

## FIRST DIVISION

[ A.C. No. 4354, April 22, 2002 ]

**LOLITA ARTEZUELA, COMPLAINANT, VS. ATTY. RICARTE B. MADERAZO, RESPONDENT.**

### D E C I S I O N

**PUNO, J.:**

For his failure to meet the exacting standards of professional ethics, the Board of Governors of the Integrated Bar of the Philippines (IBP) in its Resolution of May 2, 2000 recommended the suspension from the practice of law of respondent Atty. Ricarte B. Maderazo for the period of six (6) months, with a stern warning that repetition of the same act will be dealt with more severely. Respondent allegedly represented conflicting interests in violation of Canon 6 of the Code of Professional Ethics, and Canon 15 and Rule 15.03 of the Code of Professional Responsibility.<sup>[1]</sup>

By way of a Motion for Reconsideration,<sup>[2]</sup> respondent now comes before this Court to challenge the basis of the IBP's resolution, and prays for its reversal.

The factual antecedents of the case are as follows: On or about 3:00 in the early morning of December 24, 1992, Allan Echavia had a vehicular accident at Caduman St., corner H. Abellana St., Mandaue City. At the time of the accident, Echavia was driving a Ford Telstar car owned by a Japanese national named Hirometsi Kiyami, but was registered in the name of his brother-in-law, Jun Anthony Villapez. The car rammed into a small *carinderia* owned by complainant Lolita Artezuela.<sup>[3]</sup>

The destruction of the complainant's *carinderia* caused the cessation of the operation of her small business, resulting to her financial dislocation. She incurred debts from her relatives and due to financial constraints, stopped sending her two children to college.<sup>[4]</sup>

Complainant engaged the services of the respondent in filing a damage suit against Echavia, Villapez and one Bernardo Sia.<sup>[5]</sup> Docketed as Civil Case No. 13666, the case was assigned to Branch 14 of the Regional Trial Court of Cebu. An Amended Complaint was thereafter filed, impleading Echavia, Kiyami and Villapez, and dropping Sia as a party-defendant.<sup>[6]</sup> For his services, complainant paid the respondent the amount of Ten Thousand Pesos (P10, 000.00) as attorney's fees and Two Thousand Pesos (P2,000.00) as filing fee.<sup>[7]</sup> However, the case was dismissed on March 22, 1994, allegedly upon the instance of the complainant and her husband.<sup>[8]</sup>

Because of the dismissal of Civil Case No. 13666, complainant filed a civil case for damages against the respondent. It was docketed as CEB-18552 and assigned to Branch 57, Regional Trial Court of Cebu City. The case was dismissed on June 12,

2001.<sup>[9]</sup>

On November 24, 1994, Artezuela filed before this Court a verified complaint for disbarment against the respondent. She alleged that respondent grossly neglected his duties as a lawyer and failed to represent her interests with zeal and enthusiasm. According to her, when Civil Case No. 13666 was scheduled for pre-trial conference on August 20, 1993, respondent asked for its postponement although all the parties were present. Notwithstanding complainant's persistent and repeated follow-up, respondent did not do anything to keep the case moving. He withdrew as counsel without obtaining complainant's consent.<sup>[10]</sup>

Complainant also claimed that respondent engaged in activities inimical to her interests. While acting as her counsel, respondent prepared Echavia's Answer to the Amended Complaint. The said document was even printed in respondent's office. Complainant further averred that it was respondent who sought the dismissal of the case, misleading the trial court into thinking that the dismissal was with her consent.<sup>[11]</sup>

Respondent denied the complainant's allegations and averred that he conscientiously did his part as the complainant's lawyer in Civil Case No. 13666. He withdrew as counsel because the complainant was uncooperative and refused to confer with him. He also gave several notices to the complainant and made known his intention before he filed his Manifestation to withdraw as counsel. Because of the severed relationship, the lower court, after holding a conference, decided to grant respondent's manifestation and advised the complainant to secure the services of a new lawyer. Complainant, however, refused and instead, sought the dismissal of the case.<sup>[12]</sup>

Respondent alleged that he sought the postponement of the Pre-Trial Conference scheduled on August 20, 1993 so that he could file the Amended Complaint. He admitted that Echavia's Answer to the Amended Complaint was printed in his office but denied having prepared the document and having acted as counsel of Echavia. He claimed that complainant requested him to prepare Echavia's Answer but he declined. Echavia, however, went back to his office and asked respondent's secretary to print the document. Respondent intimated that the complainant and Echavia have fabricated the accusations against him to compel him to pay the amount of P500,000.00.<sup>[13]</sup>

This Court referred the complaint to the Integrated Bar of the Philippines (IBP). The IBP-Visayas Regional Committee on Bar Discipline formed an Investigating Committee to hear the disbarment complaint.

