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THIRD DIVISION

[A.C. No. 9537. June 10, 2013]
(Formerly CBD Case No. 09-2489)

DR. TERESITA LEE, *complainant, vs.* **ATTY. AMADOR L. SIMANDO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYERS; TESTS IN DETERMINING WHETHER A LAWYER IS GUILTY OF REPRESENTING CONFLICTING INTEREST.— Jurisprudence has provided three tests in determining whether a lawyer is guilty of representing conflicting interest: 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. 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.** 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.

2. ID.; ID.; PROHIBITION AGAINST REPRESENTING CONFLICTING INTERESTS.— [I]t is improper for respondent attorney to appear as counsel for one party (complainant as creditor) against the adverse party (Mejorado as debtor) who is also his client, since a lawyer is prohibited from representing conflicting interests. He may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflict with that of his present or former client. x x x It must be stressed that the proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter however slight the adverse interest may be. It applies even if the conflict pertains to the lawyer's private activity or in the performance

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of a function in a non-professional capacity. In the process of determining whether there is a conflict of interest, an important criterion is probability, not certainty, of conflict.

3. ID.; CODE OF PROFESSIONAL RESPONSIBILITY; PROHIBITION AGAINST USING INFORMATION ACQUIRED IN THE COURSE OF EMPLOYMENT; VIOLATED IN CASE AT BAR.— [W]e find respondent guilty of violating Rule 21.01 of the Code of Professional Responsibility. In his last-ditch effort to impeach the credibility of complainant, he divulged informations which he acquired in confidence during the existence of their lawyer-client relationship. We held in *Nombrado v. Hernandez* that the termination of the relation of attorney and client provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client. The reason for the rule is that the client's confidence once reposed cannot be divested by the expiration of the professional employment. Consequently, a lawyer should not, even after the severance of the relation with his client, do anything which will injuriously affect his former client in any matter in which he previously represented him nor should he disclose or use any of the client's confidences acquired in the previous relation. Accordingly, we reiterate that lawyers are enjoined to look at any representation situation from "the point of view that there are possible conflicts," and further, "to think in terms of impaired loyalty" that is to evaluate if his representation in any way will impair loyalty to a client.

APPEARANCES OF COUNSEL

Vibar Llorin Duran & Associates for complainant.
Eusebio Jose F. Alvina for respondent.

D E C I S I O N

PERALTA, *J.*:

Before us is a Petition for Disbarment[1] dated July 21, 2009 filed by Dr. Teresita Lee (Dr. Lee) against respondent Atty.

[1] *Rollo*, pp. 1-13.

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Amador L. Simando (Atty. Simando) before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 09-2489, now A.C. No. 9537, for violation of the Code of Judicial Ethics of Lawyers.

The facts of the case, as culled from the records, are as follows:

Atty. Simando was the retained counsel of complainant Dr. Lee from November 2004 until January 8, 2008, with a monthly retainer fee of Three Thousand Pesos (Php3,000.00).[2]

Sometime during the above-mentioned period, Atty. Simando went to see Dr. Lee and asked if the latter could help a certain Felicito M. Mejorado (Mejorado) for his needed funds. He claimed that Mejorado was then awaiting the release of his claim for informer's reward from the Bureau of Customs. Because Dr. Lee did not know Mejorado personally and she claimed to be not in the business of lending money, the former initially refused to lend money. But Atty. Simando allegedly persisted and assured her that Mejorado will pay his obligation and will issue postdated checks and sign promissory notes. He allegedly even offered to be the co-maker of Mejorado and assured her that Mejorado's obligation will be paid when due. Atty. Simando was quoted saying: "*Ipapahamak ba kita, kliyente kita"; "Sigurado ito, kung gusto mo, gagarantiyahan ko pa ito, at pipirma din ako"; "Isang buwan lang, at hindi hihigit sa dalawang buwan ito, bayad ka na.*"[3]

Due to Atty. Simando's persistence, his daily calls and frequent visits to convince Dr. Lee, the latter gave in to her lawyer's demands, and finally agreed to give Mejorado sizeable amounts of money. Respondent acted as co-maker with Mejorado in various cash loans, to wit:[4]

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[2] *Id.* at 2.

[3] *Id.* at 2.

[4] *Id.* at 3.

