



Republic of the Philippines  
**Supreme Court**  
 Manila

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**FIRST DIVISION**

**RONALDO C. FACTURAN,**  
 Complainant,

**A.C. No. 11069**

- versus -

Present:  
 SERENO, C.J.,\*  
 LEONARDO-DE CASTRO,  
 Acting Chairperson,\*\*

**PROSECUTOR ALFREDO L. BARCELONA, JR.,**  
 Respondent.

BERSAMIN,  
 PERLAS-BERNABE, and  
 CAGUIOA, JJ.

Promulgated:  
**JUN 08 2016**

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**DECISION**

**PERLAS-BERNABE, J.:**

The instant administrative case arose from an Affidavit-Complaint<sup>1</sup> for disbarment anchored on gross misconduct or serious gross misconduct in office, dishonesty, and conduct unbecoming of a lawyer or prosecutor filed by complainant Ronaldo C. Facturan (complainant) against respondent Prosecutor Alfredo L. Barcelona, Jr. (respondent) before the Office of the Court Administrator (OCA).

**The Facts**

Complainant alleged that on June 4, 2004, he filed a complaint for qualified theft against Pilar Mendoza (Mendoza), Jose Sarcon @ Jo (Sarcon), Elezar Barcelona (Elezar), Rodrigo Arro (Arro), and Joseph Montero (Montero; collectively, Mendoza, *et al.*) before the Provincial Prosecution Office of Alabel, Sarangani Province. The case was docketed as I.S. No. 04-211 and assigned for preliminary investigation to Prosecutor Faisal D. Amerkhan (Prosecutor Amerkhan).<sup>2</sup>

\* On leave.  
 \*\* Per Special Order No. 2354 dated June 2, 2016.  
<sup>1</sup> *Rollo*, pp. 4-5.  
<sup>2</sup> *Id.* at 4.

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Thereafter, or on October 26, 2004, Prosecutor Amerkhan forwarded the records of the case, together with his Resolution recommending the prosecution of Mendoza, *et al.* and the corresponding Information, to respondent for his approval and signature. However, respondent neither approved nor signed the resolution. Instead, he removed the case records from the office of the Provincial Prosecutor and brought them to his residence, where they were kept in his custody. It appears that the respondents in I.S. No. 04-211 were personally known to respondent, as Elezar is his cousin, while Mendoza, Sarcon, Arro, and Montero are his close friends.<sup>3</sup>

Aggrieved, complainant sought<sup>4</sup> the intervention of then Department of Justice (DOJ) Secretary Raul Gonzales (Secretary Gonzales), who, through then Chief State Prosecutor Jovencito R. Zuño (Chief State Prosecutor Zuño), endorsed<sup>5</sup> complainant's concerns to State Prosecutor Ringcar B. Pinote (State Prosecutor Pinote). Unfortunately, State Prosecutor Pinote could not take appropriate action on I.S. No. 04-211 as the case records were still in the possession of respondent who failed to turn them over despite the directive to do so.<sup>6</sup>

On July 20, 2005, complainant learned that the case records had been turned over to the Provincial Prosecution Office but without Prosecutor Amerkhan's Resolution and Information. Neither did respondent approve nor act upon the same, prompting complainant to file the present complaint for disbarment against him.<sup>7</sup>

In his defense,<sup>8</sup> respondent claimed that the "alleged malicious 'delaying' or the perceived concealment of the case record[s] was neither intentional nor due to favoritism,"<sup>9</sup> as he had inhibited himself from I.S. No. 04-211, which was the reason why this case was assigned to Prosecutor Amerkhan.<sup>10</sup> Respondent averred that as early as October 2004, complainant already knew that he was predisposed to disapprove the resolution prepared by Prosecutor Amerkhan, as the controversy merely involved a boundary dispute.<sup>11</sup> Thus, he advised Prosecutor Amerkhan to conduct a clarificatory hearing instead of prematurely concluding the preliminary investigation.<sup>12</sup> However, Prosecutor Amerkhan failed to do so, resulting in the delay in the resolution of I.S. No. 04-211.<sup>13</sup>

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<sup>3</sup> Id.

<sup>4</sup> See letter dated March 6, 2005; *id.* at 6.

<sup>5</sup> *Id.* at 7.

<sup>6</sup> *Id.* at 8.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *Id.* at 19-23.

<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 19-20.

<sup>12</sup> *Id.* at 20.

<sup>13</sup> *Id.* at 21.

