

EN BANC

[A.C. No. 10962 [Formerly CBD Case No. 10-2763], September 11, 2018]

AKIRA YOSHIMURA, COMPLAINANT, VS. ATTY. BERNIE PANAGSAGAN, RESPONDENT.

DECISION

PER CURIAM:

Before us is a Complaint-Affidavit^[1] filed by Akira Yoshimura (*Yoshimura*) against respondent Atty. Bernie Panagsagan (*Atty. Panagsagan*), docketed as A.C. No. 10962 for Grave Misconduct.

The facts are as follows:

Sometime in 2009, Yoshimura and his common-law wife Bernadette Tugadi (*Bernadette*) went to Tierra, Panagsagan and Associates, Atty. Panagsagan's office, at 8C Cris Eden Building, Magalang Street, Pinyahan, Diliman, Quezon City, to seek legal assistance because Bernadette decided to become a member of the Lesambah Transport Cooperative.

During said meeting, Yoshimura gave Atty. Panagsagan the amount of P5,000.00 for the preparation of documents needed for his two (2) units of buses with plate numbers PHP-559 and RHP-568. Atty. Panagsagan received and acknowledged said amount on April 21, 2009.^[2] On May 15, 2009, Bernadette gave Atty. Panagsagan the amount of P24,000.00 as payment for the Land Transportation Office (*LTO*) apprehension tickets of the four buses of Yoshimura and Bernadette.^[3] However, up until the filing of the instant complaint, the license plates of the four buses have not been given to them.

Yoshimura also claimed that Atty. Panagsagan convinced him to give "under the table" money in the amount of P40,000.00 to expedite the registration of the two buses (with plate numbers PHP-559 and RHP-568) under the name of Lesambah Cooperative. On May 31, 2009, Yoshimura conceded and gave the amount of P40,000.00 to Atty. Panagsagan which the latter received and acknowledged.^[4] In December 2009, Yoshimura received the registration of the two units of buses. However, upon inquiry with the LTO, they were disappointed to find out that the approval of the registration could be easily done legally.

Later, Yoshimura alleged that Atty. Panagsagan again asked and received from him the amount of P5,000.00 for the purpose of securing a Dropping and Substitution Order from the LTO.^[5] Then, on December 2, 2009, Yoshimura averred that Atty. Panagsagan told him that another two buses can be included in the Lesambah Cooperative franchise and the expenses for processing of yellow plates was

P80,000.00. On the same date, a total of P80,000.00 was again given to and received by Atty. Panagsagan.^[6] However, despite the release of said amount of money to Atty. Panagsagan, Yoshimura lamented that no yellow plates were released for the buses. He then demanded the return of his money, but Atty. Panagsagan refused to return the same.

Instead, Atty. Panagsagan convinced Yoshimura that their buses should join another cooperative, the Sta. Monica Transport Cooperative (*Sta. Monica*), which operates on a different route - Divisoria-Angat, while the processing of their Lesambah documents are still ongoing. Convinced, Yoshimura gave Atty. Panagsagan the amount of P50,000.00 and P150,000.00 on June 5, 2009 and June 19, 2009, respectively.^[7] Several temporary receipts were also issued for several amounts received totalling to P380,000.00 purportedly for "stock membership and bus membership."^[8]

Subsequently, as part of the documentation of their membership with Sta. Monica, Yoshimura alleged that a Management Agreement was executed between him and Bernadette and Sta. Monica Transport. The said agreement was signed by Rhoe E. Correa, as Chairman of the Cooperative, whom Yoshimura alleged to have never met. However, Yoshimura later discovered that the office of Sta. Monica in Quezon City was already closed. Upon inquiry with the LTO, they were also told that Sta. Monica Cooperative was no longer operating buses. Frustrated, Yoshimura demanded the return of their money, but again, Atty. Panagsagan failed and refused to return the same.

