



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court's First Division, issued a Resolution dated November 13, 2023, which reads as follows:

"A.C. No. 8847 (TERESA R. MAGNO, Complainant v. ATTY. GERVACIO B. ORTIZ, JR., Respondent). – This is an administrative Complaint¹ (*complaint*) filed before the Office of the Bar Confidant by Teresa R. Magno (*complainant*) against Atty. Gervacio B. Ortiz, Jr. (*respondent*) for violation of Canon 15 of the Code of Professional Responsibility (*CPR*) and Section (*Sec.*) 7 of Republic Act (*R.A.*) No. 6713.

Antecedents

Respondent holds the position of Legal Officer V in the Department of Assessment, City Government of Manila.²

Complainant alleges that, sometime in June 2008, she went to the City Hall of Manila in order to seek legal advice from a certain Atty. Danilo Ellacer (*Atty. Ellacer*), a lawyer recommended by a friend. After the search for Atty. Ellacer proved unsuccessful, she was directed to respondent, who was a friend of Atty. Ellacer, then holding office at the 2nd floor of the city hall. Complainant thereafter went to respondent's office, but was allegedly told by respondent to meet him instead at Chowking restaurant in SM Manila.³

¹ *Rollo*, pp. 1-4.

² *Id.* at 145.

³ *Id.* at 2.

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Complainant claims that a meeting between her and respondent took place at Chowking. There, complainant consulted with respondent regarding her problem involving a property which was the subject of a dispute between herself, on the one hand, and Teresa Avila⁴ (*Avila*) and Rizalina C. Ongtangco (*Ongtangco*), on the other. At the end of the consultation, respondent allegedly asked complainant to bring additional documents to their next meeting, and charged her the amount of ₱2,000.00 as initial deposit.⁵ Complainant alleged that she decided not to schedule a second consultation with respondent.

According to complainant, she did not see respondent again until late in 2009, when she was surprised to see him appear as counsel in the unlawful detainer case filed by Avila and Ongtangco against her, docketed as Civil Case No. 186196-CV (*unlawful detainer case*) then pending before Branch 22 of the Metropolitan Trial Court of Manila. The case involved the same property and the same dispute allegedly subject of complainant's consultation with respondent in June 2008.⁶

In the unlawful detainer case, respondent appeared as the collaborating counsel of Atty. Ellacer, who was counsel on record for plaintiffs Avila and Ongtangco. Respondent represented Avila and Ongtangco during the hearings on December 4, 2009, April 14, 2010, May 14, 2010, August 20, 2010, October 15, 2010, and November 5, 2010.⁷

Complainant claims that respondent had been moonlighting for several clients without being caught, while using government time and the taxpayers' money to attend hearings of his cases for monetary profit, and without any qualms of violating the ethical standards of his legal practice, which he is not allowed to do by law.⁸

Thus, on December 14, 2010, complainant filed the instant complaint, arguing that respondent's actions constituted violation of Canon 15 of the CPR and Sec. 7 of R.A. No. 6713. In connection with Canon 15 of the CPR, complainant claims that respondent represented clients in a case despite a conflict of interest. In relation to Sec. 7 of R.A. No. 6713, complainant alleges that respondent – a government employee – has been moonlighting as private counsel without authority.⁹

⁴ Also referred to as "Teresita C. Avila" in some parts of the *rollo* (see *rollo*, p. 9).

⁵ *Rollo*, p. 2.

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.*

⁹ *Id.* at 1 and 3.

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Respondent, on his part, denies that the alleged June 2008 meeting between him and complainant ever took place, and points out that there are details in complainant's narration which render her version of events dubious. First, respondent avers that he would not have agreed to give legal advice in a dispute against Avila, who is a former classmate, fellow employee, and long-time friend of his. Second, according to respondent, the dispute between complainant and Avila and Ongtangco did not arise until after June 2008, as in fact Avila and Ongtangco only purchased the property subject of the dispute on July 31, 2008. Third, respondent maintains that Atty. Ellacer is an infrequent visitor of the City Hall of Manila and that it is unlikely that anyone would go there to look for him, much less be able to track him down and trace him to respondent. Finally, respondent asserts that he would not have chosen to meet a prospective client at Chowking, because the food there does not agree with him and the crowd and noise make it unfit as a venue for a legal consultation.¹⁰

On the other hand, respondent admits that he represented Avila and Ongtangco during the hearings on December 4, 2009, April 14, 2010, May 14, 2010, August 20, 2010, October 15, 2010, and November 5, 2010 in the unlawful detainer case, but stresses that he appeared only on behalf of Atty. Ellacer, who was the actual lawyer of Avila and Ongtangco. Respondent avers that his participation in the case was only temporary, to assist Atty. Ellacer who at the time needed to travel outside Manila for long periods.¹¹

