

JAIME S. DE BORJA, COMPLAINANT, VS. ATTY. RAMON R. MENDEZ, JR., RESPONDENT.

A.C. No. 11185 [Formerly CBD No. 12-3619]. July 04, 2018

Ponente: PERALTA, J.

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PERALTA, J.:

Before us is a Complaint[1] dated October 23, 2012 for disciplinary action filed by complainant Jaime S. De Borja (Jaime) against respondent Atty. Ramon R. Mendez, Jr. (Atty. Mendez) before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 12-3619, now A.C. No. 11185.

The facts are as follows:

Sometime in 2004, Jaime, as representative of the Heirs of Deceased Augusto De Borja, engaged the services of R.R. Mendez & Associates Law Offices where Atty. Mendez is a lawyer, for the reconveyance of a parcel of land. Along with the prosecution of the case, Atty. Mendez demanded Three Hundred Thousand Pesos (P300,000.00) for the titling of a property situated in Pateros. Jaime submitted a copy of the receipt of said amount of money which was acknowledged by Atty. Mendez.[2]

However, the complaint for reconveyance was dismissed, thus, Atty. Mendez filed a notice of appeal. On October 20, 2011, the Court of Appeals ordered the Heirs of De Borja to file their Appellant's Brief within forty-five (45) days from receipt of the notice.[3] When Jaime received the notice on October 27, 2011,[4] he inquired with Atty. Mendez about the letter, to which Atty. Mendez committed that he will file the Appellant's Brief as soon as he receives a copy of the notice.

On February 3, 2012, Jaime was surprised to receive a Resolution[5] dated January 27, 2012 from the Court of Appeals dismissing the appealed case for failure to file Appellant's Brief. He asked Atty. Mendez the reason why they weren't able to file the required pleading, and he was told that the firm did not receive a copy of the notice which ordered them to file the appellant's brief. Atty. Mendez assured him that he will file the motion for reconsideration based on non-receipt of the notice, and will subsequently file the appellant's brief.

Unsatisfied, Jaime went to the Court of Appeals and the Postal Office of Caloocan. He discovered that the notice to file appellant's brief was in fact received by one Jennifer Lastimosa (Lastimosa), a secretary of the firm R.R. Mendez & Associates Law Offices. Jaime presented a copy of the Certification[6] issued by the Caloocan Central Post Office showing that Lastimosa received on October 28, 2011 the notice from the Court of Appeals.

Disappointed, in a Letter[7] dated February 13, 2012, citing loss of trust and confidence due to the dismissal of their appeal, Jaime terminated the services of Atty. Mendez, and demanded the return of the Three Hundred Thousand (Php300,000.00). Unable to get a reply from Atty. Mendez even after six months, on August 2, 2012, Jaime wrote anew to Atty. Mendez and demanded the return of the money.[8] Thus, the instant administrative complaint against Atty. Mendez for incompetence and malpractice.

On October 24, 2012, the IBP-CBD ordered Atty. Mendez to submit his Answer to the complaint.[9]

In his Answer[10] dated December 21, 2012, Atty. Mendez insisted that his law office did not receive a copy of the court order to file the appellant's brief. He claimed that even their secretary, Jennifer Lastimosa, cannot recall having received said order or mail. He claimed that when Jaime informed him about the dismissal order, he lost no time in preparing the motion for reconsideration and the appellant's brief. He lamented, however, that before the drafted motion for reconsideration and appellant's brief could be filed in court, Jaime already terminated his services as counsel. Atty. Mendez maintained that he has been in the practice of law for more than three (3) decades already and that he was never remiss in his duty to his clients. He claimed that it was unfortunate that his secretary's signature was forged to make it appear that she has received the mail.

Atty. Mendez, however, acknowledged the receipt of 300,000.00 as retainer's fees from Jaime. He averred that considering that he had actually rendered professional services to Jaime, he may refund reasonable portion thereof. Finally, Atty. Mendez asserted that due to the fact that his office actually failed to receive the notice from the court, there is no basis to show that he was unprofessional, thus, does not deserve to be meted any harsh punishment from the Court.

On January 24, 2013, the IBP-CBD, notified the parties to appear before the commission for the mandatory conference.[11]

Meanwhile, after more than one (1) year, or on June 26, 2013, Atty. Mendez made partial return of Jaime's money in the amount of P140,000.00 which was received by Atty. Marie Diane Bolong, Jaime's new counsel.[12] Atty. Mendez, in his Position Paper, claimed that he does not know how he can return the remaining balance as he already spent it for the titling of the property and that he also used the money for his daily needs considering that said money was also his retainer's fee.

In its Report and Recommendation[13] dated September 25, 2014, the IBP-CBD found Atty. Mendez guilty of negligence, thus, violating Canon 18 of the Code of Professional Responsibility which directs lawyers to serve his client with competence and diligence. It recommended that Atty. Mendez be suspended from the practice of law for a period of six (6) months with a warning that a repetition of the same infraction will result in the imposition of a more severe penalty.

