

THE HEIRS OF TIBURCIO F. BALLESTEROS, SR., NAMELY ELSIE B. AROMIN, DOLORES D. BALLESTEROS, TIBURCIO B. BALLESTEROS, JR., AND FE BALLESTEROS-YABUT, AND THE RURAL BANK OF PAGADIAN...

A.C. NO. 5760. September 30, 2005

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This is a complaint for disbarment filed by Julian B. Ballesteros ("complainant") as Administrator of the Ballesteros Estate and President and Manager of the Rural Bank of Pagadian, Inc. ("Bank") against Atty. Manileño N. Apiag ("respondent"), the retained counsel of the Ballesteros Estate and the Bank.

Complainant alleged that respondent violated the terms of the Legal Services Retainership Agreement[1] ("Retainer Agreement") and Canons 15, 17, 18, 19 and Rules 18.03 and 18.04 of the Code of Professional Responsibility.[2]

The Facts

Complainant charges respondent for reneging on his obligations as retained counsel in the following instances:

1. Civil Case Nos. 1645-1648

Respondent handled four actions for Unlawful Detainer and Damages with Prayer for Issuance of Preliminary Mandatory Injunction docketed as Civil Case Nos. 1645-1648 ("ejectment cases"). Respondent filed the ejectment cases on 26 November 1998, which were raffled to Branch 1 of the Municipal Trial Court in Cities, Pagadian City, presided by Judge Edilberto G. Absin ("Judge Absin"). In all these cases, Judge Absin issued an Order[3] dated 2 August 1999, requiring the parties to submit their position papers. Respondent failed to submit the position papers. On 8 December 1999, Judge Absin issued four identical Orders dismissing the ejectment cases.[4]

Complainant claims that respondent never informed him of the dismissal of the ejectment cases. Complainant learned of the dismissal only during the first week of March 2002 when his new counsel filed a Motion for Substitution of Legal Counsel.[5]

Complainant also claims that respondent was aware beforehand that complainant would suffer tremendous financial losses in the event of dismissal of the ejectment cases.[6]

2. Civil Case No. 3844

Respondent also handled Civil Case No. 3844 for Quieting of Title with Preliminary Injunction and Declaration of Nullity of Deed of Mortgage. The trial court set the case for pre-trial conference on 5 February 2002.

Respondent failed to appear. He did not file a pre-trial brief as well. The trial court then ordered the third-party plaintiff to present evidence ex-parte.[7]

Complainant claimed he was present during the pre-trial conference. He later learned that respondent was at his residence and did not attend the pre-trial conference.[8]

3. Civil Case No. 3395

Respondent also prosecuted the latter stages of an Action for Reconveyance of Real Property docketed as Civil Case No. 3395. This case is now on appeal with the Court of Appeals'13[th] Division. However, when the case was still in the Regional Trial Court, respondent failed to file a Motion for Reconsideration, particularly on the cancellation of the Notice of Lis Pendens annotated on the Torrens title of the property under litigation.[9]

Complainant asserts that the failure to move for reconsideration would enable the defendants to sell the property, thus making it difficult for complainant to regain possession of the property if the appellate court rules in his favor.[10]

4. Civil Case No. 4019

Respondent handled Civil Case No. 4019 for Rescission of Contract and Damages against Spouses Hawani. On 20 January 2000, the trial court rendered a decision ordering the Spouses Hawani to pay the Ballesteros Estate back rentals including penalties of P852,263.84 plus P30,000 attorney's fees.[11]

Respondent billed complainant P255,679.15 representing 30% contingent fee and P30,000 attorney's fees. Complainant asserts that the bill does not conform to the terms of the Retainer Agreement, which reads:

"OBLIGATIONS OF THE CLIENT"

x x x

5. To pay the Attorney by way of contingent fee the following:

x x x

c. Thirty percent (30%) of the total amount or equivalent sum recovered from Moral and Exemplary Damages to the exclusion of Actual Damages, paid and received by the client thru the execution of any/all judgment rendered in favor of the client; and by way of an additional incentive, awards for Attorney's fees and payment relative thereto shall pertain to and exclusively belong to the Attorney;[12]

