

FRANCISCO LORENZANA, COMPLAINANT, VS. ATTY. CESAR G. FAJARDO, RESPONDENT.

A.C. NO. 5712. June 29, 2005

Ponente: SANDOVAL-GUTIERREZ, J.

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SANDOVAL-GUTIERREZ, J.:

Francisco Lorenzana, complainant, charges respondent Atty. Cesar G. Fajardo with violation of the Civil Service Law and Canon 6 of the Code of Professional Responsibility and seeks his disbarment from the practice of the law profession.

In a verified complaint dated May 27, 2002, complainant alleged that respondent, while employed as Legal Officer V at the Urban Settlement Office in Manila, until his retirement on May 15, 2002, was a member of the People's Law Enforcement Board (PLEB) of Quezon City, receiving a monthly honorarium of P4,000.00.[1] He was also a member of the Lupong Tagapamayapa of Barangay Novaliches Proper, also receiving a monthly allowance/ honorarium.[2]

Complainant also alleged that respondent was engaged in the private practice of law, receiving acceptance fees ranging from P20,000.00 to P50,000.00. He lives in a house and lot owned by complainant's family without paying any rental and refuses to leave the place despite the latter's demands.

Asked to comment on the complaint, respondent countered that his membership in the PLEB of Quezon City, representing the NGO, was without fixed compensation. He reported only once a week in the afternoon for which he received only per diems allowed under Section 43 par. (c) of Republic Act No. 6975.[3] As regards his designation as a member of the Lupong Tagapamayapa, the same is authorized under Section 406 of the Local Government Code of 1991; and his monthly allowance/honorarium is allowed under Section 393.

While he received allowances, honoraria and other emoluments as member of the PLEB and of the Lupong Tagapamayapa, even as he is in the government service, the same is authorized by law. Hence, there was no double compensation. He admitted having appeared as private counsel in several cases. However, his clients were his relatives and friends, among them were complainant's father and brother Ricardo. He emphasized that his services were pro bono.

Respondent denied that the lot on which his house is built belongs to complainant's family. In fact, it is now the subject of an "Accion Publiciana" filed against him by one Dionisio delos Reyes before the Regional Trial Court of Quezon City, Branch 100.

In a Resolution dated January 20, 2003, we referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

IBP Commissioner Doroteo B. Aguila, who conducted the investigation, found that respondent's appointment as a member of the Lupong Tagapamayapa of Barangay Town Proper, Novaliches, Quezon City, while concurrently employed as a legal officer of the Manila Urban Settlements Office is not unlawful. Such appointment is in

accordance with the Local Government Code of 1991. Nor could respondent be found liable for receiving honoraria as a Lupon member, since the Local Government Code of 1991 authorizes Lupon members to receive honoraria, allowances, and other emoluments. With respect to respondent's appointment as PLEB member, IBP Commissioner Aguila stated that the same is not an exception to the prohibition against dual appointments or employment of government officials or employees.

IBP Commissioner Aguila found that respondent's court appearances as counsel for litigants do not constitute private practice of law since complainant failed to show that he received compensation. However, respondent should still be held liable for violation of Civil Service Rules and Regulations since he failed to show that he was permitted by his Office to appear as counsel for his clients.

On August 30, 2003, the IBP Board of Governors passed Resolution No. XVI-2003-93 quoted as follows:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and in view of respondent's accepting appointment as Board Member of the People's Law Enforcement Board of Quezon City while he was still employed as Legal Officer V of the Manila Urban Settlement Office, Atty. Cesar G. Fajardo is hereby SUSPENDED from the practice of law for one (1) month and hereby REPRIMANDED with stern WARNING for failing to obtain written permission from his superiors to appear as counsel to certain relatives and friends as required by Sec. 12, Rule XVIII of the Revised Civil Service Rules.

The prohibition against government officials and employees, whether elected or appointed, from concurrently holding any other office or position in the government is contained in Section 7, Article IX-B of the Constitution which provides:

"Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or 2employment in the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries."[4]

In trying to justify his appointment as PLEB member, respondent invoked Section 43 (c) of R.A. No. 6975[5] quoted below which, according to him, is the law allowing him to be appointed as such member of the Quezon City PLEB.

"Section 43. People's Law Enforcement Board –

x x x x x x x x

(c) Compensation, Membership in the PLEB is a civic duty. However, PLEB members may be paid per diem as may be determined by the city or municipal council from city or municipal funds."

It is clear that this provision pertains only to the compensation of PLEB members. It cannot be construed as an exception to the Constitutional and statutory prohibition against dual or multiple appointments of appointive public employees.

Respondent also failed to establish that his primary functions as Legal Officer of the Manila Urban Settlements Office allow his appointment as PLEB member, an exception to dual appointment prohibited by the Constitution and the statutes. Indeed, respondent, in accepting such appointment, has transgressed the Constitution, the Administrative Code of 1987, and the Local Government Code of 1991. Being *contra leges*, respondent also violated the Code of Professional Responsibility and the Attorney's Oath.

Canon 1 of the Code of Professional Responsibility states:

CANON 1. A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND, PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

These duties are further enshrined in the Attorney's Oath, which every lawyer in this jurisdiction has to take before he is allowed to practice law. The Attorney's Oath states in part that every lawyer "shall support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities..."