Furthermore, respondent asseverated that, except for the fact that a criminal information had been filed on September 8, 2006, he was no longer aware of any development in I.S. No. 04-211, having been subsequently detailed to the DOJ in Manila and recently, to the Office of the City Prosecutor of Marikina City.<sup>14</sup> He asserted that complainant and Prosecutor Amerkhan manipulated the filing in court of I.S. No. 04-211 through the original resolution prepared by the latter.<sup>15</sup>

The OCA indorsed<sup>16</sup> complainant's Affidavit-Complaint to the Integrated Bar of the Philippines (IBP), which then set<sup>17</sup> the case for mandatory conference on June 26, 2007. However, only the respondent appeared, prompting the IBP to terminate the mandatory conference and ordered the submission of the parties' position papers.<sup>18</sup> Unfortunately, the parties did not submit the required position papers.<sup>19</sup>

### **The IBP Report and Recommendation**

In a Report<sup>20</sup> dated March 20, 2014, the Commission on Bar Discipline (CBD) of the IBP, through Commissioner Leland R. Villadolid, Jr. (Commissioner Villadolid), found respondent to have violated Canons 18<sup>21</sup> and 18.03<sup>22</sup> of the Code of Professional Responsibility (CPR) and recommended that he be suspended from the practice of law for a period ranging from six (6) months to two (2) years upon the discretion of the IBP Governing Board.<sup>23</sup>

The IBP found that the case records of I.S. No. 04-211 were removed by respondent from the office of the Provincial Prosecutor and kept in his possession.<sup>24</sup> Records also show that he failed to timely turn over the said case records upon order of State Prosecutor Pinote.<sup>25</sup> In fact, the case records remained in his possession even after he had been detailed to the DOJ in Manila in February 2005. From the foregoing, respondent's neglect to perform his duty was apparent.<sup>26</sup>

Furthermore, respondent failed to perform his duty of approving or disapproving Prosecutor Amerkhan's recommendation pertaining to I.S. No.

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<sup>14</sup> Id. at 20.

<sup>15</sup> Id. at 21.

<sup>16</sup> See 1<sup>st</sup> Indorsement dated August 16, 2005; id. at 2.

<sup>17</sup> See Notice of Mandatory Conference/Hearing dated May 29, 2007; id. at 30.

<sup>18</sup> See Order dated August 7, 2007 signed by Commissioner Leland R. Villadolid, Jr.; id. at 34-35.

<sup>19</sup> Id. at 40.

<sup>20</sup> Id. at 39-47.

<sup>21</sup> Canon 18 – A lawyer shall serve his client with competence and diligence.

<sup>22</sup> Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

<sup>23</sup> *Rollo*, p. 47.

<sup>24</sup> Id. at 45.

<sup>25</sup> Id.

<sup>26</sup> Id. at 46.

04-211.<sup>27</sup> As such, he is also guilty of violating Canon 6.01<sup>28</sup> of the CPR for his failure to resolve I.S. No. 04-211 and delaying its resolution by keeping the case records in his possession.<sup>29</sup>

In a Resolution<sup>30</sup> dated December 13, 2014, the IBP Board of Governors adopted and approved the foregoing recommendation and suspended respondent from the practice of law for a period of one (1) year.

### **The Issue Before the Court**

The sole issue for the Court's resolution is whether or not grounds exist to hold respondent administratively liable.

### **The Court's Ruling**

The Court concurs with the IBP's factual findings and recommendation to hold respondent administratively liable, but not for violating Rule 18.03, Canon 18 of the CPR, but instead, of Rule 6.02, Canon 6 of the same Code. The pertinent rules provide:

CANON 6 – THESE CANONS SHALL APPLY TO LAWYERS  
IN GOVERNMENT SERVICE IN THE DISCHARGE OF THEIR  
OFFICIAL TASKS.

x x x x

Rule 6.02 – A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. He may be disciplined by this Court as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer.<sup>31</sup> In this regard, Rule 6.02 above-quoted is particularly directed to lawyers in the government service, enjoining them from using one's public position to: (1) promote private interests; (2) advance private interests; or (3) allow private interests to interfere with public duties.<sup>32</sup>

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<sup>27</sup> Id. at 46.

<sup>28</sup> Rule 6.01 – The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the concealment of witnesses capable of establishing the innocence of the accused is highly reprehensible and is cause for disciplinary action.

<sup>29</sup> *Rollo*, p. 46.

<sup>30</sup> Id. at 38, including dorsal portion. Issued by IBP National Secretary Nasser A. Marohomsalic.

<sup>31</sup> *Olazo v. Justice Tinga (ret.)*, 651 Phil. 290, 298 (2010).

<sup>32</sup> *Abella v. Barrios, Jr.*, A.C. No. 7332, June 18, 2013, 698 SCRA 683, 691-692.

In *Ali v. Bubong*,<sup>33</sup> the Court recognized that private interest is not limited to direct interest, but extends to advancing the interest of relatives.

In this case, respondent's accountability regarding I.S. No. 04-211 has been duly established. When Prosecutor Amerkhan forwarded to respondent the case records of I.S. No. 04-211, together with the resolution recommending the filing of the appropriate information in court, respondent failed to take action thereon, as records are bereft of evidence showing that he either approved or disapproved it. As the IBP had correctly opined,<sup>34</sup> if respondent did not concur with the findings and recommendation of Prosecutor Amerkhan, who conducted the preliminary investigation of the case, respondent should have timely disapproved his recommendation to enable complainant to take the appropriate remedy to challenge the disapproval. Moreover, the Court notes respondent's defense<sup>35</sup> that complainant was already aware beforehand that he (respondent) was inclined to disapprove the resolution prepared by Prosecutor Amerkhan, whom he ordered to conduct a clarificatory hearing on the case. However, if such was the case, then nothing could have prevented respondent from proceeding to disapprove the resolution. Yet, as the records bear out, he absolutely took no action thereon.

