SECOND DIVISION

[A.C. No. 8911, July 08, 2019]

IN RE: ATTY. ROMULO P. ATENCIA: REFERRAL BY THE COURT OF APPEALS OF A LAWYER'S UNETHICAL CONDUCT AS INDICATED IN ITS DECISION DATED JANUARY 31, 2011 IN CA-G.R. CR-HC NO. 03322 (PEOPLE OF THE PHILIPPINES V. AURORA TATAC, ET AL.).

R E S O L U T I O N

PERLAS-BERNABE, J.:

For the Court's resolution is an administrative complaint[1] filed against respondent former Judge Romulo P. Atencia (respondent) for violation of Rule 6.03 of the Code of Professional Responsibility (CPR).

The Facts

On December 16, 2003, respondent, then Presiding Judge of the Regional Trial Court of Virac, Catanduanes, Branch 43 (RTC), presided over the arraignment of accused Aurora Tatac (Tatac), Maria Gaela (Gaela), and Maritess Cunanan (Cunanan; collectively, accused) in Criminal Case Nos. 3265, 3266, and 3267 for transporting dangerous drugs, and thereafter, ordered a joint trial of the cases upon his determination that the cases involved a commonality of evidence.[2]

On February 11, 2004, respondent tendered his resignation as Presiding Judge of the RTC due to health reasons, which took effect on April 30, 2004.[3]

On April 21, 2006, or almost two (2) years after he resigned, respondent entered his appearance in the same criminal cases as substitute counsel for accused Tatac, Gaela, and Cunanan.

After trial, the RTC convicted the accused, prompting Tatac and Gaela to appeal to the CA with respondent as counsel.[4]

On appeal, the CA acquitted the accused[5] but noted that respondent committed an ethical infraction because of his acceptance of the cause of the accused, who had earlier appeared before him when he was still a judge, *viz.*:

> First, a word on the perceived unethical conduct of former Judge Romulo Atencia who, after presiding over the initial stages of the case, including the arraignment of the accused, was later engaged as counsel for the same accused.

x x x x

x x x **[H]is acceptance of the cause of the accused-appellants, who had earlier appeared before him when he was still a judge, seriously taints his stature as a lawyer.** It cannot be helped that his acceptance of the same case which he presided over may not have been made with the most pristine of intentions. While a lawyer should not reject, except for valid reasons, the cause of the defenseless or the oppressed, it is also true that he should avoid conflict of interest. Moreover, former Judge Romulo Atencia's tenure as judge of the same court may have been a significant factor for the accused-appellants' decision to engage his services. A lawyer should never allow himself to be perceived as able to influence any public official, tribunal or legislative body.

x x x x

In this regard, the CA observed that the matter should be referred6 to the Integrated Bar of the Philippines (IBP) for further investigation pursuant to Section 1 of Rule 139-B of the Rules of Court (Rules).[7]

Subsequently, the Commission on Bar Discipline of the IBP referred the matter to the Office of the Bar Confidant (OBC) for appropriate action.[8]

In a Memorandum[9] dated March 11, 2011, the OBC recommended: (1) the docketing of the complaint; and (2) that respondent be required to comment.[10] Pursuant to the OBC's recommendation, the Court issued a Resolution[11] dated April 11, 2011, approving the formal docketing of the complaint against respondent and requiring him to comment on his alleged unethical conduct.[12]

In his Comment,[13] respondent refuted the charges against him, claiming that there is no prohibition against a former judge to accept as his client somebody who was an accused in his sala when he was still judge.[14] Respondent also argued that his participation was limited to the arraignment of the accused and to the issuance of the order directing the joint trial of the cases due to commonality of evidence.[15]

In a Resolution[16] dated November 28, 2011, the Court referred the case to the IBP for investigation, report, and recommendation.[17]

The IBP's Report and Recommendation

In a Report and Recommendation[18] dated June 10, 2013, the IBP Investigating Commissioner found respondent administratively liable for violating Rule 6.03 of the CPR, and accordingly, recommended that he be meted the penalty of suspension from the practice of law for one (1) year.

The Investigating Commissioner noted that as a former judge of the court where the

cases were then pending, respondent is considered to have "intervened" when he accepted to be the counsel for the accused. Indeed, as a judge, respondent had the power to influence the proceedings, regardless of his limited participation in the case as aforementioned. Thus, he is prohibited from accepting any engagement from the accused involving the same matter.[19]

In a Resolution[20] dated August 9, 2014, the IBP Board of Governors adopted the aforesaid report and recommendation.[21]

However, during the pendency of this case, or on July 6, 2017, respondent unfortunately passed away.[22]

The Issue Before the Court

The issue for the Court's resolution is whether or not respondent should be held administratively liable for violation of Rule 6.03 of the CPR.

The Court's Ruling

Rule 6.03 of the CPR states:

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

In *Olazo v. Tinga*,[23] the Court held that Rule 6.03 contemplates of a situation where a lawyer, formerly in the government service, accepted engagement or employment in a matter which, by virtue of his public office, had previously exercised power to influence the outcome of the proceedings.[24]

The rationale for the prohibition under Rule 6.03 is this: private lawyers who, during their tenure in government service, had possessed the power to influence the outcome of the proceedings, are bound to enjoy an undue advantage over other private lawyers because of their substantial access to confidential information on the matter (including the submissions of a counter-party), as well as to the government's resources dedicated to process/resolve the same (including contacts in the institution where the matter is pending). Thus, to obviate the temptation of these government lawyers to exploit the information, contacts, and influence garnered while in the service when they leave for private practice, the prohibition under Rule 6.03 was formulated.

In *Presidential Commission on Good Government v. Sandiganbayan (PCGG)*,[25] the Court took pains to trace the roots of Rule 6.03 and discussed the so-called "revolving door" concern, which was the original impetus behind the prohibition under Rule 6.03:

In 1917, the Philippine Bar found that the oath and duties of a lawyer were insufficient to attain the full measure of public respect to which the legal profession was entitled. In that year, the Philippine Bar Association adopted as its own, Canons 1 to 32 of the ABA Canons of Professional Ethics.

As early as 1924, some ABA members have questioned the form and function of the canons. ***Among their concerns was the "revolving door" or "the process by which lawyers and others temporarily enter government service from private life and then leave it for large fees in private practice, where they can exploit information, contacts, and influence garnered in government service***." These concerns were classified as "**adverse-interest conflicts**" and **"congruent-interest conflicts." "Adverse-interest conflicts"** exist where the matter in which the former government lawyer represents a client in private practice is substantially related to a matter that the lawyer dealt with while employed by the government and the interests of the current and former are adverse. On the other hand, "**congruent-interest representation conflicts**" are unique to government lawyers and apply primarily to former government lawyers, x x x To deal with problems peculiar to former government lawyers, **Canon 36** was minted which disqualified them both for "adverse-interest conflicts" and "congruent-interest representation conflicts." **The rationale for disqualification is rooted in a concern that the government lawyer's largely discretionary actions would be influenced by the temptation to take action on behalf of the government client that later could be to the advantage of parties who might later become private practice clients**. Canon 36 provides, *viz*.:

26. Retirement from judicial position or public employment

A lawyer should not accept employment as an advocate in any matter upon the merits of which he has previously acted in a judicial capacity.

A lawyer, having once held public office or having been in the public employ should not, after his retirement, accept employment in connection with any matter he has investigated or passed upon while in such office or employ.[26] (Emphases and underscoring supplied)

According to the *PCGG* case, Rule 6.03 of CPR retained the general structure of paragraph 2, Canon 36 of the Canons of Professional Ethics *"but replaced the expansive phrase "investigated and passed upon " with the word "intervened*."[27] Notably, the word "intervened" was held to only include "an act of a person who has the power to influence the subject proceedings." The intervention cannot be insubstantial and insignificant. It does not "includ[e] participation in a proceeding even if the intervention is irrelevant or has no effect or little influence."[28]

In this case, it is undisputed that respondent not only presided over the arraignment