

**SPOUSES LIRIO U. RABANAL AND CAYETANO D. RABANAL,
COMPLAINANTS, VS. ATTY. FAUSTINO F. TUGADE, RESPONDENT.***A.C. No. 1372. June 27, 2002*

Ponente: MENDOZA, J.

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This is an administrative complaint filed by complainant spouses Cayetano and Lirio Rabanal against Atty. Faustino F. Tugade. It is alleged that respondent, as counsel for complainant Cayetano Rabanal, did not file the appellant's brief in the Court of Appeals, as a result of which the appeal filed by Cayetano was dismissed and the decision of the then Circuit Criminal Court of Tuguegarao, Cagayan became final and executory.

It appears that complainant Cayetano Rabanal was one of the accused-appellants in Criminal Case No. CCC-I-150, entitled "People of the Philippines v. Marcelino Rabanal y Ibañez, et al.," of the Criminal Circuit Court of Tuguegarao, Cagayan.[1] He was found guilty of homicide and the case was appealed to the Court of Appeals. Complainant terminated the services of his previous counsel and engaged the services of respondent Atty. Faustino F. Tugade as new counsel to prosecute the appeal.[2] However, despite the extension of time granted to him totalling 60 days, Atty. Tugade failed to file the appellant's brief, resulting in the dismissal of the appeal.[3] Cayetano filed a motion for reconsideration, but his motion was denied.[4] Complainants alleged that they paid P1,000.00 to respondent as attorney's fees and, in addition, the amount of P1,400.00 for the preparation of the appellant's brief.[5] Complainants sought the suspension from the practice of law or the disbarment of respondent attorney.[6]

In his comment dated October 24, 1974, respondent said he did not want to accept complainant's case due to his busy schedule, but that he was nonetheless prevailed upon by the latter, who is his "kababayan," to sign the appellant's brief to be filed in the case.[7] Cayetano gave the transcripts of stenographic notes (TSN) pertaining to the case to respondent, and the sum of P600.00 as litigation expenses, after which respondent asked another lawyer to prepare the appellant's brief. However, on May 11, 1974, Cayetano informed respondent that the Court of Appeals had dismissed his appeal for failure of counsel to file an appellant's brief. Respondent alleged he then entered his appearance as counsel for Cayetano and filed a motion for reconsideration with the Court of Appeals, for which he was paid P800.00.[8] The motion was, however, denied and Cayetano served sentence from 1974 to 1979, when he was released on conditional pardon.[9]

In a resolution, dated November 4, 1974, the Court referred the administrative case against respondent to the Office of the Solicitor General (OSG) for investigation, report, and recommendation.[10] The OSG conducted hearings on February 5, 1976 and November 27, 1976, during which the spouses Rabanal testified in support of their complaint.[11] On January 24, 1979, Cayetano was released from the New Bilibid Prisons on conditional pardon.[12] A few years later, the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP) assumed jurisdiction over the administrative case.[13] After each of the complainants had testified, the IBP Commissioner set the hearing for reception of respondent's evidence on June 26, 1992 with warning that the case would be considered submitted for resolution if respondent failed to present his evidence.[14] Three notices of the

hearing sent by registered mail to respondent were, however, returned unclaimed.[15] Accordingly, the IBP Hearing Commissioner, upon motion of complainant Lirio Rabanal, considered the case submitted for resolution.[16] On May 8, 1993, the IBP Board of Governors recommended to the Court the suspension of respondent from the practice of law for at least one (1) year.[17]

On July 15, 1993, the IBP Commission on Bar Discipline transmitted the records of the case to the Office of the Bar Confidant (OBC). Later, however, the transcripts of stenographic notes (TSN) were lost.[18] In any case, on May 20, 2002, the Office of the Bar Confidant (OBC) adopted the findings of the IBP and recommended the suspension of respondent from the practice of law for one (1) year.[19]

After a review of the records of this case, the Court finds no basis for reversing the findings and recommendation of the IBP and the OBC. Their recommendation is affirmed with the modification that the penalty imposed is reduced from one (1) year to six (6) months.

Respondent claims that he was not the counsel of complainant Cayetano Rabanal prior to the filing of a motion for reconsideration before the Court of Appeals and he could not be held responsible for the dismissal of complainant's appeal for failure of counsel to file the appellant's brief. We disagree.

The absence of a written contract does not preclude a finding that there was a professional relationship which merits attorney's fees for professional services rendered. A written contract is not an essential element in the employment of an attorney; the contract may be express or implied. To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession.[20] Thus, in *Villafuerte v. Cortez*,[21] the Court held that the admission of respondent lawyer that he received payment from complainant is sufficient evidence to establish a lawyer-client relationship. In this case, complainant sought and received legal advice from respondent Tugade, who admitted that he agreed to sign the appellant's brief to be filed and that he received P600.00 from complainant spouses. It is therefore clear that a lawyer-client relationship existed between the two.

It is immaterial that respondent Tugade assisted Cayetano in the case as a mere friend or "kababayan" of the latter. In *Junio v. Grupo*,[22] respondent also denied the existence of a lawyer-client relationship, stating that complainant was a close personal friend whom he helped in a personal capacity. Nonetheless, it was held:

To constitute professional employment it is not essential that the client should have employed the attorney professionally on any previous occasion. . . It is not necessary that any retainer should have been paid, promised, or charged for: neither is it material that the attorney consulted did not afterward undertake the case about which the consultation was had. If a person, in respect to his business affairs or troubles of any kind, consults with his attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established. . . .

