

## EN BANC

[ A.C. No. 9074, August 14, 2012 ]

**GRACE M. ANACTA, COMPLAINANT, VS. ATTY. EDUARDO D. RESURRECCION, RESPONDENT.**

### DECISION

**DEL CASTILLO, J.:**

"[T]he purpose of disbarment is to protect the courts and the public from the misconduct of the officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence."

[1]

In a Complaint<sup>[2]</sup> for disbarment filed on August 22, 2007 with the Integrated Bar of the Philippines Committee on Bar Discipline (IBP-CBD), complainant Grace M. Anacta (complainant) prays for the disbarment of respondent Atty. Eduardo D. Resurreccion (respondent) for "gross misconduct, deceit and malpractice."<sup>[3]</sup>

Records show that on November 15, 2004, complainant engaged the services of respondent to file on her behalf a petition for annulment of marriage before the Regional Trial Court (RTC) of Quezon City, for which she paid respondent P42,000.00.<sup>[4]</sup>

In December 2004, respondent presented to the complainant a supposed copy of a Petition for Annulment of Marriage<sup>[5]</sup> which bore the stamped receipt dated December 8, 2004 of the RTC, as well as its docket number, Civil Case No. 04-25141.

From then on, complainant did not hear from respondent or receive any notice from the trial court relative to the said petition. This prompted her to make inquiries with the Office of the Clerk of Court of the RTC of Quezon City (OCCRTC). To her surprise and dismay, she discovered that no petition for annulment docketed as Civil Case No. 04-25141 was ever filed before the said court.<sup>[6]</sup> Thus, complainant terminated the services of respondent "for loss of trust and confidence"<sup>[7]</sup> and requested the OCC-RTC to refuse any belated attempt on the part of respondent to file a petition for annulment of marriage on her behalf.<sup>[8]</sup>

On July 30, 2007, complainant, through her new counsel, wrote a letter<sup>[9]</sup> to the respondent demanding for an explanation as to how respondent intended to indemnify the complainant for damages she had suffered due to respondent's deceitful acts. Respondent has not replied thereto. Hence, complainant filed before the IBP a verified complaint praying that respondent be disbarred.

In an Order<sup>[10]</sup> dated August 22, 2007, the Director for Bar Discipline of the IBP, Atty. Alicia A. Risos-Vidal, required the respondent to submit his answer to the complaint within 15 days from notice. However, respondent did not heed said directive. Hence, complainant filed Motions to Declare Respondent in Default and Hear the Case Ex-Parte.<sup>[11]</sup> The Investigating Commissioner, Romualdo A. Din, Jr., held in abeyance the resolution of the above motions and instead set the complaint for Mandatory Conference on October 6, 2008.<sup>[12]</sup> On the said date, however, only the complainant and her counsel appeared. Accordingly, in an Order<sup>[13]</sup> dated October 6, 2008, the Investigating Commissioner deemed respondent to have waived the filing of an answer; noted complainant's motion to declare respondent in default; and gave the complainant 10 days from notice within which to file her verified position paper, after which the case shall be deemed submitted for resolution.

Complainant filed her verified Position Paper<sup>[14]</sup> on October 15, 2008.

In his Report and Recommendation<sup>[15]</sup> dated December 8, 2008, the Investigating Commissioner found clear and convincing evidence that respondent is guilty of deceit and dishonesty when he misrepresented having filed the petition for annulment of marriage after receipt of P42,000.00 when in fact no such petition was filed. He thus recommended that respondent be suspended from the practice of law for a period of two years and to reimburse/return to the complainant the amount of P42,000.00.

In a Resolution<sup>[16]</sup> dated August 28, 2010, the IBP Board of Governors adopted and approved the findings of the Investigating Commissioner but modified the recommended penalty of suspension from the practice of law from two years to four years and ordered respondent to return to the complainant the amount of P42,000.00, otherwise his suspension will continue until he returns the sum involved.

### **Our Ruling**

We adopt the findings and recommendation of the IBP.

