



Republic of the Philippines  
Supreme Court  
Manila

SECOND DIVISION

MARCELINA ZAMORA,  
Complainant,

A.C. No. 10738

Present:

- versus -

PERLAS-BERNABE, S.A.J.,  
Chairperson,  
HERNANDO,  
INTING,  
DELOS SANTOS, and  
BALTAZAR-PADILLA, \* JJ.

ATTY. MARILYN V.  
GALLANOSA,  
Respondent.

Promulgated:

14 SEP 2020

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DECISION

PERLAS-BERNABE, J.:

The instant controversy stemmed from a complaint<sup>1</sup> for disciplinary action filed by complainant Marcelina Zamora (complainant) against respondent Atty. Marilyn V. Gallanosa (respondent), for allegedly violating multiple provisions of the Code of Professional Responsibility (CPR).

The Facts

Complainant averred<sup>2</sup> that sometime in June 2012, outside the office of Labor Arbiter Virginia T. Luyas-Azarraga (LA Azarraga) of the National

\* On Leave.

<sup>1</sup> See Sinumpaang Salaysay dated February 20, 2015; *rollo*, pp. 1-6.

<sup>2</sup> See complainant's Position Paper dated September 23, 2016; *id.* at 198-216.

Labor Relations Commission where her husband's illegal dismissal case against DM Consunji, Inc. was pending, respondent approached her and inquired about the said case and the "papers" that she has. When she showed respondent the Position Paper prepared by the Public Attorney's Office (PAO) for the case, the latter remarked, "[W]alang kadating dating ang ginawa ng abogado mong PAO, matatalo ang demanda mo dyan[.]"<sup>3</sup> Respondent further inquired about the pieces of evidence in the case, to which complainant replied that she provided them to the lawyer from the PAO but the latter did not attach the same to the position paper. Respondent then remarked, "[K]aya hindi niya ikinabit[,] ayaw niya kalabanin ang arbiter na humawak ng papel mo kasi magkakasabwat yang mga yan. Yong arbiter na humawak ng papel mo at saka [attorney] ng kumpanya. Alam ko yan kasi dati akong government pero umalis na ako kasi nga ayaw ko yong ginagawa nila, nag pro-labor na lang ako[.]"<sup>4</sup> Respondent thus opined that complainant should change the position paper and, subsequently, listed the documents to be attached to the new position paper, assuring the latter that once said documents were completed, she will surely win the case.<sup>5</sup>

A week later, complainant went to respondent's office at the Pacific Century Tower in Quezon City. She confirmed whether it was possible to replace the position paper she had already submitted, to which respondent replied, "*Pwede. Eto nga, tumatawag ako ng ibang hahawak,*" giving her the impression that another Labor Arbiter will handle the case. When she asked how much respondent's professional fee was, the latter informed her that the same shall be twenty percent (20%) (of the judgment award) but on a contingent basis, *i.e.*, payable only after the case is won, hence, she need not pay anything while the new position paper was being drafted.<sup>6</sup>

Complainant returned after a week to get the new position paper, and was instructed to submit the same to LA Azarraga. The opposing counsel did not object to the replacement, however, before accepting the same, LA Azarraga asked complainant whether respondent will attend the next hearing, which was confirmed by the latter when asked via cellphone call. However, respondent failed to appear at the next scheduled hearing, resulting to the submission of the case for resolution sans hearing.<sup>7</sup>

Subsequently, complainant received notice of the decision in the case. When she informed respondent thereof, the latter instructed her to email a copy as she has not yet received her copy. She was assured by respondent that the necessary appeal would be filed, however, the reglementary period lapsed without an appeal being perfected. When she confronted respondent, the latter denied being complainant's lawyer since she did not sign the position paper and never received any fees therefor. Complainant thus went

<sup>3</sup> Id. at 1.

<sup>4</sup> Id.

<sup>5</sup> See id. at 199-200.

<sup>6</sup> See id. at 200-201.

<sup>7</sup> See id. at 201-202.

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to the radio program of Mr. Raffy Tulfo, whose staff referred her to the PAO Central Office which, in turn, wrote respondent a letter about the appeal. However, the latter maintained that she is not complainant's lawyer.<sup>8</sup>

Nonetheless, complainant prevailed upon respondent to agree to file an appeal after the latter comes back from Bicol where she was attending to some family matters. Upon respondent's return, complainant called her but was informed that the appeal was already too late. Instead, respondent offered to negotiate with the opposing party's counsel for a higher amount of financial aid than what was awarded in the decision, but she failed to do so despite complainant's numerous follow-ups, which were eventually ignored.<sup>9</sup> Hence, the instant complaint averring that respondent violated the following Rules and Canons of the CPR, to wit:

1. Rule 2.03 of the CPR when she solicited legal business on a contingent basis;
2. Canon 17 of the CPR when she denied any professional relations with complainant;
3. Rule 3.01 of the CPR when she made it appear with great certainty that she will win the case;
4. Rule 18.03 of the CPR when she abandoned the case and allowed the appeal period to lapse;
5. Rules 8.01 and 8.02, Canon 8 of the CPR when she maligned the position paper prepared by the PAO and made baseless accusations against the Labor Arbiter, the corporate lawyer, and the PAO; and
6. Rule 15.06 of the CPR when she assured the admission by the Labor Arbiter of a new position paper, thereby implying that she has influence over the said official.<sup>10</sup>

In a Resolution<sup>11</sup> dated December 9, 2015, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

For her part, respondent maintained<sup>12</sup> that she is not complainant's lawyer and denied having offered her professional services as a lawyer in the labor case of complainant's husband. While she admitted having prepared the position paper in the case, the same was free of charge as a way of extending help to complainant. She did not sign the pleading or entered her

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<sup>8</sup> See *id.* at 202-203.

<sup>9</sup> See *id.* at 204.

<sup>10</sup> See *id.* at 267-268.

<sup>11</sup> See Notice of Resolution; *id.* at 117.

<sup>12</sup> See respondent's undated Position Paper notarized on October 1, 2016; *id.* at 222-234.

appearance in the case, nor was there any discussion or agreement on the compensation.<sup>13</sup>

### **The IBP's Report and Recommendation**

In a Report and Recommendation<sup>14</sup> dated January 30, 2017, the IBP found the charges to be well-founded. It held that: (a) the series of exchanges between the parties, such as the visits for advice and guidance at respondent's office, as well as the telephone calls and text exchanges between complainant and respondent; and (b) respondent's drafting and preparation of the position paper and instructions to file the same before the office of the Labor Arbiter in lieu of the earlier position paper filed in the case, clearly demonstrate a lawyer-client relationship between them because the acts of respondent constitute rendering legal services.<sup>15</sup> Thus, it recommended that respondent be suspended from the practice of law for six (6) months, with a warning that a repetition of the same or similar act in the future shall be dealt with severely.<sup>16</sup>

In a Resolution<sup>17</sup> dated August 31, 2017, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner.

Dissatisfied, respondent filed a Motion for Reconsideration<sup>18</sup> but the same was denied in a Resolution<sup>19</sup> dated December 6, 2018; hence, this petition.<sup>20</sup>

### **The Issue Before the Court**

The essential issue in this case is whether or not respondent should be administratively sanctioned for the acts complained of.

### **The Court's Ruling**

We adopt the findings of the IBP on the unethical conduct of respondent.

Canons of the CPR are rules of conduct all lawyers must adhere to, including the manner by which lawyers' services are to be made known. Thus, Canon 3 of the CPR provides:

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<sup>13</sup> See *id.* at 228-229.

<sup>14</sup> *Id.* at 264-272. Penned by Commissioner Rogelio N. Wong.

<sup>15</sup> See *id.* at 270-271.

<sup>16</sup> See *id.* at 272.

<sup>17</sup> See Notice of Resolution issued by IBP Assistant National Secretary Doroteo B. Aguila; *id.* at 263.

<sup>18</sup> Dated December 11, 2017. *Id.* at 273-282.

<sup>19</sup> See Notice of Resolution issued by IBP Assistant National Secretary Doroteo B. Aguila; *id.* at 329.

<sup>20</sup> See Petition for Review dated July 25, 2019; *id.* at 238-249.

CANON 3 – A LAWYER IN MAKING KNOWN HIS LEGAL SERVICES SHALL USE ONLY TRUE, HONEST, FAIR, DIGNIFIED AND OBJECTIVE INFORMATION OR STATEMENT OF FACTS.

Time and again, lawyers are reminded that the practice of law is a profession and not a business; lawyers should not advertise their talents as merchants advertise their wares. To allow lawyers to advertise their talents or skills is to commercialize the practice of law, degrade the profession in the public's estimation and impair its ability to efficiently render that high character of service to which every member of the bar is called.<sup>21</sup> Thus, lawyers in making known their legal services must do so in a dignified manner. They are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers.<sup>22</sup>

Rule 2.03 of the CPR explicitly states that “[a] lawyer shall not do or permit to be done any act designed primarily to solicit legal business.” Thus, “ambulance chasing,” or the solicitation of almost any kind of business by an attorney, personally or through an agent, in order to gain employment, is proscribed.<sup>23</sup>

