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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.

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ATTENTION, SKILL, AND COMPETENCE TO THE CASE, REGARDLESS OF ITS IMPORTANCE AND WHETHER HE ACCEPTS IT FOR A FEE OR FOR FREE.— The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free. To this end, he is enjoined to employ only fair and honest means to attain lawful objectives. These principles are embodied in Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code.

2. ID.; ID.; ID.; THE LAWYER'S ACT OF ADVISING HIS CLIENT TO GO INTO HIDING IN ORDER TO EVADE ARREST IS NOT ONLY IMPROPER BUT ALSO ERRONEOUS, AND IS A CLEAR VIOLATION OF THE LAWYER'S DUTY TO HIS CLIENT TO USE PEACEFUL AND LAWFUL METHODS IN SEEKING JUSTICE.— [T]he Court finds that respondent failed to exercise the required diligence in handling complainant's cause since he: ***first***, failed to represent her competently and diligently by acting and proffering professional advice beyond the proper bounds of law; and, ***second***, abandoned his client's cause while the grave coercion case against them was pending. Anent the first infraction, it bears emphasis that complainant's right over the properties of her deceased husband, David, has yet to be sufficiently established. As such, the high-handed action taken by respondent to enforce complainant's claim of ownership over the latter's interest in Consulting Edge – *i.e.*, causing the change of the office door lock which thereby prevented the free ingress and egress of the employees of the said company – was highly improper. Verily, a person cannot take the law into his own hands, regardless of the merits of his theory. In the same light, respondent's act of advising complainant to go into hiding in order to evade arrest in the criminal case can hardly be maintained as proper legal advice since the same constitutes transgression of the ordinary processes of law. By

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virtue of the foregoing, respondent clearly violated his duty to his client to use peaceful and lawful methods in seeking justice, in violation of Rule 19.01, Canon 19 of the Code as above-quoted. To note further, since such courses of action were not only improper but also erroneous, respondent equally failed to serve his client with competence and diligence in violation of Canon 18 of the Code. In the same regard, he also remained unmindful of his client's trust in him – in particular, her trust that respondent would only provide her with the proper legal advice in pursuing her interests – thereby violating Canon 17 of the Code.

3. ID.; ID.; ID.; THE LAWYER'S ACT OF LEAVING HIS CLIENT TOTALLY UNREPRESENTED IN A CRIMINAL CASE AMOUNTS TO GROSS AND INEXCUSABLE NEGLECT.— With respect to the second infraction, [r]ecords definitively bear out that respondent completely abandoned complainant during the pendency of the grave coercion case against them; this notwithstanding petitioner's efforts to reach him as well as his receipt of the ₱150,000.00 acceptance fee. It is hornbook principle that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court. Hence, considering respondent's gross and inexcusable neglect by leaving his client totally unrepresented in a criminal case, it cannot be doubted that he violated Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code.

4. ID.; ID.; ID.; FAILURE OF THE LAWYER-RESPONDENT TO FILE HIS ANSWER TO THE COMPLAINT DESPITE DUE NOTICE DEMONSTRATES NOT ONLY HIS LACK OF RESPONSIBILITY BUT ALSO HIS LACK OF INTEREST IN CLEARING HIS NAME, WHICH IS CONSTITUTIVE OF AN IMPLIED ADMISSION OF THE CHARGES LEVELED AGAINST HIM.— [I]t must be pointed out that respondent failed to file his answer to the complaint despite due notice. This demonstrates not only his lack of responsibility but also his lack of interest in clearing

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his name, which, as case law directs, is constitutive of an implied admission of the charges leveled against him.