In *Narag v. Atty. Narag*<sup>[17]</sup> this Court held that "[t]he burden of proof rests upon the complainant, and the Court will exercise its disciplinary power only if she establishes her case by clear, convincing and satisfactory evidence."

In this case, complainant submitted the following documents to prove her allegations: (1) the Service Agreement dated November 15, 2004 to prove the existence of attorney-client relationship between the parties; (2) the Petition for Annulment of Marriage<sup>[18]</sup> supposedly filed by respondent on December 8, 2004 with the RTC of Quezon City and docketed as Civil Case No. 04-25141; (3) the Certification issued by the Assistant Clerk of Court of the RTC of Quezon City showing that "no Petition for Annulment of Marriage with Civil Case No. Q-0425141 was filed on December 8, 2004"; (4) the letter dated March 6, 2005 of the complainant to the respondent informing the latter that she is terminating his legal services effective immediately; (5) the letter of complainant to the Clerk of Court of the RTC of Quezon City wherein she requested that "any belated attempt by my

former lawyer Atty. Resurreccion to file any Petition for Annulment x x x be refused acceptance"; and, (6) the letter dated July 30, 2007 of complainant's new counsel demanding for an explanation as to how respondent intended to indemnify the complainant for damages she had suffered by reason of respondent's fraudulent misrepresentations.<sup>[19]</sup>

In the face of such a serious charge, the respondent has chosen to remain silent.

Thus, we find the confluence of the evidence submitted by the complainant to have clearly, convincingly and satisfactorily shown that indeed the respondent has authored this reprehensible act. Respondent committed deceitful and dishonest acts by misrepresenting that he had already filed a petition for annulment on behalf of the complainant and pocketing the amount of P42,000.00. He even went to the extent of presenting to the complainant a supposed copy of the petition duly filed with the court. After he was found out, he made himself scarce. He ignored all communications sent to him by the complainant. After the disbarment complaint was filed, he failed to file his answer despite due notice. He totally disregarded the proceedings before the IBP despite receipt of summons. "The act of respondent in not filing his answer and ignoring the hearings set by the Investigating Commission, despite due notice, emphasized his contempt for legal proceedings."<sup>[20]</sup>

We thus agree with the observation of the IBP Investigating Commissioner that "[s]uch action of the respondent is patently deceitful and dishonest, considering further that he received an amount of money from the complainant."<sup>[21]</sup> "The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Hence, silence in such cases is almost always construed as implied admission of the truth thereof."<sup>[22]</sup>

As early as *In Re: Sotto*,<sup>[23]</sup> this Court held that:

One of the qualifications required of a candidate for admission to the bar is the possession of good moral character, and, when one who has already been admitted to the bar clearly shows, by a series of acts, that he does not follow such moral principles as should govern the conduct of an upright person, and that, in his dealings with his clients and with the courts, he disregards the rule of professional ethics required to be observed by every attorney, it is the duty of the court, as guardian of the interests of society, as well as of the preservation of the ideal standard of professional conduct, to make use of its powers to deprive him of his professional attributes which he so unworthily abused.

In addition, Rule 1.01 of the Code of Professional Responsibility states that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." "The Code exacts from lawyers not only a firm respect for law, legal processes but also mandates the utmost degree of fidelity and good faith in dealing with clients and the moneys entrusted to them pursuant to their fiduciary relationship."<sup>[24]</sup>

Pursuant to Section 27, Rule 138 of the Rules of Court, respondent may either be

disbarred or suspended for committing deceitful and dishonest acts. Thus:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* - A member of the bar **may** be **disbarred** or **suspended** from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority to do so. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. [Emphasis supplied.]

