

JOCELYN SORENSEN, COMPLAINANT, VS. ATTY. FLORITO T. POZON, RESPONDENT.

A.C. No. 11334. January 07, 2019

Ponente: CARPIO, ACTING C.J.

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CARPIO, ACTING C.J.:

The Case

These consolidated administrative cases stemmed from the continuous negligence of respondent Atty. Florito T. Pozon to handle the legal matters entrusted to him by his client and herein complainant, Jocelyn Sorensen, or to at least inform complainant of the progress of the cases. This is in violation of Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility.

The Facts

Complainant Jocelyn Sorensen alleges that she first engaged the legal services of respondent Atty. Florito T. Pozon in 1995 for the reconstitution of the title of Lot No. 6662 in Pangan-an, Lapu-Lapu City for the sum of Ten Thousand Pesos (PhP 10,000.00).

In 1996, complainant again engaged respondent's services to file a petition for the issuance of a new owner's copy of the title of Lot No. 6659 in Pangan-an, Lapu-Lapu City for the sum of Fifteen Thousand Pesos (PhP 15,000.00).

In 2000, complainant engaged respondent's services for a third time to secure the title of Lot No. 6651 in Pangan-an, Lapu-Lapu City for the sum of Fifteen Thousand Pesos (PhP 15,000.00).

In 2003, complainant engaged respondent as her counsel for the last time to secure the title of Lot No. 2393-M in Yati, Liloan, Cebu for the sum of Twenty-Four Thousand Pesos (PhP 24,000.00).

In 2011, complainant filed a verified Complaint[1] against respondent, docketed as CBD Case No. 11-3151 and CBD Case No. 11-3182, with the Integrated Bar of the Philippines Commission on Bar Discipline (Commission) for respondent's alleged neglect to handle complainant's cases or to at least inform complainant of the progress of the cases, in violation of Rules 18.03 and 18.04 of the Code of Professional Responsibility. The Complaint alleged that despite complainant's payment amounting to Seventy-Two Thousand Pesos (PhP 72,000.00), the above- mentioned cases have yet to be concluded.

To support her allegations, complainant attached copies of the following to her complaint:

- (1) Annex A - copy of the acknowledgement receipt for PhP 2,000.00 for Lot No. 6662 and PhP 3,000.00 for Lot No. 6659 dated 4 November 1996;
- (2) Annex B - a copy of the acknowledgement receipt for PhP 5,000.00 for Lot No. 6662 dated 15 November 1995;
- (3) Annex C - a copy of the acknowledgement receipt for PhP 3,000.00 dated 17 March 1999;

(4) Annex D - a copy of the acknowledgement receipt for PhP 3,000.00 for Lot No. 6662 dated 17 March 1999;

(5) Annex E- a copy of a check amounting to PhP 5,000.00 dated 27 October 2001;

(6) Annex F-a copy of a check amounting to PhP 40,000.00 for Lot Nos. 6651 and 6659 dated 22 January 2003; and

(7) Annex G- a copy of a check amounting to PhP 6,000.00 dated 7 May 2000.

In his Answer,[2] respondent admitted that he was the legal counsel for complainant's lots in Cebu. For the 1995 case covering Lot No. 6662, respondent alleged that the acceptance fee of Ten Thousand Pesos (PhP 10,000.00) was made in several installments. Respondent alleged that the 1996 case turned out to be a difficult case because an aggrieved party appeared and filed a criminal action against complainant including respondent. The case was settled amicably and complainant decided to forego the case.

For the 1996 case covering Lot No. 6659, respondent alleged that he only received a partial payment of Three Thousand Pesos (PhP 3,000.00) out of the agreed upon acceptance fee of Fifteen Thousand Pesos (PhP 15,000.00).

For the 2000 case covering Lot No. 6651, respondent alleged that he had already gone to the City Assessor of Lapu-Lapu City and to the Revenue Regional Director of the Bureau of Internal Revenue in Banilad, Cebu City to handle the matter. Respondent averred that the delay was due to complainant's refusal to shoulder respondent's travel costs to the Land Registration Office in Quezon City. Similar to the second case, complainant failed to present any witness to prove the circumstance of loss of the owner's copy of the title. -

Lastly, for the 2003 case, respondent alleged that the delay was again due to complainant's failure to present any witness to show that she or her predecessors-in-interest possessed the lot since 1940 or prior thereto.

