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EN BANC

[A.C. No. 1890. August 7, 2002]

FEDERICO C. SUNTAY, *complainant, vs.* **ATTY. RAFAEL G. SUNTAY,** *respondent.*

SYNOPSIS

A complaint for disbarment was filed by the complainant against his nephew, Atty. Rafael G. Suntay. Complainant alleged that respondent was his legal counsel, adviser and confidant who was privy to all his legal, financial, and political affairs from 1956 to 1964. However, since they parted ways because of politics, respondent had been filing complaints and cases against complainant, making use of confidential information gained while their attorney-client relationship existed. Thereafter, this case was referred to the Office of the Solicitor General (OSG) for investigation, report and recommendation. After almost four years in 1982, the OSG submitted its report and recommendation finding respondent guilty as charged. Resolution of this case was delayed due to several motions filed by the respondent. In 1988, the case was forwarded to the Integrated Bar of the Philippines (IBP). Finally in 2001 the IBP recommended that responden Suntay be suspended from the practice of law for two years for immoral conduct. The investigating commissioner adopted in toto the report and recommendation of the OSG. In view of the penlty involved, the case was referred to the Court en banc for final action.

For violating the confidentiality of lawyer-client relationship and for unethical conduct, respondent Suntay was suspended by the Supreme Court from the practice of law for two years. After review of the records of this case, the Court found the IBP recommendation to be well taken. As found by both the OSG and the IBP investigating commissioner, respondent acted as counsel for clients in cases involving subject matter regarding which he had either been previously consulted by complainant or which he had previously helped complainant to administer as the latter's counsel and confidant from 1956 to 1964.

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SYLLABUS

LEGAL AND JUDICIAL ETHICS; ATTORNEY-CLIENT RELATION; CONSTRUED. — A lawyer shall preserve the confidences and secrets of his clients even after termination of the attorney-client relation. As his defense, respondent averred that complainant failed to specify the alleged confidential information used against him. Such defense is unavailing. As succinctly explained in *Hilado v. David*—Communications between attorney and client are, in a great number of litigations, a complicated affair, consisting of entangled relevant and irrelevant, secret and well known facts. In the complexity of what is said in the course of the dealings between an attorney and a client, inquiry of the nature suggested would lead to the revelation, in advance of the trial, of other matters that might only further prejudice the complainant's cause. And the theory would be productive of other unsalutary results. To make the passing of confidential communication a condition precedent, *i.e.,* to make the employment conditioned on the scope and character of the knowledge acquired by an attorney in determining his right to change sides, would not enhance the freedom of litigants, which is to be sedulously fostered, to consult with lawyers upon what they believe are their rights in litigation. The condition would of necessity call for an investigation of what information the attorney has received and in what way it is or it is not in conflict with his new position. Litigants would in consequence be wary in going to an attorney, lest by an unfortunate turn of the proceeding, if an investigation be held, the court should accept the attorney's inaccurate version of the facts that came to him x x x Hence, the necessity of setting down the existence of the bare relationship of attorney and client as the yardstick for testing incompatibility of interests. This stern rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to protect the honest lawyer from unfounded suspicion of unprofessional practice x x x It is founded on principles of public policy, on good taste x x x [T]he question is not necessarily one of the rights of the parties, but as to whether the attorney has adhered to proper professional standard. With these thoughts in mind, it behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing. Only thus can litigants be encouraged to entrust

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their secrets to their attorneys which is of paramount importance in the administration of justice.

APPEARANCES OF COUNSEL

Agaton Yaranon for complainant.

D E C I S I O N

BELLOSILLO, *J.*:

This *Complaint* for disbarment was filed by Federico C. Suntay against his nephew, Atty. Rafael G. Suntay, alleging that respondent was his legal counsel, adviser and confidant who was privy to all his legal, financial and political affairs from 1956 to 1964. However, since they parted ways because of politics and respondent's overweening political ambitions in 1964, respondent had been filing complaints and cases against complainant, making use of confidential information gained while their attorney-client relationship existed, and otherwise harassing him at every turn.

