



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated August 16, 2023, which reads as follows:

“A.C. No. 10891 [Formerly CBD Case No. 16-5196] (Geraldine Oville, Petitioner v. Atty. Francisco Gacal, Respondent). — *Via* an unverified Complaint,¹ Geraldine Oville (complainant) seeks to disbar Atty. Francisco Gacal (respondent) anchored on the latter’s purported misconduct.

The material operative facts unfurl as follows:

Sometime in 2009, complainant and then Congressman Emmanuel D. Pacquiao (Mr. Pacquiao) invested in a purified water business venture, known as “Pacman H2O.” Subsequently, the business incurred losses, prompting Mr. Pacquiao’s personnel to take over its operations. This notwithstanding, complainant sought to collect the cost of investment with interest from Mr. Pacquiao, who referred the matter to his lawyer, herein respondent.²

After several meetings, complainant and respondent eventually agreed on the amount to be paid by Mr. Pacquiao. In addition, respondent supposedly demanded from complainant the payment of a five percent (5%) commission, to which she acceded. Upon her receipt of the initial payment from Mr. Pacquiao, she immediately delivered to respondent his commission.³

Thereafter, complainant followed up on the remaining balance to be paid by Mr. Pacquiao. To her dismay, respondent told her not to expect anything more since the amount they agreed upon had been completely settled. She then made numerous attempts to reach Mr. Pacquiao, who merely echoed respondent’s assertion that the obligation was paid in full.⁴

Aghast, complainant filed the instant administrative charge against respondent, accusing him of committing misconduct when he represented conflicting interests, demanded a commission from her, and possibly withheld

¹ Rollo, pp. 1-3.

² Id. at 1, Complaint Affidavit & 212, Report and Recommendation of the Integrated Bar of the Philippines (IBP) Investigating Commissioner.

³ Id. at 1, see Complaint Affidavit.

⁴ Id. at 2, Complaint Affidavit.

the payment of the remaining balance due to her.⁵ As evidence, she submitted the screenshots of their text messages,⁶ as well as a copy of a China Banking Corporation check in the amount of Three Hundred Twenty Thousand Six Hundred Seventy Five Pesos (P320,675.00) made payable to respondent, representing the payment of his commission.⁷

For his part, respondent vehemently denied complainant's imputations of misconduct, asseverating that he never represented conflicting interests since they had no attorney-client relationship. Their meetings and negotiations were at the behest of his client, Mr. Pacquiao. Withal, he maintained that it was she who initially offered to pay him half of her commission by way of gratitude. His acceptance of her offer was made with the encouragement and consent of Mr. Pacquiao.⁸

Moreover, respondent insisted that it was impossible for him to withhold any payment due to complainant since Mr. Pacquiao paid her directly.⁹ In support of his claims, he submitted an Affidavit¹⁰ executed by Mr. Pacquiao, which reads as follows—

3. I did not and could not have asked "*Wa ba diay gihatag ni Bong sa imo Den?*" simply because I did not give nor (sic) hand to [respondent], any amount intended as payment for [complainant]. Likewise, I did not and could not have said anything that may imply that the payment was handed to [respondent], simply because no amount was given to [respondent].

x x x x

5. The following week [respondent] reported to me that he already held a meeting with [complainant] and that the latter was happy and satisfied for this amount of P13.4M. [Respondent] also informed me that, during their meeting, [complainant], by way of thanksgiving and appreciation for his efforts and services in bringing me and [complainant] to reach a settlement, offered to give him [respondent] half of her [complainant] 5% commission from her financiers. [Respondent] then asked me if he would accept the offer made by [complainant] to him. I told, and in fact, encouraged, [respondent] to accept the offer and receive the gift from [complainant], especially, that even if [respondent] was helping me save a lot of money in the amount of **P15,600,000.00** from the initial claim of [complainant] in the amount of P29.0M, his help for me in this negotiation with [complainant] was *gratis*. Besides, I told [respondent], the money he would be receiving from [complainant] was not mine but was [complainant's] since it was to be taken out of her commission from her financiers;

6. On December 17, 2014, I paid directly to [complainant] the total sum of P13.4Million, the exact amount being **P13,432,039.90**;

⁵ Id. at 2-3, Complaint Affidavit.

