

ROLANDO B. PACANA, JR., COMPLAINANT, VS. ATTY. MARICEL PASCUAL-LOPEZ, RESPONDENT.

A.C. No. 8243. July 24, 2009

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PER CURIAM:

This case stems from an administrative complaint[1] filed by Rolando Pacana, Jr. against Atty. Maricel Pascual-Lopez charging the latter with flagrant violation of the provisions of the Code of Professional Responsibility.[2] Complainant alleges that respondent committed acts constituting conflict of interest, dishonesty, influence peddling, and failure to render an accounting of all the money and properties received by her from complainant.

On January 2, 2002, complainant was the Operations Director for Multitel Communications Corporation (MCC). MCC is an affiliate company of Multitel International Holdings Corporation (Multitel). Sometime in July 2002, MCC changed its name to Precedent Communications Corporation (Precedent).[3]

According to complainant, in mid-2002, Multitel was besieged by demand letters from its members and investors because of the failure of its investment schemes. He alleges that he earned the ire of Multitel investors after becoming the assignee of majority of the shares of stock of Precedent and after being appointed as trustee of a fund amounting to Thirty Million Pesos (P30,000,000.00) deposited at Real Bank.

Distraught, complainant sought the advice of respondent who also happened to be a member of the Couples for Christ, a religious organization where complainant and his wife were also active members. From then on, complainant and respondent constantly communicated, with the former disclosing all his involvement and interests in Precedent and Precedent's relation with Multitel. Respondent gave legal advice to complainant and even helped him prepare standard quitclaims for creditors. In sum, complainant avers that a lawyer-client relationship was established between him and respondent although no formal document was executed by them at that time. A Retainer Agreement[4] dated January 15, 2003 was proposed by respondent. Complainant, however, did not sign the said agreement because respondent verbally asked for One Hundred Thousand Pesos (P100,000.00) as acceptance fee and a 15% contingency fee upon collection of the overpayment made by Multitel to Benefon,[5] a telecommunications company based in Finland. Complainant found the proposed fees to be prohibitive and not within his means.[6] Hence, the retainer agreement remained unsigned.[7]

After a few weeks, complainant was surprised to receive a demand letter from respondent[8] asking for the return and immediate settlement of the funds invested by respondent's clients in Multitel. When complainant confronted respondent about the demand letter, the latter explained that she had to send it so that her clients - defrauded investors of Multitel - would know that she was doing something for them and assured complainant that there was nothing to worry about.[9]

Both parties continued to communicate and exchange information regarding the persistent demands made by Multitel investors against complainant. On these occasions, respondent impressed upon complainant that she can closely work with officials of the Anti-Money Laundering Council (AMLC), the Department of Justice (DOJ), the

National Bureau of Investigation (NBI), the Bureau of Immigration and Deportations (BID),^[10] and the Securities and Exchange Commission (SEC)^[11] to resolve complainant's problems. Respondent also convinced complainant that in order to be absolved from any liability with respect to the investment scam, he must be able to show to the DOJ that he was willing to divest any and all of his interests in Precedent including the funds assigned to him by Multitel.^[12]

Respondent also asked money from complainant allegedly for safekeeping to be used only for his case whenever necessary. Complainant agreed and gave her an initial amount of P900,000.00 which was received by respondent herself.^[13] Sometime thereafter, complainant again gave respondent P1,000,000.00.^[14] Said amounts were all part of Precedent's collections and sales proceeds which complainant held as assignee of the company's properties.^[15]

When complainant went to the United States (US), he received several messages from respondent sent through electronic mail (e-mail) and short messaging system (SMS, or text messages) warning him not to return to the Philippines because Rosario Baladjay, president of Multitel, was arrested and that complainant may later on be implicated in Multitel's failed investment system. Respondent even said that ten (10) arrest warrants and a hold departure order had been issued against him. Complainant, thereafter, received several e-mail messages from respondent updating him of the status of the case against Multitel and promised that she will settle the matter discreetly with government officials she can closely work with in order to clear complainant's name.^[16] In two separate e-mail messages,^[17] respondent again asked money from complainant, P200,000 of which was handed by complainant's wife while respondent was confined in Saint Luke's Hospital after giving birth,^[18] and another P700,000 allegedly to be given to the NBI.^[19]

