

TORBEN B. OVERGAARD, COMPLAINANT, VS. ATTY. GODWIN R. VALDEZ, RESPONDENT.*A.C. No. 7902. September 30, 2008*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-7902/>**PER CURIAM:**

Complainant seeks the disbarment of Atty. Godwin R. Valdez from the practice of law for gross malpractice, immoral character, dishonesty and deceitful conduct. The complainant alleges that despite receipt of legal fees in compliance with a Retainer Agreement, the respondent refused to perform any of his obligations under their contract for legal services, ignored the complainant's requests for a report of the status of the cases entrusted to his care, and rejected demands for return of the money paid to him.

On December 16, 2005, the complainant, Torben B. Overgaard, a Dutch national, through his business partner John Bradley, entered into a Retainer Agreement[1] with the respondent, Atty. Godwin R. Valdez. For the amount of PhP900,000.00, the complainant engaged the services of the respondent to represent him as his legal counsel in two cases filed by him and two cases filed against him, all pending in Antipolo City; including a dismissed complaint which was appealed before the Department of Justice. The Agreement stipulated that fees would cover acceptance and attorney's fees, expenses of litigation, other legal incidental expenses, and appearance fees.[2]

The cases filed by the complainant included a complaint for Estafa, Grave Threats, Coercion, Unjust Vexation and Oral Defamation[3] pending before the Office of the City Prosecutor of Antipolo and a civil case for Mandamus, Injunction with prayer for Temporary Restraining Order and Damages[4] which is on trial at Branch 71, Regional Trial Court of Antipolo City. On the other hand, the cases filed against the complainant included a criminal case for Other Light Threats at Branch 2 of the Municipal Trial Court of Antipolo,[5] and violation of Section 5(a) of Republic Act No. 9262, the Anti-Violence Against Women and Their Children Act of 2004[6] before the Family Court of Antipolo City. A complaint for Illegal Possession of Firearms was also filed against Torben Overgaard which was dismissed by the City Prosecutor of Antipolo City. This was appealed to the Department of Justice by way of Petition for Review.[7]

Upon the execution of the Retainer Agreement, the complainant paid the respondent USD16,854.00 through telegraphic bank transfer,[8] as full payment for the services to be rendered under the Agreement. The respondent then assured the complainant that he would take good care of the cases he was handling for the complainant.[9]

On April 11, 2006, four months after the execution of the Retainer Agreement, the complainant, through his business partner John Bradley, demanded from the respondent a report of the action he had taken with respect to the cases entrusted to him. However, despite his continued efforts to contact the respondent to inquire on the status of the cases, he was unable to reach him; his phone calls were not answered and his electronic mails were ignored.[10]

The complainant had no knowledge of the developments of the cases that the respondent was handling for him. Upon his own inquiry, he was dismayed to find out that the respondent did not file his entry of appearance in the cases for Other Light Threats and Violation of Section 5(a) of the Anti-Violence Against Women and Children

Act.[11] The respondent also did not inform him that he was entitled to prepare a Counter-Affidavit to answer the complaint for Other Light Threats. The complainant had no knowledge that there had already been arraignments for the criminal cases against him, and that there were already warrants of arrest[12] issued for his failure to attend the arraignments. He was constrained to engage the services of another lawyer in order to file a Motion to Lift the Warrant of Arrest in the case for Other Light Threats,[13] and an Omnibus Motion to Revive the Case and Lift the Warrant of Arrest in the case for Violation of Section 5(a) of the Anti-Violence Against Women and Their Children Act.[14]

The complainant alleges that the respondent did not do a single thing with respect to the cases covered under the Retainer Agreement. Not only did the respondent fail to enter his appearance in the criminal cases filed against the complainant, he also neglected to file an entry of appearance in the civil case for Mandamus, Injunction and Damages that the complainant filed. The respondent also did not file a Comment on the complaint for Illegal Possession of Firearms which was dismissed and under review at the Department of Justice.[15]

Due to the above lapses of the respondent, on November 27, 2006, the complainant wrote the respondent and demanded the return of the documents which were turned over to him, as well as the Php900,000.00 that was paid in consideration of the cases he was supposed to handle for the complainant.[16] However, complainant was unable to get any word from the respondent despite repeated and continuous efforts to get in touch with him.

