

## NESTOR PEREZ, COMPLAINANT, VS. ATTY. DANILO DE LA TORRE, RESPONDENT

*A.C. No. 6160. March 30, 2006*

Ponente: YNARES-SANTIAGO, J.

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### YNARES-SANTIAGO, J.:

In a letter-complaint<sup>[1]</sup> dated July 30, 2003 addressed to then Chief Justice Hilario G. Davide, Jr., complainant Nestor Perez charged respondent Atty. Danilo de la Torre with misconduct or conduct unbecoming of a lawyer for representing conflicting interests.

Perez alleged that he is the barangay captain of Binanuaanan, Calabanga, Camarines Sur; that in December 2001, several suspects for murder and kidnapping for ransom, among them Sonny Boy Ilo and Diego Avila, were apprehended and jailed by the police authorities; that respondent went to the municipal building of Calabanga where Ilo and Avila were being detained and made representations that he could secure their freedom if they sign the prepared extrajudicial confessions; that unknown to the two accused, respondent was representing the heirs of the murder victim; that on the strength of the extrajudicial confessions, cases were filed against them, including herein complainant who was implicated in the extrajudicial confessions as the mastermind in the criminal activities for which they were being charged.

Respondent denied the accusations against him. He explained that while being detained at the Calabanga Municipal Police Jail, Avila sought his assistance in drafting an extrajudicial confession regarding his involvement in the crimes of kidnapping for ransom, murder and robbery. He advised Avila to inform his parents about his decision to make an extrajudicial confession, apprised him of his constitutional rights and of the possibility that he might be utilized as a state-witness.

Respondent claimed that when Ilo sought his assistance in executing his extrajudicial confession, he conferred with Ilo in the presence of his parents; and only after he was convinced that Ilo was not under undue compulsion did he assist the accused in executing the extrajudicial confession.

The complaint was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.<sup>[2]</sup> On August 16, 2005, the Investigating Commissioner submitted his report with the following recommendation:

WHEREFORE, it is respectfully recommended that Atty. Danilo de la Torre be suspended for one (1) year from the practice of the legal profession for violation of Rule 15.03 of the Code of Professional Responsibility.

### RESPECTFULLY SUBMITTED.

The Board of Governors of the IBP modified the recommendation by increasing the period of suspension to two years.

In finding the respondent guilty of representing conflicting interests, the Investigating Commissioner opined that:

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in his complaint. The complainant was able to prove by substantial evidence his charge against Atty. de la Tor[r]e. The respondent admitted that his services as a lawyer were retained by both Avila and Ilo. Perez was able to show that at the time that Atty. de la Torre was representing the said two accused, he was also representing the interest of the victim's family. This was declared by the victim's daughter, Vicky de Chavez, who testified before Branch 63 of the Regional Trial Court of Camarines Sur that her family retained the services of Atty. Danilo de la Torre to prosecute the case against her father's killers. She even admitted that she was present when Atty. de la Torre met with and advised Avila and Ilo on one occasion. This is proof that the respondent consciously offered his services to Avila and Ilo despite the fact that he was already representing the family of the two accused's victim. It may not even be improbable that respondent purposely offered to help the accused in order to further his other clients' interest. The respondent failed to deny these facts or offer competent evidence to refute the said facts despite the ample opportunity given him.

Under Rule 15.03 of the Code of Professional Responsibility, a lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts. Respondent is therefore duty bound to refrain from representing two parties having conflicting interests in a controversy. By doing precisely the foregoing, and without any proof that he secured the written consent of both parties after explaining to them the existing conflict of interest, respondent should be sanctioned.

We agree with the findings of the IBP except for the recommended penalty.

There is conflict of interests 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.[3]

There is a representation of conflicting interests if the acceptance of the new retainer will require the attorney to do anything 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.[4]

The prohibition against representing conflicting interest is founded on principles of public policy and good taste. In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. The nature of that relationship is, therefore, one of trust and confidence of the highest degree. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of impropriety and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.[5]

To negate any culpability, respondent explained that he did not offer his legal services to accused Avila and Ilo but it was the two accused who sought his assistance in executing their extrajudicial confessions. Nonetheless, he acceded to their request to act as counsel after apprising them of their constitutional rights and after being convinced that the accused were under no compulsion to give their confession.

The excuse proffered by the respondent does not exonerate him from the clear violation of Rule 15.03 of the Code of Professional Responsibility which prohibits a lawyer from representing conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

As found by the IBP, at the time respondent was representing Avila and Ilo, two of the accused in the murder of

the victim Resurreccion Barrios, he was representing the family of the murder victim. Clearly, his representation of opposing clients in the murder case invites suspicion of double-dealing and infidelity to his clients.

What is unsettling is that respondent assisted in the execution by the two accused of their confessions whereby they admitted their participation in various serious criminal offenses knowing fully well that he was retained previously by the heirs of one of the victims. Respondent, who presumably knows the intricacies of the law, should have exercised his better judgment before conceding to accused's choice of counsel. It did not cross his mind to inhibit himself from acting as their counsel and instead, he even assisted them in executing the extrajudicial confession.

Considering that this is respondent's first infraction, disbarment as sought by the complaint is deemed to be too severe. Under the present circumstances, we find that a suspension from the practice of law for three years is warranted.

WHEREFORE, Atty. Danilo de la Torre is found GUILTY of violation of Rule 15.03 of the Code of Professional Responsibility for representing conflicting interests. He is SUSPENDED for THREE YEARS from the practice of law, effective upon his receipt of this Decision. He is WARNED that a repetition of the same or similar acts will be dealt with more severely.

Let copies of this Decision be entered in the record of respondent and served on the IBP, as well as on the Court Administrator who shall circulate it to all courts for their information and guidance.

**SO ORDERED.**

Panganiban, C.J., Puno, Quisumbing, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ. concur.

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[1] Rollo, pp. 1-4.

[2] Id. at 412.

[3] Hornilla v. Salunat, A.C. No. 5804, July 1, 2003, 405 SCRA 220, 223.

[4] Abaqueta v. Florido, A.C. No. 5948, January 22, 2003, 395 SCRA 569, 574-579.

[5] Quiambao v. Bamba, Adm. Case No. 6708, August 25, 2005, 468 SCRA 1, 9-10.

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