In Notice of Resolution No. XXI-2015-170[14] dated February 20, 2015, the IBP-Board of Governors resolved to adopt and approve with modification the report and recommendation of the IBP-CBD. It further recommended that Atty. Mendez be ordered to return to Jaime the remaining amount of One Hundred Sixty Thousand Pesos (P160,000.00).

We sustain the findings of the IBP, except as to the imposition of penalty.

Canon 18 of the Code of Professional Responsibility for Lawyers states that "A lawyer shall serve his client with competence and diligence." Rule 18.03 thereof stresses:

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, Atty. Mendez' guilt as to his failure to do his duty to his client is undisputed. His conduct relative to the non-filing of the appellant's brief falls below the standards exacted upon lawyers on dedication and commitment to their client's cause. An attorney is bound to protect his clients' interest to the best of his ability and with utmost diligence. Failure to file the brief within the reglementary period despite notice certainly constitutes inexcusable negligence, more so if the failure resulted in the dismissal of the appeal, as in this case.[15]

We cannot give credence to Atty. Mendez' lame excuse that they did not receive the notice to file the appellant's brief, or that their secretary cannot recall receiving the notice. Such bare allegation of non-receipt of notice as against the registry return card, the postmaster's record books and the certification issued by the Caloocan Central Post Office showing receipt of the notice by Jennifer Lastimosa, the firm's secretary, the latter deserves more weight. Likewise, in the absence of proof to support Atty. Mendez' claim of forgery insofar as Jennifer's signature showing receipt of notice, such claim cannot be sustained.

Making the law office secretary, clerk or messenger the scapegoat or patsy for the delay in the filing of pleadings, motions and other papers and for the lawyer's dereliction of duty is common alibi of practicing lawyers. Like the alibi of the accused in criminal cases, counsel's shifting of the blame to his office employee is usually a concoction utilized to cover up his own negligence, incompetence, indolence and ineptitude.[16]

Other than Atty. Mendez' allegation of non-receipt of the notice, he has failed to duly present any reasonable excuse for the non-filing of the appellant's brief despite notice, thus, the allegation of negligence on his part in filing the appellant's brief remains uncontroverted. As a lawyer, it is expected of him to make certain that the appeal brief was filed on time. Clearly, his failure to do so is tantamount to negligence which is contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility enjoining lawyers not to neglect a legal matter entrusted to him.[17]

We cannot overstress the duty of a lawyer to uphold the integrity and dignity of the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients.[18]

Every member of the Bar should always bear in mind that every case that a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or for free.[19] A lawyer's fidelity to the cause of his client requires him to be ever mindful of the responsibilities that should be expected of him. The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. The most thorough groundwork and study must be undertaken in order to safeguard the interest of the client. The honor bestowed on his person to carry the title of a lawyer does not end upon taking the Lawyer's Oath and signing the Roll of Attorneys. Rather, such honor attaches to him for the entire duration of his practice of law and carries with it the consequent responsibility of not only satisfying the basic requirements but also going the extra mile in the protection of the interests of the client and the pursuit of justice.[20] Atty. Mendez failed to perform such duty and his omission is tantamount to a desecration of the Lawyer's Oath.

Atty. Mendez' transgressions did not end there. Other than our finding of negligence, We also find Atty. Mendez guilty of violating Rule 16.01 of the Code of Professional Responsibility which requires a lawyer to account for all the money received from the client.[21]

In line with the highly fiduciary nature of an attorney-client relationship, Canon 16 of the Code requires a lawyer to hold in trust all moneys and properties of his client that may come into his possession. Rule 16.03 of the Code obligates a lawyer to deliver the client's funds and property when due or upon demand.[22]

Where a client gives money to his lawyer for a specific purpose, such as: to file an action, to appeal an adverse judgment, to consummate a settlement, or to pay a purchase price for a parcel of land, the lawyer, upon failure to spend the money entrusted to him or her for the purpose, must immediately return the said money entrusted by the client.[23] The Court's statement in *Del Mundo v. Atty. Capistrano*[24] on this point, is instructive:

Moreover, a lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately

upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.

In the present case, Atty. Mendez received money from Jaime for the titling of property covered by Tax Declaration No. D-006-01404 on August 30, 2009.[25] However, despite several oral and written demands to Atty. Mendez as evidenced by demand letters dated February 13, 2012 and August 2, 2012, the same fell on deaf ears. Not only did Atty. Mendez failed to use the money for its intended purpose, and return the money after demand, he also did not give Jaime any reply regarding the latter's demands.

We, likewise, take note that considering it took more than a year before Atty. Mendez' made an initiative to return the money albeit partial only, the same cannot be said to be prompt or immediate return of the money, rather, he was already in delay for a considerable period of time in returning his client's money. Notably, it must be pointed out that Atty. Mendez not only failed to return the money immediately, but he also failed to return the whole amount of P300,000.00. He was able to return the amount of P140,000.00 only, thus, there is still a remaining balance of P160,000.00. While, Atty. Mendez insisted that the remaining balance was used for the titling of the property and his daily needs, there was still no proper accounting as to when, where and how the remaining balance was specifically utilized. Clearly, these acts constitute violations of Atty. Mendez' professional obligations under Canon 16[26] of the CPR which mandates lawyers to hold in trust and account all moneys and properties of his client that may come into his possession.

