

THIRD DIVISION

[A.C. No. 5067, June 29, 2015]

CORAZON M. DALUPAN, COMPLAINANT, VS. ATTY. GLENN C. GACOTT,^[1] RESPONDENT.

DECISION

VILLARAMA, JR., J.:

Before us is a petition for review under Rule 139-B, Section 12 (c) of the Rules of Court assailing Resolution No. XVII-2007-115^[2] dated March 17, 2007 and Resolution No. XIX-2010-544^[3] dated October 8, 2010 of the Board of Governors of the Integrated Bar of the Philippines (IBP) which adopted and approved the Report and Recommendation^[4] dated December 12, 2006 of the Investigating Commissioner of the Commission on Bar Discipline of the IBP. Although the IBP Board of Governors dismissed the complaint for disbarment filed against the respondent, it ordered the latter to return the payment of the attorney's fee to the complainant in the amount of P5,000. This order to return the attorney's fee is the subject of the present petition.

The salient facts of the case follow:

In her affidavit-complaint^[5] dated April 20, 1999, the complainant claimed that she was a defendant in a criminal case for grave slander pending before the Municipal Trial Court (MTC) of Puerto Princesa City, Palawan. Meanwhile, her son, Wilmer Dalupan, was also a defendant in a separate criminal case for grave slander and malicious mischief pending before the same court. In order to represent the complainant and her son, the complainant engaged the legal services of the respondent who then charged an acceptance fee of P10,000.

On August 20, 1996, the complainant paid the respondent P5,000 as initial payment for his acceptance fee.

On August 27, 1996, the complainant requested the respondent to draft a Motion to Reduce Bail Bond. However, the respondent allegedly denied the request and claimed that it was beyond the scope of his retainer services. Thus, the complainant alleged that she caused a certain Roily Calbentos to draft the same which was however signed by the respondent.

On January 31, 1997, the complainant paid the respondent the remaining balance of P5,000 for his acceptance fee. When the complainant asked for an Official Receipt from the respondent, the latter refused saying that there was no need for the issuance of a receipt. On that same day, the complainant also paid the respondent P500 for his appearance fee in the preliminary conference and arraignment which occurred on the same day.

Thereafter, the complainant alleged that the respondent neglected his duties as counsel and failed to attend any of the hearings before the MTC. In view of the respondent's repeated absences before the MTC, Judge Jocelyn S. Dilig issued an Order which appointed a counsel *de officio* to represent the complainant.

Aggrieved, the complainant filed the instant complaint for disbarment against the respondent.

On the other hand, in his comment,^[6] the respondent denied all the allegations of the complainant.

The respondent alleged that the complainant approached him and represented herself as an indigent party in the following cases for which she sought to engage the legal services of the respondent: (1) Criminal Case No. 12586, *People of the Philippines v. Corazon Dalupan, et al.* for Grave Slander, (2) Criminal Case No. 12585, *People of the Philippines v. Wilmer Dalupan* for Malicious Mischief, (3) I.S. No. 96-1104, *Custodio Family v. Cesar Dalupan, et al.* for Frustrated Murder, (4) I.S. No. 97-54, *Dalupan Family v. Romulo Custodio, et al.* for Physical Injuries, and (5) I.S. No. 9760 *Dalupan Family v. Romulo Custodio* for Frustrated Murder. The respondent agreed to represent the complainant in the aforementioned cases subject to the payment of an acceptance fee of P5,000 per case and an appearance fee of P500 for each court appearance.

On August 20, 1996, the complainant paid the respondent P5,000 for his acceptance fee.

On August 27, 1996, the respondent filed a Motion for Reduction of Bail in favor of the complainant before the MTC of Puerto Princesa City. On that same day, the complainant proceeded to the law office of the respondent and demanded that the latter negotiate with the MTC judge to ensure the grant of the Motion for Reduction of Bail. When the respondent refused the demand of the complainant, the latter replied at the top of her voice: "*Binabayaran kita, bakit hindi mo ginagawa ang gusto ko?*" The respondent answered her with, "*Hindi po lahat ng gusto ninyo ay gagawin ko, sa tama lamangpo tayo, abogado po ninyo ako, hindi ako fixer.*"^[7] This irked the complainant who then made verbal threats that she will replace the respondent with a certain Atty. Roland Pay who held office nearby. However, when the MTC of Puerto Princesa City eventually ruled in favor of the complainant and granted the motion, the latter revoked her threats that she will replace the respondent.

On August 19, 1997, the MTC of Puerto Princesa City issued a Notice of Hearing to the complainant and her son Wilmer Dalupan which ordered them to appear before the court on September 9, 1997 in connection with their criminal cases pending "therein. However, the respondent failed to attend the scheduled hearing as he allegedly failed to receive a copy of the Notice of Hearing. Thus, in his written explanation dated October 7, 1997, the respondent attributed his failure to appear before the MTC to the inefficiency of the process server of the said court.

On October 10, 1997, the complainant told the respondent that she was terminating the latter's services on the ground of loss of trust and confidence. Furthermore, the

complainant also told the respondent that she engaged the services of Atty. Roland Pay to replace the respondent. As a result, on October 30, 1997, the complainant withdrew all her records from the law office of the respondent.

On January 29, 1998, the MTC of Puerto Princesa City issued an Order which relieved the respondent of any responsibility in Criminal Case Nos. 12585 and 12586:

Acting on what the counsel of record of all the accused in the above-entitled cases call "Compliance", where obvious on the face of which is his desire to withdraw as Counsel, and it appearing that said intention to withdraw is not only with the full conformity of all the accused but at their own initiative, Atty. Glenn Gacott is hereby relieved of any responsibility in. the further prosecution of the above-captioned cases.^[8]

In view of the above Order, the respondent argued that he was not guilty of abandonment or neglect of duty because it was the complainant who wilfully terminated his services even without fault or negligence on his part.

We referred this case to the IBP for its investigation, report, and recommendation.

On December 12, 2006, Investigating Commissioner Wilfredo E.J.E. Reyes recommended the dismissal of the complaint for disbarment against the respondent. At the same time, he also recommended that the respondent return the payment of the attorney's fee to the complainant in the amount of P5,000.^[9]

The Investigating Commissioner opined that the respondent cannot be held liable for abandonment or neglect of duty because it was the complainant who discharged the respondent for loss of trust and confidence. This was confirmed by the act of the complainant in withdrawing all her records from the law office of the respondent. Furthermore, the Investigating Commissioner said that absent evidence showing that the respondent committed abandonment or neglect of duty, the presumption of regularity should prevail in favor of the respondent.

Although there was no evidence to support the claim of the complainant that she paid the respondent the remaining balance of P5,000 as acceptance fee and an appearance fee of P500 on January 31, 1997, the Investigating Commissioner gave credence to an Official Receipt dated August 20, 1996 which proved that the complainant indeed paid the respondent an amount of P5,000. However, the Investigating Commissioner found that the respondent did not perform any substantial legal work on behalf of the complainant. For this reason, and in the interest of justice, the Investigating Commissioner recommended that the respondent return the amount of P5,000 to the complainant.

On March 17, 2007, the IBP Board of Governors passed Resolution No. XVII-2007-115 which adopted and approved *in toto* the Report and Recommendation of the Investigating Commissioner.

On October 8, 2010, the IBP Board of Governors passed Resolution No. XIX-2010-544 which denied the Motion for Reconsideration dated July 27, 2007 filed by the respondent.