

CARLOS V. LOPEZ, COMPLAINANT, V. ATTY. MILAGROS ISABEL A. CRISTOBAL, RESPONDENT.

A.C. No. 12146 (Formerly CBD Case No. 13-4040). October 10, 2018

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CAGUIOA, J:

Before this Court is an administrative complaint[1] filed before the Commission on Bar Discipline of the Integrated Bar of the Philippines (CBD-IBP) by Complainant Carlos V. Lopez (Lopez) against Respondent Atty. Milagros Isabel A. Cristobal (Atty. Cristobal).

The Factual Antecedents

Lopez alleged that sometime in May 2011, he engaged the services of respondent Atty. Cristobal as his counsel in the case of Carlo V. Lopez v. Jesus A. Manego, Peter Blair S. Agustin, and Rosalina Joson Pascual (subject case), docketed as Civil Case No. 09-711, pending before the Regional Trial Court Branch 148 in Makati City (RTC Branch 148).

Atty. Cristobal required the payment of an acceptance fee of Thirty-Five Thousand Pesos (P35,000.00). Lopez deposited the said amount to Atty. Cristobal's Metrobank Account No. 007-26551-3650, as evidenced by a copy of the deposit slip[2] attached to the instant Complaint.

On September 7, 2011, the RTC Branch 148 issued an Order requiring the parties to file their respective position papers in connection with the subject case.

Lopez averred that despite knowledge of the lower court's directive, Atty. Cristobal failed to file the position paper required by the lower court. Lopez also alleged that Atty. Cristobal misrepresented to him that she already filed their position paper in court.

Lopez stated in his Complaint that Atty. Cristobal also did not attend the hearings on the subject case and that she also deliberately refused to communicate with Lopez.[3]

In a letter[4] dated March 5, 2012, Lopez informed Atty. Cristobal of his decision to stop her engagement as his counsel in the subject case and demanded that Atty. Cristobal: (1) prepare and file her withdrawal of appearance in the subject case and provide Lopez with a copy thereof; (2) return the acceptance fee of Thirty-Five Thousand Pesos (P35,000.00).[5]

Despite the written demand made by Lopez, Atty. Cristobal did not file her withdrawal as counsel of Lopez. The Branch Clerk of Court of RTC Branch 148 confirmed, in a Certification[6] dated August 30, 2012, that Atty. Cristobal had not yet filed her withdrawal of appearance as counsel of Lopez.

On December 6, 2013, Lopez filed a Verified Complaint before the CBD-IBP praying that Atty. Cristobal be disciplined.

In her Answer[7] dated May 20, 2016, Atty. Cristobal dismissed the instant complaint as completely baseless and not truthful, to wit:

x x x. On the contrary, respondent was actually able to act as counsel for the complainant in Civil Case No. 09-711, as in fact that case was still pending when respondent eventually left her retainer with the complainant. Whatever delays or postponements which had occurred during respondent's handling of Civil Case No. 09-711 was just the result of the usual vicissitudes of litigation and on, some occasions, due to circumstances which are sometimes beyond respondent's control.

2. That while respondent was initially paid her attorney's fee of Php 35,000.00, what respondent had done in handling the case was more than commensurate to that fee considering the fact that:

- Respondent had actually returned the sum of Php10,000 to the complainant, as shown by the attached copies of the checks of Five Thousand Pesos (Php 5,000.00) each issued and deposited to complainant's account, marked as Annexes "A" and ["A-1"]; and

- The balance of Php25,000.00 was a measly amount considering the stature of respondent in the legal profession and that respondent had merely accommodated the complainant when she agreed to handle the case for him, as it involved different issues in different offices;

- On top of that, complainant was not conscientious and up--to-date in the payment of the attorney's fees of the respondent. In fact, complainant had even issued a check to respondent which he later issued an order for the bank to stop payment because he had insisted on bargaining for the fees that respondent was asking for. Attached is a copy of the check issued by the complainant which he had issued a stop payment order for, and an email from the respondent telling the complainant that she does not want to bargain for the services she will be rendering, marked as Annex "B" and "C";

3. Due to the above considerations, the return by the respondent of the sum of Php10,000.00 was enough to compensate for whatever delays in the litigation of Civil Case No. 09-711 taking into consideration the amount of actual legal work performed by the respondent, the nature and difficulty of the case and respondent's stature in the legal profession.

