

FLORAIDA BANARES, COMPLAINANT, VS. ATTY. ROSALINO C. BARICAN, RESPONDENT.*A.C. No. 1288. July 29, 1974*

Ponente: CASTRO, J.

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The verified complaint filed by Floraida Lopez de Banares who accuses Atty. Rosalino C. Barican of "abandoning" her case (referring to Special Proceeding 7500 of the Court of First Instance of Rizal, Branch II), alleges specially that she engaged the services of the respondent lawyer for the purpose of acquiring the custody of her minor child from the spouses Francisco Banares and Ester Macam; that the respondent did file the appropriate petition for habeas corpus, but that except for the initial hearing the respondent failed to appear in court at the succeeding scheduled hearings, resulting in the dismissal of the petition on November 7, 1973.

Required to comment, the respondent explained, under oath, that it was not the complainant, but her mother, Percida Vasquez who did engage but later terminated his legal services. His version of the material events is as follows: he was the lawyer of the Baron Express, a transportation firm whose bus figured in an accident which caused the death of Rolando Banares, alleged husband of the complainant; in August 1973 the complainant's mother, Percida Vasquez, who wanted compensation for the death of her son-in-law, was referred to him; he advised her that no settlement could at the time be discussed because Francisco Banares, the father of the deceased, had filed a similar claim with the Office of Civil Relations at Camp Aguinaldo, whereupon, she assured the respondent that she would cause her daughter (the complainant) to thresh out the matter with her in-laws; a week later the complainant and her mother informed the respondent that the Banares family, who had the custody of the complainant's daughter, would not forego their claim as they refused to recognize the complainant as the lawful wife of the deceased on September 5, 1973 Percida Vasquez informed the respondent that they could not avail of the services of their lawyer, one Atty. Oligarion, in the matter of their claim for compensation from the Baron Express and for recovery of the custody of the complainant's daughter, for lack of expense money; she pleaded with the respondent who, moved by her insistence and also by his (respondent) wife's intercession, agreed to help in the recovery of the child's custody; on another visit, the complainant and her mother proposed to the respondent that, because they did not have money to pay for litigation expenses, the Baron Express assist them financially, and any financial assistance it would extend was to be deducted from whatever compensation was due them for Rolando's death; the respondent referred the proposal to the management of the Baron Express, which accepted the proposal and consequently advanced a sum of money to the complainant; thereafter, the respondent prepared the petition for habeas corpus; on September 16, 1973, the complainant and her mother were given the petition but they did not file it for lack of funds; the respondent again interceded with the Baron Express, which again extended monetary assistance, and the petition was thereafter filed with the Court of First Instance of Rizal; the case was set for initial hearing but was re-set to October 24, 1973 because Francisco Banares manifested in court that the complainant was not the lawful wife of his deceased son; on the day of the initial hearing, the complainant's mother intimated to the respondent that her daughter's common-law husband, one Mr. Hilado, was furious with her and her daughter for soliciting the services of the respondent, whereupon the latter, on

confirmation by the complainant and her step-father of the information given to him, advised the complainant that it was best that they retain the services of another lawyer; it was then agreed that the complainant would confer with her common-law husband, after which if she believed that the respondent's appearance would still be necessary, she would accordingly notify the respondent before October 24, 1973, submit to the respondent pertinent documents from the hospital where she allegedly gave birth, and arrange a conference between the attending physician and the respondent, but the complainant did none of these; on October 18, 1973 Percida Vasquez tearfully informed the respondent that she was terminating his services as counsel, as her daughter and her common-law husband had forbidden her from interfering with the case because they had replaced the respondent with another lawyer, one Atty. Fortaleza; in the respondent's presence Percida Vasquez instructed her other daughter (who came with her) to fetch the complainant in order to clarify matters with the respondent; on October 22, 1973 Percida Vasquez informed the respondent that her daughter would no longer avail of his services as she had decided to retain the services of another lawyer chosen by her common-law husband; and for all his bother the respondent was not compensated a single centavo.

In reply to the foregoing comment, the complainant denied that she had solicited the respondent's services and alleged that on the contrary the respondent had volunteered his services; denied that the professional services of the respondent were contracted gratis et amore and averred that he had agreed to a contingent-fee arrangement; denied that she failed to contact the respondent because in fact she did call him by phone and advised him of the next hearing; averred that the respondent had promised to appear but did not; admitted that she was able to secure "vales" or cash advances from the Baron Express on three occasions thru the help of the respondent; alleged that during the initial hearing the respondent talked to her and suggested that they live together as husband and wife, and promised to provide her with life's comforts, and later reminded her of their "date" the following Saturday at "Jack's Place" in Caloocan City; asserted that she did not appear at the designated place, and that thereafter the respondent turned indifferent to her case and consequently failed to appear at the later court hearings.

The respondent filed a rejoinder wherein he stressed that it was not the complainant but her mother, Percida Vasquez, who engaged his services; denied the allegation that he had suggested that he and the complainant live together and he would provide her with luxuries; and further denied the allegation that he had reminded the complainant of a supposed "date."

Upon the allegations of the parties, the charge that the respondent abandoned the habeas corpus case of the complainant Floraida Banares would appear to merit investigation, but the apparent joinder of issues is unreal, for rather than frontally meeting or directly traversing the allegations of the respondent that are material to the existence of a cause of action for abandonment of a client's case, the complainant evades or does not categorically or completely deny the said allegations.

If an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted. (1 Moran 332-334)

The material determinative allegations of the respondent and the statements of the complainant thereon are as follows:

1. The complainant neither admits nor denies the respondent's allegation that it was the complainant's mother, and not she, who engaged his professional services, but simply states that he volunteered his services.
2. To the allegation that the complainant agreed (but failed) to notify the respondent before October 24, 1973 if, after conferring with her common-law husband, the respondent's appearance in court would still be necessary, the complainant states that she did call the respondent by phone about the necessity of his appearance and the respondent allegedly promised to appear, but the complainant fails to state whether or not she had conferred with

her common-law husband on the matter of the dismissal or the further retention of the respondent as her counsel. It is to be noted that the agreement that the complainant would inform the respondent before the October 24, 1973 hearing as to the necessity of his appearance was predicated on the facts (a) that the complainant's common-law husband had objected to the respondent's being retained as counsel, and (b) that the respondent had, in deference thereto, advised the complainant to secure the services of another lawyer.

3. The complainant does not deny the respondent's allegation that although she had agreed to present pertinent hospital records to the respondent and to arrange a conference between the doctor and the respondent, she failed to do so.

4. The allegation that the complainant's mother went twice to see the respondent to inform him that his services would no longer be availed of by her daughter as she and her common-law husband had already replaced the respondent as counsel, is not at all denied by the complainant.

In sum and substance, the complainant's non-categorical statements on the material issues amount to an admission (requiring no proof) that the respondent did not "abandon" her case, and, instead, that she, by herself and thru her mother, dismissed the respondent as her lawyer.

ACCORDINGLY, the administrative complaint against the respondent is hereby dismissed. No costs.

Makalintal, C.J., Teehankee, Makasiar, Esguerra, and Muñoz Palma, JJ., concur.

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