



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NENITA D. SANCHEZ,
Petitioner,

A.C. No. 10543

Present:

- versus -

SERENO, *C.J.*,
LEONARDO-DE CASTRO,
BERSAMIN,
PERLAS-BERNABE, and
CAGUIOA, *JJ.*

ATTY. ROMEO G. AGUILOS,
Respondent.

Promulgated:

MAR 16 2016

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DECISION

BERSAMIN, J.:

This administrative case relates to the performance of duty of an attorney towards his client in which the former is found and declared to be lacking in knowledge and skill sufficient for the engagement. Does *quantum meruit* attach when an attorney fails to accomplish tasks which he is naturally expected to perform during his professional engagement?

Antecedents

Complainant Nenita D. Sanchez has charged respondent Atty. Romeo G. Aguilos (respondent) with misconduct for the latter's refusal to return the amount of ₱70,000.00 she had paid for his professional services despite his not having performed the contemplated professional services. She avers that in March 2005, she sought the legal services of the respondent to represent her in the annulment of her marriage with her estranged husband, Jovencio C. Sanchez; that the respondent accepted the engagement, fixing his fee at ₱150,000.00, plus the appearance fee of ₱5,000.00/hearing; that she then gave to him the initial amount of ₱90,000.00;¹ that she had gone to his

¹ Rollo, pp. 2-3.

residence in May 2005 to inquire on the developments in her case, but he told her that he would only start working on the case upon her full payment of the acceptance fee; that she had only learned then that what he had contemplated to file for her was a petition for legal separation, not one for the annulment of her marriage; that he further told her that she would have to pay a higher acceptance fee for the annulment of her marriage;² that she subsequently withdrew the case from him, and requested the refund of the amounts already paid, but he refused to do the same as he had already started working on the case;³ that she had sent him a letter, through Atty. Isidro S.C. Martinez, to demand the return of her payment less whatever amount corresponded to the legal services he had already performed;⁴ that the respondent did not heed her demand letter despite his not having rendered any appreciable legal services to her;⁵ and that his constant refusal to return the amounts prompted her to bring an administrative complaint against him⁶ in the Integrated Bar of the Philippines (IBP) on March 20, 2007.

In his answer dated May 21, 2007,⁷ the respondent alleges that the complainant and her British fiancée sought his legal services to bring the petition for the annulment of her marriage; that based on his evaluation of her situation, the more appropriate case would be one for legal separation anchored on the psychological incapacity of her husband; that she and her British fiancée agreed on ₱150,000.00 for his legal services to bring the action for legal separation, with the fiancée paying him ₱70,000.00, as evidenced by his handwritten receipt;⁸ that for purposes of the petition for legal separation he required the complainant to submit copies of her marriage contract and the birth certificates of her children with her husband, as well as for her to submit to further interviews by him to establish the grounds for legal separation; that he later on communicated with her and her fiancée upon finalizing the petition, but they did not promptly respond to his communications; that in May 2005, she admitted to him that she had spent the money that her fiancée had given to pay the balance of his professional fees; and that in June 2005, she returned to him with a note at the back of the prepared petition for legal separation essentially requesting him not to file the petition because she had meanwhile opted to bring the action for the annulment of her marriage instead.

The respondent admits that he received the demand letter from Atty. Martinez, but states that he dismissed the letter as a mere scrap of paper because the demand lacked basis in law. It is noted that he wrote in the last part of his answer dated May 21, 2007 in relation to the demand letter the following:

² Id.

³ Id.

⁴ Id. at 6.

⁵ Id. at 3.

⁶ Id. at 2-4.

⁷ Id. at 17-20.

⁸ Id. at 11.

Hence, respondent accordingly treated the said letter demand for refund dated 15 August 2005 (Annex “B” of the complaint) as a mere scrap of paper or should have been addressed by her counsel **ATTY. ISIDRO S.C. MARTINEZ**, who **unskillfully** relied on an **unverified** information furnished him, to the urinal project of the MMDA where it may serve its rightful purpose.⁹

Findings and Recommendation of the IBP

The IBP Commission on Bar Discipline (IBP-CBD) summoned the parties to a mandatory conference on August 3, 2007,¹⁰ but only the complainant and her counsel attended the conference. On his part, the respondent sent a letter dated July 20, 2007 to the IBP-CBD to reiterate his answer.¹¹ Due to his non-appearance, the IBP-CBD terminated the conference on the same day, but required the complainant to submit a verified position paper within 10 days. She did not submit the position paper in the end.

In his commissioner’s report dated July 25, 2008,¹² IBP Investigating Commissioner Jose I. De La Rama, Jr. declared that the respondent’s insistence that he could have brought a petition for legal separation based on the psychological incapacity of the complainant’s husband was sanctionable because he himself was apparently not conversant with the grounds for legal separation; that because he rendered some legal services to the complainant, he was entitled to receive only ₱40,000.00 out of the ₱70,000.00 paid to him as acceptance fee, the ₱40,000.00 being the value of the services rendered under the principle of *quantum meruit*; and that, accordingly, he should be made to return to her the amount of ₱30,000.00.

IBP Investigating Commissioner De La Rama, Jr. observed that the respondent’s statement in the last part of his answer, to the effect that the demand letter sent by Atty. Martinez in behalf of the complainant should be treated as a scrap of paper, or should have been addressed “to the urinal project of the MMDA where it may serve its rightful purpose,” was uncalled for and improper; and he opined that such offensive and improper language uttered by the respondent against a fellow lawyer violated Rule 8.01¹³ of the *Code of Professional Responsibility*.

IBP Investigating Commissioner De La Rama, Jr. ultimately recommended as follows:

⁹ Id. at 20.

¹⁰ Id. at 49.

¹¹ Id. at 15.

¹² Id. at 56-69.

¹³ Rule 8.01 - A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

The undersigned Commissioner is most respectfully recommending the following:

- (1) To order the respondent to return to the complainant the amount of ₱30,000.00 which he received for the purpose of preparing a petition for legal separation. Undersigned believes that considering the degree of professional services he has extended, the amount of ₱40,000.00 he received on March 10, 2005 would be sufficient payment for the same.
- (2) For failure to distinguish between the grounds for legal separation and annulment of marriage, respondent should be sanctioned.
- (3) Lastly, for failure to conduct himself with courtesy, fairness towards his colleagues and for using offensive or improper language in his pleading, which was filed right before the Commission on Bar Discipline, he must also be sanctioned and disciplined in order to avoid repetition of the said misconduct.

WHEREFORE, in view of the foregoing, it is most respectfully recommended that Atty. Romeo G. Aguilos be ordered to return to complainant Nenita D. Sanchez the amount of ₱30,000.00 which the former received as payment for his services because it is excessive.

It is also recommended that the Atty. Romeo G. Aguilos be suspended from the practice of law for a period of six (6) months for failure to show his respect to his fellow lawyer and for using offensive and improper language in his pleadings.

Through Resolution No. XVIII-2008-476 dated September 20, 2008,¹⁴ the IBP Board of Governors affirmed the findings of Investigating Commissioner De La Rama, Jr., but modified the recommendation of the penalty, *viz.*:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED AND APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above entitled case, herein made part of this Resolution as Annex "A", and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's failure to show respect to his fellow lawyer and for showing offensive and improper words in his pleadings, Atty. Romeo G. Aguilos, is hereby **WARNED** and **Ordered to Return** the Thirty Thousand (₱30,000.00) Pesos to complainant within thirty (30) days from receipt of notice.¹⁵

¹⁴ *Rollo*, p. 55.

¹⁵ *Id.*

The respondent filed a motion for reconsideration,¹⁶ which the IBP Board of Governors denied through Resolution No. XXI-2014-177 dated March 23, 2014.¹⁷

Issues

The two issues for consideration and resolution are: (a) whether or not the respondent should be held administratively liable for misconduct; and (b) whether or not he should be ordered to return the attorney's fees paid.

Ruling of the Court

We adopt and affirm Resolution No. XVIII-2008-476 and Resolution No. XXI-2014-177, but modify the recommended penalty.

1.

Respondent was liable for misconduct, and he should be ordered to return the entire amount received from the client

The respondent offered himself to the complainant as a lawyer who had the requisite professional competence and skill to handle the action for the annulment of marriage for her. He required her to pay ₱150,000.00 as attorney's fees, exclusive of the filing fees and his appearance fee of ₱5,000.00/hearing. Of that amount, he received the sum of ₱70,000.00.

On the respondent's conduct of himself in his professional relationship with the complainant as his client, we reiterate and adopt the thorough analysis and findings by IBP Investigating Commissioner De La Rama, Jr. to be very apt and cogent, *viz.*:

As appearing in Annex "4", which is the handwritten retainer's contract between the respondent and the complainant, there is a sweeping evidence that there is an attorney-client relationship. The respondent agreed to accept the case in the amount of ₱150,000.00. The acceptance fee was agreed upon to be paid on installment basis. Excluded in the agreement is the payment of appearance fee, filing fee and other legal documentation.

That next question is – for what case the ₱150,000.00 was intended for? Was it intended for the filing of the annulment case or legal separation?

¹⁶ Id. at 70-74.

¹⁷ Id. at 80.

In the verified Answer filed by the respondent, even the latter is quite confused as to what action he is going to file in court. The intention of the British national and the complainant was to get married. At that time and maybe up to now, the complainant is still legally married to a certain Jovencio C. Sanchez. That considering that the two are intending to get married, we can safely assume that the complainant was contemplating of filing a petition for annulment of marriage in order to free her from the marriage bond with her husband. It is only then, granting that the petition will be granted, that the complainant will be free to marry the British subject. The legal separation is but a separation of husband and wife from board and bed and the marriage bond still exists. Granting that the petition for legal separation will be granted, one is not free to marry another person.

A reading of the answer filed by the respondent would show that he himself is not well versed in the grounds for legal separation. He stated the following;

...respondent suggested to them to file instead a legal separation case for the alleged psychological incapacity of her husband to comply with his marital obligations developed or of their marriage on February 6, 1999. (please see par. 2 of the Answer).

If the intention was to file a petition for legal separation, under A.M. 02-11-11-SC, the grounds are as follows:

Sec. 2. Petition –

(a) Who may and when to file – (1) A petition for legal separation may be filed only by the husband or the wife, as the case may be, within five years from the time of the occurrence of any of the following causes:

(a) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

(b) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;

(c) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;

(d) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;

(e) Drug addiction or habitual alcoholism of the respondent;

(f) Lesbianism or homosexuality of the respondent;

(g) Contracting by the respondent of a subsequent bigamous marriage, whether in or outside the Philippines;

- (h) Sexual infidelity or perversion of the respondent;
- (i) Attempt on the life of petitioner by the respondent; or
- (j) Abandonment of petitioner by respondent without justifiable cause for more than one year.

Psychological incapacity, contrary to what respondent explained to the complainant, is not one of those mentioned in any of the grounds for legal separation.

Even in Article 55 of the Family Code of the Philippines, psychological incapacity is never a ground for the purpose of filing a petition for legal separation.

On the other hand, psychological incapacity has always been used for the purpose of filing a petition for declaration of nullity or annulment of marriage.

That as provided for by Article 36 of the New Family Code, it states that “*a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.*”

That lawyers shall keep abreast of the legal developments and participate in continuing legal education program (Canon 5 of the Code of Professional Responsibility) in order to prevent repetition of such kind of advise that respondent gave to the complainant. In giving an advise, he should be able to distinguish between the grounds for legal separation and grounds for annulment of marriage. But as the respondent stated in his answer, it appears that he is mixed up with the basic provisions of the law.¹⁸

Clearly, the respondent misrepresented his professional competence and skill to the complainant. As the foregoing findings reveal, he did not know the distinction between the grounds for legal separation and for annulment of marriage. Such knowledge would have been basic and expected of him as a lawyer accepting a professional engagement for either causes of action. His explanation that the client initially intended to pursue the action for legal separation should be disbelieved. The case unquestionably contemplated by the parties and for which his services was engaged, was no other than an action for annulment of the complainant's marriage with her husband with the intention of marrying her British fiancée. They did not contemplate legal separation at all, for legal separation would still render her incapacitated to re-marry. That the respondent was insisting in his answer that he had prepared a petition for legal separation, and that she had to pay more as attorney's fees if she desired to have the action for annulment was, therefore, beyond comprehension other than to serve as a hallow afterthought to justify his claim for services rendered.

¹⁸ Id. at 85-88.

As such, the respondent failed to live up to the standards imposed on him as an attorney. He thus transgressed Canon 18, and Rules 18.01, 18.02 and 18.03 of the *Code of Professional Responsibility*, to wit:

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rules 18.01 - **A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render.** However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 - **A lawyer shall not handle any legal matter without adequate preparation.**

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. (Emphasis supplied)

The next to be dealt with is the matter of the attorney's fees. We can easily agree that every attorney is entitled to have and receive a just and reasonable compensation for services performed at the special instance and request of his client. As long as the attorney is in good faith and honestly trying to represent and serve the interests of the client, he should have a reasonable compensation for such services.¹⁹