Through respondent's persistent promises to settle all complainant's legal problems, respondent was able to convince complainant who was still in the US to execute a deed of assignment in favor of respondent allowing the latter to retrieve 178 boxes containing cellular phones and accessories stored in complainant's house and inside a warehouse.^[20] He also signed a blank deed of sale authorizing respondent to sell his 2002 Isuzu Trooper.^[21]

Sometime in April 2003, wary that respondent may not be able to handle his legal problems, complainant was advised by his family to hire another lawyer. When respondent knew about this, she wrote to complainant via e-mail, as follows:

Dear Butchie,

Hi! Ok ka lang? Hope you are fine. Sorry if I shocked you but I had to do it as your friend and lawyer. The charges are all non-bailable but all the same as the SEC report I told you before. The findings are the same, i.e. your company was the front for the fraud of Multitel and that funds were provided you.

I anticipated this, that is why I really pushed for a quitclaim. Rolly is willing to return the Crosswind, laptop (sic) and [P]alm [P]ilot. Manny Cancio really helped. Anthony na lang. Then, I will need the accounting of all the funds you received from the sale of the phones, every employees and directors['] quitclaim (including yours), the funds transmitted to the clients through me, the funds you utilized, and whatelse (sic) is still unremitted, every centavo must be accounted for as DOJ and NBI can have the account opened.

I will also need the P30 M proof of deposit with Real [B]ank and the trust given [to] you. So we can inform them [that] it was not touched by you.

I have been informed by Efie that your family is looking at hiring Coco Pimentel. I know him very well as his sister Gwen is my best friend. I have no problem if you hire him but I will be hands off. I work differently kasi. In this cases (sic), you cannot be highprofile (sic) because it is the clients who will be sacrificed at the expense of the fame of the lawyer. I have to work quietly and discreetly. No funfare. Just like what I did for your guys

in the SEC. I have to work with people I am comfortable with. Efren Santos will sign as your lawyer although I will do all the work. He can help with all his connections. Val's friend in the NBI is the one is (sic) charge of organized crime who is the entity (sic) who has your warrant. My law partner was the state prosecutor for financial fraud. Basically we have it covered in all aspects and all departments. I am just trying to liquidate the phones I have allotted for you s ana (sic) for your trooper kasi whether we like it or not, we have to give this agencies (sic) to make our work easier according to Val. The funds with Mickey are already accounted in the quit claims (sic) as attorneys (sic) fees. I hope he will be able to send it so we have funds to work with.

As for your kids, legally they can stay here but recently, it is the children who (sic) the irate clients and government officials harass and kidnap to make the individuals they want to come out from hiding (sic). I do not want that to happen. Things will be really easier on my side.

Please do not worry. Give me 3 months to make it all disappear. But if you hire Coco, I will give him the free hand to work with your case. Please trust me. I have never let you down, have I? I told you this will happen but we are ready and prepared. The clients who received the phones will stand by you and make you the hero in this scandal. I will stand by you always. This is my expertise. TRUST me! That is all. You have an angel on your side. Always pray though to the best legal mind up there. You will be ok!

Candy[22]

On July 4, 2003, contrary to respondent's advice, complainant returned to the country. On the eve of his departure from the United States, respondent called up complainant and conveniently informed him that he has been cleared by the NBI and the BID.[23]

About a month thereafter, respondent personally met with complainant and his wife and told them that she has already accumulated P12,500,000.00 as attorney's fees and was willing to give P2,000,000.00 to complainant in appreciation for his help. Respondent allegedly told complainant that without his help, she would not have earned such amount. Overwhelmed and relieved, complainant accepted respondent's offer but respondent, later on, changed her mind and told complainant that she would instead invest the P2,000,000.00 on his behalf in a business venture. Complainant declined and explained to respondent that he and his family needed the money instead to cover their daily expenses as he was no longer employed. Respondent allegedly agreed, but she failed to fulfill her promise.[24]