Complainant enumerated the following cases filed by respondent to harass him: (a) Civil Case No. 4306-M[1] for injunction and damages in 1975, "*Carlos Panganiban v. Dr. Federico Suntay*," where respondent appeared as counsel for the plaintiff involving fishponds which respondent had previously helped to administer; (b) Civil Case No. 4726-M,[2] "*Narciso Lopez v. Federico Suntay*," in 1970 where respondent appeared as counsel for the plaintiff to determine the real contract between the parties likewise involving the two (2) fishponds which respondent had previously helped to administer; (c) Civil Case No. 112764,[3] "*Magno Dinglasan v. Federico Suntay*," for damages where respondent appeared as counsel for the plaintiff; and, (d) I.S. No. 77-1523, "*Magno Dinglasan v. Federico*

[1] Of the then CFI-Bulacan.

[2] Also of the CFI-Bulacan.

[3] Of the then CFI-Manila.

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Suntay," for false testimony and grave oral defamation before the Office of the Provincial Fiscal of Bulacan involving complainant's same testimony subject of the complaint for damages in Civil Case No. 112764.

In addition, complainant alleged that respondent relentlessly pursued a case against him for violation of PD No. 296[4] for the alleged disappearance of two (2) creeks traversing complainant's fishpond in Bulacan covered by TCT No. T-15674. Complainant alleged that respondent's possession and examination of the TCT and the blueprint plan of the property while he was still counsel for complainant provided him with the information that there used to be two (2) creeks traversing the fishpond, and that since respondent helped in the administration of the fishpond, he also came to know that the two (2) creeks had disappeared.

Required to answer the charges respondent filed a "*Motion to Order Complainant to Specify His Charges*" alleging that complainant failed to specify the alleged "confidential information or intelligence" gained by him while the attorney-client relationship existed but which he allegedly used against complainant when the relationship terminated. Complainant filed his *Comments* thereon as required in our Resolution of 26 July 1978. Thereafter this case was referred to the Office of the Solicitor General (OSG) for investigation, report, and recommendation in our Resolution dated 23 October 1978.

After almost four (4) years the OSG submitted its *Report and Recommendation* dated 14 October 1982 enumerating the following findings against respondent, to wit:

> The evidence presented by complainant which was largely unrebutted by respondent establish two counts of malpractice against respondent, one count of violating the confidentiality of client-lawyer relationship and one count of engaging in unethical conduct.

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[4] Directing all Persons, Natural or Juridical, to Renounce Possession and Move Out of Portions of Rivers, Creeks, *Esteros*, Drainage Channels and Other Similar Waterways Encroached Upon by Them and Prescribing Penalty for Violation Hereof.

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1. Respondent committed malpractice when he represented Magno Dinglasan in the case for false testimony and grave oral defamation filed by Magno Dinglasan against complainant before the Office of the Provincial Fiscal of Bulacan (I.S. No. 77-1523).

The case stemmed from the testimony given by complainant on December 21, 1976, before the Court of First Instance of Bulacan in Civil Case No. 3930-M. When asked why Magno Dinglasan had testified against him in that case, complainant stated that he once declined the demand of Magno Dinglasan, a former official of the Bureau of Internal Revenue, for ₱150,000.00 as consideration for the destruction of complainant's record in the Bureau.

On account of that testimony, Magno Dinglasan charged complainant on July 29, 1977 with the crime of false testimony and grave oral defamation (Exhibits G and G-1). During the preliminary investigation of the case by the Office of the Provincial Fiscal of Bulacan, respondent acted as counsel for Magno Dinglasan. When the case was dismissed by the Office of the Provincial Fiscal of Bulacan and it was elevated to the Ministry of Justice on appeal, respondent continued to be the lawyer of Magno Dinglasan.

Complainant testified in this disbarment proceeding that he consulted respondent, who was then his counsel, about the demand made in 1957 or 1958 by Magno Dinglasan for ₱150,000.00 as consideration for the destruction of complainant's record in the Bureau of Internal Revenue. Respondent's advice was for complainant to disregard the demand as it was improper. Later, when Magno Dinglasan reduced the amount to ₱50,000.00, complainant again consulted respondent. Respondent likewise advised complainant not to heed the demand (pp. 61-62, tsn, May 21, 1981).