The Commission ruled that "[e]ven if the complainant did in fact fail to provide witnesses, it was the duty of the respondent as her counsel to communicate the importance and necessity of getting witnesses to advance their cause." [3] The Commission faulted respondent for allowing eight years to pass without addressing complainant's cases. Furthermore, even without the presentation of witnesses, respondent was able to secure a favorable decision from the Regional Trial Court of Lapu-Lapu City in the 1996 case involving Lot No. 6659 in Pangan-an, Lapu-Lapu City.

Thus, respondent averred that what remains unresolved are the legal matters involving Lot No. 6651 in Pangan-an, Lapu-Lapu City, and Lot No. 2393-M in Liloan, Cebu.

The Reports and Recommendations of the Commission on Bar Discipline

On two separate instances, the Commission submitted two Reports and Recommendations to the Integrated Bar of the Philippines, finding respondent guilty of violating Rules 18.03 and 18.04 of the Code of Professional Responsibility.

On 18 June 2013, the Commission, through Commissioner Leo B. Malagar, submitted a Report and Recommendation[4] for CBD Case No. 11-

3151. The Commission stated:

Clearly, the respondent is guilty of neglecting the complainant's legal matter which was entrusted to him in 1995, and such negligence in connection with the above-mentioned transactions renders respondent liable. Moreover, respondent failed to keep the complainant who was his client informed of the status of the

transactions and he likewise failed to respond within a reasonable time to his client's request for information.

In view of the foregoing premises, it is respectfully recommended that the respondent be ADMONISHED considering that the complainant has not been materially prejudiced from respondent's omissions. Moreover, it is respectfully recommended that the respondent be ORDERED TO RETURN the full amount of PhP 72,000.00 which the complainant has paid to the respondent.

RESPECTFULLY SUBMITTED.[5]

On 2 February 2015, Commissioner Hannibal Augustus B. Bobis of the Commission on Bar Discipline likewise submitted a similar Report and Recommendation[6] for CBD Case No. 11-3182. The Commission stated:

The respondent should be penalized for the acts alleged in the complaint. Although there are no more issues concerning Lots 6662 and 6659 both located in Pangan-an, Lapu-Lapu City, there are remaining issues involving Lot 6651 in Pangan-an, Lapu-Lapu City and Lot 2393-M in Liloan, Cebu. Admittedly, respondent started work on these lots some time in the years 2000 and 2003, respectively. Thus, by the time the complainant filed her complaint in September 2011, there has already been a lapse of eight (8) years since its inception.

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As for the reimbursement of the sum of PhP 72,000.00, only a partial amount shall be returned to the complainant.

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In view of the foregoing, it is respectfully recommended that respondent be suspended for three (3) months and that he should return the amount of twenty one thousand pesos (PhP 21,000.00) to the [complainant].

Respectfully submitted.[7]

The Resolution of the Board of Governors of the Integrated Bar of the Philippines

On 5 June 2015, a Resolution[8] was passed by the Board of Governors of the Integrated Bar of the Philippines, modifying the Reports and Recommendations of the Commission:

x x x x

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioners in the above-entitled cases, herein made part of this Resolution as Annex "A", considering applicable laws and Respondent's [guilt for] violating Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility. Thus, Respondent Atty. Fiorito T. Pozon is hereby SUSPENDED from the practice of law for one (1) year. Moreover, he is Ordered to Return the amount of Twenty One Thousand (P21,000.00) Pesos.

RESOLVED FURTHER, that the Board of Governors consolidated the above-entitled cases as they involved the same parties and raised similar Issues.

The Issue

Whether or not respondent Atty. Fiorito T. Pozon is guilty of neglecting the legal matters entrusted to him by his client and herein complainant, Jocelyn Sorensen.

The Ruling of the Court

We adopt the ruling of the Board of Governors of the Integrated Bar of the Philippines.

A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed in him. 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. Thus, a lawyer's duty to safeguard the interests of his client commences from his retainer, the time the lawyer accepts money from a client, until his effective release from the case, the time the legal matter in litigation is finally disposed of.[9]

In this case, it is undisputed that respondent neglected the legal matters entrusted to him by complainant. Respondent even failed to at least inform complainant of the progress of the cases. Respondent's inaction is clearly in violation of Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. The Rules state:

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

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

Rule 18.04 -A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

With regard to the appropriate penalty on an errant lawyer, sound judicial discretion based on the surrounding facts is required. This Court has consistently meted out the penalty of suspension from the practice of law to lawyers who neglect their client's affairs and, at the same time, fail to return the latter's money and/or property despite demand.[10]

Considering respondent's lack of prior administrative record, suspension from the practice of law for one year is sufficient for respondent's misconduct.

