

EN BANC

[**A.M. No. P-09-2673 (A.M. OCA IPI No. 00-857-P), October 21, 2014**]

FRUMENCIO E. PULGAR, PETITIONER, VS. PAUL M. RESURRECCION AND MARICAR M. EUGENIO, RESPONDENTS.

DECISION

PER CURIAM:

Any employee or official of the Judiciary who usurps the functions of another employee or official, or illegally exacts money from law practitioners and litigants is guilty of grave misconduct, and may be dismissed from the service even for the first offense.

The Charge

In his complaint-affidavit dated March 15, 2000, Atty. Frumencio E. Pulgar denounced Court Interpreter Paul M. Resurreccion of the Regional Trial Court, Branch 276, in Muntinlupa City, for committing acts of extortion, illegal exaction, and blackmail by using his position to extort money from him, a law practitioner, in exchange for non-existent goodwill, and for violation of Administrative Circular No. 31-90.^[1]

In the course of the investigation of the complaint-affidavit filed against Resurreccion, Court; Stenographer Maricar M. Eugenio testified in favor of Resurreccion. She thereby laid the responsibility for the *ex parte* reception of the evidence on Gina Bacayon, then the acting clerk of court. She claimed that being the stenographer recording the *ex parte* presentation of evidence on February 26, 1997, she was the one who had asked for the payment of the transcript of the stenographic notes from Atty. Pulgar. However, her testimony invited suspicion of her covering up Resurreccion's malfeasance, leading to her being likewise investigated and made to answer for dishonesty.

Antecedents

In his complaint-affidavit, Atty. Pulgar set forth Resurreccion's acts in the following manner:^[2]

1. I am the counsel for the petitioner in **Civil Case No. 95-079 entitled Rey O. Chand vs. Armenia P. Chand** for Annulment of marriage based on Art. 36 of the Family Code;
2. The complaint was filed in **April 1996** and eventually the afore-indicated case was set for hearing before the Commissioner on

February 26, 1997;

3. Herein affiant presented his first and only witness, the petitioner Rey O. Chand and he testified on the factual grounds on why the marriage celebrated between him and the defendant should be dissolved;
4. After the presentation of *ex-parte* evidence, I was being charged by the Acting Clerk of Court, **Paul M. Resurreccion** to whom I paid the first P2,000.00 and I promised to pay the balance of P3,000.00 on the following day. No receipt was issued to the undersigned;
5. The following day, I sent my Liaison Officer, Oswaldo L. Serdon who brought with him the P3,000.00 in cash with my instruction that he pays the Acting Clerk of Court the said amount of P3,000.00. My L.O paid the respondent, however the Acting Clerk of Court failed to issue the corresponding receipt;
6. Undersigned being a sucker for public relations and being a practicing lawyer who does not want to cross or antagonize court personnel of Branch 276 by not giving in to his unwarranted exaction although this not embodied nor allowed in the Rules of Court by coming across to the importunings of respondent;
7. Sometime on **June 26, 1997** I received a copy of the Resolution denying our Petition. Undersigned was perturbed by the turn of events because the Acting Clerk of Court promised that he shall be the one to take care of a favorable decision in exchange for the payment that I made. But since, the decision was adverse I did not anymore bother to file a Motion for Reconsideration and again being a sucker for public relations treated the dismissal as one of those things being encountered by a practicing attorney;
8. Sometime on **February 21, 2000** at around 9:00 a.m while I was attending a case before the Sala of the Honorable Norma Perello in People of the Philippines vs. Marlon Velancio, I was approached by the person announcing the cases whom I later or (sic) able to identify as the respondent, and he asked whether I am the Atty. Pulgar who was the counsel of Rey O. Chand in the afore-indicated case of annulment of marriage;
9. I answered in the affirmative. Then all of a sudden Paul M. Resurreccion uttered "***may utang pa kayong dapat bayaran sa akin doon sa kaso ni Rey O. Chand sa ex-parte. Ibinigay na raw sa inyo yung pera pero hindi ninyo naman daw na i-bayad***" the voice of Raul Resurreccion was loud enough to be heard by almost everybody in the Sala. As a matter of fact, another employee butted-in and said "***wala pang ibinabayad kayo Atty.***" And Paul Resurreccion again uttered and said "***ibinigay na sa inyo, aba'y bayaran n'yo na at ng matapos na ang kasong yan***". I reasoned that the case that he was referring to was already dismissed and as far as I am concerned it was already terminated