IBP-CBD Report and Recommendation

In its March 4, 2021 Report and Recommendation,¹² the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) found that there was insufficient evidence to show that the alleged June 2008 meeting between complainant and respondent actually took place. Even if the meeting did take place, complainant failed to show that the subject of the meeting was the same legal predicament which eventually led to the unlawful detainer case.¹³

The IBP-CBD observed that the complaint was filed by complainant only in December 2010, when the unlawful detainer case was already ripe for decision. The IBP-CBD found it highly doubtful that complainant did not recognize respondent during the hearings when he appeared on behalf of Avila and Ongtangco. If the June 2008 meeting really had taken place, complainant could have filed the complaint earlier, or else confided the matter to her lawyer

¹⁰ Id. at 75-76, 80, and 85.

¹¹ Id. at 89.

¹² Id. at 278-286.

¹³ Id. at 282.

so that the appropriate motion to disqualify respondent in the unlawful detainer case could have been filed.¹⁴

However, the IBP-CBD found respondent to have clearly engaged in the practice of his legal profession when he appeared as collaborating counsel for Avila and Ongtangco in the unlawful detainer case. However, there is no showing that respondent obtained the proper authority from the City Government of Manila to allow him to engage in the private practice of his profession. Thus, respondent was found guilty of violating Sec. 7(b)(2) of R.A. No. 6713 – an act which merits the penalty of reprimand.¹⁵ The pertinent portion of the IBP-CBD’s recommendation provides:

WHEREFORE, premises considered, it is respectfully **RECOMMENDED** that respondent Atty. Gervacio B. Ortiz, Jr., be found **GUILTY** of violating Section 7(b)(2) of RA 6713 and accordingly he be **REPRIMANDED**. It is likewise recommended that he be **WARNED** that a repetition of the same or similar act in the future shall merit a more severe sanction.¹⁶ (Emphases in the original)

IBP Resolution

In its August 28, 2021 Resolution¹⁷ and Extended Resolution,¹⁸ the IBP Board of Governors affirmed the recommendation of the IBP-CBD that the charge against respondent for violation of Canon 15 of the CPR be dismissed, but modified the penalty to be imposed upon respondent for violation of R.A. No. 6713, *viz.*:

RESOLVED to MODIFY, as it is hereby MODIFIED, the Report and Recommendation of the Investigating Commissioner in the instant case, to **DISMISS** the charges against the Respondent for violation of Canon 15 for insufficiency of evidence, but UPHOLD THE FINDING OF GUILT for violation of RA 6713.

RESOLVED, Further, to MODIFY the recommended penalty to be imposed upon Respondent Atty. Gervacio B. Ortiz for the violation of RA 6713 from mere reprimand to **REPRIMAND and FINE of Ten Thousand Pesos (PhP10,000.00)**.¹⁹ (Emphases in the original; italics omitted)

¹⁴ Id. at 283.

¹⁵ Id. at 283-285.

¹⁶ Id. at 285.

¹⁷ Id. at 276-277.

¹⁸ Id. at 287-289.

¹⁹ Id. at 276.

The IBP Board of Governors cited the case of *Query of Atty. Silverio-Buffe, Former Clerk of Court – RTC, Branch 81, Romblon, Romblon*²⁰ (*Buffe*), wherein Atty. Buffe was penalized with a fine of ₱10,000.00 for violating R.A. No. 6713. The IBP Board of Governors considered the same penalty to be appropriate in this case.²¹

The Court's Ruling

The Court agrees with the findings and recommendations of the IBP Board of Governors.

It should be noted, at the outset, that A.M. No. 22-09-01-SC or the Code of Professional Responsibility and Accountability (*CPRA*)²² took effect on May 29, 2023. Section 1 of the General Provisions of the CPRA expressly states that the CPRA shall apply to all pending cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice. Furthermore, Canon VI, Section 6 of the CPRA accords due recognition to the authority of the Court to determine the liability of government lawyers in administrative cases which touch upon the lawyer's continuing obligations under the CPRA. In this case, the complaint alleges that respondent represented clients in court, despite conflict of interest and without permission to engage in the private practice of his legal profession. These allegations touch upon respondent's obligation as a lawyer to be faithful to his client, as well as his obligation as a government lawyer to comply with certain rules before engaging in private practice – both of which are found under Canon III of the CPRA on Fidelity. Thus, the Court's disposition of the instant case is made with the provisions of the CPRA in mind.

