

OCA CIRCULAR NO. 103-2004, August 31, 2004

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TO:

THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI' A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC ATTORNEY'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT:

SUSPENSION FROM THE PRACTICE OF LAW FOR ONE (1) YEAR OF ATTY. RIZALINO T. SIMBILLO

For the information and guidance of all concerned, quoted hereunder is the Resolution of the First Division of this Court dated August 19, 2003 in Administrative Case No. 5299 entitled "Atty. Ismael G. Khan, Jr. vs. Atty. Rizalino T. Simbillo" and G.R. No. 157053 entitled "Atty. Rizalino T. Simbillo vs. IBP Commission on Bar Discipline, et al.", to wit:

"This administrative complaint arose from a paid advertisement that appeared in the July 5, 2000 issue of the newspaper, Philippine Daily Inquirer, which reads: "ANNULMENT OF MARRIAGE Specialist 532-4333/521-2667."[1]

Ms. Ma. Theresa B. Espeleta, a staff member of the Public Information Office of the Supreme Court, called up the published telephone number and pretended to be an interested party. She spoke to Mrs. Simbillo, who claimed that her husband, Atty. Rizalino Simbillo, was expert in handling annulment cases and can guarantee a court decree within four to six months, provided the case will not involve separation of property or custody of children. Mrs. Simbillo also said that her husband charges a fee of P48,000.00 of which is payable at the time of filing of the case and the other half after a decision thereon has been rendered.

Further research by the Office of the Court Administrator and the Public Information Office revealed that similar advertisements were published in the August 2 and 6, 2000 issues of the Manila Bulletin and August 5, 2000 issue of The Philippine Star.[2]

On September 1, 2000, Atty. Ismael G. Khan, Jr., in his capacity as Assistant Court Administrator and Chief of the Public

Information Office, filed an administrative complaint against Atty. Rizalino T. Simbillo for improper advertising and solicitation of his legal services, in violation of Rule 2.03 and Rule 3.01 of the Code of Professional Responsibility and Rule 138, Section 27 of the Rules of Court.[3]

In his answer, respondent admitted the acts imputed to him, but argued that advertising and solicitation per se are not prohibited acts; that the time has come to change our views about the prohibition on advertising and

solicitation; that the interest of the public is not served by the absolute prohibition on lawyer advertising; that the Court can lift the ban on lawyer advertising; and that the rationale behind the decades-old prohibition should be abandoned. Thus, he prayed that he be exonerated from all the charges against him and that the Court promulgate a ruling that advertisement of legal services offered by a lawyer is not contrary to law, public policy and public orders as long as it is dignified.[4]

The case was referred to the Integrated Bar of the Philippines for investigation, report and recommendation.[5] On June 29, 2002, the IBP Commission on Bar Discipline passed Resolution No. XV- 2002-306,[6] finding respondent guilty of violation of Rules 2.03 and 3.01 of the Code of Professional Responsibility and Rule 138, Section 27 of the Rules of Court, and suspended him from the practice of law for one (1) year with the warning that a repetition of similar acts would be dealt with more severely. The IBP Resolution was noted by this Court on November 11, 2002.[7]

In the meantime, respondent filed an Urgent Motion for Reconsideration,[8] which was denied by the IBP in Resolution No. XV-2002-606 dated October 3 9, 2002[9]

Hence, the instant petition for certiorari, which was docketed as G.R. No. 157053 entitled, "Atty. Rizalino T. Simbillo, Petitioner versus IBP Commission on Bar Discipline, Atty. Ismael G. Khan, Jr., Asst. Court Administrator and Chief, Public Information Office, Respondents." This petition was consolidated with A.C. No. 5299 per the Court's Resolution dated March 4, 2003.

In a Resolution dated March 26, 2003, the parties were required to manifest whether or not they were willing to submit the case for resolution on the basis of the pleadings.[10] Complainant filed his Manifestation on April 25, 2003, stating that he is not submitting any additional pleading or evidence and is submitting the case for its early resolution on the basis of pleadings and records thereof.[11] Respondent, on the other hand, filed a Supplemental Memorandum on June 20, 2003.

We agree with the IBP's Resolutions Nos. XV-2002-306 and XV-2002-606.

Rules 2.03 and 3.01 of the Code of Professional Responsibility read:

Rule 2.03. - A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

Rule 3.01. - A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.

Rule 138. Section 27 of the Rules of Court states:

SEC. 27. Disbarment and suspension of attorneys by Supreme Court, grounds therefore. - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party without authority to do so.

