

## EN BANC

[ A.C. NO. 6705, March 31, 2006 ]

**RUTHIE LIM-SANTIAGO, COMPLAINANT, VS. ATTY. CARLOS B. SAGUCIO, RESPONDENT**

### DECISION

**CARPIO, J.:**

#### The Case

This is a disbarment complaint against Atty. Carlos B. Sagucio for violating Rule 15.03 of the Code of Professional Responsibility and for defying the prohibition against private practice of law while working as government prosecutor.

#### The Facts

Ruthie Lim-Santiago ("complainant") is the daughter of Alfonso Lim and Special Administratrix of his estate.<sup>[1]</sup> Alfonso Lim is a stockholder and the former President of Taggat Industries, Inc.<sup>[2]</sup>

Atty. Carlos B. Sagucio ("respondent") was the former Personnel Manager and Retained Counsel of Taggat Industries, Inc.<sup>[3]</sup> until his appointment as Assistant Provincial Prosecutor of Tuguegarao, Cagayan in 1992.<sup>[4]</sup>

Taggat Industries, Inc. ("Taggat") is a domestic corporation engaged in the operation of timber concessions from the government. The Presidential Commission on Good Government sequestered it sometime in 1986,<sup>[5]</sup> and its operations ceased in 1997.<sup>[6]</sup>

Sometime in July 1997, 21 employees of Taggat ("Taggat employees") filed a criminal complaint entitled "Jesus Tagorda, Jr. et al. v. Ruthie Lim-Santiago," docketed as I.S. No. 97-240 ("criminal complaint").<sup>[7]</sup> Taggat employees alleged that complainant, who took over the management and control of Taggat after the death of her father, withheld payment of their salaries and wages without valid cause from 1 April 1996 to 15 July 1997.<sup>[8]</sup>

Respondent, as Assistant Provincial Prosecutor, was assigned to conduct the preliminary investigation.<sup>[9]</sup> He resolved the criminal complaint by recommending the filing of 651 Informations<sup>[10]</sup> for violation of Article 288<sup>[11]</sup> in relation to Article 116<sup>[12]</sup> of the Labor Code of the Philippines.<sup>[13]</sup>

Complainant now charges respondent with the following violations:

1. Rule 15.03 of the Code of Professional Responsibility

Complainant contends that respondent is guilty of representing conflicting interests. Respondent, being the former Personnel Manager and Retained Counsel of Taggat, knew the operations of Taggat very well. Respondent should have inhibited himself from hearing, investigating and deciding the case filed by Taggat employees.<sup>[14]</sup> Furthermore, complainant claims that respondent instigated the filing of the cases and even harassed and threatened Taggat employees to accede and sign an affidavit to support the complaint.<sup>[15]</sup>

2. Engaging in the private practice of law while working as a government prosecutor

Complainant also contends that respondent is guilty of engaging in the private practice of law while working as a government prosecutor. Complainant presented evidence to prove that respondent received P10,000 as retainer's fee for the months of January and February 1995,<sup>[16]</sup> another P10,000 for the months of April and May 1995,<sup>[17]</sup> and P5,000 for the month of April 1996.<sup>[18]</sup>

Complainant seeks the disbarment of respondent for violating Rule 15.03 of the Code of Professional Responsibility and for defying the prohibition against private practice of law while working as government prosecutor.

Respondent refutes complainant's allegations and counters that complainant was merely aggrieved by the resolution of the criminal complaint which was adverse and contrary to her expectation.<sup>[19]</sup>

Respondent claims that when the criminal complaint was filed, respondent had resigned from Taggat for more than five years.<sup>[20]</sup> Respondent asserts that he no longer owed his undivided loyalty to Taggat.<sup>[21]</sup> Respondent argues that it was his sworn duty to conduct the necessary preliminary investigation.<sup>[22]</sup> Respondent contends that complainant failed to establish lack of impartiality when he performed his duty.<sup>[23]</sup> Respondent points out that complainant did not file a motion to inhibit respondent from hearing the criminal complaint<sup>[24]</sup> but instead complainant voluntarily executed and filed her counter-affidavit without mental reservation.<sup>[25]</sup>