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Date:	Amount
November 11, 2006	Php 400,000.00
November 24, 2006	200,000.00
November 27, 2006	400,000.00
December 7, 2006	200,000.00
December 13, 2006	200,000.00
Total:	Php1,400,000.00

When the said obligation became due, despite Dr. Lee's repeated demands, Mejorado failed and refused to comply with his obligation. Since Atty. Simando was still her lawyer then, Dr. Lee instructed him to initiate legal action against Mejorado. Atty. Simando said he would get in touch with Mejorado and ask him to pay his obligation without having to resort to legal action. However, even after several months, Mejorado still failed to pay Dr. Lee, so she again asked Atty. Simando why no payment has been made yet. Dr. Lee then reminded Atty. Simando that he was supposed to be the co-maker of the obligation of Mejorado, to which he replied: "*Di kasuhan din ninyo ako!*"[5]

Despite complainant's repeated requests, respondent ignored her and failed to bring legal actions against Mejorado. Thus, in January 2008, complainant was forced to terminate her contract with Atty. Simando.

Subsequently, complainant's new lawyer, Atty. Gilbert Morandarte, sent a demand letter dated June 13, 2008 to Atty. Simando in his capacity as the co-maker of some of the loans of Mejorado.

In his Letter dated June 30, 2008, respondent denied his liability as a co-maker and claimed that novation had occurred because complainant had allegedly given additional loans to Mejorado without his knowledge.[6]

Dr. Lee then accused Atty. Simando of violating the trust and confidence which she gave upon him as her lawyer, and

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[5] *Id.*

[6] *Id.*

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even took advantage of their professional relationship in order to get a loan for his client. Worse, when the said obligation became due, respondent was unwilling to help her to favor Mejorado. Thus, the instant petition for disbarment against Atty. Simando.

On August 12, 2009, the IBP-CBD ordered respondent to submit his Answer on the complaint against him.[7]

In his Answer[8] dated September 17, 2009, Atty. Simando claimed that complainant, who is engaged in lending money at a high interest rate, was the one who initiated the financial transaction between her and Mejorado. He narrated that complainant asked him if it is true that Mejorado is his client as she found out that Mejorado has a pending claim for informer's reward with the Bureau of Customs. When he affimed that Mejorado is his client, complainant signified that she is willing to give money for Mejorado's financial needs while awaiting for the release of the informer's reward. Eventually, parties agreed that Mejorado will pay double the amount and that payment shall be made upon receipt by Mejorado of the payment of his claim for informer's reward.[9]

Meanwhile, Atty. Simando stressed that Dr. Lee gave Mejorado a total of Php700,000.00 as an investment but he signed as co-maker in all the receipts showing double the amount or Php1,400,000.00.[10]

Respondent claimed that complainant is a money-lender exacting high interest rates from borrowers.[11] He narrated several instances and civil cases where complainant was engaged in money-lending where he divulged that even after defendants had already paid their loan, complainant still persists in collecting

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[7] *Id.* at 14.

[8] *Id.* at 26-40.

[9] *Id.* at 28.

[10] *Id.*

[11] *Id.* at 30.

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from them.[12] Respondent asserted that he knew of these transactions, because he was among the four lawyers who handled complainant's case.[13]

Respondent averred that from the time that Mejorado and Dr. Lee had become close to each other, the latter had given Mejorado additional investments and one (1) Silverado Pick-up at the price of ₱500,000.00 and fifty (50) sacks of old clothings. He claimed that the additional investments made by Dr. Lee to Mejorado were given without his knowledge.

Atty. Simando further alleged that with Dr. Lee's investment of around ₱2 Million which included the Silverado Pick-up and the fifty (50) sacks of old clothings, the latter required Mejorado to issue five (5) checks with a total value of ₱7,033,500.00, an amount more than the actual value which Mejorado received.[14]

Atty. Simando added that while Dr. Lee and Mejorado agreed that the issued checks shall be presented to the bank only upon payment of his informer's reward, Dr. Lee presented the checks to the bank despite being aware that Mejorado's account had no funds for said checks. Atty. Simando further denied that he refused to take legal action against Mejorado. He claimed that complainant never instructed him to file legal action, since the latter knew that Mejorado is obligated to pay only upon receipt of his informer's reward.

