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SECOND DIVISION

[A.C. No. 1797. November 7, 1979]

LEONISA O. GONZALES, *complainant, vs.* **ATTY. RICARDO C. PARRENAS,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; PRESUMPTION THAT RESPONDENT HAS PERFORMED HIS DUTY IN ACCORDANCE WITH HIS OATH, SUFFICIENTLY OVERCOME BY EVIDENCE IN CASE AT BAR.— While it is true that an attorney enjoys the legal presumption that he is innocent of the charges proferred against him until the contrary is proved and that as an officer of the court, he is presumed to have performed his duty in accordance with his oath, in the case at bar, such presumptions have been sufficiently overcome by the evidence presented by the complainant before the Solicitor General which stand unrebutted. Significantly, under Section 6, Rule 139 of the Rules of Court, said evidence may be considered by this Court in the final decision of this case. Consequently, this Court holds respondent guilty of deceit, malpractice and gross misconduct in office for having amicably settled the libel suit filed by his client without the latter's knowledge and consent and having misappropriated the settlement amount of ₱800.00.

D E C I S I O N

SANTOS, *J.*:

In a verified letter-complaint dated August 4, 1977, Leonisa O. Gonzales charged Atty. Ricardo C. Parrenas with having culpably violated his lawyer's oath when he amicably settled for the amount of ₱1,000.00 the former's complaint for libel against Erna Tumala, Nemesia Vizconde and Patria Tumala, then pending before the Office of the City Fiscal of Manila,

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without complainant's knowledge and consent, and, thereafter, misappropriated said amount.[1]

Complainant alleged that in March, 1971 she engaged the legal services of respondent to represent her in the aforesaid libel case which was docketed in the City Fiscal's Office as I.S. No. 71-5175 and assigned to Assistant City Fiscal F. Abasolo for investigation; that during the scheduled hearing, complainant was advised by the respondent not to appear, and was assured that he would handle the matter himself; that subsequently, however, complainant learned that respondent settled the case for the amount of ₱1,000.00 without her knowledge and consent; that complainant confronted the respondent who promised to pay her but failed to do so despite repeated demands; and, that in view thereof, complainant filed against respondent a criminal case for estafa which has remained pending with the City Court of Manila since 1972. Contending that the foregoing alleged actuations of the respondent constitute culpable violation of his lawyer's oath, complainant prays for his disbarment.[2]

On September 2, 1977 respondent was required to comment on the complaint.[3] On October 24, 1977, respondent filed his "Comment and Manifestation" wherein he denied the charges against him and manifested that he is ready to defend himself in this administrative case but only after the termination of the criminal action for estafa. He contended that because of the pendency of said criminal case, "it would be a violation of (his) constitutional right (against) self-incrimination to expose his defense in the administrative investigation."[4]

On November 21, 1977, this Court resolved to refer the case to the Solicitor General for investigation, report and recommendation.[5]

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[1] *Rollo*, p. 1.

[2] *Id.*, pp. 1-2.

[3] *Id.*, p. 11.

[4] *Id.*, p. 21.

[5] *Id.*, p. 23.

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Accordingly, the Office of the Solicitor General conducted an investigation of the charges against respondent. But despite due notice; respondent Parrenas never appeared on the scheduled hearings. Whereupon, the complainant was allowed to present her oral and documentary evidence.[6]

On the basis of complainant's unrebutted evidence, the Solicitor General found —

"(T)hat respondent committed serious acts of deceit, malpractice and gross misconduct in office, namely: (1) compromising the case of libel without the knowledge and consent of complainant, even deciding the terms of the settlement himself; and (2) after receiving the financial settlement of ₱800.00, he did not give it to complainant but instead misappropriated the same."[7]

In view of such finding, the Solicitor General filed with this Court, along with his "Report and Recommendation," a complaint for disbarment charging respondent Parrenas with deceit, malpractice and gross misconduct and praying that his name be stricken from the Roll of Attorneys and that he be forever prohibited from practicing law in the Philippines.[8]

On November 20, 1978 respondent was required to answer, which he did on January 5, 1979.[9] He admitted that the complainant engaged his services to represent her in the preliminary investigation of the complaint for libel which she filed against Erna Tumala, Patria Tumala and Nemesia Vizconde. He, however, denied having settled said case without the knowledge and consent of the complainant, contending that it was the complainant herself who requested him to settle the case for the amount of ₱1,000.00 to be applied as follows: ₱600.00 for the respondent as his attorney's fee; ₱200.00 for the counsel of the Tumalas; and ₱200.00 for the complainant

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[6] *Id.*, pp. 25-28.