Significantly, in an Affidavit dated June 2, 2010, Rhoel Correa stated that he has never met Yoshimura and Bernadette prior to their meeting at the Prosecutor's Office in view of the estafa case which the latter filed against him. He also stated therein that he never received any money from them and that Sta. Monica issued no receipt to them.^[9]

Furthermore, Yoshimura claimed that he employed the professional services of Atty. Panagsagan purportedly to file an estafa case against a certain individual. He gave the amount of P50,000.00 to Atty. Panagsagan, who took five months to prepare the complaint.^[10] However, Yoshimura changed his mind and decided not to pursue the complaint anymore. Instead, he demanded the refund of the P50,000.00 he paid to Atty. Panagsagan, considering that he did not pursue the filing of the case. Atty. Panagsagan, again, did not return the money.

Thus, from the foregoing actuations of Atty. Panagsagan, Yoshimura filed the instant complaint for disciplinary action due to grave misconduct against the former.

On September 20, 2010, the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) ordered Atty. Panagsagan to submit his Answer on the complaint against him.^[11]

However, despite receipt of several notices to file his Answer, Atty. Panagsagan failed to submit his Answer. He was eventually declared in default.^[12] He, likewise, failed to attend the hearings despite receipt of notices. Thus, the instant case was submitted for report and recommendation.^[13]

In its Report and Recommendation^[14] dated October 10, 2013, the IBP-CBD recommended that Atty. Panagsagan be suspended from the practice of law for a period of three (3) years. However, in Resolution No. XXI-2014-724,^[15] the IBP-Board of Governors adopted and approved with modification the IBP-CBD's report but instead recommended that Atty. Panagsagan be disbarred from the practice of law.

After a review of the records of the case, We resolved to sustain the findings and recommendation of the IBP-Board of Governors.

A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers.^[16] The issue to be determined is whether Atty. Panagsagan is still fit to continue to be an officer of the court in the dispensation of justice. Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or as in this case, the failure of respondent to answer the charges against him despite numerous notices.

Here, Atty. Panagsagan was given several opportunities to answer the complaint against him, yet no answer came. 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. Silence in such cases is almost, always construed as implied admission of the truth thereof. Consequently, we are left with no choice but to deduce his implicit admission of the charges levelled against him. *Qui tacet consentire videtur*. Silence gives consent.^[17] This instant disbarment case will, thus, proceed despite Atty. Panagsagan's unwillingness to cooperate in the proceedings.

In the instant case, Atty. Panagsagan's conduct in handling the monies given to him by his client is undisputably condemnable. Records show that Yoshimura engaged the services of Atty. Panagsagan for specific purposes to wit:

1. On April 21, 2009, Atty. Panagsagan issued a receipt for the amount of Php5,000.00 which he received as professional fees, representing the amount for the preparation of documents for the registration of two units of buses;^[18]
2. On May 15, 2009, Atty. Panagsagan issued a receipt for the amount of Php24,000.00 which he received as payment for the apprehension tickets;^[19]
3. On May 31, 2009, Atty. Panagsagan issued a receipt for the amount of Php40,000.00 which he received as "under the table" to expedite the processing of the yellow plates of the bus units;^[20]
4. On December 2, 2009, Atty. Panagsagan issued a receipt for the amount of P5,000.00 which he received for expediting the dropping and substitution order;^[21]

5. On December 2, 2009, Atty. Panagsagan issued a receipt for the amount of P30,000.00 and P50,000.00 which he received as professional fees, for the processing of the registration of several units of buses;^[22]
6. On April 28, 2009, Atty. Panagsagan issued a receipt for the amount of P50,000.00 which he received as professional fees, purportedly for the filing of an estafa case;^[23] and
7. On June 5, 2009 and June 19, 2009, Atty. Panagsagan issued a receipt for the amounts of P50,000.00 and P150,000.00, respectively, which he received for the processing of the Angat-Divisoria bus franchise for their two units of buses.^[24]

However, despite receipt of the above-mentioned amounts, Yoshimura lamented that Atty. Panagsagan failed to comply with his undertakings without giving any valid reason. Atty. Panagsagan also failed to account all the monies he has received from Yoshimura and Bernadette. Worse, when Yoshimura demanded the return of their monies, Atty. Panagsagan failed to return the same.

