



Republic of the Philippines  
Supreme Court  
Office of the Court Administrator  
Manila

**OCA CIRCULAR NO. 47-2005**

**TO : THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC ATTORNEY'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES**

**SUBJECT : SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS OF ATTY. JEREMIAS P. VITAN**

For the information and guidance of all concerned, quoted hereunder is the Decision of the Second Division dated October 21, 2004 in Administrative Case No. 6441 (formerly CBD 02-946), entitled "Violeta R. Tahaw vs. Atty. Jeremias P. Vitán", to wit:

"A lawyer must at all times comport himself in a manner befitting a member of this noble profession and worthy of his esteemed position in society. Public confidence in law and lawyers may be eroded by the irresponsible and improper conduct of a member of the Bar.<sup>1</sup> Thus, any indicia of erosion in the dignity of the profession will be dealt with accordingly by this Court.

In a *Complaint*<sup>2</sup> dated 11 March 2002, Violeta R. Tahaw claimed that she secured the services of respondent for filing the appropriate action for the partition of a real property located in Makati City sometime in 1999. As agreed upon, petitioner delivered to respondent four (4) checks in the total amount of ₱30,000.00 representing payment of the latter's professional fee. However, after almost a year without petitioner hearing from respondent about the case he would file in court, petitioner sent respondent a letter-inquiry as to the status of the case. Respondent assured complainant that he had already filed the appropriate case in Makati. Not convinced by her counsel's

<sup>1</sup> Ducat, Jr. v. Villalon, Jr., A.C. No. 3910, 14 August 2000, 337 SCRA 622, 629.

<sup>2</sup> Rollo, pp. 1-4.

assurance, complainant went to the Office of the Clerk of Court of Makati City to check if a case was indeed filed by respondent for and in her behalf.

A Certification dated 15 August 2000 issued by the assistant Clerk of Court of Makati City confirmed complainant's suspicion that respondent did not file the case as agreed upon. She wrote respondent informing him that she is terminating the latter's services as counsel and demanded the refund of the ₱30,000.00. Respondent failed to refund the aforesaid amount, and complainant was thus prompted to seek the assistance of the Integrated Bar of the Philippines (IBP).

The IBP, responding to complainant's predicament and wrote respondent two (2) letters,<sup>3</sup> informing the latter of complainant's grievance and asking his position thereon. Respondent, through a letter<sup>4</sup> to the IBP, claimed that the problem arose from a miscommunication between client and counsel. In addition, respondent insinuated that the case he was supposed to file for the complainant was complicated by the filing of other earlier complaints which he was not privy to. He promised to refund the complainant the ₱30,000.00.

The IBP acknowledged receipt of respondent's response and instructed him to issue six (6) postdated checks, each in the amount of ₱5,000.00 and dated a month apart, and to deliver the same to the IBP's office to facilitate the return of the ₱30,000.00 to complainant. Despite the instruction, respondent failed to refund the amount to complainant, and succeeded only in having complainant go back and forth to his office. Complainant once more wrote to respondent regarding the checks, only to be told by respondent that he will just send the checks through his secretary. Complainant then filed a complaint for disbarment or suspension with the IBP.

For his part, respondent denied that he obligated himself to file the partition case upon receipt of the ₱30,000.00 as claimed by complainant. He averred that the said amount represents consultation fees, research fees, and minimal acceptance fees.<sup>5</sup> He stated that complainant failed to disclose to him circumstances which would have adverse effects on the case sought to be filed<sup>6</sup> and that when confronted complainant about these, the latter became "lukewarm."<sup>7</sup> Furthermore, he claimed that he asked complainant for the filing fees but the latter "dilly-dallied" and after a while he received a letter terminating his

<sup>3</sup> *Id.* at 9-10.

<sup>4</sup> *Id.* at 11.

<sup>5</sup> *Id.* at 17-18.

<sup>6</sup> Respondent claims that complainant previously filed a case against her husband and that she signed an agreement with her husband "practically as settlement of the case." *Id.* at 18.