Respondent even publicly announced in their religious organization that she was able to help settle the ten (10) warrants of arrest and hold departure order issued against complainant and narrated how she was able to defend complainant in the said cases.[25]

By April 2004, however, complainant noticed that respondent was evading him. Respondent would either refuse to return complainant's call or would abruptly terminate their telephone conversation, citing several reasons. This went on for several months.[26] In one instance, when complainant asked respondent for an update on the collection of Benefon's obligation to Precedent which respondent had previously taken charge of, respondent arrogantly answered that she was very busy and that she would read Benefon's letter only when she found time to do so.

On November 9, 2004, fed up and dismayed with respondent's arrogance and evasiveness, complainant wrote respondent a letter formally asking for a full accounting of all the money, documents and properties given to the latter.[27] Respondent rendered an accounting through a letter dated December 20, 2004.[28] When complainant found respondent's explanation to be inadequate, he wrote a latter expressing his confusion about the accounting.[29] Complainant repeated his request for an audited financial report of all the properties turned over to her; otherwise, he will be constrained to file the appropriate case against respondent.[30] Respondent replied,[31] explaining that all the properties and cash turned over to her by complainant had been returned to her

clients who had money claims against Multitel. In exchange for this, she said that she was able to secure quitclaim documents clearing complainant from any liability.[32] Still unsatisfied, complainant decided to file an affidavit-complaint[33] against respondent before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) seeking the disbarment of respondent.

In her Answer-Affidavit,[34] respondent vehemently denied being the lawyer for Precedent. She maintained that no formal engagement was executed between her and complainant. She claimed that she merely helped complainant by providing him with legal advice and assistance because she personally knew him, since they both belonged to the same religious organization.[35]

Respondent insisted that she represented the group of investors of Multitel and that she merely mediated in the settlement of the claims her clients had against the complainant. She also averred that the results of the settlement between both parties were fully documented and accounted for.[36] Respondent believes that her act in helping complainant resolve his legal problem did not violate any ethical standard and was, in fact, in accord with Rule 2.02 of the Code of Professional Responsibility.[37]

To bolster her claim that the complaint was without basis, respondent noted that a complaint for estafa was also filed against her by complainant before the Office of the City Prosecutor in Quezon City citing the same grounds. The complaint was, however, dismissed by Assistant City Prosecutor Josephus Joannes H. Asis for insufficiency of evidence.[38] Respondent argued that on this basis alone, the administrative case must also be dismissed.

In her Position Paper,[39] respondent also questioned the admissibility of the electronic evidence submitted by complainant to the IBP's Commission on Bar Discipline. Respondent maintained that the e-mail and the text messages allegedly sent by respondent to complainant were of doubtful authenticity and should be excluded as evidence for failure to conform to the Rules on Electronic Evidence (A.M. No. 01-7-01-SC).

After due hearing, IBP Investigating Commissioner Patrick M. Velez issued a Report and Recommendation[40] finding that a lawyer-client relationship was established between respondent and complainant despite the absence of a written contract. The Investigating Commissioner also declared that respondent violated her duty to be candid, fair and loyal to her client when she allowed herself to represent conflicting interests and failed to render a full accounting of all the cash and properties entrusted to her. Based on these grounds, the Investigating Commissioner recommended her disbarment.

Respondent moved for reconsideration,[41] but the IBP Board of Governors issued a Recommendation[42] denying the motion and adopting the findings of the Investigating Commissioner.

The case now comes before this Court for final action.

We affirm the findings of the IBP.