Hence, on December 28, 2006, Torben Overgaard was constrained to file an administrative complaint against Atty. Godwin R. Valdez before the Integrated Bar of the Philippines, alleging that the respondent engaged in unlawful, dishonest, immoral and deceitful conduct.[17] Despite the order to submit an Answer to the complaint against him,[18] the respondent failed to comply. A Mandatory Conference was set on September 21, 2007,[19] but the respondent failed to attend despite being duly notified.[20] This prompted the Commission on Bar Discipline to issue an Order declaring the respondent in default for failure to submit an Answer and failure to attend the Mandatory Conference.[21] The investigation proceeded ex parte.

The complainant submitted his position paper on October 5, 2007,[22] with a prayer that the respondent be disbarred from the practice of law, and to be ordered to return the amount of Php900,000.00. A Clarificatory Hearing was scheduled on December 11, 2007,[23] and again, it was only the complainant who was in attendance; the respondent failed to attend the hearing despite notice. The case was then submitted for resolution based on the pleadings submitted by the complainant and the hearings conducted.[24]

Integrated Bar of the Philippines (IBP) Investigating Commissioner Antonio S. Tria, to whom the instant disciplinary case was assigned for investigation, report and recommendation, found the respondent guilty of violating Canon 15, Canon 16, Rule 16.01, Canon 17, Canon 18, and Rule 18.04 of the Code of Professional Responsibility. In his Report dated January 29, 2008, he recommended that respondent be suspended from the practice of law for a period of three (3) years. The IBP Board of Governors, through Resolution No. XVIII-2008-126, dated March 6, 2008, approved the recommendation of Commissioner Tria, and further ordered the complainant to return the Php900,000.00 to the complainant within 60 days from receipt of the notice.

We agree. We find the respondent Atty. Godwin R. Valdez to have committed multiple violations of the canons of the Code of Professional Responsibility.

The appropriate penalty to be imposed on an errant attorney involves the exercise of sound judicial discretion based on the facts of the case. Section 27, Rule 138 of the Rules of Court provides, viz:

Sec. 27. 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 to do so. The practice of soliciting cases for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.

The respondent has indubitably fallen below the exacting standards demanded of members of the bar. He did not merely neglect his client's cause, he abandoned his client and left him without any recourse but to hire another lawyer. He not only failed to properly handle the cases which were entrusted to his care, he refused to do a single thing in connection with these cases. He did not file any pleading to defend his client; he did not even enter his appearance in these cases. Moreover, he disregarded the complainant's letters and electronic mails and rejected the complainant's phone calls. All the complainant was asking for was a report of the status of the cases but the respondent could not be reached no matter what the complainant did to get in touch with him. After receipt of the full amount of fees under the Retainer Agreement, he simply disappeared, leaving the client defenseless and plainly prejudiced in the cases against him. Warrants of arrest were even issued against the complainant due to the respondent's gross and inexcusable negligence in failing to ascertain the status of the case and to inform his client of the arraignment. It was not a mere failure on the respondent's part to inform the complainant of matters concerning the cases, it was an unmistakable evasion of duty. To hide from the complainant, avoid his calls, ignore his letters, and leave him helpless is unforgivable; and to commit all these acts and omissions after receiving the full amount of legal fees and after assuring the client of his commitment and responsibility violates the Code of Professional Responsibility.

