

ARTHUR O. MONARES, COMPLAINANT, V. ATTY. LEVI P. MUÑOZ, RESPONDENT.*A.C. No. 5582. January 24, 2017*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-5582/>**CAGUIOA, J:**

For resolution is the Joint Petition for Review with Prayer for Absolution and/or Clemency[2] (Joint Petition) dated May 14, 2009 filed by respondent Atty. Levi P. Muñoz (Muñoz) , in connection with the complaints for disbarment filed by by Arthur O. Monares (Monares), Atty. Oliver O. Olaybal (Olaybal) purportedly representing Albay Electric Cooperative, Inc. (ALECO), and Benjilieh M. Constante (Constante), dated January 17, 2002, February 4, 2002 and March 21, 2002, respectively.

Monares is the plaintiff in Civil Case No. 9923 filed against Ludolfo Muñoz (Ludolfo) before the Regional Trial Court (RTC) of Legazpi City. In his complaint, Monares alleged that Muñoz represented his brother Ludolfo in the said case during regular government hours while employed as Provincial Legal Officer of Albay City.[3]

Under the chairmanship of Olaybal, ALECO's old board of directors (BOD) engaged Muñoz as retained counsel sometime in June 1998. Olaybal averred that Muñoz did not inform ALECO's old BOD that he was employed as Provincial Legal Officer at such time. Olaybal raised that after its administrator, the National Electrification Administration (NEA), deactivated the old BOD on the ground of mismanagement, Muñoz served as retained counsel of the NEA-appointed team which took over the management of ALECO. Moreover, Olaybal alleged that Muñoz illegally collected payments in the form of notarial and professional fees in excess of what was agreed upon in their retainer agreement.[4]

Constante is the Executive Assistant for Legal Affairs of Sunwest Construction and Development Corporation (Sunwest). Constante claimed that Muñoz filed ten (10) cases against Sunwest on Ludolfo's behalf before the Office of the Ombudsman (Ombudsman) while he was serving as Provincial Legal Officer.[5]

All three (3) complaints prayed that Muñoz be disbarred for unlawfully engaging in private practice. In addition, Olaybal sought Muñoz's disbarment for acts of disloyalty, particularly, for violating the rule against conflict of interest.[6]

To support their position, the complainants raised that Muñoz had been previously disciplined by the Ombudsman for two (2) counts of unauthorized practice of profession in OMB-ADM-101-0462, and was meted the penalty of removal and dismissal from service. The complainants further manifested that Muñoz had been convicted by the Municipal Trial Court in Cities (MTCC) of Legazpi City in Criminal Case Nos. 25568 and 25569 for violation of Section 7(b)(2) in relation to Section 11 of Republic Act No. 6713.[7] Muñoz's conviction has since become final pursuant to the Court's Resolution dated June 14, 2004 in G.R. No. 160668.[8]

In his respective comments to the complaints,[9] Muñoz claimed that he had requested Governor Al Francis C. Bichara (Governor Bichara) for authority to continue his private practice shortly after his appointment. This request was granted on July 18, 1995[10] Thereafter, Muñoz submitted the same request to Rafael C. Alunan III, then Secretary of the Department of the Interior and Local Government (DILG).[11] On September 8, 1995,

Acting Secretary Alexander P. Aguirre granted Muñoz's request, under the following conditions:

- That no government time, personnel, funds or supplies shall be utilized in connection (sic) and that no conflict of interest with your present position as Provincial Legal Officer shall arise thereby;
- That the time so devoted outside of office hours, the place(s) and under what circumstances you can engage in private employment shall be fixed by the Governor of Albay to the end that it will not impair in any way your efficiency; and
- That any violation of the above restrictions will be a ground for the cancellation and/or revocation of this authority.[12] (Emphasis supplied)

Pursuant to the DILG's authorization, Governor Bichara imposed the following conditions upon Muñoz:

- [Y]ou cannot handle cases against the Province of Albay;
- [Y]ou will be on call and you will have no fix (sic) working hours provided that the efficiency of the Provincial Legal Office shall not be prejudiced;
- [Y]ou are exempted in (sic) accomplishing your Daily Time Record considering the limitation already mentioned above; [and]
- In addition to the above enumeration[,] you are to perform functions subject to limitations in Sec. 481 of RA 7160.[13]

Muñoz emphasized that his authority to engage in private practice was renewed by Governor Bichara on July 3, 1998 for his second term ending in July 2001, and again on July 5, 2001 for his third term ending in July 2004.[14]

The complaints were separately referred by the Court to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[15] The complaints were then consolidated through the Order dated January 16, 2003 issued by Commissioner Milagros V. San Juan.[16] Subsequently, the complaints underwent a series of re-assignments, until finally assigned to Commissioner Dorotea B. Aguila.[17]

