

EN BANC

[A.C. No. 10557 (Formerly CBD Case No. 07-1962), July 10, 2018]

JERRY M. PALENCIA, COMPLAINANT, V. ATTY. PEDRO L. LINSANGAN, ATTY. GERARD M. LINSANGAN, AND ATTY. GLENDA M. LINSANGAN-BINOYA, RESPONDENTS.

DECISION

PER CURIAM:

Before us is a complaint^[1] filed by Jerry M. Palencia (complainant) against Attorneys (Attys.) Pedro L. Linsangan, Gerard M. Linsangan^[2] and Glenda Linsangan-Binoya (respondents) for disciplinary action.

Complainant was an overseas Filipino worker seafarer who was seriously injured during work when he fell into the elevator shaft of the vessel M/T "Panos G" flying a Cyprus flag.^[3] After initial treatment in Singapore, complainant was discharged and flown to the Philippines to continue his medical treatment and rehabilitation. While confined at the Manila Doctors Hospital, one "Moises," and later Jesheryl L. Millena (Jesheryl), paralegals in respondents' law office, approached complainant. They convinced him to engage the services of respondents' law office in order to file a suit against his employers for indemnity.^[4] After several visits from the paralegals and respondent Atty. Pedro Linsangan, complainant executed (1) an Attorney-Client Contract,^[5] and (2) a Special Power of Attorney,^[6] where he engaged the legal services of respondents and Gurbani & Co., a law firm based in Singapore, and agreed to pay attorney's fees of 35% of any recovery or settlement obtained for both.

After execution of the contract, complainant, through the efforts of respondents, was paid by his employer the following amounts: US\$60,000.00 as indemnity and US\$20,000.00 under their collective bargaining agreement. From these amounts, respondents charged complainant attorney's fees of 35%.^[7]

Respondents and Gurbani & Co. also filed a tort case against the owners of "Panos G" before the High Court of Singapore (Singapore case). For this case, respondents engaged the services of Papadopoulos, Lycourgos & Co., a law firm based in Cyprus, to draft a written opinion on the issues involving Cyprus law, among others.^[8] They also engaged the services of retired Justice Emilio Gancayco (Justice Gancayco) for his expert opinion regarding various issues raised by defendant's lawyer and representatives.^[9]

Thereafter, negotiations led to a settlement award in favor of complainant in the amount of US\$95,000.00. Gurbani & Co. remitted to respondents the amount of US\$59,608.40.^[10] From this amount, respondents deducted: (I) US\$5,000.00 as

payment to Justice Gancayco; (2) their attorney's fees equivalent to 35%; and (3) other expenses, leaving the net amount of US\$18,132.43 for complainant.^[11]

Respondents tendered the amount of US\$20,756.05 (representing the US\$18,132.43) to complainant, which the latter refused.^[12] As complainant contested the amount comprised of the expenses and attorney's fees deducted, the following civil actions ensued between complainant and respondents:

- (1) On September 12, 2005, respondents filed an action for preliminary mandatory injunction (Civil Case No. 05113475) before the Regional Trial Court (RTC) of Manila to compel complainant to receive the amount tendered.^[13] This case was dismissed by the RTC, and the dismissal was eventually upheld by this Court on July 7, 2008.^[14]
- (2) On September 22, 2005, complainant filed with the RTC of Ligao City an action for accounting, remittance of settlement amounts and damages (Civil Case No. 2401 or accounting case).^[15] On June 16, 2011, the RTC ruled in favor of complainant and ordered respondents to make proper accounting, among others.^[16] Although the RTC upheld the stipulated attorney's fees as binding between the parties, it determined that the fees are lumped for both respondents and Gurbani & Co.^[17] On appeal, the CA affirmed the RTC's Decision but reduced the rate of attorney's fees to 10%.^[18] This Court affirmed the CA Decision in our Resolution dated February 20, 2013 in G.R. No. 205088. An Entry of Judgment was issued on August 8, 2013.

On March 28, 2007, complainant also filed the subject letter-Complaint^[19] with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline (CBD). He requested that an investigation be conducted and the corresponding disciplinary action be imposed upon respondents for committing the following unethical acts: (1) refusing to remit the amount collected in the Singapore case worth US\$95,000.00, and in offering only US\$20,756.05; (2) depositing complainant's money into their own account; and (3) engaging in "ambulance chasing" by deploying their agents to convince complainant to hire respondents' services while the former was still bedridden in the hospital.

