

**HERMINIA P. VOLUNTAD-RAMIREZ, COMPLAINANT, VS. ATTY. ROSARIO B. BAUTISTA, RESPONDENT.***A.C. No. 6733. October 10, 2012*

Ponente: CARPIO, J.

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This administrative case arose from a complaint filed by Herminia P. Voluntad-Ramirez (complainant) against Atty. Rosario B. Bautista (respondent) for violation of Canon 18,[1] Rule 18.02,[2] and Rule 22.02[3] of the Code of Professional Responsibility, violation of the lawyer's oath, grave misconduct, and conduct prejudicial to the best interest of the public.

**The Facts**

In her Affidavit-Complaint[4] dated 29 March 2005, complainant alleged that on 25 November 2002, she engaged the legal services of respondent to file a complaint against complainant's siblings for encroachment of her right of way. For his legal services, respondent demanded P15,000 as acceptance fee, plus P1,000 per court appearance. Complainant then paid respondent the P15,000 acceptance fee. On 29 May 2003, or six months after she hired respondent, complainant severed the legal services of respondent because respondent failed to file a complaint within a reasonable period of time as requested by complainant. Complainant then retrieved from respondent the folder containing the documents and letters pertaining to her case which complainant had entrusted to respondent. Complainant claimed that she was dissatisfied with the way respondent handled her complaint considering that during the six months that elapsed, respondent only sent a letter to the City Engineer's Office in Navotas City concerning her complaint. On 8 March 2004, complainant sent a letter to respondent, reiterating that she was terminating the services of respondent and that she was asking for the refund of P14,000 out of the P15,000 acceptance fee. Complainant stated in her letter that due to respondent's "failure to institute the desired complaint on time" against complainant's brothers and sisters, complainant was compelled to hire the services of another counsel to file the complaint. Respondent failed to refund the P14,000, prompting complainant to file on 10 May 2005 her complaint dated 29 March 2005 with the Office of the Bar Confidant of the Supreme Court. Complainant charged respondent with violation of Canon 18, Rule 18.02, and Rule 22.02 of the Code of Professional Responsibility, violation of the lawyer's oath, grave misconduct, and conduct prejudicial to the best interest of the public.

In his defense, respondent alleges that complainant initially wanted him to file an injunction case against her siblings but later changed her mind when she was apprised of the expenses involved. Respondent then advised complainant that since her case involves family members, earnest efforts toward a compromise should be made in accordance with Article 222 of the Civil Code[5] and that since the parties reside in the same barangay, the case must be referred to the barangay in accordance with the Local Government Code. Respondent also suggested filing a criminal action instead of an injunction case. The day after he was hired by complainant, respondent wrote

a letter to the City Engineer of Navotas City pertaining to complainant's case. Respondent made several follow ups with the City Engineer's Office and even filed a case[6] against the City Engineer for nonfeasance under Republic Act No. 6713.[7] When complainant voluntarily withdrew her case from respondent on 29 May 2003, complainant also retrieved the folder containing the documents relevant to her case. It was only after almost ten months from severing respondent's legal services that complainant sent a letter dated 8 March 2004 demanding the refund of P14,000 out of the P15,000 acceptance fee. Respondent explains that the acceptance fee is non-refundable because it covers the time and cost of research made immediately before and after acceptance of the case. The acceptance fee also pays for the office supplies used for the case. Nevertheless, respondent alleges that he did not ignore complainant's request for a refund. Respondent claims that he sent a letter dated 17 March 2004, which stated that although it is their law firm's policy not to entertain requests for refund of acceptance fee, they were willing to grant her a fifty percent (50%) discount and for complainant to contact them for her refund.[8] In fact, respondent stated that he sent text messages to complainant's lawyer, Atty. Bartolome, signifying respondent's willingness to refund the amount of P9,000.[9]

In her Reply-Affidavit, complainant stated that even before she engaged respondent's legal services, her case was already referred to the barangay for conciliation proceedings. However, complainant's siblings failed to appear which resulted in the issuance on 1 July 2002 of a Certification to File Action by the Office of the Lupong Tagapamayapa, Office of the Barangay Council, Barangay Daanghari, Navotas.[10] Respondent countered in his Position Paper that complainant did not inform him of the existence of the alleged Certification to File Action and that the said certification was not part of the case folder which respondent turned over to complainant when his services was severed.

The case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation or decision.

#### Report and Recommendation of the Commission on Bar Discipline

The Investigating Commissioner found respondent "guilty of violation of the lawyer's oath, Canon 18, Rule[s] 18.03 and 22.02 of the Code of Professional Responsibility, grave misconduct and thereby recommend that he be suspended for a period of one (1) year with a stern warning that similar acts in the future will be severely dealt with." [11] Respondent was also ordered to refund to complainant the sum of P14,000.

The Investigating Commissioner held that respondent has the moral duty to restitute P14,000 out of the P15,000 acceptance fee considering that, apart from sending a letter to the City Engineer of Navotas City, respondent did nothing more to advance his client's cause during the six months that complainant engaged his legal services.

#### Decision of the Board of Governors of the Integrated Bar of the Philippines

On 31 May 2007, the IBP Board of Governors passed Resolution No. XVII-2007-230, adopting and approving the Investigating Commissioner's Report and Recommendation, with modification, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's dishonesty, negligence in [his] mandated duty to file a case to protect [his] clients cause, Atty. Rosario Bautista is hereby SUSPENDED from the practice of law for six (6) months, and Restitution of the amount of P14,000 to complainant is likewise ordered.[12]

In his Motion for Reconsideration, respondent alleged that even before complainant officially engaged his legal services on 25 November 2002, complainant already consulted him for several days regarding her case for which no consultation fee was charged. A day after receiving the P15,000 acceptance fee, respondent sent a letter-complaint to the City Engineer of Navotas City for a possible case of violation of the National Building Code. Respondent reiterated that complainant failed to disclose to him that a Certification to File Action was already issued by the Office of the Lupong Tagapamayapa.

In its 28 October 2011 Resolution No. XX-2011-143, the Board of Governors of the IBP partially granted respondent's Motion for Reconsideration:

RESOLVED to unanimously GRANT partially, the Respondent's Motion for Reconsideration. Thus, Resolution No. XVIII-2007-230 dated 31 May 2007 is hereby Amended, by lowering the recommended penalty of Suspension against respondent Atty. Rosario Bautista from six (6) months to ADMONITION.

#### The Issue

The issue in this case is whether respondent is guilty of negligence in handling the case of complainant.

#### The Ruling of the Court

The Court affirms the 28 October 2011 Resolution No. XX-2011-143 of the Board of Governors of the IBP, reducing the recommended penalty from six months to admonition.

We agree with the finding of the Investigating Commissioner that respondent breached his duty to serve his client with competence and diligence. Respondent is also guilty of violating Rule 18.03 of the Code of Professional Responsibility, which states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." However, we do not find respondent guilty of violating Rule 22.02 of the Code of Professional Responsibility<sup>[13]</sup> since respondent immediately turned over to complainant the folder containing the documents and letters pertaining to her case upon the severance of respondent's legal services.

Once a lawyer receives the acceptance fee for his legal services, he is expected to serve his client with competence, and to attend to his client's cause with diligence, care and devotion.<sup>[14]</sup> As held in *Santiago v. Fojas*:<sup>[15]</sup>

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of [his] 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 his 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 the 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.<sup>[16]</sup>

In this case, respondent attributes his delay in filing the appropriate criminal case to the absence of conciliation proceedings between complainant and her siblings before the barangay as required under Article 222 of the Civil

Code and the Local Government Code. However, this excuse is belied by the Certification to File Action by the Office of the Lupong Tagapamayapa, Office of the Barangay Council, Barangay Daanghari, Navotas. The Certification to File Action was issued on 1 July 2002, which was more than four months before complainant engaged respondent's legal services on 25 November 2002. Respondent's allegation that complainant failed to inform him about the existence of the Certification to File Action is hard to believe considering complainant's determination to file the case against her siblings. Clearly, respondent has been negligent in handling complainant's case.

In *Cariño v. Atty. De Los Reyes*,<sup>[17]</sup> the respondent lawyer who failed to file a complaint-affidavit before the prosecutor's office, restituted the P10,000 acceptance fee paid to him. The respondent lawyer in *Cariño* was reprimanded by the Court with a warning that he should be more careful in the performance of his duty to his clients.

In this case, complainant is asking for the refund of P14,000 out of the P15,000 acceptance fee considering that, apart from sending a letter to the City Engineer of Navotas City, respondent did nothing more to advance his client's cause during the six months that complainant engaged his legal services. We agree with the recommendation of the Investigating Commissioner and the IBP Board of Governors that a refund is in order.

WHEREFORE, the Court AFFIRMS the 28 October 2011 Resolution No. XX-2011-143 of the Board of Governors of the Integrated Bar of the Philippines, reducing the recommended penalty from six months to admonition. The Court finds Atty. Rosario B. Bautista GUILTY of violating Canon 18 and Rule 18.03 of the Code of Professional Responsibility and he is ADMONISHED to exercise greater care and diligence in the performance of his duty to his clients. Atty. Bautista is ordered to RESTITUTE to complainant P14,000 out of the P15,000 acceptance fee.

### **SO ORDERED.**

Brion, Del Castillo, Perez, and Perlas-Bernabe, JJ., concur.

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[1] CANON 18 – A lawyer shall serve his client with competence and diligence.

[2] RULE 18.02. A lawyer shall not handle any legal matter without adequate preparation.

[3] RULE 22.02. A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

[4] Rollo, pp. 2-4.

[5] Article 222 of the Civil Code states that: “[n]o suit shall be filed or maintained between members of the same family unless it should appear that earnest efforts toward a compromise have been made, but that the same have failed, subject to the limitations in Article 2035.”

[6] Respondent did not submit any evidence to prove that he indeed filed a case for nonfeasance against the City Engineer.

[7] Otherwise known as the “Code of Conduct and Ethical Standards for Public Officials and Employees.”

[8] Rollo, p. 15. Although it was stated in the Comment that respondent attached the letter dated 17 March 2004 as Annex 3, no such letter was attached as annex in the records. Nevertheless, in her Position Paper dated 22 April 2006, complainant stated that respondent's offer to restitute 50% of the acceptance fee is not equitable.

[9] Id. at 16.

[10] Id. at 24.

[11] IBP Records, Volume IV, p. 6.

[12] Id. at 1.

[13] RULE 22.02. A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

[14] *Hernandez v. Padilla*, A.C. No. 9387, 20 June 2012; *Del Mundo v. Capistrano*, A.C. No. 6903, 16 April 2012; *Reyes v. Atty. Vitan*, 496 Phil. 1 (2005).

[15] Adm. Case No. 4103, 7 September 1995, 248 SCRA 68.

[16] Id. at 73-74.

[17] 414 Phil. 667 (2001).

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