DOLORES C. BELLEZA, COMPLAINANT, VS. ATTY. ALAN S. MACASA, RESPONDENT.

A.C. No. 7815. July 23, 2009

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PER CURIAM:

This treats of the complaint for disbarment filed by complainant Dolores C. Belleza against respondent Atty. Alan S. Macasa for unprofessional and unethical conduct in connection with the handling of a criminal case involving complainant's son.

On November 10, 2004, complainant went to see respondent on referral of their mutual friend, Joe Chua. Complainant wanted to avail of respondent's legal services in connection with the case of her son, Francis John Belleza, who was arrested by policemen of Bacolod City earlier that day for alleged violation of Republic Act (RA) 9165.[1] Respondent agreed to handle the case for P30,000.

The following day, complainant made a partial payment of P15,000 to respondent thru their mutual friend Chua. On November 17, 2004, she gave him an additional P10,000. She paid the P5,000 balance on November 18, 2004. Both payments were also made thru Chua. On all three occasions, respondent did not issue any receipt.

On November 21, 2004, respondent received P18,000 from complainant for the purpose of posting a bond to secure the provisional liberty of her (complainant's) son. Again, respondent did not issue any receipt. When complainant went to the court the next day, she found out that respondent did not remit the amount to the court.

Complainant demanded the return of the P18,000 from respondent on several occasions but respondent ignored her. Moreover, respondent failed to act on the case of complainant's son and complainant was forced to avail of the services of the Public Attorney's Office for her son's defense.

Thereafter, complainant filed a verified complaint[2] for disbarment against respondent in the Negros Occidental chapter of the Integrated Bar of the Philippines (IBP). Attached to the verified complaint was the affidavit[3] of Chua which read:

> I, JOE CHUA, of legal age, Filipino and resident of Purok Sawmill, Brgy. Bata, Bacolod City, after having been sworn to in accordance with law, hereby depose and state:
>
> 1. That I am the one who introduce[d] Mrs. Dolores C. Belleza [to] Atty. Alan Macasa when she looked for a lawyer to help her son in the case that the latter is facing sometime [i]n [the] first week of November 2004;
>
> 2. That by reason of my mutual closeness to both of them, I am the one who facilitated the payment of Mrs. DOLORES C. BELLEZA to Atty. Alan Macasa;
>
> 3. That as far as I know, I received the following amount from Mrs. Dolores Belleza as payment for Atty. Alan Macasa:
>
> Date
>
> Amount

November 11, 2004

P15,000.00

A week after

10,000.00

November 18, 2004

5,000.00

4. That the above-mentioned amounts which I supposed as Attorney's Fees were immediately forwarded by me to Atty. [Macasa];

5. That I am executing this affidavit in order to attest to the truth of all the foregoing statements.

x x x x x x x x x[4]

In a letter dated May 23, 2005,[5] the IBP Negros Occidental chapter transmitted the complaint to the IBP's Commission on Bar Discipline (CBD).[6]

In an order dated July 13, 2005,[7] the CBD required respondent to submit his answer within 15 days from receipt thereof. Respondent, in an urgent motion for extension of time to file an answer dated August 10, 2005,[8] simply brushed aside the complaint for being "baseless, groundless and malicious" without, however, offering any explanation. He also prayed that he be given until September 4, 2005 to submit his answer.

Respondent subsequently filed urgent motions[9] for second and third extensions of time praying to be given until November 4, 2005 to submit his answer. He never did.

When both parties failed to attend the mandatory conference on April 19, 2006, they were ordered to submit their respective position papers.[10]

In its report and recommendation dated October 2, 2007,[11] the CBD ruled that respondent failed to rebut the charges against him. He never answered the complaint despite several chances to do so.

The CBD found respondent guilty of violation of Rule 1.01 of the Code of Professional Responsibility which provides:

> Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.

It also found him guilty of violation of Rules 16.01 and 16.02 of the Code of Professional Responsibility:

> Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.
>
> Rule 16.02 - A lawyer shall keep the funds of each client separate and apart from his own and those others kept by him.

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The CBD ruled that respondent lacked good moral character and that he was unfit and unworthy of the privileges conferred by law on him as a member of the bar. The CBD recommended a suspension of six months with a stern warning that repetition of similar acts would merit a more severe sanction. It also recommended that respondent be ordered to return to complainant the P18,000 intended for the provisional liberty of the complainant's son and the P30,000 attorney's fees.

The Board of Governors of the IBP adopted and approved the report and recommendation of the CBD with the modification that respondent be ordered to return to complainant only the amount of P30,000 which he received as attorney's fees.[12]

We affirm the CBD's finding of guilt as affirmed by the IBP Board of Governors but we modify the IBP's recommendation as to the liability of respondent.