Canon 1, Rule 1.01 of the Code of Professional Responsibility states that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." Deceitful conduct involves moral turpitude and includes anything done contrary to justice, modesty or good morals.[25] It is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to justice, honesty, modesty, or good morals.[26] Representing to the complainant that he would take care of the cases filed against him,[27] assuring the complainant that his property involved in a civil case would be safeguarded,[28] and then collecting the full amount of legal fees of Php900,000.00, only to desert the complainant after receipt of the fees, were manifestly deceitful and dishonest.

The relationship of an attorney to his client is highly fiduciary. Canon 15 of the Code of Professional Responsibility provides that "a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client." Necessity and public interest enjoin lawyers to be honest and truthful when dealing with his client. A lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed in him.[29] However, instead of devoting himself to the client's cause, the respondent avoided the complainant, forgot about the cases he was handling for him and ostensibly abandoned him. The client reposed his trust in his lawyer with full faith that the lawyer would not betray him or abscond from his responsibilities. By assuring the complainant that he would take care of the cases included in the Retainer Agreement, and even accepting fees, the respondent defrauded the complainant when he did not do a single thing he was expected to do.

A lawyer shall serve his client with competence and diligence.[30] A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.[31] Respondent should indeed be held liable, for he was not just incompetent, he was practically useless; he was not just negligent, he was indolent; and rather than being of help to the complainant, he prejudiced the client. Respondent's inaction with respect to the matters entrusted to his care is obvious; and his failure to file an answer to the complaint for disbarment against him and to attend the hearings in connection therewith, without any explanation or request for resetting, despite proper notice from the IBP, is clear evidence of negligence on his part.

The Code of Professional Responsibility further provides that a lawyer is required to keep the client informed of the status of his case and to respond within a reasonable time to the client's request for information.[32] The respondent did the opposite. Despite the complainant's efforts to consult him and notwithstanding numerous attempts to contact him, simply to ask for an update of the status of the cases, the respondent was able to avoid the complainant and never bothered to reply.

After months of waiting for a reply from the respondent, and discovering that the respondent had been remiss in his duties, the complainant demanded the return of the documents he had turned over to the respondent. He also demanded the return of the money he had paid for the legal services that were not rendered and expenses of litigation which were not incurred. However, the respondent rejected the complainant's demands.

Rule 16.01, Canon 16 of the Code of Professional Responsibility, provides that "a lawyer shall account for all money and property collected or received for and from the client." The complainant paid \$16,854.00 to the respondent via telegraphic bank transfer. This was considered as complete payment for the PhP900,000.00 that was stipulated as the consideration for the legal services to be rendered. However, since the respondent did not carry out any of the services he was engaged to perform, nor did he appear in court or make any payment in connection with litigation, or give any explanation as to how such a large sum of money was spent and allocated, he must immediately return the money he received from the client upon demand. However, he refused to return the money he received from the complainant despite written demands, and was not even able to give a single report regarding the status of the cases.

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. Money entrusted to a lawyer for a specific purpose - such as for filing fees - but not used for failure to file the case, must immediately be returned to the client on demand.[33]

In *Sencio v. Calvadores*,[34] the respondent lawyer Sencio was engaged to file a case, which he failed to do. His client demanded that he return the money which was paid to him but he refused. Sencio similarly failed to answer the complaint and disregarded the orders and notices of the IBP on many occasions.[35] The respondent lawyer was ordered to return the money that he received from the complainant with interest at 12% per annum from the date of the promulgation of the resolution until the return of the amount.[36]

The practice of law is not a right, but a privilege. It is granted only to those of good moral character.[37] The Bar must maintain a high standard of honesty and fair dealing.[38] Lawyers must conduct themselves beyond reproach at all times, whether they are dealing with their clients or the public at large,[39] and a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment.[40]

The respondent demonstrated not only appalling indifference and lack of responsibility to the courts and his client but also a wanton disregard for his duties as a lawyer. It is deplorable that members of the bar, such as the respondent, betray not only the trust of their client, but also public trust. For the practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral

character.[41] Those who are unable or unwilling to comply with the responsibilities and meet the standards of the profession are unworthy of the privilege to practice law. We must protect the administration of justice by requiring those who exercise this function to be competent, honorable and reliable in order that the courts and clients may rightly repose confidence in them.

In this case, we find that suspension for three years recommended by the IBP is not sufficient punishment for the unacceptable acts and omissions of respondent. The acts of the respondent constitute malpractice and gross misconduct in his office as attorney. His incompetence and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed in him as a member of the bar. We could not find any mitigating circumstances to recommend a lighter penalty. For violating elementary principles of professional ethics and failing to observe the fundamental duties of honesty and good faith, the respondent has proven himself unworthy of membership in this noble profession.

IN VIEW WHEREOF, respondent Atty. Godwin R. Valdez is hereby DISBARRED and his name is ordered STRICKEN from the Roll of Attorneys. He is ORDERED to immediately return to Torben B. Overgaard the amount of \$16,854.00 or its equivalent in Philippine Currency at the time of actual payment, with legal interest of six percent (6%) per annum from November 27, 2006, the date of extra-judicial demand. A twelve percent (12%) interest per annum, in lieu of six percent (6%), shall be imposed on such amount from the date of promulgation of this decision until the payment thereof. He is further ORDERED to immediately return all papers and documents received from the complainant.

Copies of this Decision shall be served on the Integrated Bar of the Philippines, the Office of the Bar Confidant and all courts.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Austria-Martinez, Carpio-Morales, Azcuna, Tinga, Chico-Nazario, Velasco, Jr., Nachura, Reyes, Leonardo-De Castro, and Brion, JJ., concur.
Corona, J., on official leave.

[1] Rollo, p. 3.

[2] Id.

[3] Id., p. 5.

[4] Id., p. 6.

[5] Id., p. 7.

[6] Id., p. 8.

[7] Id., p.9.

[8] Id., pp. 4, 45.

[9] Id., p. 5.

[10] Id, p. 46.

[11] Id., p. 2.

[12] Id., p. 10 and 11.

- [13] *Id.*, p. 72.
- [14] *Id.*, p. 75.
- [15] *Id.*, p. 23-24.
- [16] *Id.*, p. 12 and 40.
- [17] The administrative complaint was docketed as CBD Case No. 06-1894.
- [18] Rollo, p. 13.
- [19] *Id.*, p. 19.
- [20] *Id.*
- [21] *Id.*, p. 21.
- [22] *Id.*, p. 22.
- [23] *Id.*, p. 41.
- [24] *Id.*, p. 43.
- [25] *In re Basa*, 41 Phil. 275, 276 (1920), citing *Bouvier's Law Dictionary*.
- [26] *In re Gutierrez*, AC No. L-363, July 31, 1962, 5 SCRA 661.
- [27] Rollo at p. 4.
- [28] *Id.*, at p. 26.
- [29] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 17.
- [30] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18.
- [31] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18, Rule 18.03.
- [32] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18, Rule 18.04.
- [33] *Barnachea v. Quiocho*, A.C. No. 5925, March 11, 2003, 399 SCRA 1.
- [34] A.C. No. 5841, January 20, 2003, 395 SCRA 393.
- [35] *Id.*
- [36] See also *Emiliano Court Townhouses Homeowners Association v. Atty. Michael Dioneda*, A.C. No. 5162, March 20, 2003, 399 SCRA 296.
- [37] *People v. Santodides*, G.R. No. 109149, December 21, 1999, 321 SCRA 310.
- [38] *Maligsa v. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408, 413.
- [39] *Gatchalian Promotions Talents Pool, Inc. v. Naldoza*, A.C. No. 4017, September 29, 1999, 315 SCRA 406.
- [40] *Ere v. Rubi*, A.C. No. 5176, December 14, 1999, 320 SCRA 617.
- [41] *Director of Religious Affairs v. Bayot*, 74 Phil 477 (1944).

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