Respondent's representation of Magno Dinglasan in I.S. No. 77-1523 constitutes malpractice (Section 27, Rule 138, Rules of Court) for respondent was previously the lawyer of complainant and respondent was consulted by complainant regarding the very matter which was the subject of the case. By serving as the lawyer of Magno Dinglasan, in I.S. No. 77-1523, respondent thus represented an interest which conflicted with the interest of his former client.

2. Respondent again committed malpractice when he served as lawyer of Magno Dinglasan in Civil Case No. 112764 before the Court of First Instance of Manila.

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Civil Case No. 112764 was an action for damages filed by Magno Dinglasan against complainant based, among others, on the same testimony that complainant gave on December 21, 1976 before the Court of First Instance of Bulacan in Civil Case No. 3930-M.

For the same reasons set forth above, respondent's representation of Magno Dinglasan in Civil Case No. 112764 constitutes malpractice as thereby he represented conflicting interests.

3. In filing a charge against complainant for alleged illegal destruction of dikes, respondent violated the confidentiality of information obtained out of a client-lawyer relationship.

In his capacity as lawyer of complainant from 1956 to 1964, respondent had the following functions:

> "Witness
>
> "A: He was my lawyer from 1956 from the time he passed the bar up to sometime in 1964 and my legal adviser on political matters and legal matters.
>
> "ATTY. AQUINO:
>
> "Q: As your lawyer from 1956 to 1964, will you kindly inform the Honorable Hearing Officer what was the nature of the work of Atty. Suntay?
>
> "A: He handled my cases on the titling of our properties. He served as my legal counsel in the Hagonoy Rural Bank of which my family is the majority stockholders. He used to help me manage my fishpond. He is our legal adviser on legal matters. He is our confidant. We have no secrets between us. He has complete access in our papers (tsn, May 21, 1981).

Complainant owned several fishponds in Bulacan, among them, the fishpond covered by Transfer Certificate of Title No. T-15674. This fishpond was previously traversed by two creeks, Sapang Malalim and Sapang Caluang. The existence of the creeks is shown by the certificate of title and the blue print plan of the fishpond. In the certificate of title, the fishpond is bounded on the north and northeast by Sapang Caluang and on the west by Sapang Malalim (please see Exhibit 6).

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In a letter dated March 17, 1973, respondent reported the disappearance of the two creeks to the authorities. The Chief State Prosecutor referred the letter to the Office of the Provincial Fiscal of Bulacan. The Office of the Provincial Fiscal of Bulacan required the Public Works to conduct a re-survey. (Exhibit 6).

In 1974, the Ministry of Public Works conducted a relocation survey of the fishpond. The relocation survey disclosed that there were no more creeks traversing the fishpond. Sapang Malalim and Sapang Caluang had disappeared.

Respondent was requested to file a formal complaint with supporting affidavits, for violation of Presidential Decree No. 296. Respondent did so and the complaint was docketed as I.S. No. 74-193. (Exhibit 6)

From the foregoing facts, it is clear that respondent made use of the information he gained while he was the lawyer of complainant as basis for his complaint for the building of illegal dikes. His possession and examination of Transfer Certificate of Title No. T-15674 and the blueprint plan provided him the information that there used to be two creeks traversing the fishpond covered by the title. Since he helped in the administration of the fishpond, he also came to know that the two creeks had disappeared. Thus, he gained the data which became the basis of his complaint when he was a lawyer and part administrator of complainant. Under the circumstances, there is a violation of professional confidence.

4. The evidence also establishes the commission of unethical conduct by respondent for serving as lawyer of Panganiban and Lopez x x x and for himself filing criminal charges against complainant which were later dismissed. The cases wherein respondent served as lawyer for the adversary of complainant or filed by respondent himself against complainant are the following:

1. *Carlos Panganiban v. Federico Suntay,* Civil Case No. 4306-M, CFI, Branch VII, Malolos, Bulacan;

2. *Narciso Lopez v. Federico Suntay*, Civil Case No. 4726-M, CFI, Branch II, Malolos, Bulacan;

3. *Magno Dinglasan v. Federico Suntay,* I.S. No. 77-1523, Office of the Provincial Fiscal of Bulacan;

4. *Magno Dinglasan v. Federico Suntay*, Civil Case No. 112764, CFI, Branch XX, Manila; and

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5. *Rafael G. Suntay and Magno Dinglasan v. Federico C. Suntay,* I.S. No. 74-193, Office of the Provincial Fiscal of Bulacan, for violation of P.D. 296.

While there may be validity to respondent's contention that it is not improper for a lawyer to file a case against a former client, especially when the professional relationship had ended several years before, yet under the over-all circumstances of the case at bar it can not be said that respondent acted ethically. Complainant was not a mere client of respondent. He is an uncle and a political benefactor. The parties for whom respondent filed cases against complainant were former friends or associates of complainant whom respondent met when he was serving as the lawyer and general adviser of complainant. The cases filed by respondent were about properties which respondent had something to do with as counsel and administrator of complainant.

x x x x x x x x x

IN VIEW OF THE FOREGOING, undersigned respectfully submit that the evidence establishes commission by respondent of malpractice for violating the confidentiality of client-lawyer relationship and engaging in unethical conduct.

x x x x x x x x x[5]

Resolution of this case was delayed despite receipt of the foregoing *Report and Recommendation* in view of the *Omnibus Motion to Remand Case to the Office of the Solicitor General; Motion to Disqualify Solicitor Rogelio Dancel to Act on this Case and Motion to Suspend Period to File Answer* dated 18 January 1983 filed by respondent principally accusing handling Solicitor Dancel of having given unwarranted advantage and preference to the complainant in the investigation of the case.

After several pleadings on the issue were filed by both respondent and Solicitor Rogelio Dancel, the Court in its *Resolution* dated 22 August 1983 denied respondent's motion to disqualify Solicitor Dancel and required the OSG to proceed with the investigation of this case. However, no further proceedings were conducted by the OSG until the records of the case together with other cases

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[5] *Rollo*, Vol. III, pp. 207-214.

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were turned over to the Integrated Bar of the Philippines (IBP) on 19 May 1988.

After almost three (3) years from the time the records of this case were turned over to it, the IBP Commission on Bar Discipline submitted to this Court on 11 May 2001 *Resolution No. XIV-2001-169* adopting and approving the *Report and Recommendation* of the Investigating Commissioner finding respondent guilty as charged. The IBP recommended that respondent Atty. Suntay be suspended from the practice of law for two (2) years for immoral conduct. In so recommending the Investigating Commissioner adopted *in toto* the findings of the OSG in its *Report and Recommendation* dated 14 October 1982. In our Resolution of 5 September 2001 we noted the foregoing IBP Resolution. However, in view of the penalty involved, this case was referred to the Court *En Banc* for final action pursuant to our Resolution dated 18 January 2000, Sec. 2, par. (b), in A.M. No. 99-12-08-SC.[6]

After a review of the records of this case, the Court finds the IBP *Recommendation* to be well taken. As found by both the OSG and the IBP Investigating Commissioner, respondent Atty. Rafael G. Suntay acted as counsel for clients in cases involving subject matters regarding which he had either been previously consulted by complainant or which he had previously helped complainant to administer as the latter's counsel and confidant from 1956 to 1964. Thus in Civil Cases Nos. 4306-M and 4726-M respondent acted as counsel for estranged business associates of complainant, namely, Carlos Panganiban and Narciso Lopez, the subject matter of which were the two (2) fishponds which respondent had previously helped to administer.

On the other hand, I.S. No. 77-1523 for false testimony and grave oral defamation before the Office of the Provincial Fiscal of Bulacan, and Civil Case No. 112764 for damages before the then Court of First Instance of Manila, were filed in behalf

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[6] Referral of Administrative Matters and Cases to the Divisions of the Court or to the Chief Justice and Chairmen of Divisions for Appropriate Actions.

