Supreme Court E-Library

six (6) months effective immediately, with a warning that similar infractions in the future will be dealt with more severely.

Let all courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Decision, and be it duly recorded in the personal file of respondent Atty. Vivian G. Rubia.

SO ORDERED.

Chico-Nazario, Velasco, Jr., Nachura and *Peralta, JJ.,* concur.

FIRST DIVISION

[A.C. No. 8242. October 2, 2009]

REBECCA J. PALM, *complainant, vs.* **ATTY. FELIPE ILEDAN, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; CONFIDENTIALITY OF LAWYER-CLIENT RELATIONSHIP; INFORMATION ABOUT THE NECESSITY TO AMEND CORPORATE BY-LAWS, NOT CONSIDERED A CONFIDENTIAL MATTER. — Canon 21 of the Code of Professional Responsibility provides: Canon 21. A lawyer shall preserve the **confidence and secrets** of his client even after the attorney-client relationship is terminated. We agree with the IBP that in the course of complainant's consultations, respondent obtained the information about the need to amend the corporate by-laws to allow board members outside the Philippines to participate in board meetings through teleconferencing. Respondent himself admitted this in his Answer. However, what transpired on 10 January 2004 was

not a board meeting but a stockholders' meeting. Respondent attended the meeting as proxy for Harrison. The physical presence of a stockholder is not necessary in a stockholders' meeting because a member may vote by proxy unless otherwise provided in the articles of incorporation or by-laws. Hence, there was no need for Steven and Deanna Palm to participate through teleconferencing as they could just have sent their proxies to the meeting. In addition, although the information about the necessity to amend the corporate by-laws may have been given to respondent, it could not be considered a confidential information. The amendment, repeal or adoption of new by-laws may be effected by "the board of directors or trustees, by a majority vote thereof, and the owners of at least a majority of the outstanding capital stock, or at least a majority of members of a non-stock corporation." It means the stockholders are aware of the proposed amendments to the by-laws. While the power may be delegated to the board of directors or trustees, there is nothing in the records to show that a delegation was made in the present case. Further, whenever any amendment or adoption of new by-laws is made, copies of the amendments or the new by-laws are filed with the Securities and Exchange Commission (SEC) and attached to the original articles of incorporation and by-laws. **The documents are public records and could not be considered confidential.** It is settled that the mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential. **Since the proposed amendments must be approved by at least a majority of the stockholders, and copies of the amended by-laws must be filed with the SEC, the information could not have been intended to be confidential.** Thus, the disclosure made by respondent during the stockholders' meeting could not be considered a violation of his client's secrets and confidence within the contemplation of Canon 21 of the Code of Professional Responsibility.

2. ID.; ID.; ON LAWYER REPRESENTING CONFLICTING INTEREST; NOT APPRECIATED IN CASE AT BAR. – Rule 15.03, Canon 15 of the Code of Professional Responsibility provides: Rule 15.03 — A lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of the facts. In *Quiambao v. Bamba*, the Court enumerated various tests to determine conflict of interests. One test of inconsistency of interests is whether

Supreme Court E-Library

the lawyer will be asked to use against his former client any confidential information acquired through their connection or previous employment. The Court has ruled that what a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect him in any matter in which he previously represented him. We find no conflict of interest when respondent represented Soledad in a case filed by Comtech. The case where respondent represents Soledad is an Estafa case filed by Comtech against its former officer. **There was nothing in the records that would show that respondent used against Comtech any confidential information acquired while he was still Comtech's retained counsel.** Further, respondent made the representation after the termination of his retainer agreement with Comtech. A lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client. The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for complainant.
Egmedio J. Castillon, Jr. for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

The case before the Court is a disbarment proceeding filed by Rebecca J. Palm (complainant) against Atty. Felipe Iledan, Jr. (respondent) for revealing information obtained in the course of an attorney-client relationship and for representing an interest which conflicted with that of his former client, Comtech Worldwide Solutions Philippines, Inc. (Comtech).

Supreme Court E-Library

The Antecedent Facts

Complainant is the President of Comtech, a corporation engaged in the business of computer software development. From February 2003 to November 2003, respondent served as Comtech's retained corporate counsel for the amount of ₱6,000 per month as retainer fee. From September to October 2003, complainant personally met with respondent to review corporate matters, including potential amendments to the corporate by-laws. In a meeting held on 1 October 2003, respondent suggested that Comtech amend its corporate by-laws to allow participation during board meetings, through teleconference, of members of the Board of Directors who were outside the Philippines.

Prior to the completion of the amendments of the corporate by-laws, complainant became uncomfortable with the close relationship between respondent and Elda Soledad (Soledad), a former officer and director of Comtech, who resigned and who was suspected of releasing unauthorized disbursements of corporate funds. Thus, Comtech decided to terminate its retainer agreement with respondent effective November 2003.