4. While in the latter stage of the legal retainer of the respondent with the complainant, the former was already finding it difficult to accommodate and attend all the scheduled hearings of complainant's case because of her ever increasing legal obligations with other clients and other work commitments; however, there was no damage or prejudice caused upon the complainant at all. Actually the parting of the ways of the two was due to the irreconcilable differences between [the two].

x x x x

6. That the case of the complainant (Civil Case No. 09-711) was not actually lost or dismissed as borne by the very documents attached to the herein complaint simply means that actually no damage or prejudice was caused upon the complainant resulting from respondent's handling of that case. Clearly, this instant disbarment complaint is just the product of an overly-complaining or overreacting litigant who himself was not blameless as to why respondent eventually left him for he was really a difficult client to deal with.[8] (Emphasis supplied)

Atty. Cristobal admitted that while she was aware of RTC Branch 148's directive to file a position paper, she did not proceed to prepare and file the said position paper on account of the continued refusal of Lopez to pay her accumulated legal fees.[9] Atty. Cristobal claimed that Lopez caused payment to be stopped on a P27,000.00 check that he had previously issued in her favor as further payment of her legal fees. She alleged that Lopez kept insisting on bargaining for the attorney's fees that she was asking for.[10]

The IBP 's Report and Recommendation

After due proceedings, Investigating Commissioner Jose Alfonso M. Gomos (Investigating Commissioner

Gomos) rendered a Report and Recommendation[11] on November 25, 2016, recommending that Atty. Cristobal be suspended from the practice of law for a period of six (6) months, to wit:

4.7

Under the circumstances, the supposed "continued refusal" of the complainant "to pay (respondent's) accumulated legal fees" should have been a reason for her to have withdrawn from the case. The same is sanctioned under Rule 22.01 (e) of the Code of Professional Responsibility.

4.7.1

But Canon 22 is clear: A lawyer may withdraw his services only for good cause and upon notice appropriate in the circumstances.

4.7.2

It is elementary that a lawyer who desires to retire from an action without the consent of his client must file a petition for withdrawal in court.[12] He must serve a copy of his petition for withdrawal upon his client and the adverse party.[13] He should moreover present his petition well in advance of the trial of the action to enable the client to secure the services of another lawyer.[14]

4.7.3

Notably, the respondent failed to observe the above procedural requirement.[15] (*Emphasis and italics in the original*)

Investigating Commissioner Gomos did not give credence to Atty. Cristobal's justification for her failure to prepare and file the required position paper:

4.8

Surely, the supposed refusal to pay of the complainant cannot be a justification of the respondent's failure to prepare and file the required position paper. The failure of the client to pay the agreed fees does not warrant the lawyer's abandoning his client's cause.[16] After all, once a lawyer agrees to take up the cause of the client, he owes fidelity and entire devotion to that cause.

x x x x

4.10

Clearly, the failure of the respondent to file the required position paper of her client, and her failure to properly withdraw from the case, should render her liable.[17]

The dispositive portion of Investigating Commissioner Gomos' Report and Recommendation reads as follows:

V. RECOMMENDATION

It is, therefore, respectfully recommended that the respondent be suspended from the practice of law for SIX

(6) months.[18] (Emphasis and italics in the original)

On June 17, 2017, the IBP Board of Governors passed a Resolution adopting and approving the findings and recommendation of Investigating Commissioner Gomos, thus:

RESOLVED to ADOPT the findings of the fact and recommendation of the Investigating Commissioner imposing the penalty of six (6) months suspension from the practice of law.[19] (Italics in the original)

Per certification of the Office of the Bar Confidant, no motion for reconsideration or petition for review has been filed by either party as of March 20, 2018.[20]

The Court's Ruling

After a judicious examination of the records and submission of the parties, the Court upholds the findings and recommendation of the IBP Board of Governors.

The Court agrees with the IBP Board of Governors that Atty. Cristobal's failure to file the required position paper and her failure to properly withdraw from the case reveals Atty. Cristobal's failure to live up to her duties as a lawyer in consonance with the strictures of her oath and the Code of Professional Responsibility (CPR).

The acts committed by Atty. Cristobal thus fall squarely within the prohibition of Rule 18.03 and 18.04 of Canon 18 and Rule 22.01 of Canon 22 of the CPR, which provides:

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.

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.

x x x x

CANON 22—A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

Rule 22.01.—A lawyer may withdraw his services in any of the following cases:

- (a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
- (b) When the client insists the lawyer pursue conduct violative of these canons and rules;
- (c) When his inability to work with co-counsel will not promote the best interest of the client;
- (d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
- (e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
- (f) When the lawyer is elected or appointed to public office; and
- (g) Other similar cases.

