

EN BANC

[A.C. No. 9532, October 08, 2013]

**MARIA CRISTINA ZABALJAUREGUI PITCHER, COMPLAINANT, VS.
ATTY. RUSTICO B. GAGATE, RESPONDENT.**

DECISION

PERLAS-BERNABE, J.:

For the Court's resolution is an administrative complaint^[1] filed by Maria Cristina Zabaljauregui Pitcher (complainant) against Atty. Rustico B. Gagate (respondent), charging him for gross ignorance of the law and unethical practice of law.

The Facts

Complainant claimed to be the legal wife of David B. Pitcher (David),^[2] a British national who passed away on June 18, 2004.^[3] Prior to his death, David was engaged in business in the Philippines and owned, among others, 40% of the shareholdings in Consulting Edge, Inc.^[4] (Consulting Edge), a domestic corporation. In order to settle the affairs of her deceased husband, complainant engaged the services of respondent.^[5]

On June 22, 2004, complainant and respondent met with Katherine Moscoso Bantegui (Bantegui),^[6] a major stockholder of Consulting Edge,^[7] in order to discuss the settlement of David's interest in the company.^[8] They agreed to another meeting which was, however, postponed by Bantegui. Suspecting that the latter was merely stalling for time in order to hide something, respondent insisted that the appointment proceed as scheduled.^[9]

Eventually, the parties agreed to meet at the company premises on June 28, 2004. However, prior to the scheduled meeting, complainant was prevailed upon by respondent to put a paper seal on the door of the said premises, assuring her that the same was legal.^[10]

On the scheduled meeting, Bantegui expressed disappointment over the actions of complainant and respondent, which impelled her to just leave the matter for the court to settle. She then asked them to leave, locked the office and refused to give them a duplicate key.^[11]

Subsequently, however, respondent, without the consent of Bantegui, caused the change in the lock of the Consulting Edge office door,^[12] which prevented the employees thereof from entering and carrying on the operations of the company. This prompted Bantegui to file before the Office of the City Prosecutor of Makati (Prosecutor's Office) a complaint for grave coercion against complainant and

respondent.^[13] In turn, respondent advised complainant that criminal and civil cases should be initiated against Bantegui for the recovery of David's personal records/business interests in Consulting Edge.^[14] Thus, on January 17, 2005, the two entered into a Memorandum of Agreement,^[15] whereby respondent undertook the filing of the cases against Bantegui, for which complainant paid the amount of P150,000.00 as acceptance fee and committed herself to pay respondent P1,000.00 for every court hearing.^[16]

On November 18, 2004, the Prosecutor's Office issued a Resolution^[17] dated October 13, 2004, finding probable cause to charge complainant and respondent for grave coercion. The corresponding Information was filed before the Metropolitan Trial Court of Makati City, Branch 63, docketed as Criminal Case No. 337985 (grave coercion case), and, as a matter of course, warrants of arrest were issued against them.^[18] Due to the foregoing, respondent advised complainant to go into hiding until he had filed the necessary motions in court. Eventually, however, respondent abandoned the grave coercion case and stopped communicating with complainant.^[19] Failing to reach respondent despite diligent efforts,^[20] complainant filed the instant administrative case before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD), docketed as CBD Case No. 06-1689.

Despite a directive^[21] from the IBP-CBD, respondent failed to file his answer to the complaint. The case was set for mandatory conference on November 24, 2006,^[22] which was reset twice,^[23] on January 12, 2007 and February 2, 2007, due to the absence of respondent. The last notice sent to respondent, however, was returned unserved for the reason "moved out."^[24] In view thereof, Investigating Commissioner Tranquil S. Salvador III declared the mandatory conference terminated and required the parties to submit their position papers, supporting documents and affidavits.^[25]

The IBP's Report and Recommendation

On March 18, 2009, Investigating Commissioner Pedro A. Magpayo, Jr. (Commissioner Magpayo) issued a Report and Recommendation,^[26] observing that respondent failed to safeguard complainant's legitimate interest and abandoned her in the grave coercion case. Commissioner Magpayo pointed out that Bantegui is not legally obliged to honor complainant as subrogee of David because complainant has yet to establish her kinship with David and, consequently, her interest in Consulting Edge.^[27] Hence, the actions taken by respondent, such as the placing of paper seal on the door of the company premises and the changing of its lock, were all uncalled for. Worse, when faced with the counter legal measures to his actions, he abandoned his client's cause.^[28] Commissioner Magpayo found that respondent's acts evinced a lack of adequate preparation and mastery of the applicable laws on his part, in violation of Canon 5^[29] of the Code of Professional Responsibility (Code), warranting his suspension from the practice of law for a period of six months.^[30]

The IBP Board of Governors adopted and approved the aforementioned Report and Recommendation in Resolution No. XX-2011-261 dated November 19, 2011 (November 19, 2011 Resolution), finding the same to be fully supported by the

evidence on record and the applicable laws and rules.^[31]

In a Resolution^[32] dated October 8, 2012, the Court noted the Notice of the IBP's November 19, 2011 Resolution, and referred the case to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation.^[33]

The OBC's Report and Recommendation

On February 11, 2013, the OBC submitted a Report and Recommendation^[34] dated February 6, 2013, concluding that respondent grossly neglected his duties to his client and failed to safeguard the latter's rights and interests in wanton disregard of his duties as a lawyer.^[35] It deemed that the six-month suspension from the practice of law as suggested by the IBP was an insufficient penalty and, in lieu thereof, recommended that respondent be suspended for three years.^[36] Likewise, it ordered respondent to return the P150,000.00 he received from complainant as acceptance fee.^[37]

The Court's Ruling

After a careful perusal of the records, the Court concurs with and adopts the findings and conclusions of the OBC.

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.^[38] To this end, he is enjoined to employ only fair and honest means to attain lawful objectives.^[39] These principles are embodied in Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code which respectively state:

CANON 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

CANON 18 - A lawyer shall serve his client with competence and diligence.

x x x x

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

x x x x

CANON 19 - A lawyer shall represent his client with zeal within the bounds of the law.

Rule 19.01 - A lawyer shall employ only fair and honest means to attain

the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

x x x x

Keeping with the foregoing rules, the Court finds that respondent failed to exercise the required diligence in handling complainant's cause since he: ***first***, failed to represent her competently and diligently by acting and proffering professional advice beyond the proper bounds of law; and, ***second***, abandoned his client's cause while the grave coercion case against them was pending.

Anent the first infraction, it bears emphasis that complainant's right over the properties of her deceased husband, David, has yet to be sufficiently established. As such, the high-handed action taken by respondent to enforce complainant's claim of ownership over the latter's interest in Consulting Edge – *i.e.*, causing the change of the office door lock which thereby prevented the free ingress and egress of the employees of the said company – was highly improper. Verily, a person cannot take the law into his own hands, regardless of the merits of his theory. In the same light, respondent's act of advising complainant to go into hiding in order to evade arrest in the criminal case can hardly be maintained as proper legal advice since the same constitutes transgression of the ordinary processes of law. By virtue of the foregoing, respondent clearly violated his duty to his client to use peaceful and lawful methods in seeking justice,^[40] in violation of Rule 19.01, Canon 19 of the Code as above-quoted. To note further, since such courses of action were not only improper but also erroneous, respondent equally failed to serve his client with competence and diligence in violation of Canon 18 of the Code. In the same regard, he also remained unmindful of his client's trust in him – in particular, her trust that respondent would only provide her with the proper legal advice in pursuing her interests – thereby violating Canon 17 of the Code.

With respect to the second infraction, records definitively bear out that respondent completely abandoned complainant during the pendency of the grave coercion case against them; this notwithstanding petitioner's efforts to reach him as well as his purported receipt of the P150,000.00 acceptance fee. It is hornbook principle that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court.^[41] Hence, considering respondent's gross and inexcusable neglect by leaving his client totally unrepresented in a criminal case, it cannot be doubted that he violated Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code.

In addition, it must be pointed out that respondent failed to file his answer to the complaint despite due notice. This demonstrates not only his lack of responsibility but also his lack of interest in clearing his name, which, as case law directs, is constitutive of an implied admission of the charges leveled against him.^[42] In fine, respondent should be held administratively liable for his infractions as herein discussed. That said, the Court now proceeds to determine the appropriate penalty