

## EN BANC

[ A.M. No. 10-5-7-SC, December 07, 2010 ]

**JOVITO S. OLAZO, COMPLAINANT, VS. JUSTICE DANTE O. TINGA  
(RET.), RESPONDENT.**

### DECISION

**BRION, J.:**

Before us is the disbarment case against retired Supreme Court Associate Justice Dante O. Tinga (*respondent*) filed by Mr. Jovito S. Olazo (*complainant*). The respondent is charged of violating Rule 6.02,<sup>[1]</sup> Rule 6.03<sup>[2]</sup> and Rule 1.01<sup>[3]</sup> of the Code of Professional Responsibility for representing conflicting interests.

#### **Factual Background**

In March 1990, the complainant filed a sales application covering a parcel of land situated in *Barangay* Lower Bicutan in the Municipality of Taguig. The land (*subject land*) was previously part of Fort Andres Bonifacio that was segregated and declared open for disposition pursuant to Proclamation No. 2476,<sup>[4]</sup> issued on January 7, 1986, and Proclamation No. 172,<sup>[5]</sup> issued on October 16, 1987.

To implement Proclamation No. 172, Memorandum No. 119 was issued by then Executive Secretary Catalino Macaraig, creating a Committee on Awards whose duty was to study, evaluate, and make a recommendation on the applications to purchase the lands declared open for disposition. The Committee on Awards was headed by the Director of Lands and the respondent was one of the Committee members, in his official capacity as the Congressman of Taguig and Pateros (from 1987 to 1998); the respondent's district includes the areas covered by the proclamations.

#### **The First Charge: Violation of Rule 6.02**

In the complaint,<sup>[6]</sup> the complainant claimed that the respondent abused his position as Congressman and as a member of the Committee on Awards when he unduly interfered with the complainant's sales application because of his personal interest over the subject land. The complainant alleged that the respondent exerted undue pressure and influence over the complainant's father, Miguel P. Olazo, for the latter to contest the complainant's sales application and claim the subject land for himself. The complainant also alleged that the respondent prevailed upon Miguel Olazo to accept, on various dates, sums of money as payment of the latter's alleged rights over the subject land. The complainant further claimed that the respondent brokered the transfer of rights of the subject land between Miguel Olazo and Joseph Jeffrey Rodriguez, who is the nephew of the respondent's deceased wife.

As a result of the respondent's abuse of his official functions, the complainant's sales

application was denied. The conveyance of rights to Joseph Jeffrey Rodriguez and his sales application were subsequently given due course by the Department of Environment and Natural Resources (*DENR*).

### **The Second Charge: Violation of Rule 6.03**

The second charge involves another parcel of land within the proclaimed areas belonging to Manuel Olazo, the complainant's brother. The complainant alleged that the respondent persuaded Miguel Olazo to direct Manuel to convey his rights over the land to Joseph Jeffrey Rodriguez. As a result of the respondent's promptings, the rights to the land were transferred to Joseph Jeffrey Rodriguez.

In addition, the complainant alleged that in May 1999, the respondent met with Manuel for the purpose of nullifying the conveyance of rights over the land to Joseph Jeffrey Rodriguez. The complainant claimed that the respondent wanted the rights over the land transferred to one Rolando Olazo, the *Barangay* Chairman of Hagonoy, Taguig. The respondent in this regard executed an "Assurance" where he stated that he was the lawyer of Ramon Lee and Joseph Jeffrey Rodriguez.

### **The Third Charge: Violation of Rule 1.01**

The complainant alleged that the respondent engaged in unlawful conduct considering his knowledge that Joseph Jeffrey Rodriguez was not a qualified beneficiary under Memorandum No. 119. The complainant averred that Joseph Jeffrey Rodriguez is not a *bona fide* resident of the proclaimed areas and does not qualify for an award. Thus, the approval of his sales application by the Committee on Awards amounted to a violation of the objectives of Proclamation No. 172 and Memorandum No. 119.

The complainant also alleged that the respondent violated Section 7(b)(2) of the Code of Conduct and Ethical Standards for Public Officials and Employees or Republic Act (*R.A.*) No. 6713 since he engaged in the practice of law, within the one-year prohibition period, when he appeared as a lawyer for Ramon Lee and Joseph Jeffrey Rodriguez before the Committee on Awards.