It has been repeatedly stressed that the practice of law is not a business.[12] It is a profession in which duty to public service, not money, is the primary consideration. Lawyering is not primarily meant to be a money-making venture, and law advocacy is not a capital that necessarily yields profits.[13] The gaining of a livelihood should be a secondary consideration.[14] The duty to public service and to the administration of justice should be the primary consideration of lawyers, who must subordinate their personal interests or what they owe to themselves.[15] The following elements distinguish the legal profession from a business:

- A duty of public service, of which the emolument is a by-product, and in which one may attain the highest

eminence without making much money;

- A relation as an "officer of the court" to the administration of justice involving thorough sincerity, integrity and reliability;
- A relation to clients in the highest degree of fiduciary;
- A relation to colleagues at the bar characterized by candor, fairness, and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with their clients.[16]

There is no question that respondent committed the acts complained of. He himself admits that he caused the publication of the advertisements. While he professes repentance and begs for the Court's indulgence, his contrition rings hollow considering the fact that he advertised his legal services again after he pleaded for compassion and after claiming that he had no intention to violate the rules. Eight months after filing his answer, he again advertised his legal services in the August 14, 2001 issue of the Buy & Sell Free Ads Newspaper.[17] Ten months later, he caused the same advertisement to be published in the October 5, 2001 issue of Buy & Sell.[18] Such acts of respondent are a deliberate and contemptuous affront on the Court's authority.

What adds to the gravity of respondent's acts is that in advertising himself as a self-styled "Annulment of Marriage Specialist" he wittingly or unwittingly erodes and undermines not only the stability but also the sanctity of an institution still considered sacrosanct despite the contemporary climate of permissiveness in our society. Indeed, in assuring prospective clients that an annulment may be obtained in four to six months from the time of the filing of the case,[19] he in fact encourages people, who might have otherwise been disinclined and would have refrained from dissolving their marriage bonds, to do so.

Nonetheless, the solicitation of legal business is not altogether proscribed. However, for solicitation to be proper, it must be compatible with the dignity of the legal profession. If it is made in a modest and decorous manner, it would bring no injury to the lawyer and to the bar.[20] Thus, the use of simple signs stating the name or names of the lawyers, the office and residence address and fields of practice, as well as advertisement in legal periodicals bearing the same brief data, are permissible. Even the use of calling cars is now acceptable.[21] Publication in reputable law lists, in a manner consistent with the standards of conduct imposed by the canon, of brief biographical and informative data is likewise allowable. As explicitly stated in *Ulep v. Legal Clinic, Inc.*: [22]

Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of law practiced; date and place of birth and admission to the bar; schools attended with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorships; legal teaching positions; membership and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of listings in other reputable law lists; the names and addresses of references; and, with their written consent, the names of clients regularly represented.

The law list must be a reputable law list published primarily for that purpose; it cannot be a mere supplemental feature of a paper, magazine, trade journal or periodical which is published principally for other purposes. For that reason, a lawyer may not properly publish his brief biographical and informative data in a daily paper, magazine, trade journal or society program. Nor may a lawyer permit his name to be published in a law list the conduct, management, contents of which are calculated or likely to deceive or injure the public or the bar, or to lower dignity or standing of the profession.

The use of an ordinary simple professional card is also permitted. The card may contain only a statement of his

name, the name of the law firm which he is connected with, address, telephone number and special branch of law ' practiced. The publication of a simple announcement of the opening of a law firm or of changes in the partnership, associates, firm name or office address, being for the convenience of the profession, is not objectionable. He may likewise have his name listed in a telephone directory but not under a designation of special branch of law. (emphasis and italics supplied)

WHEREFORE, in view of the foregoing, respondent RIZALINO T. SMBILLO is found GUILTY of violation of Rules 2.03 and 3.01 of the Code of Professional Responsibility and Rule . 138, Section 27 of the Rules of Court. He is SUSPENDED from the practice of law for ONE (1) YEAR effective upon receipt of this Resolution. He is likewise STERNLY WARNED that a repetition of the same or similar offense will be dealt with more severely.

Let copies of this Resolution be entered in his record as attorney and be furnished the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED."

Copy of the resolution was received by respondent on August 27, 2003. The motion for reconsideration filed by respondent was denied for lack of merit in the resolution dated November 12, 2003.

__31__ August 2004.

PRESBITERO J. VELASCO, JR.

Court Administrator

[1]Rollo.p. 13.

[2] Id., pp. 14-15.

[3] Id., p. 9.

[4] Id., pp. 21-57.

[5] Id., p. 60.

[6] Id., p. 62.

[7] Id., p. 72.

[8] Id., p. 75.

[9] Id., p. 73.

[10] Id., p. 109.

[11] Id., p. 110.

[12]Cantiiler v. Potenciano, AC, No, 3195, 18 December 1989 , 180 3CRA246.253.

[13]Canlas v. Court of Appeals, G.R. No. L-77691, 8 August 1988,164 SCRA 160,174.

[14]Agpalo R., LEGAL ETHICS, p. 12 [1997]

[15]Burbe v. Magulta, AC. No. 5713, 10 June 2002 .

[16]Agpalo, supra, at pp. 13-14, citing In re Sycip, 30 July 1979, 92 SCRA 1,10; Pineda E.L. LEGAL AND JUDICIAL ETHICS, p. 58 [1999]

[17] Rollo.Vol.II p. 41.

[18] Id., p. 110.

[19] Rollo, Vol. I, p. 3.

[20] Pineda, Legal and Judicial Ethics, supra, at p. 61.

[21] Id ., p. 65.

[22]Bar Matter No. 553, M June 1993, 223 SCRA 378.407.

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