

FIDELA VDA. DE ENRIQUEZ, COMPLAINANT, VS. ATTY. MANUEL G. SAN JOSE, RESPONDENT.

A.C. NO. 3569. February 23, 2007

Ponente: QUISUMBING, J.

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QUISUMBING, J.:

This is an administrative complaint[1] for disbarment filed by Fidela Vda. De Enriquez against respondent Atty. Manuel G. San Jose for gross negligence.

Complainant alleged that on August 28, 1989, she hired the services of respondent Atty. San Jose for the purpose of filing an unlawful detainer case against one Rugerio Alipante, who defaulted in the payment of monthly rentals on complainant's property in Taban, Libmanan, Camarines Sur. According to the complainant, respondent failed to file the appropriate civil case, despite payment to him of P2,000 attorney's fees, so she decided to withdraw the case from respondent. She demanded the return of the pertinent documents but despite repeated demands, respondent refused and failed to return the documents. As a result, the action for unlawful detainer prescribed. Complainant alleged further, that her daughter who worked for respondent was not paid her salary. Complainant prayed that Atty. San Jose be disbarred or suspended from the practice of law.

In his Comment,[2] respondent denied being negligent. He alleged that he received a letter from the complainant informing him that the lessee had already agreed to vacate the premises, and thus, the filing of an unlawful detainer case had become unnecessary. Respondent also explained that he did not file the case even before receiving complainant's letter because there was a vacancy in the sala of the Municipal Circuit Trial Court (MCTC) of Libmanan-Cabusao, Camarines Sur. He claimed that he informed complainant that the case could not be filed until a new judge was appointed, but he promised to file the case before the action prescribed. Respondent claimed further that the attorney's fee was P3,000 and that he had paid complainant's daughter P700 per month.

The Court referred[3] the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation by the IBP-Commission on Bar Discipline (CBD). The investigating officer found that respondent was indeed remiss in the performance of his professional duties as counsel. According to Commissioner Julio C. Elamparo, the only complete work respondent rendered to his client was sending a demand letter for the lessee to vacate the subject premises within ten days from receipt of the demand letter. The Commissioner also found respondent's explanation for his failure to file the case unsatisfactory and concluded that respondent was guilty of negligence in the performance of his duty as a lawyer for abandonment of his client's cause. The Commissioner recommended that respondent be suspended from the practice of law for three months.[4]

The IBP Board of Governors adopted the report and recommendation of the Commissioner finding respondent liable for negligence but only imposed the penalty of one-month suspension from the practice of law.[5]

On December 17, 1997, respondent filed a petition seeking the dismissal of the case against him and prayed that he be exonerated. He denied being negligent. He claimed that the IBP Board of Governors misinterpreted the

complainant's letter, which stated that the complainant and her lessee came to an agreement for the latter to vacate the leased premises. He claimed that he relied on that letter thereby negating the necessity of further filing a case for unlawful detainer.

In our Resolution, dated December 6, 1999, we resolved to remand the case to the IBP which, in turn, assigned the case to the IBP-CBD for further investigation.

The Investigating Commissioner in her report, dated August 5, 2004, recommended that the petition be dismissed for lack of merit. Said recommendation was adopted by the IBP, which passed a resolution to that effect, and approved by the IBP Board of Governors on October 7, 2004.

After a thorough review of the records in this matter, we are in agreement with the IBP that respondent Atty. San Jose be held liable for negligence; thus, his petition for exoneration should be denied for utter lack of merit.

The Code of Professional Responsibility in Rule 18.03 enjoins a lawyer not to neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.[6] A lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence. It is the duty of a lawyer to serve his client with competence and diligence and he should exert his best efforts to protect, within the bounds of the law, the interest of his client. It is not enough that a practitioner is qualified to handle a legal matter; he is also required to prepare adequately and give the appropriate attention to his legal work.[7]

In *Santos v. Lazaro*,[8] we held that Rule 18.03 of the Code of Professional Responsibility is a basic postulate in legal ethics. Indeed, when a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed in him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society. Until the lawyer's withdrawal is properly done, the lawyer is expected to do his or her best for the interest of the client.[9]

In this case, respondent fell short of the diligence required of a lawyer entrusted with a case. It is undisputed that respondent was hired by the complainant on August 28, 1989, and that respondent sent the notice to vacate to the lessee before the appropriate unlawful detainer case could be filed. However, after nine months, respondent had done nothing further in connection with the case.

