

EN BANC

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

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

DECISION

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 letter 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.