

JOSE A. ROLDAN, COMPLAINANT, VS. ATTY. NATALIO PANGANIBAN AND ATTY. JUANITO P. NOEL, RESPONDENTS.*A.C. No. 4552. December 14, 2004*

Ponente: AUSTRIA-MARTINEZ, J.

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Before us is an administrative case for disbarment filed by complainant Jose A. Roldan against respondents Atty. Natalio M. Panganiban and Atty. Juanito P. Noel. Complainant charges that respondent lawyers reneged in their duties and obligations towards him as their client, especially in the complainant's right to appeal to the higher court after losing his case in the lower courts. The allegations in the complaint dated February 12, 1996[1] in support of the accusations are as follows:

- Na ako ang plaintiff sa Civil Case No. 144860-CV M.I.T. Branch 25 "Jose A. Roldan vs. Ramon Montano & Robert Montano," na ang Judge ay si Honorable Severino De Castro, Jr. na ang kaso ay "Recovery of possession with damages." Ito'y iniapila ko sa RTC Branch 43 with Civil Case No. 95-73739 na ang Judge naman dito ay si Honorable Manuel F. Lorenzo ng RTC. Si Atty. Panganiban at Atty. Noel ang abogado ko.

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- Na noong February 6, 1995 bago kami pumasok sa court room ay nagtanong sa akin si Atty. Noel, ng ganito: "Mr. Roldan nasaan nga pala yung resibo na ibinigay ni Tessie sa iyo na nagbigay ka ng down payment na Ten Thousand Pesos (P10,000.00) noong March 1, 1986." Agad akong sumagot at sinabi ko sa kaniya, "Atty. Noel lahat po ng original ay hiningi ninyo sa akin, lahat po ay binigay ko sa inyo kasama iyong resibo ni Tessie Dalusong, na ako'y magbigay ng Ten Thousand Pesos bilang downpayment sa ipinagbili niyang bahay sa akin. Agad siyang sumagot "Wala kang ibinibigay sa akin!"

- Na kaya nga sinabi ko kay Atty. Noel na: "Ibigay ninyo sa akin ang folder at ako ang hahanap ng resibo ni Tessie Dalusong." Tumulong din si Atty. Noel, at nakita din namin. Sinabi ni Atty. Noel "Sayang hindi na natin maipasok ito, hindi na kasi pwedeng magpasok pa ng mga ibidensya." Di ko alam kung bakit hindi niya ipinasok noon pa man. (Ang resibo na nagpapatunay na ako ang unang nakabili ng bahay sa 1723 Pedro Gil St., Paco, Maynila).

- Na noong nasa loob na kami ng court room ay handa na ako sa sinasabi ni Atty. Noel no "Rebuttal" pero nagtaka ako kinumbinsi ako na diumano ay malinaw na ang aking deklarasyon at malinaw ang mga ebidensya kaya hindi na raw dapat mag "rebuttal" i-waive na lang daw sa Memorandum kaya nga sinabi ng Judge na: "Gumawa kayo ng Memoranda within fifteen days submitted for decision." Noong March 8, 1995 ang memorandum ay submitted for decision;

- Na noong Abril 7, 1995 sinabi ko kay Atty. Noel, "Bakit may ibinigay na zerox copies ng decision si Robert Montano na aking kalaban "sumagot si Atty. Noel, at sinabi sa akin "Tsekin mo sa court." Gayon nga ang aking ginawa. At bumalik ako kay Atty. Noel, at sinabi ko: Totoo nga na may decision na. Sinabi ni Atty. Noel na: "Ginapang nila yun, sapalagay mo, magkano ang inilagay nila?" Sa palagay ko ay hindi lang trenta mil

(P30,000.00) pesos ang magagastos nila sa kasong ito, yun ang isinagot ko;

- Na iminungkahi ko kay Atty. Noel na magpayl ng “motion for reconsideration, sinagat ako ni Atty. Noel na: ‘Ginapang na nila yun kaya dapat umapila na lang tayo.’ Sinabi ko kay Atty. Noel na: Kung matalo pa rin ako dito, ay dalhin natin sa Supreme Court” para parehas ang laban; Na bilang bahagi nito inilakip ko dito ang decision ng MTC; at ang apilasyon sa RTC, at ang petsa ng decision ng RTC na tinaggap ni Atty. Noel.