and I said **"why should I pay again when it was already dismissed. As a matter of fact, I paid already then why are still exacting payment from me?."** Again, in an angry voice respondent reiterated his previous demands. To cut the display of unbecoming behavior of the respondent court personnel I told him **"mabuti pa maghaharap tayo."**

10. In view thereof, I am formally charging **Paul M. Resurreccion of extortion, illegal exaction, and blackmail** by using his position to extort money from a practitioner in exchange for non-existent goodwill and for violation of Administrative Circular No. 31-90 particularly Sec. 76 which provides: x x x

On May 25, 2000, the Office of the Court Administrator (OCA), acting on the complaint-affidavit, required Resurreccion to submit his comment within ten days from receipt.^[3]

In his comment,^[4] Resurreccion tendered the following explanations:

Pars. 1, 2 and 3 of the complaint-affidavit are admitted.

Par. 4 is vehemently denied. I did not take the ex-parte presentation of evidence for his client, much more received the initial P2,000.00, and the promised P3,000.00 the following day, hence, must issue the corresponding receipt. In fact, the testimony of the Petitioner was taken before the Clerk of Court not before this Branch Clerk of Court, who is not a lawyer. The Honorable Judge was then available and in attendance on February 26, 1997. The Resolution denying the Petition was prepared by the Presiding Judge assisted by the Clerk of Court.

Par. 5. If it is true that his Liaison Officer went to my office the following day, and paid the P3,000.00, where is the Affidavit of his Liaison Officer attesting that he/she gave any money to me? Again, it is emphasized that ex-parte presentation of evidence, was taken by the Office of the Clerk of Court never by me, the Branch Clerk of Court, hence, no payment, granting there was, will be forthcoming to me. I did nor render any service in connection with this case. Why would this lawyer pay me P2,000.00 and be promised P3,000.00 more for doing nothing? He is truly confused!

Par. 6 is denied for the same reason as No. 5. I am not an extortionist, much more "importunings." Even granting this is so, I cannot ask to be paid for doing nothing.

Par. 7 is admitted as the Resolution in that case was sent to complainant, which was adverse to him. The reason why the PETITION was denied, was the negligence of Atty. Pulgar who did not present the Psychiatrist, not even her report, while this Petition is based on psychological incapacity yet. Now he is trying to redeem himself by making it appear that he lost because he did not pay the alleged P3,000.00. How cheap

can he get. The price[-]of his incompetence is truly minimal. In fact, upon a Motion for Reconsideration by another lawyer, the case was re-opened, the Psychiatrist testimony and report taken, and the decision was reconsidered. His client probably saw his negligence, so he got himself another lawyer. The case was lost due to his negligence, if not ignorance, not because of the lack of P3,000.00.

Par. 8. If I ever I talke (sic) with Atty. Pulgar on February 21, 2000 at around 9:00 A.M. it was to remind him about the payment of the transcript, upon the prodding of the stenographer, who had been asking for its payment, from this squelching lawyer, who refused to pay. I only echoed the pleas of said stenographer, who herself attested to the unpaid sum, and seconded my request.

Par. 9. I politely approached Atty. Pulgar, NEVER in a demanding manner as I have no right to the amount due to the stenographer. It was Atty. Pulgar who instead shouted, embarrassed probably, because he knew that his client told us that he had remitted the payment for the TSN to Atty. Pulgar by way of a check, issued to him. But Atty. Pulgar never paid the stenographer for the transcript. All that he paid for was the Commissioner's fee. Surely, if there is any amount due me, I cannot announce this and demand for it in a loud manner, specially, if I am "committing graft." Why would I OPENLY demand the money from Atty. Pulgar in the presence of lawyers and other people. It was him, shame that made him defensive knowing that the sum for the stenographer was kept by him.

