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[A.C. No. 4945. October 8, 2013]

MA. JENNIFER TRIA-SAMONTE, *complainant*, *vs*. **EPIFANIA "FANNY" OBIAS,** *respondent*.

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CLIENT-LAWYER RELATIONSHIP; IF A PERSON, IN RESPECT TO BUSINESS AFFAIRS OR TROUBLES OF ANY KIND, CONSULTS A LAWYER WITH A VIEW TO OBTAINING PROFESSIONAL ADVICE OR ASSISTANCE, AND THE ATTORNEY VOLUNTARILY PERMITS OR ACQUIESCES WITH THE CONSULTATION, THEN THE PROFESSIONAL EMPLOYMENT IS ESTABLISHED.— Indeed, respondent, in her Comment, already admitted that she rendered legal services to Sps. Tria, which necessarily gave rise to a lawyer-client relationship between them. The complete turnaround made by respondent in her motion for reconsideration from the IBP Board of Governors' Resolution No. XX-2012-109, where she contended that there was no lawyer-client relationship between her and Sps. Tria, cannot thus be given any credence. Since respondent publicly held herself out as lawyer, the mere fact that she also donned the hat of a real estate broker did not divest her of the responsibilities attendant to the legal profession. In this regard, the legal advice and/or legal documentation that she offered and/or rendered regarding the real estate transaction subject of this case should not be deemed removed from the category of legal services. Case law instructs that if a person, in respect to business affairs or troubles of any kind, consults a lawyer with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces with the consultation, then the professional employment is established. Thus, in view of the fact that Sps. Tria knew respondent to be, and transacted with her as, a lawyer, her belated and unilateral classification of her own acts as being limited to those of a real estate broker cannot be upheld. In any case, the lawyer-client relationship between Sps. Tria

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and respondent was confirmed by the latter's admission that she rendered legal services to the former.

2. **ID.; ID.; ID.; LAWYERS ARE DUTY BOUND TO OBSERVE CANDOR, FAIRNESS, AND LOYALTY IN ALL THEIR DEALINGS AND TRANSACTIONS WITH THEIR CLIENTS, AND AN ABSOLUTE ABDICATION OF EVERY PERSONAL ADVANTAGE CONFLICTING IN ANY WAY WITH THE INTERESTS OF THEIR CLIENTS IS DEMANDED FROM THEM; CANONS 17 AND 18 AND RULE 1.01, CANON 1 OF THE CODE OF PROFESSIONAL RESPONSIBILITY, VIOLATED BY THE RESPONDENT-LAWYER.—** It is a core ethical principle that lawyers owe fidelity to their clients' cause and must always be mindful of the trust and confidence reposed in them. They are duty-bound to observe candor, fairness, and loyalty in all their dealings and transactions with their clients. Irrefragably, the legal profession demands of attorneys an absolute abdication of every personal advantage conflicting in any way, directly or indirectly, with the interests of their clients. As enshrined in Canons 17 and 18 of the Code: Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him. Canon 18 — A lawyer shall serve his client with competence and diligence. In the present case, respondent clearly transgressed the above-mentioned rules as her actions were evidently prejudicial to her clients' interests. Records disclose that instead of delivering the deed of sale covering the subject property to her clients, she wilfully notarized a deed of sale over the same property in favor of another person. Accordingly, far removed from protecting the interest of her clients, Sps. Tria, who had, in fact, already fully paid the purchase price of the subject property, respondent participated and was even instrumental in bringing about the defeat of their rights over the said property. Hence, respondent grossly violated the trust and confidence reposed in her by her clients, in contravention of Canons 17 and 18 of the Code. To add, by turning against her own clients, respondent also violated Rule 1.01, Canon 1 of the Code which provides that a lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct. Lest it be forgotten, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality,

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honesty, integrity, and fair dealing. These unyielding standards respondent evidently failed to adhere to.

3. ID.; ID.; THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP) MUST EXPLAIN THE BASES FOR THE MODIFICATION OF THE PENALTY RECOMMENDED BY THE INVESTIGATING COMMISSIONER.— Anent the proper penalty to be imposed, records bear out that the penalty of suspension from the practice of law recommended by the Investigating Commissioner was decreased from a period of five years to just one year by the IBP Board of Governors in Resolution No. XVIII-2007-185. However, the Court observes that the said resolution is bereft of any explanation showing the bases for such modification in contravention of Section 12(a), Rule 139-B of the Rules of Court which mandates that "[t]he decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based." Verily, the Court frowns on the unexplained change made by the IBP Board of Governors in the recommended penalty. Be that as it may, the Court proceeds to correct the same.

