

SECOND DIVISION

[A.C. No. 9018, April 20, 2016]

TERESITA P. FAJARDO, COMPLAINANT, VS. ATTY. NICANOR C. ALVAREZ, RESPONDENT.

DECISION

LEONEN, J.:

This administrative case involves the determination of whether a lawyer working in the Legal Section of the National Center for Mental Health under the Department of Health is authorized to privately practice law, and consequently, whether the amount charged by respondent for attorney's fees is reasonable under the principle of *quantum meruit*.

Complainant Teresita P. Fajardo (Teresita) was the Municipal Treasurer of San Leonardo, Nueva Ecija. She hired respondent Atty. Nicanor C. Alvarez (Atty. Alvarez) to defend her in criminal and administrative cases before the Office of the Ombudsman.

The parties have differing versions of the facts as summarized by the Investigating Commissioner of the Commission on Bar Discipline of the Integrated Bar of the Philippines. Teresita's version of the facts is as follows:

Around 2009, Teresita hired Atty. Alvarez to handle several cases filed against her before the Office of the Ombudsman.^[1] Atty. Alvarez was then working in the Legal Section of the National Center for Mental Health.^[2] He asked for P1,400,000.00 as acceptance fee.^[3] However, Atty. Alvarez did not enter his appearance before the Office of the Ombudsman nor sign any pleadings.^[4]

Atty. Alvarez assured Teresita that he had friends connected with the Office of the Ombudsman who could help with dismissing her case for a certain fee.^[5] Atty. Alvarez said that he needed to pay the amount of P500,000.00 to his friends and acquaintances working at the Office of the Ombudsman to have the cases against Teresita dismissed.^[6]

However, just two (2) weeks after Teresita and Atty. Alvarez talked, the Office of the Ombudsman issued a resolution and decision recommending the filing of a criminal complaint against Teresita, and her dismissal from service, respectively.^[7]

Teresita then demanded that Atty. Alvarez return at least a portion of the amount she gave.^[8] Atty. Alvarez promised to return the amount to Teresita; however, he failed to fulfill this promise.^[9] Teresita sent a demand letter to Atty. Alvarez, which he failed to heed.^[10]

On the other hand, Atty. Alvarez claims the following:

Atty. Alvarez is Legal Officer III of the National Center for Mental Health under the Department of Health.^[11] He has authority to engage in private practice of the profession.^[12] He represented Teresita in several cases before the Office of the Ombudsman.^[13]

Atty. Alvarez and Teresita had an arrangement that Teresita would consult Atty. Alvarez whenever a case was filed against her.^[14] Atty. Alvarez would then advise Teresita to send him a copy of the complaint and its attachments through courier.^[15] Afterwards, Atty. Alvarez would evaluate the case and call Teresita to discuss his fees in accepting and handling the case.^[16] A 50% downpayment would be deposited to Atty. Alvarez's or his secretary's bank account.^[17] The balance would then be paid in installments.^[18] The success fee was voluntary on Teresita's part.^[19]

On July 10, 2009, Atty. Alvarez received a call from Teresita regarding a meeting at Shangri-La Mall to discuss the decision and resolution she received from the Office of the Ombudsman dismissing her from service for dishonesty and indicting her for violation of Section 3 of Republic Act No. 3019, respectively.^[20] Atty. Alvarez accepted the case and asked for P500,000.00 as acceptance fee.^[21] According to Atty. Alvarez, he arrived at the amount after considering the difficulty of the case and the workload that would be involved, which would include appeals before the Court of Appeals and this Court.^[22] However, the fee is exclusive of filing fees, appearance fees, and other miscellaneous fees such as costs for photocopying and mailing.^[23]

Atty. Alvarez claimed that he prepared several pleadings in connection with Teresita's case:

- (1) motion for reconsideration filed on July 23, 2009 in connection with the administrative case;
- (2) motion for reconsideration filed on July 23, 2009 in connection with the criminal case;
- (3) petition for injunction filed on October 15, 2009 before the Regional Trial Court of Gapan City; and
- (4) petition for preliminary injunction with prayer for a temporary restraining order filed before the Court of Appeals on November 18, 2009, and the amended petition on November 26, 2009.^[24]

Atty. Alvarez also said that he prepared several letters to different government officials and agencies.^[25]

Atty. Alvarez alleged that Teresita made staggered payments for the amounts they agreed on.^[26] Teresita only paid the balance of the agreed acceptance fee equivalent to P450,000.00 on February 11, 2010.^[27] While Teresita paid P60,000.00 for the miscellaneous expenses, she did not pay the expenses for other legal work performed and advanced by Atty. Alvarez.^[28]

On the last day for filing of the petition for review of the Office of the Ombudsman's Decision, Teresita informed Atty. Alvarez that she was no longer interested in retaining Atty. Alvarez's services as she had hired Atty. Tyrone Contado from Nueva Ecija, who was Atty. Alvarez's co-counsel in the cases against Teresita.^[29]

On June 1, 2011, Teresita filed before the Office of the Bar Confidant a Verified Complaint praying for the disbarment of Atty. Alvarez.^[30] This Court required Atty. Alvarez to file his comment on the complaint within 10 days from notice.^[31]

On December 7, 2011, the case was referred to the Integrated Bar of the Philippines for investigation, report, and recommendation.^[32]