On October 6, 1999, Commissioner Gabriel T. Ingles issued a Report finding the respondent guilty of representing conflicting interests, in violation of Canon 15 and Rule 15.03 of the Code of Professional Responsibility, as well as, of Canon 6 of the Code of Professional Ethics. He recommended that the respondent be suspended from the practice of law for a period of one (1) year.<sup>[14]</sup> Commissioner Ingles did not rule on the other issues.

As aforesaid, the Board of Governors of the Integrated Bar of the Philippines upheld the findings of the Committee with modification only as to the penalty.

Seeking reconsideration of the IBP's resolution, respondent contends that the Investigating Committee did not conduct trial; hence, he was not able to confront and examine the witnesses against him. He argues that the Investigating Committee's finding that he represented Echavia is contrary to court records and the complainant's own testimony in CEB-18552. He also casts doubt on the credibility of the Investigating Committee to render just and fair recommendations considering that the Investigating Commissioner and the respondent are counsel-adversaries in another case, Civil Case No. R-33277. Finally, he questions the imposition of a six-month suspension, which he claims to be harsh considering that his private practice is his only source of income.<sup>[15]</sup>

After carefully examining the records, as well as the applicable laws and jurisprudence on the matter, this Court is inclined to uphold the IBP's resolution.

In administrative cases, the requirement of notice and hearing does not connote full adversarial proceedings, as "actual adversarial proceedings become necessary only for clarification or when there is a need to propound searching questions to witnesses who give vague testimonies."<sup>[16]</sup> Due process is fulfilled when the parties were given reasonable opportunity to be heard and to submit evidence in support of their arguments.<sup>[17]</sup>

In the case at bar, records show that respondent repeatedly sought the postponement of the hearings, prompting the Investigating Commissioner to receive complainant's evidence *ex parte* and to set the case for resolution after the parties have submitted their respective memorandum. Hence:

"The records show that this is already the third postponement filed by respondent namely December 12, 1996 (*sic*), January 3, 1996 and April 1, 1996.

The Commission for the last time, will cancel today's hearing and can no longer tolerate any further postponement. Notify respondent by telegram for the hearing for (*sic*) April 22, 1996 at 2:00 P.M. Said hearing is intransferable in character.

In the meantime, complainant affirmed her complaint and likewise her witness, Allan Echavia, also affirmed the contents of his affidavit and further stated that he had executed the same and understood the contents thereof."<sup>[18]</sup>

It is by his own negligence that the respondent was deemed to have waived his right to cross-examine the complainant and her witness. He cannot belatedly ask this Court to grant new trial after he has squandered his opportunity to exercise his right.

Respondent's contention that the finding of the Investigating Committee was contrary to the records and the complainant's own admission in CEB-18552 is without merit. It is true that Atty. Aviola was Echavia's counsel-of-record in Civil Case No. 13666 as evidenced by the certification from the clerk of court,<sup>[19]</sup> and as admitted by the complainant in CEB-18552, *viz*:

"ATTY. MADERAZO: (To witness- ON CROSS)

Q: Madam witness, you mentioned that the defendant in this case was the counsel of Allan Echavia as early as August 20, 1993, wherein you learned for the first time of this fact when you say he is counsel of Allan Echavia. (*sic*) You mean he is the counsel of record of Allan Echavia in the Civil Case before Judge Dacudao? Is that what you mean?

A: What I learned was that Atty. Alviola was the counsel of Allan Echavia in the case before Judge Dacudao but I heard Atty. Maderazo telling Allan Echavia not to admit that Atty. Maderazo is appearing for me because he will be the one to coordinate with Allan's case.

Q: So it is clear that the defendant in this case is not the counsel of record of Allan Echavia. It was Atty. Alviola stated by you now?

A: Atty. Maderazo was not Allan Echavia's counsel but it was Atty. Alviola who was the counsel of record of Allan Echavia."<sup>[20]</sup>

Nevertheless, the issue in this case is not whether the respondent also acted as the counsel-of-record of Echavia. Rather, it is whether or not he had a direct hand in the preparation of Echavia's Answer to the Amended Complaint.

To be guilty of representing conflicting interests, a counsel-of-record of one party need not also be counsel-of-record of the adverse party. He does not have to publicly hold himself as the counsel of the adverse party, nor make his efforts to advance the adverse party's conflicting interests of record--- although these circumstances are the most obvious and satisfactory proof of the charge. It is enough that the counsel of one party had a hand in the preparation of the pleading of the other party, claiming adverse and conflicting interests with that of his original client. To require that he also be counsel-of-record of the adverse party would punish only the most obvious form of deceit and reward, with impunity, the highest form of disloyalty.

Canon 6 of the Code of Professional Ethics states:

"It is the duty of a lawyer at the time of the retainer to disclose to the client the circumstances of his relations to the parties and any interest in or in connection with the controversy, which might influence the client in the selection of the counsel.

"It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this Canon, **a lawyer represents conflicting interests when in behalf of one of the clients, it is his duty to contend for that which duty to another client requires him to oppose.**" (emphasis supplied)