Canon 18 clearly mandates that a lawyer is duty-bound to competently and diligently serve his client once the

former takes up the latter's cause. The lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Hence, his neglect of a legal matter entrusted to him amounts to inexcusable negligence for which he must be administratively liable,[21] as in this case. The Court finds no credence to Atty. Cristobal's defense that her failure to prepare and file the required position paper was justified because of Lopez' refusal to pay her attorney's fees.

Rule 22.01, Canon 22 of the CPR, on the other hand, provides that an attorney may only retire from a case either by written consent of his client or by permission of the court after due notice and hearing, in which event the attorney should see to it that the name of the new lawyer is recorded in the case.[22] A lawyer who desires to retire from an action without the written consent of his client must file a petition for withdrawal in court.[23] He must serve a copy of his petition upon his client and the adverse party at least three (3) days before the date set for hearing, otherwise the court may treat the application as a "mere scrap of paper." [24]

The circumstances of the case show that Atty. Cristobal made no such move. The Court agrees with the findings of the Investigating Commissioner that Atty. Cristobal's defense of discharge as self-serving. Atty. Cristobal claimed that her return of the case records to Lopez as well as the latter's acceptance of P10,000.00 effectively discharged her from her obligations as counsel for complainant. The Court does not agree.

Atty. Cristobal clearly disregarded the mandate of Rule 22.01, Canon 22 of the CPR. Atty. Cristobal never sought the written consent of Lopez, his client or the permission of the court. Atty. Cristobal also did not file a petition for withdrawal in court.

Here, the circumstances of this case indubitably show that after receiving the amount of P35,000.00 as acceptance fee, Atty. Cristobal failed to render any legal service in relation to the case of Lopez.

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.[25]

From the foregoing, the Court finds a six-month suspension from the practice of law appropriate as penalty for Atty. Cristobal'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.[26] Considering that Atty. Cristobal's receipt of the P35,000.00 remains undisputed, the Court finds the return of the remaining balance of P25,000.00, to be in order.

WHEREFORE, the Court finds Atty. Milagros Isabel A. Cristobal **LIABLE** for violation of Canons 18 and 22 and Rules 18.03, 18.04 and 22.01 of the Code of Professional Responsibility and she is hereby **SUSPENDED** from the practice of law for six (6) months effective immediately upon receipt of this Decision. She is also **ORDERED** to **RETURN** to complainant Carlos V. Lopez the remaining balance of P25,000.00 from the P35,000.00 she received from the latter within ninety (90) days from receipt of this Decision. Respondent shall submit to the Court proof of restitution within ten (10) days from payment. Failure to comply with the foregoing directive will warrant the imposition of a more severe penalty.

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 and be it entered into respondent's personal record.

SO ORDERED.

Carpio (Chairperson), Perlas-Bernabe, and A. Reyes, Jr., JJ., concur.
J. Reyes, Jr.,[*] J., on wellness leave.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018. On wellness leave.

[1] Rollo, pp. 2-5.

[2] Id. at 8.

[3] Id. at 3.

[4] Id. at 13.

[5] See id. at 6 and 8. The amount as stated in the Letter dated March 5, 2012 is P30,000.00.

[6] Id. at 14.

[7] Id. at 39-41.

[8] Id. at 39-40.

[9] Id. at 70.

[10] Id. at 68.

[11] Id. at 100-107.

[12] See RUBEN E. AGPALO, COMMENT ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT 376 (2004).

[13] Id.

[14] Id.

[15] Rollo, p. 106.

[16] COMMENT ON THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE CODE OF JUDICIAL CONDUCT, *supra* note 11, at 157.

[17] Rollo, p. 106-107.

[18] Id. at 107.

[19] Id. at 98.

[20] Id. at 96-A.

[21] Sps. Lopez v. Atty. Limos, 780 Phil. 113, 120 (2016).

[22] ERNESTO L. PINEDA, LEGAL AND JUDICIAL ETHICS 267 (1995).

[23] RUBEN E. AGPALO, LEGAL AND JUDICIAL ETHICS 359 (7th ed., 2002), citing *In re Montagne & Dominguez*, 3 Phil. 577 (1904); see *Alcantara, Jr. v. Judge Veloso*, 159-A Phil. 988 (1975); *Intestate Estate of the Deceased Domingo, Sr. v. Aquino*, 148 Phil. 486 (1971); RULES OF COURT, Rule 138, Sec. 26.

[24] *Visitacion v. Manit*, 137 Phil. 348, 356 (1969); *G.A. Machineries, Inc. v. Januto*, 151-A Phil. 5 (1973).

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

[26] *Pitcher v. Atty. Gagarte*, 719 Phil. 82, 94 (2013).

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