

REMIGIO P. SEGOVIA, JR., FRANCISCO RIZABAL, PABLITO RIZABAL, MARCIAL RIZABAL ROMINES, PELAGIO RIZABAL ARYAP AND RENATO RIZABAL, COMPLAINANTS, VS. ATTY. ROLANDO S. JAVIER, RESPON...

A.C. No. 10244 [Formerly CBD Case No. 07-2085]. March 12, 2018

Ponente: PERALTA, J.

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PERALTA, J.:

This case stemmed from a letter-complaint[1] filed by complainants Remigio P. Segovia, Jr., Francisco Rizabal, Pablito Rizabal, Marcial Rizabal Romines, Pelagio Rizabal Aryap and Renato Rizabal with the Integrated Bar of the Philippines (IBP) against respondent Atty. Rolando S. Javier, for allegedly abandoning them by failing to file the case on their behalf after collecting the amount of P57,000.00 for litigation fees.

Complainants alleged that they engaged the services of respondent as their counsel in a case involving falsification of documents and recovery of property. During the existence of attorney-client relationship, respondent asked the complainants the amount of P30,000.00 as filing fee, which they have dutifully paid. Complainants discovered that respondent also demanded from one Riza Rizabal Tesalona the amount of P27,000.00 in connection with the case. Whenever they followed-up on the case, they always received a response from respondent to not worry as he would tile the case within the week, and an assurance that the case will be resolved in their favor. However, respondent never filed the case.[2]

On May 8, 2012, the Commission on Bar Discipline (CBD), through IBP Commissioner Oliver A. Cachapero (Commissioner Cachapero), issued a Notice of Mandatory Conference[3] directing the parties to appear before the commission, and to submit their respective Mandatory Conference Brief. Both parties did not appear.

In an Order[4] dated July 6, 2012, Commissioner Cachapero directed the parties to file their respective verified position paper, however, both parties failed to file their position papers.

On November 14, 2012, Commissioner Cachapero submitted his Report,[5] a portion of which reads:

DISCUSSION

The disquisition is brief and concise.

Lawyers have always been reminded that their relationship with their clients must be characterized by trust which exemplifies fiduciary relationship absence of which the legal profession's image to the public would be debased. In this connection, best efforts must be exerted by the attorney to protect his client's interest and he must account for any fund received by him from his client.

In the instant case, Respondent had clearly breached the trust reposed in him by his client after accepting the case and collecting the filing fees and yet failed in his duty to file the case for his clients despite demands from the latter. These practices by lawyers degrade the legal profession and the administration of justice and breed

delinquent lawyers. Such practices should not be tolerated since it could easily be done especially against indigent and marginalized clients.

Under Rule 18.03 of the Code of Professional Responsibility, a lawyer has the bounden duty of not neglecting a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. The Supreme Court, and this Commission, have consistently held, in construing this rule, that the mere failure of the lawyer to perform the obligations due to the client is considered per se a violation. Also, a lawyer who received money to handle a client's case but rendered no service at all shall be subject to disciplinary measure.

Unfortunately for the Respondent, he failed to submit his Answer and his Position Paper. He, as well, failed to attend the mandatory conference, hence, the undersigned has no means of knowing his contentions and had to rely on the allegations in the Complaint.

RECOMMENDATION

Foregoing premises considered, the undersigned believes and so holds that the instant complaint is with merit. Accordingly, he recommends that the Respondent be SUSPENDED for a period of one (1) year.[6]

The Board of Governors adopted the findings of the Commissioner in Resolution No. XX-2013-304, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in 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 the applicable laws and rules, and considering that respondent violated Rule 18.03 of the Code of Professional Responsibility, Atty. Rolando S. Javier is hereby SUSPENDED from the practice of law for one (1) year.[7]

The Court's Ruling

We adopt the ruling of the IBP Board of Governors.

A license to practice law is a guarantee by the courts to the public that the licensee possesses sufficient skill, knowledge and diligence to manage their cases. When a lawyer accepts a case, his acceptance is an implied representation that he possesses the requisite academic learning, skill and ability to handle the case. The lawyer has the duty to exert his best judgment in the prosecution or defense of the case entrusted to him and to exercise reasonable and ordinary care and diligence in the pursuit or defense of the case.[8]

A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed in him. An attorney's duty to safeguard the client's interests commences from his retainer until his effective release from the case or the final disposition of the whole subject matter of the litigation. During that period, he is expected to take such reasonable steps and such ordinary care as his client's interests may require.[9] In other words, acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.[10]

The Code of Professional Responsibility (CPR) states:

CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

x x x x

RULE 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. x x x

CANON 18 - A lawyer shall serve his client with competence and diligence.

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.

In the instant case, it was undisputed that respondent failed to file the case of falsification of public documents and recovery of property in favor of complainants despite receiving the money in connection with the said case. Respondent's inaction despite repeated follow-ups and his promise that the case will be resolved in complainants' favor demonstrated his cavalier attitude and appalling indifference to his clients' cause.

