

FIRST DIVISION

[Adm. Case No. 9058, November 14, 2012]

**ROBERT VICTOR G. SEARES, JR., COMPLAINANT, VS. ATTY.
SANIATA LIWLIWA V. GONZALES-ALZATE, RESPONDENT.**

D E C I S I O N

BERSAMIN, J.:

Atty. Saniata Liwliwa V. Gonzales-Alzate is charged with incompetence and professional negligence, and a violation of the prohibition against representing conflicting interests. Complainant Robert Victor G. Seares, Jr. is her former client.

Seares, Jr. alleges that Atty. Gonzales-Alzate was his legal counsel when he ran for the position of Municipal Mayor of Dolores, Abra in the May 2007 elections; that after he lost by a 50-vote margin to Albert Z. Guzman, she filed in his behalf a "Petition Of Protest *Ad Cautelam*"^[1] in the Regional Trial Court (RTC) in Bangued, Abra; that the petition was dismissed for being "fatally defective;"^[2] that several months later, she insisted on filing a "Petition of Protest" in the RTC, but the petition was also dismissed on the ground that it was already time-barred, and on the further ground of forum shopping because the certification against forum shopping was false; that the RTC declared her as "professionally negligent;"^[3] that he again ran for Municipal Mayor of Dolores, Abra in the May 2010 elections, and won; that he later learned that his political opponents retained her as their counsel;^[4] that with him barely two months in office, one Carlito Turqueza charged him with abuse of authority, oppression and grave misconduct in the Sangguniang Panlalawigan of Abra;^[5] that she represented Turqueza as counsel;^[6] and that she intentionally made false and hurtful statements in the memorandum she prepared in that administrative case in order to attack him.^[7]

Seares, Jr. asserts that Atty. Gonzales-Alzate thereby violated Canon 15, Canon 17 and Canon 18 of the *Code of Professional Responsibility* for negligently handling his election protest, for prosecuting him, her former client, and for uttering false and hurtful allegations against him. Hence, he prays that she should be disbarred.

In her comment,^[8] Atty. Gonzales-Alzate denies the charges of professional negligence and incompetence, and of representing conflicting interests. She states that Seares, Jr. solicited her legal services in the last week of May 2007 because his counsel, Atty. Yasser Lumbos, informed him that he could not go to Abra to handle his *ad cautelam* petition;^[9] that Seares, Jr. and his parents were themselves the ones who decided not anymore to appeal the dismissal of the *ad cautelam* petition despite her advice that an appeal would likely succeed;^[10] that she did not convince Seares, Jr. to file the second petition because he and his parents were the ones who insisted on filing the appeal in disregard of the possibly adverse consequences of

doing so;^[11] and that the imputation of negligence against her based on the trial judge's declaration that she submitted a false certification against forum shopping was unwarranted, because all that she did was to make superimpositions in the certification against forum shopping in order to write the correct dates as well as the notarial document number and notarial docket page number for the certification against forum shopping.

Atty. Gonzales-Alzate refutes the charge that she represented conflicting interests by explaining that: (a) she was engaged as an attorney in the May 2010 elections only by Dominic Valera (a candidate for Municipal Mayor of Bangued, Abra) and by President Aquino, neither of whom was Seares, Jr.'s political opponent;^[12] (b) Carlito Turqueza used to be a political ally of Seares, Jr.;^[13] (c) she disclosed to Turqueza her having once acted as a counsel of Seares, Jr.;^[14] (d) Seares, Jr. did not object to her legal representation of Turqueza;^[15] and (e) the 2007 election protest that she handled for Seares, Jr. was unrelated to the administrative complaint that Turqueza brought against Seares, Jr. in 2010.^[16]

Issues

To be determined are the following issues, namely:

(a) Was Atty. Gonzales-Alzate guilty of professional negligence and incompetence in her handling of Seares, Jr.'s electoral protest in the RTC?

(b) Did Atty. Gonzales-Alzate violate the prohibition against representing conflicting interests when she assisted Turqueza in his administrative case against Seares, Jr., her former client?