5. ID.; ID.; ID.; SUSPENSION FROM THE PRACTICE OF LAW FOR A PERIOD OF THREE YEARS IMPOSED UPON THE RESPONDENT-LAWYER FOR IMPROPER AND ERRONEOUS COUNSELING AND ABANDONMENT OF HIS CLIENT DURING THE PROCEEDINGS.— Several cases show that lawyers who have been held liable for gross negligence for infractions similar to those committed of respondent were suspended from the practice of law for a period of two years. In *Jinon v. Jiz*, a lawyer who neglected his client's case, misappropriated the client's funds and disobeyed the IBP's directives to submit his pleadings and attend the hearings was suspended from the practice of law for two years. x x x. However, the Court observes that, in the present case, complainant was subjected to a graver injury as she was prosecuted for the crime of grave coercion largely due to the improper and erroneous advice of respondent. Were it not for respondent's imprudent counseling, not to mention his act of abandoning his client during the proceedings, complainant would not have unduly suffered the harbors of a criminal prosecution. Thus, considering the superior degree of the prejudice caused to complainant, the Court finds it apt to impose against respondent a higher penalty of suspension from the practice of law for a period of three years as recommended by the OBC.

6. ID.; ID.; ID.; DISCIPLINARY PROCEEDINGS SHOULD ONLY REVOLVE AROUND THE DETERMINATION OF THE RESPONDENT-LAWYER'S ADMINISTRATIVE AND NOT HIS CIVIL LIABILITY, EXCEPT WHEN THE CLAIMED LIABILITIES ARE INTRINSICALLY LINKED TO HIS PROFESSIONAL ENGAGEMENT.— [T]he Court sustains the OBC's recommendation for the return of the ₱150,000.00 acceptance fee received by respondent from complainant since the same is intrinsically linked to his professional engagement. While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received

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by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement (such as the acceptance fee in this case). Hence, considering further that the fact of respondent's receipt of the ₱150,000.00 acceptance fee from complainant remains undisputed, the Court finds the return of the said fee, as recommended by the OBC, to be in order.

APPEARANCES OF COUNSEL

David Bartido Loste for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is an administrative complaint[1] filed by Maria Cristina Zabaljauregui Pitcher (complainant) against Atty. Rustico B. Gagate (respondent), charging him for gross ignorance of the law and unethical practice of law.

The Facts

Complainant claimed to be the legal wife of David B. Pitcher (David),[2] a British national who passed away on June 18, 2004.[3] Prior to his death, David was engaged in business in the Philippines and owned, among others, 40% of the shareholdings in Consulting Edge, Inc.[4] (Consulting Edge), a domestic corporation. In order to settle the affairs of her deceased husband, complainant engaged the services of respondent.[5]

On June 22, 2004, complainant and respondent met with Katherine Moscoso Bantegui (Bantegui),[6] a major stockholder

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

[2] *Id.* at 117. As shown in the Marriage Contract.

[3] *Id.* at 1.

[4] *Id.* at 1, 56, and 140.

[5] *Id.* at 1, 52, 72, and 140.

[6] *Id.* at 1. "Katrina Bantigue or Bantique" in some parts of the record.

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of Consulting Edge,[7] in order to discuss the settlement of David's interest in the company.[8] They agreed to another meeting which was, however, postponed by Bantegui. Suspecting that the latter was merely stalling for time in order to hide something, respondent insisted that the appointment proceed as scheduled.[9]

Eventually, the parties agreed to meet at the company premises on June 28, 2004. However, prior to the scheduled meeting, complainant was prevailed upon by respondent to put a paper seal on the door of the said premises, assuring her that the same was legal.[10]

On the scheduled meeting, Bantegui expressed disappointment over the actions of complainant and respondent, which impelled her to just leave the matter for the court to settle. She then asked them to leave, locked the office and refused to give them a duplicate key.[11]

Subsequently, however, respondent, without the consent of Bantegui, caused the change in the lock of the Consulting Edge office door,[12] which prevented the employees thereof from entering and carrying on the operations of the company. This prompted Bantegui to file before the Office of the City Prosecutor of Makati (Prosecutor's Office) a complaint for grave coercion against complainant and respondent.[13] In turn, respondent advised complainant that criminal and civil cases should be initiated against Bantegui for the recovery of David's personal records/ business interests in Consulting Edge.[14] Thus, on January 17,

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[7] *Id.* at 68-69.

[8] *Id.* at 1.

[9] *Id.* at 2.

[10] *Id.* at 2, 110, and 141.

[11] *Id.* at 2-3, 110-111, and 141.

[12] *Id.* at 3, 111, and 141. See also TSN, February 2, 2007 (attached to the *rollo*), *id.* at 80-85.

[13] *Id.* at 3, 111, and 142.

[14] *Id.* at 3 and 111.

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2005, the two entered into a Memorandum of Agreement,[15] whereby respondent undertook the filing of the cases against Bantegui, for which complainant paid the amount of ₱150,000.00 as acceptance fee and committed herself to pay respondent ₱1,000.00 for every court hearing.[16]

On November 18, 2004, the Prosecutor's Office issued a Resolution[17] dated October 13, 2004, finding probable cause to charge complainant and respondent for grave coercion. The corresponding Information was filed before the Metropolitan Trial Court of Makati City, Branch 63, docketed as Criminal Case No. 337985 (grave coercion case), and, as a matter of course, warrants of arrest were issued against them.[18] Due to the foregoing, respondent advised complainant to go into hiding until he had filed the necessary motions in court. Eventually, however, respondent abandoned the grave coercion case and stopped communicating with complainant.[19] Failing to reach respondent despite diligent efforts,[20] complainant filed the instant administrative case before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD), docketed as CBD Case No. 06-1689.

Despite a directive[21] from the IBP-CBD, respondent failed to file his answer to the complaint. The case was set for mandatory

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[15] *Id.* at 118-122.

[16] *Id.* at 3 and 111.

[17] *Id.* at 124-128. Docketed as I.S. No. 2004-G-10680. Issued by 4th Assistant City Prosecutor William C. T. Uy.

[18] *Id.* at 4.

[19] *Id.*

[20] *Ibid.*

[21] *Id.* at 18-19. The Order dated March 15, 2006 issued by Director for Bar Discipline Rogelio A. Vinluan was delivered to respondent on March 27, 2006 as shown in the Quezon City Central Post Office's Certification dated February 19, 2009 issued by Chief of the Records Unit Llewelyn Fallarme.

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conference on November 24, 2006,[22] which was reset twice,[23] on January 12, 2007 and February 2, 2007, due to the absence of respondent. The last notice sent to respondent, however, was returned unserved for the reason "moved out."[24] In view thereof, Investigating Commissioner Tranquil S. Salvador III declared the mandatory conference terminated and required the parties to submit their position papers, supporting documents and affidavits.[25]

The IBP's Report and Recommendation

On March 18, 2009, Investigating Commissioner Pedro A. Magpayo, Jr. (Commissioner Magpayo) issued a Report and Recommendation,[26] observing that respondent failed to safeguard complainant's legitimate interest and abandoned her in the grave coercion case. Commissioner Magpayo pointed out that Bantegui is not legally obliged to honor complainant as subrogee of David because complainant has yet to establish her kinship with David and, consequently, her interest in Consulting Edge.[27] Hence, the actions taken by respondent, such as the placing of paper seal on the door of the company premises and the changing of its lock, were all uncalled for. Worse, when faced with the counter legal measures to his actions, he abandoned his client's cause.[28] Commissioner Magpayo found that respondent's acts evinced a lack of adequate preparation and mastery of the applicable laws on his part, in violation of Canon 5[29] of the Code of

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[22] *Id.* at 25. Notice of Mandatory Conference dated September 29, 2006 issued by Commissioner Tranquil S. Salvador III.

[23] *Id.* at 29 and 31.

[24] *Id.* at 32. Per the Postmaster's Letter dated February 18, 2009.

[25] *Id.* at 98.Order dated February 2, 2007.

[26] *Id.* at 138-146.

[27] *Id.* at 145.

[28] *Id.*

[29] CANON 5 — A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve

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Professional Responsibity (Code), warranting his suspension from the practice of law for a period of six months.[30]

The IBP Board of Governors adopted and approved the aforementioned Report and Recommendation in Resolution No. XX-2011-261 dated November 19, 2011 (November 19, 2011 Resolution), finding the same to be fully supported by the evidence on record and the applicable laws and rules.[31]

In a Resolution[32] dated October 8, 2012, the Court noted the Notice of the IBP's November 19, 2011 Resolution, and referred the case to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation.[33]

The OBC's Report and Recommendation

On February 11, 2013, the OBC submitted a Report and Recommendation[34] dated February 6, 2013, concluding that respondent grossly neglected his duties to his client and failed to safeguard the latter's rights and interests in wanton disregard of his duties as a lawyer.[35] It deemed that the six-month suspension from the practice of law as suggested by the IBP was an insufficient penalty and, in lieu thereof, recommended that respondent be suspended for three years.[36] Likewise, it ordered respondent to return the ₱150,000.00 he received from complainant as acceptance fee.[37]

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high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

[30] *Rollo,* pp. 145-146.

[31] *Id.* at 137.

[32] *Id.* at 147.

[33] *Id.* at 148.

[34] *Id.* at 149-153.

[35] *Id.* at 151-152.

[36] *Id.* at 152-153.

[37] *Id.* at 153.

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The Court's Ruling

After a careful perusal of the records, the Court concurs with and adopts the findings and conclusions of the OBC.

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with utmost trust and confidence. In this regard, clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. For his part, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.[38] To this end, he is enjoined to employ only fair and honest means to attain lawful objectives.[39] These principles are embodied in Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code which respectively state:

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.

x x x x x x x x x

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

x x x x x x x x x

CANON 19 – A lawyer shall represent his client with zeal within the bounds of the law.

Rule 19.01 – A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

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[38] *Vda. de Saldivar v. Cabanes, Jr.*, A.C. No. 7749, July 8, 2013.

[39] *Trinidad v. Villarin*, A.C. No. 9310, February 27, 2013, 692 SCRA 1, 7.

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x x x x x x x x x

Keeping with the foregoing rules, the Court finds that respondent failed to exercise the required diligence in handling complainant's cause since he: ***first***, failed to represent her competently and diligently by acting and proffering professional advice beyond the proper bounds of law; and, ***second***, abandoned his client's cause while the grave coercion case against them was pending.

Anent the first infraction, it bears emphasis that complainant's right over the properties of her deceased husband, David, has yet to be sufficiently established. As such, the high-handed action taken by respondent to enforce complainant's claim of ownership over the latter's interest in Consulting Edge – *i.e.*, causing the change of the office door lock which thereby prevented the free ingress and egress of the employees of the said company – was highly improper. Verily, a person cannot take the law into his own hands, regardless of the merits of his theory. In the same light, respondent's act of advising complainant to go into hiding in order to evade arrest in the criminal case can hardly be maintained as proper legal advice since the same constitutes transgression of the ordinary processes of law. By virtue of the foregoing, respondent clearly violated his duty to his client to use peaceful and lawful methods in seeking justice,[40] in violation of Rule 19.01, Canon 19 of the Code as above-quoted. To note further, since such courses of action were not only improper but also erroneous, respondent equally failed to serve his client with competence and diligence in violation of Canon 18 of the Code. In the same regard, he also remained unmindful of his client's trust in him – in particular, her trust that respondent would only provide her with the proper legal advice in pursuing her interests – thereby violating Canon 17 of the Code.

With respect to the second infraction, records definitively bear out that respondent completely abandoned complainant during the pendency of the grave coercion case against them; this notwithstanding petitioner's efforts to reach him as well as

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[40] *Rural Bank of Calape, Inc. (RBCI) Bohol v. Florido*, A.C. No. 5736, June 18, 2010, 621 SCRA 182, 187.

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his receipt of the ₱150,000.00 acceptance fee. It is hornbook principle that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to his care or giving sound legal advice, but also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination even without prodding from the client or the court.[41] Hence, considering respondent's gross and inexcusable neglect by leaving his client totally unrepresented in a criminal case, it cannot be doubted that he violated Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code.

In addition, it must be pointed out that respondent failed to file his answer to the complaint despite due notice. This demonstrates not only his lack of responsibility but also his lack of interest in clearing his name, which, as case law directs, is constitutive of an implied admission of the charges leveled against him.[42] In fine, respondent should be held administratively liable for his infractions as herein discussed. That said, the Court now proceeds to determine the appropriate penalty to be imposed against respondent.

Several cases show that lawyers who have been held liable for gross negligence for infractions similar to those committed of respondent were suspended from the practice of law for a period of two years. In *Jinon v. Jiz*,[43] a lawyer who neglected his client's case, misappropriated the client's funds and disobeyed the IBP's directives to submit his pleadings and attend the hearings was suspended from the practice of law for two years. In *Small v. Banares*,[44] the Court meted a similar penalty against a lawyer who failed to render any legal service even after receiving money from the complainant; to return the money and documents he

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[41] *Vda. De Saldivar v. Cabanes, Jr., supra* note 38.

[42] See *Re: Criminal Case No. MC-02-5637 Against Arturo V. Peralta and Larry C. De Guzman,* 498 Phil. 318, 325 (2005).

[43] See A.C. No. 9615, March 5, 2013, 692 SCRA 348.

[44] See 545 Phil. 226 (2007).

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received despite demand; to update his client on the status of her case and respond to her requests for information; and to file an answer and attend the mandatory conference before the IBP. Also, in *Villanueva v. Gonzales*,[45] a lawyer who neglected complainant's cause; refused to immediately account for his client's money and to return the documents received; failed to update his client on the status of her case and to respond to her requests for information; and failed to submit his answer and to attend the mandatory conference before the IBP was suspended from the practice of law for two years. However, the Court observes that, in the present case, complainant was subjected to a graver injury as she was prosecuted for the crime of grave coercion largely due to the improper and erroneous advice of respondent. Were it not for respondent's imprudent counseling, not to mention his act of abandoning his client during the proceedings, complainant would not have unduly suffered the harbors of a criminal prosecution. Thus, considering the superior degree of the prejudice caused to complainant, the Court finds it apt to impose against respondent a higher penalty of suspension from the practice of law for a period of three years as recommended by the OBC.

In the same light, the Court sustains the OBC's recommendation for the return of the ₱150,000.00 aceptance fee received by respondent from complainant since the same is intrinsically linked to his professional engagement. While the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability,[46] it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement (such as the acceptance fee in this case). Hence,considering further that the fact of respondent's receipt of the ₱150,000.00 acceptance fee from complainant remains

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[45] See 568 Phil. 379 (2008).

[46] See *Roa v. Moreno*, A.C. No. 8382, April 21, 2010, 618 SCRA 693.

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undisputed,[47] the Court finds the return of the said fee, as recommended by the OBC, to be in order.

WHEREFORE, respondent Atty. Rustico B. Gagate is found guilty of violating Canon 17, Rule 18.03 of Canon 18, and Rule 19.01 of Canon 19 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of three (3) years, effective upon the finality of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

Further, respondent is **ORDERED** to return to complainant Maria Cristina Zabaljauregui Pitcher the ₱150,000.00 acceptance fee he received from the latter within ninety (90) days from the finality of this Decision. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

Let a copy of this Decision 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, and *Leonen, JJ.,* concur.

Reyes, J., no part — had been his associate.

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

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[47] The assertion that the ₱150,000.00 acceptance fee was received by respondent – as evidence by a receipt signed by respondent (attached as Annex "C" to the complaint; *rollo*, p. 12) – remains undisputed in view of respondent's default during the administrative proceedings *a quo* (see Order dated February 2, 2007; *id.* at 98) as well as his failure to file any other pleading in his defense despite due notice (see *id*. at 151). To further note, the said receipt was duly submitted to the IBP during the February 2, 2007 mandatory conference (*id*. at 61-64). However, records do not show that complainant's allegation with respect to her payment of appearance fees to respondent at the rate of ₱1,000.00 per hearing (see complainant, *id*. at 3) was duly substantiated; perforce, the return of the same cannot be made by the Court.