

WILFREDO M. CATU, Complainant, vs. ATTY. VICENTE G. RELLOSA, Respondent.

A.C. No. 5738. February 19, 2008

Ponente: CORONA, J.

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CORONA, J.:

Complainant Wilfredo M. Catu is a co-owner of a lot[1] and the building erected thereon located at 959 San Andres Street, Malate, Manila. His mother and brother, Regina Catu and Antonio Catu, contested the possession of Elizabeth C. Diaz-Catu[2] and Antonio Pastor[3] of one of the units in the building. The latter ignored demands for them to vacate the premises. Thus, a complaint was initiated against them in the Lupong Tagapamayapa of Barangay 723, Zone 79 of the 5[th] District of Manila[4] where the parties reside.

Respondent, as punong barangay of Barangay 723, summoned the parties to conciliation meetings.[5] When the parties failed to arrive at an amicable settlement, respondent issued a certification for the filing of the appropriate action in court.

Thereafter, Regina and Antonio filed a complaint for ejectment against Elizabeth and Pastor in the Metropolitan Trial Court of Manila, Branch 11. Respondent entered his appearance as counsel for the defendants in that case. Because of this, complainant filed the instant administrative complaint,[6] claiming that respondent committed an act of impropriety as a lawyer and as a public officer when he stood as counsel for the defendants despite the fact that he presided over the conciliation proceedings between the litigants as punong barangay.

In his defense, respondent claimed that one of his duties as punong barangay was to hear complaints referred to the barangay's Lupong Tagapamayapa. As such, he heard the complaint of Regina and Antonio against Elizabeth and Pastor. As head of the Lupon, he performed his task with utmost objectivity, without bias or partiality towards any of the parties. The parties, however, were not able to amicably settle their dispute and Regina and Antonio filed the ejectment case. It was then that Elizabeth sought his legal assistance. He acceded to her request. He handled her case for free because she was financially distressed and he wanted to prevent the commission of a patent injustice against her.

The complaint was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. As there was no factual issue to thresh out, the IBP's Commission on Bar Discipline (CBD) required the parties to submit their respective position papers. After evaluating the contentions of the parties, the IBP-CBD found sufficient ground to discipline respondent.[7]

According to the IBP-CBD, respondent admitted that, as punong barangay, he presided over the conciliation proceedings and heard the complaint of Regina and Antonio against Elizabeth and Pastor. Subsequently, however, he represented Elizabeth and Pastor in the ejectment case filed against them by Regina and Antonio. In the course thereof, he prepared and signed pleadings including the answer with counterclaim, pre-trial brief, position paper and notice of appeal. By so doing, respondent violated Rule 6.03 of the Code of Professional Responsibility:

Rule 6.03 – A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he intervened while in said service.

Furthermore, as an elective official, respondent contravened the prohibition under Section 7(b)(2) of RA 6713:[8]

SEC. 7. Prohibited Acts and Transactions. – In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

xxx xxx xxx

(b) Outside employment and other activities related thereto. – Public officials and employees during their incumbency shall not:

xxx xxx xxx

(2) Engage in the private practice of profession unless authorized by the Constitution or law, provided that such practice will not conflict or tend to conflict with their official functions; xxx (emphasis supplied)

According to the IBP-CBD, respondent's violation of this prohibition constituted a breach of Canon 1 of the Code of Professional Responsibility:

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

For these infractions, the IBP-CBD recommended the respondent's suspension from the practice of law for one month with a stern warning that the commission of the same or similar act will be dealt with more severely.[9] This was adopted and approved by the IBP Board of Governors.[10]

We modify the foregoing findings regarding the transgression of respondent as well as the recommendation on the imposable penalty.

Rule 6.03 of the Code
of Professional Responsibility
Applies Only to Former
Government Lawyers

Respondent cannot be found liable for violation of Rule 6.03 of the Code of Professional Responsibility. As worded, that Rule applies only to a lawyer who has left government service and in connection "with any matter in which he intervened while in said service." In *PCGG v. Sandiganbayan*,^[11] we ruled that Rule 6.03 prohibits former government lawyers from accepting "engagement or employment in connection with any matter in which [they] had intervened while in said service."

Respondent was an incumbent punong barangay at the time he committed the act complained of. Therefore, he was not covered by that provision.

Section 90 of RA 7160, Not
Section 7(b)(2) of RA 6713,
Governs The Practice of
Profession of Elective Local
Government Officials

Section 7(b)(2) of RA 6713 prohibits public officials and employees, during their incumbency, from engaging in the private practice of their profession "unless authorized by the Constitution or law, provided that such practice

will not conflict or tend to conflict with their official functions.” This is the general law which applies to all public officials and employees.

For elective local government officials, Section 90 of RA 7160[12] governs:

SEC. 90. Practice of Profession. – (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

(b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during session hours: Provided, That sanggunian members who are members of the Bar shall not:

(1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;

(2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office;

(3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and

(4) Use property and personnel of the Government except when the sanggunian member concerned is defending the interest of the Government.

(c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: Provided, That the officials concerned do not derive monetary compensation therefrom.

This is a special provision that applies specifically to the practice of profession by elective local officials. As a special law with a definite scope (that is, the practice of profession by elective local officials), it constitutes an exception to Section 7(b)(2) of RA 6713, the general law on engaging in the private practice of profession by public officials and employees. *Lex specialibus derogat generalibus*. [13]

Under RA 7160, elective local officials of provinces, cities, municipalities and barangays are the following: the governor, the vice governor and members of the sangguniang panlalawigan for provinces; the city mayor, the city vice mayor and the members of the sangguniang panlungsod for cities; the municipal mayor, the municipal vice mayor and the members of the sangguniang bayan for municipalities and the punong barangay, the members of the sangguniang barangay and the members of the sangguniang kabataan for barangays.

Of these elective local officials, governors, city mayors and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives. This is because they are required to render full time service. They should therefore devote all their time and attention to the performance of their official duties.

On the other hand, members of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan may practice their professions, engage in any occupation, or teach in schools except during session hours. In other words, they may practice their professions, engage in any occupation, or teach in schools outside their session hours. Unlike governors, city mayors and municipal mayors, members of the sangguniang panlalawigan, sangguniang panlungsod or sangguniang bayan are required to hold regular sessions only at least once a week. [14] Since the law itself grants them the authority to practice their professions, engage in any occupation or teach in schools outside session hours, there is no longer any need for them to secure prior permission or authorization from any other person or office for any of these purposes.

While, as already discussed, certain local elective officials (like governors, mayors, provincial board members and

councilors) are expressly subjected to a total or partial proscription to practice their profession or engage in any occupation, no such interdiction is made on the punong barangay and the members of the sangguniang barangay. Expressio unius est exclusio alterius.[15] Since they are excluded from any prohibition, the presumption is that they are allowed to practice their profession. And this stands to reason because they are not mandated to serve full time. In fact, the sangguniang barangay is supposed to hold regular sessions only twice a month.[16]

Accordingly, as punong barangay, respondent was not forbidden to practice his profession. However, he should have procured prior permission or authorization from the head of his Department, as required by civil service regulations.

A Lawyer In Government Service
Who Is Not Prohibited To Practice
Law Must Secure Prior Authority
From The Head Of His Department

A civil service officer or employee whose responsibilities do not require his time to be fully at the disposal of the government can engage in the private practice of law only with the written permission of the head of the department concerned.[17] Section 12, Rule XVIII of the Revised Civil Service Rules provides:

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 the 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, time so devoted outside of office hours should be fixed by the agency to the end that it will not impair in any way the efficiency of the officer or employee: And provided, finally, that no permission is necessary in the case of investments, made by an officer or employee, which do not involve real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer of the board of directors. (emphasis supplied)

As punong barangay, respondent should have therefore obtained the prior written permission of the Secretary of Interior and Local Government before he entered his appearance as counsel for Elizabeth and Pastor. This he failed to do.