Ruling

The severity of disbarment or suspension proceedings as the penalty for an attorney's misconduct has always moved the Court to treat the complaint with utmost caution and deliberate circumspection. We have done so because we must wield the power to disbar or suspend on the preservative rather than on the vindictive principle,^[17] conformably with our thinking that disbarment or suspension will be condign and appropriate only when there is a clear, convincing, and satisfactory proof of misconduct seriously affecting the professional standing and ethics of respondent attorney as an officer of the Court and as a member of the Bar.^[18]

Guided by the foregoing tenets, we dismiss the disbarment complaint against Atty. Gonzales-Alzate.

I.

Charge of professional negligence and incompetence is unfounded and devoid of substance

Seares, Jr. insists that Atty. Gonzales-Alzate's submission of a "fatally defective" petition in his election protest violated Canon 17^[19] and Canon 18^[20] of the *Code of Professional Responsibility*, claiming that her attaching a "cut-and-paste"

certificate of non-forum shopping to his election protest, which the trial court's decision described as "professional negligence," reflected her lack of diligence and competence as an attorney because it was fatal to his protest.

The complaint against Atty. Gonzales-Alzate is unfounded and devoid of substance.

For administrative liability under Canon 18 to attach, the negligent act of the attorney should be gross^[21] and inexcusable^[22] as to lead to a result that was highly prejudicial to the client's interest.^[23] Accordingly, the Court has imposed administrative sanctions on a grossly negligent attorney for unreasonable failure to file a required pleading,^[24] or for unreasonable failure to file an appeal,^[25] especially when the failure occurred after the attorney moved for several extensions to file the pleading^[26] and offered several excuses for his nonfeasance.^[27] The Court has found the attendance of inexcusable negligence when an attorney resorts to a wrong remedy,^[28] or belatedly files an appeal,^[29] or inordinately delays the filing of a complaint,^[30] or fails to attend scheduled court hearings.^[31] Gross misconduct on the part of an attorney is determined from the circumstances of the case, the nature of the act done and the motive that induced the attorney to commit the act.^[32]

Yet, a reading of the June 8, 2007 order of the RTC (Branch I) in Bangued, Abra shows that the true cause of the dismissal of Seares, Jr.'s "Petition For Protest *Ad Cautelam*" was its prematurity in light of the pendency in the Commission on Elections of his "Petition to Suspend Canvass and Proclamation."^[33] The RTC cogently held that "(t)he primary objective of this petition is to pray for the issuance of a Preliminary Precaution Order xxx (but) a prayer for the issuance of the protection of ballot boxes, Books and Lists of Voters and other election paraphernalia in the recently concluded elections is well within the power of the Commission on Elections."^[34] We see no trace of professional negligence or incompetence on the part of Atty. Gonzales-Alzate in her handling of Seares, Jr.'s protest, especially because she even filed in his behalf a "Motion for Reconsideration,"^[35] a "Comment on the Court's Dismissal of the Protest *Ad Cautelam*"^[36] and a "Motion to Withdraw Cash Deposit."^[37] Besides, her explanation that it was Seares, Jr. himself who decided not to pursue the appeal and who instead requested her to move for the withdrawal of his cash deposit was very plausible.

Also, we cannot find Atty. Gonzales-Alzate professionally negligent in respect of the filing and eventual dismissal of the subsequent "Petition for Protest." The verification and certification against forum shopping attached to the petition contained handwritten superimpositions by Atty. Gonzales-Alzate, but such superimpositions were apparently made only to reflect the corrections of the dates of subscription and the notarial document number and docket number for the verification and certification. If that was all there was to the superimpositions, then there was nothing to support the trial judge's observation that the "cut and paste" method in preparing the verification and certification for non-forum shopping constituted "professional negligence" that proved fatal to her client's protest.^[38] As a matter of policy, a court-bound document or paper prepared in a slipshod manner affects only the form but not the substance of the submission. Such slipshod preparation, even

assuming it to be true, would not deserve administrative censure. Not letting form prevail over substance still remains to be the judicial ideal.

The foregoing notwithstanding, we doubt the sincerity of the charge of professional negligence and incompetence. Had Seares, Jr. been prejudiced by Atty. Gonzales-Alzate's negligent and incompetent handling of his election protest, we wonder why he would denounce her only after nearly five years have passed. The motivation for the charge becomes suspect, and the charge is thereby weakened all the more.

II.