Par. 10 is strongly disputed. Asking for any sum from any lawyer or party litigant, much more "extort", is never tolerated in our office. My presiding judge will gun me down, and I mean literally, because she carries a gun, if this is ever done by anyone of her staff.

Finally, it is impossible for me or anyone of us to ask money from the LOSING party, should we ever ask, which never happened!

WHEREFORE, it is respectfully prayed that this baseless, unfounded, tramped-up (sic) and malicious charge by this negligent, penny squelching, and blundering lawyer, who did not pay the TSN even though he received the sum from his client, be dismissed.

Upon the recommendation of then Court Administrator Presbitero J. Velasco, Jr.,^[5] the Court called upon then Executive Judge Norma C. Perello (Judge Perello) of the Regional Trial Court in Muntinlupa City (RTC in Muntinlupa City) to investigate the complaint-affidavit, and to report and submit her recommendations thereon.^[6]

On December 12, 2002, Judge Perello submitted her report and recommendation to the OCA, stating that the complaint-affidavit against Resurreccion should be dismissed due to what she perceived as the failure of Atty. Pulgar to substantiate his charge.^[7]

On April 24, 2003, however, the OCA rejected the findings and recommendation of Judge Perello, and, instead, recommended that the case be referred to another investigator in the person of Judge Juanita Tomas-Guerrero (Judge Guerrero) of the RTC in Muntinlupa City.^[8] Accordingly, on June 16, 2003, the Court directed Judge Guerrero to conduct further investigation, and to submit her report and recommendation; and to exhaust all possible means to locate Atty. Pulgar.^[9]

In the ensuing hearings conducted by Judge Guerrero, Court Stenographer Maricar Eugenio of the RTC in Muntinlupa City testified that it was Gina Bacayon, then acting clerk of court, who had received the evidence *ex parte* in the case of Atty. Pulgar; ^[10] that being the stenographer who had recorded the *ex parte* presentation of evidence on February 26, 1997, ^[11] she had asked for the payment of the transcript of the stenographic notes from Atty. Pulgar; ^[12] and that she had submitted a duplicate copy of the transcript of the stenographic notes. ^[13]

Report and Recommendation of Investigating Judge Guerrero

In her report and recommendation dated October 22, 2003, ^[14] Judge Guerrero made the following conclusions and recommendations, to wit:

CONCLUSIONS:

PREMISES CONSIDERED, the Court concludes that the following scenarios must have happened on February 26, 1997 and February 21, 2000:

On February 26, 1997, after the case of Rey Chand was called, the Court allowed the petitioner to present evidence *ex-parte* because of the failure of Armenia Chand to file her Answer. As is the practice and being the Acting Branch Clerk of Court, Mr. Resurreccion was allowed to receive the evidence of the petitioner while the Court was busy hearing other cases ready for trial. Since Mr. Resurreccion, being also the Court Interpreter, was needed in the courtroom, he had to call Ms. Gina Bucayon, the Acting Clerk of Court, who is also not a lawyer, to attend to the *ex-parte* proceedings. This is probably the reason why Ms. Bucayon's handwritings appeared in the minutes of February 26, 1997 and why Mr. Resurreccion claimed that he did not know Atty. Pulgar as he had not met him. As was the practice, Atty. Pulgar could have given the fee for the *ex-parte* to Mr. Resurreccion through Ms. Bucayon. Then, Mr. Oswaldo Serdon went to the court office and delivered the balance of the *ex-parte* proceedings but which failed to reach Mr. Resurreccion as he had just left it on a table. In the meantime, the Rey Chand case was dismissed.

Subsequently, while Mr. Chand was following up his case after it was revived, he mentioned that he has paid the commissioner's fee inclusive of stenographer's fee to his lawyer (Atty. Pulgar) for the *ex-parte* proceedings of February 26, 1997. So, when Atty. Pulgar appeared again on February 21, 2000, Ms. Thelma Manlingit who was familiar with Atty. Pulgar, had to call the attention of Mr. Resurreccion about Mr. Pulgar's