In this case, respondent admitted having met complainant (albeit under different circumstances as claimed by complainant), advised the latter to see her in her office so they can discuss her husband's labor case, and prepared the position paper for the case,<sup>24</sup> all of which constitute practice of law. Case law states that the “practice of law” means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. Thus, to engage in the practice of law is to perform acts which are usually performed by members of the legal profession requiring the use of legal knowledge or skill,<sup>25</sup> and embraces, among others: (a) the preparation of pleadings and other papers incident to actions and special proceedings; (b) the management of such actions and proceedings on behalf of clients before judges and courts; and (c) advising clients, and all actions taken for them in matters connected with the law, where the work done involves the determination by the trained legal mind of the legal effects of facts and conditions.<sup>26</sup>

A lawyer-client relationship was established from the very first moment respondent discussed with complainant the labor case of her husband and advised her as to what legal course of action should be pursued therein. By respondent's acquiescence with the consultation and her drafting of the position paper which was thereafter submitted in the case, a

<sup>21</sup> *Linsangan v. Tolentino*, 614 Phil. 327, 333 (2009); citations omitted.

<sup>22</sup> *Palencia v. Linsangan*, A.C. No. 10557, July 10, 2018, 871 SCRA 440, 453.

<sup>23</sup> *Palencia v. Linsangan*, id. at 454.

<sup>24</sup> See *rollo*, pp. 224-225.

<sup>25</sup> *Cayetano v. Monsod*, 278 Phil. 235, 243 (1991).

<sup>26</sup> See id. at 242. See also *Bonifacio v. Era*, 819 Phil. 170, 181 (2017).

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professional employment was established between her and complainant. To constitute professional employment, it is not essential that the client employed the attorney professionally on any previous occasion, or that any retainer be paid, promised, or charged.<sup>27</sup> The fact that one is, at the end of the day, not inclined to handle the client's case, or that no formal professional engagement follows the consultation, or no contract whatsoever was executed by the parties to memorialize the relationship is hardly of consequence.<sup>28</sup> To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession.<sup>29</sup>

Corollarily, the Court finds that respondent is likewise guilty of violation of Rule 8.02<sup>30</sup> of the CPR. Settled is the rule that a lawyer should not steal another lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services.<sup>31</sup> It is undisputed that respondent was aware of the professional relationship between the PAO and complainant/her husband with respect to the labor case, yet, she assumed the drafting of a new position paper, especially to replace the one originally filed by the PAO.

There being a lawyer-client relationship existing between the parties, respondent was duty-bound to file the appeal she had agreed to prepare in the case at the soonest possible time, in order to protect the client's interest. Her failure to do so made her liable for transgressing Canon 17 which enjoins lawyers to be mindful of the trust and confidence reposed on them, as well as Rule 18.03<sup>32</sup> of the CPR which prohibits lawyers from neglecting legal matters entrusted to them.

In *Hernandez v. Padilla*,<sup>33</sup> a lawyer who similarly denied the existence of any lawyer-client relationship with the complainant and was negligent in handling his client's case was suspended from the practice of law for six (6) months and sternly warned that a repetition of the same or a similar offense will be dealt with more severely. Consistent with this case, the Court agrees with the IBP's recommendation to suspend respondent for the same period.

**WHEREFORE**, respondent Atty. Marilyn V. Gallanosa is found **GUILTY** of violating Rules 2.03, 8.02, and 18.03, and Canon 17 of

<sup>27</sup> *Burbe v. Magulta*, 432 Phil. 840, 848 (2002).

<sup>28</sup> *Hadlujá v. Madianda*, 553 Phil. 221, 227 (2007).

<sup>29</sup> See *Santos v. Navarro*, A.C. No. 12178, October 16, 2019, citing *Spouses Rabanal v. Atty. Tugade*, 432 Phil. 1064, 1068 (2002).

<sup>30</sup> Rule 8.02 - A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer, however, it is the right of any lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

<sup>31</sup> *Linsangan v. Tolentino*, supra note 21, at 334, citing Agpalo, LEGAL AND JUDICIAL ETHICS, 7th Edition (2002), p. 101.

<sup>32</sup> Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

<sup>33</sup> 688 Phil. 329 (2012).

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the Code of Professional Responsibility. Accordingly, she is hereby **SUSPENDED** from the practice of law for a period of six (6) months, effective immediately upon her receipt of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

She is **DIRECTED** to immediately file a Manifestation to the Court that her suspension has started, copy furnished all courts and quasi-judicial bodies where she has entered her appearance as counsel.

Let copies of this Decision be furnished the Office of the Bar Confidant to be entered in respondent's personal record as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the office of the Court Administrator for circulation to all courts.

**SO ORDERED.**

  
**ESTELA M. PERLAS-BERNABE**  
Senior Associate Justice

**WE CONCUR:**

  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**HENRI JEAN PAUL B. INTING**  
Associate Justice

  
**EDGARDO L. DELOS SANTOS**  
Associate Justice

**On Leave**  
**PRISCILLA J. BALTAZAR-PADILLA**  
Associate Justice