Worse, respondent removed the case records from the office of the Provincial Prosecutor and, when directed to turn them over, failed to do so notwithstanding his assignment to the DOJ in Manila in February 2005. As a result, no further action had been taken on I.S. No. 04-211 in the meantime. In fact, as of June 30, 2005, respondent still had not complied with State Prosecutor Pinote's directive to return not only the case records of I.S. No. 04-211, but all the cases previously assigned to him as well.<sup>36</sup> Needless to state, respondent ought to have known that without the case records, no further action could be taken on any of those cases. His assignment to the DOJ in Manila in February 2005 should have even prompted him to turn over the case records of I.S. No. 04-211 for appropriate action, but he still failed to do so, without any plausible reason.

Absent any intelligent explanation as regards his lapses in the handling of I.S. No. 04-211 and his failure to timely return the case records thereof for further action, despite the directive to do so, it can only be inferred that respondent **not merely failed, but obstinately and deliberately refused** to perform his duties as a prosecutor. Such refusal, under the circumstances, evidently worked to the advantage of the respondents in I.S. No. 04-211 – which included respondent's cousin, Elezar – as the absence of the case records in the office of the Provincial Prosecutor resulted in the delay in the filing of the appropriate criminal information in court against

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<sup>33</sup> 493 Phil. 172 (2005).

<sup>34</sup> *Rollo*, p. 46.

<sup>35</sup> *Id.* at 19.

<sup>36</sup> See *id.* at 8.

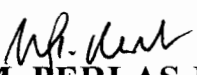
them. Hence, it is apparent that respondent used his public position as a prosecutor to advance and protect the private interest of his relative, which is clearly proscribed in the CPR.

Indeed, respondent's actions and omissions in this case, *i.e.*, his failure to resolve I.S. No. 04-211 and to turn over the case records thereof despite orders to do so, appear to have been committed for the benefit of and to safeguard private interests. As a lawyer who is also a public officer, respondent miserably failed to cope with the strict demands and high standards of the legal profession.<sup>37</sup> It bears stressing that a lawyer in public office is expected not only to refrain from any act or omission which might tend to lessen the trust and confidence of the citizenry in government, he must also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing. Otherwise said, a lawyer in government service is a keeper of the public faith and is burdened with high degree of social responsibility, perhaps higher than her brethren in private practice.<sup>38</sup> Accordingly, the Court finds that suspension for a period of one (1) year,<sup>39</sup> as recommended by the IBP, should be meted upon respondent.

**WHEREFORE**, respondent Prosecutor Alfredo L. Barcelona, Jr. is found **GUILTY** of violating Rule 6.02, Canon 6 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon his receipt of this Decision, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be attached to respondent's personal record as a member of the Bar. Likewise, let copies of the same be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

**SO ORDERED.**

  
**ESTELA M. BERLAS-BERNABE**  
Associate Justice


<sup>37</sup> *Huyssen v. Gutierrez*, 520 Phil. 117, 131 (2006).

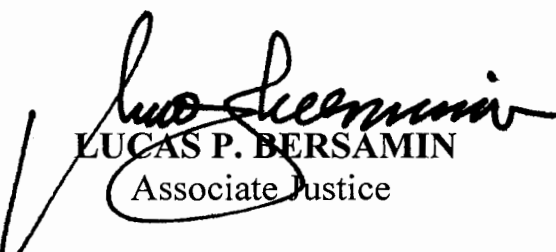
<sup>38</sup> *Vitriolo v. Dasig*, 448 Phil. 199, 209 (2003).

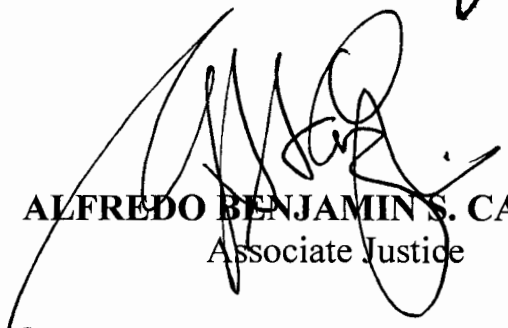
<sup>39</sup> See *Re: Resolution of the Court Dated 1 June 2004 In G.R. No. 72954 Against Atty. Victor C. Avecilla*, 667 Phil. 547 (2011).

**WE CONCUR:**

On leave  
**MARIA LOURDES P. A. SERENO**  
Chief Justice

  
**TERESITA J. LEONARDO-DE CASTRO**  
Associate Justice  
Acting Chairperson

  
**LUCAS P. BERSAMIN**  
Associate Justice

  
**ALFREDO BENJAMINS S. CAGUIOA**  
Associate Justice