Respondent states that complainant's reason in not filing a motion to inhibit was her impression that respondent would exonerate her from the charges filed as gleaned from complainant's statement during the hearing conducted on 12 February 1999:

x x x

Q. (Atty. Dabu). What do you mean you didn't think he would do it, Madam Witness?

A. Because he is supposed to be my father's friend and he was working with my Dad and he was supposed to be trusted by my father. And he came to me and told me he gonna help me. x x x.<sup>[26]</sup>

Respondent also asserts that no conflicting interests exist because he was not representing Taggat employees or complainant. Respondent claims he was merely performing his official duty as Assistant Provincial Prosecutor.<sup>[27]</sup> Respondent argues that complainant failed to establish that respondent's act was tainted with personal interest, malice and bad faith.<sup>[28]</sup>

Respondent denies complainant's allegations that he instigated the filing of the cases, threatened and harassed Taggat employees. Respondent claims that this accusation is bereft of proof because complainant failed to mention the names of the employees or present them for cross-examination.<sup>[29]</sup>

Respondent does not dispute his receipt, after his appointment as government prosecutor, of retainer fees from complainant but claims that it

was only on a case-to-case basis and it ceased in 1996.<sup>[30]</sup> Respondent contends that the fees were paid for his consultancy services and not for representation. Respondent submits that consultation is not the same as representation and that rendering consultancy services is not prohibited.<sup>[31]</sup> Respondent, in his Reply-Memorandum, states:

x x x [I]f ever Taggat paid him certain amounts, these were paid voluntarily by Taggat without the respondent's asking, intended as token consultancy fees on a case-to-case basis and not as or for retainer fees. These payments do not at all show or translate as a specie of 'conflict of interest'. Moreover, these consultations had no relation to, or connection with, the above-mentioned labor complaints filed by former Taggat employees.<sup>[32]</sup>

Respondent insists that complainant's evidence failed to prove that when the criminal complaint was filed with the Office of the Provincial Prosecutor of Cagayan, respondent was still the retained counsel or legal consultant.<sup>[33]</sup>

While this disbarment case was pending, the Resolution and Order issued by respondent to file 651 Informations against complainant was reversed and set aside by Regional State Prosecutor of Cagayan Rodolfo B. Cadelina last 4 January 1999.<sup>[34]</sup> Hence, the criminal complaint was dismissed.<sup>[35]</sup>

### **The IBP's Report and Recommendation**

The Integrated Bar of the Philippines' Investigating Commissioner Ma. Carmina M. Alejandro-Abbas ("IBP Commissioner Abbas") heard the case<sup>[36]</sup> and allowed the parties to submit their respective memoranda.<sup>[37]</sup> Due to IBP Commissioner Abbas' resignation, the case was reassigned to Commissioner Dennis A.B. Funa ("IBP Commissioner Funa").<sup>[38]</sup>

After the parties filed their memoranda and motion to resolve the case, the IBP Board of Governors issued Resolution No. XVI-2004-479 ("IBP Resolution") dated 4 November 2004 adopting with modification<sup>[39]</sup> IBP Commissioner Funa's Report and Recommendation ("Report") finding respondent guilty of conflict of interests, failure to safeguard a former client's interest, and violating the prohibition against

the private practice of law while being a government prosecutor. The IBP Board of Governors recommended the imposition of a penalty of three years suspension from the practice of law. The Report reads:

Now the issue here is whether being a **former lawyer of Taggat** conflicts with his role as Assistant Provincial Prosecutor in deciding I.S. No. 97-240. A determination of this issue will require the test of whether the matter in I.S. No. 97-240 will conflict with his former position of Personnel Manager and Legal Counsel of Taggat.

I.S. No. 97-240 was filed for "*Violation of Labor Code*" (see *Resolution of the Provincial Prosecutors Office, Annex "B" of Complaint*). Herein Complainant, Ruthie Lim-Santiago, was being accused as having the "*management and control*" of Taggat (p. 2, *Resolution of the Prov. Pros. Office, supra*).

