

EN BANC

[A.C. No. 5408, February 07, 2017]

ANITA SANTOS MURRAY, COMPLAINANT, V. ATTY. FELICITO J. CERVANTES, RESPONDENT.

R E S O L U T I O N

LEONEN, J.:

We sustain, with modification, the Integrated Bar of the Philippines Board of Governors' Resolution No. XVI-2004-481^[1] and Resolution No. XVIII-2008-711.^[2]

Resolution No. XVI-2004-481 modified the Board of Governors' Resolution No. XV-2002-599.^[3] The latter ruled that respondent Atty. Felicito J. Cervantes must be reprimanded and ordered to return to complainant Anita Santos Murray the sum of P80,000.00.^[4] Resolution No. XVI-2004-481 modified this with the penalty of one (1)-year suspension from the practice of law, with an additional three (3)-month suspension for every month (or fraction) that respondent is unable to deliver to complainant the sum of P80,000.00.^[5] Resolution No. XVIII-2008-711 denied respondent's Motion for Reconsideration.^[6]

On February 2, 2001, complainant filed before this Court a Complaint^[7] charging respondent with violating Canon 18^[8] of the Code of Professional Responsibility.

Complainant alleged that sometime in June 2000, she sought the services of a lawyer to assist in the naturalization (that is, acquisition of Philippine citizenship) of her son, Peter Murray, a British national. Respondent was later introduced to her. On June 14, 2000, she and respondent agreed on the latter's services, with complainant handing respondent the sum of P80,000.00 as acceptance fee.^[9]

About three (3) months passed without respondent doing "anything substantial."^[10] Thus, on September 11, 2000, complainant wrote respondent to inform him that she was terminating his services. She explained:

I am not satisfied with the way things are going regarding my petition. I am expecting that you keep me abreast of your activities but I am left in the dark as to what have you done so far. You do not show up on our scheduled appointments nor do you call me up to let me know why you cannot come. You stood me up twice already which shows that you are not even interested in my case.

. . . .

Since I already paid the P80,000.00 acceptance fee in full, I expect to get a refund of the same from you.^[11]

As respondent failed to return the P80,000.00 acceptance fee, complainant instituted the Complaint in this case. She also instituted criminal proceedings against respondent for violation of Article 315(1)(b)^[12] of the Revised Penal Code.^[13]

This case was subsequently referred to the Integrated Bar of the Philippines for its investigation, report, and recommendation.^[14]

After the proceedings before the Integrated Bar of the Philippines, Investigating Commissioner Demaree J.B. Raval (Commissioner Raval) furnished a Report ^[15] dated September 9, 2002 recommending that respondent be reprimanded and required to return the sum of P80,000.00 to complainant. In its Resolution No. XV-2002-599,^[16] the Integrated Bar of the Philippines Board of Governors adopted Commissioner Raval's recommendations.

Respondent filed before this Court a Motion for Leave to Admit Additional Evidence with Motion to Dismiss.^[17] He asserted that he never required complainant to immediately pay him P80,000.00 as acceptance fee.^[18] This Motion was forwarded to the Integrated Bar of the Philippines^[19] and was treated as respondent's Motion for Reconsideration.^[20] For her part, complainant filed several manifestations and motions asking that a heavier penalty be imposed on respondent.^[21]

Acting on the pending incidents of the case, Investigating Commissioner Dennis A.B. Funa (Commissioner Funa) furnished a Report^[22] recommending that respondent be suspended from the practice of law for one (1) year, with an additional three (3)-month suspension for every month (or fraction) that respondent fails to deliver to complainant the sum of P80,000.00.

Commissioner Funa justified the penalty of suspension by emphasizing that, in a hearing conducted by the Integrated Bar of the Philippines on August 18, 2004, respondent was "orally directed" to return the P80,000.00 not later than the end of August 2004.^[23] Respondent acceded to this; however, he failed to return the P80,000.00.^[24]

In its Resolution No. XVI-2004-481,^[25] the Board of Governors adopted Commissioner Puna's recommendation.

