

AQUILINO Q. PIMENTEL, JR., COMPLAINANT, VS. ATTYS. VITALIANO C. FABROS AND PACIFICO S. PAAS, RESPONDENTS.

A.C. NO. 4517. September 11, 2006

Ponente: CORONA, J.

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CORONA, J.:

A complaint for disbarment was filed against Attys. Vitaliano C. Fabros and Pacifico S. Paas by Senator Aquilino Q. Pimentel Jr. for "unlawful, dishonest, immoral or deceitful conduct" in relation to the discharge of their duties as chairman and vice-chairman, respectively, of the provincial board of canvassers, Province of Isabela (PBC-Isabela) in the 1995 elections.

Complainant alleged that:

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- Among the duties of the [PBC-Isabela] was to canvass the results of the elections from the various municipalities and component cities of the Province of Isabela and submit the Provincial Certificate of Canvass to the Commission on Elections (COMELEC). This Provincial Certificate of Canvass was to be submitted to the COMELEC together with its supporting Statement of Votes per Municipality for the Province of Isabela, and as required by law, these documents were prepared under the control and supervision of the [PBC-Isabela] of which herein respondents are officials.

- In fact, with respect to the Provincial Certificate of Canvass of Isabela, respondents were required to certify under oath that they duly canvassed the votes cast for each candidate for Senator in the election held on May 8, 1995. And with respect to the Statement of Votes per Municipality, they were required to certify that each entry made is true and correct.

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- It would appear, however, that the Statement of Votes per Municipality (annex "B") prepared and certified to be true and correct by herein respondents was actually a fraudulent statement which had been altered and which contain false and untrue entries. By comparing the said statements with the Municipal/City Certificates of Canvass of some of the municipalities and component cities for the Province of Isabela, it is clearly apparent that in nine (9) municipalities and one (1) city of the said province, the votes of candidates Enrile, Honasan and Mitra were padded and increased by some 27,755, 10,000 and 7,000, respectively....

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- The anomalous, irregular and illegal padding of the votes in the Provincial Certificate of Canvass for the Province of Isabela cannot be attributed [to] mere computation or recording error, but was ostensibly the result of a premeditated scheme knowingly implemented by herein respondents.

- The respondents, chairman and vice chairman of the [PBC-Isabela], willfully, feloniously, unethically and in wanton and reckless regard of the duties and responsibilities reposed upon them by virtue of their official positions, signed the Provincial Certificate of Canvass (annex "A") and the Statement of Votes per

Municipality (annex "B") for the Province of Isabela, well aware that the same contained false statements which has altered the results of the senatorial elections in said province. Their submission of these falsified documents to the COMELEC is an act constituting a gross violation of the Omnibus Election Code and existing penal laws, and a serious breach of public trust and of their oaths as duly licensed members of the Philippine Bar.

- For under section 27 of R.A. 6646 it is provided that any member of the board of canvasser who tampers, increases, or decreases the votes received by a candidate in any election shall be guilty of [an] election offense.
- And, under provisions of the Code of Professional Responsibility, a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. xxx xxx xxx.[1] (Emphasis ours)

In his comment, respondent Fabros reproduced the counter-affidavit he filed with the COMELEC-Manila since the issues raised in the complaint were identical to those brought before the Commission. He denied committing any act which violated his oath as a lawyer. Specifically, he stated that: (1) he neither consented nor allowed any member of PBC-Isabela to increase the votes of Senators Enrile, Honasan and Mitra; (2) the canvassing was done in public view; (3) he faithfully read the votes as reflected in the municipal/city certificates of canvass, repeating the same twice or thrice and (4) the canvassing proceeded in an orderly manner after counsels and watchers were given the chance to examine the certificates of canvass.[2]

Aside from substantially echoing the statements of Fabros, respondent Paas alleged that he was in no position to manipulate the figures since Fabros did the reading throughout the canvass, while he attended to maintaining the integrity of the envelopes containing the statement of votes. Both attributed to human fatigue or simple negligence any error in the figures since the board and its staff allegedly worked continuously to finish the canvassing within 72 hours as directed.[3] Paas claimed that if there were figures in the certificates of canvass which did not match the statement of votes prepared by the PBC, he honestly believed that this was due to human fatigue.[4] He alleged that, if at all, he could only be faulted for failing to see for himself if the reading by Fabros of the number of votes and the tabulation thereof faithfully reflected the figures in the PBC's copy of the election returns.

Both respondents do not, however, deny that they authenticated the provincial certificate of canvass and signed the statement of votes as "true and correct." Their only excuse for any discrepancy was their alleged reliance on the documents prepared by the secretary of PBC-Isabela, Olympia Marquez.

The Integrated Bar of the Philippines (IBP) Investigating Commissioner George Briones heard the case on January 20, 1997.[5] By agreement of the parties, the Investigating Commissioner ordered the parties to submit simultaneous verified position papers with the affidavits of their witnesses.[6] On June 21, 2003, the IBP board of governors issued a resolution adopting the report and recommendation of the Investigating Commissioner. Respondents were found guilty of violating Rule 1.01 of the Code of Professional Responsibility and were penalized with a fine of P10,000 each, with a warning that a violation on similar grounds will be dealt with more severely.

Based on the evidence presented, we find respondents guilty of misconduct. The records reflect, and respondents admit, the discrepancy between the questioned certificate of canvass and the statement of votes of the Province of Isabela in the 1995 elections. While there was no question that the municipal/city certificates of canvass were not tampered with, the tabulation of the figures on the statement of votes was anomalous. For this, respondents were responsible.[7]

As chairman and vice-chairman of PBC-Isabela, respectively, respondents were mandated to receive the municipal/city certificates of canvass, and to canvass them for the votes of the members of the Senate, among others.[8] They were also required to determine the provisional total votes of each candidate as of each

adjournment. On final adjournment, they were tasked to prepare a statement of votes with a certification of the same as official.[9] In addition, they prepared the provincial certificate of canvass (in which the padded figures were discovered) with the certification under oath as public officers that the entries were true and correct.[10]

More than simply affixing their signatures for the purpose of identifying the documents, respondents signed the documents certifying (and vouching) for the correctness and accuracy of their contents. Even if they allegedly had no participation in the misdeed, they nevertheless remained responsible for it as officials of PBC-Isabela. Respondents must bear the consequences of any misstatement or falsehood arising from such certification.[11] They cannot evade responsibility by pointing to other persons who supposedly prepared the documents in question.[12] They had the opportunity to check, as they should have checked, the accuracy of the figures they were certifying to.[13] By certifying to false figures, they committed misconduct subject to disciplinary action.[14] In fact, by invoking the defenses of honest mistake, oversight due to fatigue, even simple negligence, respondents virtually admitted the existence of the discrepancies in the number of votes reflected in the questioned documents.[15]

As public officers, respondents failed to live up to the high degree of excellence, professionalism, intelligence and skill required of them.[16] As lawyers, they were found to have engaged in unlawful, dishonest, immoral and deceitful conduct.[17] They also violated their oath as officers of the court

to foist no falsehood on anyone. Furthermore, by express provision of Canon 6 of the Code of Professional Responsibility, the avoidance of such conduct is demanded of them as lawyers in the government service:

CANON 6 - These canons shall apply to lawyers in government service in the discharge of their official tasks.

As lawyers in the government service, respondents were under an even greater obligation to observe the basic tenets of the legal profession because public office is a public trust.[18]

WHEREFORE, the Court finds respondents Atty. Vitaliano C. Fabros and Atty. Pacifico S. Paas GUILTY of misconduct and imposes on them a FINE in the amount of P10,000 each, with a WARNING that the commission in the future of a similar act will be dealt with more severely.

Let a copy of this resolution be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines, and entered in the records of respondents.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Azcuna and Garcia, JJ., concur.

[1] Complaint, rollo, Vol. 1, pp. 2-5.

[2] Compliance, id., Vol. 1, pp. 30-31; Counter Affidavit, id., Vol. 1, pp. 32-33.

[3] Counter Affidavit, id., Vol. 1, p. 32.

[4] Id., p. 33.

[5] IBP-CBD Order, id., Vol. 2, p. 4.

[6] At that time, a COMELEC investigation (E.O. Case No. 95-408) was also pending against respondents along with other election officials for violation of Sec. 27(b), RA 6646. IBP-CBD TSN, pp. 12-13, id., Vol. 3.

[7] Id., p. 22.

- [8] Position Paper, id., Vol. 2, pp. 12-13. See COMELEC Resolution No. 2756 (January 17, 1997).
- [9] Position Paper, id., Vol. 2, p. 13. See Sec. 23 (f)(g), COMELEC Resolution No. 2756.
- [10] Position Paper, id., Vol. 2, p. 13. See Sec. 42, COMELEC Resolution No. 2756.
- [11] Report and Recommendation, id., Vol. 3.
- [12] Id.
- [13] Id.
- [14] Id.
- [15] Pimentel v. COMELEC, 382 Phil. 75, 90 (2000).
- [16] Sec. 4(b), Code of Conduct and Ethical Standards for Public Officials and Employees, RA 6713.
- [17] Rule 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
- [18] Pimentel, Sr. v. Llorente, A.C. No. 4680, 29 August 2000, 339 SCRA 154.

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