

SECOND DIVISION

[A.C. No. 5098, April 11, 2012]

JOSEFINA M. ANIÑON, COMPLAINANT, VS. ATTY. CLEMENCIO SABITSANA, JR., RESPONDENT.

DECISION

BRION, J.:

We resolve this disbarment complaint against Atty. Clemencio Sabitsana, Jr. who is charged of: (1) violating the lawyer's duty to preserve confidential information received from his client;^[1] and (2) violating the prohibition on representing conflicting interests.^[2]

In her complaint, Josefina M. Aniñon (*complainant*) related that she previously engaged the legal services of Atty. Sabitsana in the preparation and execution in her favor of a Deed of Sale over a parcel of land owned by her late common-law husband, Brigido Caneja, Jr. Atty. Sabitsana allegedly violated her confidence when he subsequently filed a civil case against her for the annulment of the Deed of Sale in behalf of Zenaida L. Cañete, the legal wife of Brigido Caneja, Jr. The complainant accused Atty. Sabitsana of using the confidential information he obtained from her in filing the civil case.

Atty. Sabitsana admitted having advised the complainant in the preparation and execution of the Deed of Sale. However, he denied having received any confidential information. Atty. Sabitsana asserted that the present disbarment complaint was instigated by one Atty. Gabino Velasquez, Jr., the notary of the disbarment complaint who lost a court case against him (Atty. Sabitsana) and had instigated the complaint for this reason.

The Findings of the IBP Investigating Commissioner

In our Resolution dated November 22, 1999, we referred the disbarment complaint to the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. In his Report and Recommendation dated November 28, 2003, IBP Commissioner Pedro A. Magpayo Jr. found Atty. Sabitsana administratively liable for representing conflicting interests. The IBP Commissioner opined:

In *Bautista vs. Barrios*, it was held that a lawyer may not handle a case to nullify a contract which he prepared and thereby take up inconsistent positions. Granting that Zenaida L. Cañete, respondent's present client in Civil Case No. B-1060 did not initially learn about the sale executed by Bontes in favor of complainant thru the confidences and information divulged by complainant to respondent in the course of the preparation of

the said deed of sale, respondent nonetheless has a duty to decline his current employment as counsel of Zenaida Cañete in view of the rule prohibiting representation of conflicting interests.

In re De la Rosa clearly suggests that a lawyer may not represent conflicting interests in the absence of the written consent of all parties concerned given after a full disclosure of the facts. In the present case, no such written consent was secured by respondent before accepting employment as Mrs. Cañete's counsel-of-record. x x x

x x x

Complainant and respondent's present client, being contending claimants to the same property, the conflict of interest is obviously present. There is said to be inconsistency of interest when on behalf of one client, it is the attorney's duty to contend for that which his duty to another client requires him to oppose. In brief, if he argues for one client this argument will be opposed by him when he argues for the other client. Such is the case with which we are now confronted, respondent being asked by one client to nullify what he had formerly notarized as a true and valid sale between Bontes and the complainant. (footnotes omitted)^[3]

The IBP Commissioner recommended that Atty. Sabitsana be suspended from the practice of law for a period of one (1) year.^[4]

The Findings of the IBP Board of Governors

In a resolution dated February 27, 2004, the IBP Board of Governors resolved to adopt and approve the Report and Recommendation of the IBP Commissioner after finding it to be fully supported by the evidence on record, the applicable laws and rules.^[5] The IBP Board of Governors agreed with the IBP Commissioner's recommended penalty.

Atty. Sabitsana moved to reconsider the above resolution, but the IBP Board of Governors denied his motion in a resolution dated July 30, 2004.

The Issue

The issue in this case is whether Atty. Sabitsana is guilty of misconduct for representing conflicting interests.

The Court's Ruling

After a careful study of the records, we agree with the findings and recommendations of the IBP Commissioner and the IBP Board of Governors.

The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information

to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all dealings and transactions with the client.^[6] Part of the lawyer's duty in this regard is to avoid representing conflicting interests, a matter covered by Rule 15.03, Canon 15 of the Code of Professional Responsibility quoted below:

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.

"The proscription against representation of conflicting interests applies to a situation where the opposing parties are present clients in the same action or in an unrelated action."^[7] The prohibition also applies even if the "lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other client, or that there would be no occasion to use the confidential information acquired from one to the disadvantage of the other as the two actions are wholly unrelated."^[8] To be held accountable under this rule, it is "enough that the opposing parties in one case, one of whom would lose the suit, are present clients and the nature or conditions of the lawyer's respective retainers with each of them would affect the performance of the duty of undivided fidelity to both clients."^[9]

Jurisprudence has provided three tests in determining whether a violation of the above rule is present in a given case.

One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.

Another test of inconsistency of interests is **whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.** Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

^[10] [emphasis ours]

On the basis of the attendant facts of the case, we find substantial evidence to support Atty. Sabitsana's violation of the above rule, as established by the following circumstances on record:

One, his legal services were initially engaged by the complainant to protect her interest over a certain property. The records show that upon the legal advice of Atty. Sabitsana, the Deed of Sale over the property was prepared and executed in the complainant's favor.