In their answer,^[20] respondents explained that complainant retained respondents and Gurbani & Co.'s services in 2004 for purposes of filing a claim against the ship owner, its agents and principals. This led to the filing of a claim before the Singapore High Court. They averred that on April 29, 2005, Gurbani & Co. advised respondents of the settlement of the claim in Singapore for US\$95,000.00.^[21] On June 20, 2005, respondents sent a letter to complainant informing him that they already received the settlement amount and requested him to come to the former's office to get his net share.^[22] Complainant went to respondents' law office on June 28, 2005 where respondents tendered to the former his net share of US\$20,756.05.^[23] However, complainant unjustly refused to accept the amount. Complainant also refused their tender of payment in their letter dated August 3, 2005.^[24] On September 12, 2005,

respondents even filed a "consignation case" (Civil Case No. 05113475) before the RTC of Manila.^[25]

Respondents denied that they deposited the amount to their own account. They claimed that the amount of US\$20,756.05 has been placed for safekeeping in a vault located inside their office ever since.^[26] On May 3, 2007, after their receipt of the complaint and the IBP-CBD's Order dated April 3, 2007, they decided to deposit the money with Bank of the Philippine Islands in an interest savings account, in trust for complainant.^[27]

As to the allegations of ambulance chasing, respondents averred that they provide free legal advice to the public. It was in the course of this public service when they met complainant.^[28]

After proceedings, the IBP-CBD in its Report and Recommendation^[29] ruled that respondents violated the canons of the Code of Professional Responsibility (CPR): (1) in soliciting legal business through their agents while complainant was in the hospital; (2) in failing to account for, and deliver the funds and property of his client when due or upon demand; and (3) in hiring the services of a foreign law firm and another lawyer without prior knowledge and consent of complainant of the fees and expenses to be incurred.^[30] The IBP-CBD found that all three respondents connived and thus recommended that all respondents be suspended from the practice of law for a period of one year. It also directed respondents to comply with the Decision in the accounting case (Civil Case No. 2401) in favor of complainant.^[31]

The IBP Board of Governors adopted the Report and Recommendation.^[32] After respondents' motion for reconsideration^[33] and complainant's opposition^[34] thereto, the IBP Board of Governors modified the penalty and increased respondents' suspension from the practice of law to two years with warning, and ordered respondents to return the 5% of the amount assessed to complainant as attorney's fees.^[35]

We adopt the findings of the IBP on the unethical conduct of respondents Attys. Pedro L. Linsangan and, Gerard M. Linsangan. We, however, absolve respondent Atty. Glenda M. Linsangan-Binoya for lack of any evidence as to her participation in the acts complained of.

I

The practice of law is a profession and not a business.^[36] Lawyers are reminded to avoid at all times any act that would tend to lessen the confidence of the public in the legal profession as a noble calling, including, among others, the manner by which he makes known his legal services.

A lawyer in making known his legal services must do so in a dignified manner.^[37] They are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers.^[38] The CPR explicitly states that "[a] lawyer shall not do or permit to be done any act designed primarily to solicit legal business."^[39] Corollary to this duty is for lawyers not to encourage any suit or proceeding for any corrupt motive or interest.^[40] Thus, "ambulance chasing," or the solicitation of

almost any kind of business by an attorney, personally or through an agent, in order to gain employment, is proscribed.^[41]

Here, there is sufficient evidence to show that respondents violated these rules. No less than their former paralegal Jeshere admitted that respondent Atty. Pedro Linsangan came with her and another paralegal named Moises, to Manila Doctors Hospital several times to convince complainant to hire their services.^[42] This is a far cry from respondents' claim that they were merely providing free legal advice to the public. Moreover, while respondents deny Jeshere's connection with their law firm, this was sufficiently rebutted by complainant when he presented Jeshere's resignation letter as received by respondents' firm.^[43] In employing paralegals to encourage complainant to file a lawsuit against his employers, respondents indirectly solicited legal business and encouraged the filing of suit. These constitute malpractice^[44] which calls for the exercise of the court's disciplinary powers and warrants serious sanctions.^[45]