In his Comment,<sup>[7]</sup> the respondent claimed that the present complaint is the third malicious charge filed against him by the complainant. The first one was submitted before the Judicial and Bar Council when he was nominated as an Associate Justice of the Supreme Court; the second complaint is now pending with the Office of the Ombudsman, for alleged violation of Section 3(e) and (i) of *R.A.* No. 3019, as amended.

With his own supporting documents, the respondent presented a different version of the antecedent events.

The respondent asserted that Miguel Olazo owned the rights over the subject land and he later conveyed these rights to Joseph Jeffrey Rodriguez. Miguel Olazo's rights over the subject land and the transfer of his rights to Joseph Jeffrey Rodriguez were duly recognized by the Secretary of the *DENR* before whom the conflict of rights over the subject land (between Miguel Olazo and Joseph Jeffrey Rodriguez, on one hand, and the complainant on the other hand) was brought. In its decision, the *DENR* found Joseph Jeffrey Rodriguez a qualified applicant, and his application over

the subject land was given due course. The respondent emphasized that the DENR decision is now final and executory. It was affirmed by the Office of the President, by the Court of Appeals and by the Supreme Court.

The respondent also advanced the following defenses:

(1) He denied the complainant's allegation that Miguel Olazo told him (complainant) that the respondent had been orchestrating to get the subject land. The respondent argued that this allegation was without corroboration and was debunked by the affidavits of Miguel Olazo and Francisca Olazo, the complainant's sister.

(2) He denied the complainant's allegation that he offered the complainant P50,000.00 for the subject land and that he (the respondent) had exerted undue pressure and influence on Miguel Olazo to claim the rights over the subject land. The respondent also denied that he had an inordinate interest in the subject land.

(3) He claimed that there was nothing wrong in signing as a witness in Miguel Olazo's affidavit where the latter asserted his rights over the subject land. The affidavit merely attested to the truth.

(4) He asserted that he and Miguel Olazo were cousins and that the latter decided to sell his rights over the subject land for the medical treatment of his heart condition and the illness of his daughter, Francisca Olazo. The respondent insisted that the money he extended to them was a form of loan.

(5) The respondent's participation in the transaction between Miguel Olazo and Joseph Jeffrey Rodriguez involved the payment of the loan that the respondent extended to Miguel Olazo.

(6) Manuel's belated and secondhand allegation in his *Sinumpaang Salaysay*, dated January 20, 2000, regarding what his father told him, cannot prevail over his earlier *Sinumpaang Salaysay* with Francisca Olazo, dated August 2, 1997. In the said *Sinumpaang Salaysay*, Manuel categorically asserted that his father Miguel Olazo, not the complainant, was the farmer-beneficiary. Manuel also expressed his agreement to the transfer of rights (*Pagpapatibay Sa Paglilipat Ng Karapatan*) in favor of Joseph Jeffrey Rodriguez, and the withdrawal of his father's application to give way to Joseph Jeffrey Rodriguez's application.

(7) The complainant's allegation that the respondent had pressured and influenced Miguel Olazo to sell the subject land was not sufficient as it was lacking in specificity and corroboration. The DENR decision was clear that the complainant had no rights over the subject land.

The respondent additionally denied violating Rule 1.01 of the Code of Professional Responsibility. He alleged that during his third term as Congressman from 1995 to 1997, the conflicting applications of the complainant, Miguel Olazo and Joseph Jeffrey Rodriguez were not included in the agenda for deliberation of the Committee on Awards. Rather, their conflicting claims and their respective supporting documents were before the Office of the Regional Director, NCR of the DENR. This office ruled over the conflicting claims only on August 2, 2000. This ruling became the basis of the decision of the Secretary of the DENR.

Similarly, the respondent cannot be held liable under Rule 6.02 of the Code of Professional Responsibility since the provision applies to lawyers in the government service who are allowed by law to engage in private law practice and to those who, though prohibited from engaging in the practice of law, have friends, former associates and relatives who are in the active practice of law.<sup>[8]</sup> In this regard, the respondent had already completed his third term in Congress and his stint in the Committee on Awards when he represented Joseph Jeffrey Rodriguez on May 24, 1999.