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Conversely, if the lawyer does not use the money for the intended purpose, he must immediately return the money to the client.[11]

We note that while complainants allege that respondent specifically received P57,000.00 for filing fees, only the amount of P30,000.00 was supported by evidence. Since respondent failed to render any legal service to complainants for failing to file the said case, he should have promptly accounted for and returned the money to complainants.

Respondent's failure to return the money to complainants despite failure to use the same for the intended purpose is conduct indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainants warrants the imposition of disciplinary action.

Moreover, respondent's violations were aggravated by his failure to comply with the CBD's directives for him to file his pleadings and to attend the hearing, which demonstrated not only his irresponsibility but also his disrespect for the judiciary and his fellow lawyers. Such conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court. As a member of the bar, he ought to have known that the orders of the CBD as the investigating arm of the Court in administrative cases against lawyers were not mere requests but directives which should have been complied with promptly and completely.[12]

This Court notes that this is not the first time that respondent was held liable for similar infractions. He was found in both cases to have unlawfully withheld and misappropriated money. In *Igual v. Javier*, [13] the Court suspended respondent from the practice of law for a period of one month and ordered him to restitute the amount of P7,000.00 to Igual upon finding that respondent had unjustifiably refused to return Igual's money upon demand. Furthermore, his absence of integrity was highlighted by his "half-baked excuses, hoary pretenses and blatant lies in his testimony before the IBP Committee on Bar Discipline." In *Adrimisin v. Javier*, [14] the Court found that respondent unjustifiably refused to return the amount of P-500.00 he received in 1983 despite his failure to immediately secure a bail bond in favor of Adrimisin's son-in-law. In that case, respondent was suspended from the practice of law for six (6) months.

The appropriate penalty on an errant lawyer requires sound judicial discretion based on the surrounding facts. In similar cases where lawyers neglected their clients' affairs and, at the same time, failed to return the latter's money and/or property despite demand, the Court meted out the penalty of suspension from the practice of law.[15] In *Andrada v. Atty. Cera*, [16] the Court suspended Cera from the practice of law for one (1) year for failing to exert any effort on his client's case and completely reneging on the obligations due his client. In *Segovia-Ribaya v. Atty. Lawsin*, [17] the Court suspended Lawsin for a similar period for his failure to perform his undertaking under his retainerhip agreement with his client and to return the money given to him by the latter. Likewise, in *Maglente v. Atty. Agcaoili, Jr.*, [18] the same penalty was imposed on the respondent who failed to render any legal service to his client as well as to return the money he received for such purpose and offered the flimsy excuse that the money he received was not enough to fully pay the filing fees.

From the foregoing, the Court finds a one-year suspension from the practice of law appropriate as penalty for respondent's misconduct.

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 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.[19] And considering further that respondent's receipt of the P30,000.00 remains undisputed, the Court finds the return of the same to the complainants, plus legal interest with the rate of twelve percent (12%) per annum from September 10, 2007 until June 30, 2013, then six percent (6%) interest per annum from July 1, 2013 until fully paid, to be in order.

WHEREFORE, the Court finds respondent Atty. Rolando S. Javier GUILTY of violation of the Code of Professional Responsibility. Accordingly, the Court SUSPENDS him from the practice of law for one (1) year effective immediately upon receipt of this Decision. He is STERNLY WARNED that a repetition of the same or similar acts in the future shall be dealt with more severely. He is ORDERED to RETURN to complainants the amount of P30,000.00 with interest at the rate of twelve percent (12%) per annum from September 10, 2007 until June 30, 2013, then six percent (6%) interest per annum from July 1, 2013 until fully paid. Respondent shall submit to the Court proof of restitution within ten (10) days from payment.

Let all the courts, through the Office of the Court Administrator, as well as the IBP and the Office of the Bar Confidant, be notified of this Decision and be it entered into respondent's personal record.

SO ORDERED.

Carpio,[*] Acting C. J., (Chairperson), Perlas-Bernabe, Caguioa, and Reyes, Jr., JJ., concur.

[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

[1] Rollo pp. 2-4.

[2] Id. at 2.

[3] Id. at 11.

[4] Id. at 12.

[5] Id. at 17-19.

[6] Id. at 18-19. (Citations omitted).

[7] Id. at 16. (Emphasis in the original)

[8] *Parias v. Paguinto*, 478 Phil. 239, 245 (2004).

[9] *Gamalinda v. Atty. Alcantara*, 283 Phil. 384, 389 (1992).

[10] *Nery v. Atty. Sampana*, 742 Phil. 531, 536 (2014).

[11] *Meneses v. Atty. Macalino*, 518 Phil. 378, 385 (2006).

[12] *Jinon v. Atty. Jiz*, 705 Phil. 321,329 (2013).

[13] 324 Phil. 698, 709 (1996).

[14] 532 Phil. 639 (2006).

[15] *Maglente v. Atty. Agcaoili, Jr.*, 756 Phil. 116 (2015).

[16] 764 Phil. 346 (2015).

[17] 721 Phil. 44, 53 (2013).

[18] *Supra* note 15.

[19] *Pitcher v. Atty. Gagat*, 719 Phil. 82, 94 (2013).

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