Finally, Atty. Simando insisted that he did not violate their lawyer-client relationship, since Dr. Lee voluntarily made the financial investment with Mejorado and that he merely introduced complainant to Mejorado. He further claimed that there is no conflict of interest because he is Mejorado's lawyer relative to the latter's claim for informer's reward, and not Mejorado's lawyer against Dr. Lee. He reiterated that there is no conflicting interest as there was no case between Mejorado and Dr. Lee that he is handling for both of them.[15]

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[12] *Id.*

[13] *Id.*

[14] *Id.* at 29.

[15] *Id.* at 33.

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In her Reply dated October 30, 2009, Dr. Lee denied that what she entered into was a mere investment. She insisted that she lent the money to Mejorado and respondent, in his capacity as co-maker and the transaction was actually a loan.[16] To prove her claim, Dr. Lee submitted the written loan agreements/receipts which categorically stated that the money received was a loan with due dates, signed by Mejorado and respondent as co-maker.[17] She further claimed that she did not know Mejorado and it was respondent who brought him to her and requested her to assist Mejorado by lending him money as, in fact, respondent even vouched for Mejorado and agreed to sign as co-maker.

Complainant further emphasized that what she was collecting is the payment only of the loan amounting to One Million Four Hundred Thousand Pesos (Php1,400,000.00) which respondent had signed as co-maker. Thus, respondent's claim that his obligation was already extinguished by novation holds no water, since what was being collected is merely his obligation pertaining to the loan amounting to Php1,400,000.00 only, and nothing more.

Finally, complainant lamented that respondent, in his comments, even divulged confidential informations he had acquired while he was still her lawyer and even used it against her in the present case, thus, committing another unethical conduct. She, therefore, maintained that respondent is guilty of violating the lawyer-client confidentiality rule.

Both parties failed to appear during the mandatory conference on January 15, 2010. Both parties requested for resetting of the mandatory conference, however, both failed to agree on a certain date. Hence, the IBP, so as not to delay the disposition of the complaint, terminated the mandatory conference and instead required the parties to submit their respective position papers.[18]

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[16] *Id.* at 123.

[17] *Id.* at 135-137.

[18] *Id.* at 184.

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On March 18, 2010, the IBP-CBD found Atty. Simando guilty of violating the Code of Professional Responsibility. It recommended that respondent be suspended from the practice of law for six (6) months.

On December 29, 2010, the IBP Board of Governors adopted and approved the Report and Recommendation of the IBP-CBD to suspend Atty. Simando from the practice of law for a period of six (6) months.

Respondent moved for reconsideration.

On March 10, 2012, the IBP Board of Governors granted respondent's motion for reconsideration for lack of sufficient evidence to warrant the penalty of suspension. The Resolution dated December 29, 2010 was reversed and the case against respondent was dismissed.

RULING

We reverse the ruling of the IBP Board of Governors.

Jurisprudence has provided three tests in determining whether a lawyer is guilty of representing conflicting interest:

> 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. 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.
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> 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.** 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.[19]

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[19] *Josefina M. Aninon v. Atty. Clemencio Sabitsana, Jr.*, A.C. No. 5098, April 11, 2012. (Emphasis supplied.)

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In the instant case, we find substantial evidence to support respondent's violation of the above parameters, as established by the following circumstances on record:

First, it is undisputed that there was a lawyer-client relationship between complainant and Atty. Simando as evidenced by the retainer fees received by respondent and the latter's representation in certain legal matters pertaining to complainant's business;

Second, Atty. Simando admitted that Mejorado is another client of him *albeit* in a case claiming rewards against the Bureau of Customs;

Third, Atty. Simando admitted that he was the one who introduced complainant and Mejorado to each other for the purpose of entering into a financial transaction while having knowledge that complainant's interests could possibly run in conflict with Mejorado's interests which ironically such client's interests, he is duty-bound to protect;

Fourth, despite the knowledge of the conflicting interests between his two clients, respondent consented in the parties' agreement and even signed as co-maker to the loan agreement;

Fifth, respondent's knowledge of the conflicting interests between his two clients was demonstrated further by his own actions, when he:

(a) failed to act on Mejorado's failure to pay his obligation to complainant despite the latter's instruction to do so;

(b) denied liability despite signing as co-maker in the receipts/promissory notes arising from the loan agreement between his two clients;

(c) rebutted complainant's allegations against Mejorado and him, and even divulged informations he acquired while he was still complainant's lawyer.

Clearly, it is improper for respondent to appear as counsel for one party (complainant as creditor) against the adverse party (Mejorado as debtor) who is also his client, since a lawyer

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is prohibited from representing conflicting interests. He may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflict with that of his present or former client.