<sup>7</sup> *Id.* at 18.

services.<sup>8</sup> In fact, complainant had already affixed her signature to the complaint but was probably swayed by other advisers not to proceed with the case and instead pursue the refund of the ₱30,000.00.<sup>9</sup>

On 27 November 2003, IBP Commissioner Acerey C. Pacheco submitted his report and recommendation to the IBP Board of Governors. As per the report, respondent's agreement to represent complainant in the partition case intended to be filed was established.<sup>10</sup> Likewise, the report pointed out the inconsistency between respondent's statement in his Answer denying that he obligated himself to file the case upon receipt of ₱30,000.00 and complainant's dilly-dallying in giving him the amount for filing fees, as against his assurances to complainant that the case was already filed.<sup>11</sup> The report noted that respondent's failure to reply to or deny complainant's allegation in her letter terminating his services was an admission that he miserably failed to diligently attend to the latter's case.<sup>12</sup> Finally, the report stated that respondent failed to comply with his commitment to return the ₱30,000.00. Considering that the amount was paid by the complainant for his professional services which he miserably failed to perform, the same must be returned to complainant without delay.<sup>13</sup> The report recommended that respondent be reprimanded and admonished to be more careful in the performance of his duty to his clients.<sup>14</sup>

On 27 February 2004, the IBP Board of Governors issued a resolution adopting and approving the Report and Recommendation of the Investigating Commissioner,<sup>15</sup> to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A," and, finding the recommendation fully supported by the evidence on record and applicable laws and rules, considering that a lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client, Atty. Jeremi[as] P. Vitan is hereby REPRIMANDED and ADMONISHED to be, henceforth, more careful in the performance of his duty to his clients and Ordered to Immediately Return the amount of ₱30,000.00 to complainant.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.* at 82.

<sup>11</sup> *Id.* at 82-83

<sup>12</sup> *Id.* at 83.

<sup>13</sup> *Id.* at 85.

<sup>14</sup> *Id.* at 85-86.

<sup>15</sup> *Id.* at 76.

After a careful consideration of the record of the instant case, the Court agrees with the IBP in its findings and conclusion that respondent has been remiss in his responsibilities. However, this Court holds that the appropriate sanction should be a suspension for a period of six (6) months.

Canon 17 of the Code of Professional Responsibility provides: "A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him." In the case of *Aromin v. Atty. Boncavil*,<sup>16</sup> this Court held:

Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client save, by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.<sup>17</sup>

The trust and confidence necessarily reposed by clients require in a lawyer a high standard and appreciation of his duty to them. To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty, and integrity of the legal profession.<sup>18</sup>

A perusal of the records of the case reveals that complainant wanted to partition a parcel of residential land owned in part by her deceased husband, Simeon Tahaw, Sr.<sup>19</sup> Allegedly, Simeon owed complainant sums of money which the former failed to pay, as a result of which, complainant filed a

<sup>16</sup> 373 Phil. 612 (1999).

<sup>17</sup> *Id.* at 618 citing *Santiago v. Fojas*, 248 SCRA 68 (1995).

<sup>18</sup> *Supra*, note 1 at 628.

<sup>19</sup> *Id.* at 22-27.

case against him. To settle the case, the spouses entered into an agreement<sup>20</sup> dated 27 May 1987 wherein Simeon Tahaw, Sr. and complainant agreed that a specific forty (40) square meter portion of the same parcel of land "shall pass on to complainant as her exclusive property to the exclusion of all other heirs."<sup>21</sup> When Simeon died, complainant went to respondent to seek the partition of the same parcel of land with the forty (40) square meter portion thereof awarded to her.

It is an elementary principle in civil law that every donation between the spouses during the marriage is void.<sup>22</sup> The agreement relied upon by complainant for the proposed partition case partakes the nature of a donation by Simeon of a part of his undivided share in the property. Hence, the agreement is void and cannot be the source of any right in favor of complainant. The partition case was premised on a void agreement and thus could not prosper.

Even if complainant did not disclose the previous litigation and agreements between her and her deceased husband, respondent would eventually find out, as in fact he did, about it in the course of drafting the proposed complaint. Any lawyer worth his salt would know that the partition case sought to be filed would have no basis and would not prosper. Respondent should have immediately appraised complainant on the lack of merit of her case. Instead, he asked for money for filing fees, and worse, pretended to have filed the complaint.

