

## **ESTELA ANASTACIO-BRIONES, COMPLAINANT, VS. ATTY. ALFREDO A. ZAPANTA, RESPONDENT.**

*A.C. No. 6266. November 16, 2006*

Ponente: QUISUMBING, J.

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### **QUISUMBING, J.:**

This is a disbarment complaint filed by Estela Anastacio-Briones against respondent Atty. Alfredo A. Zapanta for abandonment and neglect of duties.

In her Complaint[1] dated December 1, 2003, Estela Anastacio-Briones stated that she engaged the services of respondent to file three civil cases involving a parcel of land located in Antipolo City. The cases were then consolidated[2] before the Regional Trial Court of Antipolo City, Branch 73.

Complainant averred that on October 25, 2002, she showed respondent a copy of "Discharge and Appearance of Counsels with Ex-parte Motion to Cancel the October 25, 2002 Hearing" she intended to file that day. She claimed that even prior to the hearing, she informed respondent of her joint venture agreement with a real estate developer who offered the services of its own counsel. Complainant added that respondent requested her not to file it and he would submit a withdrawal of appearance instead. Complainant also informed respondent that she could not attend the hearing on January 6, 2003 because of other commitments. Respondent allegedly assured her that he would be present in the hearing.

On January 6, 2003, both respondent and complainant failed to appear in the hearing. As a result, the trial court declared them to have waived their right to present further witnesses and directed them to file their formal offer of evidence within ten days from notice. The trial court noted that respondent received its Order on January 24, 2003, but respondent did not act on it within the ten-day period. Instead of filing a formal offer of evidence, respondent filed a withdrawal of appearance on March 5, 2003. On March 10, 2003, the trial court dismissed the case with prejudice.[3]

On May 5, 2003, complainant learned that the cases were dismissed and that respondent did not attend the January 6, 2003 hearing and did not file a formal offer of evidence.

Complainant prayed that respondent be disbarred for abandoning her case and withdrawing his appearance as counsel without her knowledge.

In his Comment[4] dated June 10, 2004, respondent countered that he was discharged as complainant's counsel after the October 25, 2002 hearing. Respondent added that he prepared a withdrawal of appearance on October 30, 2002 but complainant ignored his several requests to sign it in his office. Nevertheless, he claimed he filed a withdrawal of appearance on March 5, 2003 without complainant's conformity.

Respondent denied promising complainant that he would attend the January 6, 2003 hearing. According to him, complainant informed his secretary that her new lawyer would attend. Respondent claimed further that complainant's new lawyer should be faulted for belatedly filing an entry of appearance and a motion for

reconsideration. Respondent claimed that he was merely being used as a scapegoat for complainant's own negligence in pursuing the cases.

In a Resolution<sup>[5]</sup> dated September 20, 2004, the Court referred the matter to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In his Report and Recommendation dated May 26, 2005, Commissioner Dennis A.B. Funa of the IBP Commission on Bar Discipline found respondent liable for negligence in the performance of his duties as counsel, and for violating the Code of Professional Responsibility. Commissioner Funa recommended respondent's suspension for three months from the practice of law.

In Resolution No. XVII-2005-104 dated October 22, 2005, the IBP Board of Governors adopted and approved the report and recommendation of Commissioner Funa. On November 15, 2005, the IBP Board of Governors forwarded the Report to this Court pursuant to Rule 139-B of the Rules of Court.

On January 4, 2006, respondent filed with this Court a motion for reconsideration. In its comment, the IBP, through Commissioner Funa, recommended the denial of the motion.

We sustain the findings of the IBP that respondent was remiss in performing his duties as counsel of complainant. The Court finds respondent liable for negligence and for violation of Canon 18<sup>[6]</sup> specifically Rules 18.03<sup>[7]</sup> and 18.04<sup>[8]</sup> of the Code of Professional Responsibility.

Section 26, Rule 138 of the Rules of Court<sup>[9]</sup> provides the proper procedure for a lawyer's withdrawal as counsel in a case. Unless the procedure prescribed in the abovementioned section is complied with, the attorney of record is regarded as the counsel who should be served with copies of the judgments, orders and pleadings and who should be held responsible for the case.<sup>[10]</sup> For its part, the court could recognize no other representation on behalf of the client except such counsel of record until a formal substitution of attorney is effected.<sup>[11]</sup>

In *Orcino v. Gaspar*,<sup>[12]</sup> we held that until a lawyer's withdrawal shall have been approved, he remains counsel of record and is expected by his client as well as by the court to do what the interests of his client require. He must still appear on the date of hearing for the attorney-client relation does not terminate formally until there is a withdrawal of his appearance on record.

In this case, respondent admitted that he did not attend the January 6, 2003 hearing despite being notified by the court. His claim that he was already discharged as counsel as early as October 25, 2002 is negated by the record that he withdrew his appearance only on March 5, 2003. Until his dismissal or withdrawal was made of record, any judicial notice sent to him was binding upon his client even though as between them the professional relationship may have been terminated.<sup>[13]</sup> Thus, unless properly relieved, respondent is responsible for the conduct of the cases and his failure to attend the hearing and comply with the trial court's directive to file a formal offer of evidence constitute inexcusable negligence.

Moreover, respondent's negligence is not excused by his claim that he had prepared his withdrawal of appearance as early as October 30, 2002 but complainant refused to sign it. In *Macarilay v. Serina*,<sup>[14]</sup> with similar facts, we rejected the counsel's excuse for failing to file the complaints, although the complaints were finished, due to his client's refusal to sign them.

Certainly not to be overlooked is the duty of an attorney to inform his client of the developments of the case.<sup>[15]</sup> We note that it was only on May 5, 2003 that complainant learned that she defaulted in the case. As a lawyer mindful of the interest of his client, respondent should have informed the complainant of the court's order addressed to him, especially if he considered himself discharged in order for complainant and her new counsel to

be guided accordingly.

The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts. The penalties for a lawyer's failure to file a brief or other pleading range from reprimand, warning with fine, suspension and, in grave cases, disbarment.[16] In this case, this Court sustains the recommendation of the IBP for respondent's suspension of three months.

WHEREFORE, respondent Atty. Alfredo A. Zapanta is hereby found GUILTY of negligence and is meted the penalty of SUSPENSION from the practice of law for THREE 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, the Department of Justice, and all courts in this country for their information and guidance.

**SO ORDERED.**

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

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[1] Rollo, pp. 1-3.

[2] Docketed as Civil Case Nos. 98-4934, 98-4935 and 99-5218.

[3] Supra note 1 at 6.

[4] Id. at 30.

[5] Id. at 55.

[6] Canon 18 - A lawyer shall serve his client with competence and diligence.

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

[8] 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.

[9] 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. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the adverse party.

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[10] Aquino v. Court of Appeals, G.R. No. 109493, July 2, 1999, 309 SCRA 578, 584.

[11] Wack Wack Golf and Country Club, Inc. v. Court of Appeals, et al., 106 Phil. 501, 505 (1959).

[12] Adm. Case No. 3773, September 24, 1997, 279 SCRA 379.

[13] Aromin v. Boncavil, A.C. No. 5135, September 22, 1999, 315 SCRA 1, 6.

[14] A.C. No. 6591, May 4, 2005, 458 SCRA 12.

[15] *Dizon v. Laurente*, A.C. No. 6597, September 23, 2005, 470 SCRA 595, 601.

[16] *Heirs of Tiburcio F. Ballesteros, Sr. v. Apiag*, A.C. No. 5760, September 30, 2005, 471 SCRA 111, 127.

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