Among the fundamental rules of ethics is the principle that an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion.[10] However, respondent in this case failed to file the appropriate civil case after sending a demand letter. The failure to file a pleading is by itself inexcusable negligence on the part of respondent.[11] Moreover, this Court finds reprehensible respondent's failure to heed the request of his client for the return of the case documents. That respondent gave no reasonable explanation for that failure makes his neglect patent.

Respondent aggravates his misconduct by blaming the courts. Respondent's excuse that the MCTC having jurisdiction over the case was vacant; that filing of a case would be useless; and that the best thing to do was to wait for the vacancy to be filled, finds no support in the practice of law. The vacancy in court did not suspend the court's official existence, much less render it *functus officio*.

Respondent also relies in vain on complainant's letter dated August 16, 1990, wherein complainant informed respondent of her decision to withdraw the case. According to the complainant, she resorted to the letter so she could retrieve the records she previously handed over to the respondent, but he continued to refuse to return them. It may be noted that the letter was sent to respondent a few days before the lapse of the one-year prescriptive period. If respondent had earlier filed a case, there would have been no need for complainant to resort to that letter

to get the records in line with her plan to have the Public Attorney's Office assist in filing the appropriate case. Needless to stress, because of the respondent's failure to file the appropriate case, and his refusal to return the documents, time ran out and the action for unlawful detainer case was barred by prescription. Damage and prejudice to the client's cause was undeniable.

Finally, we find the recommended penalty of one-month suspension from the practice of law too light. In previous cases, we have imposed six months suspension for violations of this nature, taking into consideration the gravity of the offense and the necessity of preserving the integrity of the legal profession. In *Reyes v. Vitan*,^[12] 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. Considering precedents, in the light of circumstances in this case, we find no reason to deviate now from the penalty meted previously for similar infractions.

WHEREFORE, respondent Atty. Manuel G. San Jose is hereby declared guilty of violation of Canon 18 specifically Rule 18.03 of the Code of Professional Responsibility and is **SUSPENDED** from the practice of law for a period of six (6) months effective upon notice of this Resolution. He is ordered to return to complainant, within five (5) days from notice, the sum of P2,000 with 12% interest per annum from the date of the promulgation of this Resolution until the full amount shall have been returned.

Let a copy of this Resolution be entered into respondent's personal records as an attorney and as a member of the Philippine Bar, and furnished the Court Administrator for distribution to all courts of the land, the IBP, and the Office of the Bar Confidant.

SO ORDERED.

Carpio, Carpio-Morales Tinga and Velasco, Jr., JJ., concur.

[1] Rollo, pp. 2-6.

[2] *Id.* at 17-29.

[3] *Id.* at 41.

[4] *Id.* at 46-A.

[5] *Id.* at 43.

[6] 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.

x x x x

[7] *Amaya v. Tecson*, Adm. Case No. 5996, February 7, 2005, 450 SCRA 510, 516.

[8] Adm. Case No. 5085, February 6, 2003, 397 SCRA 51, 54.

[9] *Villarias-Riesenbeck v. Abarrientos*, A.C. No. 6238 (Formerly CBD Case No. 00-762), November 4, 2004, 441 SCRA 440, 448.

[10] *Cuizon v. Macalino*, Adm. Case No. 4334, July 7, 2004, 433 SCRA 479, 483.

[11] Barbuco v. Beltran, A.C. No. 5092, August 11, 2004, 436 SCRA 57, 61.

[12] A.C. No. 5835, April 15, 2005, 456 SCRA 87, 92.

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