

**ELISA V. VENTEREZ, GENARO DE VERA, INOCENCIA V. RAMIREZ,
PACITA V. MILLS, ANTONINA V. PALMA AND RAMON DE VERA,
COMPLAINANTS, VS. ATTY. RODRIGO R. COSME, RESPONDENT.**

A.C. No. 7421. October 10, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Complaint filed by complainants Eliza V. Venterez, Genaro de Vera, Inocencia V. Ramirez, Pacita V. Mills, Antonina V. Palma and Ramon de Vera against respondent Atty. Rodrigo R. Cosme, charging the latter with Abandonment, Gross Negligence and Dereliction of Duty.

Complainants contracted the legal services of respondent in Civil Case No. 981 entitled, “Sps. Daniel and Lolita Oviedo, et al. v. Eliza de Vera, et al.,” for Declaration of Ownership with Damages filed before the Municipal Trial Court (MTC) of Calasiao, Pangasinan. Respondent represented the complainants, who were defendants in said case, until a Decision thereon was rendered by the MTC on 25 February 2004. The MTC ruled against the complainants. Respondent received a copy of the said Decision on 3 March 2004.

Complainants alleged that they directed the respondent to either file a Motion for Reconsideration or a Notice of Appeal, but respondent failed or refused to do so. The 15-day period within which to file an appeal or a motion for reconsideration of the MTC Decision expired on 18 March 2004. Complainant Elisa V. Venterez was constrained to contract another lawyer to prepare the Motion for Reconsideration which was filed on 19 March 2004. It must be stressed that the said motion was signed by complainant Elisa V. Venterez herself as the said lawyer did not enter his appearance.

On 23 March 2004, the said Motion for Reconsideration was denied^[1] by the MTC. Respondent was not furnished a copy of the denial of the motion per a Certification^[2] issued by Clerk of Court II Zenaida C. de Vera. On 31 March 2004, a Motion for Issuance of Writ of Execution^[3] was filed by the plaintiffs in Civil Case No. 981 but respondent never bothered to file an opposition to or any comment on the said motion despite receipt thereof. The motion was eventually granted^[4] by the MTC on 23 April 2004. On 28 April 2004, a Writ of Execution^[5] was issued and on 26 April 2004, an Entry of Judgment^[6] was made in the said case.

Two months after respondent received a copy of the Decision, the respondent filed his Notice of Retirement of Counsel with the MTC on 3 May 2004.

Feeling aggrieved by respondent’s actuations, complainants filed the instant administrative complaint against him.^[7]

In his Answer,^[8] respondent denied the claim of complainants that soon after the Decision was rendered by the MTC, they (complainants) directed him to file an appeal or a motion for reconsideration thereof. For his defense, respondent averred that Salvador Ramirez (the son of one of the complainants, Inocencia V. Ramirez), informed him that “he [was] withdrawing the case from the respondent because he already engaged another lawyer to take

over the case, so respondent gave the records of the case to him.” Respondent explained that “after Salvador Ramirez withdrew the case from the respondent, and engaged another lawyer, the respondent turned over the records of the case to him and the respondent ceased as the counsel of the complainants.” Respondent further alleged that the said Motion for Reconsideration was already prepared by another lawyer. He denied being furnished a copy of the Motion for Reconsideration allegedly prepared and filed by another lawyer engaged by complainant Elisa V. Venterez and that he was served with a copy of the denial of the said Motion by the MTC. Respondent also clarified that the “last day of the 15-day period for the perfection of the appeal is 19 March 2004 since a copy of the decision was served on the respondent on 4 March 2004.” Finally, respondent argued that “when the respondent was served a copy of the Motion for Writ of Execution, he immediately notified Salvador Ramirez about said Motion but Salvador Ramirez came to see the respondent only on 3 May 2005, when the respondent asked him to sign a Notice of Retirement of Counsel signed by Salvador Ramirez which respondent immediately filed in court.”

Pursuant to the complaint, a hearing was conducted by the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) at the IBP Building, Ortigas Center, Pasig City, on 15 February 2006.

On 11 April 2006, Investigating Commissioner Dennis A. B. Funa submitted his Report and Recommendation,[9] finding respondent liable for gross negligence and recommending the imposition upon him of the penalty of three months suspension, to wit:

PREMISES CONSIDERED, it is submitted that Respondent is GUILTY of Gross Negligence and should be given the penalty of THREE (3) MONTHS SUSPENSION.