In this case, Cayetano consulted respondent Tugade in his professional capacity in order to obtain advice concerning his appeal. Respondent agreed, as shown by his acceptance of the payment to him, his receipt of the TSNs of the case, and the fact that he signed the appellant's brief. His claim that he merely accepted payment but that he asked another lawyer to prepare the brief is an obvious subterfuge. He has not even named the lawyer assuming that the latter is real. It is hard to see why respondent should personally accept payment and the transcripts of stenographic notes from complainant if he did not intend to prepare the appellant's brief. Moreover, the fact that respondent filed a motion for reconsideration after the dismissal of the appeal only confirms that he was indeed Cayetano's lawyer.

The records clearly show that respondent Atty. Faustino F. Tugade was remiss in the performance of his duties as

counsel of complainant Cayetano Rabanal. He was given by the Court of Appeals an extension of time totalling 60 days within which to file the appellant's brief, but he failed to file the same. He thus violated the Code of Professional Responsibility which provides:

RULE 12.03. — A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

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

What this Court said in another case is fitting:

Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[23]

Indeed, a lawyer owes fidelity to the cause of his client. He should be mindful of the trust and confidence reposed in him, remembering always that his actions or omissions are binding on his clients. In this case, the failure of respondent to file the appellant's brief resulted in the dismissal of the appeal. As a consequence, the decision in the trial court finding complainant guilty of homicide became final and executory and he was sentenced to ten years of imprisonment. As has been held:

An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. (Del Rosario vs. Court of Appeals, 114 SCRA 159) A failure to file brief for his client certainly constitutes inexcusable negligence on his part. (People vs. Villar, 46 SCRA 107) The respondent has indeed committed a serious lapse in the duty owed by him to his client as well as to the Court not to delay litigation and to aid in the speedy administration of justice. (People vs. Daban, 43 SCRA 185; People vs. Estocada, 43 SCRA 515).[24]

It should likewise be noted that respondent failed to notify the IBP of his change of address, thus delaying the resolution of this case. Service of notice and other pleadings, which must be furnished to the parties, must be made at the last address on record. If the parties are represented by counsel, such notices shall be sent instead to the counsel's last given address on record in the absence of a proper and adequate notice of a change of address, unless service upon the party himself is ordered.[25]

In *Resurreccion v. Sayson*,[26] the Court attributed the delay in the resolution of an administrative case to respondent lawyer, after finding that "The 27-year delay in the resolution of this case was, to a large extent, caused by his failure to appear before the Office of the Solicitor General and to inform the IBP of his change of address, a failure that also indicated his lack of regard for the very serious charges brought against him." Similarly, respondent Tugade likewise showed a disregard of the charge against him, and the IBP properly made its recommendation solely on the basis of complainants' testimonies and the documentary evidence.

In *Galen v. Paguirigan*,[27] the Court, taking into account that it was a first offense, suspended for a period of six

(6) months a lawyer who failed to file a brief. Atty. Faustino Tugade showed lack of due care for his client's interest and willful neglect of his duties as an officer of the court, thus warranting the imposition of the same penalty on him.

WHEREFORE, in view of the foregoing, respondent Atty. Faustino F. Tugade is **SUSPENDED** from the practice of law for six (6) months effective upon finality hereof with **WARNING** that a repetition of the same negligent act charged in this complaint will be dealt with even more severely.

SO ORDERED.

Bellosillo, (Chairman), and Corona, JJ., concur.
Quisumbing, J., abroad, on official business.

[1] Entry of Judgment, Vol. I of records, p. 6.

[2] Complaint, p. 1; Vol. I of records, p. 1.

[3] Id., p. 2; id., p. 2.

[4] Id., p. 2; id., p. 2.

[5] Id., p. 1; id., p. 1.

[6] Id., p. 3; id., p. 3.

[7] Id., p. 2; id., p. 10.

[8] Id., p. 3; id., p. 11.

[9] Complaint, p. 2; Vol. I of records, p. 2; Entry of Judgment, Vol. I of records, p. 6; Letter dated March 3, 1992 of the Superintendent of the Bureau of Corrections, Vol. II of records, p. 3.

[10] Vol. I of records, p. 14.

[11] Resolution of the IBP Board of Governors, p. 1; Vol. II of records, p. 12.

[12] Vol. II of records, p. 3.

[13] Resolution of the IBP Board of Governors dated May 8, 1993, p. 1; Vol. II of records, p. 12.

[14] Order of the IBP Hearing Commissioner dated March 27, 1992; Vol. II of records, p. 6.

[15] Notices of hearing, Vol. II of records, pp. 2, 5, 8.

[16] Vol. II of records, p. 9.

[17] Vol. II of records, pp. 13-14.

[18] Report, dated February 20, 2002, of Atty. Ma. Cristina B. Layusa, Acting Bar Confidant, Vol. II of records, pp. 42-44.

[19] Vol. II of records, pp. 53-54.

[20] *Dee v. Court of Appeals*, 176 SCRA 651 (1989).

[21] 288 SCRA 687 (1998).

[22] Adm. Case No. 5020, December 18, 2001.

[23] Ramos v. Jacoba, Adm. Case No. 5505, September 27, 2001.

[24] Id. (emphasis in the original).

[25] Thermochem Incorporated v. Naval, 344 SCRA 76 (2000); Aguilar v. Court of Appeals, 310 SCRA 393 (1999); Sy, Sr. v. Intermediate Appellate Court, 162 SCRA 130 (1988).

[26] 300 SCRA 129 (1998).

[27] Adm. Case No. 5558, March 7, 2002.

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