Clearly, as a former Personnel Manager and Legal Counsel of Taggat, herein Respondent undoubtedly *handled the personnel and labor concerns of Taggat*. Respondent, undoubtedly *dealt with and related with* the employees of Taggat. Therefore, Respondent undoubtedly *dealt with and related with complainants in I.S. No. 97-240*. The issues, therefore, in I.S. No. 97-240, are very much familiar with Respondent. While the issues of unpaid salaries pertain to the periods 1996-1997, the mechanics and personalities in that case are very much familiar with Respondent.

**A lawyer owes something to a former client.** Herein Respondent owes to Taggat, a former client, the duty to "*maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect him in any matter in which he previously represented him*" (*Natam v. Capule*, 91 Phil. 640; p. 231, Agpalo, Legal Ethics, 4th ed.)

Respondent argues that as Assistant Provincial Prosecutor, he does not represent any client or any interest except justice. It should not be forgotten, however, that a lawyer has an **immutable duty to a former client** with respect to matters that he previously handled for that former client. In this case, matters relating to *personnel, labor policies, and labor relations* that he previously handled as Personnel Manager and Legal Counsel of Taggat. I.S. No. 97-240 was for "*Violation of the Labor Code*." **Here lies the conflict.** Perhaps it would have been different had I.S. No. 97-240 not been labor-related, or if Respondent had not been a Personnel Manager concurrently as Legal Counsel. But as it is, I.S. No. 97-240 is labor-related and Respondent was a former Personnel Manager of Taggat.

x x x x

While Respondent ceased his relations with Taggat in 1992 and the unpaid salaries being sought in I.S. No. 97-240 were of the years 1996 and 1997, the employees and management involved **are the very personalities he dealt with as Personnel Manager and Legal Counsel of Taggat.** Respondent dealt with these persons in his fiduciary

relations with Taggat. Moreover, he was an employee of the corporation and part of its management.

x x x x

As to the propriety of receiving "Retainer Fees" or "consultancy fees" from herein Complainant while being an Assistant Provincial Prosecutor, and for rendering legal consultancy work while being an Assistant Provincial Prosecutor, this matter had long been settled. **Government prosecutors are prohibited to engage in the private practice of law** (see Legal and Judicial Ethics, Ernesto Pineda, 1994 ed., p. 20; *People v. Villanueva*, 14 SCRA 109; *Aquino v. Blanco* 70 Phil. 647). The act of being a legal consultant is a practice of law. To engage in the practice of law is to do any of those acts that are characteristic of the legal profession (In re: David, 93 Phil. 461). It covers any activity, in or out of court, which required the application of law, legal principles, practice or procedures and calls for legal knowledge, training and experience (*PLA v. Agrava*, 105 Phil. 173; *People v. Villanueva*, 14 SCRA 111; *Cayetano v. Monsod*, 201 SCRA 210).

Respondent clearly violated this prohibition.

As for the secondary accusations of harassing certain employees of Taggat and instigating the filing of criminal complaints, we find the evidence insufficient.

Accordingly, Respondent should be found guilty of conflict of interest, failure to safeguard a former client's interest, and violating the prohibition against the private practice of law while being a government prosecutor.<sup>[40]</sup>

The IBP Board of Governors forwarded the Report to the Court as provided under Section 12(b), Rule 139-B<sup>[41]</sup> of the Rules of Court.

### **The Ruling of the Court**

The Court exonerates respondent from the charge of violation of Rule 15.03 of the Code of Professional Responsibility ("Code"). However, the Court finds respondent liable for violation of Rule 1.01, Canon 1 of the Code of Professional Responsibility against unlawful conduct.<sup>[42]</sup> Respondent committed unlawful conduct when he violated Section 7(b)(2) of the Code of Conduct and Ethical Standards for Public Officials and Employees or Republic Act No. 6713 ("RA 6713").

Canon 6 provides that the Code "shall apply to lawyers in government service in the discharge of their official duties."<sup>[43]</sup> A government lawyer is thus bound by the prohibition "not [to] represent conflicting interests."<sup>[44]</sup> However, this rule is subject to certain limitations. The prohibition to represent conflicting interests does not apply when no conflict of interest exists, when a written consent of all concerned is given after a full disclosure of the facts or when no true attorney-client relationship exists.<sup>[45]</sup> Moreover, considering the serious consequence of the disbarment or suspension of a member of the Bar, clear preponderant evidence is necessary to