Clearly, respondent's protestations that the delay and eventual non-filing of the case for complainant was due to the latter's fault fall flat in view of the circumstances surrounding the case. Complainant's assertion that respondent reassured her that the case had already been filed remains uncontroverted by the latter. Why would respondent lead complainant to believe that a case has been filed, and why would the latter expect that it be filed, if as respondent claims, he was still waiting for the filing fees from the complainant? Moreover, in his letter to the IBP dated 29 November 2003,<sup>23</sup> respondent stated that he was willing to arrange for the refund of the ₱30,000.00 as he "in conscience cannot file a case merely just for the sake of filing a case to earn [a] few bucks."<sup>24</sup> If respondent believes that complainant's case appeared hopeless, why did he not advise her so? Why did he let the matter drag until this very proceeding before he explained the non-filing of the proposed case?

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<sup>20</sup> *Id.* at 41.

<sup>21</sup> *Id.*

<sup>22</sup> Art. 133, Civil Code and Art. 87 of the Family Code.

<sup>23</sup> Rollo, p. 11.

<sup>24</sup> *Ibid.*

When a lawyer takes a client's cause, he thereby covenants that he will exert all effort for its prosecution until its final conclusion.<sup>25</sup> Thus, when respondent's services were engaged by complainant, the former took it upon himself to perform the legal services required of him. In the instant case, however, respondent seemed to have forgotten his sworn duty after he received the money from his client.

Canon 7 of the Code of Professional Responsibility mandates that a "lawyer shall at all times uphold the integrity and dignity of the legal profession." The strength of the legal profession lies in the dignity and integrity of its members. For this reason, this Court has been exacting in its demand of integrity and good moral character of the members of the Bar. As explained in *Sipin-Nabor v. Atty. Baterina*:<sup>26</sup>

This Court has been exacting in its demand for integrity and good moral character of the members of the Bar. A lawyer shall at all times uphold the integrity and dignity of the legal profession. The trust and confidence necessarily reposed by clients requires in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. The bar must maintain a high standard of legal proficiency as well as of honesty and fair dealing. Generally speaking, a lawyer can do honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end, members of the legal fraternity can do nothing that might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.<sup>27</sup>

Once a lawyer agrees to handle a case, he should undertake the task with dedication and care, and if he should do any less, then he is not true to his lawyer's oath.<sup>28</sup> The records of the case clearly show that respondent failed to live up to the duties and responsibilities of a member of the legal profession.

WHEREFORE, respondent Atty. Jeremias P. Vitan is hereby found GUILTY of violation of Canons 7 and 17 of the Code of Professional Responsibility for his failure to file the necessary pleading for his client's case and for the failure to return and immediately deliver the funds of his client advanced for the purpose of filing the said case, upon demand, and even after his commitment with the IBP to do so. The respondent is hereby SUSPENDED for a period of six (6) months effective from the date of promulgation hereof, with a STERN

<sup>25</sup> *Cantiller v. Potenciano* A.C. No. 3195, 18 December 1989, 180 SCRA 246, 252.

<sup>26</sup> 412 Phil 419 (2001).

<sup>27</sup> *Id.* at 424 citing *Marcelo v. Javier*, 214 SCRA 1 (1992); *Fernandez v. Grecia*, 223 SCRA 425 (1993).

<sup>28</sup> *Moton v. Cadiao*, 377 Phil. 1, 5 (1999).

WARNING that a repetition of the same and similar acts shall be dealt with more severely. Atty. Vitan is ORDERED to immediately RETURN the amount of ₱30,000.00 to complainant.

Let a copy of this *Decision* be attached to Atty. Vitan's personal record in the Office of the Bar Confidant and copies thereof be furnished to the Integrated Bar of the Philippines.

SO ORDERED."

Copy of the Decision was received by the respondent on November 12, 2004 as shown by Registry No. 7190.

27 April 2005.

**PRESBITERO J. VELASCO, JR.**  
Court Administrator