- Na noong Abril 24, 1995 umapila ako sa “Court of Appeal” makaraan ang ilang buwan ay dumating sa office ni Atty. Noel at Atty. Panganiban, noong November 13, 1995 ang decision subalit tinawagan ako ng sekretarya nila Atty. Noel at Atty. Panganiban noon lang November 24, 1995. Tinanong ko ang sekretarya ni Atty. Panganiban kung nasaan si Atty. Noel, ang sagot ng sekretarya ay “Nasa probinsiya maraming inaasikaso doon.” Agad kong sinabi: “Hindi ba fifteen days lang para maka-apila sa Supreme Court.” Sumagot si Zeny at sinabi “Isang buwan daw yun para sagutin.”

- Na madalas kong tawagan si Zeny (ang sekretarya ni Atty. Panganiban) na sinasabi kong nakahanda na ang pangbayad gawin na ninyo ang apilasyon sa “Supreme Court,” ito’y madalas kong sabihin sa sekretarya (si Zeny) kaya’t ibinigay niya ang bagong office ni Atty. Noel sa Gedisco Centre Rm. 134, 1564 Mabini St., Ermita, Manila.

- Na madalas akong magpunta sa bagong office ni Atty. Noel gaya noong Dec. 1, 1995, Dec. 4, 1995, Dec. 5, 1995, Dec. 7, 1995, Dec. 8, 1995 at noon pang huling linggo ng November ay sisimulan ko ng sabihin sa dalawang sekretarya (si Zeny at Marie Cris) na gawin na ang aking apilasyon sabihin kay Atty. Noel sa “Supreme Court.”

- Na noong December 12, 1995 maaga pa ay nagpunta ako sa office ni Atty. Noel sa Gedisco 3rd Flr. Mabini St., Ermita, Manila. Tinanong ko ang kaniyang sekretarya kung nakausap si Atty. Noel, sinagot ako ng sekretarya at sinabing ‘Tinanong ko si Atty. Noel kung yari na yung apilasyong ipinagagawa ninyo (Jose Roldan) hindi po niya ako sinasagot.’

- Na kaya agad akong magpunta sa RTC Branch 43 upang alamin ang katotohanan nabatid ko noon lang, na ako’y natalo ng walang kalaban-laban, pagkat nag-laps na o lampas na ang panahong ibinibigay ng batas para makapag-payl ng apilasyon sa Supreme Court.

- Na dahil dito sa mga panloloko, at pagwawalang bahala sa aking kaso ni Atty. Noel, at Atty. Panganiban ay idinidimanda ko sila ng Damages na halagang one hundred fifty thousand (P150,000.00) pesos at dapat silang alisan ng karapatan na makapag-practice sa kanilang propesyon.

In his Comment dated August 8, 1996, Atty. Panganiban avers that he was neither aware nor did he participate in the prosecution of “Civil Case No. 144860-CV M.I.T. Branch 25 “Jose A. Roldan vs. Ramon Montano & Robert Montano” and in the appeal of said case to the Regional Trial Court (RTC), Branch 43; they do not have a lawyer-client relationship because he is on leave in the practice of law since October 18, 1993 when he was designated Acting Mayor of Laurel, Batangas, and during his incumbency as such, and up to the filing of this administrative complaint in 1996, he is still on leave as law practitioner because he was elected Mayor of Laurel, Batangas in the last 1995 election; probably, complainant included him as respondent because he thought that he is practicing law and is still an associate of Atty. Juanito P. Noel, due to the fact that on some occasions complainant might have seen him or they might have talked casually in the law office from which he was on leave in his practice of law because he drops there from time to time to meet visitors from Laurel who are living and who have problems in Metro Manila; and he has not received any single centavo from the complainant.

In his Comment, dated August 29, 1996, Atty. Noel alleges: Sometime in 1994, he agreed to represent