In his Report and Recommendation^[33] dated November 12, 2012, Investigating Commissioner Honesto A. Villamayor found Atty. Alvarez guilty of violating the Code of Professional Responsibility and recommended Atty. Alvarez's suspension from the practice of law for one (1) year.^[34] Atty. Alvarez was also ordered to return the amount of P700,000.00 to Teresita with legal interest from the time of demand until its full payment.^[35] The dispositive portion of the Investigating Commissioner's Report and Recommendation reads:

WHEREFORE, finding Respondent guilty of committing unlawful, immoral and deceitful acts of the Canon of Professional Responsibility, [it] is recommended that he be suspended for one (1) year in the practice of law and he be ordered to return the amount of P700,000.00 to the Complainant within two (2) months from receipt of this order with legal interest from the time of demand, until fully paid, with a warning that repetition of [a] similar offense in the future will be dealt with more severely.^[36]

On the unauthorized practice of law, the Investigating Commissioner found that while Atty. Alvarez claimed that he was authorized by his superior to privately practice law, the pleadings he allegedly prepared and filed did not bear his name and signature.^[37] Hence, the Investigating Commissioner stated that:

The time that Respondent spent in following up the case of Complainant in the Office of the Ombudsman is a time lost to the government which could have been used in the service of many taxpayers[.]^[38]

In any case, granting that Atty. Alvarez was authorized by his superior to practice his profession, the Investigating Commissioner stated that Atty. Alvarez was prohibited to handle cases involving malversation of funds by government officials such as a municipal treasurer.^[39]

Moreover, the Investigating Commissioner found that the attorney's fees Atty. Alvarez asked for were unreasonable:

From all indication, Complainant was forced to give to the Respondent the amount of P1,400,000.00 because of the words of Respondent that he has friends in the Office of the Ombudsman who can help with a fee. That because of that guarantee, Complainant was obligated to shell out

every now and then money for the satisfaction of the allege[d] friend of the Respondent[.]

Complainant is an ordinary Municipal Treasurer of a 4th or 5th class municipality and the amount of attorney's fees demanded by the Respondent is very much excessive. . . . The exorbitant amount that he demanded from complainant is too much for a lowly local government employee. What the Respondent did is not only illegal, immoral and dishonest but also taking advantage of a defenseless victim.

. . . .

While a lawyer should charge only fair and reasonable fees, no hard and fast rule may be set in the determination of what a reasonable fee is, or what is not. That must be established from the facts of each case[.]

. . . .

The fees claimed and received by the Respondent for the alleged cases he handled despite the fact that the records and evidence does not show that he ever signed pleadings filed, the amount of P700,000.00 is reasonable, thus, fairness and equity dictate, he has to return the excess amount of P700,000.00 to the complainant[.][⁴⁰]

In Notice of Resolution No. XX-2013-778^[41] dated June 21, 2013, the Integrated Bar of the Philippines Board of Governors adopted the findings and recommendations of the Investigating Commissioner:

*RESOLVED to ADOPT AND APPROVE, as it is hereby unanimously ADOPTED AND APPROVED, the Report and Recommendation of the Investigating Commissioner in 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 that complaint [sic] is guilty of unlawful, immoral and deceitful acts, Atty. Nicanor C. Alvarez is hereby **SUSPENDED from the practice of law for one (1) year with [a] Warning** that repetition of the same acts shall be dealt with more sever[ely]. Further, he is Ordered to Return the amount of P700,000.00 to complainant with legal interest from the time of demand.*^[42] (Emphasis in the original)

Atty. Alvarez moved for reconsideration of the Resolution,^[43] but the Motion was denied by the Board of Governors in Notice of Resolution No. XXI-2014-286^[44] dated May 3, 2014. The Resolution reads:

RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Commission and the resolution subject of the motion, it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2013-778 dated June 21, 2013 is hereby AFFIRMED.^[45] (Emphasis in the original)

We resolve the following issues:

First, whether respondent Atty. Nicanor C. Alvarez, as a lawyer working in the Legal Section of the National Center for Mental Health under the Department of Health, is authorized to engage in the private practice of law; and

Second, whether the amount charged by respondent for attorney's fees is reasonable under the principle of *quantum meruit*.

The Investigating Commissioner did not make a categorical declaration that respondent is guilty of unauthorized practice of his profession. The Investigating Commissioner merely alluded to respondent's unauthorized practice of law.

We find that respondent committed unauthorized practice of his profession.

Respondent claims that he is authorized to practice his profession^[46] as shown in the letter dated August 1, 2001 of National Center for Mental Health Chief Bernardino A. Vicente.^[47] The letter reads:

TO : ATTY. NICANOR C. ALVAREZ
Legal Officer III
This Center

Subject : Authority to engage in private practice of profession

This refers to your request for permission to engage in private practice of your profession.

In accordance with Administrative Order No. 21, s. 1999 of the Department of Health, which vested in the undersigned the authority to grant permission for the exercise of profession or engage in the practice of profession, you are hereby authorized to teach or engage in the practice of your profession *provided it will not run in conflict with the interest of the Center and the Philippine government as a whole*. In the exigency of the service however, or when public interest so requires, this authority may be revoked anytime.

Please be guided accordingly.

[sgd.]

BERNARDINO A. VICENTE, MD, FFPPA, MHA, CESO IV
Medical Center Chief II^[48] (Emphasis supplied)

Respondent practiced law even if he did not sign any pleading. In the context of this case, his surreptitious actuations reveal illicit intent. Not only did he do unauthorized practice, his acts also show badges of offering to peddle influence in the Office of the Ombudsman.

In *Cayetano v. Monsod*,^[49] the modern concept of the term "practice of law" includes the more traditional concept of litigation or appearance before courts: