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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 5067. June 29, 2015]

CORAZON M. DALUPAN, *complainant*, *vs*. **ATTY. GLENN C. GACOTT,**[1] *respondent*.

SYLLABUS

LEGAL ETHICS; LAWYERS; ATTORNEY'S FEES AND ACCEPTANCE FEES, DISTINGUISHED.— It is well-settled that attorney's fee is understood both in its ordinary and extraordinary concept. In its ordinary sense, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. Meanwhile, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages. x x x On the other hand, acceptance fee refers to the charge imposed by the lawyer for merely accepting the case. This is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. Thus, he incurs an opportunity cost by merely accepting the case of the client which is therefore indemnified by the payment of acceptance fee. Since the acceptance fee only seeks to compensate the lawyer for the lost opportunity, it is not measured by the nature and extent of the legal services rendered.

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[1] In *Tabang v. Gacott*, A.C. No. 6490, July 9, 2013, 700 SCRA 788, the Court disbarred Atty. Glenn C. Gacott.

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D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review under Rule 139-B, Section 12 (c) of the Rules of Court assailing Resolution No. XVII-2007-115[2] dated March 17, 2007 and Resolution No. XIX-2010-544[3] dated October 8, 2010 of the Board of Governors of the Integrated Bar of the Philippines (IBP) which adopted and approved the Report and Recommendation[4] dated December 12, 2006 of the Investigating Commissioner of the Commission on Bar Discipline of the IBP. Although the IBP Board of Governors dismissed the complaint for disbarment filed against the respondent, it ordered the latter to return the payment of the attorney's fee to the complainant in the amount of ₱5,000. This order to return the attorney's fee is the subject of the present petition.

The salient facts of the case follow:

In her affidavit-complaint[5] dated April 20, 1999, the complainant claimed that she was a defendant in a criminal case for grave slander pending before the Municipal Trial Court (MTC) of Puerto Princesa City, Palawan. Meanwhile, her son, Wilmer Dalupan, was also a defendant in a separate criminal case for grave slander and malicious mischief pending before the same court. In order to represent the complainant and her son, the complainant engaged the legal services of the respondent who then charged an acceptance fee of ₱10,000.

On August 20, 1996, the complainant paid the respondent ₱5,000 as initial payment for his acceptance fee.

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[2] *Rollo*, p. 258.

[3] *Id*. at 261.

[4] *Id*. at 248-257.

[5] *Id*. at 6-7.

On August 27, 1996, the complainant requested the respondent to draft a Motion to Reduce Bail Bond. However, the respondent allegedly denied the request and claimed that it was beyond the scope of his retainer services. Thus, the complainant alleged that she caused a certain Rolly Calbentos to draft the same which was however signed by the respondent.

On January 31, 1997, the complainant paid the respondent the remaining balance of ₱5,000 for his acceptance fee. When the complainant asked for an Official Receipt from the respondent, the latter refused saying that there was no need for the issuance of a receipt. On that same day, the complainant also paid the respondent ₱500 for his appearance fee in the preliminary conference and arraignment which occurred on the same day.

Thereafter, the complainant alleged that the respondent neglected his duties as counsel and failed to attend any of the hearings before the MTC. In view of the respondent's repeated absences before the MTC, Judge Jocelyn S. Dilig issued an Order which appointed a counsel *de oficio* to represent the complainant.

Aggrieved, the complainant filed the instant complaint for disbarment against the respondent.

On the other hand, in his comment,[6] the respondent denied all the allegations of the complainant.

The respondent alleged that the complainant approached him and represented herself as an indigent party in the following cases for which she sought to engage the legal services of the respondent: (1) Criminal Case No. 12586, *People of the Philippines v. Corazon Dalupan, et al.* for Grave Slander, (2) Criminal Case No. 12585, *People of the Philippines v. Wilmer Dalupan* for Malicious Mischief, (3) I.S. No. 96-1104, *Custodio Family v. Cesar Dalupan, et al.* for Frustrated Murder, (4) I.S. No. 97-54, *Dalupan Family v. Romulo Custodio, et al.* for Physical Injuries, and (5) I.S. No. 9760 *Dalupan Family v.*

[6] *Id*. at 10-15.

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Romulo Custodio for Frustrated Murder. The respondent agreed to represent the complainant in the aforementioned cases subject to the payment of an acceptance fee of ₱5,000 per case and an appearance fee of ₱500 for each court appearance.

On August 20, 1996, the complainant paid the respondent ₱5,000 for his acceptance fee.

On August 27, 1996, the respondent filed a Motion for Reduction of Bail in favor of the complainant before the MTC of Puerto Princesa City. On that same day, the complainant proceeded to the law office of the respondent and demanded that the latter negotiate with the MTC judge to ensure the grant of the Motion for Reduction of Bail. When the respondent refused the demand of the complainant, the latter replied at the top of her voice: "*Binabayaran kita, bakit hindi mo ginagawa ang gusto ko?*" The respondent answered her with, "*Hindi po lahat ng gusto ninyo ay gagawin ko, sa tama lamang po tayo, abogado po ninyo ako, hindi ako fixer.*"[7] This irked the complainant who then made verbal threats that she will replace the respondent with a certain Atty. Roland Pay who held office nearby. However, when the MTC of Puerto Princesa City eventually ruled in favor of the complainant and granted the motion, the latter revoked her threats that she will replace the respondent.