The Board of Governors' Resolution No. XVIII-2008-711 later denied respondent's Motion for Reconsideration.^[26]

It is evident from the records that respondent failed to deliver on the services that he committed to complainant despite receiving the amount of P80,000.00 as acceptance fee. Although respondent asserted that he did not actively solicit this amount from complainant, it remains, as Commissioner Funa underscored, that respondent accepted this amount as consideration for his services.^[27] Moreover, following complainant's engagement of his services, respondent failed to communicate with complainant or update her on the progress of the services that he was supposed to render. Not only did he fail in taking his own initiative to communicate; he also failed to respond to complainant's queries and requests for updates.

Respondent's failure to timely and diligently deliver on his professional undertaking justifies the Integrated Bar of the Philippines' conclusion that he must reconstitute complainant the amount of P80,000.00.

Luna v. Galarrita^[28] has explained the parameters for ordering restitution in disciplinary proceedings:

In *Ronquillo v. Atty. Cezar*, the parties entered a Deed of Assignment after which respondent received P937,500.00 from complainant as partial payment for the townhouse and lot. However, respondent did not turn over this amount to developer Crown Asia, and no copy of the Contract to Sell was given to complainant. This court suspended Atty. Cezar from the practice of law for three (3) years, but did not grant complainant's prayer for the return of the P937,500.00.

Ronquillo held that "[d]isciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the court into the conduct of one of its officers." Thus, disciplinary proceedings are limited to a determination of "whether or not the attorney is still fit to be allowed to continue as a member of the Bar."

Later jurisprudence clarified that this rule excluding civil liability determination from disciplinary proceedings "remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct [from] and not intrinsically linked to his professional engagement." This court has thus ordered in administrative proceedings the return of amounts representing legal fees.

This court has also ordered restitution as concomitant relief in administrative proceedings when respondent's civil liability was already established:

Although the Court renders this decision in an administrative proceeding primarily to exact the ethical responsibility on a member of the Philippine Bar, the Court's silence about the respondent lawyer's legal obligation to reconstitute the complainant will be both unfair and inequitable. No victim of gross ethical misconduct concerning the client's funds or property should be required to still litigate in another proceeding what the administrative proceeding has already established as the respondent's liability. That has been the reason why the Court has required restitution of the amount involved as a concomitant relief in the cited cases of *Mortera v. Pagatpatan*, *Almendarez, Jr. v. Langit*, *Small v. Banares*.

^[29] (Citations and emphases omitted)

It is proper, in the course of these disciplinary proceedings, that respondent be required to return to complainant the amount of P80,000.00. This amount was delivered to respondent during complainant's engagement of his professional services, or in the context of an attorney-client relationship. This is neither an extraneous nor purely civil matter.

By the same failure to timely and diligently deliver on his professional undertaking (despite having received fees for his services), as well as by his failure to keep complainant abreast of relevant developments in the purposes for which his services were engaged, respondent falls short of the standards imposed by Canon 18 of the Code of Professional Responsibility:

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.01 - A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 - A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 - *A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.*

Rule 18.04 - *A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.* (Emphasis supplied)

Disciplinary sanctions more severe than those considered proper by the Integrated Bar of the Philippines are warranted.

We emphasize that, during the proceedings before the Integrated Bar of the Philippines, respondent acknowledged his duty to compensate complainant for the amount of P80,000.00. He then made a commitment to return that sum to her. To date, however, he has failed to deliver on the commitment made almost twelve and a half years ago.

We clarify that the oral instruction given to respondent in the Integrated Bar of the Philippines' August 18, 2004 hearing was not a juridically binding order. Rule 139-B of the Rules of Court sanctions and spells out the terms of the Integrated Bar of the Philippines' involvement in cases involving the disbarment and/or discipline of lawyers. The competence of the Integrated Bar of the Philippines is only recommendatory. Under Article VIII, Section 5(5)^[30] of the 1987 Constitution, only this Court has the power to actually rule on disciplinary cases of lawyers, and to impose appropriate penalties.

Rule 139-B merely delegates investigatory functions to the Integrated Bar of the Philippines. With the exercise of its delegated investigatory power, the Integrated Bar of the Philippines refers proposed actions to this Court. Recognizing the Integrated Bar of the Philippines' limited competence in disciplinary cases impels a concomitant recognition that, pending favorable action by this Court on its recommendations, its determinations and conclusions are only provisional. Therefore, rulings on disciplinary cases attain finality and are enforceable only upon this Court's own determination that they must be imposed.

The oral instruction given to respondent in the August 18, 2004 hearing has, thus, not attained such a degree of finality as would immutably require him to comply,