Thereafter, the IBP Board of Governors passed Resolution[10] No. XVII-2006-457 dated 8 September 2006, approving and adopting the recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, 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 that Respondent is guilty of gross negligence, Atty. Rodrigo Cosme is hereby SUSPENDED from the practice of law for three (3) months.[11]

We sustain the findings and recommendation of the IBP Board of Governors.

The core issue is whether the respondent committed culpable negligence in handling complainants’ case, as would warrant disciplinary action.

No lawyer is obliged to advocate for every person who may wish to become his client, but once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must be mindful of the trust and confidence reposed in him.[12] Among the fundamental rules of ethics is the principle that an attorney who undertakes an action impliedly stipulates to carry it to its termination, that is, until the case becomes final and executory. A lawyer is not at liberty to abandon his client and withdraw his services without reasonable cause and only upon notice appropriate in the circumstances.[13] Any dereliction of duty by a counsel affects the client.[14] This means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law and he may expect his lawyer to assert every such remedy or defense.[15]

The Decision in Civil Case No. 981 was rendered by the MTC of Calasiao, Pangasinan, on 25 February 2004. Respondent admitted[16] that he was served a copy of the said Decision on 4 March 2004. After having received a copy of the MTC Decision, respondent did not bother to file a Motion for Reconsideration or a notice of appeal with the proper courts. Thus, complainants were compelled to engage the services of a new counsel to file a

Motion for Reconsideration with the MTC who did not, however, enter his appearance as new counsel. It bears stressing that during this time, respondent had not yet filed any notice of withdrawal as counsel for the complainants in Civil Case No. 981. Respondent only formally withdrew as counsel for complainant in Civil Case No. 981 when he filed with the MTC his Notice^[17] of Retirement as Counsel on 5 May 2004, on the ground that "he was also retired as Counsel for the [complainants] two days after he received copy of the decision rendered in this case when SALVADOR RAMIREZ, a representative of the [complainants], withdrew all the records of the case from [respondent] to be given to his new counsel."

We cannot accept respondent's defense that he had already withdrawn from the case two days after his receipt of the MTC Decision and that he had allegedly communicated this withdrawal to Salvador Ramirez, son of one of the herein complainants, Inocencia Ramirez. It is an apparent attempt on the part of respondent to wash his hands of any liability for failing to pursue any of the available remedies to complainants from the adverse MTC Decision.

The rule in this jurisdiction is that a client has the absolute right to terminate the attorney-client relation at any time with or without cause.^[18] The right of an attorney to withdraw or terminate the relation other than for sufficient cause is, however, considerably restricted.^[19] 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.^[20] He is not at liberty to abandon it without reasonable cause.^[21] 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.^[22]

Section 26, Rule 138 of the Revised Rules of Court provides:

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.

A lawyer may retire at any time from any action or special proceeding with the written consent of his client filed in court and with a copy thereof served upon the adverse party. Should the client refuse to give his consent, the lawyer must file an application with the court. The court, on notice to the client and adverse party, shall determine whether the lawyer ought to be allowed to retire. The application for withdrawal must be based on a good cause.^[23]

What constitute good cause for the withdrawal of services by the counsel are identified under Rule 22.01, Canon 22 of the Code of Professional Responsibility, which provides:

CANON 22 -- A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

Rule 22.01 -- A lawyer may WITHDRAW his services in any of the following cases:

- a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
- b) When the client insists that the lawyer pursue conduct violative of these canons and rules;
- c) When his inability to work with co-counsel will not promote the best interest of the client;
- d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment

effectively;

e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;

f) When the lawyer is elected or appointed to public office; and

g) Other similar cases.

The instant case does not fall under any of the grounds aforementioned. Neither can the circumstances of this case be considered analogous to the grounds thus explicitly enumerated. Contrary to respondent's contention, his professional relations as a lawyer with his clients are not terminated by the simple turnover of the records of the case to his clients. Respondent's defense completely crumbles in face of the fact that Salvador Ramirez is not even a party in Civil Case No. 981 and, hence, had no authority to withdraw the records of the said case from respondent or to terminate the latter's services.

Assuming, nevertheless, that respondent was justified in withdrawing his services, he, however, cannot just do so and leave complainants in the cold, unprotected. The lawyer has no right to presume that his petition for withdrawal will be granted by the court.[24] Until his withdrawal shall have been approved, the lawyer remains counsel of record who is expected by his clients, as well as by the court, to do what the interests of his clients require.[25] He must still appear before the court to protect the interest of his clients by availing himself of the proper remedy, for the attorney-client relations are not terminated formally until there is a withdrawal of record.

Without a proper revocation of his authority and withdrawal as counsel, respondent remains counsel of record for the complainants in Civil Case No. 981; and whether he has a valid cause to withdraw from the case, he cannot immediately do so and leave his clients without representation. An attorney may only retire from the case either by a written consent of his client or by permission of the court after due notice and hearing, in which event, the attorney should see to it that the name of the new attorney is recorded in the case.[26] Respondent did not comply with these obligations. Therefore, he remains the counsel of record for the complainants in Civil Case No. 981 with the duty to protect complainants' interest. Had he made the necessary inquiries as to the status of the case, he would have known that he was still the counsel of record as no entry of appearance was ever made by another counsel. It would have been easily discernible on his part that there was no change in his status as complainants' lawyer. As of that time, their client-lawyer relationship was still subsisting. Therefore, he would have known that the Motion for Reconsideration was denied; and a writ of execution had been issued under the circumstances.

All told, we rule and so hold that on account of respondent's failure to protect the interest of complainants, respondent indeed violated Rule 18.03, Canon 18 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." Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. This Court has been exacting in its expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public.

The determination of the appropriate penalty to be imposed on an errant lawyer involves the exercise of sound judicial discretion based on the facts of the case.[27] In cases of similar nature, the penalty imposed by the Court consisted of reprimand,[28] fine of five hundred pesos with warning,[29] suspension of three months,[30] six months[31] and even disbarment[32] in an aggravated case.

The facts of the case show that respondent failed to live up to his duties as a lawyer pursuant to the Code of Professional Responsibility. We conclude that a 3-month suspension from the practice of law is a just penalty

under the circumstances.

WHEREFORE, the resolution of the IBP Board of Governors approving and adopting the report and recommendation of the Investigating Commissioner is hereby **AFFIRMED**. Accordingly, **ATTY. RODRIGO R. COSME** is hereby **SUSPENDED** from the practice of law for a period of **THREE (3) MONTHS**, with a stern warning that a repetition of the same or similar wrongdoing will be dealt with more severely.

Let a copy of this decision be attached to respondent's personal record with the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all courts of the land.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, Nachura, and Reyes, JJ., concur.

[1] Rollo, p. 19.

[2] Id. at 43.

[3] Id. at 20.

[4] Id. at 21.

[5] Id. at 23-24.

[6] Id. at 22.

[7] Id. at 1-6.

[8] Id. at 86.

[9] Id. at 149-155.

[10] Id. at 86.

[11] Id. at .

[12] Tan v. Lupak, G.R. No. 93707, 23 January 2001, 350 SCRA 74, 84.

[13] Montano v. Integrated Bar of the Philippines, A.C. No. 4215, 21 May 2001, 358 SCRA 1, 9.

[14] Philhouse Developmwn Corporation v. Consolidated Orix Leasing and Finance Corporation, G.R. No. 135287, 4 April 2001, 356 SCRA 281, 285.

[15] Santiago v. Fojas, A.C. No. 4103, 7 September 1995, 248 SCRA 68, 73-74.

[16] Rollo, p. 28.

[17] Id. at 31.

[18] Franciso v. Portugal, A.C. No. 6155, 14 March 2006, 484 SCRA 571, 580.

[19] Lim, Jr. v. Villarosa, A.C. No. 5303, 15 June 2006, 490 SCRA 494, 514.

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

[21] De Juan v. Baria III, A.C. No. 5817, 27 May 2004, 429 SCRA 187, 191.

[22] Orcino v. Gaspar, supra note 20.

[23] Id.

[24] Orcino v. Gaspar, supra note 20 at 800.

[25] Id. at 800-801.

[26] De Juan v. Baria III, supra note 21 at 193.

[27] Endaya v. Atty. Oca, 457 Phil. 314, 329 (2003).

[28] Santiago v. Fojas, A.M. No. 4103, 7 September 1995, 248 SCRA 68, 75-76.

[29] Basas v. Icawat, 393 Phil. 304, 310 (2000).

[30] Ford v. Daitol, 320 Phil. 53, 59 (1995).

[31] Perla Compania de Seguros, Inc. v. Atty. Saquilabon, 337 Phil. 555, 559 (1997).

[32] Mariveles v. Mallari, A.C. No. 3294, 17 February 1993, 219 SCRA 44, 46.

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