

EDMUND BALMACEDA, COMPLAINANT, V. ATTY. ROMEO Z. USON, RESPONDENT.*A.C. No. 12025. June 20, 2018*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-12025/>**REYES, JR., J:**

This is an administrative complaint for disbarment filed by Edmund Balmaceda (complainant) against respondent Atty. Romeo Z. Uson (respondent) for violating Rules 16 and 18 of the Code of Professional Responsibility.

The complainant alleged that sometime in April 2012, he and a certain Carlos Agapito (Agapito) went to the office of the respondent to seek legal advice, concerning the supposed intrusion or illegal occupation of his brother, Antonio Balmaceda (Antonio), over a property he owned, which he subsequently sold to Agapito. At the conclusion of their meeting, complainant and Agapito were convinced that the filing of an ejectment case is the most appropriate legal measure to take and engaged the services of the respondent as counsel for a fee of P75,000.00.[1] The said attorney's fees were paid in full to the respondent as evidenced by a receipt[2] signed by the latter.

Despite the full payment of the attorney's fees, the respondent did not file an ejectment case against Antonio. The complainant visited the respondent several times to follow up on his case but the latter would always tell him he was already working on the same. Two years had lapsed, however, but no ejectment case was ever filed by the respondent. Thus, in February 2014, he sent the respondent a demand letter[3] for the return of the attorney's fees of P75,000.00 which he paid him but the latter refused to receive the same. He sent him another demand letter[4] to refund him the amount but still the respondent refused to heed. The unjustified refusal of the respondent to return the amount paid as attorney's fees culminated in the filing of the instant disbarment complaint against him.[5]

In his Verified Answer with Positive and Affirmative Defenses,[6] the respondent denied the pertinent allegations in the complaint. He alleged that upon receipt of the attorney's fees, he immediately sent a demand letter to Antonio, asking him to vacate the subject property. Forthwith, Antonio confronted him about the veracity of the claims stated in the demand letter. Respondent then presented to Antonio the deed of extrajudicial settlement and waiver of rights in favor of the complainant, as well the latter's certificate of title over the property, and the deed of absolute sale in favor of Agapito and his wife. Antonio was taken aback upon learning of the documents and told the respondent that they are going to take legal action as they were co-owners of the property and that it is better for him not to meddle into the feud. He immediately informed the complainant of the incident as well as the threat hurled by Antonio to take matters to court. He then offered to return the amount of P75,000.00 given to him as attorney's fees but the complainant refused to accept the amount and insisted on the filing of the ejectment case. For several times, the complainant went to his office to insist on the filing of the case but he repeatedly told him he can no longer proceed with the same especially that the supposed co-owners of the property expressed the intention to file an action for the annulment of title, deed of extrajudicial settlement and deed of sale against the complainant and Agapito. He offered to return the money paid to him as attorney's fees but the complainant refused and threatened to file an administrative case against him. Not long thereafter, the complainant filed the

instant disbarment case. Respondent, however, maintained that he did not violate his oath as a lawyer nor the Code of Professional Responsibility and prayed that the complaint be dismissed.[7]

During the preliminary mandatory conference, the attorney-in-fact of the complainant, Emily Bendero (Bendero) and the respondent manifested that the latter offered to return a portion of the attorney's fees in the amount of P50,000.00 and that the former accepted the same as full settlement of the claim. They likewise expressed in writing their mutual desire to terminate the case. Considering, however, that mere settlement among the parties does not automatically result in the dismissal of the complaint, the parties were still ordered to submit their respective verified position papers. [8] Notwithstanding this order, it was only the respondent who submitted his position paper.[9]

The IBP's Findings

In his Report and Recommendation[10] dated June 28, 2015, IBP Investigating Commissioner Oscar Leo S. Billena of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) found that no substantial evidence was presented to prove the allegations in the complaint and thus recommended the dismissal of the disbarment complaint. The dispositive portion of the report reads as follows:

WHEREFORE, in light of the foregoing, it is hereby recommended that the herein complaint for disbarment be dismissed.[11]

On October 28, 2015, the Board of Governors of the IBP issued Resolution No. XXII-2015-65,[12] reversing the recommendation of the investigating commissioner, thus:

RESOLVED to REVERSE the findings of facts and the recommended dismissal by the investigating Commissioner, adopting the recommendation of the Commission on Bar Discipline imposing a penalty of 6 months suspension against Atty. Romeo Z. Uson pursuant to previous Supreme Court decisions in similar cases.[13]

On March 3, 2016, the respondent filed a motion for reconsideration[14] but the Board of Governors denied the same in its Resolution No. XXII-2017-1146,[15] disposing as follows:

RESOLVED to DENY the Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.[16]

Ruling of this Court

The Court sustains the recommendation of the Board of Governors of the IBP.

It needless to emphasize that at the very moment a lawyer agrees to be engaged as a counsel, he is obliged to handle the same with utmost diligence and competence until the conclusion of the case. He is expected to exert his time and best efforts in order to assist his client in his legal predicament. Neglecting a legal cause renders him accountable under the Code of Professional Responsibility, specifically, under Rule 18.03 thereof, which states:

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

xxxx

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

Further, in *Spouses Jonathan and Ester Lopez vs. Atty. Stnamar E. Limos Lopez vs. Limos*,[17] it was stressed, thus:

Once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable.[18]

In the instant case, the respondent reneged on his duty when he failed to file the ejectment case on behalf of the complainant despite full payment of his attorney's fees. His negligence caused his client to lose his cause of action since the prescriptive period of one year to file the ejectment case had already lapsed without him filing the necessary complaint in court.

Respondent, however, claimed that it was an exercise of good judgment on his part not to file the case considering the circumstances surrounding the ownership of the disputed property. He averred that when he sent a demand letter to Antonio and the other occupants of the property, he was informed that the complainant acquired the title through fraudulent means and that they plan to institute a civil action against the complainant.

The respondent's excuse fails to convince.

Before respondent was engaged as counsel, he had a discussion with the complainant about his legal concern and had a good opportunity to examine the documents presented to him by his prospective client. When he agreed to be the counsel of the complainant, it only means that, based on the discussion and documents, he believed that complainant had a cause of action to file an ejectment case. He signified his approval to the filing of the ejectment case when he accepted the case and the corresponding fees thereto as in fact the acknowledgment receipt[19] for the said payment states that it is in full satisfaction of his attorney's fees for the filing of the ejectment case. To state the pertinent portion, viz.:

RECEIVED the amount of SEVENTY FIVE THOUSAND (P75,000.00) PESOS, Philippine Currency, from EDMUND AUSTRIA [BALMACEDA], as and for full payment of Attorney's Fees in Ejectment Case, Re: SPS. CARLOS J. AGAPITO and DOLORES CARIÑO AGAPITO VS. ANTONIO AUSTRIA BALMACEDA of Sitio Lecor, Barangay Poblacion Norte, Paniqui, Tarlac.

Paniqui, Tarlac, April 16, 2012. (Emphasis ours)

That the occupants of the property claimed that they also have a right to possess the same and that they intend to bring the matter to court are not compelling reasons to prevent the respondent from filing the ejectment case. After all, they are free to pursue legal remedies to protect their own interest. What should have merited respondent's greater consideration is the fact that the complainant is his client and his earlier assessment that he has a cause of action for ejectment. In any case, whoever may have the better title or right to possess the property will depend on the appreciation of the trial court.

Respondent cannot sway this Court by alleging that the occupants, in fact, filed an action for annulment of the complainant's title to the property, even submitting a photocopy of the said complaint to be part of the records of the case. He may have thought this would pass as a convenient excuse to validate his claim that there was a good reason for not filing the case but the circumstances and evidence he submitted only highlighted his negligence. Based on the records, he agreed to the filing of the ejectment case in April 16, 2012, which was the date stated in the receipt of the full payment of his attorney's fees. On the other hand, the complaint for annulment of title was filed by Antonio and his supposed co-heirs only on November 5, 2013, as stamped in the photocopy of the same. At that time, one year had already lapsed and therefore the complainant had already lost his cause of action for ejectment due to the respondent's failure to file the necessary complaint. Had respondent been prompt, the complainant could have established his case in court. Plainly speaking, the respondent cannot justify his

negligence by claiming that the occupants pursued their threat to file a case in court. There is simply no connection between his duty as counsel to the complainant with the supposed defendants' threat to retaliate with a separate legal action. This should have even prompted him to be more vigilant in protecting his client's case but, as it was, he slacked and let his client lose his case without the merits thereof being submitted to the fair deliberation and disposal of the court.

In *Nebreja vs. Reonal*,^[20] the Court reiterated the strict command for lawyers to diligently and competently protect their client's causes, thus:

This Court has 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. Thus, a lawyer was held to be negligent when he failed to do anything to protect his client's interest after receiving his acceptance fee. In another case, this Court has penalized a lawyer for failing to inform the client of the status of the case, among other matters. In another instance, for failure to take the appropriate actions in connection with his client's case, the lawyer was suspended from the practice of law for a period of six months and was required to render accounting of all the sums he received from his client.^[21]

Further, in *Reyes vs. Vitan*,^[22] it was held that "the act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the Code of Professional Responsibility."^[23]

That the respondent eventually returned a portion of the money to the complainant and both have signified consent to the termination of the case do not automatically exonerate him from administrative liability. Restitution may have earned him the condonation of his client but, being a member of the Integrated Bar of the Philippines, he is also answerable to the legal profession. Membership in the bar, being imbued with public interest, holds him accountable not only to his client but also to the court, the legal profession and the society at large. He is thus expected to conduct himself according to the stringent standards of morality and competence imposed upon all members of the legal profession. After all, membership in the bar is merely a privilege which may be withdrawn, temporarily or perpetually, from a lawyer who fails to live by the tenets of professional responsibility.