⁶ Id. at 4-18.

⁷ Id. at 19.

⁸ Id. at 42-45, see Respondent's Comment.

⁹ Id. at 48-52, see Respondent's Comment.

¹⁰ Id. at 59-61, see Affidavit of Mr. Emmanuel D. Pacquiao.

7. No amount passed through my lawyer [respondent], neither payment been coursed through him;

x x x x¹¹

Finally, respondent argued that the Complaint should be dismissed outright for being unverified,¹² in contravention of the requirement under Rule 139-B, Section 1 of the Rules of Court.¹³

In due course, the Integrated Bar of the Philippines (IBP) Investigating Commissioner Victor Emmanuel M. Pangilinan recommended the dismissal of the Complaint against respondent,¹⁴ ratiocinating that the complainant failed to present an iota of evidence to show conflict of interest. The screenshots of the text messages submitted by complainant merely proved that respondent acted in the best interests of his client. Neither was she able to establish that it was respondent who initially demanded from her the payment of a commission and that he withheld any payment due to her.¹⁵

Upon the other hand, respondent managed to satisfactorily prove that he sought Mr. Pacquiao's consent prior to accepting complainant's offer,¹⁶ in accordance with his duty under Rule 20.03 of the Code of Professional Responsibility (CPR).¹⁷

Consequently, the IBP Board of Governors (IBP Board) passed a Resolution dated June 12, 2021, adopting the Report and Recommendation of the Investigating Commissioner to dismiss the Complaint for disbarment against respondent.¹⁸

Upon a punctilious review of the record, this Court accords imprimatur to the findings and recommendation of the IBP to dismiss the Complaint for disbarment against respondent, Atty. Gacal.

Incipiently, respondent's argument that the administrative charge should be dismissed outright for lacking the proper verification holds no water. In this regard, it bears stressing that "[l]ack of verification is a mere formal requirement that could be corrected through further compliance or

¹¹ Id. at 59-60. Emphasis in the original.

¹² Id. at 52-56, Respondent's Comment.

¹³ **Section 1. How Instituted.** – Proceedings for the 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 of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts. x x x

¹⁴ *Rollo*, p. 220, Report and Recommendation of the Integrated Bar of the Philippines (IBP) Investigating Commissioner.

¹⁵ Id. at 219.

¹⁶ Id. at 220.

¹⁷ Rule 20.03 – A lawyer shall not, without the full knowledge and consent of the client, accept any fee, reward, costs, commission, interest, rebate or forwarding allowance or other compensation whatsoever related to his professional employment from anyone other than the client.

¹⁸ *Rollo*, pp. 210-211, Notice of Resolution.

simply waived in favor of substantial justice.”¹⁹

At any rate, the Court finds that the dismissal of the Complaint against respondent is in order.

The new Code of Professional Responsibility and Accountability (CPRA),²⁰ which became effective on May 29, 2023,²¹ stringently maintains some of the rules governing conflict of interest²² enshrined in the old CPR, viz.:

CANON III

FIDELITY

Fidelity pertains to a lawyer's duty to uphold the Constitution and the laws of the land, to assist in the administration of justice as an officer of the court, and to advance or defend a client's cause, with full devotion, genuine interest, and zeal in the pursuit of truth and justice.

x x x x

SECTION 6. *Fiduciary duty of a lawyer.* – A lawyer shall be mindful of the trust and confidence reposed by the client.

To this end, a lawyer shall not abuse or exploit the relationship with a client.

x x x x

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.

On that score, the Court's *ponencia* in *Tan v. Atty. Alvarico*²³ iterates the tests in determining whether there is conflict of interest, thusly—

¹⁹ See *Cabataña v. Atty. Moya & Atty. Basiao*, A.C. No. 7858, November 29, 2017 (Unsigned Resolution).

²⁰ A.M. No. 22-09-01-SC, approved on April 11, 2023.

