

EN BANC

[A.C. No. 5948 (Formerly A.M. No. CBD-354),
January 22, 2003]

**GAMALIEL ABAQUETA, COMPLAINANT, VS. ATTY. BERNARDITO
A. FLORIDO, RESPONDENT.**

RESOLUTION

YNARES-SANTIAGO, J.:

This is an administrative complaint^[1] against Atty. Bernardito A. Florido filed with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline, praying that appropriate sanctions be imposed on respondent for representing conflicting interests.

Complainant is a Filipino by birth who had acquired American citizenship. He resides at 15856 N. 15th Way, Phoenix, Arizona 85022, U.S.A. Respondent is a practicing lawyer based in Cebu City.

On November 28, 1983, complainant engaged the professional services of respondent through his attorney-in-fact, Mrs. Charito Y. Baclig, to represent him in Special Proceedings No. 3971-R, entitled, "*In the Matter of the Intestate Estate of Deceased Bonifacia Abaqueta*,"^[2] *Susana Uy Trazo, petitioner*" before the Regional Trial court of Cebu.^[3]

Accordingly, respondent entered his appearance in Special Proceedings No. 3971-R as counsel for herein complainant.^[4] Subsequently, he filed complainant's "Objections and Comments to Inventory and Accounting," registering complainant's objection –

. . . to the inclusion of the properties under Items 1 to 5 contained in the inventory of the administratrix dated November 9, 1983. ***These properties are the sole and exclusive properties of the oppositor*** per the latest tax declarations already marked as Exhibits "2", "3", "4", "5" and "6" in the Formal Offer of Exhibits by oppositor in writing dated August 17, 1983 xxx.^[5]

Several years later, Milagros Yap Abaqueta filed an action for sum of money against complainant, docketed as Civil Case No. CEB-11453 and entitled, "*Milagros Yap Abaqueta vs. Gamaliel Abaqueta and Casiano Gerona*."^[6] Respondent signed the Complaint as counsel for plaintiff Milagros Yap Abaqueta, averring, inter alia, that:

Plaintiff and defendant Gamaliel Abaqueta are the ***conjugal owners*** of those certain parcels of land, more particularly as follows...

The "parcels of land" referred to as conjugal property of complainant and Milagros Yap-Abaqueta are the very same parcels of land in Special Proceedings No. 3971-R which respondent, as lawyer of complainant, alleged as the "sole and exclusive properties" of complainant. In short, respondent lawyer made allegations in Civil Case No. CEB-11453 which were contrary to and in direct conflict with his averments as counsel for complainant in Special Proceedings No. 3971-R.

Complainant further averred that respondent admitted he was never authorized by the former to appear as counsel for complainant's ex-wife in Civil Case No. CEB-11453; that respondent failed to indicate in the Complaint the true and correct address of herein complainant, which respondent knew as far back as August 2, 1990, when he wrote a letter to the complainant at the said address.^[7] Consequently, complainant failed to receive summons and was declared in default in Civil Case No. CEB-11453. While the order of default was eventually set aside, complainant incurred expenses to travel to the Philippines, which were conservatively estimated at \$10,000.00. He argues that respondent's conduct constitute professional misconduct and malpractice as well as trifling with court processes.

In his defense, respondent claims in his Answer^[8] that he always acted in good faith in his professional relationship with complainant in spite of the fact that they have not personally met. He based the matters he wrote in the Complaint on information and documents supplied by Mrs. Charito Y. Baclig, complainant's sister-in-law and attorney-in-fact, indicating that he was sole and exclusive owner of the properties. This was sometime in November 1983. No affidavit of adjudication was ever furnished respondent by complainant and this was apparently suppressed because it would show that the properties formed part of the estate.

Eight years later, in November 1991, long after Special Proceedings No. 3971-R was settled and the attorney-client relationship between complainant and respondent was terminated, Mrs. Milagros Abaqueta through Mrs. Baclig, engaged his services to file Civil Case No. CEB-11453. Mrs. Baclig presented to him a deed of absolute sale dated July 7, 1975,^[9] showing that the properties subject hereof were not complainant's exclusive property but his conjugal property with his wife, the same having been acquired during the subsistence of their marriage. Thus, in all good faith, respondent alleged in the complaint that said properties were conjugal assets of the spouses.

Respondent further pointed out that his law firm handles on the average eighty new court cases annually and personally interviews four or five clients, prospective clients and/or witnesses daily except Saturdays and Sundays. It regularly closes to the public at 7:00 p.m., but work continues sometimes until 8:30 p.m. This has been going on for the last twenty-five years out of respondent's thirty-three years of private practice. The absence of personal contact with complainant and the lapse of eight years resulted in the oversight and/or lapse of respondent's memory that complainant was a former client. Furthermore, the caption of the Special Proceeding was not in the name of complainant but was entitled, "*In the Matter of the Intestate Estate of Bonifacia Payahay Abaqueta.*"

Respondent expressed regret over the oversight and averred that immediately after discovering that he formerly represented complainant in Special Proceeding No.

3971-R, he filed a motion to withdraw as counsel for plaintiff, which was granted by the trial court.^[10] He denied any malice in his acts and alleged that it is not in his character to do malice or falsehood particularly in the exercise of his profession.

In his Comments/Observations on Respondent's Answer,^[11] complainant averred that respondent's conduct was geared towards insuring a court victory for Milagros Yap in Civil Case No. CEB-11453, wherein he deliberately stated that complainant's address was 9203 Riverside Lodge Drive, Houston, Texas, 77083, U.S.A., when he knew fully well that complainant's true and correct address was c/o V.A. Hospital, 7th Street & Italian School Road, Phoenix, Arizona, 85013, U.S.A. By falsely stating and concealing his true and correct address, respondent eventually succeeded in obtaining a default judgment in favor of his client.

During the pendency of these proceedings before the IBP, it appeared that respondent's son got married to the daughter of IBP National President Arthur D. Lim. Thus, Atty. Lim inhibited himself from participating in the resolution of the case.^[12] Subsequently, a Resolution was issued requiring the IBP to elevate the entire records of the case within thirty (30) days from notice.^[13]

The main issue to be resolved in the case at bar is whether or not respondent violated Rule 15.03 of the Code of Professional Responsibility. The investigating commissioner found that respondent clearly violated the prohibition against representing conflicting interests and recommended that he be suspended from the practice of law for a period of three (3) months.

We find the recommendation well-taken.

Rule 15.03 of the Code of Professional Responsibility explicitly provides that –

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.

There is a conflict of interest if there is an inconsistency in the interests of two or more opposing parties. The test is whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim but it is his duty to oppose it for the other client.^[14] In short, if he argues for one client, this argument will be opposed by him when he argues for the other client.^[15]

There is a representation of conflicting interests if the acceptance of the new retainer will require the attorney to do anything which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation, to use against his first client any knowledge acquired through their connection.^[16]

As pointed out by the investigating commissioner, respondent does not deny that he represented complainant in Special Proceedings No. 3971-R. He also does not deny that he is the lawyer of Milagros Yap Abaqueta in Civil Case No. CEB-11453, filed against complainant and involving the same properties which were litigated in Special Proceedings No. 3971-R. Respondent also admitted that he did not secure the consent of complainant before he agreed to act as Milagros Yap Abaqueta's lawyer in Civil Case No. CEB-11453.