The lawyer's paramount duty to society is to obey the law. For of all classes and professions, it is the lawyer who is most sacredly bound to uphold the laws, for he is their sworn servant.[6] Sadly, respondent failed to fulfill this exacting duty.

On respondent's appointment as a member of the Lupon Tagapamayapa of Barangay Novaliches Proper, while serving as Legal Officer V of the Manila Urban Settlements Office, we agree with the IBP Investigating Commissioner that the same is in order, being allowed by law.

"Section 406. Character of Office and Service of Lupon Members –

x x x x x x x x

(b) The lupon or pangkat members shall serve without compensation, except as provided in Section 393 and without prejudice to incentives as provided for in this Section and in Book IV of this Code. The Department of Interior and Local Government shall provide for a system of granting economic or other incentives to the lupon or pangkat members who adequately demonstrate the ability to judiciously and expeditiously resolve cases referred to them. While in the performance of their duties, the lupon or pangkat members, whether in public or private employment, shall be deemed to be on official time, and shall not suffer from any diminution in compensation or allowance from said employment by reason thereof."

The above provision allows government officials and employees to sit as lupon or pangkat members. The phrase "whether in public or private employment" sustains respondent's posture.

We now determine whether respondent engaged in the practice of law while employed as Legal Officer V in the Manila Urban Settlement Office. Private practice of law contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer.[7] Practice is more than an isolated appearance for it consists in frequent or customary action a succession of acts of the same kind. The practice of law by attorneys employed in the government, to fall within the prohibition of statutes has been interpreted as customarily habitually holding one's self out to the public, as a lawyer and demanding payment for such services.[8]

In the case at bar, respondent's appearance as counsel is not merely isolated. Evidence presented by complainant shows that he had an extensive practice of law. While employed as a Legal Officer in the Urban Resettlement Office of Manila, he maintained a law office. The pleadings he signed as "counsel" for his clients filed with the courts indicate his office address as "Room 201 7 JA Building, 244 Gen. Luis St., Novaliches, Quezon City." Following is the letter head appearing on the letters and envelopes[9] sent to his clients:

"Cesar G. Fajardo
Attorney and Counsellor-at-Law
Room 201 7 J & A Building
244 Gen. Luis St., Novaliches
Quezon City."

Respondent cannot justify his practice of law by claiming that his office (the Manila Urban Resettlement) is "not really strict when it comes to appearing in some private cases as they (employees) were sometimes called to

render service even on holidays without additional compensation.” At most, he should have asked written permission from his chief as required by Section 12, Rule XVIII of the Revised Civil Service Rules that “(n)o 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 the Department.”

As to respondent’s alleged unlawful stay on complainant’s property affecting his conduct as a member of the Bar, suffice it to state that any discussion on this issue is premature since the case is still pending in the RTC, Branch 100, Quezon City.

Anent the penalty to be imposed, as mentioned earlier, the IBP Board of Governors recommended that respondent be suspended for one (1) month for accepting a prohibited appointment as a member of the PLEB of Quezon City and be reprimanded for failing to obtain a written permission from his “superiors” to appear as counsel “for certain friends and relatives.” We believe that a heavier penalty should be imposed upon him for he transgressed not only the statutes but the very fundamental law itself, in violation of his Attorney’s Oath and Canon 1 of the Code of Professional Responsibility.

Section 27, Rule 138 of the Revised Rules of Court reads:

SEC. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefore. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which is he is required to take before admission to practice, for a willful disobedience of any lawful order of a superior court or for corruptly and willfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice (Stress supplied).

WHEREFORE, for accepting employment as a member of the PLEB of Quezon City while concurrently employed as Legal Officer V of the Manila Urban Settlement Office, in violation of the Constitution and the statutes, which in turn contravene his Attorney’s Oath and Code of Professional Responsibility; and by engaging in the illegal practice of law, Atty. Cesar G. Fajardo is hereby **SUSPENDED** from the practice of law for a period of six (6) months effective from notice and is **REPRIMANDED** and **WARNED** that any repetition of similar acts would be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be spread upon the records of Atty. Cesar G. Fajardo; the Office of the Court Administrator to be furnished to the courts of the land for their information and guidance.

SO ORDERED.

Panganiban, (Chairman), Corona, Carpio-Morales, and Garcia, JJ., concur.

[1] Annex “B”, Letter-Certification, dated June 6, 2002 of Councilor Ramon P. Quedalla, Chairman. People’s Law Enforcement Board, Quezon City.

[2] Annex “C”, Certification dated May 21, 2002, issued by Barangay Captain Antonio M. Lazaro.

[3] An Act Establishing the Philippine National Police Under a Reorganized Department of the Interior and Local Government and for Other Purposes.

[4] Similar provision is found in Section 54 (3), Chapter 7, Title I (A), Book V of the Administrative Code of 1987 and Section 94 (a) of the Local Government Code of 1991.

[5] Supra.

[6] In Re: Gutierrez, 115 Phil. 647 (1962).

[7] Office of the Court Administrator vs. Ladaga, 350 SCRA 326, January 26, 2001.

[8] People vs. Simplicio Villanueva, 121 Phil. 894, May 27, 1965.

[9] Rollo at 42, 55, and 63.

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