

PEDRO L. LINSANGAN, COMPLAINANT, VS. ATTY. NICOMEDES TOLENTINO, RESPONDENT.

A.C. No. 6672. September 04, 2009

Ponente: CORONA, J.

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CORONA, J.:

This is a complaint for disbarment[1] filed by Pedro Linsangan of the Linsangan Linsangan & Linsangan Law Office against Atty. Nicomedes Tolentino for solicitation of clients and encroachment of professional services.

Complainant alleged that respondent, with the help of paralegal Fe Marie Labiano, convinced his clients[2] to transfer legal representation. Respondent promised them financial assistance[3] and expeditious collection on their claims.[4] To induce them to hire his services, he persistently called them and sent them text messages.

To support his allegations, complainant presented the sworn affidavit[5] of James Gregorio attesting that Labiano tried to prevail upon him to sever his lawyer-client relations with complainant and utilize respondent's services instead, in exchange for a loan of P50,000. Complainant also attached "respondent's" calling card:[6]

Front

NICOMEDES TOLENTINO
LAW OFFICE
CONSULTANCY & MARITIME SERVICES

W/ FINANCIAL ASSISTANCE

Fe Marie L. Labiano
Paralegal

1st MIJI Mansion, 2nd Flr. Rm. M-01 Tel: 362-7820
6th Ave., cor M.H. Del Pilar Fax: (632) 362-7821
Grace Park, Caloocan City Cel.: (0926) 2701719

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(emphasis supplied)

Hence, this complaint.

Respondent, in his defense, denied knowing Labiano and authorizing the printing and circulation of the said calling card.[7]

The complaint was referred to the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[8]

Based on testimonial and documentary evidence, the CBD, in its report and recommendation,[9] found that respondent had encroached on the professional practice of complainant, violating Rule 8.02[10] and other canons[11] of the Code of Professional Responsibility (CPR). Moreover, he contravened the rule against soliciting cases for gain, personally or through paid agents or brokers as stated in Section 27, Rule 138[12] of the Rules of Court. Hence, the CBD recommended that respondent be reprimanded with a stern warning that any repetition would merit a heavier penalty.

We adopt the findings of the IBP on the unethical conduct of respondent but we modify the recommended penalty.

The complaint before us is rooted on the alleged intrusion by respondent into complainant's professional practice in violation of Rule 8.02 of the CPR. And the means employed by respondent in furtherance of the said misconduct themselves constituted distinct violations of ethical rules.

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

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 time 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.[13] To allow a lawyer to advertise his talent or skill 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.[14]

Rule 2.03 of the CPR provides:

RULE 2.03. A LAWYER SHALL NOT DO OR PERMIT TO BE DONE ANY ACT DESIGNED PRIMARILY TO SOLICIT LEGAL BUSINESS.

Hence, lawyers are prohibited from soliciting cases for the purpose of gain, either personally or through paid agents or brokers.[15] Such actuation constitutes malpractice, a ground for disbarment.[16]

Rule 2.03 should be read in connection with Rule 1.03 of the CPR which provides:

RULE 1.03. A LAWYER SHALL NOT, FOR ANY CORRUPT MOTIVE OR INTEREST, ENCOURAGE ANY SUIT OR PROCEEDING OR DELAY ANY MAN'S CAUSE.

This rule proscribes "ambulance chasing" (the solicitation of almost any kind of legal business by an attorney, personally or through an agent in order to gain employment)[17] as a measure to protect the community from barratry and champerty.[18]

Complainant presented substantial evidence[19] (consisting of the sworn statements of the very same persons coaxed by Labiano and referred to respondent's office) to prove that respondent indeed solicited legal business as well as profited from referrals' suits.

Although respondent initially denied knowing Labiano in his answer, he later admitted it during the mandatory

hearing.

Through Labiano's actions, respondent's law practice was benefited. Hapless seamen were enticed to transfer representation on the strength of Labiano's word that respondent could produce a more favorable result.

Based on the foregoing, respondent clearly solicited employment violating Rule 2.03, and Rule 1.03 and Canon 3 of the CPR and Section 27, Rule 138 of the Rules of Court.

With regard to respondent's violation of Rule 8.02 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.[20] Again the Court notes that respondent never denied having these seafarers in his client list nor receiving benefits from Labiano's "referrals." Furthermore, he never denied Labiano's connection to his office.[21] Respondent committed an unethical, predatory overstep into another's legal practice. He cannot escape liability under Rule 8.02 of the CPR.

Moreover, by engaging in a money-lending venture with his clients as borrowers, respondent violated Rule 16.04:

Rule 16.04 - A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.

The rule is that a lawyer shall not lend money to his client. The only exception is, when in the interest of justice, he has to advance necessary expenses (such as filing fees, stenographer's fees for transcript of stenographic notes, cash bond or premium for surety bond, etc.) for a matter that he is handling for the client.

The rule is intended to safeguard the lawyer's independence of mind so that the free exercise of his judgment may not be adversely affected.[22] It seeks to ensure his undivided attention to the case he is handling as well as his entire devotion and fidelity to the client's cause. If the lawyer lends money to the client in connection with the client's case, the lawyer in effect acquires an interest in the subject matter of the case or an additional stake in its outcome.[23] Either of these circumstances may lead the lawyer to consider his own recovery rather than that of his client, or to accept a settlement which may take care of his interest in the verdict to the prejudice of the client in violation of his duty of undivided fidelity to the client's cause.[24]

As previously mentioned, any act of solicitation constitutes malpractice[25] which calls for the exercise of the Court's disciplinary powers. Violation of anti-solicitation statutes warrants serious sanctions for initiating contact with a prospective client for the purpose of obtaining employment.[26] Thus, in this jurisdiction, we adhere to the rule to protect the public from the Machiavellian machinations of unscrupulous lawyers and to uphold the nobility of the legal profession.

Considering the myriad infractions of respondent (including violation of the prohibition on lending money to clients), the sanction recommended by the IBP, a mere reprimand, is a wimpy slap on the wrist. The proposed penalty is grossly incommensurate to its findings.

A final word regarding the calling card presented in evidence by petitioner. A lawyer's best advertisement is a well-merited reputation for professional capacity and fidelity to trust based on his character and conduct.[27] For this reason, lawyers are only allowed to announce their services by publication in reputable law lists or use of simple professional cards.

Professional calling cards may only contain the following details:

- (a) lawyer's name;
- (b) name of the law firm with which he is connected;

- (c) address;
- (d) telephone number and
- (e) special branch of law practiced.[28]

Labiano's calling card contained the phrase "with financial assistance." The phrase was clearly used to entice clients (who already had representation) to change counsels with a promise of loans to finance their legal actions. Money was dangled to lure clients away from their original lawyers, thereby taking advantage of their financial distress and emotional vulnerability. This crass commercialism degraded the integrity of the bar and deserved no place in the legal profession. However, in the absence of substantial evidence to prove his culpability, the Court is not prepared to rule that respondent was personally and directly responsible for the printing and distribution of Labiano's calling cards.

WHEREFORE, respondent Atty. Nicomedes Tolentino for violating Rules 1.03, 2.03, 8.02 and 16.04 and Canon 3 of the Code of Professional Responsibility and Section 27, Rule 138 of the Rules of Court is hereby **SUSPENDED** from the practice of law for a period of one year effective immediately from receipt of this resolution. He is **STERNLY WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Resolution be made part of his records in the Office of the Bar Confidant, Supreme Court of the Philippines, and be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator to be circulated to all courts.

So ordered.

Puno, C.J., (Chairperson), Carpio, Leonardo-De Castro and Bersamin, JJ., concur.

[1] Complaint dated February 1, 2005. Rollo, pp. 1-7.

[2] Overseas seafarers Cenen Magno, Henry Dy, James R. Gregorio and Noel Geronimo. Id., pp. 2-3, 9-14.

[3] Id., p. 9.

[4] Involved benefits and disability collection cases. Id., pp. 2-3.

[5] Complaint, Annex "D." Id., pp. 12-14.

[6] Complaint, Annex "A." Id., p. 8.

[7] Answer dated April 26, 2005. Id., pp. 20-23.

[8] Resolution dated August 15, 2005. Id., p. 24.

[9] Report and recommendation penned by Commissioner Lolita Quisumbing dated March 2, 2006. Id., pp. 106-111.

[10] Code of Professional Responsibility, Rule 8.02 provides:

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.

[11] Rule 1.01; Canon 2; Rule 2.03; Canon 3; Rule 3.01; Canon 7; Rule 7.03; Canon 8; Rule 8.01; Canon 9; and Rule 9.01 of the Code of Professional Responsibility. Rollo, p. 110.

[12] RULES OF COURT, Rule 138, Section 27 provides:

Disbarment or suspension of attorneys by Supreme Court; grounds therefor. -- 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 admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (emphasis supplied)

[13] *In Re: Tagorda*, 53 Phil. 37 (1933).

[14] Agpalo, *LEGAL AND JUDICIAL ETHICS*, 7th Edition (2002), p. 109.

[15] Rule 138, Section 27 of the Rules of Court. See *supra* note 12.

[16] *Supra* note 13.

[17] Agpalo. *Supra* note 14, p. 72.

[18] *McCloskey v. Tobin*, 252 US 107, 64 L Ed 481, 40 S Ct 306 (1920).

[19] Or evidence which a reasonable mind might accept as adequate to support a conclusion even if other equally reasonable minds might opine otherwise (*Portuguez v. GSIS Family Savings Bank*, G.R. No. 169570, 2 March 2007, 517 SCRA 309; *Bautista v. Sula*, A.M. No. P-04-1920, 17 August 2007, 530 SCRA 406; *ePacific Global Contact Center, Inc. v. Cabansay*, G.R. No. 167345, 23 November 2007, 538 SCRA 498). Moreover, in *In re: Improper Solicitation of Court Employees - Rolando H. Hernandez*, Executive Assistant 1, Office of the Court Administrator, A.M. No. 2008-12-SC, 24 April 2009, the Court adopted the OCA's evaluation which relied on the sworn statements to support its conclusion that illegal acts were committed by respondents in this case.

[20] *Supra* note 14, p. 101.

[21] *Rollo*, pp. 96-97.

[22] Agpalo, *supra* note 14, p. 240 citing comments of the IBP Committee that drafted the CPR, p. 90.

[23] *Id.*

[24] *Id.*

[25] *Supra* notes 10 and 12.

[26] *State Bar v. Kilpatrick*, 874 SW2d 656 (1994, Tex). In this case, the lawyer was disbarred.

[27] *Ulep v. Legal Clinic, Inc.*, B.M. No. 553, 17 June 1993, 223 SCRA 378.

[28] *Id.*, p. 408.

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