Respondent Disrespected
Legal Processes

Respondent was given more than enough opportunity to answer the charges against him. Yet, he showed indifference to the orders of the CBD for him to answer and refute the accusations of professional misconduct against him. In doing so, he failed to observe Rule 12.03 of the Code of Professional Responsibility:

> Rule 12.03 - A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Respondent also ignored the CBD's directive for him to file his position paper. His propensity to flout the orders of the CBD showed his lack of concern and disrespect for the proceedings of the CBD. He disregarded the oath he took when he was accepted to the legal profession "to obey the laws and the legal orders of the duly constituted legal authorities." He displayed insolence not only to the CBD but also to this Court which is the source of the CBD's authority.

Respondent's unjustified disregard of the lawful orders of the CBD was not only irresponsible but also constituted utter disrespect for the judiciary and his fellow lawyers.[13] His conduct was unbecoming of a lawyer who is called upon to obey court orders and processes and is expected to stand foremost in complying with court directives as an officer of the court.[14] Respondent should have known that the orders of the CBD (as the investigating arm of the Court in administrative cases against lawyers) were not mere requests but directives which should have been complied with promptly and completely.[15]

Respondent Grossly Neglected
The Cause of His Client

Respondent undertook to defend the criminal case against complainant's son. Such undertaking imposed upon him the following duties:

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

CANON 19 - A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

A lawyer who accepts the cause of a client commits to devote himself (particularly his time, knowledge, skills and effort) to such cause. He must be ever mindful of the trust and confidence reposed in him, constantly striving to be worthy thereof. Accordingly, he owes full 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, skill and ability to ensure that nothing shall be taken or withheld from his client, save by the rules of law legally applied.[16]

A lawyer who accepts professional employment from a client undertakes to serve his client with competence and diligence.[17] He must conscientiously perform his duty arising from such relationship. He must bear in mind that by accepting a retainer, he impliedly makes the following representations: that he possesses the requisite degree of learning, skill and ability other lawyers similarly situated possess; that he will exert his best judgment in the prosecution or defense of the litigation entrusted to him; that he will exercise reasonable care and diligence in the use of his skill and in the application of his knowledge to his client's cause; and that he will take all steps necessary to adequately safeguard his client's interest.[18]

A lawyer's negligence in the discharge of his obligations arising from the relationship of counsel and client may cause delay in the administration of justice and prejudice the rights of a litigant, particularly his client. Thus, from the perspective of the ethics of the legal profession, a lawyer's lethargy in carrying out his duties to his client is both unprofessional and unethical.[19]

If his client's case is already pending in court, a lawyer must actively represent his client by promptly filing the necessary pleading or motion and assiduously attending the scheduled hearings. This is specially significant for a lawyer who represents an accused in a criminal case.

The accused is guaranteed the right to counsel under the Constitution.[20] However, this right can only be meaningful if the accused is accorded ample legal assistance by his lawyer:

> ... The right to counsel proceeds from the fundamental principle of due process which basically means that a person must be heard before being condemned. The due process requirement is a part of a person's basic rights; it is not a mere formality that may be dispensed with or performed perfunctorily.
>
> The right to counsel must be more than just the presence of a lawyer in the courtroom or the mere propounding of standard questions and objections. The right to counsel means that the accused is amply accorded legal assistance extended by a counsel who commits himself to the cause for the defense and acts accordingly. The right assumes an active involvement by the lawyer in the proceedings, particularly at the trial of the case, his bearing constantly in mind of the basic rights of the accused, his being well-versed on the case, and his knowing the fundamental procedures, essential laws and existing jurisprudence.[21]
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> -- ? -- â—‹ -- ? --
>
> [T]he right of an accused to counsel is beyond question a fundamental right. Without counsel, the right to a fair trial itself would be of little consequence, for it is through counsel that the accused secures his other rights. In other words, the right to counsel is the right to effective assistance of counsel.[22]

The right of an accused to counsel finds substance in the performance by the lawyer of his sworn duty of fidelity to his client.[23] Tersely put, it means an effective, efficient and truly decisive legal assistance, not a simply perfunctory representation.[24]

In this case, after accepting the criminal case against complainant's son and receiving his attorney's fees, respondent did nothing that could be considered as effective and efficient legal assistance. For all intents and

purposes, respondent abandoned the cause of his client. Indeed, on account of respondent's continued inaction, complainant was compelled to seek the services of the Public Attorney's Office. Respondent's lackadaisical attitude towards the case of complainant's son was reprehensible. Not only did it prejudice complainant's son, it also deprived him of his constitutional right to counsel. Furthermore, in failing to use the amount entrusted to him for posting a bond to secure the provisional liberty of his client, respondent unduly impeded the latter's constitutional right to bail.

Respondent Failed to Return
His Client's Money

The fiduciary nature of the relationship between counsel and client imposes on a lawyer the duty to account for the money or property collected or received for or from the client.[25]

When a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client.[26] His failure either to render an accounting or to return the money (if the intended purpose of the money does not materialize) constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility.[27]

Moreover, a lawyer has the duty to deliver his client's funds or properties as they fall due or upon demand.[28] His failure to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client.[29] It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.[30] Indeed, it may border on the criminal as it may constitute a prima facie case of swindling or estafa.