Moreover, in *Bautista vs. Bernabe*,^[24] it was held that the "complainant's desistance or withdrawal of the complaint does not exonerate respondent or put an end to the administrative proceedings. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant." The reason stems from the fact that "disbarment cases are sui generis."^[25] In *Bautista*, the Court elucidated, thus:

A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministrations of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorneys alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.^[26]

It is also well to remember that in Canon 16 of the Code of Professional Responsibility, it is provided that a lawyer only holds in trust all moneys and properties of his client that may come into his possession. "The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client."^[27]

In the present case, it was established that the respondent collected his attorney's fees and thereafter neglected the

complainant's case. While he offered an excuse for his non-filing of the complaint for ejectment, the same was not an acceptable reason for failing to perform the agreed legal services. Moreover, he failed to promptly return the money he received as acceptance fees as it took him more than two (2) years, or after the filing of the instant administrative case, to refund the complainant of the amount paid for services not rendered.

To be clear, the mere forgiveness, desistance or acquiescence of the client to the dismissal of the administrative proceedings will not ipso facto absolve the lawyer from liability but by establishing that no misconduct or negligence was committed. In this case where the respondent admitted to receiving attorney's fees and failing to file a complaint for ejectment even after the lapse of two (2) years, the imposition of an administrative sanction is only proper.

In *Solidon vs. Macalalad*,^[28] the respondent lawyer was imposed with the penalty of six (6) months suspension for failing to file a petition for registration of title over a certain property after receipt of the acceptance fee of P80,000.00. He also failed to promptly return the money he received even after failing to render legal services. Similarly, in *Pariñas vs. Paguinto*,^[29] the Court imposed the same penalty upon the respondent lawyer for violating Rule 18 of the Code of Professional Responsibility when he failed to file an annulment case despite receipt of acceptance fee and filing fees. Also, in *Vda. De Enriquez vs. San Jose*,^[30] the erring lawyer was meted the penalty of six (6) months of suspension for failing to file the appropriate civil case after sending a demand letter. Here, the Court declared that "the failure to file a pleading is by itself inexcusable negligence on the part of respondent."^[31]

In line with prevailing jurisprudence, the Court finds the imposition of the six (6) months of suspension on the respondent warranted under the circumstances.

WHEREFORE, respondent Atty. Romeo Z. Usón GUILTY of violating Rules 18.03 and 16.01 of the Code of Professional Responsibility. He is hereby SUSPENDED FOR SIX (6) MONTHS from the practice of law effective upon receipt of this decision, and is sternly warned that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant, Integrated Bar of the Philippines, the Public Information Office and the Office of the Court Administrator for circulation to all courts. Likewise, a Notice of Suspension shall be prominently posted in the Supreme Court website as a notice to the general public.

The respondent, upon receipt of this resolution shall forthwith be suspended from the practice of law and shall formally manifest to this Court that his suspension has started. He shall furnish all courts and quasi-judicial bodies where he has entered his appearance a copy of this manifestation.

SO ORDERED.

Carpio,^[*] Peralta, Perlas-Bernabe, and Caguioa, JJ., concur.

[*] Senior Associate Justice (Per Section 12, Republic Act No. 296, The Judiciary Act of 1948, As Amended)

[1] Rollo, p. 3.

[2] Id. at 6.

[3] Id. at 7.

[4] Id. at 8.

- [5] Id. at 3.
- [6] Id. at 14-16.
- [7] Id. at 15.
- [8] Id. at 46.
- [9] Id. at 60.
- [10] Id. at 58-63.
- [11] Id. at 63.
- [12] Id at 73.
- [13] Id. at 73.
- [14] Id. at 64-66.
- [15] Id. at 71.
- [16] Id.
- [[17]] 780 Phil. 113 (2016).
- [18] Id. at 120.
- [19] Rollo, p. 6.
- [20] 730 Phil. 55 (2014).
- [21] Id. at 61-62.
- [22] 496 Phil. 1 (2005).
- [23] Id. at 4.
- [24] 517 Phil. 236, 241 (2006).
- [25] 534 Phil. 471, 482 (2006).
- [26] Supra note 24, at 241.
- [27] Spouses Jonathan and Ester Lopez v. Atty. Sinamar E. Limos, supra note 17, at 121.
- [28] 627 Phil. 284 (2010).
- [29] 478 Phil. 239 (2004).
- [30] 545 Phil. 379 (2007).
- [31] Id. at 384.

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