complainant in recovering a one-half portion of the ground floor of a house located at 1723 Pedro Gil St., Paco, Manila which complainant bought from one Simplicia Villanueva represented by her daughter Teresita Dalusong on November 28, 1986. A civil complaint for recovery of ownership and possession was filed on February 8, 1994 with the RTC but upon the effectivity of the law expanding the jurisdiction of the Metropolitan Trial Court (MTC) the case was transferred to the MTC. From the evidence of the defendant, he honestly saw no need to present a rebuttal evidence. The MTC rendered a decision dismissing the case on the alleged ground that the identity of the subject matter of the action was not clearly established. He filed an appeal in due time to the RTC of Manila (Branch 43) and not with the Court of Appeals as stated in paragraph 9 of the complaint. On November 13, 1995, he received a copy of the RTC decision dated October 10, 1995, affirming the decision of the MTC. Through the telephone, he informed the complainant about the decision of the RTC. Complainant instructed him to prepare an appeal to the higher court which actually refers to the Court of Appeals and not with the Supreme Court as complainant claims. He advised the complainant that he could find no error in the said decision and a further appeal would be frivolous and without merit and requested the complainant to come over so that he could discuss the matter with him. Whenever the complainant went to the law office, he failed to see him because the latter was still attending court hearings. The complainant asked for the records of the case which was given by his secretary. Complainant never returned the case folder to him, neither did he call up by phone, or see him personally. He then assumed that the complainant had hired another lawyer to handle the appeal. He was surprised when he received on July 18, 1996 a copy of the resolution of this Honorable Court dated June 19, 1996, requiring them to file their comment on the complaint of Jose A. Roldan.

We referred the matter to the Integrated Bar of the Philippines (IBP) for investigation. After hearing, IBP Investigating Commissioner Manuel A. Quiambao submitted his Report and Recommendation dismissing the complaint against Atty. Panganiban and imposing censure to Atty. Noel. In a Resolution dated February 27, 2004, the IBP adopted and approved the said Report and Recommendation.

We shall first resolve the issue of the existence or non-existence of lawyer-client relationship between Atty. Panganiban and the complainant.

From a careful reading of the records of this case, it appears that Atty. Panganiban and Atty. Noel used to be law associates. However, Atty. Panganiban went on leave from the practice of law since October 18, 1993 when he was designated as acting mayor of Laurel, Batangas^[2] due to the indefinite leave of absence filed by the mayor and by reason of his election as mayor of the said municipality in 1995. The complainant claims that he secured the services of Atty. Panganiban on January 6, 1994.^[3] It is thus clear that Atty. Panganiban was not an active associate of the law firm, since at that time, he was already on leave from the practice of law. Moreover, the complaint filed in 1996 before the RTC for Recovery of Possession and Ownership with Damages was prepared and signed by Atty. Noel alone and not in any representation of any law firm. In fact from the filing of the said civil case in the RTC, it was Atty. Noel who represented the complainant. Not once did Atty. Panganiban appear for the complainant nor did he sign any document pertaining with the aforesaid case. Necessarily, the complaint against Atty. Panganiban must be dismissed.

As to the complaint against Atty. Noel.

The main issues to be resolved are: (1) whether there was a deliberate attempt to suppress evidence on the part of Atty. Noel, to the prejudice of complainant and (2) whether it was correct for Atty. Noel to refuse to file a further appeal of the case to the Court of Appeals by way of petition for review despite the manifest desire of the complainant to do so.

Anent the first issue.

Complainant insists that Atty. Noel's failure to present in evidence the receipt dated March 1, 1986 was fatal to his cause. The receipt shows that complainant made a partial payment of P10,000.00 of the P40,000.00 price of the subject property. Complainant claims that this piece of document proves that complainant bought the subject property ahead of the defendants who bought it only on July 30, 1986. Thus, to the mind of the complainant, the non-presentation of the subject receipt is suppression of evidence.

Atty. Noel denied receiving the subject receipt and asserts that the same was mere fabrication of the complainant. He insists that said receipt did not exist during the preparation and filing of the complaint and even during the presentation of evidence. Otherwise, he argues that such fact should have been alleged in the complaint to show that complainant bought the subject property ahead of the other buyer. Atty. Noel also claims that assuming that the receipt was given to him, the same cannot be used as evidence because the receipt shows that it was signed by one Romeo Dalusong who is not a party to the sale; neither does it appear in the receipt that Romeo was acting in a representative capacity.

A short historical backdrop is necessary for a clearer insight of this issue.

It appears that the subject property was subjected to a double sale by the same seller. The Deed of Sale of the complainant is dated November 28, 1986 while that of the other buyer is dated July 30, 1986. But complainant claims that actually the sale as to him took place on March 1, 1986 as evidenced by the subject receipt. Complainant however failed to take possession of the subject property as the same is already in the possession of the other buyer. Complainant filed an ejectment case^[4] against the tenant of the other buyer but the same was dismissed for the reason that "complainant failed to show that he had proprietary right over the property in question." Unable to take possession of the subject property, complainant filed a case against the seller for the annulment of the contract of sale, the Deed of Sale dated November 28, 1986. Complainant won and the court awarded him damages of P80,000.00.

Subsequently, the seller and the complainant entered into a Compromise Agreement.^[5] The seller, agreed to sell one-half of her duplex house which is the same property that was previously sold to complainant on November 28, 1986, including all her proprietary rights over the land, in the amount of P80,000.00. Since the Court awarded damages to the complainant in the same amount, this was set-off against the price of the property. Pursuant to the said compromise agreement, a Deed of Absolute Sale and Transfer of Right^[6] in favor of the complainant was executed on December 22, 1990 by the seller over the said property.

Even with the sale on December 22, 1990 over the subject property as a result of the compromise agreement, complainant still failed to take possession of the subject property, hence he filed a complaint for Recovery of Possession and Ownership with Damages against the other buyer. It is in this case that complainant claims that Atty. Noel failed to present the subject receipt. The MTC dismissed the complaint and the RTC on appeal, dismissed it again. Upon failure of Atty. Noel to file a petition for review with the Court of Appeals, complainant filed the present administrative complaint against him.

We find credence to the allegation of Atty. Noel that the subject receipt was not in existence at the time he prepared the complaint or even at the time of presentation of evidence. The complaint was verified by the complainant stating the fact that he caused its preparation, that he read the same and attested that the contents thereof are true and correct. If complainant's allegation that he gave the receipt to Atty. Noel at that time, and considering the importance of the subject receipt to his case, he should have called the attention of Atty. Noel that there was no allegation of the existence of the subject receipt.

We thus hold that Atty. Noel is not guilty of suppressing evidence.

As to the second issue, that is, the issue of propriety of Atty. Noel's refusal or failure to file a petition for review before the Court of Appeals.

It is the contention of the complainant that he lost the right to file a further appeal because he was not informed immediately of the result of the appeal to the RTC. Complainant insists that Atty. Noel, through his secretary, called the complainant only on November 24, 1995 or 11 days after the receipt of the adverse RTC decision and was given the impression that he has still one month within which to file an appeal. The complainant also said that he paid the respondents visits on December 1, 4, 5, 7 and 8, 1995, to follow up the filing of the appeal to the higher court but that he was not able to talk to Atty. Noel; that it was only when he went to the RTC that he learned that he lost the case because the period of the appeal has lapsed.

Atty. Noel contends that he received the RTC decision on November 13, 1995 and on the following day, he instructed his secretary to contact the complainant to inform him of the adverse RTC decision with the directive for the complainant to call up Atty. Noel; that when complainant called, he was instructed by the complainant to prepare an appeal to the higher court; that he told the complainant that there is no need to appeal the case because, first, the decision of the court is "correct," and second, he is obligated by the code of professional responsibilities to refrain from filing a frivolous and unmeritorious appeal; that thereafter, complainant went to his office twice, the last of this instance was when complainant took all the records of the case and never came back which led him to believe that complainant will not appeal the adverse RTC decision. Atty. Noel further states that, in any event, his relationship with the complainant ended upon the issuance of the decision and that the complainant should not expect that he would still appeal the case.

We find for the complainant.

It is noted that the complainant has been very diligent in following up the status of the case. From the time, complainant filed the case with the MTC up to the time he appealed with the RTC, complainant was vigilant with his rights constantly in contact with Atty. Noel. We find it strange therefore that upon receipt of the adverse RTC decision, it would seem, if Atty. Noel's version is to be given credence, the complainant had lost his zeal and just allowed the time to appeal to lapse. As correctly observed by the Investigating Commissioner in his Report:

Here was a complainant who went through several litigations over the same subject matter, including a case of ejectment, a case of annulment of contract of sale with damages, a case of action for recovery of ownership and possession, an appeal to the Regional Trial Court, and he did not seem perturbed that he lost it (the appeal) and did not find it essential to discuss the matter with his lawyer for possible remedial action? That is, as claimed by his lawyer?

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As opposed to the general denial given by the respondent about the claim that the complainant followed up his case several times with his office (outside of the two occasions that he conceded the complainant did so), the complainant was precise in detailing the circumstances which described how he tried his best to seek the presence of Atty. Noel to no avail. There were dates, detailed circumstances, and specific places. Given the character which had characterized the effort of the complainant to seek appropriate legal remedies for his complaints, the assertions would be consistent, that is, that he made great efforts to find Atty. Noel.