The rule on the accounting of monies and properties received by lawyers from clients as well as their return upon demand is explicit. Canon 16, Rules 16.01, 16.02 and 16.03 of the Code of Professional Responsibility (*CPR*) provides:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those others kept by him.

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand.

The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. When a lawyer collects or receives money from his client for a particular purpose, he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money if the intended purpose of the money does not materialize constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility.^[25]

Thus, Atty. Panagsagan's failure to return Yoshimura's money despite repeated demands gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of, the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.^[26]

We likewise cannot overlook Atty. Panagsagan's reprehensible conduct when he

asked Yoshimura for the amount of P40,000.00 as "under the table" allegedly to expedite the release of the yellow plates of the bus units with plate numbers PHP-559 and RHP 568. Atty. Panagsagan himself signed a receipt showing that he took money in the amount of P40,000.00 for the said purpose.^[27]

Undoubtedly, this act of Atty. Panagsagan is tantamount to grave misconduct. The act of demanding a sum of money from his client, purportedly to be used as a bribe to expedite a transaction, is not only an abuse of his client's trust but an overt act of undermining the trust and faith of the public in the legal profession. As officers of the court, lawyers owe their utmost fidelity to public service and the administration of justice. In no way should a lawyer indulge in any act that would damage the public's perception of the dispensation of justice.^[28]

Equally reprehensible was Atty. Panagsagan's act of convincing Yoshimura and Bernadette to instead join another cooperative, Sta. Monica, when in fact Sta. Monica was no longer in the business of operating transport buses. It can be presumed that it was through Atty. Panagsagan's misrepresentation which prompted Yoshimura to pay the total amount of P200,000.00 for the processing of documents to be able to join said cooperative.^[29] Several temporary receipts were also issued for several amounts of monies received totaling to P380,000.00 purportedly for "stock membership and bus membership, albeit, it was unclear who actually received said amounts of monies and issued the receipts therefor.^[30]

To give semblance of truth, Atty. Panagsagan also prepared and notarized a management contract between Yoshimura and Bernadette and Rhoel F. Correa, the chairman/authorized representative of Sta. Monica. However, Yoshimura and Bernadette insisted that they have never met Rhoel Correa. In an affidavit, Rhoel Correa also stated that he has never met Yoshimura and Bernadette and that he neither received any money from them nor issued any receipts to them.^[31] Clearly, Atty. Panagsagan's act in convincing Yoshimura and Bernadette to join a cooperative which no longer operate, in order to obtain money from them, speaks of his dishonest and deceitful character. This actuations of Atty. Panagsagan constitute grave violations of the CPR which mandates lawyers not to do any falsehood.^[32]

Adding to Atty. Panagsagan's list of infractions was his violation of the notarial law. He notarized on June 10, 2009 the management contract between Yoshimura and Bernadette and Sta. Monica without all the affiant's personal appearance. To reiterate, Yoshimura and Bernadette maintained that they have never met Rhoel Correa, which is consistent with the latter's statement in his affidavit that he has never met Yoshimura and Bernadette prior to their meeting at the Prosecutor's Office on June 2, 2010. Thus, considering that both Yoshimura and Bernadette, and Rhoel Correa have never met each other prior to June 2, 2010, it can be surmised that at the time of the notarization of the contract on June 10, 2009, both or one of them did not appear before Atty. Panagsagan.

In *Agbulos v. Atty. Viray*^[33] this Court, citing *Dela Cruz-Sillano v. Atty. Pangan*^[34] reiterated anew the necessity of personal appearance of the affiants, to wit:

The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice