

## FIRST DIVISION

[ **A.C. NO. 6708 (CBD CASE NO. 01-874), August 25, 2005** ]

**FELICITAS S. QUIAMBAO, COMPLAINANT, VS. ATTY. NESTOR A. BAMBA, RESPONDENT.**

### RESOLUTION

**DAVIDE, JR., C.J.:**

We are aware of the hapless fact that there are not enough lawyers to serve an exploding population. This unfortunate state of affairs, however, will not seize this Court from exercising its disciplinary power over lawyers culpable of serious indiscretions. The incidence of public force must be deployed to bear upon the community to eventually forge a legal profession that provides quality, ethical, accessible, and cost-effective legal service to our people and whose members are willing and able to answer the call to public service.

In this administrative case for disbarment, complainant Felicitas S. Quiambao charges respondent Atty. Nestor A. Bamba with violation of the Code of Professional Responsibility for representing conflicting interests when the latter filed a case against her while he was at that time representing her in another case, and for committing other acts of disloyalty and double-dealing.

From June 2000 to January 2001, the complainant was the president and managing director of Allied Investigation Bureau, Inc. (AIB), a family-owned corporation engaged in providing security and investigation services. She avers that she procured the legal services of the respondent not only for the corporate affairs of AIB but also for her personal case. Particularly, the respondent acted as her counsel of record in an ejectment case against Spouses Santiago and Florita Torroba filed by her on 29 December 2000 before the Metropolitan Trial Court (MeTC) of Parañaque City, which was docketed as Civil Case No. 11928. She paid attorney's fees for respondent's legal services in that case.<sup>[1]</sup> About six months after she resigned as AIB president, or on 14 June 2001, the respondent filed on behalf of AIB a complaint for replevin and damages against her before the MeTC of Quezon City for the purpose of recovering from her the car of AIB assigned to her as a service vehicle. This he did without withdrawing as counsel of record in the ejectment case, which was then still pending.<sup>[2]</sup>

Apart from the foregoing litigation matter, the complainant, in her Position Paper, charges the respondent with acts of disloyalty and double-dealing. She avers that the respondent proposed to her that she organize her own security agency and that he would assist her in its organization, causing her to resign as president of AIB. The respondent indeed assisted her in December 2000 in the formation of another security agency, Quiambao Risk Management Specialists, Inc., (QRMSI), which was later registered under complainant's name, with the respondent as a "silent partner"

represented by his associate Atty. Gerardo P. Hernandez. The respondent was paid attorney's fees for his legal services in organizing and incorporating QRMSI. He also planned to "steal" or "pirate" some of the more important clients of AIB. While serving as legal counsel for AIB and a "silent partner" of QRMSI, he convinced complainant's brother Leodegario Quiambao to organize another security agency, San Esteban Security Services, Inc. (SESSI) where he (the respondent) served as its incorporator, director, and president. The respondent and Leodegario then illegally diverted the funds of AIB to fund the incorporation of SESSI, and likewise planned to eventually close down the operations of AIB and transfer the business to SESSI.<sup>[3]</sup>

For his part, the respondent admits that he represented the complainant in the aforementioned ejectment case and later represented AIB in the replevin case against her. He, however, denies that he was the "personal lawyer" of the complainant, and avers that he was made to believe that it was part of his function as counsel for AIB to handle even the "personal cases" of its officers. Even assuming that the complainant confided to him privileged information about her legal interests, the ejectment case and the replevin case are unrelated cases involving different issues and parties and, therefore, the privileged information which might have been gathered from one case would have no use in the other. At any rate, it was the complainant herself who insisted that he stay as her counsel despite the perceived differences among her, her brother, and AIB over the motor vehicle subject of the replevin case. The complainant even asked him to assist her in her monetary claims against AIB.<sup>[4]</sup>

The respondent also denies the charge raised by the complainant in her position paper that he agreed to be a "silent partner" of QRMSI through his nominee, Atty. Gerardo P. Hernandez, who was his former law partner. He declined complainant's offer to assume that role and suggested Atty. Hernandez in his place; thus, 375 shares of stock were registered in Atty. Hernandez's name as consideration of his (Atty. Hernandez's) legal services as corporate secretary and legal counsel of QRMSI. The respondent also denies that he convinced complainant's brother Leodegario to organize another security agency and that the funds of AIB were unlawfully diverted to SESSI. It was to complement the business of AIB, which was then in danger of collapse, that SESSI was established. Leodegario's wife and her son have the effective control over SESSI. Respondent's subscribed shareholdings in SESSI comprise only 800 shares out of 12,500 subscribed shares. He serves AIB and SESSI in different capacities: as legal counsel of the former and as president of the latter.<sup>[5]</sup>

In his Report and Recommendation<sup>[6]</sup> dated 31 August 2004, the investigating commissioner of the IBP found the respondent guilty of representing conflicting interests based on the following undisputed facts: first, the respondent was still complainant's counsel of record in the ejectment case when he filed, as legal counsel of AIB, the replevin case against her; and second, the respondent was still the legal counsel of AIB when he advised the complainant on the incorporation of another security agency, QRMSI, and recommended his former law partner, Atty. Gerardo Hernandez, to be its corporate secretary and legal counsel and also when he conferred with Leodegario to organize another security agency, SESSI, where the respondent became an incorporator, stockholder, and president. Thus, the investigating commissioner recommended that the respondent be suspended from

the practice of law for one year.

The IBP Board of Governors adopted and approved the investigating commissioner's report and recommendation, but reduced the penalty from one year to a stern reprimand.<sup>[7]</sup>

The issue in this case is whether the respondent is guilty of misconduct for representing conflicting interests in contravention of the basic tenets of the legal profession.

Rule 15.03, Canon 5 of the Code of Professional Responsibility provides: "A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts." This prohibition is founded on principles of public policy and good taste.<sup>[8]</sup> In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. The nature of that relationship is, therefore, one of trust and confidence of the highest degree.<sup>[9]</sup> It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing for only then can litigants be encouraged to entrust their secrets to their lawyers, which is of paramount importance in the administration of justice.<sup>[10]</sup>

In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose.<sup>[11]</sup> Developments in jurisprudence have particularized various tests to determine whether a lawyer's conduct lies within this proscription. 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.<sup>[12]</sup> 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.<sup>[13]</sup> 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.<sup>[14]</sup>

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. It is of no moment that 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. 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.<sup>[15]</sup>

In this case, it is undisputed that at the time the respondent filed the replevin case on behalf of AIB he was still the counsel of record of the complainant in the pending

ejection case. We do not sustain respondent's theory that since the ejection case and the replevin case are unrelated cases fraught with different issues, parties, and subject matters, the prohibition is inapplicable. His representation of opposing clients in both cases, though unrelated, obviously constitutes conflict of interest or, at the least, invites suspicion of double-dealing. While the respondent may assert that the complainant expressly consented to his continued representation in the ejection case, the respondent failed to show that he fully disclosed the facts to both his clients and he failed to present any written consent of the complainant and AIB as required under Rule 15.03, Canon 15 of the Code of Professional Responsibility.

Neither can we accept respondent's plea that he was duty-bound to handle all the cases referred to him by AIB, including the personal cases of its officers which had no connection to its corporate affairs. That the representation of conflicting interest is in good faith and with honest intention on the part of the lawyer does not make the prohibition inoperative.<sup>[16]</sup> Moreover, lawyers are not obliged to act either as an adviser or advocate for every person who may wish to become their client. They have the right to decline such employment, subject, however, to Canon 14 of the Code of Professional Responsibility.<sup>[17]</sup> Although there are instances where lawyers cannot decline representation,<sup>[18]</sup> they cannot be made to labor under conflict of interest between a present client and a prospective one.<sup>[19]</sup>

Additionally, in his position paper, the respondent alleges that when the complainant invited the respondent to join QRMSI, he "vehemently refused to join them due to his perception of **conflicting interest** as he was then (and still is at present) the Legal Counsel" of AIB, which is also a security agency.<sup>[20]</sup> To bolster his allegation, he invoked the affidavits of complainant's witnesses which contained statements of his apprehension of conflict of interest should he join QRMSI.<sup>[21]</sup>

Surprisingly, despite his apprehension or awareness of a possible conflict of interest should he join QRMSI, the respondent later allowed himself to become an incorporator, stockholder, and president of SESSI, which is also a security agency. He justified his act by claiming that while both AIB and SESSI are engaged in security agency business, he is serving in different capacities. As the in-house legal counsel of AIB, he "serves its legal interest the parameter of which evolves around legal matters" such as protecting the legal rights and interest of the corporation; conducting an investigation or a hearing on violations of company rules and regulations of their office employees and security guards; sending demand letters in collection cases; and representing the corporation in any litigation for or against it. And as president of SESSI, he serves the operational aspects of the business such as "how does it operate[ ], how much do they price their services, what kind or how do they train[ ] their security guards, how they solicit clients." Thus, conflict of interest is far-fetched. Moreover, the respondent argues that the complainant, not being a stockholder of AIB and SESSI, has no right to question his alleged conflict of interest in serving the two security agencies.<sup>[22]</sup>

While the complainant lacks personality to question the alleged conflict of interests on the part of the respondent in serving both security agencies, we cannot just turn a blind eye to respondent's act. It must be noted that the proscription against representation of conflicting interests finds application where the conflicting