

FIRST DIVISION

[A.C. No. 9119, March 12, 2018]

EUGENIO E. CORTEZ, COMPLAINANT, VS. ATTY. HERNANDO P. CORTEZ, RESPONDENT.

DECISION

TIJAM, J.:

The instant controversy arose from a Complaint-Affidavit^[1] filed by complainant Eugenio E. Cortez^[2] against respondent Atty. Hernando P. Cortes (Atty. Cortes) for grave misconduct, and violation of the Lawyer's Oath and the Code for Professional Responsibility.

Complainant alleged that he engaged the services of Atty. Cortes as his counsel in an illegal dismissal case against Philippine Explosives Corporation (PEC). He further alleged that he and Atty. Cortes had a handshake agreement on a 12% contingency fee as and by way of attorney's fees.^[3]

Atty. Cortes prosecuted his claims for illegal dismissal which was decided in favor of complainant. The Court of Appeals affirmed the decision of the National Labor Relations Commission ordering PEC to pay complainant the total amount of One Million One Hundred Thousand Pesos (P1,100,000) three staggered payments. PEC then Issued City Bank Check No. 1000003986 dated March 31, 2005 in the amount of Five Hundred Fifty Thousand Pesos (P550,000), Check No. 1000003988 in the amount of Two Hundred Seventy-Five Thousand Pesos (P275,000) dated April 15, 2005, and Check No. 1000003989 also in the amount of Two Hundred Seventy-Five Thousand Pesos (P275,000) dated April 30, 2005, all payable in the name of complainant.^[4]

Complainant narrated that after the maturity of the first check, he went to China Bank, Southmall Las Pinas with Atty. Cortes and his wife to open an account to deposit the said check. Atty. Cortes asked complainant to wait outside the bank while he personally, for and in his behalf, facilitated the opening of the account. After thirty minutes, he was asked to go inside and sign a joint savings account with Atty. Cortes.^[5]

On April 7, 2005, complainant alleged that when he was about to withdraw the amount of the initial check deposited, Atty. Cortes arrived with his wife and ordered the bank teller to hold off the transaction. When complainant asked why he did that, Atty. Cortes answered that 50% of the total awarded claims belongs to him as attorney's fees. When complainant questioned him, Atty. Cortes became hysterical and imposingly maintained that 50% of the total awarded claims belongs to him.^[6]

Complainant then tried to pacify Atty. Cortes and his wife and offered to pay

P200,000, and when Atty. Cortes rejected it, he offered the third check amounting to P275,000, but Atty. Cortes still insisted on the 50% of the total award. Complainant was then forced to endorse the second and third checks to Atty. Cortes, after which he was able to withdraw the proceeds of the first check. With the help of the lawyers in the Integrated Bar of the Philippines (IBP), complainant was able to have the drawer of the checks cancel one of the checks endorsed to Atty. Cortes before he was able to encash the same.

Atty. Cortes, in his Answer, admitted that his services were engaged by complainant to pursue the labor claims. He, however, denied that they agreed on a 12% contingency fee by way of attorney's fees.^[7]

Atty. Cortes claimed that complainant is a relative of his, but considering that the case was to be filed in Pampanga and he resided in Las Pinas, he would only accept the case on a fifty-fifty sharing arrangement.^[8]

Atty. Cortes alleged that the checks were issued pursuant to the pre-execution agreement reached by the parties at the office of Labor Arbiter Herminio V. Suelo. He and complainant agreed that the amount of the first check be divided fifty-fifty, the whole of the second check would be the complainant's, and the third check would be his.^[9]

Atty. Cortes further alleged that he had to assist complainant in the opening of an account to deposit the checks. Atty. Cortes had to convince the bank manager to accept the checks issued in the name of Eugene E. Cortez despite the fact that complainant's ID's are all in the name of Eugenio E. Cortez.^[10] He claimed that anyone in his place would have demanded for the holding off of the transaction because of the base ingratitude, patent deception and treachery of complainant.^[11]

Atty. Cortes posited that the check forms part and parcel of the judgment award to which he had a lien corresponding to his attorney's fees and complainant should have at least invited him to witness the "harvest of the fruits."^[12]

Atty. Cortes insisted that the alleged 12% agreement is false, being merely a concoction of complainant's fertile and unstable mind. He also pointed out that the fifty-fifty sharing arrangement is not unconscionably high because the complainant was given the option to hire other lawyers, but still he engaged his services.^[13]

After hearing and submission of position papers, the IBP Commission on Bar Discipline, in a Report and Recommendation dated April 11, 2007, recommended the six-month suspension of Atty. Cortes. It ruled that a contingent fee arrangement should generally be in writing, and that contingent fees depend upon an express contract without which the lawyer can only recover on the basis of *quantum meruit*. It also pointed out that the Labor Code establishes a limit as to the amount of attorney's fees that a lawyer may collect or charge his client in labor cases.

