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SECOND DIVISION

[A.C. No. 6174. November 16, 2011]

LYDIA CASTRO-JUSTO, *complainant, vs.* **ATTY. RODOLFO T. GALING,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; THE RELATIONSHIP WAS ESTABLISHED FROM THE MOMENT LEGAL ADVICE WAS SOUGHT FROM THE LAWYER DESPITE CLOSE FRIENDSHIP BETWEEN THEM. — A lawyer-client relationship can exist notwithstanding the close friendship between complainant and respondent. The relationship was established the moment complainant sought legal advice from respondent regarding the dishonored checks. By drafting the demand letter respondent further affirmed such relationship. The fact that the demand letter was not utilized in the criminal complaint filed and that respondent was not eventually engaged by complainant to represent her in the criminal cases is of no moment. As observed by the Investigating Commissioner, by referring to complainant Justo as "my client" in the demand letter sent to the defaulting debtor respondent admitted the existence of the lawyer-client relationship. Such admission effectively estopped him from claiming otherwise.

2. ID.; ID.; PROHIBITION AGAINST CONFLICTING INTEREST; ABSENCE OF MONETARY CONSIDERATION DOES NOT EXEMPT LAWYERS FROM COMPLYING THEREWITH; SUSTAINED. — Absence of monetary consideration does not exempt lawyers from complying with the prohibition against pursuing cases with conflicting interests. The prohibition attaches from the moment the attorney-client relationship is established and extends beyond the duration of the professional relationship. We held in *Burbe v. Atty. Magulta* that it is not necessary that any retainer be paid, promised or charged; neither is it material that the attorney consulted did not afterward handle the case for which his service had been sought.

3. ID.; ID.; ID.; SUCH PROHIBITION IS FOUNDED ON PRINCIPLES OF PUBLIC POLICY AND GOOD TASTE;

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RATIONALE. — Under Rule 15.03, Canon 15 of the Code of Professional Responsibility, "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts." Respondent was therefore bound to refrain from representing parties with conflicting interests in a controversy. By doing so, without showing any proof that he had obtained the written consent of the conflicting parties, respondent should be sanctioned. The prohibition against representing conflicting interest is founded on principles of public policy and good taste. In the course of the lawyer-client relationship, the lawyer learns of the facts connected with the client's case, including the weak and strong points of the case. The nature of the relationship is, therefore, one of trust and confidence of the highest degree. 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. x x x The take-over of a client's cause of action by another lawyer does not give the former lawyer the right to represent the opposing party. It is not only malpractice but also constitutes a violation of the confidence resulting from the attorney-client relationship.

APPEARANCES OF COUNSEL

Manuel A. Año for complainant.

D E C I S I O N

PEREZ, *J.*:

Before us for consideration is Resolution No. XVIII-2007-196[1] of the Board of Governors, Integrated Bar of the Philippines (IBP), relative to the complaint[2] for disbarment filed by Lydia Castro-Justo against Atty. Rodolfo T. Galing.

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[1] *Rollo*, p. 45.

[2] *Id.* at 1-2.

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Complainant Justo alleged that sometime in April 2003, she engaged the services of respondent Atty. Galing in connection with dishonored checks issued by Manila City Councilor Arlene W. Koa (Ms. Koa). After she paid his professional fees, the respondent drafted and sent a letter to Ms. Koa demanding payment of the checks.[3] Respondent advised complainant to wait for the lapse of the period indicated in the demand letter before filing her complaint.

On 10 July 2003, complainant filed a criminal complaint against Ms. Koa for estafa and violation of Batas Pambansa Blg. 22 before the Office of the City Prosecutor of Manila.[4]

On 27 July 2003, she received a copy of a Motion for Consolidation[5] filed by respondent for and on behalf of Ms. Koa, the accused in the criminal cases, and the latter's daughter Karen Torralba (Ms. Torralba). Further, on 8 August 2003, respondent appeared as counsel for Ms. Koa before the prosecutor of Manila.

Complainant submits that by representing conflicting interests, respondent violated the Code of Professional Responsibility.

In his Comment,[6] respondent denied the allegations against him. He admitted that he drafted a demand letter for complainant but argued that it was made only in deference to their long standing friendship and not by reason of a professional engagement as professed by complainant. He denied receiving any professional fee for the services he rendered. It was allegedly their understanding that complainant would have to retain the services of another lawyer. He alleged that complainant, based on that agreement, engaged the services of Atty. Manuel A. Año.

To bolster this claim, respondent pointed out that the complaint filed by complainant against Ms. Koa for estafa and violation

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[3] *Id.* at 3-4.

[4] *Id.* at 5-6.

[5] *Id.* at 10-11.

[6] *Id.* at 14-22.

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of B.P. Blg. 22 was based not on the demand letter he drafted but on the demand letter prepared by Atty. Manuel A. Año.

Respondent contended that he is a close friend of the opposing parties in the criminal cases. He further contended that complainant Justo and Ms. Koa are likewise long time friends, as in fact, they are "*comares*" for more than 30 years since complainant is the godmother of Ms. Torralba.[7] Respondent claimed that it is in this light that he accommodated Ms. Koa and her daughter's request that they be represented by him in the cases filed against them by complainant and complainant's daughter. He maintained that the filing of the Motion for Consolidation which is a non-adversarial pleading does not evidence the existence of a lawyer-client relationship between him and Ms. Koa and Ms. Torralba. Likewise, his appearance in the joint proceedings should only be construed as an effort on his part to assume the role of a moderator or arbiter of the parties.

He insisted that his actions were merely motivated by an intention to help the parties achieve an out of court settlement and possible reconciliation. He reported that his efforts proved fruitful insofar as he had caused Ms. Koa to pay complainant the amount of ₱50,000.00 in settlement of one of the two checks subject of I.S. No. 03G-19484-86.

Respondent averred that the failure of Ms. Koa and Ms. Torralba to make good the other checks caused a lot of consternation on the part of complainant. This allegedly led her to vent her ire on respondent and file the instant administrative case for conflict of interest.

In a resolution dated 19 October 2007, the Board of Governors of the IBP adopted and approved with modification the findings of its Investigating Commissioner. They found respondent guilty of violating Canon 15, Rule 15.03 of the Code of Professional Responsibility by representing conflicting interests and for his daring audacity and for the pronounced malignancy of his act.

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[7] *Id.* at 16.

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It was recommended that he be suspended from the practice of law for one (1) year with a warning that a repetition of the same or similar acts will be dealt with more severely.[8]

We agree with the Report and Recommendation of the Investigating Commissioner,[9] as adopted by the Board of Governors of the IBP.

It was established that in April 2003, respondent was approached by complainant regarding the dishonored checks issued by Manila City Councilor Koa.

It was also established that on 25 July 2003, a Motion for Consolidation was filed by respondent in I.S. No. 03G-19484-86 entitled "*Lydia Justo vs. Arlene Koa*" and I.S. No. 03G-19582-84 entitled "*Lani C. Justo vs. Karen Torralba*." Respondent stated that the movants in these cases are mother and daughter while complainants are likewise mother and daughter and that these cases arose out from the same transaction. Thus, movants and complainants will be adducing the same sets of evidence and witnesses.

Respondent argued that no lawyer-client relationship existed between him and complainant because there was no professional fee paid for the services he rendered. Moreover, he argued that he drafted the demand letter only as a personal favor to complainant who is a close friend.

We are not persuaded. A lawyer-client relationship can exist notwithstanding the close friendship between complainant and respondent. The relationship was established the moment complainant sought legal advice from respondent regarding the dishonored checks. By drafting the demand letter respondent further affirmed such relationship. The fact that the demand letter was not utilized in the criminal complaint filed and that respondent was not eventually engaged by complainant to represent her in the criminal cases is of no moment. As observed by the Investigating Commissioner, by referring to complainant

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[8] *Id.* at 45.

[9] *Id.* at 46-53.

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Justo as "my client" in the demand letter sent to the defaulting debtor,[10] respondent admitted the existence of the lawyer-client relationship. Such admission effectively estopped him from claiming otherwise.

Likewise, the non-payment of professional fee will not exculpate respondent from liability. Absence of monetary consideration does not exempt lawyers from complying with the prohibition against pursuing cases with conflicting interests. The prohibition attaches from the moment the attorney-client relationship is established and extends beyond the duration of the professional relationship.[11] We held in *Burbe v. Atty. Magulta*[12] that it is not necessary that any retainer be paid, promised or charged; neither is it material that the attorney consulted did not afterward handle the case for which his service had been sought.[13]

Under Rule 15.03, Canon 15 of the Code of Professional Responsibility, "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts." Respondent was therefore bound to refrain from representing parties with conflicting interests in a controversy. By doing so, without showing any proof that he had obtained the written consent of the conflicting parties, respondent should be sanctioned.

The prohibition against representing conflicting interest is founded on principles of public policy and good taste.[14] In the course of the lawyer-client relationship, the lawyer learns of the facts connected with the client's case, including the weak and strong points of the case. The nature of the relationship is, therefore, one of trust and confidence of the highest degree.[15]

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[10] *Id.* at 48.

[11] *Buted v. Hernando,* A.C. No. 1359, 17 October 1991, 203 SCRA 1, 8.

[12] 432 Phil. 840 (2002).

[13] *Id.* at 848.

[14] *Hilado v. David,* 84 Phil. 569, 578 (1949).

[15] *Maturan v. Gonzales,* A.C. No. 2597, 12 March 1998, 287 SCRA 443, 446.

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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.[16]

The case of *Hornilla v. Atty. Salunat*[17] is instructive on this concept, thus:

> There is conflict of interest when a lawyer represents inconsistent 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. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client.'[18] This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used.[19] Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act 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.[20] Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.[21]

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[16] *Supra* note 14 at 579.

[17] 453 Phil. 108 (2003).

[18] *Id.* at 111 citing PINEDA, *Legal and Judicial Ethics*, p. 199 [1999 ed.].

[19] *Id.* citing *Hilado v. David*, 84 Phil. 569[1949]; *Nombrado v. Hernandez*, 26 SCRA 13 [1968]; *Bautista v. Barrios*, 9 SCRA 695 [1963].

[20] *Id.* at 111-112 citing PINEDA, *Legal and Judicial Ethics*, p.199, citing *Pierce v. Palmer*, 31 R.I. 432.

[21] *Id.* at 112 citing AGPALO, *Legal Ethics*, p. 220, citing in *Re De la Rosa*, 27 Phil. 258[1914]; *Grievance Committee v. Rottner*, 152 Conn. 59, 203 A 2d 82 [1954] and *Titania v. Ocampo*, 200 SCRA 472 [1991].

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The excuse proffered by respondent that it was not him but Atty. Año who was eventually engaged by complainant will not exonerate him from the clear violation of Rule 15.03 of the Code of Professional Responsibility. The take- over of a client's cause of action by another lawyer does not give the former lawyer the right to represent the opposing party. It is not only malpractice but also constitutes a violation of the confidence resulting from the attorney-client relationship.

Considering that this is respondent's first infraction, the disbarment sought in the complaint is deemed to be too severe. As recommended by the Board of Governors of the IBP, the suspension from the practice of law for one (1) year is warranted.

ACCORDINGLY, the Court resolved to *SUSPEND* Atty. Rodolfo T. Galing from the practice of law for one (1) year, 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.

SO ORDERED.

Carpio (Chairperson), Brion, Sereno, and *Reyes, JJ.*, concur.

SECOND DIVISION

[A.C. No. 6899. November 16, 2011]

ROGELIO F. ESTAVILLO, *complainant, vs.* **ATTYS. GEMMO G. GUILLERMO and ERME S. LABAYOG,** *respondents.*