In a stockholders' meeting held on 10 January 2004, respondent attended as proxy for Gary Harrison (Harrison). Steven C. Palm (Steven) and Deanna L. Palm, members of the Board of Directors, were present through teleconference. When the meeting was called to order, respondent objected to the meeting for lack of quorum. Respondent asserted that Steven and Deanna Palm could not participate in the meeting because the corporate by-laws had not yet been amended to allow teleconferencing.

On 24 March 2004, Comtech's new counsel sent a demand letter to Soledad to return or account for the amount of ₱90,466.10 representing her unauthorized disbursements when she was the Corporate Treasurer of Comtech. On 22 April 2004, Comtech received Soledad's reply, signed by respondent. In July 2004, due to Soledad's failure to comply with Comtech's written demands, Comtech filed a complaint for Estafa against Soledad before the Makati Prosecutor's Office. In the proceedings before the City Prosecution Office of Makati, respondent appeared as Soledad's counsel.

Supreme Court E-Library

On 26 January 2005, complainant filed a Complaint[1] for disbarment against respondent before the Integrated Bar of the Philippines (IBP).

In his Answer,[2] respondent alleged that in January 2002, Soledad consulted him on process and procedure in acquiring property. In April 2002, Soledad again consulted him about the legal requirements of putting up a domestic corporation. In February 2003, Soledad engaged his services as consultant for Comtech. Respondent alleged that from February to October 2003, neither Soledad nor Palm consulted him on confidential or privileged matter concerning the operations of the corporation. Respondent further alleged that he had no access to any record of Comtech.

Respondent admitted that during the months of September and October 2003, complainant met with him regarding the procedure in amending the corporate by-laws to allow board members outside the Philippines to participate in board meetings.

Respondent further alleged that Harrison, then Comtech President, appointed him as proxy during the 10 January 2004 meeting. Respondent alleged that Harrison instructed him to observe the conduct of the meeting. Respondent admitted that he objected to the participation of Steven and Deanna Palm because the corporate by-laws had not yet been properly amended to allow the participation of board members by teleconferencing.

Respondent alleged that there was no conflict of interest when he represented Soledad in the case for Estafa filed by Comtech. He alleged that Soledad was already a client before he became a consultant for Comtech. He alleged that the criminal case was not related to or connected with the limited procedural queries he handled with Comtech.

The IBP's Report and Recommendation

In a Report and Recommendation dated 28 March 2006,[3] the IBP Commission on Bar Discipline (IBP-CBD) found

[1] *Rollo*, pp. 1-7.

[2] *Id.* at 36-41.

[3] BP Records, Vol. III, pp. 3-10. Penned by Commissioner Acerey C. Pacheco.

Supreme Court E-Library

respondent guilty of violation of Canon 21 of the Code of Professional Responsibility and of representing interest in conflict with that of Comtech as his former client.

The IBP-CBD ruled that there was no doubt that respondent was Comtech's retained counsel from February 2003 to November 2003. The IBP-CBD found that in the course of the meetings for the intended amendments of Comtech's corporate by-laws, respondent obtained knowledge about the intended amendment to allow members of the Board of Directors who were outside the Philippines to participate in board meetings through teleconferencing. The IBP-CBD noted that respondent knew that the corporate by-laws have not yet been amended to allow the teleconferencing. Hence, when respondent, as representative of Harrison, objected to the participation of Steven and Deanna Palm through teleconferencing on the ground that the corporate by-laws did not allow the participation, he made use of a privileged information he obtained while he was Comtech's retained counsel.

The IBP-CBD likewise found that in representing Soledad in a case filed by Comtech, respondent represented an interest in conflict with that of a former client. The IBP-CBD ruled that the fact that respondent represented Soledad after the termination of his professional relationship with Comtech was not an excuse.

The IBP-CBD recommended that respondent be suspended from the practice of law for one year, thus:

> WHEREFORE, premises considered, it is most respectfully recommended that herein respondent be found guilty of the charges preferred against him and be suspended from the practice of law for one (1) year.[4]

In Resolution No. XVII-2006-583[5] passed on 15 December 2006, the IBP Board of Governors adopted and approved the recommendation of the Investigating Commissioner with modification by suspending respondent from the practice of law for two years.

[4] *Id.* at 10.

[5] *Id.* at 1.

Supreme Court E-Library

Respondent filed a motion for reconsideration.[6]

In an undated Recommendation, the IBP Board of Governors First Division found that respondent's motion for reconsideration did not raise any new issue and was just a rehash of his previous arguments. However, the IBP Board of Governors First Division recommended that respondent be suspended from the practice of law for only one year.

In Resolution No. XVIII-2008-703 passed on 11 December 2008, the IBP Board of Governors adopted and approved the recommendation of the IBP Board of Governors First Division. The IBP Board of Governors denied respondent's motion for reconsideration but reduced his suspension from two years to one year.

The IBP Board of Governors forwarded the present case to this Court as provided under Section 12(b), Rule 139-B[7] of the Rules of Court.

The Ruling of this Court

We cannot sustain the findings and recommendation of the IBP.

Violation of the Confidentiality of Lawyer-Client Relationship

Canon 21 of the Code of Professional Responsibility provides:

> Canon 21. A lawyer shall preserve the **confidence and secrets** of his client even after the attorney-client relationship is terminated. (Emphasis supplied)

We agree with the IBP that in the course of complainant's consultations, respondent obtained the information about the

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[6] *Id.* at 11-13.

[7] Sec. 12(b). If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

Supreme Court E-Library

need to amend the corporate by-laws to allow board members outside the Philippines to participate in board meetings through teleconferencing. Respondent himself admitted this in his Answer.

However, what transpired on 10 January 2004 was not a board meeting but a stockholders' meeting. Respondent attended the meeting as proxy for Harrison. The physical presence of a stockholder is not necessary in a stockholders' meeting because a member may vote by proxy unless otherwise provided in the articles of incorporation or by-laws.[8] Hence, there was no need for Steven and Deanna Palm to participate through teleconferencing as they could just have sent their proxies to the meeting.

In addition, although the information about the necessity to amend the corporate by-laws may have been given to respondent, it could not be considered a confidential information. The amendment, repeal or adoption of new by-laws may be effected by "the board of directors or trustees, by a majority vote thereof, and the owners of at least a majority of the outstanding capital stock, or at least a majority of members of a non-stock corporation."[9] It means the stockholders are aware of the proposed amendments to the by-laws. While the power may be delegated to the board of directors or trustees, there is nothing in the records to show that a delegation was made in the present case. Further, whenever any amendment or adoption of new by-laws is made, copies of the amendments or the new by-laws are filed with the Securities and Exchange Commission (SEC) and attached to the original articles of incorporation and by-laws.[10] **The documents are public records and could not be considered confidential.**

It is settled that the mere relation of attorney and client does not raise a presumption of confidentiality.[11] The client must

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[8] Section 89, Corporation Code.

[9] Section 48, Corporation Code.

[10] *Id*.

[11] *Mercado v. Atty. Vitriolo*, 498 Phil. 49 (2005).

Supreme Court E-Library

intend the communication to be confidential.[12] **Since the proposed amendments must be approved by at least a majority of the stockholders, and copies of the amended by-laws must be filed with the SEC, the information could not have been intended to be confidential.** Thus, the disclosure made by respondent during the stockholders' meeting could not be considered a violation of his client's secrets and confidence within the contemplation of Canon 21 of the Code of Professional Responsibility.

Representing Interest in Conflict With the Interest of a Former Client

The IBP found respondent guilty of representing an interest in conflict with that of a former client, in violation of Rule 15.03, Canon 15 of the Code of Professional Responsibility which provides:

> Rule 15.03 — A lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of the facts.

We do not agree with the IBP.

In *Quiambao v. Bamba*,[13] the Court enumerated various tests to determine conflict of interests. One test of inconsistency of interests is whether the lawyer will be asked to use against his former client any confidential information acquired through their connection or previous employment.[14] The Court has ruled that what a lawyer owes his former client is to maintain inviolate the client's confidence or to refrain from doing anything which will injuriously affect him in any matter in which he previously represented him.[15]

We find no conflict of interest when respondent represented Soledad in a case filed by Comtech. The case where respondent

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[12] *Id*.

[13] A.C. No. 6708, 25 August 2005, 468 SCRA 1.

[14] *Id*.

[15] *Pormento, Sr. v. Atty. Pontevedra*, 494 Phil. 164 (2005).

Supreme Court E-Library

represents Soledad is an Estafa case filed by Comtech against its former officer. **There was nothing in the records that would show that respondent used against Comtech any confidential information acquired while he was still Comtech's retained counsel**. Further, respondent made the representation after the termination of his retainer agreement with Comtech. A lawyer's immutable duty to a former client does not cover transactions that occurred beyond the lawyer's employment with the client.[16] The intent of the law is to impose upon the lawyer the duty to protect the client's interests only on matters that he previously handled for the former client and not for matters that arose after the lawyer-client relationship has terminated.[17]

WHEREFORE, we *DISMISS* the complaint against Atty. Felipe Iledan, Jr. for lack of merit.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

SECOND DIVISION

[G.R. No. 152006. October 2, 2009]

MONTANO PICO and ROSITA PICO, *petitioners, vs.* **CATALINA ADALIM-SALCEDO and URBANO SALCEDO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW, PROPER; QUESTION OF LAW

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[16] *Lim-Santiago v. Sagucio,* A.C. No. 6705, 31 March 2006, 486 SCRA 10.

[17] *Id*.