In *Jinon v. Atty. Jiz*,[27] the lawyer failed to facilitate the transfer of land to his client's name and failed to return the money he received from the client despite demand. We suspended the lawyer from the practice of law for two years.

In *Agot v. Atty. Rivera*,[28] the lawyer neglected his obligation to secure his client's visa and failed to return his client's money despite demand. We also suspended him from the practice of law for two years.

In *Luna v. Atty. Galarrita*,[29] the lawyer failed to promptly inform his client of his receipt of the proceeds of a settlement for the client, and further refused to turn over the amount received. As in the above cases, We suspended him from the practice of law for two years.

Time and again, We have reminded lawyers that the practice of law is a privilege bestowed only to those who possess and continue to possess the legal qualifications for the profession. As such, lawyers are duty-bound to maintain at all times a high standard of legal proficiency, morality, honesty, integrity, and fair dealing. If the lawyer falls short of this standard, the Court will not hesitate to discipline the lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion.[30]

The Code of Professional Responsibility demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship. Any lawyer who does not live up to this duty must be prepared to take the consequences of his waywardness.[31]

PENALTY

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR. For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[32]

Considering our jurisprudence and the totality of the circumstances in the present case, the Court finds that the suspension for six (6) months recommended by the IBP-CBD which was adopted by the Board of Governors is not sufficient punishment for Atty. Mendez' transgressions. His failure to discharge his duty properly constitutes an infringement of ethical standards and of his oath. Such failure makes him answerable not just to his client, but also to this Court, to the legal profession, and to the general public.

Finally, the Court sustains the IBP's recommendation ordering respondent to return the amount of P160,000.00 he received from complainant for the titling of their property. It is well to note that 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." [33] Here, since Atty. Mendez received the aforesaid amount as part of his legal fees as he claimed, the Court, thus, find it necessary, under the given circumstances, that he return the unaccounted remaining balance of P160,000.00 to Jaime. [34]

WHEREFORE, premises considered, respondent ATTY. RAMON R. MENDEZ, JR. is found GUILTY of violating Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. He is SUSPENDED from the practice of law for a period of one (1) year, effective upon receipt of this Decision, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

Atty. Mendez is, likewise, ORDERED to RETURN to complainant Jaime S. De Borja the remaining balance of P160,000.00 with legal interest, if it is still unpaid, within ninety (90) days from the finality of this Decision. Failure to comply with this directive will merit the imposition of the more severe penalty, which this Court shall impose based on the complainant's motion with notice duly furnished to Atty. Mendez.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to the personal record of Atty. Mendez as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

Carpio, (Chairperson), Perlas-Bernabe, Caguioa, and Reyes, Jr., JJ., concur.

[1] Rollo, pp. 2-9.

[2] Id. at 10.

[3] Id. at 11.

[4] Id. at 12.

[5] Id. at 14-15.

[6] Id. at 17.

[7] Id. at 18-19.

[8] Id. at 20.

- [9] Id. at 34.
- [10] Id. at 35-39.
- [11] Id. at 60.
- [12] Id. at 113.
- [13] Id. at 119-123.
- [14] Id. at 117-118.
- [15] *Ford v. Atty. Daitol*, 320 Phil. 53, 58 (1995); *People v. Villar*, 150-B Phil. 97 (1972).
- [16] *Adaza v. Barinaga*, 192 Phil. 198, 201 (1981).
- [17] See *Atty. Solidon v. Atty. Macalalad*, 627 Phil. 284, 293 (2010).
- [18] *Atty. Alcantara, et al. v. Atty. De Vera*, 650 Phil. 214, 221 (2010).
- [19] *Barbuco v. Atty. Beltran*, 479 Phil. 692, 697 (2004).
- [20] *Penilla v. Atty. Alcid, Jr.*, 717 Phil. 210, 222 (2013).
- [21] *Atty. Solidon v. Atty. Macalalad*, supra note 17, at 292.
- [22] *Gutierrez v. Atty. Maravilla-Ona*, 789 Phil. 619, 623 (2016).
- [23] Id.
- [24] 685 Phil. 687, 693 (2012).
- [25] Rollo, p. 10.
- [26] CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession; Rule 16.01. - A lawyer shall account for all money or property collected or received for or from the client; Code of Professional Responsibility; Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand.
- [27] 705 Phil. 321 (2013).
- [28] 740 Phil. 393 (2014).
- [29] 763 Phil. 175 (2015).
- [30] *Gutierrez v. Atty. Maravilla-Ona*, supra note 22, at 624.
- [31] *Malangas v. Atty. Zaide*, 785 Phil. 930, 940 (2016).
- [32] *Jimenez v. Atty. Francisco*, 749 Phil. 551, 574 (2014).
- [33] *Pitcher v. Atty. Gagete*, 719 Phil. 82, 94 (2013).
- [34] See *Gutierrez v. Atty. Maravilla-Ona*, supra note 22, at 626.

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