

MA. GINA L. FRANCISCO, JOSEPHINE S. TAN AND CARLOS M. JOAQUIN, COMPLAINANTS, VS. ATTY. JAIME JUANITO P. PORTUGAL, RESPONDENT

A.C. NO. 6155. March 14, 2006

Ponente: TINGA, J.

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TINGA, J.:

Complainants filed before this Court an affidavit-complaint[1] on 15 August 2003 against Atty. Jaime Juanito P. Portugal (respondent) for violation of the Lawyer's Oath, gross misconduct, and gross negligence. Complainants are related to petitioners in G.R. No. 152621-23 entitled SPO1 Ernest C. Francisco, SPO1 Donato F. Tan and PO3 Rolando M. Joaquin v. People of the Philippines, in whose behalf respondent filed the Petition for Review on Certiorari (Ad Cautelam) in the case.

The complaint against respondent originated from his alleged mishandling of the above-mentioned petition which eventually led to its denial with finality by this Court to the prejudice of petitioners therein.

The facts are as follows:

On 21 March 1994, SPO1 Ernesto C. Francisco, SPO1 Donato F. Tan and PO3 Rolando M. Joaquin (eventually petitioners in G.R. No. 152621-23, collectively referred to herein as the accused) were involved in a shooting incident which resulted in the death of two individuals and the serious injury of another. As a result, Informations were filed against them before the Sandiganbayan for murder and frustrated murder. The accused pleaded not guilty and trial ensued. After due trial, the Sandiganbayan[2] found the accused guilty of two counts of homicide and one count of attempted homicide.

At that juncture, complainants engaged the services of herein respondent for the accused. Respondent then filed a Motion for Reconsideration with the Sandiganbayan but it was denied in a Resolution dated 21 August 2001. Unfazed by the denial, respondent filed an Urgent Motion for Leave to File Second Motion for Reconsideration, with the attached Second Motion for Reconsideration.[3] Pending resolution by the Sandiganbayan, respondent also filed with this Court a Petition for Review on Certiorari (Ad Cautelam) on 3 May 2002.

Thereafter, complainants never heard from respondent again despite the frequent telephone calls they made to his office. When respondent did not return their phone inquiries, complainants went to respondent's last known address only to find out that he had moved out without any forwarding address.

More than a year after the petition was filed, complainants were constrained to personally verify the status of the ad cautelam petition as they had neither news from respondent about the case nor knowledge of his whereabouts. They were shocked to discover that the Court had already issued a Resolution[4] dated 3 July 2002, denying the petition for late filing and non-payment of docket fees.

Complainants also learned that the said Resolution had attained finality and warrants of arrest[5] had already been issued against the accused because respondent, whose whereabouts remained unknown, did nothing to prevent the

reglementary period for seeking reconsideration from lapsing.

In his Comment,[6]respondent states that it is of vital significance that the Court notes that he was not the original counsel of the accused. He only met the accused during the promulgation of the Sandiganbayan decision convicting the accused of two counts of homicide and one count of attempted homicide. He was merely requested by the original counsel to be on hand, assist the accused, and be present at the promulgation of the Sandiganbayan decision.

Respondent claims that there was no formal engagement undertaken by the parties. But only because of his sincere effort and in true spirit of the Lawyer's Oath did he file the Motion for Reconsideration. Though admitting its highly irregular character, respondent also made informal but urgent and personal representation with the members of the Division of the Sandiganbayan who promulgated the decision of conviction. He asserts that because of all the efforts he put into the case of the accused, his other professional obligations were neglected and that all these were done without proper and adequate remuneration.

As to the ad cautelam petition, respondent maintains that it was filed on time. He stresses that the last day of filing of the petition was on 3 April 2002 and on that very day, he filed with this Court a Motion for Extension of Time to File Petition for Review,[7] seeking an additional thirty (30) days to file the petition. Subsequently, on 3 May 2002, he filed the petition by registered mail and paid the corresponding docket fees. Hence, so he concludes, it was filed within the reglementary period.

Soon thereafter, respondent recounted all the "herculean" efforts he made in assisting the accused for almost a year after the promulgation of the Sandiganbayan decision. He considered the fact that it was a case he had just inherited from the original counsel; the effect of his handling the case on his other equally important professional obligations; the lack of adequate financial consideration for handling the case; and his plans to travel to the United States to explore further professional opportunities. He then decided to formally withdraw as counsel for the accused. He wrote a letter to PO3 Rolando Joaquin (PO3 Joaquin), who served as the contact person between respondent and complainants, explaining his decision to withdraw as their counsel, and attaching the Notice to Withdraw which respondent instructed the accused to sign and file with the Court. He sent the letter through registered mail but unfortunately, he could not locate the registry receipt issued for the letter.

Respondent states that he has asked the accused that he be discharged from the case and endorsed the Notice of Withdrawal to PO3 Joaquin for the latter to file with the Court. Unfortunately, PO3 Joaquin did not do so, as he was keenly aware that it would be difficult to find a new counsel who would be as equally accommodating as respondent. Respondent suggests this might have been the reason for the several calls complainants made to his office.

