

ANGELITA C. ORCINO, COMPLAINANT, VS. ATTY. JOSUE GASPAR, RESPONDENT.

A.C. No. 3773. September 24, 1997

Ponente: PUNO, J.

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PUNO, J.:

On June 14, 1992, complainant Angelita C. Orcino filed with this Court a letter-complaint dated December 10, 1991 against respondent Atty. Josue Gaspar, her former counsel. Complainant prayed that this Court impose disciplinary sanctions on respondent for abandoning his duties and for failing to return the legal fees she fully paid for his services.

The complaint arose from the following facts: Complainant engaged the services of respondent to prosecute a criminal case she intended to file against several suspects in the slaying of her husband. In consideration thereof, complainant bound herself to pay respondent legal fees of P20,000.00 -- P10,000.00 to be paid upon signing of the contract and the balance to be paid on or before the conclusion of the case. Complainant was also to pay P500.00 per appearance of respondent before the court and fiscal. This agreement was embodied in a contract executed on February 22, 1991.[1]

In accordance with the contract, complainant paid respondent the sum of P5,000.00 on February 25, 1991,[2] another P5,000.00 on March 31, 1991,[3] and P10,000.00 on May 21, 1991,[4] for a total of P20,000.00.

Forthwith, respondent entered into his duties. He interviewed witnesses and gathered evidence to build a case against the suspects. He drew up the necessary sworn statements and dutifully attended the preliminary investigation. The case was thereafter filed with the Regional Trial Court, Branch 37, Baloc, Sto. Domingo, Nueva Ecija.[5]

As private prosecutor, respondent religiously attended the bail hearings for the accused although these hearings were postponed on motion of the accused's counsel. Respondent however failed to attend the hearing scheduled in August 1991. It was at this hearing that the court, over complainant's objections, granted bail to all the accused. After the hearing, complainant immediately went to respondent's residence and confronted him with his absence.[6] Respondent explained that he did not receive formal notice of the hearing.[7] Complainant became belligerent and started accusing him of jeopardizing the case by his absence. Respondent said that her suspicions were based on rumors and intrigues fed to her by her relatives.[8] Complainant, however, continued accusing him belligerently. She asked for the records of the case saying that she could refer them to another lawyer. Stung by her words, respondent gave her the records.[9]

Complainant never returned the records nor did she see respondent. On September 18, 1991, respondent filed before the trial court a "Motion to Withdraw as Counsel." [10] The motion did not bear the consent of complainant.

On October 23, 1991, the court issued an order directing respondent to secure complainant's consent to the motion

"and his appearance as private prosecutor shall continue until he has secured this consent." [11]

Complainant refused to sign her conformity to respondent's withdrawal. [12] Meanwhile, the hearings in the criminal case continued. Respondent did not appear at the hearings nor did he contact complainant. Complainant was thus compelled to engage the services of another lawyer. Hence, the letter-complaint.

We referred the letter-complaint to the Integrated Bar of the Philippines, Commission on Bar Discipline, for investigation, report and recommendation.

The rule in this jurisdiction is that a client has the absolute right to terminate the attorney-client relation at any time with or without cause. [13] The right of an attorney to withdraw or terminate the relation other than for sufficient cause is, however, considerably restricted. [14] Among the fundamental rules of ethics is the principle that an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion. [15] He is not at liberty to abandon it without reasonable cause. [16] A lawyer's right to withdraw from a case before its final adjudication arises only from the client's written consent or from a good cause. [17]

Section 26 of Rule 138 of the Revised Rules of Court provides:

Sec. 26. Change of attorneys -- An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

x x x."

A lawyer may retire at any time from any action or special proceeding with the written consent of his client filed in court and copy thereof served upon the adverse party. Should the client refuse to give his consent, the lawyer must file an application with the court. The court, on notice to the client and adverse party, shall determine whether he ought to be allowed to retire. The application for withdrawal must be based on a good cause. [18]

In the instant case, complainant did not give her written consent to respondent's withdrawal. The court thus ordered respondent to secure this consent. Respondent allegedly informed the court that complainant had become hostile and refused to sign his motion. [19] He, however, did not file an application with the court for it to determine whether he should be allowed to withdraw.

Granting that respondent's motion without complainant's consent was an application for withdrawal with the court, we find that this reason is insufficient to justify his withdrawal from the case. Respondent's withdrawal was made on the ground that "there no longer exist[ed] the xxx confidence" between them and that there had been "serious differences between them relating to the manner of private prosecution." [20]

Rule 22.01 of Canon 22 of the Code of Professional Responsibility provides:

CANON 22 -- A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

Rule 22.01-- A lawyer may withdraw his services in any of the following cases:

- a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
- b) When the client insists that the lawyer pursue conduct violative of these canons and rules;
- c) When his inability to work with co-counsel will not promote the best interest of the client;

- d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
- e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
- f) When the lawyer is elected or appointed to public office; and
- g) Other similar cases."

