

REX POLINAR DAGOHOY, COMPLAINANT, VS. ATTY. ARTEMIO V. SAN JUAN, RESPONDENTS.

A.C. No. 7944. June 03, 2013

Ponente: BRION, J.

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BRION, J.:

For consideration are: (1) the letter[1] dated August 28, 2012 of respondent Atty. Artemio V. San Juan informing the Court of his compliance with the Court's Resolution[2] dated April 16, 2012; and (2) the Report and Recommendation[3] dated January 14, 2013 of the Office of the Bar Confidant.

The Facts

Atty. San Juan was administratively charged for gross negligence, in connection with the dismissal of his client's appeal filed before the Court of Appeals (CA). Tomas Dagohoy (Tomas), his client and the father of complainant Rex Polinar Dagohoy, was charged with and convicted of theft by the Regional Trial Court, Branch 34, of Panabo City, Davao del Norte.[4] According to the complainant, the CA dismissed the appeal for Atty. San Juan's failure to file the appellant's brief.[5] He further alleged that Atty. San Juan did not file a motion for reconsideration against the CA's order of dismissal.[6]

The complainant also accused Atty. San Juan of being untruthful in dealing with him and Tomas. The complainant, in this regard, alleged that Atty. San Juan failed to inform him and Tomas of the real status of Tomas' appeal and did not disclose to them the real reason for its dismissal.[7]

In his comment,[8] Atty. San Juan denied the charge. He imputed fault on Tomas for failing to furnish him a copy of the case records to enable him to prepare and file the appellant's brief. He claimed that he tried to save the situation but a rich niece of Tomas dismissed him and prevented him from further acting on the case.

The IBP's Report and Recommendation

After receipt of Atty. San Juan's comment, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[9]

On September 15, 2009, Investigating Commissioner Salvador B. Hababag found Atty. San Juan negligent and recommended the penalty of three (3) months suspension from the practice of law.[10] The Investigating Commissioner opined:

Under Section 7, Rule 44 of the same Rules, the period within which Appellant should file his Brief is limited only to forty five (45) days, unless an extension of time to file briefs has been granted by the Court upon good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended. However, up to the present or for a period of almost one (1) year, Accused Appellant neither moved for extension of time to file nor filed his brief.[11]

In Resolution No. XIX-2011-305 dated May 15, 2011, the IBP Board of Governors unanimously approved the findings of the Investigating Commissioner.[12]

The IBP refers its findings to the Court

The complainant and Atty. San Juan did not file a motion for reconsideration against Resolution No. XIX-2011-305 dated May 15, 2011. The IBP thereafter submitted its findings to the Court.

In our Resolution dated April 16, 2012, we resolved:

A.C. No. 7944 (Rex Polinar Dagohoy vs. Artemio V. San Juan). – The Court NOTES the Notice of Resolution No. XIX-2011-305 dated 15 May 2011 of the IBP Board of Governors which adopted and approved the report and recommendation of the Investigating Commissioner finding the same to be fully supported by the evidence on record and applicable laws and rules, and finding respondent guilty of gross negligence, ordered the suspension of Atty. Artemio V. San Juan from the practice of law for three (3) months; transmitted by letter dated 16 January 2012 of Acting Director Dennis A.B. Funa, IBP Commission on Bar Discipline, together with the records of the case and the notation that no motion for reconsideration was filed by either party.[13] (emphases and italics supplied)

Atty. San Juan's letter dated August 28, 2012

and motion to lift suspension from the practice of law

In a letter dated August 28, 2012, Atty. San Juan manifested his compliance with the April 16, 2012 Resolution and prayed for the lifting of his suspension. He stated that:

This will please confirm receipt on May 31, 2012 of a Resolution dated 16 April 2012, by the Hon. Supreme Court, Second Division, Baguio City, ordering my suspension from the practice of law for three (3) months. Upon receipt of the notice on May 31, 2012, I personally informed the Presiding Judge of the [c]ourts where I have been handling cases by showing to them the above-mentioned notice from the High Court.[14]

In its Report and Recommendation dated January 14, 2013, the Office of the Bar Confidant recommended:

- A resolution, whether to adopt or modify the penalty imposed on the respondent as recommended by the IBP, be now issued;
- For purposes of determining the effectivity of the order of suspension, respondent be REQUIRED to notify the Court of the date of x x x the said resolution;
- After the lapse of the entire duration of the order of suspension, the respondent be REQUIRED to file a sworn manifestation, with attachment of certifications from the IBP Local Chapter where he belongs and the Office of the Executive Judge of the court where he practices his profession, all stating that he has ceased and desisted from the practice of law (stating the date of the start of suspension up to the end of the period of suspension).[15]

The Court's Ruling

Except for the recommended penalty, we adopt the findings of the IBP.

In *Dalisay Capili v. Atty. Alfredo L. Bentulan*,^[16] we held that the failure to file a brief resulting in the dismissal of an appeal constitutes inexcusable negligence. In this case, Atty. San Juan's negligence in handling his client's appeal was duly established by the records and by his own admission. We cannot accept as an excuse the alleged lapse committed by his client in failing to provide him a copy of the case records.

In the first place, securing a copy of the case records was within Atty. San Juan's control and is a task that the lawyer undertakes. We note that Atty. San Juan received a notice dated April 19, 2005^[17] from CA Clerk of Court Beverly S. Beja informing him that the case records were already complete and at his disposal for the preparation of the brief.

Second, Atty. San Juan, unlike his client, knows or should have known, that filing an appellant's brief within the reglementary period is critical in the perfection of an appeal. In this case, Atty. San Juan was directed to file an appellant's brief within thirty (30) days from receipt of the notice dated April 19, 2005 sent by CA Clerk of Court Beja.

The preparation and the filing of the appellant's brief are matters of procedure that fully fell within the exclusive control and responsibility of Atty. San Juan. It was incumbent upon him to execute all acts and procedures necessary and incidental to the perfection of his client's appeal.

Third, the records also disclose Atty. San Juan's lack of candor in dealing with his client. He omitted to inform Tomas of the progress of his appeal with the CA.[18] Worse, he did not disclose to Tomas the real reason for the CA's dismissal of the appeal.[19] Neither did Atty. San Juan file a motion for reconsideration to address the CA's order of dismissal, or otherwise resort to available legal remedies that might have protected his client's interest.

Atty. San Juan's negligence undoubtedly violates the Lawyer's Oath that requires him to "conduct [himself] as a lawyer according to the best of (his) knowledge and discretion, with all good fidelity as well to the courts as to (his) clients[.]" He also violated Rule 18.03 and Rule 18.04, Canon 18 of the Code of Professional Responsibility, which provide:

CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

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.

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.

"It is a fundamental rule of ethics that 'an attorney who undertakes to conduct an action impliedly stipulates to carry it to its conclusion.'"[20] It was Atty. San Juan's bounden duty to see his cases through until proper completion; he could not abandon or neglect them in midstream,[21] in the way he did with the complainant's case.

In light of these considerations, we find the IBP's recommended penalty of three (3) months suspension from the practice of law not commensurate to the gravity of the infractions committed; as described above, these infractions warrant the imposition of a stiffer sanction. We take into account the following acts, omissions, and consequence attendant to Atty. San Juan's inadequacies: first, the negligence in handling his client's appeal; second, his failure to act candidly and effectively in communicating information to his client; and more importantly, third, the serious and irreparable consequence of his admitted negligence which deprived his client of legal remedies in addressing his conviction.

In *Pineda v. Atty. Macapagal*,[22] we imposed a one (1) year suspension from the practice of law on a lawyer who, like Atty. San Juan, had been found guilty of gross negligence in handling his client's case. With this case as the norm, we hold that Atty. San Juan should be meted a suspension of one (1) year from the practice of law for his negligence and inadequacies in handling his client's case.

Finally, we deny Atty. San Juan's motion to lift the order of suspension. Atty. San Juan's self-imposed compliance with the IBP's recommended penalty of three (3) months suspension was premature. The wordings of the Resolution dated April 16, 2012 show that the Court merely noted: (1) the IBP's findings and the

recommended penalty against Atty. San Juan; and (2) the IBP referral of the case back to the Court for its proper disposition. The IBP findings and the stated penalty thereon are merely recommendatory; only the Supreme Court has the power to discipline erring lawyers and to impose against them penalties for unethical conduct.[23] Until finally acted upon by the Supreme Court, the IBP findings and the recommended penalty imposed cannot attain finality until adopted by the Court as its own. Thus, the IBP findings, by themselves, cannot be a proper subject of implementation or compliance.[24]

WHEREFORE, premises considered, the Court resolves to:

- NOTE the Report and Recommendation dated January 14, 2013 of the Office of the Bar Confidant;
- SUSPEND from the practice of law for a period of one (1) year Atty. Artemio V. San Juan for violating his Lawyer's Oath and Rules 18.03 and Rule 18.04, Canon 18 of the Code of Professional Responsibility, with a WARNING that the commission of the same or similar act or acts shall be dealt with more severely; and
- DENY the motion filed by Atty. Artemio V. San Juan in the letter dated August 28, 2012 that he be allowed to return to the practice of law.

Let copies of this Decision be furnished to all courts. The Office of the Bar Confidant is instructed to include a copy of this Decision in Atty. San Juan's file.

SO ORDERED.

Del Castillo, Perez, Perlas-Bernabe, and Leonen, [**] JJ., concur.
Brion, [*] J., (Acting Chairperson).

[*] In lieu of Associate Justice Antonio T. Carpio per Special Order No. 1460 dated May 29, 2013.

[**] Designated as Acting Member in lieu of Associate Justice Antonio T. Carpio, per Special Order No. 1461 dated May 29, 2013.

[1] Rollo, p. 112.

[2] Id. at 120.

[3] Id., pages unnumbered.

[4] Docketed as Crim. Case No. 99-12; id. at 9-14.

[5] Id. at 17-18.

[6] Id. at 2-3.

[7] Ibid.

[8] Id. at 53-55.

[9] Id. at 63.

[10] Id. at 106-111.

[11] Id. at 110-111.

[12] Id. at 104-105.

[13] Id. at 120.

[14] Id. at 112.

[15] Id., pages unnumbered.

[16] A.C. No. 5862; through an extended resolution dated October 12, 2011.

[17] Rollo, p. 46.

[18] Affidavit of Merit dated January 24, 2008 of Tomas and Affidavit–Complaint dated November 14, 2007 of the complainant; id. at 15-16 and 27-28, respectively.

[19] Ibid.

[20] Zarate-Bustamante v. Atty. Libatique, 418 Phil. 249, 255 (2001).

[21] Ibid.

[22] 512 Phil. 668, 672 (2005).

[23] 1987 Constitution, Article VIII, Section 15.

[24] Lourdes Corres v. Atty. Juan A. Abaya, Jr., A.C. No. 2983; through an extended Resolution dated February 29, 2012.

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