Lastly, the respondent claimed that he cannot be held liable under Rule 6.03 of the Code of Professional Responsibility since he did not intervene in the disposition of the conflicting applications of the complainant and Joseph Jeffrey Rodriguez because the applications were not submitted to the Committee on Awards when he was still a member.

### **The Court's Ruling**

Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official.<sup>[9]</sup> He may be disciplined by this Court as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer.<sup>[10]</sup>

The issue in this case calls for a determination of whether the respondent's actions constitute a breach of the standard ethical conduct - first, while the respondent was still an elective public official and a member of the Committee on Awards; and second, when he was no longer a public official, but a private lawyer who represented a client before the office he was previously connected with.

After a careful evaluation of the pleadings filed by both parties and their respective pieces of evidence, we resolve to dismiss the administrative complaint.

### **Accountability of a government lawyer in public office**

Canon 6 of the Code of Professional Responsibility highlights the continuing standard of ethical conduct to be observed by government lawyers in the discharge of their official tasks. In addition to the standard of conduct laid down under R.A. No. 6713 for government employees, a lawyer in the government service is obliged to observe the standard of conduct under the Code of Professional Responsibility.

Since public office is a public trust, the ethical conduct demanded upon lawyers in the government service is more exacting than the standards for those in private practice. Lawyers in the government service are subject to constant public scrutiny under norms of public accountability. They also bear the heavy burden of having to put aside their private interest in favor of the interest of the public; their private activities should not interfere with the discharge of their official functions.<sup>[11]</sup>

The first charge involves a violation of Rule 6.02 of the Code of Professional Responsibility. It imposes the following restrictions in the conduct of a government lawyer:

A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

The above provision prohibits a lawyer from using his or her public position to: (1) promote private interests; (2) advance private interests; or (3) allow private interest to interfere with his or her public duties. We previously held that the restriction **extends to all government lawyers** who use their public offices to promote their private interests.<sup>[12]</sup>

In *Huyssen v. Gutierrez*,<sup>[13]</sup> we defined promotion of private interest to include soliciting gifts or anything of monetary value in any transaction requiring the approval of his or her office, or may be affected by the functions of his or her office.

In *Ali v. Bubong*,<sup>[14]</sup> we recognized that private interest is not limited to direct interest, but extends to advancing the interest of relatives. We also ruled that private interest interferes with public duty when the respondent uses the office and his or her knowledge of the intricacies of the law to benefit relatives.<sup>[15]</sup>

In *Vitriolo v. Dasig*,<sup>[16]</sup> we found the act of the respondent (an official of the Commission on Higher Education) of extorting money from persons with applications or requests pending before her office to be a serious breach of Rule 6.02 of the Code of Professional Responsibility.<sup>[17]</sup> We reached the same conclusion in *Huyssen*, where we found the respondent (an employee of the Bureau of Immigration and Deportation) liable under Rule 6.02 of the Code of Professional Responsibility, based on the evidence showing that he demanded money from the complainant who had a pending application for visas before his office.<sup>[18]</sup>

Similarly, in *Igoy v. Soriano*<sup>[19]</sup> we found the respondent (a Court Attorney of this Court) liable for violating Rule 6.02 of the Code of Professional Responsibility, after considering the evidence showing that he demanded and received money from the complainant who had a pending case before this Court.

Applying these legal precepts to the facts of the case, we find the absence of any concrete proof that the respondent abused his position as a Congressman and as a member of the Committee on Awards in the manner defined under Rule 6.02 of the Code of Professional Responsibility.

*First*, the records do not clearly show if the complainant's sales application was ever brought before the Committee on Awards. By the complaint's own account, the complainant filed a sales application in March 1990 before the Land Management Bureau. By 1996, the complainant's sales application was pending before the Office of the Regional Director, NCR of the DENR due to the conflicting claims of Miguel Olazo, and, subsequently, of Joseph Jeffrey Rodriguez. The records show that it was only on August 2, 2000 that the Office of the Regional Director, NCR of the DENR rendered its decision, or after the term of the respondent's elective public office and membership to the Committee on Awards, which expired in 1997.

These circumstances do not show that the respondent did in any way promote, advance or use his private interests in the discharge of his official duties. To repeat,