

**NANETTE B. SISON, REPRESENTED BY DELIA B. SARABIA,
COMPLAINANT, VS. ATTY. SHERDALE M. VALDEZ, RESPONDENT.***A.C. No. 11663. July 31, 2017*

Ponente: PERLAS-BERNABE, J.

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This administrative case stemmed from a Complaint for Permanent Disbarment^[1] (disbarment complaint) dated September 13, 2013 filed by complainant Nanette B. Sison (complainant), represented by her mother, Delia B. Sarabia (Sarabia),^[2] against respondent Atty. Sherdale M. Valdez (respondent) for violating his professional duties under the Code of Professional Responsibility (CPR).

The Facts

Sometime in September 2012, complainant, an overseas Filipino worker in Australia, engaged respondent's legal services to file an action against Engr. Eddie S. Pua of B.S. Pua Construction (old contractor) and the project manager, Engr. Dario Antonio (project manager), for failing to construct complainant's house in Nuvali, Canlubang, Calamba, Laguna in due time.^[3] Although no written agreement was executed between the parties specifying the scope of legal services, respondent received the total amount of P215,000.00 from complainant, through Sarabia, on three (3) separate dates.^[4] Respondent acknowledged receipt of the first two (2) installments in a handwritten note, stating that the amount of P165,000.00 was for litigation expenses, i.e., attorney's fees, filing fees, bond, and other expenses.^[5] The last payment was deposited online to the bank account of respondent's wife, Ma. Analyn M. Valdez.^[6]

On January 8, 2013, complainant terminated respondent's legal services via e-mail and text messages^[7] with a demand to return the amount given, which was not heeded notwithstanding several demands. Hence, complainant, through Sarabia, filed the instant disbarment complaint before the Integrated Bar of the Philippines (IBP) - Commission on Bar Discipline (CBD), alleging that despite receipt of her payments: (a) respondent failed to render his legal services and update her regarding the status of the case; (b) commingled her money with that of respondent's wife; (c) misappropriated her money by failing to issue a receipt for the last installment of the payment received; and (d) fabricated documents to justify retention of her money.^[8]

For his part,^[9] respondent claimed that he reported the status of the case to complainant through phone and e-mail.^[10] After studying the case, he informed complainant of his evaluation via e-mail.^[11] On November 1, 2012, respondent went to his hometown in Hagan, Isabela with one "Atty. Joselyn V. Valeros" to personally serve the demand letter to the old contractor. However, when they went to the house of the old contractor on November 4, 2012, the person present thereat refused to receive the letter.^[12] Respondent supposedly spent P15,000.00 for his travel to Ilagan, Isabela.^[13]

Respondent further averred that he was supposed to personally meet complainant for the first time upon the latter's arrival in the Philippines in the second week of November 2012. During the meeting, he intended to personally report the status of the case, have the pleadings signed, and explain how her payments would be

applied. However, no phone call or e-mail was made by complainant to confirm the meeting.[14] Respondent later learned from complainant's new contractor that she did not want to meet with him for fear that he would only ask for more money.[15]

On the same day his legal services were terminated, respondent sent the demand letters to the old contractor and the project manager via courier service,[16] allegedly before he found out about the termination.[17] In a letter[18] dated January 10, 2013, respondent, through complainant's sister, Elisea Sison, asked complainant to reconsider the termination and outlined the services he already rendered, as follows: (a) he sent a demand letter dated November 4, 2012 to the old contractor; (b) he drafted a complaint for breach of contract and damages with prayer for preliminary attachment; (c) he sent a final demand letter dated January 8, 2013 to the old contractor; and (d) while waiting for a response, he proceeded to investigate the old contractor's real and personal properties to ascertain what can be the subject of preliminary attachment.[19] Respondent admitted that he opted not to immediately mail the demand letter to the old contractor so that the latter could not dispose of or hide his properties.[20] Alternatively, respondent offered to return the amount of P150,000.00 to complainant, explaining that he already studied the case, prepared the complaint, and incurred expenses.[21] However, complainant refused and proceeded to file the present case.

Instead of filing their respective position papers before the IBP-CBD, the parties filed a Joint Manifestation[22] on February 20, 2014, agreeing to settle the matter amicably and acknowledging that the disbarment complaint was filed because of "misapprehension of facts due to pure error in accounting and honest mistakes by respondent." [23] Complainant's counsel acknowledged receipt of P200,000.00 representing partial payment of respondent's obligation, while the balance of P118,352.00 will be paid subsequently.[24] In turn, complainant undertook not to pursue nor testify against respondent in this administrative case, as well as in the Estafa case.[25]

The IBP's Report and Recommendation

In the Report and Recommendation[26] dated June 7, 2014, the IBP - CBD Investigating Commissioner (IC) recommended that respondent be reprimanded for violating his obligations under the CPR with a stern warning never to commit the same mistakes again.[27]

