

## AVITO YU, COMPLAINANT, VS. ATTY. CESAR R. TAJANLANGIT, RESPONDENT.

*A.C. No. 5691. March 13, 2009*

Ponente: TINGA, J.

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### TINGA, J.:

This is an administrative complaint for disbarment filed by complainant Avito Yu against respondent Atty. Cesar R. Tajanlangit for violation of Rules 18.03 and 16.01 of the Code of Professional Responsibility (the Code).[1]

Complainant alleged that he had engaged the services of respondent as defense counsel in Criminal Case No. 96-150393 that resulted in a judgment of conviction against him and a sentence of thirty (30) years of imprisonment.[2] After the motion for reconsideration and/or new trial was denied by the trial court, instead of filing an appeal, respondent filed a petition for certiorari[3] under Rule 65 of the 1997 Rules of Civil Procedure imputing grave abuse of discretion on the trial court's part in denying the motion. This petition was subsequently denied by the Court of Appeals. Due to respondent's alleged error in the choice of remedy, the period to appeal lapsed and complainant was made to suffer imprisonment resulting from his conviction. In depriving complainant of his right to an appeal, respondent allegedly violated Rule 18.03[4] of the Code. Moreover, complainant averred that respondent had violated Rule 16.01[5] of the Code for failing to return the bailbond to him in the amount P195,000.00 after having withdrawn the same.[6] Further, complainant stated that respondent had failed to pay the telephone bill he had incurred during his stay at complainant's house.[7]

Complainant prayed that respondent be disbarred and be ordered to pay him the amount of P211,106.97 plus interest.[8]

For his part, respondent clarified that his legal services were engaged only after the denial of the motion for reconsideration and/or new trial and the supplement thereto. His legal services were limited to filing the petition for certiorari. Complainant, at the time, had already been convicted by the trial court. Respondent also explained that he had discussed with complainant the merits of filing a petition for certiorari and that complainant gave his conformity to the filing of the same.[9]

Moreover, respondent averred that complainant had authorized and instructed him to withdraw the cash bond in order to apply the amount as payment for legal fees and reimbursement for expenses. With regard to the unpaid telephone bill, respondent alleged that he was not presented a copy of the billing statement despite his previous requests. He also contended that he had been allowed to use the telephone to facilitate coordination between him and complainant as he was then residing in Bacolod City.[10]

The Court referred the matter to the Integrated Bar of the Philippines (IBP) by Resolution of 16 July 2003.[11]

In his Report and Recommendation dated 2 December 2004, Atty. Leland R. Villadolid, Jr., IBP Commissioner, made the following findings:

On the charge of violating Rule 18.03

x x x

x x x Considering that Respondent was only hired after the denial of the Motion for Reconsideration and/or New Trial, Complainant is silent whether an appeal was still available to him at that time. Complainant failed to state the material dates when his first lawyer, Atty. Lacsamana received the Decision dated 6 February 1998, when she filed the Motion for Reconsideration and/or New Trial, and when his second lawyer, Atty. Espiritu, received the Order dated 23 April 1999.

While all of the lawyers who protected Complainant's cause were of the view that there was a need to present additional evidence and/or hold trial anew, it is obvious that Complainant singled out Respondent and blamed him solely for his conviction.

At any rate, Respondent exhaustively explained his legal basis for elevating the Order dated 23 April 1999 to the Court of Appeals by filing a Petition for Certiorari. Considering that the Order dated 23 April 1999, which denied the Motion for Reconsideration and/or New Trial, Respondent's argument that the said order is not the proper subject of appeal is tenable. This is supported by Section 1(a), Rule 43 and Section 9, Rule 37 of the Rules of Court. For another, a perusal of grounds Respondent raised in the Petition is acceptable grounds that warrant a new trial. At least two of the grounds Respondent raised were: the negligence of former counsel in failing to present evidence and new discovered evidence. It is well-settled that these grounds usually warrant the re-opening of evidence. Thus, it cannot be said that Respondent acted negligently in advocating Complainant's cause.

x x x

On the charge of violating Rule 16.01

x x x In the absence of evidence controverting Respondent's claim that a verbal agreement exists or an amount different from what was agreed upon, it is believable that indeed, Complainant knew of the fee arrangement entered into with the Respondent, through Ms. Javier, who acted in his behalf. It is also indisputable that Complainant executed a Special Power of Attorney dated 23 March 1999 authorizing the Respondent to withdraw the cash bonds in several criminal cases on his behalf. Thus, it was not all improper for Respondent to withdraw the same.

x x x

While Respondent is entitled to be paid for the legal services he rendered and expenses he incurred, it is still Respondent's obligation to render an accounting of the money received.

x x x

Further, Respondent did not substantiate his claim that he had paid for or tendered payment for the unpaid telephone bill. While he contends that he previously asked for the billing statement, it was allegedly not shown to him. However, there is no showing that from the time the instant disbarment complaint was filed, which in itself constitutes the demand for its payment, any payment (was) made by the Respondent.[12]

Accordingly, the IBP Commissioner recommended that respondent be directed to: (1) render an accounting of the money he had received and to itemize the nature of the legal services he had rendered, inclusive of the expenses he had incurred in compliance with Rule 16.01 of the Code; and (2) to pay the amount of the unpaid telephone bill. It was further recommended that respondent be sternly warned that a similar offense in the future would be dealt with more severely.[13]

On 12 March 2005, the IBP Board of Governors passed Resolution No. XVI-2005-83 adopting and approving the Report and Recommendation of the IBP Commissioner.[14]

The Court is in full accord with the findings and recommendation of the IBP.

Records show that respondent did not serve as complainant's lawyer at the inception of or during the trial of Criminal Case No. 96-150393 which resulted to the conviction of the latter. In fact, respondent was only engaged as counsel after the withdrawal of appearance of complainant's lawyers and denial of the Motion for Reconsideration and/or New Trial and the supplement thereto. At that time, complainant had already been incarcerated. Significantly, complainant made no mention of the availability of the remedy of appeal at the time of respondent's employment.

More importantly, the Court finds adequate respondent's justification for filing the petition for certiorari instead of an appeal. Indeed, there is no showing that respondent was negligent in handling the legal matter entrusted to him by complainant.

The Court also agrees with the IBP that it was not at all improper for respondent to have withdrawn the cash bonds as there was evidence showing that complainant and respondent had entered into a special fee arrangement. But, however justified respondent was in applying the cash bonds to the payment of his services and reimbursement of the expenses he had incurred, the Court agrees with

the IBP that he is not excused from rendering an accounting of the same. In *Garcia v. Atty. Manuel*,<sup>[15]</sup> the Court held that "(t)he highly fiduciary and confidential relation of attorney and client requires that the lawyer should promptly account for all the funds received from, or held by him for, the client."<sup>[16]</sup> The fact that a lawyer has a lien for his attorney's fees on the money in his hands collected for his client does not relieve him from the obligation to make a prompt accounting.<sup>[17]</sup>

Finally, the Court concurs with the IBP that while it is true that respondent was not presented a copy of the unpaid telephone bill, the instant complaint itself constitutes the demand for its payment. Considering that there is no manifestation to the effect that the same has been paid, respondent should accordingly be required to settle it.

WHEREFORE, in view of the foregoing, respondent Atty. Cesar R. Tajanlangit is ordered to render, within thirty (30) days from notice of this Resolution, an accounting of all monies he received from complainant and to itemize the nature of the legal services he had rendered, inclusive of the expenses he had incurred, in compliance with Rule 16.01 of the Code of Professional Responsibility.

Respondent is further ADMONISHED that commission of the same or similar act in the future will be dealt with more severely.

**SO ORDERED.**

Quisumbing, Acting C.J., Carpio Morales, Velasco, Jr., and Brion, JJ., concur.

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[1] Rollo, pp. 1-3.

[2] Id. at 1.

[3] Id. at 11-37.

[4] Rule 18.03: A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

[5] Rule 16.01: A lawyer shall account for all money or property collected or received for or from the client.

[6] Supra note 2.

[7] Id. at 195-196; Position Paper of Complainant dated 9 February 2004.

[8] Id. at 196.

[9] Id. at 98-100 ; Comment dated 20 January 2003.

[10] Id. at 100-103.

[11] Id. at 129.

[12] Id. at 319-322.

[13] Id. at 323.

[14] Id. at 314-315.

[15] 443 Phil. 429 (2003).

[16] Id. at 487.

[17] Schulz v. Atty. Flores, 462 Phil. 601, 612-613 (2003).

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