We note that the complainant was informed about the adverse RTC decision within the 15-day prescriptive period to appeal. As stated elsewhere, Atty. Noel received the adverse RTC decision on November 13, 1995 and the complainant was informed about the adverse RTC decision on November 24, 1995. Hence, complainant has still four days to file an appeal. However, Atty. Noel failed to ensure that the client was advised appropriately. Atty. Noel entrusted entirely with his secretary the duty to inform the complainant about the adverse decision. And the secretary informed the complainant rather late and worse with the wrong information that the complainant has still

a month within which to file an appeal. This resulted to the lapse of the prescriptive period to appeal without complainant having availed of the said remedy.

A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.[7] If only Atty. Noel's position of not filing an appeal because it would only be frivolous has been properly communicated to the complainant at the earliest possible time so that the complainant would be able to seek the services of another lawyer for help, it would have been commendable. A lawyer's duty is not to his client but to the administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics.”[8] But as it was, Atty. Noel's negligence as afore-discussed robbed the complainant of the opportunity to at least look for another lawyer for professional help and file an appeal, after all, it is the client who finally decides whether to appeal or not an adverse decision.

We cannot also accept the reasoning of Atty. Noel that he should not be expected to file an appeal for the complainant because their lawyer-client relationship ended with the RTC decision. First, a lawyer continues to be a counsel of record until the lawyer-client relationship is terminated either by the act of his client or his own act, with permission of the court. Until such time, the lawyer is expected to do his best for the interest of his client.[9] Second, Atty. Noel admitted that complainant instructed him to file an appeal with the higher court. Even assuming that their contract does not include filing of an appeal with the higher courts, it is still the duty of Atty. Noel to protect the interest of the complainant by informing and discussing with the complainant of the said decision and his assessment of the same. A lawyer shall represent his client with zeal within the bounds of the law.[10] It is the obligation of counsel to comply with his client's lawful request. Counsel should exert all effort to protect the interest of his client.

The determination of the appropriate penalty to be imposed on an errant lawyer involves the exercise of sound judicial discretion based on the facts of the case.[11] In cases of similar nature, the penalty imposed by the Court consisted of reprimand,[12] fine of five hundred pesos with warning,[13] suspension of three months,[14] six months[15] and even disbarment[16] in aggravated case.

The facts of the case show that Atty. Noel failed to live up to his duties as a lawyer pursuant to the Code of Professional Responsibility. We conclude that a suspension from the practice of law for one month is just penalty under the circumstances.

Complainant's claim for damages cannot be entertained in the present disbarment case as it is not the proper forum. It is not an ordinary civil case where damages could be awarded.[17] A disbarment case is a proceeding that is intended to protect the Court and the public from the misconduct of its officers; to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable and reliable, men in whom courts and clients may repose confidence.[18] It has been emphasized in a number of cases that disbarment proceedings belong to a class of their own, distinct from that of a civil or a criminal action.[19]

Wherefore, the complaint against Atty. Natalio M. Panganiban is DISMISSED. Atty. Juanito P. Noel is SUSPENDED for one month with a warning that a repetition of the same would be meted a more severe penalty. Let a copy of this decision be attached to respondent's personal record in the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

SO ORDERED.

Puno, (Chairman), Tinga, and Chico-Nazario, JJ., concur.
Callejo, Sr., J., on leave.

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- [1] Rollo, pp. 3-4.
 - [2] Rollo, p. 15.
 - [3] Rollo, p. 39.
 - [4] Records, p. 74.
 - [5] Records, pp. 56-57.
 - [6] Records, p. 58.
 - [7] Rule 18.03, Code of Professional Responsibility.
 - [8] *Maglasang vs. People*, 190 SCRA 306, 313 (1990).
 - [9] *Orcino vs. Gaspar*, 279 SCRA 379 (1997).
 - [10] Canon 19, Code of Professional Responsibility.
 - [11] *Endaya vs. Oca* 410 SCRA 244, 255 (2003)
 - [12] *Santiago vs. Fojas*, 248 SCRA 68, 75-76 (1995).
 - [13] *Basas vs. Icawat*, 338 SCRA 648, 652 (2000).
 - [14] *Ford vs. Daitol*, 250 SCRA 7, 13 (1995).
 - [15] *Perla Compania de Seguros*, 271 SCRA 109 (1997).
 - [16] *Mariveles vs. Mallari*, 219 SCRA 44, 46 (1993).
 - [17] *Rodriguez vs. Tagala*, 101 SCRA 28, 36-37 (1980).
 - [18] *Id.*
 - [19] *De Fajardo vs. Bugaring*, AC 5113, October 7, 2004.

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