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of Magno Dinglasan, a former Bureau of Internal Revenue (BIR) official, regarding whose alleged demand for ₱150,000.00 from complainant in exchange for the destruction of the latter's record in the BIR, respondent had previously advised complainant to disregard. Civil Case No. 117624 and I.S. No. 77-1523 were precisely filed against complainant because the latter had previously testified on the alleged demand made by Dinglasan. Although respondent denied that there was ever such a demand made by Dinglasan, the point is that his word on the matter, *i.e.*, whether there was in fact such a demand, would carry much weight against complainant considering that he was the latter's counsel in 1957 or 1958 when the alleged demand was made. In addition, respondent initiated the prosecution of complainant in I.S. No. 74-193 for violation of P.D. No. 296[7] for the disappearance of the two (2) creeks, namely, Sapang Malalim and Sapang Caluang, previously traversing complainant's fishpond in Bulacan covered by TCT No. T-15674 by using information obtained while he was in possession of the certificate of title and the blueprint plan of the property.

As the *Code of Professional Responsibility* provides:

Rule 21.01. - A lawyer shall not reveal the confidences or secrets of his client except:

a) When authorized by the client after acquainting him of the consequences of the disclosure;
b) When required by law;
c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

Rule 21.01.— A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

A lawyer shall preserve the confidences and secrets of his clients even after termination of the attorney-client relation.[8]

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[7] See Note 4.

[8] Canon 21, Code of Professional Responsibility.

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As his defense to the charges, respondent averred that complainant failed to specify the alleged confidential information used against him. Such a defense is unavailing to help respondent's cause for as succinctly explained in *Hilado v. David*[9]-

> Communications between attorney and client are, in a great number of litigations, a complicated affair, consisting of entangled relevant and irrelevant, secret and well known facts. In the complexity of what is said in the course of the dealings between an attorney and a client, inquiry of the nature suggested would lead to the revelation, in advance of the trial, of other matters that might only further prejudice the complainant's cause. And the theory would be productive of other unsalutary results. To make the passing of confidential communication a condition precedent, *i.e.,* to make the employment conditioned on the scope and character of the knowledge acquired by an attorney in determining his right to change sides, would not enhance the freedom of litigants, which is to be sedulously fostered, to consult with lawyers upon what they believe are their rights in litigation. The condition would of necessity call for an investigation of what information the attorney has received and in what way it is or it is not in conflict with his new position. Litigants would in consequence be wary in going to an attorney, lest by an unfortunate turn of the proceeding, if an investigation be held, the court should accept the attorney's inaccurate version of the facts that came to him x x x

Hence, the necessity of setting down the existence of the bare relationship of attorney and client as the yardstick for testing incompatibility of interests. This stern rule is designed not alone to prevent the dishonest practitioner from fraudulent conduct, but as well to protect the honest lawyer from unfounded suspicion of unprofessional practice x x x It is founded on principles of public policy, on good taste x x x [T]he question is not necessarily one of the rights of the parties, but as to whether the attorney has adhered to proper professional standard. With these thoughts in mind, it behooves attorneys, like Caesar's wife, not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing.

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[9] 84 Phil. 569, 578-579 (1949).

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Only thus can litigants be encouraged to entrust their secrets to their attorneys which is of paramount importance in the administration of justice.

WHEREFORE, in view of the foregoing, IBP Resolution No. XIV-2001-169 dated 29 April 2001 is adopted and approved. For violating the confidentiality of lawyer-client relationship and for unethical conduct, respondent Atty. Rafael G. Suntay is *SUSPENDED* from the practice of law for two (2) years effective upon the finality hereof.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and all courts throughout the country.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, and *Corona, JJ.*, concur.

EN BANC

[A.M. No. 02-5-111-MCTC. August 7, 2002]

RE: AUDIT CONDUCTED ON THE BOOKS OF ACCOUNTS OF FORMER CLERK OF COURT MR. WENCESLAO P. TINOY, MCTC, TALAKAG, BUKIDNON.

SYNOPSIS

An audit on the books of account of former clerk of court of the Municipal Circuit Trial Court of Talakag, Bukidnon, Wenceslao P. Tinoy, revealed a delay in remittances of Judiciary