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

[8] *Id.*, pp. 43-45.

[9] *Id.*, pp. 57 and 66.

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to be collected by her from the ex-mayor who interceded in behalf of the Tumalas. Respondent further denied having misappropriated the amount of ₱800.00, contending that he turned over the sum of ₱600.00 to complainant, but that the latter returned the amount to him as his attorney's fee. Finally, respondent denied having violated his lawyer's oath and cited his twenty five (25) years of service in the government — holding various positions therein — as proof of his "unstained service to country." Although he reiterated his previous request to this Court to hold in abeyance the administrative investigation until the termination of the criminal case pending before the City Court of Manila, respondent nevertheless prayed that after due hearing, this complaint for disbarment be dismissed.[10]

Complainant, through the Solicitor General, filed a reply to the answer of the respondent on February 28, 1979. She denied having agreed to dismiss her charge of libel against Erna Tumala, Patria Tumala and Nemesia Vizconde. She contended that she was completely unaware of the settlement which was entirely the idea of the respondent. And, insisting that respondent was guilty of deceit, malpractice and gross misconduct, the complainant reiterated her prayer for his disbarment.[11]

The issues having been joined, and since respondent's answer contained no statement as to his desire to adduce evidence before a commissioner to be appointed by this Court pursuant to Sections 6 and 7 of Rule 139 of the Rules of Court, the case was set for hearing on May 28, 1979, a Monday, at 10:30 a.m.[12] However, respondent filed with this Court on May 25, 1979 an urgent motion to hold in abeyance the hearing of this case until the termination of the criminal action for estafa so as not to expose his defense in said criminal case.[13] And on the scheduled hearing, only complainant, through Solicitor Romeo de la Cruz,

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[10] *Id.*, pp. 66-67.

[11] *Id.*, pp. 77-79.

[12] *Id.*, p. 81.

[13] *Id.*, p. 87.

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appeared.[14] Thereupon, this Court resolved to consider this case submitted for decision.[15]

In the light of the foregoing factual and procedural antecedents, three issues emerge for Our resolution, namely:

1. May this administrative case be decided despite respondent's insistence that the same be held in abeyance until after the termination of the pending criminal case for estafa initiated against him for the same cause of action by the same complainant?

2. In the affirmative, is respondent guilty as charged on the basis of the records on hand?

3. Again, in the affirmative, what penalty may be imposed upon respondent?

1. The first issue is resolved in the affirmative. Respondent's contention that the proceedings in this case should be suspended because of the pendency of the estafa case is without merit. For, as pointed out by the Solicitor General —

"The issues in the estafa case are not completely the same as the issues in this proceeding. The point of inquiry in this case is whether respondent is fit to continue as a member of the legal profession in view of his abovementioned conduct. The issue in the estafa case is whether respondent had caused damage to complainant through fraud."[16]

Respondent's claim that "it would be a violation of (his) constitutional right (against) self-incrimination to expose his defense in the administrative investigation."[17] is palpably erroneous and self-contradicting. For it is hard to see how the respondent's defense in this administrative case can incriminate him in the criminal proceeding. And, as the Solicitor General correctly argued —

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[14] *Id.*, p. 89.

[15] *Id.*, p. 90.

[16] *Id.*, p. 29.

[17] *Id.*, p. 21.

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"Indeed respondent has the right to remain silent and he can invoke his constitutional privilege against self-incrimination, but this does not mean that this case may not be continued and respondent's moral unfitness determined from evidence other than his admission. Respondent cannot make use of his own wrongdoing as a shield against administrative sanctions imposable against him."[18]

The record also shows that the procedure prescribed by Rule 139 of the Rules of Court on "Disbarment or Suspension of Attorneys" has been faithfully, nay religiously, followed in the instant case. Therefore, there is no legal impediment to this case being now finally determined and decided by this Court.

Respondent's right to procedural due process has thus been fully respected. He has been accorded sufficient opportunity to present whatever defense he had and the evidence in support thereof. His refusal to appear, despite due notice, at the hearings held, first, in the Office of the Solicitor General, and, later, in this Court, should be construed as a waiver of his right to present whatever evidence he had and should not in any way defeat complainant's right to the final resolution of her complaint for disbarment.