Respondent never denied receiving P18,000 from complainant for the purpose of posting a bond to secure the provisional liberty of her son. He never used the money for its intended purpose yet also never returned it to the client. Worse, he unjustifiably refused to turn over the amount to complainant despite the latter's repeated demands.

Moreover, respondent rendered no service that would have entitled him to the P30,000 attorney's fees. As a rule, the right of a lawyer to a reasonable compensation for his services is subject to two requisites: (1) the existence of an attorney-client relationship and (2) the rendition by the lawyer of services to the client.[31] Thus, a lawyer who does not render legal services is not entitled to attorney's fees. Otherwise, not only would he be unjustly enriched at the expense of the client, he would also be rewarded for his negligence and irresponsibility.

Respondent Failed to Uphold the Integrity and Dignity of the Legal Profession

For his failure to comply with the exacting ethical standards of the legal profession, respondent failed to obey Canon 7 of the Code of Professional Responsibility:

> CANON 7. A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND THE DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR. (emphasis supplied)

Indeed, a lawyer who fails to abide by the Canons and Rules of the Code of Professional Responsibility disrespects the said Code and everything that it stands for. In so doing, he disregards the ethics and disgraces the dignity of the legal profession.

Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code of

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Professional Responsibility. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar.[32] Thus, every lawyer should act and comport himself in a manner that would promote public confidence in the integrity of the legal profession.[33]

Respondent was undeserving of the trust reposed in him. Instead of using the money for the bond of the complainant's son, he pocketed it. He failed to observe candor, fairness and loyalty in his dealings with his client.[34] He failed to live up to his fiduciary duties. By keeping the money for himself despite his undertaking that he would facilitate the release of complainant's son, respondent showed lack of moral principles. His transgression showed him to be a swindler, a deceitful person and a shame to the legal profession.

WHEREFORE, respondent Atty. Alan S. Macasa is hereby found GUILTY not only of dishonesty but also of professional misconduct for prejudicing Francis John Belleza's right to counsel and to bail under Sections 13 and 14(2), Article III of the Constitution, and for violating Canons 1, 7, 17, 18 and 19 and Rules 12.03, 16.01, 16.02, 16.03 and 18.03 of the Code of Professional Responsibility. He is therefore DISBARRED from the practice of law effective immediately.

Respondent is hereby ORDERED to return to complainant Dolores C. Belleza the amounts of P30,000 and P18,000 with interest at 12% per annum from the date of promulgation of this decision until full payment. Respondent is further DIRECTED to submit to the Court proof of payment of the amount within ten days from payment. Failure to do so will subject him to criminal prosecution.

Let copies of this resolution be furnished the Office of the Bar Confidant to be entered into the records of respondent Atty. Alan S. Macasa and the Office of the Court Administrator to be furnished to the courts of the land for their information and guidance.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Carpio, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Leonardo-De Castro, Peralta, and Bersamin, JJ., concur.
Brion, J., on official leave.

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[1] Comprehensive Dangerous Drugs Act of 2002.

[2] Rollo, pp. 2-5.

[3] Annex "A" of the Complaint. Id., p. 6.

[4] Id.

[5] Id., p. 1.

[6] The CBD docketed the complaint as CBD Case No. 05-1524.

[7] Id., p. 8.

[8] Id., pp. 9-10.

[9] Dated September 2, 2005 and October 4, 2005, respectively. Id., pp. 16-17 and 21-22, respectively.

[10] Order dated April 19, 2006. Id., p. 27.

Despite receipt by the parties of the order, no position paper was filed. Hence, the investigating commissioner resolved the case based on the pleadings and papers available to him.

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[11] Prepared and signed by CBD Commissioner Salvador B. Hababag. Id., pp. 32-36.

[12] Resolution No. XVIII-2007-182 dated October 12, 2007.

[13] Sibulo v. Ilagan, A.C. No. 4711, 25 November 2004, 486 Phil. 197 (2004).

[14] Id.

[15] Id.

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

[17] See Canon 18 of the Code of Professional Responsibility.

[18] Islas v. Platon, 47 Phil. 162 (1924).

[19] See Villaflores v. Limos, A.C. No. 7504, 23 November 2007, 538 SCRA 140.

[20] See Section 14(2), Article III, Constitution.

[21] People v. Molina, 423 Phil. 637 (2001).

[22] Kimmelman v. Morrison, 477 US 365 (1986) cited in People v. Liwanag, 415 Phil. 271 (2001).

[23] Callangan v. People, G.R. No. 153414, 27 June 2006, 493 SCRA 269 citing People v. Ferrer, 454 Phil. 431 (2003).

[24] Id.

[25] See Rule 16.01 of the Code of Professional Responsibility.

[26] In re Nueno, 48 Phil. 178 (1948).

[27] See Atty. Navarro v. Atty. Meneses III, 349 Phil. 520 (1998).

[28] Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

[29] Pentecostes v. Ibañez, 363 Phil. 624 (1999).

[30] Id.

[31] Arce v. Philippine National Bank, 62 Phil. 570 (1935).

[32] Ducat v. Villalon, 392 Phil. 394 (2000).

[33] Id.

[34] CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

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