The attorney's fees shall be those stipulated in the retainer's agreement between the client and the attorney, which constitutes the law between the parties for as long as it is not contrary to law, good morals, good customs, public policy or public order.²⁰ The underlying theory is that the retainer's agreement between them gives to the client the reasonable notice of the arrangement on the fees. Once the attorney has performed the task assigned to him in a valid agreement, his compensation is determined on the basis of what he and the client agreed.²¹ In the absence of the written agreement, the lawyer's compensation shall be based on *quantum meruit*, which means "as much as he deserved."²² The determination of attorney's fees on the basis of *quantum meruit* is also authorized "when the counsel, for justifiable cause, was not able to finish the case to its conclusion."²³ Moreover, *quantum meruit* becomes the basis of recovery of compensation by the attorney where the circumstances of the engagement indicate that it will be contrary to the parties' expectation to deprive the attorney of all compensation.

¹⁹ *Traders Royal Bank Employees Union-Independent v. NLRC*, G.R. No. 120592, March 14, 1997, 269 SCRA 733, 743; *De Guzman v. Visayan Rapit Transit Co., Inc.*, 68 Phil. 643 (1939).

²⁰ *Reparations Commission vs. Visayan Packing Corporation*, G.R. No.30712, February 6, 1991, 193 SCRA 531, 540.

²¹ *Francisco v. Matias*, L-16349, January 1, 1964, 10 SCRA 89, 95.

²² *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunications Phils., Inc.*, G.R. No. 104600, July 2, 1999, 309 SCRA 566, 575.

²³ *Id.*

Nevertheless, the court shall determine in every case what is reasonable compensation based on the obtaining circumstances,²⁴ provided that the attorney does not receive more than what is reasonable, in keeping with Section 24 of Rule 138 of the *Rules of Court*, to wit:

Section 24. *Compensation of attorneys; agreement as to fees* – An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

The court's supervision of the lawyer's compensation for legal services rendered is not only for the purpose of ensuring the reasonableness of the amount of attorney's fees charged, but also for the purpose of preserving the dignity and integrity of the legal profession.²⁵

The respondent should not have accepted the engagement because as it was later revealed, it was way above his ability and competence to handle the case for annulment of marriage. As a consequence, he had no basis to accept any amount as attorney's fees from the complainant. He did not even begin to perform the contemplated task he undertook for the complainant because it was improbable that the agreement with her was to bring the action for legal separation. His having supposedly prepared the petition for legal separation instead of the petition for annulment of marriage was either his way of covering up for his incompetence, or his means of charging her more. Either way did not entitle him to retain the amount he had already received.

The written receipt dated March 10, 2005 shows that the respondent received ₱70,000.00 as acceptance fee. His refusal to return the amount to the complainant rested on his claim of having already completed the first phase of the preparation of the petition for legal separation after having held conferences with the complainant and her British fiancée. In this respect, IBP Investigating Commission De la Rama, Jr. opined that the respondent could retain ₱40,000.00 of the ₱70,000.00 because the respondent had rendered some legal services to the complainant, specifically: (a) having the complainant undergo further interviews towards establishing the ground for legal separation; (b) reducing into writing the grounds discussed during the interviews based on her statement in her own dialect (Annexes 1 and 2) after

²⁴ *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 426-427.

²⁵ *Id.* at 433-434.

he could not understand the written statement prepared for the purpose by her British fiancée; (c) requiring her to submit her marriage contract with her husband Jovencio C. Sanchez (Annex 3), and the certificates of live birth of her four children: Mary Joy, Timothy, Christine, and Janette Anne, all surnamed Sanchez (Annexes 4, 5, 6 and 7); and (d) finalizing her petition for legal separation (Annex 8) in the later part of April, 2007.

The opinion of IBP Investigating Commission De la Rama, Jr. in favor of the respondent was too generous. We cannot see how the respondent deserved any compensation because he did not really begin to perform the contemplated tasks if, even based on his version, he would prepare the petition for legal separation instead of the petition for annulment of marriage. The attorney who fails to accomplish the tasks he should naturally and expectedly perform during his professional engagement does not discharge his professional responsibility and ethical duty toward his client. The respondent was thus guilty of misconduct, and may be sanctioned according to the degree of the misconduct. As a consequence, he may be ordered to restate to the client the amount received from the latter in consideration of the professional engagement, subject to the rule on *quantum meruit*, if warranted.

Accordingly, the respondent shall be fined in the amount of ₱10,000.00 for his misrepresentation of his professional competence, and he is further to be ordered to return the entire amount of ₱70,000.00 received from the client, plus legal interest of 6% *per annum* reckoned from the date of this decision until full payment.

2.

Respondent did not conduct himself with courtesy, fairness and candor towards his professional colleague

The *Rules of Court* mandates members of the Philippine Bar to “abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged.”²⁶ This duty of lawyers is further emphasized in the *Code of Professional Responsibility*, whose Canon 8 provides: “A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.” Rule 8.01 of Canon 8 specifically demands that: “A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.”

²⁶ Rule 138, Sec 20 (f) of the Rules of Court.

The Court recognizes the adversarial nature of our legal system which has necessitated lawyers to use strong language in the advancement of the interest of their clients.²⁷ However, as members of a noble profession, lawyers are always impressed with the duty to represent their clients' cause, or, as in this case, to represent a personal matter in court, with courage and zeal but that should not be used as license for the use of offensive and abusive language. In maintaining the integrity and dignity of the legal profession, a lawyer's language – spoken or in his pleadings – must be dignified.²⁸ As such, every lawyer is mandated to carry out his duty as an agent in the administration of justice with courtesy, dignity and respect not only towards his clients, the court and judicial officers, but equally towards his colleagues in the Legal Profession.

The respondent's statement in his answer that the demand from Atty. Martinez should be treated "as a mere scrap of paper or should have been addressed by her counsel x x x to the urinal project of the MMDA where it may service its rightful purpose" constituted simple misconduct that this Court cannot tolerate.

In his motion for reconsideration, the respondent tried to justify the offensive and improper language by asserting that the phraseology was not *per se* uncalled for and improper. He explained that he had sufficient cause for maintaining that the demand letter should be treated as a mere scrap of paper and should be disregarded. However, his assertion does not excuse the offensiveness and impropriety of his language. He could have easily been respectful and proper in responding to the letter.

As penalty for this particular misconduct, he is reprimanded, with the stern warning that a repetition of the offense will be severely punished.

WHEREFORE, the Court **AFFIRMS** the Resolution No. XVIII-2008-476 dated September 20, 2008 of the Integrated Bar of the Philippines Board of Governors, with the **MODIFICATION** that Atty. Romeo G. Aguilos is hereby **FINED** ₱10,000.00 for misrepresenting his professional competence to the client, and **REPRIMANDS** him for his use of offensive and improper language towards his fellow attorney, with the stern warning that a repetition of the offense shall be severely punished.

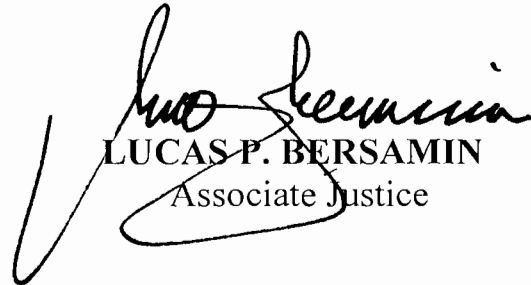
The Court **ORDERS** Atty. Romeo G. Aguilos to **RETURN** to the complainant within thirty (30) days from notice the sum of ₱70,000.00, plus legal interest of 6% *per annum* reckoned from the date of this decision until full payment.

²⁷ *Saberon v. Larong*, A.C. No. 6567, April 16, 2008, 551 SCRA 359, 368.

²⁸ *Id.*

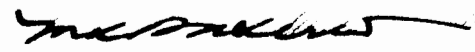
Let copies of this decision be attached to the personal records of Atty. Romeo G. Aguilos as a member of the Philippine Bar, and be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator for proper dissemination to all courts throughout the country.

SO ORDERED.




LUCAS P. BERSAMIN
Associate Justice

WE CONCUR:



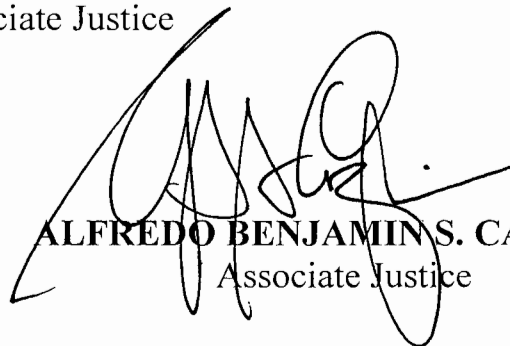
MARIA LOURDES P. A. SERENO
Chief Justice



TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice