

MA LIBERTAD SJ CANTILLER, COMPLAINANT, VS. ATTY. HUMBERTO V. POTENCIANO, RESPONDENT.*Adm. Case No. 3195. December 18, 1989*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/52ff0f063a32/>**PER CURIAM:**

"Public interest requires that an attorney exert his best efforts and ability in the prosecution or defense of his client's cause. A lawyer who performs that duty with diligence and candor not only protects the interests 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. This is so 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 or to the public. That circumstance explains the public concern for the maintenance of an untarnished standard of conduct by every attorney towards his client." [1]

Subject of this administrative complaint is Humberto V. Potenciano, a practicing lawyer and a member of the Philippine Bar under Roll No. 21862. He is charged with deceit, fraud, and misrepresentation, and also with gross misconduct, malpractice and of acts unbecoming of an officer of the court.

The essential facts are as follows:[2]

Complainant herein is the sister of Peregrina Cantiller, defendant in an action for "ejectment" docketed as Civil Case No. 6046 before the Metropolitan Trial Court of Manila, Branch 57, San Juan, Metro Manila.

Another action, likewise involving Peregrina but this time as plaintiff, was then pending before the Regional Trial Court, Branch 168, Pasig, Metro Manila docketed as Civil Case No. 54117 for "reconveyance with damages." Both actions involve the apartment unit being rented by complainant and her sister.

When the two cases were concluded, Peregrina came out the losing party. Civil Case No. 54117 for reconveyance was ordered dismissed by the Regional Trial Court on June 8, 1987 while Civil Case No. 6046 for ejectment was decided by the Metropolitan Trial Court against her.

On October 8, 1987, pursuant to the writ of execution issued in Civil Case No. 6046 for ejectment, complainant and Peregrina were served a notice to vacate the rented premises within four (4) days from receipt of notice.

Desperate and at a loss on what to do, they consulted a certain Sheriff Pagalunan on the matter. Pagalunan, in turn, introduced them to herein respondent. After such introduction, the parties "impliedly agreed" that respondent would handle their case. Forthwith, a petition entitled "Annulment of Judgment, Annulment of Sale and Damages with prayer for Preliminary Injunction and/or Status Quo Order, etc." was prepared by respondent to forestall the execution of the order to vacate in Civil Case No. 6046.

In the afternoon of October 9, 1987, the complainant was made to sign by respondent what she described as a "[h]astily prepared, poorly conceived, and haphazardly composed"[3] petition for annulment of judgment. Complainant alleges that respondent promised her that the necessary restraining order would be secured if only because the judge who would hear the matter was his "katsukaran" (close friend).

Thereupon, the petition was filed with the Regional Trial Court, Branch 153, Pasig, Metro Manila and docketed as Civil Case No. 55118. Respondent demanded from the complainant one thousand pesos (P1,000.00) as attorney's fee which the latter paid that same afternoon.

However, when the case was raffled and assigned to Branch 153, the presiding judge asked respondent to withdraw as counsel in the case on the ground of their friendship.

On October 11, 1987, respondent went to the house of complainant and asked her to be ready with two thousand pesos (P2,000.00) to be given to another judge who will issue the restraining order in the ejectment case (Civil Case No. 6046). Complainant and her sister were only able to raise the amount of one thousand pesos which they immediately gave to respondent.

Later respondent informed the complainant and her sister that he could not locate the judge who would issue the restraining order. The parties, then, instead went to the Max's Restaurant where respondent ordered some food - including two plastic bags of food allegedly to be given to the judge who would issue the restraining order. At this juncture, respondent asked for the remaining balance of the two thousand pesos (P2,000.00) which he earlier demanded. Complainant gave her last money - a ten dollar (\$10.00) bill.

Sometime after the filing of Civil Case No. 55118, respondent informed complainant and Peregrina that there was a need to file another case with the Regional Trial Court to enable them to regain possession of the apartment. For this purpose, respondent told complainant to prepare the amount of Ten Thousand Pesos (P10,000.00) allegedly to be deposited with the Treasurer's Office of Pasig as purchase price of the apartment and another one thousand pesos (P1,000.00) to cover the expenses of the suit. Respondent stressed to the complainant the need and urgency of filing the new complaint.

Complainant and Peregrina raised the said amounts through the kindness of some friends and relatives. On October 26, 1987, the money was handed over to the respondent.

On the same date, a complaint for "Specific Performance, Annulment of Simulated or Spurious Sale with Damages," later docketed as Civil Case No. 55210, was filed by respondent with the Regional Trial Court, Branch 165, Pasig, Metro Manila.

At the hearing of the preliminary injunction in Civil Case No. 55118 on October 30, 1987, respondent, contrary to his promise that he would secure a restraining order, withdrew his appearance as counsel for complainant. Complainant was not able to get another lawyer as replacement. Thus, no restraining order or preliminary injunction was obtained. As a consequence, the order to vacate in Civil Case No. 6046 was eventually enforced and executed.

Sometime thereafter, it came to complainant's knowledge that there was really no need to make a deposit of ten thousand pesos (P10,000.00) relative to Civil Case No. 55210. After further inquiry, she found out that in fact there was no such deposit made. Thus, on December 23, 1987, complainant sent a demand letter to respondent asking for the return of the total amount of eleven thousand pesos (P11,000.00) which the former earlier gave to the latter. However, this letter was never answered and the money was never returned. Hence, complainant lodged this administrative complaint against herein respondent.

Meanwhile, on December 29, 1987, the Regional Trial Court, Branch 153, dismissed Civil Case No. 55118 for failure to state a cause of action.[4] On January 20, 1988, Civil Case No. 55210 was likewise dismissed for being identical with Civil Case No. 55118.[5]

Respondent in his answer contends that the filing of Civil Cases Nos. 55118 and 55210 was done in good faith

and that the allegations of complainant relative to the administrative charge against him are all lies, product of one's imagination and only intended to harass him.[6]

This Court agrees that the petitions in Civil Cases Nos. 55118 and 55210 appear to be poorly prepared and written. Having represented himself capable of picking up the cudgels for the apparently lost cause of complainant respondent should have carefully prepared the pleadings if only to establish the justness of his representation. The little time involved is no excuse. Complainant reposed full faith in him. His first duty was to file the best pleading within his capability. Apparently, respondent was more interested in getting the most out of the complainant who was in a hopeless situation. He bragged about his closeness to the judge concerned in one case and talked about the need to "buy" the restraining order in the other. Worse still he got P10,000.00 as alleged deposit in court which he never deposited. Instead he pocketed the same. The pattern to milk the complainant dry is obvious.

When a lawyer takes a client's cause, he thereby covenants that he will exert all effort for its prosecution until its final conclusion. The failure to exercise due diligence or the abandonment of a client's cause makes such lawyer unworthy of the trust which the client had reposed on him. The acts of respondent in this case violate the most elementary principles of professional ethics.[7]

The Court finds that respondent failed to exercise due diligence in protecting his client's interests. Respondent had knowledge beforehand that he would be asked by the presiding judge in Civil Case No. 55118 to withdraw his appearance as counsel by reason of their friendship. Despite such prior knowledge, respondent took no steps to find a replacement nor did he inform complainant of this fact.

Even assuming that respondent had no previous knowledge that he would be asked to withdraw, the record is quite clear that four (4) days prior to the hearing of the preliminary injunction in Civil Case No. 55118 respondent already filed a motion therein withdrawing as complainant's counsel interposing as reason therefor his frequent attacks of pain due to hemorrhoids. Despite this void, respondent failed to find a replacement. He did not even ask complainant to hire another lawyer in his stead.[8]

His actuation is definitely inconsistent with his duty to protect with utmost dedication the interest of his client and of the fidelity, trust and confidence which he owes his client.[9] More so in this case, where by reason of his gross negligence complainant thereby suffered by losing all her cases.

The filing of Civil Case No. 55210 on October 26, 1987, the same day that he had already filed a motion to withdraw as counsel for complainant in Civil Case No. 55118, reveals his lack of good faith as an advocate. He also failed to appear for the complainant in said case. It was all a show to get more money from her. This adversely reflects on his fitness to practice law. When confronted with this evident irregularity, he lamely stated that while he did not physically appear for complainant he nevertheless prepared and drafted the pleadings.

His services were engaged by complainant hoping that the property subject of the ejectment proceeding would be returned to her. In fact, it was respondent who persuaded complainant that the filing of these two cases simultaneously were the means by which this objective can be achieved. His duty was not only to prepare the pleadings but to represent complainant until the termination of the cases. This he failed to do.

His representation that there was an immediate need to file Civil Case No. 55210 when he already knew that he could no longer physically handle the same is an act of deception of his client.[10] It shows lack of fidelity to his oath of office as a member of the Philippine bar.

The allegation of respondent that the ten thousand pesos (P10,000.00) was given to him as fee for his services, is simply incredible. Indeed, such amount is grossly disproportionate with the service he actually rendered.[11] And

his failure to return even a portion of the amount upon demand of complainant all the more bolsters the protestation of complainant that respondent does not deserve to remain as an officer of the court.

Lawyers are an indispensable part of the whole system of administering justice in this jurisdiction. At a time when strong and disturbing criticisms are being hurled at the legal profession, strict compliance with one's oath of office and the canons of professional ethics is an imperative.

Lawyers should be fair, honest, respectable, above suspicion and beyond reproach in dealing with their clients. The profession is not synonymous with an ordinary business proposition. It is a matter of public interest.

WHEREFORE, after considering the entirety of the circumstances present in this case, this Court finds Atty. Humberto V. Potenciano to be guilty of the charges against him and hereby SUSPENDS him from the practice of law for an indefinite period until such time he can demonstrate that he has rehabilitated himself as to deserve to resume the practice of law.

Finally, respondent is hereby ordered to return to complainant herein the sum of eleven thousand pesos (P11,000.00) with legal interest from the date of this resolution until it is actually returned.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Cortes, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Agpalo, Legal Ethics, 3rd ed. (Law Publishing House, 1985), page 153.

[2] Pages 1-13, Rollo.

[3] Page 2, Rollo.

[4] Pages 26-32, Record.

[5] Pages 39-40, Supra.

[6] Pages 48-51, Rollo.

[7] In re Yeager, 56 Phil 691 (1932).

[8] Page 11, Report.

[9] Canon 17, Code of Professional Responsibility.

[10] Sta. Maria vs. Tuason, 11 SCRA 562 (1964).

[11] Canon 22, Code of Professional Responsibility.

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