It is thus clear from the foregoing provision that in any of the following circumstances, to wit: (1) *deceit*; (2) *malpractice*; (3) *gross misconduct*; (4) *grossly immoral conduct*; (5) *conviction of a crime involving moral turpitude*; (6) *violation of the lawyer's oath*; (7) *wilful disobedience of any lawful order of a superior court*; or (8) *corruptly or wilfully appearing as an attorney for a party to a case without authority to do so*; the Court is vested with the authority and discretion to impose either the extreme penalty of disbarment or mere suspension. Certainly, the Court is not placed in a straitjacket as regards the penalty to be imposed. There is no ironclad rule that disbarment must immediately follow upon a finding of deceit or gross misconduct. The Court is not mandated to automatically impose the extreme penalty of disbarment. It is allowed by law to exercise its discretion either to disbar or just suspend the erring lawyer based on its appreciation of the facts and circumstances of the case.

We examined the records of the case and assessed the evidence presented by the complainant. After such examination and assessment, we are convinced beyond doubt that respondent should only be meted the penalty of four-year suspension as properly recommended by the IBP Board of Governors. In the exercise of our discretion, we are unquestionably certain that the four-year suspension suffices and commensurable to the infractions he committed. As will be pointed out later, there have been cases with more or less the same factual setting as in the instant case where the Court also imposed the penalty of suspension and not disbarment.

We have gone over jurisprudential rulings where the respondents were found guilty of grave misconduct and/or dishonesty and we observe that the Court either disbars or suspends them based on its collective appreciation of attendant circumstances and in the exercise of its sound discretion.

In *Garcia v. Atty. Manuel*,<sup>[25]</sup> the Court found respondent therein to have committed dishonesty and abused the confidence<sup>[26]</sup> of his client for failing to file the ejectment suit despite asking for and receiving from the complainant the money intended as filing fees. In his bid for exoneration, therein respondent attempted to mislead the Court by claiming that he has not yet received the registry return card of the notice to vacate hence his failure to file the ejectment suit. However, the records indubitably showed that he had already received the same. Moreover,

therein respondent likewise refused to return the monies he received from the complainant despite repeated demands.<sup>[27]</sup> The Court thus concluded that therein respondent's actions constitute gross misconduct. Nevertheless, based on its appreciation of the evidence, the Court refrained from imposing the penalty of disbarment. Instead, it imposed the penalty of suspension from the practice of law for a period of six months, ratiocinating thus:

Complainant asks that respondent be disbarred. However, we find that suspension from the practice of law is sufficient to discipline respondent. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end. In this case, we find suspension to be sufficient sanction against respondent. Suspension, we may add, is not primarily intended as punishment, but as a means to protect the public and the legal profession.<sup>[28]</sup>

In *Ceniza v. Rubia*,<sup>[29]</sup> respondent therein was alleged to have misrepresented having already filed in court the necessary complaint by showing the copy of the complaint stamped "received" with a docket number thereon.<sup>[30]</sup> However, upon verification with the appropriate court, it was discovered that none was filed.<sup>[31]</sup> It was also noted that respondent therein prompted the complainant to borrow money from a third party just to be able to pay her attorney's fees. When the case reached this Court, it imposed the penalty of suspension and not disbarment. In so doing, the Court lent more credence to the explanation of the respondent that the case was "withdrawn" after it had been stamped "received" by the court.

In *Roa v. Moreno*,<sup>[32]</sup> the Court found respondent therein guilty of gross misconduct and dishonesty. He issued a bogus Certificate of Land Occupancy to the complainant<sup>[33]</sup> and refused to return the amount paid by the complainant.<sup>[34]</sup> For said infractions, the Court meted him with the penalty of suspension from the practice of law for two years.<sup>[35]</sup>

In *Barcenas v. Alvero*,<sup>[36]</sup> respondent failed to deposit in court the amount of P300,000.00 which he received from his client supposedly as redemption price. He also failed to return the amount despite repeated demands. He was suspended for two years.

In *Small v. Banares*<sup>[37]</sup> respondent received P80,000.00 from complainant for his legal services and as filing fees. He however failed to file the necessary complaint and was never heard from again. He was thus suspended from the practice of law for two years.

In *Judge Angeles v. Atty. Uy, Jr.*,<sup>[38]</sup> therein respondent failed to promptly report that he received money on behalf of his client. However, for lack of evidence of misappropriation, he was only suspended and not disbarred.