4. ID.; ID.; DISBARMENT; PENALTY OF DISBARMENT METED OUT AGAINST A LAWYER WHO DELIBERATELY VIOLATED THE CODE OF PROFESSIONAL RESPONSIBILITY WHEN SHE DISHONESTLY DEALT WITH HER OWN CLIENTS, AND ADVANCED THE INTERESTS OF ANOTHER AGAINST HER CLIENTS, RESULTING TO THEIR LOSS.— Jurisprudence reveals that in similar cases where lawyers abused the trust and confidence reposed in them by their clients as well as committed unlawful, dishonest, and immoral or deceitful conduct, as in this case, the Court found them guilty of gross misconduct and disbarred them. In *Chua v. Mesina, Jr.*, the Court disbarred the lawyer who, upon his misrepresentations, breached his promise to his clients to transfer to them the property subject of that case, but instead, offered the same for sale to the public. Also, in *Tabang v. Gacott*, the penalty of disbarment was meted out against the lawyer who, among others, actively sought to sell the properties subject of that case contrary to the interests of his own clients. As the infractions in the foregoing cases are akin to those committed

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by respondent in the case at bar, the Court deems that the same penalty of disbarment be imposed against her. Clearly, as herein discussed, respondent committed deliberate violations of the Code as she dishonestly dealt with her own clients and advanced the interests of another against them resulting to their loss. For such violations, respondent deserves the ultimate punishment of disbarment consistent with existing jurisprudence.

5. **ID.; ID.; ID.; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS ARE ONLY CONFINED TO THE ISSUE OF WHETHER OR NOT THE RESPONDENT-LAWYER IS STILL FIT TO BE ALLOWED TO CONTINUE AS A MEMBER OF THE BAR, AND THAT THE ONLY CONCERN IS HIS ADMINISTRATIVE LIABILITY; LIABILITIES WHICH ARE PURELY CIVIL IN NATURE OR THOSE WHICH HAVE NO INTRINSIC LINK TO THE LAWYER'S PROFESSIONAL ENGAGEMENT SHOULD BE THRESHED OUT IN A PROPER PROCEEDING OF SUCH NATURE.—** [I]t bears to note that the foregoing resolution does not – as it should not – include an order for the return of the ₱2,800,000.00 purchase price and the amount of ₱115,000.00 for expenses allegedly received by respondent, albeit the Investigating Commissioner's findings on the same. In *Roa v. Moreno*, it has been held that disciplinary proceedings against lawyers are only confined to the issue of whether or not the respondent-lawyer is still fit to be allowed to continue as a member of the Bar and that the only concern is his administrative liability. Thus, the Court's findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature – meaning, those liabilities which have no intrinsic link to the lawyer's professional engagement – as the same should be threshed out in a proper proceeding of such nature.

APPEARANCES OF COUNSEL

Samonte Felicen Tria Samonte Law Offices for complainant.
David C. Naval for respondent.

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R E S O L U T I O N

***PER CURIAM*:**

For the Court's resolution is an administrative Complaint-affidavit[1] filed by Ma. Jennifer Tria-Samonte (complainant) against Epifania "Fanny" Obias (respondent) charging her for grave misconduct and/or gross malpractice.

The Facts

In 1997, spouses Prudencio and Loreta Jeremias (Sps. Jeremias), through respondent, offered for sale a parcel of agricultural land covered by Transfer Certificate of Title No. 597 (subject property) to the late Nestor Tria (Nestor) and Pura S. Tria (Sps. Tria), for a consideration of ₱2,800,000.00 and payable in installments.[2] Respondent, who was to receive the payment from Sps. Tria and transmit the same to Sps. Jeremias, undertook to deliver the deed of sale and owner's copy of the title to her clients (Sps. Tria) upon full payment of the purchase price.[3] She further undertook to cause the conversion of the subject property from agricultural to residential, and the transfer of the title to the names of Sps. Tria as part of the package agreement.[4] Respondent received all the installment payments made by Sps. Tria and issued receipts therefor.[5] After full payment of the purchase price on July 11, 1997,[6] and after giving an additional ₱115,000.00 for capital gains tax and other expenses,[7]

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[1] *Rollo*, pp. 1-5.

[2] *Id.* at 1.

[3] *Id.*

[4] *Id.*

[5] *Id.* at 2. See also various attached receipts issued by respondent; *id.* at 12-16.

[6] *Id.* See also receipt issued by respondent for the additional expenses; *id.* at 16.

[7] *Id.* at 17.

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Sps. Tria requested from respondent the delivery of the deed of sale and the owner's copy of the title to them but respondent failed to comply explaining that the Department of Agrarian Reform clearance for conversion of the subject property from agricultural to residential was taking time.[8] Despite several subsequent demands, respondent still failed to fulfill her undertakings under the package agreement.[9]

On May 22, 1998, Nestor was fatally shot and died.[10] Thereafter, complainant, daughter of Sps. Tria, again demanded from respondent and Sps. Jeremias the delivery of the deed of sale and the certificate of title of the subject property to them, but to no avail. For their part, Sps. Jeremias informed complainant that they had received the consideration of ₱2,200,000.00 and they had executed and turned-over the sale documents to respondent.[11]

Complainant later discovered that a deed of sale over the subject property was executed by Sps. Jeremias and notarized by respondent in favor of someone else, a certain Dennis Tan, on May 26, 1998 for a consideration of ₱200,000.00.[12]

In defense, respondent, in her Comment,[13] claimed that Nestor instructed her in November 1997 not to proceed with the processing of the deed of sale and, instead, to just look for another buyer.[14] She further averred that Nestor also demanded

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[8] See TSN, March 17, 2005, *id.* at 554.

[9] See TSN, March 17, 2005, *id.* at 554-555 and 576.

[10] *Id.* at 2. The Court takes judicial notice of the fact that respondent was charged with the murder of Nestor. In its November 24, 2010 Decision in G.R. No. 175887, entitled "*Heirs of the Late Nestor Tria v. Atty. Epifania Obias*," the Court even sustained the probable cause finding against respondent for the said crime. (See *Heirs of the Late Nestor Tria v. Obias*, G.R. No. 175887, November 24, 2010, 636 SCRA 91.)

[11] *Id.* at 3.

[12] *Id.* at 3-4. See also Deed of Sale dated May 26, 1998; *id.* at 23-24.

[13] *Id.* at 56-59.

[14] *Id.* at 57.

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from her the return of the purchase price, and that she complied with the said demand and returned the ₱2,800,000.00 in cash to Nestor sometime during the latter part of January 1998.[15] However, she did not ask for a written receipt therefor. In fact, Nestor told her not to return the ₱115,000.00 intended for capital gains taxes and other expenses, and to just apply the said sum as attorney's fees for the other legal services that she rendered for him.[16]

In the Court's Resolution[17] dated August 30, 1999, the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation. After numerous postponements, mostly at the instance of respondent,[18] only the complainant and her witnesses testified before the IBP. Eventually, respondent's right to present evidence was considered waived.[19]

The IBP's Report and Recommendation

On September 25, 2007, the IBP Investigating Commissioner, Wilfredo E.J.E. Reyes (Investigating Commissioner), issued his Report and Recommendation,[20] finding respondent to have violated her oath as a lawyer due to her participation in the second sale of the subject property despite the lack of any lawful termination of the prior sale of the same property to Sps. Tria. The Investigating Commissioner observed that respondent received, and admitted to have received, from Sps. Tria the ₱2,800,000.00 purchase price and the amount of ₱115,000.00 for expenses. He further found the second sale of the same property to Dennis Tan as a clear indication that respondent: (*a*) employed serious deceit or fraud against Sps. Tria and their family; (*b*) violated their proprietary rights; and (*c*) violated

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[15] *Id.*

[16] *Id.* at 57-58.

[17] *Id.* at 72.

[18] *Id.* at 628.

[19] *Id.*

[20] *Id.* at 620-639.

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the trust and confidence reposed in her.[21] On the other hand, the Investigating Commissioner did not give credence to respondent's defense that she returned the ₱2,800,000.00 purchase price given by Sps. Tria and that the latter caused the cancellation of the sale of the subject property in their favor, absent any receipt or documentation to prove the same.[22] As counsel for Sps. Tria, respondent failed in her obligation to observe honesty and diligence in their transaction and, as such, she was found guilty of grave misconduct and gross malpractice in violation of Canons 17 and 18 of the Code of Professional Responsibility (Code).[23] Accordingly, the Investigating Commissioner recommended that respondent be suspended from the practice of law for a period of five years.[24]

Finding the recommendation to be fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violation of Canons 17 and 18 of the Code, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation in Resolution No. XVIII-2007-185[25] dated October 19, 2007 but reduced the suspension of respondent from the practice of law from five years to one year.

Both complainant and respondent filed their respective motions for reconsideration[26] which were, however, denied in the IBP Board of Governors' Resolution No. XX-2012-109 dated March 10, 2012.[27]

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[21] *Id.* at 638.

[22] *Id.* at 637.

[23] *Id.*

[24] *Id.* at 639.

[25] *Id.* at 619.

[26] *Id.* at 640-646 (for complainant); and *id.* at 669-674 (for respondent).

[27] *Id.* at 697.

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The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating Canons 17 and 18 of the Code.

The Court's Ruling

The Court finds no cogent reason to disturb the findings of the IBP. Indeed, respondent, in her Comment, already admitted that she rendered legal services to Sps. Tria,[28] which necessarily gave rise to a lawyer-client relationship between them. The complete turnaround made by respondent in her motion for reconsideration from the IBP Board of Governors' Resolution No. XX-2012-109, where she contended that there was no lawyer-client relationship between her and Sps. Tria,[29] cannot thus be given any credence.

Since respondent publicly held herself out as lawyer, the mere fact that she also donned the hat of a real estate broker did not divest her of the responsibilities attendant to the legal profession. In this regard, the legal advice and/or legal documentation that she offered and/or rendered regarding the real estate transaction subject of this case should not be deemed removed from the category of legal services.[30] Case law instructs that if a person, in respect to business affairs or troubles of any kind, consults a lawyer with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces

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[28] Paragraph 5 of respondent's comment states: "It is hereby further pointed out that undersigned Respondent had been appearing as counsel for Nestor Tria since 1995 in administrative cases and in investigations by the Office of the Ombudsman for violation of the Anti-Graft and Corrupt Practices Act, **and had rendered legal services by way of documenting, or giving legal advice on, acquisition of many valuable real properties not only in Camarines Sur but in Metro Manila in the names of the spouses Nestor Tria and Pura S. Tria**, or of their children[.]" (*Id.* at 58; emphasis supplied)

[29] *Id.* at 656-657.

[30] See *Barnachea v. Atty. Quiocho*, 447 Phil. 67 (2003).

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with the consultation, then the professional employment is established.[31] Thus, in view of the fact that Sps. Tria knew respondent to be, and transacted with her as, a lawyer, her belated and unilateral classification of her own acts as being limited to those of a real estate broker cannot be upheld. In any case, the lawyer-client relationship between Sps. Tria and respondent was confirmed by the latter's admission that she rendered legal services to the former. With this relationship having been established, the Court proceeds to apply the ethical principles pertinent to this case.

It is a core ethical principle that lawyers owe fidelity to their clients' cause and must always be mindful of the trust and confidence reposed in them.[32] They are duty-bound to observe candor, fairness, and loyalty in all their dealings and transactions with their clients.[33] Irrefragably, the legal profession demands of attorneys an absolute abdication of every personal advantage conflicting in any way, directly or indirectly, with the interests of their clients.[34] As enshrined in Canons 17 and 18 of the Code:

Canon 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Canon 18 — A lawyer shall serve his client with competence and diligence.

In the present case, respondent clearly transgressed the above-mentioned rules as her actions were evidently prejudicial to her clients' interests. Records disclose that instead of delivering the deed of sale covering the subject property to her clients, she wilfully notarized a deed of sale over the same property in favor of another person. Accordingly, far removed from protecting the interest of her clients, Sps. Tria, who had, in fact, already fully paid the purchase price of the subject property, respondent

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[31] *Burbe v. Atty. Magulta*, 432 Phil. 840, 848-849 (2002).

[32] *Id.* at 849.

[33] *Barnachea v. Atty. Quiocho*, *supra* note 30, at 75.

[34] *Id.*

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participated and was even instrumental in bringing about the defeat of their rights over the said property. Hence, respondent grossly violated the trust and confidence reposed in her by her clients, in contravention of Canons 17 and 18 of the Code. To add, by turning against her own clients, respondent also violated Rule 1.01, Canon 1 of the Code which provides that a lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct. Lest it be forgotten, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing.[35] These unyielding standards respondent evidently failed to adhere to.

Anent the proper penalty to be imposed, records bear out that the penalty of suspension from the practice of law recommended by the Investigating Commissioner was decreased from a period of five years to just one year by the IBP Board of Governors in Resolution No. XVIII-2007-185. However, the Court observes that the said resolution is bereft of any explanation showing the bases for such modification in contravention of Section 12(a), Rule 139-B of the Rules of Court which mandates that "[t]he decision of the Board upon such review shall be in writing and shall clearly and distinctly state the facts and the reasons on which it is based." Verily, the Court frowns on the unexplained change made by the IBP Board of Governors in the recommended penalty. Be that as it may, the Court proceeds to correct the same.

Jurisprudence reveals that in similar cases where lawyers abused the trust and confidence reposed in them by their clients as well as committed unlawful, dishonest, and immoral or deceitful conduct, as in this case, the Court found them guilty of gross misconduct and disbarred them. In *Chua v. Mesina, Jr.*,[36] the Court disbarred the lawyer who, upon his misrepresentations,

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[35] *Tabang v. Gacott*, A.C. No. 6490, July 9, 2013, citing *In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edillon*, 174 Phil. 55, 62 (1978) and *Ventura v. Samson*, A.C. No. 9608, November 27, 2012, 686 SCRA 430, 433.

[36] 479 Phil. 796 (2004).

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breached his promise to his clients to transfer to them the property subject of that case, but instead, offered the same for sale to the public. Also, in *Tabang v. Gacott*,[37] the penalty of disbarment was meted out against the lawyer who, among others, actively sought to sell the properties subject of that case contrary to the interests of his own clients. As the infractions in the foregoing cases are akin to those committed by respondent in the case at bar, the Court deems that the same penalty of disbarment be imposed against her. Clearly, as herein discussed, respondent committed deliberate violations of the Code as she dishonestly dealt with her own clients and advanced the interests of another against them resulting to their loss. For such violations, respondent deserves the ultimate punishment of disbarment consistent with existing jurisprudence.

As a final point, it bears to note that the foregoing resolution does not – as it should not – include an order for the return of the ₱2,800,000.00 purchase price and the amount of ₱115,000.00 for expenses allegedly received by respondent, albeit the Investigating Commissioner's findings on the same. In *Roa v. Moreno*,[38] it has been held that disciplinary proceedings against lawyers are only confined to the issue of whether or not the respondent-lawyer is still fit to be allowed to continue as a member of the Bar and that the only concern is his administrative liability.[39] Thus, the Court's findings during administrative-disciplinary proceedings have no bearing on the liabilities of the parties involved which are purely civil in nature – meaning, those liabilities which have no intrinsic link to the lawyer's professional

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[37] See *supra* note 35.

[38] A.C. No. 8382, April 21, 2010, 618 SCRA 693.

[39] "[W]e cannot sustain the IBP's recommendation ordering respondent to return the money paid by complainant. In disciplinary proceedings against lawyers, **the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability**. Our findings have no material bearing on other judicial action which the parties may choose to file against each other." (*Roa v. Moreno*, *id.* at 700; emphasis supplied.)

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engagement[40] – as the same should be threshed out in a proper proceeding of such nature.

WHEREFORE, respondent Epifania "Fanny" Obias is found guilty of gross misconduct and is accordingly **DISBARRED.**

Let a copy of this Resolution be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all the courts.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Villarama, Jr., J., on official leave.

EN BANC

[A.C. No. 9532. October 8, 2013]

MARIA CRISTINA ZABALJAUREGUI PITCHER, *complainant, vs.* **ATTY. RUSTICO B. GAGATE,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER-CLIENT RELATIONSHIP; THE LAWYER IS EXPECTED TO MAINTAIN AT ALL TIMES A HIGH STANDARD OF LEGAL PROFICIENCY, AND TO DEVOTE HIS FULL

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[40] An example of a liability which has an intrinsic link to the professional engagement would be a lawyer's acceptance fees.