The failure of respondent to comply with Section 12, Rule XVIII of the Revised Civil Service Rules constitutes a violation of his oath as a lawyer: to obey the laws. Lawyers are servants of the law, vires legis, men of the law. Their paramount duty to society is to obey the law and promote respect for it. To underscore the primacy and importance of this duty, it is enshrined as the first canon of the Code of Professional Responsibility.

In acting as counsel for a party without first securing the required written permission, respondent not only engaged in the unauthorized practice of law but also violated civil service rules which is a breach of Rule 1.01 of the Code of Professional Responsibility:

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. (emphasis supplied)

For not living up to his oath as well as for not complying with the exacting ethical standards of the legal profession, respondent failed to comply with Canon 7 of the Code of Professional Responsibility:

CANON 7. A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND THE DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. (emphasis supplied)

supplied)

Indeed, a lawyer who disobeys the law disrespects it. In so doing, he disregards legal ethics and disgraces the dignity of the legal profession.

Public confidence in the law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar.[18] Every lawyer should act and comport himself in a manner that promotes public confidence in the integrity of the legal profession.[19]

A member of the bar may be disbarred or suspended from his office as an attorney for violation of the lawyer's oath[20] and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility.

WHEREFORE, respondent Atty. Vicente G. Rellosa is hereby found GUILTY of professional misconduct for violating his oath as a lawyer and Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility. He is therefore SUSPENDED from the practice of law for a period of six months effective from his receipt of this resolution. He is sternly WARNED that any repetition of similar acts shall be dealt with more severely.

Respondent is strongly advised to look up and take to heart the meaning of the word delicadeza.

Let a copy of this resolution be furnished the Office of the Bar Confidant and entered into the records of respondent Atty. Vicente G. Rellosa. The Office of the Court Administrator shall furnish copies to all the courts of the land for their information and guidance.

SO ORDERED.

Puno, C.J., (Chairperson), Sandoval-Gutierrez, Azcuna, and Leonardo-De Castro, JJ., concur.

[1] Particularly described as lot no. 19, block no. 3, Pas-14849.

[2] Complainant's sister-in-law.

[3] Hereafter, "Elizabeth and Pastor."

[4] Hereafter, "Barangay 723."

[5] These were scheduled on March 15, 2001, March 26, 2001 and April 3, 2001.

[6] Dated July 5, 2002. Rollo, pp. 2-23.

[7] Report and Recommendation dated October 15, 2004 of Commissioner Doroteo B. Aguila of the IBP-CBD. Id., pp. 103-106.

[8] The Code of Conduct and Ethical Standards for Public Officials and Employees.

[9] Supra note 7.

[10] CBD Resolution No. XVI-2004-476 dated November 4, 2004. Rollo, p. 102.

[11] G.R. Nos. 151809-12, 12 April 2005, 455 SCRA 526. (emphasis in the original)

[12] The Local Government Code of 1992.

[13] This rule of statutory construction means that a special law repeals a general law on the same matter.

[14] Section 52(a), RA 7160. They may also hold special sessions upon the call of the local chief executive or a majority of the members of the sanggunian when public interest so demands. (Section 52[b], id.)

[15] This rule of statutory construction means that the express mention of one thing excludes other things not mentioned.

[16] Id.

[17] See *Ramos v. Rada*, A.M. No. P-202, 22 July 1975, 65 SCRA 179; *Zeta v. Malinao*, A.M. No. P-220, 20 December 1978, 87 SCRA 303.

[18] *Ducat v. Villalon*, 392 Phil. 394 (2000).

[19] Id.

[20] See Section 27, Rule 138, RULES OF COURT.

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