On August 19, 1997, the MTC of Puerto Princesa City issued a Notice of Hearing to the complainant and her son Wilmer Dalupan which ordered them to appear before the court on September 9, 1997 in connection with their criminal cases pending therein. However, the respondent failed to attend the scheduled hearing as he allegedly failed to receive a copy of the Notice of Hearing. Thus, in his written explanation dated October 7, 1997, the respondent attributed his failure to appear before the MTC to the inefficiency of the process server of the said court.

On October 10, 1997, the complainant told the respondent that she was terminating the latter's services on the ground of

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[7] *Id*. at 12.

loss of trust and confidence. Furthermore, the complainant also told the respondent that she engaged the services of Atty. Roland Pay to replace the respondent. As a result, on October 30, 1997, the complainant withdrew all her records from the law office of the respondent.

On January 29, 1998, the MTC of Puerto Princesa City issued an Order which relieved the respondent of any responsibility in Criminal Case Nos. 12585 and 12586:

> Acting on what the counsel of record of all the accused in the above-entitled cases call "Compliance", where obvious on the face of which is his desire to withdraw as Counsel, and it appearing that said intention to withdraw is not only with the full conformity of all the accused but at their own initiative, Atty. Glenn Gacott is hereby relieved of any responsibility in the further prosecution of the above-captioned cases.[8]

In view of the above Order, the respondent argued that he was not guilty of abandonment or neglect of duty because it was the complainant who wilfully terminated his services even without fault or negligence on his part.

We referred this case to the IBP for its investigation, report, and recommendation.

On December 12, 2006, Investigating Commissioner Wilfredo E.J.E. Reyes recommended the dismissal of the complaint for disbarment against the respondent. At the same time, he also recommended that the respondent return the payment of the attorney's fee to the complainant in the amount of ₱5,000.[9]

The Investigating Commissioner opined that the respondent cannot be held liable for abandonment or neglect of duty because it was the complainant who discharged the respondent for loss of trust and confidence. This was confirmed by the act of the complainant in withdrawing all her records from the law office of the respondent. Furthermore, the Investigating Commissioner

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[8] *Id*. at 134.

[9] *Id*. at 256-257.

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said that absent evidence showing that the respondent committed abandonment or neglect of duty, the presumption of regularity should prevail in favor of the respondent.

Although there was no evidence to support the claim of the complainant that she paid the respondent the remaining balance of ₱5,000 as acceptance fee and an appearance fee of ₱500 on January 31, 1997, the Investigating Commissioner gave credence to an Official Receipt dated August 20, 1996 which proved that the complainant indeed paid the respondent an amount of ₱5,000. However, the Investigating Commissioner found that the respondent did not perform any substantial legal work on behalf of the complainant. For this reason, and in the interest of justice, the Investigating Commissioner recommended that the respondent return the amount of ₱5,000 to the complainant.

On March 17, 2007, the IBP Board of Governors passed Resolution No. XVII-2007-115 which adopted and approved *in toto* the Report and Recommendation of the Investigating Commissioner.

On October 8, 2010, the IBP Board of Governors passed Resolution No. XIX-2010-544 which denied the Motion for Reconsideration dated July 27, 2007 filed by the respondent.

Hence, the present petition[10] which raises the sole issue of whether the respondent should return the payment of the attorney's fee to the complainant in the amount of ₱5,000.

Firstly, the respondent argued that when the MTC of Puerto Princesa City issued the Order dated January 29, 1998 which relieved the respondent of any responsibility in Criminal Case Nos. 12585 and 12586, the trial court did not require the respondent to reimburse the payment of the attorney's fee to the complainant. Thus, the IBP Board of Governors exceeded its authority in ordering the respondent to return such fees to the complainant.

Secondly, the respondent argued that a plain reading of the Official Receipt dated August 20, 1996 would reveal that the

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[10] *Id.* at 236-247.

parties intended the payment of ₱5,000 to serve as acceptance fee which is different from attorney's fee. According to the respondent, the acceptance fee corresponds to the opportunity cost incurred by the lawyer for not representing other potential clients due to a conflict of interest with the present client. Thus, the payment of acceptance fee to the lawyer does not depend on the latter's performance of legal services.

Since the complainant failed to file any comment on the petition for review, we proceed to resolve the sole issue raised, and rule in favor of the respondent.

We find that the respondent did not commit any fault or negligence in the performance of his obligations under the retainer agreement which was wilfully terminated by the complainant on the ground of loss of trust and confidence. As held by the Investigating Commissioner, the evidence on record shows that the respondent is not liable for abandonment or neglect of duty.

However, we disagree with the conclusion of the Investigating Commissioner that the respondent should return the payment of the attorney's fee to the complainant in the amount of ₱5,000.

Firstly, the Investigating Commissioner seriously erred in referring to the amount to be returned by the respondent as attorney's fee. Relevantly, we agree with the respondent that there is a distinction between attorney's fee and acceptance fee.

It is well-settled that attorney's fee is understood both in its ordinary and extraordinary concept.[11] In its ordinary sense, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. Meanwhile, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.[12] In the present case, the Investigating Commissioner referred to the attorney's fee in its ordinary concept.

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[11] *Traders Royal Bank Employees Union-Independent v. NLRC,* 336 Phil. 705, 712 (1997).

[12] *Ortiz v. San Miguel Corporation*, 582 Phil. 627, 640 (2008).

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On the other hand, acceptance fee refers to the charge imposed by the lawyer for merely accepting the case. This is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. Thus, he incurs an opportunity cost by merely accepting the case of the client which is therefore indemnified by the payment of acceptance fee. Since the acceptance fee only seeks to compensate the lawyer for the lost opportunity, it is not measured by the nature and extent of the legal services rendered.

In the present case, based on a simple reading of the Official Receipt dated August 20, 1996, the parties clearly intended the payment of ₱5,000 to serve as acceptance fee of the respondent, and not attorney's fee. Moreover, both parties expressly claimed that they intended such payment as the acceptance fee of the respondent. Absent any other evidence showing a contrary intention of the parties, we find that the Investigating Commissioner gravely erred in referring to the amount to be returned by the respondent as attorney's fee.

Since the Investigating Commissioner made an erroneous reference to attorney's fee, he therefore mistakenly concluded that the respondent should return the same as he did not perform any substantial legal work on behalf of the complainant. As previously mentioned, the payment of acceptance fee does not depend on the nature and extent of the legal services rendered.

Secondly, the respondent did not commit any fault or negligence which would entail the return of the acceptance fee.

Once a lawyer receives the acceptance fee for his legal services, he is expected to serve his client with competence, and to attend to his client's cause with diligence, care and devotion.[13] In *Cariño v. Atty. De Los Reyes*,[14] the respondent lawyer who

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[13] *Hernandez v. Padilla*, A.C. No. 9387, June 20, 2012, 674 SCRA 1, 8; See *Del Mundo v. Capistrano*, A.C. No. 6903, April 16, 2012, 669 SCRA 462, 468; *Reyes v. Atty. Vitan*, 496 Phil. 1, 4 (2005).

[14] 414 Phil. 667 (2001).

failed to file a complaint-affidavit before the prosecutor's office, returned the ₱10,000 acceptance fee paid to him. Moreover, he was admonished by the Court to be more careful in the performance of his duty to his clients. Meanwhile, in *Voluntad-Ramirez v. Bautista*,[15] we ordered the respondent lawyer to return the ₱14,000 acceptance fee because he did nothing to advance his client's cause during the six-month period that he was engaged as counsel.

In the present case, the complainant alleged that she requested the respondent to draft a Motion to Reduce Bail Bond which was denied by the latter. She also claimed that the respondent failed to attend any of the hearings before the MTC. Thus, the complainant filed the present complaint for disbarment on the ground of abandonment or neglect of duty. On the other hand, the respondent denied the allegation that he failed to draft the Motion to Reduce Bail Bond and submitted a copy of the MTC Order[16] dated August 28, 1996 granting the motion to reduce bail. He also justified his failure to attend the hearings before the MTC to the failure of the process server to provide him with a Notice of Hearing.

Other than her bare allegations, the complainant failed to present any evidence to support her claim that the respondent committed abandonment or neglect of duty. Thus, we are constrained to affirm the factual findings of the Investigating Commissioner that the presumption of regularity should prevail in favor of the respondent. Absent any fault or negligence on the part of the respondent, we see no legal basis for the order of the Investigating Commissioner to return the attorney's fee (acceptance fee) of ₱5,000.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. Resolution No. XVII-2007-115 and Resolution No. XIX-2010-544 of the IBP Board of Governors insofar as they ordered the respondent to return the attorney's fee

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[15] A.C. No. 6733, October 10, 2012, 683 SCRA 327, 335.

[16] *Rollo*, p. 127.

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(acceptance fee) to the complainant in the amount of Five Thousand Pesos (₱5,000) are **REVERSED and SET ASIDE**.

SO ORDERED.

Peralta (*Acting Chairperson*),[*] *Perez*,[**] *Perlas-Bernabe*,[***] and *Jardeleza*, *JJ.*, concur.

FIRST DIVISION

[G.R. No. 163116. June 29, 2015]

ALLIED BANKING CORPORATION, *petitioner*, *vs.* **JESUS S. YUJUICO (DECEASED), REPRESENTED BY BRENDON V. YUJUICO,** *respondent*.

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; GUARANTY; DISTINGUISHED FROM SURETY.— [Article 2047 of the] *Civil Code* [provides:] Article 2047. By guaranty a person, called the guarantor, binds himself to the creditor to fulfill the obligation of the principal debtor in case the latter should fail to do so. If a person binds himself solidarily with the

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[*] Designated Acting Chairperson per Special Order No. 2071 dated June 23, 2015.

[**] Designated Acting Member per Special Order No. 2084 dated June 29, 2015.

[***] Designated Acting Member per Special Order No. 2072 dated June 23, 2015.