Rule 15.03, Canon 15 of the Code of Professional responsibility provides:

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

This prohibition is founded on principles of public policy, good taste[43] and, more importantly, upon necessity. In the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including its weak and strong points. Such knowledge must be considered sacred and guarded with care. No opportunity must be given to him to take advantage of his client; for if the confidence is abused, the profession will suffer by the loss thereof.[44] 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 paramount in the administration of justice.[45] It is for these reasons that we have described the attorney-client relationship as one of trust and confidence of the highest degree.[46]

Respondent must have known that her act of constantly and actively communicating with complainant, who, at that time, was beleaguered with demands from investors of Multitel, eventually led to the establishment of a lawyer-client relationship. Respondent cannot shield herself from the inevitable consequences of her actions by simply saying that the assistance she rendered to complainant was only in the form of "friendly accommodations,"[47] precisely because at the time she was giving assistance to complainant, she was already privy to the cause of the opposing parties who had been referred to her by the SEC.[48]

Respondent also tries to disprove the existence of such relationship by arguing that no written contract for the engagement of her services was ever forged between her and complainant.[49] This argument all the more reveals respondent's patent ignorance of fundamental laws on contracts and of basic ethical standards expected from an advocate of justice. The IBP was correct when it said:

The absence of a written contract will not preclude the finding that there was a professional relationship between the parties. Documentary formalism is not an essential element in the employment of an attorney; the contract may be express or implied. To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession.[50] (Emphasis supplied.)

Given the situation, the most decent and ethical thing which respondent should have done was either to advise complainant to engage the services of another lawyer since she was already representing the opposing parties, or to desist from acting as representative of Multitel investors and stand as counsel for complainant. She cannot be permitted to do both because that would amount to double-dealing and violate our ethical rules on conflict of interest.

In *Hornilla v. Atty. Salunat*,[51] we explained the concept of conflict of interest, 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." 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. 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. 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.[52]

Indubitably, respondent took advantage of complainant's hapless situation, initially, by giving him legal advice and, later on, by soliciting money and properties from him. Thereafter, respondent impressed upon complainant that she had acted with utmost sincerity in helping him divest all the properties entrusted to him in order to absolve him from any liability. But simultaneously, she was also doing the same thing to impress upon her clients, the party claimants against Multitel, that she was doing everything to reclaim the money they invested with Multitel. Respondent herself admitted to complainant that without the latter's help, she would not have been able to earn as much and that, as a token of her appreciation, she was willing to share some of her earnings with complainant.[53] Clearly, respondent's act is shocking, as it not only violated Rule 9.02, Canon 9 of the Code of Professional Responsibility,[54] but also toyed with decency and good taste.

Respondent even had the temerity to boast that no Multitel client had ever complained of respondent's unethical

behavior.[55] This remark indubitably displays respondent's gross ignorance of disciplinary procedure in the Bar. As a member of the Bar, she is expected to know that proceedings for disciplinary actions against any lawyer may be initiated and prosecuted by the IBP Board of Governors, motu proprio or upon referral by this Court or by the Board of Officers of an IBP Chapter[56] even if no private individual files any administrative complaint.

Upon review, we find no cogent reason to disturb the findings and recommendations of the IBP Investigating Commissioner, as adopted by the IBP Board of Governors, on the admissibility of the electronic evidence submitted by complainant. We, accordingly, adopt the same in toto.

Finally, respondent argues that the recommendation of the IBP Board of Governors to disbar her on the grounds of deceit, malpractice and other gross misconduct, aside from violation of the Lawyer's Oath, has been rendered moot and academic by voluntary termination of her IBP membership, allegedly after she had been placed under the Department of Justice's Witness Protection Program.[57] Convenient as it may be for respondent to sever her membership in the integrated bar, this Court cannot allow her to do so without resolving first this administrative case against her.

The resolution of the administrative case filed against respondent is necessary in order to determine the degree of her culpability and liability to complainant. The case may not be dismissed or rendered moot and academic by respondent's act of voluntarily terminating her membership in the Bar regardless of the reason for doing so. This is because membership in the Bar is a privilege burdened with conditions.[58] The conduct of a lawyer may make him or her civilly, if not criminally, liable to his client or to third parties, and such liability may be conveniently avoided if this Court were to allow voluntary termination of membership. Hence, to terminate one's membership in the Bar voluntarily, it is imperative that the lawyer first prove that the voluntary withdrawal of membership is not a ploy to further prejudice the public or to evade liability. No such proof exists in the present case.