Respondent's assertion that there is no conflict of interest because complainant and respondent are his clients in unrelated cases fails to convince. His representation of opposing clients in both cases, though unrelated, obviously constitutes conflict of interest or, at the least, invites suspicion of double-dealing.[20] Moreover, with the subject loan agreement entered into by the complainant and Mejorado, who are both his clients, readily shows an apparent conflict of interest, moreso when he signed as co-maker.

Likewise, respondent's argument that the money received was an investment and not a loan is difficult to accept, considering that he signed as co-maker. Respondent is a lawyer and it is objectionable that he would sign as co-maker if he knew all along that the intention of the parties was to engage in a mere investment. Also, as a lawyer, signing as a co-maker, it can be presupposed that he is aware of the nature of suretyship and the consequences of signing as co-maker. Therefore, he cannot escape liability without exposing himself from administrative liability, if not civil liability. Moreover, we noted that while complainant was able to show proof of receipts of various amounts of money loaned and received by Mejorado, and signed by the respondent as co-maker, the latter, however, other than his bare denials, failed to show proof that the money given was an investment and not a loan.

It must be stressed that the proscription against representation of conflicting interests finds application where the conflicting interests arise with respect to the same general matter however slight the adverse interest may be. It applies even if the conflict pertains to the lawyer's private activity or in the performance of a function in a non-professional capacity. In the process of

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[20] *Id.*

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determining whether there is a conflict of interest, an important criterion is probability, not certainty, of conflict.[21]

We likewise note that respondent offered several excuses in order to avoid payment of his liability. *First*, in his Answer to complainant's demand letter, he claimed there was novation which extinguished his liability; *Secondly*, he claimed that the amount received by Mejorado for which he signed as co-maker was merely an investment and not a loan. *Finally*, he alleged that it was agreed that the investment with profits will be paid only after Mejorado receives the payment for his claim for reward which complainant violated when she presented the checks for payment prematurely. These actuations of Atty. Simando do not speak well of his reputation as a lawyer.[22]

Finally, we likewise find respondent guilty of violating Rule 21.01 of the Code of Professional Responsibility.[23] In his last-ditch effort to impeach the credibility of complainant, he divulged informations[24] which he acquired in confidence during the existence of their lawyer-client relationship.

We held in *Nombrado v. Hernandez*[25] that the termination of the relation of attorney and client provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client. The reason for the rule is that the client's confidence once reposed cannot be divested by the expiration of the professional employment. Consequently, a lawyer should not, even after the severance of the relation with his client, do anything

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[21] *Quiambao v. Atty. Bamba*, A.C. No. 6708, August 25, 2005, 465 SCRA 1, 13.

[22] *Rollo*, pp. 135-137.

[23] Rule 21.01.– A lawyer shall not, to the disadvantage of his client, use information acquired in the course of mployment, nor shall he use the same to his own advantge or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

[24] Respondent's Answer dated September 17, 2009, *rollo*, pp. 30-31.

[25] 135 Phil. 5, 9 (1968).

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which will injuriously affect his former client in any matter in which he previously represented him nor should he disclose or use any of the client's confidences acquired in the previous relation.

Accordingly, we reiterate that lawyers are enjoined to look at any representation situation from "the point of view that there are possible conflicts," and further, "to think in terms of impaired loyalty" that is to evaluate if his representation in any way will impair loyalty to a client.[26]

WHEREFORE, premises considered, this Court resolves to **ADOPT** the findings and recommendation of the IBP in Resolution No. XIX-2010-733 suspending respondent Atty. Amador L. Simando for six (6) months from the practice of law, with a **WARNING** that a repetition of the same or similar offense will warrant a more severe penalty.

Let copies of this Decision be furnished all courts, the Office of the Bar Confidant and the Integrated Bar of the Philippines for their information and guidance. The Office of the Bar Confidant is **DIRECTED** to append a copy of this Decision to respondent's record as member of the Bar.

Atty. Simando is **DIRECTED** to inform the Court of the date of his receipt of this Decision so that we can determine the reckoning point when his suspension shall take effect.

This Decision shall be immediately executory.

SO ORDERED.

Velasco, Jr. (Chairperson), Abad, Mendoza, and *Leonen, JJ.,* concur.

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[26] *Heirs of Falame v. Atty. Baguio,* A.C. No. 6876, March 7, 2008, 548 SCRA 1, 15.