In his Report dated March 11, 2005[18] (IBP Report), Commissioner Aguila recommended that Muñoz be found guilty of gross misconduct and violation of Rules 1.01, 6.02, 15.01 and 15.03 of the Code of Professional Responsibility (CPR). The penalty of suspension from the practice of law for an aggregate period of four (4) years[19] was recommended. On automatic review, the IBP Board of Governors (IBP-BOG) approved and adopted Commissioner Aguila's recommendation in a Resolution dated October 22, 2005.[20]

On December 22, 2005, Muñoz filed an Ex-Parte Appeal for Mercy, Clemency and Compassion before the IBP-BOG, praying that the recommended penalty be reduced to one (1) year.[21] This appeal was denied on January 28, 2006.[22]

Muñoz filed before this Court an Ex-Parte Appeal for Mercy, Clemency, Forgiveness and Compassion[23] (Appeal) dated April 8, 2006 praying for the reduction of the recommended penalty of suspension for four (4) years to one (1) year or less, and the dismissal of the complaints for disbarment filed against him. As an alternative prayer, Muñoz requested that he be granted special limited authority to practice law until all his pending cases are terminated.[24]

In his Appeal, Muñoz, insisted that when he served as Provincial Legal Officer from June 1995 to May 2002, he engaged in private practice pursuant to the three (3) written authorities issued by Governor Bichara, and the written authority of the DILG issued during his first term, which he claims had never been revoked. Muñoz also

argued that no conflict of interest existed between ALECO's old BOD and the NEA management team, since he was engaged as retained counsel of ALECO as an institution, not its management teams.[25]

On August 28, 2006, the Court resolved to remand Muñoz's Appeal to the IBP for disposition.[26]

Acting on Muñoz's Appeal, the IBP-BOG issued a Resolution reducing the recommended period of suspension from four (4) to three (3) years.[27] Unsatisfied, Muñoz filed a Motion for Reconsideration, which the IBP-BOG denied on December 11, 2008.[28]

Aggrieved, Muñoz elevated his case anew to this Court through this Joint Petition. In fine, Muñoz reiterates the allegations in his Appeal, with the additional assertion that the fees he collected from ALECO were contemplated under their retainer agreement.[29]

The Court agrees with the IBP-BOG's findings and recommendations.

Muñoz violated the conditions of his
DILG authorization.

Munoz's DILG authorization prohibited him from utilizing government time for his private practice. As correctly observed by Commissioner Aguila, Rule XVII of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws (Omnibus Rules), requires government officers and employees of all departments and agencies, except those covered by special laws, to render not less than eight (8) hours of work a day for five (5) days a week, or a total of forty (40) hours a week.[30] The number of required weekly working hours may not be reduced, even in cases where the department or agency adopts a flexible work schedule.[31]

Notably, Muñoz did not deny Monares' allegation that he made at least eighty-six (86) court appearances in connection with at least thirty (30) cases from April 11, 1996 to August 1, 2001.[32] He merely alleged that his private practice did not prejudice the functions of his office.

Court appearances are necessarily made within regular government working hours, from 8:00 in the morning to 12:00 noon, and 1:00 to 5:00 in the afternoon.[33] Additional time is likewise required to study each case, draft pleadings and prepare for trial. The sheer volume of cases handled by Muñoz clearly indicates that government time was necessarily utilized in pursuit of his private practice, in clear violation of the DILG authorization and Rule 6.02[34] of the CPR.

Muñoz should have requested for
authority to engage in private practice
from the Secretary of DILG for his
second and third terms.

Acting Secretary Aguirre's grant of authority cannot be unreasonably construed to have been perpetual. Moreover, Muñoz cannot claim that he believed in good faith that the authority granted by Governor Bichara for his second and third terms sufficed.

Memorandum No. 17 dated September 4, 1986 (Memorandum 17) , which Muñoz himself cites in his Joint Petition, is clear and leaves no room for interpretation. The power to grant authority to engage in the practice of one's profession to officers and employees in the public service lies with the head of the department, in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules which provides, in part:

Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department: Provided, That this prohibition will be absolute in the case of those officers and

employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the officer or employee x x x. (Emphasis and underscoring supplied)

Memorandum 17 was issued more than nine (9) years prior to Muñoz's appointment as Provincial Legal Officer, hence, he cannot feign ignorance thereof. As a local public official, it was incumbent upon Muñoz to secure the proper authority from the Secretary of the DILG not only for his first term, but also his second and third. His failure to do so rendered him liable for unauthorized practice of his profession and violation of Rule 1.01[35] of the CPR.

Muñoz represented conflicting interests.

Muñoz cannot elude Olaybal's allegations of disloyalty. In *Mabini Colleges, Inc. v. Pajarillo*,[36] the Court explained the tests to determine the existence of conflict of interest, thus:

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interest if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof. (Emphasis supplied)

As Muñoz himself detailed in his Joint Petition, he acted as counsel for ALECO under the management of the old BOD in the following cases:

A. Civil Case No. 10007 — ALECO (Petitioner) vs. Eleuterio Adonay, NEA Project Supervisor and his team John Catral et. al., a case filed by Oliver O. Olaybal and his group. For: Injunction, Accounting with Prayer for Writs of Preliminary Injunction and/or Temporary Restraining Order, seeking to stop the election of the new set of member (sic) of the Board of Directors x x x.

B. Civil Case [N]o. 10066 entitled ALBAY ELECTRIC COOPERATIVE, INC. as Petitioner, also filed by Oliver O. Olaybal, a case for Prohibition, Mandamus and Receivership, with Preliminary Prohibition and Mandatory Injunction and/or Temporary Restraining and Mandatory Orders. Among others, this Petition was filed to stop the second scheduled election of the ALECO Board of Directors scheduled for February 23, and 24, 2002.[37] (Underscoring omitted; additional emphasis supplied)

Muñoz thereafter served as retained counsel of ALECO under the direction of the NEA management team. Muñoz could have easily anticipated that his advice would be sought with respect to the prosecution of the members of the old BOD, considering that the latter was deactivated due to alleged mismanagement. The conflict of interest between Olaybal's board on one hand, and NEA and its management team on the other, is apparent. By representing conflicting interests without the permission of all parties involved, Muñoz violated Rules 15.01 and 15.03 of the CPR.[38]

In *Catu v. Rellosa*,[39] the Court imposed the penalty of suspension for six (6) months upon a punong barangay who acted as counsel for respondents in an ejectment case without securing the authority of the Secretary of DILG. In *Aniñon v. Sabitsana, Jr.*,[40] the Court imposed the penalty of one (1) year suspension upon a lawyer

who accepted a new engagement that required him to oppose the interests of a party whom he previously represented. In view of Muñoz's multiple infractions, the Court finds the recommended penalty of suspension for an aggregate period of three (3) years proper.

WHEREFORE, Atty. Levi P. Muñoz is found GUILTY of gross misconduct and violation of Rules 1.01, 6.02, 15.01 and 15.03 of the Code of Professional Responsibility. He is hereby SUSPENDED from the practice of law for a period of three (3) years effective upon receipt of this Decision, with a STERN WARNING that a repetition of any violation hereunder shall be dealt with more severely.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Del Castillo, Mendoza, Reyes, Perlas-Bernabe, Leonen, and Jardeleza, JJ., concur.

[1] Also referred to as "Benjilieh M. Constante-Reyes" elsewhere in the records.

[2] Rollo (A.C. No. 5582), Vol. II, pp. 614-642.

[3] Id. at 544-545.

[4] Id. at 545.

[5] Id.

[6] Id.

[7] Id. at 546, 692-700. OMB-ADM-1-01-0462 is also referred to as OMB-ADM-1-01-0462-1 in some parts of the records.

[8] Id. at 754.

[9] Id. at 543.

[10] See rollo (A.C. No. 5582), Vol. I, pp. 270, 273.

[11] Id. at 270, 274.

[12] Id. at 276.

[13] Id. at 277.

[14] Rollo (A.C. No. 5582) Vol. II, p. 547.

[15] Rollo (A.C. No. 5582) Vol. I, p. 289; see rollo (A.C. No. 5582) Vol. II, p. 543.

[16] Rollo (A.C. No. 5582) Vol. II, p. 544.

[17] Id.

[18] Id. at 543-553.

[19] Id. at 553. Three (3) years for unauthorized practice of law, plus one (1) year for acts of disloyalty.

[20] Id. at 541-542.

[21] Id. at 555-557 and 559.

[22] Id. at 559.

[23] Id. at 558-562.

[24] Id. at 561.

[25] Id. at 559-560.

[26] Id. at 570-571.

[27] Id. at 597-598.

[28] Id. at 595-596.

[29] Id. at 618.

[30] OMNIBUS RULES IMPLEMENTING BOOK V OF EXECUTIVE ORDER NO. 292 AND OTHER PERTINENT CIVIL SERVICE LAWS, Rule XVII, Section 5.

[31] Id. at Section 6.

[32] Rollo (A.C. No. 5582), Vol. I, pp. 5-12.

[33] Rollo (A.C. No. 5582), Vol. II, pp. 608-609.

[34] Rule 6.02 of Canon 6 provides:

Rule 6.02.- A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

[35] Rule 1.01, Canon 1 provides:

Rule 1.01. - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[36] A.C. No. 10687, July 22, 2015, 763 SCRA 288, 294-295, citing *Hornilla v. Salunat*, 453 Phil. 108, 111-112 (2003).

[37] Rollo (A.C. No. 5582), Vol. II, pp. 629-630.

[38] Rules 15.01 and 15.03 of Canon 15 provide:

Rule 15.01. - A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

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Rule 15.03. - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

[39] 569 Phil. 539 (2008).

[40] 685 Phil. 322 (2012).

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