At the outset, the IC disapproved the Joint Manifestation, noting that a compromise agreement would not operate to exonerate a lawyer from a disciplinary case. As to respondent's liability, the IC observed that he committed several violations of the CPR during the period of his engagement with complainant from September 2012 up to January 8, 2013. First, he failed to inform his client about the status of the case.[28] The IC acknowledged that respondent rendered some legal services to complainant, but only came up with the list of services after his termination, thus, supporting the conclusion that he indeed failed to update his client about the developments of the case.[29] Second, he asked for payment of fees from complainant even before he prepared the draft complaint. The IC explained that a prudent lawyer would first wait for the computation of court fees before seeking payment of filing and bond fees.[30] Third, respondent failed to issue the proper receipt for the full amount he received from complainant.[31] Fourth, respondent commingled the funds of his client with that of his wife when he asked that the P50,000.00 be deposited to his wife's bank account.[32]

As to the compensation for legal services, the IC opined that P30,000.00 was reasonable based on quantum meruit, in view of the limited services respondent rendered during the initiatory stage of the case - i.e., review of the case and drafting of demand letters, complaint, and special power of attorney.[33] However, citing *Nebreja v. Reonal*, [34] the IC declined to recommend restitution of the amount received by respondent, noting the Court's alleged policy that the collection of money should be made through an independent action.[35] The IC also refused to grant reimbursement to respondent of the amount of P15,000.00 he incurred for his trip to Isabela for

his failure to render an accounting of his expenses.[36]

Although respondent was found to have violated his duties to his client, herein complainant, the IC considered his active membership in the IBP-Laguna Chapter from 2007 to 2009 and his continuous service as a law professor in Adamson University since 2009 as mitigating factors to reduce his recommended penalty to reprimand.[37]

In a Resolution[38] dated January 31, 2015, the IBP Board of Governors adopted and approved the IC's Report and Recommendation, but modified the penalty to suspension from the practice of law for a period of six (6) months.

Respondent moved for reconsideration,[39] but was denied in a Resolution[40] dated September 23, 2016.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for the acts complained of.

The Court's Ruling

After a judicious review of the records, the Court concurs with the IBP's finding of administrative liability with some modifications.

Records show that in September 2012, complainant engaged respondent's services to file a money claim, and pursuant to such engagement, complainant paid respondent a total of P215,000.00. After a little more than three (3) months, complainant terminated respondent's legal services due to the latter's failure to render legal services. While it was acknowledged that respondent did render some legal services to complainant albeit only in the initiatory stage, it was also established that respondent failed to duly update his client on the developments of the case. As correctly pointed out by the IBP, respondent's lapses constitute a violation of Rule 18.04, Canon 18 of the CPR, which reads:

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

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.

Once a lawyer takes up the cause of his client, a lawyer is duty-bound to serve the latter with competence and to attend to such client's cause with diligence, care, and devotion. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him.[41] In this relation, a lawyer has the duty to apprise his client of the status and developments of the case and all other relevant information.[42]

In this case, respondent alleged that he waited for complainant's arrival in the Philippines in November 2012 to personally report on his accomplishments, to have the necessary pleadings signed, and to explain how the money given will be applied. However, the meeting did not push through.

Indeed, respondent cannot justify his non-compliance by shifting the blame to complainant for failing to meet with him, especially so that he failed to inform his client of the pleadings she needed to sign.

The Court likewise finds that respondent violated Rules 16.01 and 16.03, Canon 16 of the CPR, which respectively read:

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.

Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. x x x.

The highly fiduciary nature of an attorney-client relationship imposes on a lawyer the duty to account for the money or property collected or received for or from his client.[43] 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.[44] His failure to return gives rise to a presumption that he has appropriated it for his own use, and the conversion of funds entrusted to him constitutes a gross violation of his professional obligation under Canon 16 of the CPR.[45]

In this case, respondent failed to account for the money received from complainant when he only acknowledged receipt of P165,000.00 for litigation expenses despite admittedly receiving P215,000.00. When complainant terminated his legal services, the fact that no case has been filed in court should have prompted him to immediately return to complainant the amounts intended as filing and bond fees, as these were obviously unutilized.

In fact, respondent admitted that, based on his belief, he was entitled to only P65,000.00 as compensation for his legal services.[46] As such, he should have returned the excess amount of P150,000.00 out of the P215,000.00 he received from complainant. Notably, Rule 16.03 of the CPR allows a lawyer to retain the amount necessary to satisfy his lawful fees and disbursements.[47] Hence, respondent's persistent refusal to return the money to complainant despite several demands renders him administratively liable.