The case of *Meneses v. Atty. Macalino*[11] further emphasized that when a lawyer receives money from a 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.

In the present case, respondent failed to safeguard complainant's interests after the retainer commenced. Respondent's mere acceptance of the money from the client without fulfilling his duties as a lawyer is indicative of lack of integrity and propriety. Respondent's actions constitute a clear violation of the trust reposed in him by complainant.

Complainant alleged that respondent received PhP 72,000.00 for filing fees. However, we agree with the Resolution of the Board of Governors that only PhP 21,000.00 shall be returned to the complainant for failing to fulfill his duties as a lawyer. The return of only the partial amount of PhP 21,000.00 was explained in the Report and Recommendation of the Commission in CBD Case No. 11-3182. The Commission explained:

The March 17, 1999 acknowledgement receipt with the amount of three thousand pesos (PhP 3,000.00) cannot be used against the respondent as he did not receive it personally. Likewise, the October 27, 2001 check in the amount of five thousand pesos (PhP 5,000.00) is not evidence that respondent received the said amount as it is a "pay to cash" check.

The aggregate amount of ten thousand pesos (PhP 10,000.00) represented in the July 4, 1996 acknowledgement receipt, the November 15, 1995 acknowledgement receipt, and the March 17, 1999 acknowledgement receipt were all specified to be for the services rendered by the respondent for Lot 6662 in

Pangan-an, Lapu-Lapu City which had already been resolved. Thus, respondent had already worked for this amount.

Legal services were likewise concluded for the titling of Lot 6659 in Pangan-an, Lapu-Lapu City. Thus, complainant is not entitled to the reimbursement of the agreed upon legal fee of fifteen thousand pesos (PhP 15,000.00).

Nonetheless, complainant should be reimbursed for the agreed legal fee of fifteen thousand pesos (PhP 15,000.00) to secure the title to Lot 6651 in Pangan-an, Lapu-Lapu City. The remaining balance shall be considered as spent for the expenses incurred by the respondent as this amount was beyond the agreed upon legal fee as stated in the position paper of the complainant.

For the agreed fee to secure the title to Lot 2393-M in Yati, Liloan, Cebu, the complainant was only able to prove that respondent received the amount of six thousand pesos (PhP 6,000.00). Thus, the said amount shall likewise be reimbursed to her.

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In view of the foregoing, it is respectfully recommended that respondent x x x should return the amount of twenty one thousand pesos (PhP 21,000.00) to the [complainant].[12]

WHEREFORE, the Court finds respondent Atty. Fiorito T. Pozon GUILTY of violating Rules 18.03 and 18.04, Canon 18 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 shall be dealt with more severely in the future. Respondent is ORDERED to return to complainant Jocelyn Sorensen the amount of PhP 21,000.00 with interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid for the unresolved legal matters involving Lot No. 6651 in Pangan-an, Lapu-Lapu City and Lot No. 2393-M in Liloan, Cebu. 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 Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Decision. Let a copy of this Decision be entered in the records of respondent.

SO ORDERED.

Perlas-Bernabe, Caguioa, J. Reyes, Jr., and Hernando,[*] JJ., concur.

[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

[1]Rollo (A.C. No. 11334), pp. 3-4 and Rollo, (A.C. No. 11335), pp. 2-A-3.

[2]Rollo (A.C. No. 11334), pp. 37-40.

[3]Id. at 117.

[4]Id. at 120-123.

[5]Id. at 122-123.

[6]Id. at 114-119.

[7]Id. at 116, 118-119.

[8]Id. at 112-113.

[9]Segovia v. Atty. Javier, A.C. No. 10244, 12 March 2018.

[10]Andrada v. Atty Cera, 764 Phil. 346 (2015); Maglente v. Atty. Agcaoili, Jr., 756 Phil. 116 (2015); Segovia-Ribaya v. Atty. Lawsin, 721 Phil. 44 (2013).

[11]518 Phil. 378,385 (2006).

[12]Rollo (A.C. No. 11334), pp. 118-119.

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