²¹ Section 3 of the General Provisions of the CPRA states: “The CPRA shall take effect fifteen (15) calendar days after its publication in the Official Gazette or any newspaper of general circulation. The CPRA was published in the Manila Bulletin and The Philippine Star on May 14, 2023. Likewise, Section 1 of the General Provisions of the CPRA states: “The CPRA shall be applied to all pending and future cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice, in which case, the procedure under which the cases were filed shall govern.”

²² 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.”

x x x

Canon 17 – “A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.”

²³ See *Tan v. Atty. Alvarico*, A.C. No. 10933, November 3, 2020; citation omitted.

One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.

Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.²⁴

Patently, engaging in negotiations with the adverse party is not *per se* representation of conflicting interests. In truth, the Court has ruled in a plethora of cases that "negotiation would lead to a violation of the rule on conflicting interests when the respondent-attorney negotiates with the client's adversary in opposition to his client's interest or claim."²⁵

Here, as aptly observed by the Investigating Commissioner, a perusal of the evidence submitted by both parties only shows that in the course of his negotiations with the complainant, respondent remained loyal to the cause of his client, Mr. Pacquiao. No less than Mr. Pacquiao himself acknowledged that respondent was not remiss in apprising him of the developments during his meetings and negotiations with the complainant. Likewise, respondent was able to secure significantly better terms for Mr. Pacquiao (*i.e.*, "Atty. Gacal was helping me save a lot of money in the amount of **₱15,600,000.00** from the initial claim of Denden Oville in the amount of **₱29.0M**"),²⁶ demonstrating his diligence and propriety in rendering legal service.

Having settled that no conflict of interest exists in this case, the Court now proceeds to determine whether respondent committed any other act constituting misconduct to warrant his disbarment. Unfortunately for complainant, the IBP was correct in discerning that she utterly failed to establish that respondent violated other provisions of the CPRA. The text messages which she submitted prove nothing more than that their meetings and negotiations actually transpired, but did not, in any way, show solicitation of commission on respondent's part. Thence, her claim that it was respondent who had initially demanded the payment of a commission from her has no leg to stand on.

By the same token, complainant was unable to substantiate her claim that respondent withheld any payment due to her. Contrastingly, he managed to dispel her claim through Mr. Pacquiao's sworn testimony that he "paid directly to [Ms. Oville] x x x x" and that "no amount passed through [his]

²⁴ See *id.*

²⁵ See *id.*

²⁶ *Rollo*, p. 60, Affidavit of Mr. Emmanuel D. Pacquiao.

lawyer, Atty. Francisco M. Gacal.”²⁷

Well-ensconced is the rule that in disbarment proceedings, the burden of proof rests upon the complainant.²⁸ The quantum of proof necessary for a finding of guilt in such proceedings is substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.²⁹ In the case at bench, complainant’s efforts to implicate respondent deserve to be brushed aside owing to the palpable lack of substantial evidence to prove that he flouted his duties as a member of the legal profession.

At this juncture, it must be emphasized that an attorney enjoys the legal presumption that he is innocent of the charges against him until the contrary is proved, and that as an officer of the Court, he is presumed to have performed his duties in accordance with his oath.³⁰ The Court has consistently considered disbarment and suspension of an attorney as the most severe forms of disciplinary action, which should be imposed with great caution. They should be meted out only for duly proven serious administrative charges.³¹

Given the foregoing disquisitions, it is beyond cavil that the instant administrative charge has neither factual nor legal mooring, as complainant was unable to establish with substantial evidence her imputations of misconduct against respondent. Perforce, the Complaint must be given short shrift.

WHEREFORE, the Complaint for disbarment against respondent Atty. Francisco Gacal is hereby **DISMISSED**.

SO ORDERED.” (Singh, J., on official leave)

By authority of the Court:

Misael C. Battung III
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court
681
11/19/23

²⁷ Id.

²⁸ See *Arsenio v. Atty. Tabuzo*, 809 Phil. 206, 210 (2017).

²⁹ See *Rico v. Atty. Salutan*, 827 Phil. 1, 6 (2018).

³⁰ Id. at 5.

³¹ See *Atty. Aguirre v. Atty. Reyes*, A.C. No. 4355, January 8, 2020; citation omitted.

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