The report and recommendation was adopted and approved by the IBP Board of Governors in an August 17, 2007 Resolution:

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RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED 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 for violation of Article 11(b) of the Labor Code, Atty. Hernando P. Cortes is hereby **SUSPENDED** from the practice of law for six (6) months and Ordered to Return to complainant whatever amount he received in excess of the 10% allowable attorney's fees in labor case (sic).

TOMAS N. PRADO
National Secretary^[14]

A motion for reconsideration^[15] was filed by Atty. Cortes, which was denied by the IBP Board of Governors.^[16]

The issue, plainly, is whether or not the acts complained of constitute misconduct on the part of Atty. Cortes, which would subject him to disciplinary action.

We rule in the affirmative.

We have held that a contingent fee arrangement is valid in this jurisdiction. It is generally recognized as valid and binding, but must be laid down in an express contract.^[17] The case of *Rayos v. Atty. Hernandez*^[18] discussed the same succinctly, thus:

A contingent fee arrangement is valid in this jurisdiction and is generally recognized as valid and binding but must be laid down in an express contract. The amount of contingent fee agreed upon by the parties is subject to the stipulation that counsel will be paid for his legal services **only if** the suit or litigation prospers. A much higher compensation is allowed as contingent fee in consideration of the risk that the lawyer may get nothing if the suit fails. Contracts of this nature are permitted because they redound to the benefit of the poor client and the lawyer especially in cases where the client has meritorious cause of action, but no means with which to pay for legal services unless he can, with the sanction of law, make a contract for a contingent fee to be paid out of the proceeds of the litigation. Oftentimes, the contingent fee arrangement is the only means by which the poor and helpless can seek redress for injuries sustained and have their rights vindicated.^[19] (Emphasis Ours)

In this case, We note that the parties did not have an express contract as regards the payment of fees. Complainant alleges that the contingency fee was fixed at 12% via a handshake agreement, while Atty. Cortes counters that the agreement was 50%.

The IBP Commission on Discipline pointed out that since what respondent handled was merely a labor case, his attorney's fees should not exceed 10%, the rate allowed under Article 111^[20] of the Labor Code.

Although we agree that the 50% contingency fee was excessive, We do not agree that the 10% limitation as provided in Article 111 is automatically applicable.

The case of *Masmud v. NLRC (First Division), et al.*,^[21] discussed the matter of application of Article 111 of the Labor Code on attorney's fees:

There are two concepts of attorney's fees. **In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services rendered to the latter. On the other hand, in its extraordinary concept, attorney's fees may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party,** such that, in any of the cases provided by law where such award can be made, *e.g.*, those authorized in Article 2208 of the Civil Code, the amount is payable not to the lawyer but to the client, *unless* they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof.

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Contrary to Evangelina's proposition, **Article 111 of the Labor Code deals with the extraordinary concept of attorneys fees. It regulates the amount recoverable as attorney's fees in the nature of damages sustained by and awarded to the prevailing party. It may not be used as the standard in fixing the amount payable to the lawyer by his client for the legal services he rendered.**^[22]
(Emphasis Ours)

It would then appear that the contingency fees that Atty. Cortes required is in the ordinary sense as it represents reasonable compensation for legal services he rendered for complainant. Necessarily, the 10% limitation of the Labor Code would not be applicable. Beyond the limit fixed by Article 111, such as between the lawyer and the client, the attorney's fees may exceed 10% on the basis of *quantum meruit*.^[23] We, however, are hard-pressed to accept the justification of the 50% contingency fee that Atty. Cortes is insisting on for being exorbitant.

Generally, the amount of attorney's fees due is that stipulated in the retainer agreement which is conclusive as to the amount of the lawyers compensation. In the absence thereof, the amount of attorney's fees is fixed on the basis of *quantum meruit*, *i.e.*, the reasonable worth of the attorneys services.^[24] Courts may