Charge of representing conflicting interests is bereft of merit

Seares, Jr. next charges Gonzales-Alzate with violating Canon 15 of the *Code of Professional Responsibility* for supposedly representing conflicting interests when she took on the administrative complaint that Turqueza brought against Seares, Jr.

The charge of Seares, Jr. is bereft of merit.

Canon 15 of the *Code of Professional Responsibility* prohibits an attorney from representing a party in a controversy that is either directly or indirectly related to the subject matter of a previous litigation involving another client. Relevantly, Rule 15.01, Rule 15.02 and Rule 15.03 provide:

Rule 15.01—A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

Rule 15.02—A lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client.

Rule 15.03—A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

Atty. Gonzales-Alzate's legal representation of Turqueza neither resulted in her betrayal of the fidelity and loyalty she owed to Seares, Jr. as his former attorney, nor invited the suspicion of unfaithfulness or double dealing while she was performing her duties as an attorney.^[39] Representing conflicting interests would occur only where the attorney's new engagement would require her to use against a former client any confidential information gained from the previous professional relation.^[40] The prohibition did not cover a situation where the subject matter of the present engagement was totally unrelated to the previous engagement of the attorney.^[41] To constitute the violation, the attorney should be shown to intentionally use against the former client the confidential information acquired by her during the previous employment.^[42] But a mere allegation of professional misconduct would not suffice to establish the charge, because accusation was not synonymous with guilt.^[43]

As it turned out, the charge of representing conflicting interests leveled against Atty. Gonzales-Alzate was imaginary. The charge was immediately unworthy of serious consideration because it was clear from the start that Atty. Gonzales-Alzate did not take advantage of her previous engagement by Seares, Jr. in her legal representation of Turqueza in the latter's administrative charge against Seares, Jr. There was no indication whatsoever of her having gained any confidential information during her previous engagement by Seares, Jr. that could be used against Seares, Jr. Her engagement by Seares, Jr. related only to the election protest in 2007, but Turqueza's complaint involved Seares, Jr.'s supposedly unlawful interference in ousting Turqueza as the president of the Liga ng mga Barangay of Dolores, Abra in 2010. There is no question that both charges were entirely foreign to one another.

Moreover, the prohibition against representing conflicting interests further necessitated identity of the parties or interests involved in the previous and present engagements. But such identity was not true here. The adverse party in Seares, Jr.'s election protest in 2007 was Albert Z. Guzman, the newly-elected Municipal Mayor of Dolores, Abra, who was not involved in Turqueza's administrative complaint against Seares, Jr. In fact, Turqueza was not even a mayoral candidate in Dolores, Abra in the elections held in 2007 and in 2010. The allegation by Seares, Jr. that Atty. Gonzales-Alzate represented his political opponent was not even true because Turqueza was Seares, Jr.'s political ally, as Atty. Gonzales-Alzate stated.

It is notable, too, that Seares, Jr. expressly agreed to Atty. Gonzales-Alzate's legal representation of Turqueza in the latter's administrative case against Seares, Jr. This is borne out by the affidavit of Turqueza that Atty. Gonzales-Alzate submitted,^[44] the relevant portion of which follows:

x x x x

6. When Mayor Robert Victor Seares arrived, he was with a black shirt and jeans and the Vice Governor started the conference asking us if there is a possibility of amicable settlement. Atty. Ma. Saniata Liwliwa Gonzales-Alzate first talked and she raised the fact that in 2007 Mayor Robert Victor Seares was her client in an election protest and she even said how she represented him, and Mayor Seares said "*wen Attorney* (yes Attorney) and the Atty. Gonzales-Alzate said to all of us in the said room that she was before the lawyer of Jr. Seares (Mayor Robert Victor Seares) and now if Jr. will not oppose it, she will be representing me in the said administrative case and this time, she will now be a lawyer against Jr. Seares. The said lawyer was even smiling when she said that and Jr. Seares (Mayor Robert Victor Seares) was normally giggling and smiling and said "*wen attorney, awan ti kuak dita, iyabogaduam latta a, isuna lang a ni kapitan no nya paylang ti kayatna, nayted la ngarud sueldo nan*" (Yes, attorney, I have no concern with that, you lawyer for him if that is so, I don't know what the (barangay) captain would still want, his salary was already released to him.)

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