Complainant claims that the award of P852,263.84 corresponds to unpaid rentals, penalties and charges from 16 January 1997 to 15 January 2000. This amount represents actual damages and not moral or exemplary damages.[13]

Complainant further claims that for this case alone, he paid respondent a total of P219,000 consisting of fees for consultation, acceptance, court appearances, preparation of pleadings and motions.[14]

On 5 March 2002, complainant received from respondent a final demand letter. Complainant refused to pay respondent. Thus, on 2 April 2002, respondent filed Civil Case No. 4370-2k2 for Collection of Sum of Money and Damages with Preliminary Injunction and Restraining Order.[15]

Complainant now seeks the disbarment of respondent for violating Canons 15, 17, 18, 19 and Rules 18.03 and 18.04 of the Code of Professional Responsibility.[16]

In his Comment, respondent refutes complainant's allegations and counters that:

1. Civil Case Nos. 1645-1648

Complainant was one of the defendants in several criminal complaints[17] that involved the same lot in the four ejectment cases. Respondent contends that complainant's motive in filing the Actions for Unlawful Detainer was to harass the private offended party and her witnesses so they would drop the criminal cases against complainant.[18] Nevertheless, respondent filed the ejectment cases with all fidelity to his client.

Respondent maintains that he submitted the drafts of the Position Paper and Affidavit to complainant for his signature. However, complainant did not return the drafts despite several reminders. Respondent cannot now present the drafts because respondent submitted all copies of the Affidavit and Position Paper to complainant. Respondent's computer used in encoding the final drafts no longer contains the drafts in its files.[19]

Respondent insists that he furnished complainant a copy of the dismissal order in the four ejectment cases.[20] Respondent points out that complainant's claim of lack of knowledge of the dismissal order for more than two years is incredible. Respondent posits that complainant's inaction for two years constitutes dereliction and makes him unworthy as an administrator of the Ballesteros Estate.[21]

2. Civil Case No. 3844

In the civil case for Quieting of Title, respondent did not file a pre-trial brief because of the possibility of a compromise agreement. Respondent claims that complainant, upon receiving the proposed compromise agreement from respondent, promised to submit the compromise agreement to the Bank's Board of Directors for its consensus. Respondent was hopeful that the compromise agreement would succeed so he decided not to file the pre-trial brief. His non-appearance at the pre-trial conference on 5 February 2002 was based on his assumption that the trial court would grant the Motion for Postponement filed by counsel for plaintiffs.[22] Respondent attributed to complainant's failure to act on the compromise agreement the subsequent issuance by Judge Absin of the order allowing the third-party plaintiff to present evidence ex-parte.[23]

Further, respondent denies the allegation that complainant was present in court during the pre-trial conference on 5 February 2002.[24] As shown in the trial court's Order,[25] defendant Bank failed to appear, proving that complainant never attended the pre-trial conference. Respondent points to this as a clear indicium of complainant's extraordinary temerity to lie to the Court.[26]

3. Civil Case No. 3395

On Civil Case No. 3395, respondent claims that complainant never referred this case to him. Respondent's participation in this case was only by special appearance due to the inability of Atty. Manuel Diokno, the counsel of record from Manila, to attend the scheduled trial. In fact, a separate Special Agreement governed respondent's services in this case.[27]

Respondent insists that he is not at fault for the non-filing of a Motion for Reconsideration because he merely followed the instruction of Atty. Diokno to file the Notice of Appeal.[28]

However, to protect complainant's interest, respondent filed a Motion for Reconsideration with the Office of the Registry of Deeds to remedy the impending effect of the cancellation of the Notice of Lis Pendens.[29]

4. Civil Case No. 4019

Respondent claims that complainant presented to him the draft of the Retainer Agreement. The original provision on the payment of contingent fee to which respondent agreed reads: "xxx [i]n the event of an award for damages, the fee shall be thirty (30) percent of the award xxx." [30] That complainant prepared the final draft of the Retainer Agreement is shown by the details of complainant's Residence Certificate which were typewritten while the

details of respondent's Residence Certificate remained in blank.[31]

Respondent asserts that complainant maliciously altered the agreed word "inclusion" by changing it to "exclusion"[32] to make it appear that actual damages are excluded in computing the 30% contingent fee. Respondent laments that he would not receive any contingent fee because his clients, the Ballesteros Estate and the Bank, are artificial persons which could not recover moral and exemplary damages.[33] Respondent asserts that the word "exclusion" is inconsistent to a holistic interpretation of the Retainer Agreement.[34]

Respondent contends that he exerted great effort in preparing the case against the Spouses Hawani, thus he rightfully deserves his attorney's fees.[35]

Finally, respondent claims that complainant's stubborn refusal to pay left respondent no other course but to file the case for Collection of Sum of Money and Damages against complainant.[36]

The IBP's Report and Recommendation

The Integrated Bar of the Philippines Investigating Commissioner Lydia A. Navarro ("IBP Commissioner Navarro") allowed the parties to submit position paper or memorandum in lieu of a formal hearing.[37] After the parties filed their memoranda, the IBP Board of Governors issued Resolution No. XVI-2004-234 ("IBP Resolution") dated 16 April 2004 adopting with modification[38] IBP Commissioner Navarro's Report and Recommendation ("Report") finding respondent negligent in legal matters entrusted to him by his client. The IBP Board of Governors recommended the imposition on respondent of a penalty of six months suspension from the practice of law. The Report reads:

After going over the evidence submitted by the parties, the undersigned noted that the interpretation concerning their Retainer Agreement is a matter to be resolved by the Court where Civil Case No. 4370-2K2 for Collection of Sum of Money and Damages was filed on April 20, 2002 and that is before RTC Branch, 18 when complainant allegedly refused to pay respondent his attorneys fees pursuant to their agreement which is still pending litigation between them.

With respect to the four (4) ejectment cases dismissed by the court for failure of respondent to file Position Papers for each case as per Court Order; respondent's allegation that it was attributable to the complainant who did not return the draft to him which was refuted by the complainant for he was not supposed to sign the same is of no moment for as counsel of record, it was incumbent upon respondent to take the necessary action and not for the complainant who is not conversant with the court proceedings otherwise respondent's legal services would not have been engaged; and for such remission respondent had been negligent considering that he should not have taken for granted the non-filing of Position Papers for each of the four (4) ejectment cases which had been the very reason for the dismissal of said cases.

Respondent's contention that his appearance in Civil Case No. 3395 being special; instead of a motion for reconsideration he filed a Notice of Appeal upon complainant's instruction as allegedly relayed to the latter by their counsel of record Atty. Diokno was in violation of Rule 19.01 (sic), Canon 19 of the Code of Professional Responsibility when respondent allowed his client to dictate upon him the procedure in handling said case without first making the necessary coordination with Atty. Diokno the alleged counsel of record of the complainant. But the fact remains that respondent pursued the case until a decision was promulgated; therefore as such he was in control in having prosecuted Case No. 3395; a legal responsibility.

From the facts obtaining, it is evident that respondent had been negligent in legal matters and actions entrusted to him by his client complainant herein as required by the courts in compliance with Court procedure for which remission he should be liable.[39]

The IBP Board of Governors forwarded the Report to the Court as provided under Section 12(b), Rule 139-B[40]

of the Rules of Court.

The Ruling of the Court

The Court finds respondent liable for violation of Canon 18, Rule 18.03, Rule 18.04 and Rule 19.03 of the Code of Professional Responsibility ("Code").

The Code mandates that every "lawyer shall serve his client with competence and diligence." [41] The Code further states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." [42] The Code provides that "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." [43] Furthermore, "a lawyer shall not allow his client to dictate the procedure in handling the case." [44]

Respondent failed to file position papers and did not inform complainant of the dismissal of the ejectment cases

Respondent's assertion that he submitted the position papers to complainant for signature is not substantiated by any evidence. Respondent's bare allegations do not persuade the Court.

In *Macarilay v. Serina*, [45] the Court held the handling counsel accountable for failing to file the complaints and imputing the fault to his client. The Court did not believe the counsel's claim that the complaints were ready but the client refused to sign them. Thus, the Court refused to countenance the counsel's ill-disguised attempt to cover up his negligence by wrongfully shifting the blame to his client.

In the present case, the evidence at hand belies respondent's claim that complainant had knowledge of the dismissal of the ejectment cases. In the Omnibus Motion to Withdraw as Counsel with Prayer to Enter into the Records a Charging Lien ("Omnibus Motion") [46] respondent filed on 5 March 2002, respondent included the four ejectment cases as shown in the records. [47] However, the trial court dismissed the ejectment cases as early as 8 December 1999, making their inclusion in the Omnibus Motion clearly unwarranted.

In *Garcia v. Atty. Manuel*, [48] the Court found the lawyer in bad faith for failing to inform the client of the status of the case. The Court has repeatedly stressed that the lawyer-client relationship is highly fiduciary. [49] There is always a need for the client to receive from the lawyer periodic and full updates on developments affecting the case. The lawyer should apprise the client on the mode and manner that the lawyer is utilizing to defend the client's interests. [50]

A case in point is *Canoy v. Ortiz* [51] where the Court ruled that the lawyer's failure to file the position paper is per se a violation of Rule 18.03 of the Code. There the Court ruled that the lawyer could not shift the blame to his client for failing to follow up his case because it was the lawyer's duty to inform his client of the status of cases. The Court further ruled that the dereliction of duty to file the position paper, compounded by the failure for nearly two years to inform the client of the dismissal of the case, evidently shows the lawyer's negligence.

Respondent failed to file a pre-trial brief and failed to attend the pre-trial conference in the Quieting of Title case

Respondent claims that he did not file a pre-trial brief because of the possibility of a compromise agreement. The proposed compromise agreement was prepared sometime in February 2001. [52] In the pre-trial conferences held, respondent always manifested that complainant opted not to file any pre-trial brief in the hope of a compromise agreement. [53]

Section 6, Rule 18 of the Rules of Court provides:

SEC. 6 Pre-trial brief. — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

(a)

A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

xxx.

A pre-trial brief and a compromise agreement are not mutually exclusive. In fact, a pre-trial brief should contain a statement of the willingness to enter into such a compromise agreement.

Respondent's failure to file the pre-trial brief constitutes inexcusable negligence. As the Court held in *Spouses Galen v. Atty. Paguirigan*:^[54]

An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. A failure to file brief for his client certainly constitutes inexcusable negligence on his part. 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.

Moreover, respondent's non-appearance in the pre-trial conference held on 5 February 2002 was due to his assumption that the trial court would grant the Motion for Postponement filed by counsel for plaintiffs. The Court has repeatedly ruled that motions for postponements are granted only upon meritorious grounds and no party has the right to assume that such motion would be granted.^[55] Respondent's reason for his non-appearance at the pre-trial conference is faulty and unacceptable.

Respondent failed to file a motion for reconsideration in the reconveyance of real property case

Respondent claimed that his participation in the reconveyance of real property case was only by special appearance and he merely followed instructions given by Atty. Diokno, the counsel of record. Atty. Diokno directed the immediate filing of a Notice of Appeal. Complainant conveyed this instruction to respondent, who did not call Atty. Diokno to discuss its implications.

Respondent did not act as a mere messenger of Atty. Diokno in filing the Notice of Appeal. Respondent actually handled and pursued the case until the promulgation of the decision. Therefore, respondent cannot claim that his participation in the case was merely by special appearance to file the Notice of Appeal.^[56]

Respondent should know that every case a lawyer accepts deserves the lawyer's full attention, diligence, skill and competence regardless of its importance and whether he accepts it for a fee or for free.^[57] It is a lawyer's sworn duty to present every remedy or defense within the authority of the law in support of his client's cause.^[58] Any member of the bar worth his title cannot afford to practice the profession in a lackadaisical manner.^[59]

Respondent's claim for his lawful fees

The Court leaves the resolution of respondent's claim for attorney's fees to Branch 18 of the Regional Trial Court of Pagadian City where respondent filed Civil Case No. 4370-2k2 for Collection of Sum of Money and Damages. The resolution of respondent's claim requires a trial on the merits.

On the Appropriate Penalty on Respondent

The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the

surrounding facts.[60] The penalties for a lawyer's failure to file a brief or other pleading range from reprimand,[61] warning with fine,[62] suspension[63] and, in grave cases, disbarment.[64] In the present case, we agree with the penalty recommended by the IBP Board of Governors since respondent was clearly negligent in handling a number of cases.

WHEREFORE, we find respondent Atty. Manileño N. Apiag GUILTY of violation of Canon 18, Rule 18.03, Rule 18.04 and Rule 19.03 of the Code of Professional Responsibility. Accordingly, we SUSPEND respondent Atty. Manileño N. Apiag from the practice of law for SIX (6) MONTHS effective upon finality of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as an attorney; the Integrated Bar of the Philippines; and all courts in the country for their information and guidance.

SO ORDERED.

Davide, Jr., C.J., Quisumbing, Ynares-Santiago, and Azcuna, JJ., concur.

[1] Rollo, Vol. 1, pp. 2-3.

The pertinent provisions are:

OBLIGATION OF THE ATTORNEY

xxx

- To submit a report on matters under legal to the client from time to time and up-date the client of its progress and development upon the latter's request.

- To act promptly and diligently (sic) on matters referred to by client and whatsoever for the best interest of the client within his professional bounds.

xxx

OTHER CONDITION

... Furthermore, that the Attorney shall update and furnish the client with copies of all pertinent papers, documents and/or orders relative to matters within his obligations ...

[2] Ibid., pp. 10-11.

[3] Ibid., pp. 71-74.

[4] Ibid., pp. 75-78. The defendants in these cases are Luisito Angeles, Mansueto Pollisco, Genara Dalid Tiongco and Innocentes Alcopra.

[5] Ibid., p. 101.

[6] Ibid., p. 5. The allegations made in the ejectment complaint states:

- That just recently, an interested person is negotiating to purchase the area of the lot which portion is the subject-matter of the herein complaint and the purpose for which the lot shall be purchased requires expediency and time is of the essence, otherwise, IF THE SALE WILL NOT MATERIALIZE GREAT AND IRREPARABLE DAMAGES WOULD PREJUDICE THE PLAINTIFFS xxx.

[7] Ibid., pp. 6-7.

[8] Ibid.

[9] Ibid., pp. 7-8.

[10] Ibid.

[11] Ibid., pp. 8, 103-108.

[12] Ibid., pp. 17-18.

[13] Ibid., pp. 8-9.

[14] Ibid., p. 9.

[15] Ibid., p. 10.

[16] Ibid., pp. 10-14.

[17] Ibid., p. 138. Several criminal complaints were filed by Mrs. Faustina Calibo, Genara Dalid Tiongco and Pepita Supremo together with their witnesses before the City Prosecutor's Office against Julian Ballesteros, Philip Ballesteros Aromin and Primo Mangubat for Grave Threats, Grave Coercions and Usurpation of Real Rights/Violation of P.D. No. 772. Defendants in these cases were alleged to have entered the land owned by Mrs. Calibo, harassed the occupants therein by repeatedly demanding money for the supposed rentals of their stores, with the use of intimidations and threats that their stores will be removed if they refuse to pay.

[18] Ibid., p. 139.

[19] Ibid., p. 141.

[20] Ibid.

[21] Ibid., p. 142.

[22] Ibid., pp. 143, 274-275.

[23] Ibid., pp. 142-143.

[24] Ibid., p. 143.

[25] Ibid., p. 102.

[26] Supra note 24.

[27] Ibid., pp. 143-144.

[28] Ibid., p. 144.

[29] Ibid.

[30] Ibid., p. 134.

[31] Ibid., p. 19.

[32] Ibid., p. 147.

[33] Ibid.

[34] Ibid., p. 148. The specific provision of the Agreement reads:

- To pay the Attorney by way of contingent fee, the following:
- Ten percent (10%) of the total amount paid to and recovered by the client prior to legal action;
- Fifteen percent (15%) of the total amount paid and received by the client after the case is filed in Court but prior to final judgment. This includes proceeds in amicable settlement paid to client, amount paid to client by virtue of client's concession for updating and/or re-structuring of amounts and the like;
- Thirty percent (30%) of the total amount or equivalent sum recovered from MORAL and EXEMPLARY DAMAGES, to the EXCLUSION of ACTUAL DAMAGES, paid and received by the client thru the execution of any/all judgment rendered in favor of the client; and by way of an additional incentive, awards of Attorney's Fees and payment relative thereto shall pertain to and exclusively belong to the Attorney.

[35] Ibid., p. 136.

[36] Ibid.

[37] Rollo, Vol. II, p. 11.

[38] The IBP Commissioner imposed a penalty of three months suspension from the practice of law.

[39] Report, pp. 10-11.

[40] Section 12(b), Rule 139-B of the Rules of Court provides:

SEC. 12. Review and Decision by the Board of Governors. —

x x x

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

[41] Canon 18, Code of Professional Responsibility.

[42] Rule 18.03, Code of Professional Responsibility.

[43] Rule 18.04, Code of Professional Responsibility.

[44] Rule 19.03, Code of Professional Responsibility.

[45] A.C. No. 6591, 4 May 2005.

[46] Rollo, Vol. I, pp. 117-124.

[47] Ibid., pp. 119, 124.

[48] 443 Phil. 479 (2003).

[49] *Espiritu v. Atty. Cabredo IV*, 443 Phil. 24 (2003).

[50] *Supra* note 45.

[51] Adm. Case No. 5485, 16 March 2005, 453 SCRA 410.

[52] Rollo, Vol. I, pp. 272-273.

[53] Ibid., pp. 267-271.

[54] 428 Phil. 590 (2002) citing *Tan v. Lapak*, G.R. No. 93707, 23 January 2001, 350 SCRA 74. Reported as *Sps. Galen v. Atty. Paguirigan*.

[55] *Intestate Estate of the Late Ricardo P. Presbitero, Sr. v. Court of Appeals*, G.R. No. 102432, 21 January 1993, 217 SCRA 372.

[56] *Supra* note 39.

[57] *In re: Atty. David Briones*, 415 Phil. 203 (2001).

[58] *Abay v. Montesino*, A.C. No. 5718, 4 December 2003, 417 SCRA 77.

[59] *Schulz v. Flores*, A.C. No. 4219, 8 December 2003, 417 SCRA 159.

[60] *Endaya v. Oca*, A.C. No. 3967, 3 September 2003, 410 SCRA 244.

[61] *Vda. de Oribiana v. Gerio*, Adm. Case No. 1582, 28 February 1979, 88 SCRA 586.

[62] *Basas v. Atty. Icawat*, 393 Phil. 304 (2000).

[63] *Spouses Rabanal v. Atty. Tugade*, 432 Phil. 1064 (2002).

[64] *Mariveles v. Mallari*, Adm. Case No. 3294, 17 February 1993, 219 SCRA 44.

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