WHEREFORE, respondent Attorney Maricel Pascual-Lopez is hereby DISBARRED for representing conflicting interests and for engaging in unlawful, dishonest and deceitful conduct in violation of her Lawyer's Oath and the Code of Professional Responsibility.

Let a copy of this Decision be entered in the respondent's record as a member of the Bar, and notice 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.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, and Bersamin, JJ., concur.
Brion, J., on official leave.

[1] Rollo, pp. 1-45.

[2] Id. at 8.

[3] Id. at 1 and 622.

[4] Id. at 13; Annex "B."

[5] Id. at 376; 554.

[6] Id.

- [7] Id. at 13.
- [8] Id. at 10-12; Annex "A."
- [9] Id. at 2.
- [10] Id. at 554.
- [11] Id. at 377.
- [12] Id. at 554.
- [13] Id. at 3 and 14; Annex "C."
- [14] Id. at 3 and 19; Annex "F."
- [15] Id.
- [16] Id. at 3-4 and 20-24; Annexes "G," "H," and "I."
- [17] Id. at 20-24; Annexes "H" and "I."
- [18] Id. at 6 and 555.
- [19] Id. at 6 and 24; Annex "I."
- [20] Id. at 4, 15 and 554; Annex "D."
- [21] Id. at 5, 16-17 and 554; Annex "E."
- [22] Id. at 20; Annex "G."
- [23] Id. at 6.
- [24] Id.
- [25] Id. at 360; Exhibit "33."
- [26] Id. at 7.
- [27] Id. at 27; Annex "K."
- [28] Id. at 28-30; Annex "L."
- [29] Id. at 31-32; Annex "M."
- [30] Id. at 32.
- [31] Id. at 33-39; Annex "N."
- [32] Id.
- [33] Id. at 1-45.
- [34] Id. at 49-213.
- [35] Id. at 50.
- [36] Id. at 51.
- [37] Rule 2.02 of Canon 2 of the Code of Professional Responsibility reads in full:

Rule 2.02 - In such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the extent necessary to safeguard the latter's rights.

[38] Id. at 235-237.

[39] Id. at 215-238.

[40] Id. at 550-566.

[41] Id. at 567-576.

[42] Id. at 618.

[43] Hilado v. David, 84 Phil. 569, 579 (1949) cited in Quiambao v. Bamba, A.C. No. 6708, August 25, 2005, 468 SCRA 1, 9-10.

[44] US v. Laranja, 21 Phil. 500 (1912).

[45] Hilado v. David, supra note 43.

[46] Maturan v. Gonzales, 350 Phil. 882, 887 (1998).

[47] Rollo, p. 50.

[48] Id. at 51.

[49] Id. at 49.

[50] Id. at 629.

[51] 453 Phil. 108 (2003).

[52] Id. at 111-112.

[53] Id. at 6, 38-39

[54] Rule 9.02, Canon 9 of the Code of Professional Responsibility provides in full:

Rule 9.02 - A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:

- a) Where there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to the persons specified in the agreement; or
- b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or
- c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan, even if the plan is based in whole or in part, on a profit-sharing arrangement.

[55] Rollo, pp. 66-67; respondent's Answer-Affidavit.

[56] Section 1 of Rule 139-B on Disbarment and Discipline of Attorneys provides in full:

SECTION 1. How instituted. - Proceedings for 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 or 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 any erring attorneys including those in the government service; Provided, however, That all charges against Justices of the Court of Appeals and the Sandiganbayan, and Judges of the Court of Tax Appeals and lower courts, even if lawyers are jointly charged with them, shall be filed with the Supreme Court; Provided, further, That charges filed against Justices and Judges before the IBP, including those filed prior to their appointment in the Judiciary, shall immediately be forwarded to the Supreme Court for disposition and adjudication.

Six (6) copies of the verified complaint shall be filed with the Secretary of the IBP or the Secretary of any of its chapters who shall forthwith transmit the same to the IBP Board of Governors for assignment to an investigator.

[57] Rollo, pp. 577-584.

[58] St. Loius University Laboratory High School (SLU-LHS) Faculty and Staff v. Atty. Rolando C. dela Cruz A.C. No. 6010, August 28, 2006.

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