Although the IBP correctly found that respondent is entitled to reasonable compensation for the limited services he rendered, the Court notes that respondent appears to have waived his claim for compensation when he agreed to return the amount of P200,000.00 in cash and pay an additional P118,352.00 in exchange for complainant's desistance in the Estafa and disbarment cases filed against him.[48] Thus, the matter of restitution should no longer be an issue. However, it should be stressed that his administrative liability herein should remain, considering the rule that a disbarment case is not subject to any compromise.[49]

Anent the penalty, the Court has the plenary power to discipline erring lawyers,[50] and thus, in the exercise of its judicial discretion, may impose a penalty less than the IBP's recommendation if such penalty would achieve the desired end of reforming the errant lawyer.[51] Considering the surrounding circumstances of this case, such as the short duration of the engagement, respondent's return of the money, his expression of humility and remorse, and the fact that this is his first administrative case, the Court finds the penalty of suspension from the practice of law for a period of three (3) months sufficient and commensurate to respondent's violations.

WHEREFORE, respondent Atty. Sherdale M. Valdez is found GUILTY of violating Rule 18.04, Canon 18, as well as Rules 16.01 and 16.03, Canon 16 of the Code of Professional Responsibility. Accordingly, he is SUSPENDED from the practice of law for a period of three (3) months effective from the finality of this Resolution, and is STERNLY WARNED that a repetition of the same or similar acts shall be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in the personal record of respondent as a member of the Philippine Bar; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for circulation to all courts throughout the country.

SO ORDERED.

Sereno, C. J., Leonardo-De Castro, Del Castillo, and Caguioa, JJ., concur.

[1] Rollo, pp. 2-18.

[2] See Special Power of Attorney; id. at 75-77.

[3] Id. at 3.

[4] Respondent received: (1) P50,000.00 on September 28, 2012; (2) P115,000.00 on October 4, 2012; and (3) P50,000.00 on October 11, 2012. See id. at 3-4 and 91.

[5] Id. at 78.

[6] See Banco De Oro Cash Deposit Slip under the name of "Anily M. Valdez"; id. at 79. See also id. at 4.

[7] See id. at 60.

[8] See id. at 111.

[9] See Answer with Affirmative Defenses dated October 22, 2013; id. at 21-30.

[10] See id. at 25.

[11] In an e-mail dated October 11, 2012, respondent sent an e-mail to complainant stating that he already studied the case and is ready to file. (Id. at 31.) Complainant replied thanking him for the update. (Id. at 32.) On December 15, 2012, complainant sent an e-mail asking for an update and for a copy of the complaint filed. (Id. at 33).

[12] Id. at 25.

[13] Id. at 113.

[14] Id. at 25-26 and 112-113.

[15] Id. at 26 and 113.

[16] See Receipts of the Courier Transactions dated January 8, 2013; id. at 89.

[17] Id. at 26.

[18] Id. at 80-82.

[19] See id. at 80-81 and 112.

[20] Id. at 25 and 112.

[21] See id. at 82 and 113.

[22] Dated February 14, 2014. Id. at 101-102.

[23] Id. at 101.

[24] Id.

[25] Id.

- [26] Id. at 111-120. Submitted by Commissioner Cecilio A.C. Villanueva.
- [27] Id. at 120.
- [28] Id. at 115.
- [29] Id. at 116
- [30] Id. at 117.
- [31] Id.
- [32] Id.
- [33] Id. at 119.
- [34] See 730 Phil. 55, 63 (2014).
- [35] Rollo, p. 119.
- [36] Id.
- [37] See id. at 119-120.
- [38] See Notice of Resolution in Resolution No. XXI-2015-102 issued by National Secretary Nasser A. Marohomsalic; id. at 110, including dorsal portion.
- [39] Dated October 27, 2015. Id. at 121-128.
- [40] Id. at 140.
- [41] See Egger v. Duran, A.C. No. 11323, September 14, 2016.
- [42] Penilla v. Alcid, 717 Phil. 210, 221 (2013).
- [43] Belleza v. Macasa, 611 Phil. 179, 190 (2009).
- [44] Del Mundo v. Capistrano, 685 Phil. 687, 693 (2012).
- [45] Id.
- [46] Rollo, p. 166.
- [47] "In case of a disagreement (as to the amount of attorney's fees), or when the client disputes the amount claimed by the lawyer for being unconscionable, the lawyer should not arbitrarily apply the funds in his possession to the payment of his fees; instead, it should behoove the lawyer to file, if he still deems it desirable, the necessary action or the proper motion with the proper court to fix the amount of his attorney's fees." (J.K. Mercado and Sons Agricultural Enterprises, Inc. v. De Vera, 375 Phil 766, 773 [1999]).
- [48] See rollo, p. 101.
- [49] See Virtusio v. Virtusio, 694 Phil. 148, 158 (2012).
- [50] See Foronda v. Alvarez, 737 Phil. 1, 13 (2014).
- [51] Id.

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