On 9 February 2004, the Court resolved to refer the matter to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The case was assigned to Investigating Commissioner Leland R. Villadolid, Jr. (Commissioner Villadolid) who sent notices of hearing to the parties but of the three complainants, only complainant Carlos Joaquin appeared. Thus, in the mandatory conference held, the other two complainants were declared as having waived their rights to further participate in the IBP proceedings.[8]

The parties were directed to file their respective position papers and on 27 May 2005, Commissioner Villadolid submitted his Report and Recommendation finding respondent guilty of violation of the Code of Professional Responsibility[9] and recommended the imposition of penalty ranging from reprimand to suspension of six (6) months.[10] On 12 November 2005, the Board of Directors of the IBP resolved to adopt and approve

Commissioner Villadolid's recommendation to find respondent guilty and specifically to recommend his suspension for six (6) months as penalty.

The only issue to be resolved in the case at bar is, considering all the facts presented, whether respondent committed gross negligence or misconduct in handling G.R. No. 152621-23, which eventually led to the ad cautelam petition's dismissal with finality.

After careful consideration of the records of the case, the Court finds the suspension recommended by the IBP proper.

In a criminal case like that handled by respondent in behalf of the accused, respondent has a higher duty to be circumspect in defending the accused for it is not only the property of the accused which stands to be lost but more importantly, their right to their life and liberty. As held in *Regala v. Sandiganbayan*:^[11]

Thus, in the creation of lawyer-client relationship, there are rules, ethical conduct and duties that breathe life into it, among those, the fiduciary duty to his client which is of very delicate, exacting and confidential character, requiring a very high degree of fidelity and good faith, that is required by reason of necessity and public interest x x x .

It is also the strict sense of fidelity of a lawyer to his client that distinguishes him from any other profession in society. x x x^[12]

At the onset, the Court takes notice that the ad cautelam petition was actually filed out of time. Though respondent filed with the Sandiganbayan an Urgent Motion for Leave to File Second Motion for Reconsideration with the attached Second Motion for Reconsideration, he should have known that a second motion for reconsideration is a prohibited pleading^[13] and it rests on the sound discretion of the Sandiganbayan to admit it or not. Thus, in effect, the motion did not toll the reglementary period to appeal. Having failed to do so, the accused had already lost their right to appeal long before respondent filed his motion for extension. Therefore, respondent cannot now say he filed the ad cautelam petition on time. Also important to note is the allegation of complainants that the Sandiganbayan denied the second motion for reconsideration in its Resolution dated 7 February 2002. This respondent does not dispute.

As to respondent's conduct in dealing with the accused and complainants, he definitely fell short of the high standard of assiduousness that a counsel must perform to safeguard the rights of his clients. As aptly observed by Commissioner Villadolid, respondent had not been quite candid in his dealings with the accused or complainants. The Court notes that though respondent represented to the accused that he had changed his office address, still, from the examination of the pleadings^[14] he filed, it can be gleaned that all of the pleadings have the same mailing address as that known to complainants. Presumably, at some point, respondent's office would have received the Court's Resolution dismissing the petition. Of course, the prudent step to take in that situation was to at least inform the client of the adverse resolution since they had constantly called respondent's office to check the status of the case. Even when he knew that complainants had been calling his office, he opted not to return their calls.

Respondent professed an inkling that the several phone calls of complainants may have been about the letter he sent PO3 Joaquin regarding his desire to be discharged as counsel of the case. However, though aware of such likelihood, respondent still did not return their calls. Had he done so, he and complainants could have threshed out all unresolved matters between them.

Had respondent truly intended to withdraw his appearance for the accused, he as a lawyer who is presumably steeped in court procedures and practices, should have filed the notice of withdrawal himself instead of the

accused. At the very least, he should have informed this Court through the appropriate manifestation that he had already given instructions to his clients on the proper way to go about the filing of the Notice of Withdrawal, as suggested by Commissioner Villadolid. In not so doing, he was negligent in handling the case of the accused.

Certainly, respondent ought to know that he was the one who should have filed the Notice to Withdraw and not the accused. His tale that he sent a registered letter to the accused and gave them instructions on how to go about respondent's withdrawal from the case defies credulity. It should have been respondent who undertook the appropriate measures for the proper withdrawal of his representation. He should not have relied on his client to do it for him if such was truly the case. Without the presentation of the alleged registry receipt (or the return card, which confirms the receipt of the mail by the recipient) of the letter he allegedly sent to PO3 Joaquin, the Court cannot lend credence to respondent's naked claim, especially so that complainants have been resolute in their stand that they did not hear from respondent after the latter had filed the ad cautelam petition. He could relieve himself of his responsibility as counsel only first by securing the written conformity of the accused and filing it with the court pursuant to Rule 138, Section 26 of the Rules of Court.[15]

The rule in this jurisdiction is that a client has the absolute right to terminate the attorney-client relation at anytime with or without cause. The right of an attorney to withdraw or terminate the relation other than for sufficient cause is, however, considerably restricted. 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. He is not at liberty to abandon it without reasonable cause. A lawyer's right to withdraw from a case before its final adjudication arises only from the client's written consent or from a good cause.[16]

We agree with Commissioner Villadolid that the dismissal of the ad cautelam petition was primarily due to the gross negligence of respondent. The Court has stressed in *Aromin v. Boncavil*[17] that:

Once he agrees to take up the cause of the 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.[18]

Respondent has time and again stated that he did all the endeavors he enumerated without adequate or proper remuneration. However, complainants have sufficiently disputed such claim when they attached in their position paper filed before the IBP a machine validated deposit slip in the amount of P15,500.00 for the Metro Bank savings account of one Jaime Portugal with account number 7186509273.[19] Respondent has neither admitted nor denied having claimed the deposited amount.

The Court also rejects respondent's claim that there was no formal engagement between the parties and that he made all his efforts for the case without adequate and proper consideration. In the words of then Justice Panganiban (presently Chief Justice) in *Burbe v. Atty. Magulta*: [20]

After agreeing to take up the cause of a client, a lawyer owes fidelity to both cause and client, even if the client never paid any fee for the attorney-client relationship. Lawyering is not a business; it is a profession in which

duty of public service, not money, is the primary consideration.[21]

Also to the point is another case where this Court ruled, thus:

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. x x x [22]

Hence, even if respondent felt under-compensated in the case he undertook to defend, his obligation embodied in the Lawyer's Oath and the Code of Professional Responsibility still remains unwavering. The zeal and the degree of fervor in handling the case should neither diminish nor cease just because of his perceived insufficiency of remuneration.

Lastly, the Court does not appreciate the offensive appellation respondent called the shooting incident that the accused was engaged in. He described the incident, thus: "the accused police officers who had been convicted of [h]omicide for the 'salvage' of Froilan G. Cabiling and Jose M. Chua and [a]ttempted [h]omicide of Mario C. Macato." [23] Rule 14.01 [24] of the Code of Professional Responsibility clearly directs lawyers not to discriminate clients as to their belief of the guilt of the latter. It is ironic that it is the defense counsel that actually branded his own clients as being the culprits that "salvaged" the victims. Though he might think of his clients as that, still it is unprofessional to be labeling an event as such when even the Sandiganbayan had not done so.

The IBP Board of Governors recommended the suspension of respondent for six (6) months, the most severe penalty recommended by Commissioner Villadolid, but did not explain why such penalty was justified. In a fairly recent case where the lawyer failed to file an appeal brief which resulted to the dismissal of the appeal of his client in the Court of Appeals, the Court imposed upon the erring lawyer the penalty of three (3) months' suspension. [25] The Court finds it fit to impose the same in the case at bar.

WHEREFORE, premises considered, respondent is hereby SUSPENDED from the practice of law for three (3) months. Let a copy of the Resolution be furnished the Bar Confidant for appropriate annotation in the record of respondent.

SO ORDERED.

Quisumbing, (Chairman), Carpio, and Carpio Morales, JJ., concur.

[1] Rollo, pp. 1-13.

[2] In a decision dated 30 April 2001, penned by Associate Justice Nicodemo T. Ferrer and concurred in by Associate Justices Narciso S. Nario and Rodolfo G. Palattao. Id. at 26-54.

[3] Dated 11 September 2001, id. at 80-87.

[4] Id. at 123.

[5] Id. at 124-126

[6] Id. at 132-137.

[7] Id. at 138-141.

[8] Rollo, Vol. 2, pp. 12-14.

[9] Particularly:

Canon 17—A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence

reposed in him.

Canon 18—A lawyer shall serve his client with competence and diligence.

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

Rule 18.04—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.

[10] Report and Recommendation, p. 11.

[11] 330 Phil. 678 (1996).

[12] *Id.* at 699.

[13] The Rules of Court, which suppletorily applies to the rules of procedure of the Sandiganbayan, prohibits the filing of a second motion for reconsideration as embodied in Section 2 of Rule 52 which states:

nona"Sec. 2. Second Motion for Reconsideration.—No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained."

[14] Motion for Reconsideration, rollo, pp. 56-74, Urgent Motion for Leave to File Second Motion for Reconsideration and the Second Motion for Reconsideration, *id.* at 80-87, Motion for Extension of Time to File Petition for Review, *supra* note 7, Petition for Review on Certiorari Ad Cautelam, rollo, pp. 103-122.

[15] Sec. 26. Change of attorneys.—An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. x x x

[16] *Orcino v. Gaspar*, 344 Phil. 792, 798 (1997).

[17] 373 Phil. 612 (1999).

[18] *Id.* at 618, citing *Santiago v. Fojas*, 248 SCRA 68, 73-74.

[19] Annex "J" of complainants' Position Paper, rollo, vol. 2, p. 110.

[20] 432 Phil. 840 (2002).

[21] 432 Phil. 840, 843 (2002).

[22] *Spouses Rabanal v. Atty. Tugade*, 432 Phil. 1064, 1068 (2002), citing *Dee v. Court of Appeals*, 176 SCRA 651 (1989).

[23] Rollo, p. 136 and Vol. 2, *id.* at 120.

[24] Rule 14.01—A lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person.

[25] *Edquibal v. Ferrer*, A.C. No. 5687, 3 February 2005, 450 SCRA 406.

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