A lawyer may withdraw his services from his client only in the following instances: (a) when a client insists upon an unjust or immoral conduct of his case; (b) when the client insists that the lawyer pursue conduct violative of the Code of Professional Responsibility; (c) when the client has two or more retained lawyers and the lawyers could not get along to the detriment of the case; (d) when the mental or physical condition of the lawyer makes him incapable of handling the case effectively; (e) when the client deliberately fails to pay the attorney's fees agreed upon; (f) when the lawyer is elected or appointed to public office; (g) other similar cases.

The instant case does not fall under any of the grounds mentioned. Neither can this be considered analogous to the grounds enumerated. As found by the Commission on Bar Discipline, this case arose from a simple misunderstanding between complainant and respondent. Complainant was upset by respondent's absence at the hearing where bail was granted to the suspected killers of her husband. She vehemently opposed the grant of bail. It was thus a spontaneous and natural reaction for her to confront respondent with his absence. Her belligerence arose from her overzealousness, nothing more. Complainant's words and actions may have hurt respondent's feelings considering the work he had put into the case. But her words were uttered in a burst of passion. And even at that moment, complainant did not expressly terminate respondent's services. She made this clear when she refused to sign his "Motion to Withdraw as Counsel."

Assuming, nevertheless, that respondent was justified in terminating his services, he, however, cannot just do so and leave complainant in the cold unprotected. The lawyer has no right to presume that his petition for withdrawal will be granted by the court.[21] Until his withdrawal shall have been approved, the lawyer remains counsel of record who is expected by his client as well as by the court to do what the interests of his client require.[22] He must still appear on the date of hearing[23] for the attorney-client relation does not terminate formally until there is a withdrawal of record.[24]

Respondent expressly bound himself under the contract to bring the criminal case to its termination. He was in fact paid in full for his services. Respondent failed to comply with his undertaking, hence, it is but fair that he return to complainant half of the amount paid him. The peculiar circumstances of the case have rendered it impossible for respondent and complainant to continue their relation under the contract.

IN VIEW WHEREOF, respondent is admonished to exercise more prudence and judiciousness in dealing with his clients. He is also ordered to return to complainant within fifteen (15) days from notice the amount of ten thousand pesos (P10,000.00) representing a portion of his legal fees received from the latter with a warning that failure on his part to do so will result in the imposition of stiffer disciplinary action.

SO ORDERED.

Regalado, (Chairman) and Torres, Jr., JJ., concur.

Mendoza, J., on official leave.

[1] Exhibit "C."

[2] Exhibit "D."

[3] Exhibit "E."

[4] Exhibit "F."

[5] Criminal Case No. SD-66(91) entitled "People of the Philippines v. Venancio Salazar, Danilo Salazar and Celso Salazar."

[6] TSN of November 22, 1993, pp. 14-16.

[7] Id., p. 15.

[8] Answer, p. 4, Records, p. 24; Exhibit "1."

[9] Exhibit "1," p. 1.

[10] Exhibit "G."

[11] Exhibit "H."

[12] TSN of August 31, 1995, p. 6.

[13] Rinconanda Tel. Co., Inc. v. Buenviaje, 184 SCRA 701, 704 [1990]; Second Paragraph, Section 26, Rule 138, Revised rules of court Provides:

"x x x A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract x x x."

[14] Martin, Legal and Judicial Ethics, p. 102 [1988]; and Pineda, Legal and Judicial ethics, p. 266 [1994] citing 7 C.J.S. 940.

[15] Dais v. Garduno, 49 Phil. 165, 169 [1925]; Stork Country v. Mishel, 173 N.W. 817, 820, 6 ALR 174 [1919], cited in Agpalo, Legal Ethics, pp. 289-290 [1992]; Martin, supra, and Pineda, supra.

[16] Id.

[17] Agpalo, supra, at 290, citing Rule 138, Sec. 26; Canon 22, Code of Professional Responsibility; Canon 44, Canons of Professional Ethics.

[18] Agpalo, supra.

[19] TSN of August 31, 1995, pp. 6-7.

[20] Exhibit "G."

[21] Visitacion v. Manit, 27 SCRA 523, 531 [1969].

[22] People v. Casimiro, 45 SCRA 554, 556-557 [1972]; Wack-Wack Golf and Country Club v. Court of Appeals, 106 Phil. 501, 504-505 [1959].

[23] Visitacion v. Manit, supra; Wack-Wack Golf and Country Club v. Court of Appeals, supra.

[24] Tumbagahan v. Court of Appeals, 165 SCRA 485 [1988]; Visitacion v. Manit, supra.

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