

THIRD DIVISION

[A.C. No. 8096, July 05, 2010]

**REY J. VARGAS AND EDUARDO A. PANES, JR., COMPLAINANTS,
VS. ATTY. MICHAEL A. IGNES, ATTY. LEONARD BUENTIPO MANN,
ATTY. RODOLFO U. VIAJAR, JR., AND ATTY. JOHN RANGAL D.
NADUA, RESPONDENTS.**

R E S O L U T I O N

VILLARAMA, JR., J.:

Before the Court is a petition for review of Resolution No. XVIII-2008-335^[1] passed on July 17, 2008 by the Board of Governors of the Integrated Bar of the Philippines (IBP) in CBD Case No. 07-1953. The IBP Board of Governors dismissed the disbarment case filed by the complainants against the respondents.

The facts and proceedings antecedent to this case are as follows:

Koronadal Water District (KWD), a government-owned and controlled corporation (GOCC), hired respondent Atty. Michael A. Ignés as private legal counsel for one (1) year effective April 17, 2006.^[2] The Office of the Government Corporate Counsel (OGCC) and the Commission on Audit (COA) gave their consent to the employment of Atty. Ignés.^[3] However, controversy later erupted when two (2) different groups, herein referred to as the Dela Peña board and Yaphockun board, laid claim as the legitimate Board of Directors of KWD.

On December 28, 2006, the members of the Dela Peña board filed Civil Case No. 1793^[4] for Injunction and Damages, seeking to annul the appointment of two (2) directors, Joselito T. Reyes and Carlito Y. Uy, who will allegedly connive with Director Allan D. Yaphockun whose hostility to the "present" Board of Directors, the Dela Peña board, is supposedly of public knowledge.

On January 18, 2007, the Dela Peña board also adopted Resolution No. 009^[5] appointing respondents Atty. Rodolfo U. Viajar, Jr. and Atty. Leonard Buentipo Mann as private collaborating counsels for all cases of KWD and its Board of Directors, under the direct supervision and control of Atty. Ignés.

Subsequently, on February 9, 2007, Attys. Ignés, Viajar, Jr. and Mann filed SCA Case No. 50-24 for Indirect Contempt of Court^[6] entitled *Koronadal Water District (KWD), represented herein by its General Manager, Eleanor Pimentel-Gomba v. Efren V. Cabucay, et al.* On **February 19, 2007**, they also filed Civil Case No. 1799 for Injunction and Damages^[7] entitled *Koronadal Water District (KWD), represented herein by its General Manager, & Eleanor Pimentel-Gomba v. Rey J. Vargas.* On **March 9, 2007**, KWD and Eleanor Pimentel-Gomba filed a supplemental complaint^[8] in Civil Case No. 1799.

Meanwhile, in Contract Review No. 079^[9] dated **February 16, 2007**, the OGCC had approved the retainer contract of Atty. Benjamin B. Cuanan as new legal counsel of KWD and stated that the retainer contract of Atty. Ignés had expired on **January 14, 2007**.

In its letter^[10] dated **March 2, 2007**, the OGCC also addressed Eleanor P. Gomba's insistence that the retainer contract of Atty. Ignés will expire on April 17, 2007. The OGCC stated that as stipulated, the KWD or OGCC may terminate the contract anytime without need of judicial action; that OGCC's grant of authority to private counsels is a privilege withdrawable under justifiable circumstances; and that the termination of Atty. Ignés's contract was justified by the fact that the Local Water Utilities Administration had confirmed the Yaphockun board as the new Board of Directors of KWD and that said board had terminated Atty. Ignés's services and requested to hire another counsel.

Alleging that respondents acted as counsel for KWD without legal authority, complainants filed a disbarment complaint^[11] against the respondents before the IBP Commission on Bar Discipline (CBD), docketed as CBD Case No. 07-1953. Complainants alleged that respondents filed SCA Case No. 50-24 and Civil Case No. 1799 as counsels of KWD without legal authority. They likewise stated in their position paper^[12] that Atty. Ignés continued representing KWD even after the OGCC had confirmed the expiration of Atty. Ignés's contract in its April 4, 2007 manifestation/motion^[13] in Civil Case No. 1796-25 entitled *Koronadal Water District (KWD), represented herein by its General Manager, Eleanor Pimentel Gomba v. Supreme Investigative and Security Agency, represented by its Manager Efren Y. Cabucay*.

In his defense,^[14] Atty. Mann stated that he and his fellow respondents can validly represent KWD until April 17, 2007 since Atty. Ignés was not notified of his contract's pre-termination. Atty. Mann also stated that he stopped representing KWD after April 17, 2007 in deference to the OGCC's stand. Attys. Ignés, Viajar, Jr. and Nadua echoed Atty. Mann's defense.^[15]

On March 10, 2008, complainants filed a manifestation^[16] before the IBP with the following attachments: (1) the transcript of stenographic notes taken on January 28, 2008 in Civil Case No. 1799, and (2) the notice of appeal dated February 28, 2008 of the January 7, 2008 Order dismissing Civil Case No. 1799. Aforesaid transcript showed that Atty. Ignés appeared as counsel of KWD and Ms. Gomba. He also signed the notice of appeal.

In his report and recommendation,^[17] the Investigating Commissioner recommended that the charge against Atty. Ignés be dismissed for lack of merit. The Investigating Commissioner held that Atty. Ignés had valid authority as counsel of KWD for one (1) year, from April 2006 to April 2007, and he was unaware of the pre-termination of his contract when he filed pleadings in SCA Case No. 50-24 and Civil Case No. 1799 in February and March 2007.

As to Attys. Viajar, Jr., Mann and Nadua, the Investigating Commissioner recommended that they be fined P5,000 each for appearing as attorneys for a party

without authority to do so, per *Santayana v. Alampay*.^[18] The Investigating Commissioner found that they failed to secure the conformity of the OGCC and COA to their engagement as collaborating counsels for KWD.

As aforesaid, the IBP Board of Governors reversed the recommendation of the Investigating Commissioner and dismissed the case for lack of merit.

Hence, the present petition.

Complainants contend that the IBP Board of Governors erred in dismissing the case because respondents had no authority from the OGCC to file the complaints and appear as counsels of KWD in Civil Case No. 1799, SCA Case No. 50-24 and Civil Case No. 1796-25. Complainants point out that the retainerhip contract of Atty. Ighes had expired on January 14, 2007; that the "Notice of Appeal filed by Atty. Ighes, et al." in Civil Case No. 1799 was denied per Order dated April 8, 2008 of the Regional Trial Court (RTC) "for being filed by one not duly authorized by law;" and that the authority of Attys. Viajar, Jr. and Mann as collaborating counsels is infirm since Resolution No. 009 of the Dela Peña board lacks the conformity of the OGCC. As a consequence, according to complainants, respondents are liable for willfully appearing as attorneys for a party to a case without authority to do so.

In his comment, Atty. Ighes admits that their authority to represent KWD had expired on April 17, 2007, but he and his fellow respondents stopped representing KWD after that date. He submits that they are not guilty of appearing as counsels without authority. In their comment, Attys. Viajar, Jr. and Nadua propound similar arguments. They also say that their fees were paid from private funds of the members of the Dela Peña board and KWD personnel who might need legal representation, not from the public coffers of KWD. In his own comment, Atty. Mann submits similar arguments.

After a careful study of the case and the parties' submissions, we find respondents administratively liable.

At the outset, we note that the parties do not dispute the need for OGCC and COA conformity if a GOCC hires private lawyers. Nonetheless, we shall briefly recall the legal basis of this rule. Under Section 10, Chapter 3, Title III, Book IV of the Administrative Code of 1987, it is the OGCC which shall act as the principal law office of all GOCCs. And Section 3 of Memorandum Circular No. 9,^[19] issued by President Estrada on August 27, 1998, enjoins GOCCs to refrain from hiring private lawyers or law firms to handle their cases and legal matters. But the same Section 3 provides that in exceptional cases, the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, and the written concurrence of the COA shall first be secured before the hiring or employment of a private lawyer or law firm. In *Phividec Industrial Authority v. Capitol Steel Corporation*,^[20] we listed three (3) indispensable conditions before a GOCC can hire a private lawyer: (1) private counsel can only be hired in exceptional cases; (2) the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be; and (3) the written concurrence of the COA must also be secured.

In the case of respondents, do they have valid authority to appear as counsels of

KWD?

We find that Attys. Nadua, Viajar, Jr. and Mann had no valid authority to appear as collaborating counsels of KWD in SCA Case No. 50-24 and Civil Case No. 1799. Nothing in the records shows that Atty. Nadua was engaged by KWD as collaborating counsel. While the 4th Whereas Clause of Resolution No. 009 partly states that he and Atty. Ignés "presently stand as KWD legal counsels," there is no proof that the OGCC and COA approved Atty. Nadua's engagement as legal counsel or collaborating counsel. Insofar as Attys. Viajar, Jr. and Mann are concerned, their appointment as collaborating counsels of KWD under Resolution No. 009 has no approval from the OGCC and COA.

Attys. Nadua, Viajar, Jr. and Mann are in the same situation as the private counsel of Phividec Industrial Authority in *Phividec*. In that case, we also ruled that said private counsel of Phividec Industrial Authority, a GOCC, had no authority to file the expropriation case in Phividec's behalf considering that the requirements set by Memorandum Circular No. 9 were not complied with.^[21] Thus, Resolution No. 009 did not grant authority to Attys. Nadua, Viajar, Jr. and Mann to act as collaborating counsels of KWD. That Atty. Ignés was not notified of the pre-termination of his own retainerhip contract cannot validate an inexistent authority of Attys. Nadua, Viajar, Jr. and Mann as collaborating counsels.

In the case of Atty. Ignés, he also appeared as counsel of KWD without authority, after his authority as its counsel had expired. True, the OGCC and COA approved his retainerhip contract for one (1) year effective April 17, 2006. But even if we assume as true that he was not notified of the pre-termination of his contract, the records still disprove his claim that he stopped representing KWD after *April 17, 2007*.

Atty. Ignés offered no rebuttal to the verified manifestation of complainants filed with the IBP on March 10, 2008. Attached therein was the transcript of stenographic notes^[22] in Civil Case No. 1799 taken on *January 28, 2008* when Atty. Ignés argued the extremely urgent motion for the immediate *return of the facilities of the KWD* to the KWD Arellano Office. The RTC was compelled to ask him why he seeks the return of *KWD* properties if he filed the motion as counsel of *Ms. Gomba*. When the RTC noted that KWD does not appear to be a party to the motion, Atty. Ignés said that *KWD is represented by Ms. Gomba* per the caption of the case. Atty. Ignés also manifested that they will file a motion for reconsideration of the orders dismissing Civil Case No. 1799 and Civil Case No. 1793. The RTC ruled that it will not accept any motion for reconsideration in behalf of KWD unless he is authorized by the OGCC, but Atty. Ignés later filed a notice of appeal^[23] dated *February 28, 2008*, in Civil Case No. 1799. As the notice of appeal signed by Atty. Ignés was filed by one (1) not duly authorized by law, the RTC, in its Order^[24] dated April 8, 2008, denied due course to said notice of appeal.

As we see it, Atty. Ignés portrayed that his appearance on January 28, 2008 was merely as counsel of *Ms. Gomba*. He indicted himself, however, when he said that *Ms. Gomba* represents KWD per the case title. In fact, the extremely urgent motion sought the return of the facilities of KWD to its Arellano Office. Clearly, Atty. Ignés filed and argued a motion with the interest of KWD in mind. The notice of appeal in Civil Case No. 1799 further validates that Atty. Ignés still appeared as counsel of