

FIRST DIVISION

[A.C. No. 10543, March 16, 2016]

NENITA D. SANCHEZ, PETITIONER, VS. ATTY. ROMEO G. AGUILOS, RESPONDENT.

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 P70,000.00 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 P150,000.00, plus the appearance fee of P5,000.00/hearing; that she then gave to him the initial amount of P90,000.00;^[1] that she had gone to his 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 him^[6] 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 P150,000.00 for his legal services to bring the action for legal separation, with the fiancée paying him P70,000.00, 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:

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 P40,000.00 out of the P70,000.00 paid to him as acceptance fee, the P40,000.00 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 P30,000.00.

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 8.01^[13] of the Code of Professional Responsibility.

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

The undersigned Commissioner is most respectfully recommending the following:

- (1) To order the respondent to return to the complainant the amount of P30,000.00 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 P40,000.00 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 P30,000.00 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 (P30,000.00) Pesos to complainant within thirty (30) days from receipt of notice.^[15]

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 P150,000.00 as attorney's fees, exclusive of the filing fees and his appearance fee of P5,000.00/hearing. Of that amount, he received the sum of P70,000.00.

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 P150,000.00. 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 P150,000.00 was intended for? Was it intended for the filing of the annulment case or legal separation?

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