



Republic of the Philippines
Supreme Court
Manila

EN BANC

ATTY. POLICARPIO I. CATALAN, JR., A.C. No. 7360
Complainant,

Present:

CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
ABAD,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
SERENO,
REYES, and
PERLAS-BERNABE, JJ.

- versus -

ATTY. JOSELITO M. SILVOSA,
Respondent.

Promulgated:

JULY 24, 2012 *Josiloe*

X

X

DECISION

PER CURIAM:

This is a complaint filed by Atty. Policarpio I. Catalan, Jr. (Atty. Catalan) against Atty. Joselito M. Silvosa (Atty. Silvosa). Atty. Catalan has three causes of action against Atty. Silvosa: (1) Atty. Silvosa appeared as counsel for the accused in the same case for which he previously appeared as prosecutor; (2) Atty. Silvosa bribed his then colleague Prosecutor Phoebe

Toribio (Pros. Toribio) for ₱30,000; and (3) the Sandiganbayan convicted Atty. Silvosa in Criminal Case No. 27776 for direct bribery. Integrated Bar of the Philippines' (IBP) Commissioner for Bar Discipline Dennis A.B. Funa (Comm. Funa) held Atty. Silvosa liable only for the first cause of action and recommended the penalty of reprimand. The Board of Governors of the IBP twice modified Comm. Funa's recommendation: first, to a suspension of six months, then to a suspension of two years.

Atty. Silvosa was an Assistant Provincial Prosecutor of Bukidnon and a Prosecutor in Regional Trial Court (RTC), Branch 10, Malaybalay City, Bukidnon. Atty. Silvosa appeared as public prosecutor in Criminal Case No. 10256-00, "People of the Philippines v. SPO2 Elmor Esperon y Murillo, et al." (Esperon case), for the complex crime of double frustrated murder, in which case Atty. Catalan was one of the private complainants. Atty. Catalan took issue with Atty. Silvosa's manner of prosecuting the case, and requested the Provincial Prosecutor to relieve Atty. Silvosa.

In his first cause of action, Atty. Catalan accused Atty. Silvosa of appearing as private counsel in a case where he previously appeared as public prosecutor, hence violating Rule 6.03 of the Code of Professional Responsibility.¹ Atty. Catalan also alleged that, apart from the fact that Atty. Silvosa and the accused are relatives and have the same middle name, Atty. Silvosa displayed manifest bias in the accused's favor. Atty. Silvosa caused numerous delays in the trial of the Esperon case by arguing against the position of the private prosecutor. In 2000, Provincial Prosecutor Guillermo Ching granted Atty. Catalan's request to relieve Atty. Silvosa from handling the Esperon case. The RTC rendered judgment convicting the accused on 16 November 2005. On 23 November 2005, Atty. Silvosa, as private lawyer and as counsel for the accused, filed a motion to reinstate

¹ A lawyer shall not, after leaving the government service, accept engagement or employment in connection with any matter in which he had intervened while in the said service.

bail pending finality of judgment of the Esperon case.

In his second cause of action, Atty. Catalan presented the affidavit of Pros. Toribio. In a case for frustrated murder where Atty. Catalan's brother was a respondent, Pros. Toribio reviewed the findings of the investigating judge and downgraded the offense from frustrated murder to less serious physical injuries. During the hearing before Comm. Funa, Pros. Toribio testified that, while still a public prosecutor at the time, Atty. Silvosa offered her ₱30,000 to reconsider her findings and uphold the charge of frustrated murder.

Finally, in the third cause of action, Atty. Catalan presented the Sandiganbayan's decision in Criminal Case No. 27776, convicting Atty. Silvosa of direct bribery on 18 May 2006. Nilo Lanticse (Lanticse) filed a complaint against Atty. Silvosa before the National Bureau of Investigation (NBI). Despite the execution of an affidavit of desistance by the complainant in a homicide case in favor of Lanticse's father-in-law, Arsenio Cadinan (Cadinan), Cadinan still remained in detention for more than two years. Atty. Silvosa demanded ₱15,000 from Lanticse for the dismissal of the case and for the release of Cadinan. The NBI set up an entrapment operation for Atty. Silvosa. GMA 7's television program *Imbestigador* videotaped and aired the actual entrapment operation. The footage was offered and admitted as evidence, and viewed by the Sandiganbayan. Despite Atty. Silvosa's defense of instigation, the Sandiganbayan convicted Atty. Silvosa. The dispositive portion of Criminal Case No. 27776 reads:

WHEREFORE, this court finds JOSELITO M. SILVOSA GUILTY, beyond reasonable doubt, of the crime of direct bribery and is hereby sentenced to suffer the penalty of:

(A) Imprisonment of, after applying the Indeterminate Sentence Law, one year, one month and eleven days of *prision correccional*, as minimum, up to three years, six months and twenty days of *prision correccional*, as maximum;

(B) Fine of TEN THOUSAND PESOS (Php 10,000.00), with subsidiary imprisonment in case of insolvency; and

(C) All other accessory penalties provided for under the law.

SO ORDERED.²

In his defense, on the first cause of action, Atty. Silvosa states that he resigned as prosecutor from the Esperon case on 18 October 2002. The trial court released its decision in the Esperon case on 16 November 2005 and cancelled the accused's bail. Atty. Silvosa claims that his appearance was only for the purpose of the reinstatement of bail. Atty. Silvosa also denies any relationship between himself and the accused.

On the second cause of action, Atty. Silvosa dismisses Pros. Toribio's allegations as "self-serving" and "purposely dug by [Atty. Catalan] and his puppeteer to pursue persecution."

On the third cause of action, while Atty. Silvosa admits his conviction by the Sandiganbayan and is under probation, he asserts that "conviction under the 2nd paragraph of Article 210 of the Revised Penal Code, do [sic] not involve moral turpitude since the act involved 'do [sic] not amount to a crime.'" He further claims that "it is not the lawyer in respondent that was convicted, but his capacity as a public officer, the charge against respondent for which he was convicted falling under the category of crimes against public officers x x x."

In a Report and Recommendation dated 15 September 2008, Comm. Funa found that:

² *Rollo*, p. 34.

As for the first charge, the wordings and prohibition in Rule 6.03 of the *Code of Professional Responsibility* [are] quite clear. [Atty. Silvosa] did intervene in Criminal Case No. 10246-00. [Atty. Silvosa's] attempt to minimize his role in said case would be unavailing. The fact is that he is presumed to have acquainted himself with the facts of said case and has made himself familiar with the parties of the case. Such would constitute sufficient intervention in the case. The fact that, subsequently, [Atty. Silvosa] entered his appearance in said case only to file a *Motion to Post Bail Bond Pending Appeal* would still constitute a violation of Rule 6.03 as such act is sufficient to establish a lawyer-client relation.

As for the second charge, there is certain difficulty to dissect a claim of bribery that occurred more than seven (7) years ago. In this instance, the conflicting allegations are merely based on the word of one person against the word of another. With [Atty. Silvosa's] vehement denial, the accusation of witness [Pros.] Toribio stands alone unsubstantiated. Moreover, we take note that the alleged incident occurred more than seven (7) years ago or in 1999, [l]ong before this disbarment case was filed on November 2006. Such a long period of time would undoubtedly cast doubt on the veracity of the allegation. Even the existence of the bribe money could not be ascertained and verified with certainty anymore.

As to the third charge, [Atty. Silvosa] correctly points out that herein complainant has no personal knowledge about the charge of extortion for which [Atty. Silvosa] was convicted by the Sandiganbayan. [Atty. Catalan] was not a party in said case nor was he ever involved in said case. The findings of the Sandiganbayan are not binding upon this Commission. The findings in a criminal proceeding are not binding in a disbarment proceeding. No evidence has been presented relating to the alleged extortion case.

PREMISES CONSIDERED, it is submitted that [Atty. Silvosa] is GUILTY only of the First Charge in violating Rule 6.03 of the Code of Professional Responsibility and should be given the penalty of REPRIMAND.

Respectfully submitted.³

In a Resolution dated 9 October 2008, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of Comm. Funa and suspended Atty. Silvosa from the practice of law for six months. In another Resolution dated 28 October 2011, the IBP Board of Governors increased the penalty of Atty. Silvosa's suspension from the practice of law to two years. The Office of the Bar Confidant received the

³ Id. at 145-146.

notice of the Resolution and the records of the case on 1 March 2012.

We sustain the findings of the IBP only in the first cause of action and modify its recommendations in the second and third causes of action.

Atty. Catalan relies on Rule 6.03 which states that “A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in said service.” Atty. Silvosa, on the hand, relies on Rule 2.01 which provides that “A lawyer shall not reject, except for valid reasons the cause of the defenseless or the oppressed” and on Canon 14 which provides that “A lawyer shall not refuse his services to the needy.”

We agree with Comm. Funa’s finding that Atty. Silvosa violated Rule 6.03. When he entered his appearance on the Motion to Post Bail Bond Pending Appeal, Atty. Silvosa conveniently forgot Rule 15.03 which provides that “A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of facts.”