II

The relationship between a lawyer and his client is highly fiduciary.^[46] This relationship holds a lawyer to a great degree of fidelity and good faith especially in handling money or property of his clients.^[47] Thus, Canon 16 and its rules remind a lawyer to: (1) hold in trust all moneys and properties of his client that may come into his possession;^[48] (2) deliver the funds and property of his client when due or upon demand subject to his retaining lien;^[49] and (3) account for all money or property collected or received for or from his client.^[50]

Money collected by a lawyer on a judgment rendered in favor of his client constitutes trust funds and must be immediately paid over to the client.^[51] As he holds such funds as agent or trustee, his failure to pay or deliver the same to the client after demand constitutes conversion.^[52] Thus, whenever a lawyer collects money as a result of a favorable judgment, he must promptly report and account the money collected to his client.^[53]

It is the lawyer's duty to give a prompt and accurate account to his client. Upon the collection or receipt of property or funds for the benefit of the client, his duty is to notify the client promptly and, absent a contrary understanding, pay or remit the same to the client, less only *proper fees* and disbursements, as soon as reasonably possible.^[54] He is under absolute duty to give his client a full, detailed, and *accurate account* of all money and property which has been received and handled by him, and must justify all transactions and dealings concerning them.^[55] And while he is in possession of the client's funds, he should not commingle it with his private property or use it for his personal purposes without his client's consent.^[56]

Here, respondents claim that they promptly accounted for the total award of US\$95,000.00, and after deducting their fees, tendered the amount of US\$20,756.05. Complainant, however, refused to accept the amount because he contested both the expenses and the separate deduction of attorney's fees by respondents and Gurbani & Co.

We find that while respondents gave prompt notice to complainant of their receipt of money collected in the latter's favor, they were amiss in their duties to give accurate

accounting of the amounts due to complainant, and to return the money due to client upon demand.

The Attorney-Client Contract between the parties states: "We/I hereby voluntarily agree and bind ourselves, our heirs and assigns to pay Atty. Pedro L. Linsangan and his collaborating Singapore counsels, the sum equivalent to thirty-five [35%] percent of any recovery or settlement obtained."^[57] Clearly, the stipulated rate referred to the combined professional fees of both respondents and their collaborating Singapore counsel, Gurbani & Co.^[58] Nevertheless, respondents proceeded to deduct separate fees on top of the amount already deducted by Gurbani & Co. Complainant contested this deduction and refused to accept the amount being tendered by respondents. Since a claim for attorney's fees may be asserted either in the very action in which the services of a lawyer had been rendered, or in a separate action,^[59] respondents, instead of forcibly deducting their share, should have moved for the judicial determination and collection of their attorney's fees. The fact alone that a lawyer has a lien for his attorney's fees on money in his hands collected for his client does not entitle him to unilaterally appropriate his client's money for himself.^[60]

Worse, respondents allegedly kept the money inside the firm's vault for two years until they were made aware of the disciplinary complaint against them before the IBP-CBD. However, as noted by the IBP-CBD in its Report and Recommendation:

[T]he defense of respondents that they kept in their office vault the share of complainant as computed by them in the amount of US\$18,132.43, hence, they forgot the same and remembered it only when they received the Order of this Commission for them to file an Answer to complainant's Complaint [*which is more than 2 years*] is rather highly incredible considering that it involves a substantial amount, the series of communications between the parties, and the Civil cases subsequently filed.^[61] (Italics in the original.)

Even if we give credence to this explanation, it is improper for the lawyer to put his client's funds in his personal safe deposit vault.^[62] Funds belonging to the client should be deposited in a separate trust account in a bank or trust company of good repute for safekeeping.^[63]

It is apparent from the foregoing that respondents failed to handle their client's money with great degree of fidelity. Respondents also showed their lack of good faith when they appropriated for themselves more than what is allowed under their contract. They have demonstrated that the payment of their attorney's fees is more important than their fiduciary and faithful duty of accounting and returning what is rightfully due to their client. More, they also failed to observe proper safekeeping of their client's money. Respondents violated the trust reposed in them, and demonstrated their lack of integrity and moral soundness.^[64] Respondents' flagrant and malicious refusal to comply with the CPR amounts to gross misconduct.^[65] This warrants the imposition of disciplinary sanctions.^[66]

III

The practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character.^[67]