There is insufficient evidence to find respondent liable for violation of Sec. 13, Canon III of the CPRA.

The complaint in the instant case alleges that respondent violated the rules on conflict of interest under Rules 15.01 and 15.03 of Canon 15 of the CPR. Said rules provide:

Rule 15.01. - A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict

²⁰ 613 Phil. 1 (2009).

²¹ *Rollo*, p. 288.

²² The CPRA took effect on May 29, 2023 (OCA Circular No. 200-2023, May 19, 2023).

with another client or his own interest, and if so, shall forthwith inform the prospective client.

Rule 15.03. - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

In relation thereto, Sec. 13, Canon III of the CPRA provides:

SECTION 13. *Conflict of interest.* — A lawyer shall not represent conflicting interests except by written informed consent of all concerned given after a full disclosure of the facts.

There is conflict of interest when a lawyer represents inconsistent or opposing interests of two or more persons. The test is whether in behalf of one client it is the lawyer's duty to fight for an issue or claim, but which is his or her duty to oppose for the other client.

In administrative proceedings against lawyers, the quantum of proof is substantial evidence and the burden of proof is on the complainant to establish the allegations in his or her complaint.²³ Substantial evidence is defined under Sec. 32, Canon VI of the CPRA and Sec. 6, Rule 133 of the Revised Rules on Evidence as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion," while burden of proof is defined under Sec. 1, Rule 131 of the Revised Rules on Evidence as "the duty of a party to present evidence on the facts in issue necessary to establish his [or her] claim or defense by the amount of evidence required by law."²⁴

In this case, the Court agrees with the IBP-CBD that the timing of the filing of the complaint is highly suspect. Although complainant claims that she consulted with respondent in June 2008 and that respondent appeared in hearings in the unlawful detainer case as early as December 2009, complainant did not file the administrative complaint before the IBP until December 2010, when the unlawful detainer case was already ripe for decision. Moreover, the allegation of complainant that the lawyer whom she was directed to in June 2008, during a random visit to the City Hall of Manila, happened to be the very same lawyer who eventually represented the opposing parties in the unlawful detainer case over a year later, is quite unbelievable.

Further, it is noted that complainant did not attach evidence to the administrative complaint proving the existence or subject matter of the alleged June 2008 meeting with respondent, other than her own self-serving testimony and the supporting affidavit of a friend. Notably, on April 19, 2012, or almost

²³ *Tan v. Atty. Alvarico*, A.C. No. 10933, November 3, 2020; see also CPRA, Canon VI, Sec. 32.

²⁴ *Tan v. Atty. Alvarico*, *id.*

two years after the filing of the complaint, complainant submitted the receipt allegedly issued by respondent for the June 2008 meeting, in the form of a green post-it note dated June 25, 2008, bearing the words “[r]eceived the amount of two thousand pesos (2,000.-) from Teresa R. Magno” and with a signature above the name “Atty. Gervacio B. Ortiz.”²⁵ Complainant claimed that she found the lost receipt while fixing her things in preparation for vacating her house.²⁶ On the other hand, respondent avers that the receipt is a forgery, and submitted several of his writing samples showing a difference in his signature and that his consistent practice is to affix the suffix “Jr.” to his name, which is clearly absent in the alleged receipt submitted by complainant.²⁷

The Court finds the small piece of paper to be unreliable. It is highly suspicious that complainant claims to have retrieved the note after the passage of almost four years since the alleged meeting with respondent, and which complainant did not submit as evidence until almost two years after the filing of the complaint.

The Court rules that complainant failed to discharge her burden of proof and failed to prove the occurrence of the June 2008 meeting with substantial evidence. As such, it cannot be gainsaid that respondent represented conflicting interests by advising complainant in the June 2008 meeting, and then appearing on behalf of Avila and Ongtango in the unlawful detainer case. Verily, complainant did not establish with substantial evidence that respondent violated Sec. 13, Canon III of the CPRA.

Respondent is administratively liable for violation of Sec. 21, Canon III of the CPRA.

On the other hand, there is no dispute that respondent appeared as collaborating counsel for Avila and Ongtango in the unlawful detainer case during the hearings on December 4, 2009, April 14, 2010, May 14, 2010, August 20, 2010, October 15, 2010, and November 5, 2010. This was admitted by respondent. It is likewise clear that respondent made the said appearances without written permission from the City Government of Manila.

Sec. 7(b)(2) of R.A. No. 6713 prohibits incumbent public officials and employees from engaging in the private practice of their profession, unless authorized by the Constitution or law, and provided that such practice will not

²⁵ *Rollo*, p. 157.

²⁶ *Id.* at 154.

²⁷ *Id.* at 169.

conflict or tend to conflict with their official functions. Under Memorandum Circular No. 17, Series of 1986, in relation to Sec. 12, Rule XVIII of the Revised Civil Service Rules, government officers and employees are not allowed to engage in the private practice of their profession without written permission from the head of the government office in which they are employed.

In relation thereto, Sec. 21, Canon III of the CPRA provides:

SECTION 21. *Lawyers in government service; conflict of interest.* — A lawyer currently serving in the government shall not practice law privately, unless otherwise authorized by the Constitution, the law or applicable Civil Service rules and regulations. If allowed, private practice shall be upon the express authority of the lawyer's superior, for a stated specified purpose or engagement, and only during an approved leave of absence. However, the lawyer shall not represent an interest adverse to the government.

The CPRA likewise elucidated the practice of law, viz.:

SECTION 1. *Practice of Law.* — The practice of law is the rendition of legal service or performance of acts or the application of law, legal principles, and judgment, in or out of court, with regard to the circumstances or objectives of a person or a cause, and pursuant to a lawyer-client relationship or other engagement governed by the CPRA. It includes employment in the public service or private sector and requires membership in the Philippine bar as qualification.

Indeed, respondent's court appearances constitute the practice of law, regardless of whether he made the said appearances for and on behalf of another lawyer. By appearing in court for private parties, respondent engaged in the private practice of his legal profession. By engaging in the private practice of his profession without written permission from the City Government of Manila, respondent committed a violation of Sec. 7(b)(2) of R.A. No. 6713 and Sec. 21, Canon III of the CPRA.

Under Sec. 34, Canon VI of the CPRA, simple misconduct is such misconduct without the manifest elements of corruption, clear intent to violate the law, or flagrant disregard of established rules. In this case, respondent indeed violated Sec. 7(b)(2) of R.A. No. 6713 and Sec. 21, Canon III of the CPRA by engaging in private practice as a government lawyer without the necessary authority. However, it appears that respondent committed such violation without showing manifest elements of corruption, clear intent to violate the law, or a flagrant disregard of the established rules. Thus, the Court

deems it proper to regard respondent's act of engaging in the private practice of his profession as simple misconduct.

Having established respondent's administrative liability, the Court now determines the proper penalty to be imposed on him. It is noted that engaging in the private practice of one's profession without authority is considered a light offense under the 2017 Rules on Administrative Cases in the Civil Service.²⁸ In the case of *Buffe* cited by the IBP Board of Governors, Atty. Buffe was found to have violated Sec. 7(b)(2) of R.A. No. 6713 through her act of appearing as private counsel in several hearings before the court where she served as clerk of court within one year from her separation from service, and was ordered to pay a fine of ₱10,000.00.²⁹ However, under the CPRA, simple misconduct is a less serious offense punishable by either or a combination of (a) suspension from the practice of law for a period within the range of one month to six months, or revocation of notarial commission and disqualification as notary public for less than two years; or (b) a fine within the range of ₱35,000.00 to ₱100,000.00.³⁰

The Court finds that a fine of ₱10,000.00 is appropriate under the circumstances. It is noted that respondent's appearances before the trial court took place in 2009 and 2010, and that the instant case has been pending since 2010, or long before the CPRA came into effect. We find, thus, that the imposition of the penalty provided under the CPRA, which markedly increased the amount of the applicable fine for the offense of engaging in private practice without authority, would work injustice. As such, the Court exercises its discretion under Sec. 1 of the CPRA's General Provisions to temper the application of the CPRA in pending cases, when its retroactive application would work injustice.

FOR THIS REASON, respondent Atty. Gervacio B. Ortiz, Jr. is found administratively **GUILTY** of Simple Misconduct and he is hereby **FINED** in the amount of ₱10,000.00, with a **STERN WARNING** that a repetition of the same or similar offense in the future will be dealt with more severely.

This Resolution shall take effect immediately upon respondent's receipt of a copy of this Resolution. Respondent shall inform this Court and the Office of the Bar Confidant in writing of the date he received a copy of this Resolution.

²⁸ Rule 10, Sec. 50(F)(15).

²⁹ *Query of Atty. Silverio-Buffe, Former Clerk of Court - Branch 81, Romblon, Romblon*, supra note 20, at 25.

³⁰ CPRA, Canon VI, Secs. 34(a) and 37(b).

SO ORDERED.”

By authority of the Court:

Maria Teresa B. Sibulo

MARIA TERESA B. SIBULO
Division Clerk of Court *ms*

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DEC 19 2023

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