Atty. Silvosa’s attempts to minimize his involvement in the same case on two occasions can only be described as desperate. He claims his participation as public prosecutor was only to appear in the arraignment and in the pre-trial conference. He likewise claims his subsequent participation as collaborating counsel was limited only to the reinstatement of the original bail. Atty. Silvosa will do well to take heed of our ruling in *Hilado v. David*.⁴

An attorney is employed — that is, he is engaged in his professional capacity as a lawyer or counselor — when he is listening to his client’s preliminary statement of his case, or when he is giving advice thereon, just as truly as when he is drawing his client’s pleadings, or advocating his client’s pleadings, or advocating his client’s cause in open court.

⁴ 84 Phil. 569, 576-579 (1949). Citations omitted.

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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. It is founded on principles of public policy, on good taste. As has been said in another case, the 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 their secrets to their attorneys which is of paramount importance in the administration of justice.

Indeed, the prohibition against representation of conflicting interests applies although the attorney's intentions were honest and he acted in good faith.⁵

Atty. Silvosa denies Pros. Toribio's accusation of bribery and casts doubt on its veracity by emphasizing the delay in presenting a complaint before the IBP. Comm. Funa, by stating that there is difficulty in ascertaining the veracity of the facts with certainty, in effect agreed with Atty. Silvosa. Contrary to Comm. Funa's ruling, however, the records show that Atty. Silvosa made an attempt to bribe Pros. Toribio and failed. Pros. Toribio executed her affidavit on 14 June 1999, a day after the failed bribery attempt, and had it notarized by Atty. Nemesio Beltran, then President of the IBP-Bukidnon Chapter. There was no reason for Pros. Toribio to make false testimonies against Atty. Silvosa. Atty. Silvosa, on the other hand, merely denied the accusation and dismissed it as persecution. When the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him. He must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him.⁶ Atty. Silvosa failed in this respect.

⁵ *Pormento, Sr. v. Atty. Pontevedra*, 494 Phil. 164, 183 (2005). Citation omitted.

⁶ *Radjaie v. Atty. Alovera*, 392 Phil. 1, 17 (2000) citing *Reyes v. Gaa*, 316 Phil. 97, 101 (1995).

Unfortunately for Atty. Silvosa, mere delay in the filing of an administrative complaint against a member of the bar does not automatically exonerate a respondent. Administrative offenses do not prescribe. No matter how much time has elapsed from the time of the commission of the act complained of and the time of the institution of the complaint, erring members of the bench and bar cannot escape the disciplining arm of the Court.⁷

We disagree with Comm. Funa's ruling that the findings in a criminal proceeding are not binding in a disbarment proceeding.

First, disbarment proceedings may be initiated by any interested person. There can be no doubt of the right of a citizen to bring to the attention of the proper authority acts and doings of public officers which a citizen feels are incompatible with the duties of the office and from which conduct the public might or does suffer undesirable consequences.⁸ Section 1, Rule 139-B reads:

Section 1. *How Instituted.* – Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against erring attorneys including those in government service.

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It is of no moment that Atty. Catalan is not the complainant in Criminal Case No. 27776, and that Lanticse, the complainant therein, was

⁷ *Heck v. Judge Santos*, 467 Phil. 798, 825 (2004).

⁸ *Marcelo v. Javier, Sr.*, Adm. Case No. 3248, 18 September 1992, 214 SCRA 1, 14. Citation omitted.

not presented as a witness in the present case. There is no doubt that the Sandiganbayan's judgment in Criminal Case No. 27776 is a matter of public record and is already final. Atty. Catalan supported his allegation by submitting documentary evidence of the Sandiganbayan's decision in Criminal Case No. 27776. Atty. Silvosa himself admitted, against his interest, that he is under probation.

Second, conviction of a crime involving moral turpitude is a ground for disbarment. Moral turpitude is defined as an act of baseness, vileness, or depravity in the private duties which a man owes to his fellow men, or to society in general, contrary to justice, honesty, modesty, or good morals.⁹ Section 27, Rule 138 provides:

Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* – **A member of the bar may be disbarred** or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or **by reason of his conviction of a crime involving moral turpitude**, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

In a disbarment case, this Court will no longer review a final judgment of conviction.¹⁰

Third, the crime of direct bribery is a crime involving moral turpitude. In *Magno v. COMELEC*,¹¹ we ruled:

By applying for probation, petitioner in effect admitted all the elements of the crime of direct bribery:

⁹ *Dela Torre v. COMELEC*, 327 Phil. 1144, 1150 (1996). Citations omitted.

¹⁰ *Re: SC Decision dated May 20, 2008 in G.R. No. 161455 under Rule 139-B of the Rules of Court v. Atty. Rodolfo D. Pactolin*, A.C. No. 7940, 24 April 2012; *Moreno v. Atty. Araneta*, 496 Phil. 788 (2005); *In Re: Rodolfo Pajo*, 203 Phil. 79 (1982); *In the matter of Disbarment Proceedings v. Narciso N. Jaramillo*, 101 Phil. 323 (1957).