2. The second issue is likewise resolved in the affirmative.

Respondent does not deny having amicably settled the libel case filed with the Office of the City Fiscal by his client (herein complainant) against Erna Tumala, Nemesia Vizconde and Patria Tumala. Neither does he deny having received the amount of ₱800.00 as part of the settlement price. He, however, contends that it was the complainant herself who requested him to settle the case and directed him to take the amount of ₱600.00 as his attorney's fee and to give the remaining ₱200.00 to the lawyer of the Tumalas. But he presents no evidence whatsoever to support such contention.

On the other hand, the complainant produced before the investigation conducted by the Solicitor General oral and documentary evidence to support her charges of deceit,

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[18] *Id.*, p. 29.

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malpractice and gross misconduct. And on the basis of such evidence, the Solicitor General made the following findings and conclusions:

"The unrebutted testimony of complainant and her documentary evidence show that complainant filed a complaint for libel docketed as I.S. No. 71-5175 in the Office of the City Fiscal of Manila against Erna Tumala, Patria Tumala and Nemesia Vizconde (Exhibit B). To represent her during the hearing of the case, she engaged the services of respondent (pp. 5-6, TSN, March 31, 1978). A few days before one of the scheduled hearings, respondent went to Iloilo City (p. 26, *ibid.*). In view of the absence of her counsel, complainant went to his house to get the record of the case so that she can arrange for representation during the hearing (p. 27, *ibid.*). When she got the record, much to her surprise, she found a receipt (Exhibit C) signed by respondent stating that the libel case has been settled in consideration of the amount of ₱800.00 received by respondent and ₱200.00 still to be paid (p. 27, *ibid.*). Complainant went to the Fiscal's Office and her worst fears were confirmed for she found out that the case had indeed been dismissed (pp. 8-9, *ibid.*; Exhibit A)."

"Complainant tried to contact respondent in order to confront him with the receipt and the dismissal of the case but to no avail. Convinced that respondent was evading her, complainant filed against him the case for estafa docketed as Criminal Case No. F-145436 in the City Court of Manila (pp. 29-30, *ibid.*; Exhibit E).

"It is clear from the facts that respondent committed serious acts of deceit, malpractice and gross misconduct in office, namely: (1) compromising the case of libel without the knowledge and consent of complainant, even deciding the terms of the settlement himself; and (2) after receiving the financial settlement of ₱800.00, he did not give it to complainant but instead he misappropriated the same."[19]

This Court finds no reason to disagree with the foregoing findings and conclusions of the Solicitor General.

While it is true that an attorney enjoys the legal presumption that he is innocent of the charges proferred against him until the contrary is proved and that as an officer of the court, he is presumed to have performed his duty in accordance with his

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[19] *Id.*, pp. 27-28.

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oath,[20] in the case at bar, such presumptions have been sufficiently overcome by the evidence presented by the complainant before the Solicitor General which stand unrebutted. Significantly, under Section 6, Rule 139 of the Rules of Court, said evidence may be considered by this Court in the final decision of this case. Consequently, this Court holds respondent guilty of deceit, malpractice and gross misconduct in office for having amicably settled the libel suit filed by his client without the latter's knowledge and consent and having misappropriated the settlement amount of ₱800.00.

3. Finally, as to the penalty to be imposed. The Solicitor General recommends that respondent's name be stricken from the Roll of Attorneys and that he be forever prohibited from practicing law in the Philippines.

While it is true that the actuations of the respondent lawyer deserve condemnation by this Court, the same are not, however, of such magnitude as to merit the supreme sanction of disbarment. Instead, a suspension of five years is deemed adequate and commensurate to the charges proved and sufficient to serve as warning against the commission of similar acts by the other members of the Bar.

WHEREFORE, respondent is hereby SUSPENDED from the practice of law for a period of FIVE YEARS from notice hereof. Let this decision be noted in the records of the respondent.

SO ORDERED.

Barredo (Chairman), Antonio, Aquino, Concepcion Jr., and *Abad Santos, JJ.*, concur.

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[20] *Santos v. Dischoso*, Adm. Case No. 1825, August 22, 1978, 84 SCRA 622.