¹¹ 439 Phil. 339, 346-347 (2002).

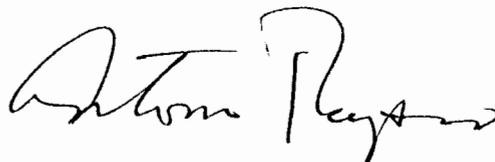
1. *the offender is a public officer;*
2. *the offender accepts an offer or promise or receives a gift or present by himself or through another;*
3. such offer or promise be accepted or gift or present be received by the public officer with a view to committing some crime, or in consideration of the execution of an act which does not constitute a crime but the act must be unjust, or to refrain from doing something which it is his official duty to do; and
4. *the act which the offender agrees to perform or which he executes is connected with the performance of his official duties.*

Moral turpitude can be inferred from the third element. The fact that the offender agrees to accept a promise or gift and deliberately commits an unjust act or refrains from performing an official duty in exchange for some favors, denotes a malicious intent on the part of the offender to renege on the duties which he owes his fellowmen and society in general. Also, the fact that the offender takes advantage of his office and position is a betrayal of the trust reposed on him by the public. It is a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals. In all respects, direct bribery is a crime involving moral turpitude. (Italicization in the original)

Atty. Silvosa's representation of conflicting interests and his failed attempt at bribing Pros. Toribio merit at least the penalty of suspension. Atty. Silvosa's final conviction of the crime of direct bribery clearly falls under one of the grounds for disbarment under Section 27 of Rule 138. Disbarment follows as a consequence of Atty. Silvosa's conviction of the crime. We are constrained to impose a penalty more severe than suspension because we find that Atty. Silvosa is predisposed to flout the exacting standards of morality and decency required of a member of the Bar. His excuse that his conviction was not in his capacity as a lawyer, but as a public officer, is unacceptable and betrays the unmistakable lack of integrity in his character. The practice of law is a privilege, and Atty. Silvosa has proved himself unfit to exercise this privilege.

WHEREFORE, respondent Atty. Joselito M. Silvosa is hereby **DISBARRED** and his name **ORDERED STRICKEN** from the Roll of Attorneys. Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and to the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.



ANTONIO T. CARPIO
Senior Associate Justice



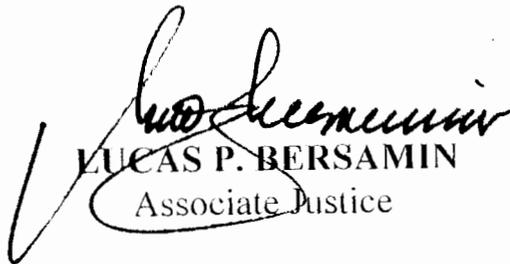
PRESBITERO J. VELASCO, JR.
Associate Justice

(On official leave)
**TERESITA J. LEONARDO-
DE CASTRO**
Associate Justice

(On leave)
ARTURO D. BRION
Associate Justice

(On official business)
DIOSDADO M. PERALTA
Associate Justice

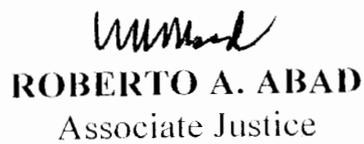




LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



ROBERTO A. ABAD
Associate Justice

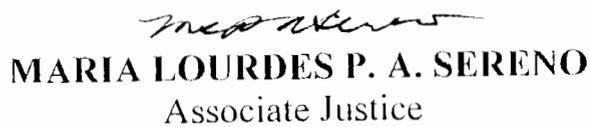


MARTIN S. VILLARAMA, JR.
Associate Justice

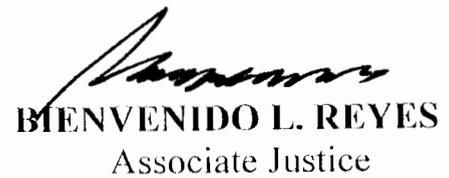


JOSE PORTUGAL PEREZ
Associate Justice

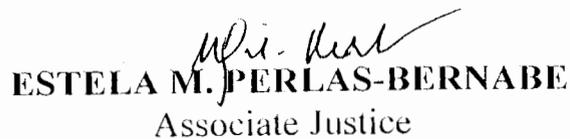
(On leave)
JOSE C. MENDOZA
Associate Justice



MARIA LOURDES P. A. SERENO
Associate Justice



BIENVENIDO L. REYES
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice