

ATTY. ELMER C. SOLIDON, COMPLAINANT, VS. ATTY. RAMIL E. MACALALAD, RESPONDENT.

A.C. No. 8158. February 24, 2010

Ponente: BRION, J.

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BRION, J.:

In a verified complaint[1] before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP Commission on Bar Discipline), Atty. Elmer C. Solidon (Atty. Solidon) sought the disbarment of Atty. Ramil E. Macalalad (Atty. Macalalad) for violations of Rule 16.01,[2] Rule 18.03,[3] and Rule 18.04[4] of the Code of Professional Responsibility involving negligence in handling a case.

The Facts

Atty. Macalalad is the Chief of the Legal Division of the Department of Environment and Natural Resources (DENR), Regional Office 8, Tacloban City. Although he is in public service, the DENR Secretary has given him the authority to engage in the practice of law.

While on official visit to Eastern Samar in October 2005, Atty. Macalalad was introduced to Atty. Solidon by a mutual acquaintance, Flordeliz Cabo-Borata (Ms. Cabo-Borata). Atty. Solidon asked Atty. Macalalad to handle the judicial titling of a parcel of land located in Borongan, Eastern Samar and owned by Atty. Solidon's relatives. For a consideration of Eighty Thousand Pesos (P80,000.00), Atty. Macalalad accepted the task to be completed within a period of eight (8) months. Atty. Macalalad received Fifty Thousand Pesos (P50,000.00) as initial payment; the remaining balance of Thirty Thousand Pesos (P30,000.00) was to be paid when Atty. Solidon received the certificate of title to the property.

Atty. Macalalad has not filed any petition for registration over the property sought to be titled up to the present time.

In the Complaint, Position Papers[5] and documentary evidence submitted, Atty. Solidon claimed that he tried to contact Atty. Macalalad to follow-up on the status of the case six (6) months after he paid the initial legal fees. He did this through phone calls and text messages to their known acquaintances and relatives, and, finally, through a letter sent by courier to Atty. Macalalad. However, he did not receive any communication from Atty. Macalalad.

In the Answer,[6] Position Paper,[7] and affidavits of witnesses, Atty. Macalalad posited that the delay in the filing of the petition for the titling of the property was caused by his clients' failure to communicate with him. He also explained that he had no intention of reneging on his obligation, as he had already prepared the draft of the petition. He failed to file the petition simply because he still lacked the needed documentary evidence that his clients should have furnished him. Lastly, Atty. Macalalad denied that Atty. Solidon tried to communicate with him.

The Findings of the IBP

In his Report and Recommendation dated June 25, 2008, Investigating Commissioner Randall C. Tabayoyong made the following finding of negligence against Atty. Macalalad:

...complainant submitted in his position paper the affidavit of Flordeliz Cabo-Borata, the mutual acquaintance of both complainant and respondent. In the said affidavit, Mrs. Cabo-Borata described how she repeatedly followed-up the matter with respondent and how respondent turned a deaf ear towards the same. There is nothing on record which would prompt this Office to view the allegations therein with caution. In fact, considering that the allegations corroborate the undisputed facts of the instant case...

As respondent has failed to duly present any reasonable excuse for the non-filing of the application despite the lapse of about a year from the time his services were engaged, it is plain that his negligence in filing the application remains uncontroverted. And such negligence is contrary to the mandate prescribed in Rule 18.03, Canon 18 of the Code of Professional Responsibility, which enjoins a lawyer not to neglect a legal matter entrusted to him. In fact, Rule 18.03 even provides that his negligence in connection therewith shall render him liable.

Acting on this recommendation, the Board of Governors of the IBP Commission on Bar Discipline passed Resolution No. XVIII-2008-336 dated July 17, 2008, holding that:

RESOLVED TO ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution ... and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Rule 18.03 of the Code of Professional Responsibility, Atty. Ramil E. Macalalad is hereby SUSPENDED from the practice of law for three (3) months and Ordered to Return the amount of Fifty Thousand Pesos (P50,000) with 12% interest per annum to complainant ...

The case is now before this Court for our final action pursuant to Section 12(b), Rule 139-B of the Rules of Court, considering that the IBP Commission on Bar Discipline imposed the penalty of suspension on Atty. Macalalad.

The Court's Ruling

We agree with the IBP's factual findings and legal conclusions.

In administrative cases against lawyers, the quantum of proof required is preponderance of evidence which the complainant has the burden to discharge.[8] We fully considered the evidence presented and we are fully satisfied that the complainant's evidence, as outlined above, fully satisfies the required quantum of proof in proving Atty. Macalalad's negligence.

Rule 18.03, Canon 18 of the Code of Professional Responsibility provides for the rule on negligence and states:

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

This Court has consistently held, in construing this Rule, that the mere failure of the lawyer to perform the obligations due to the client is considered per se a violation.

Thus, in *Villafuerte v. Cortez*,^[9] we held that a lawyer is negligent if he failed to do anything to protect his client's interest after receiving his acceptance fee. In *In Re: Atty. Briones*,^[10] we ruled that the failure of the counsel to submit the required brief within the reglementary period (to the prejudice of his client who languished in jail for more than a year) is an offense that warrants disciplinary action. In *Garcia v. Atty. Manuel*, we penalized a lawyer for failing to inform the client of the status of the case, among other matters.^[11]

Subsequently, in *Reyes v. Vitan*,^[12] we reiterated that the act of receiving money as acceptance fee for legal services in handling the complainant's case and, subsequently, in failing to render the services, is a clear violation of Canon 18 of the Code of Professional Responsibility. We made the same conclusion in *Canoy v. Ortiz*^[13] where we emphatically stated that the lawyer's failure to file the position paper was per se a violation of Rule 18.03 of the Code of Professional Responsibility.

The circumstance that the client was also at fault does not exonerate a lawyer from liability for his negligence in handling a case. In *Canoy*, we accordingly declared that the lawyer cannot shift the blame to his client for failing to follow up on his case because it was the lawyer's duty to inform his client of the status of the case.^[14] Our rulings in *Macarilay v. Seriña*,^[15] in *Heirs of Ballesteros v. Apiag*,^[16] and in *Villaflores v. Limos*^[17] were of the same tenor. In *Villaflores*, we opined that even if the client has been equally at fault for the lack of communication, the main responsibility remains with the lawyer to inquire and know the best means to acquire the required information. We held that as between the client and his lawyer, the latter has more control in handling the case.

All these rulings drive home the fiduciary nature of a lawyer's duty to his client once an engagement for legal services is accepted. A lawyer so engaged to represent a client bears the responsibility of protecting the latter's interest with utmost diligence.^[18] The lawyer bears the duty to serve his client with competence and diligence, and to exert his best efforts to protect, within the bounds of the law, the interest of his or her client.^[19] Accordingly, competence, not only in the knowledge of law, but also in the management of the cases by giving these cases appropriate attention and due preparation, is expected from a lawyer.^[20]

The records in this case tell us that Atty. Macalalad failed to act as he committed when he failed to file the required petition. He cannot now shift the blame to his clients since it was his duty as a lawyer to communicate with them. At any rate, we reject Atty. Macalalad's defense that it was his clients who failed to contact him. Although no previous communication transpired between Atty. Macalalad and his clients, the records nevertheless show that Atty. Solidon, who contracted Atty. Macalalad's services in behalf of his relatives, tried his best to reach him prior to the filing of the present disbarment case. Atty. Solidon even enlisted the aid of Ms. Cabo-Borata to follow-up on the status of the registration application with Atty. Macalalad.

As narrated by Ms. Cabo-Borata in her affidavit,^[21] she succeeded several times in getting in touch with Atty. Macalalad and on those occasions asked him about the progress of the case. To use Ms. Cabo-Borata's own words, she received "no clear-cut answers from him"; he just informed her that everything was "on process." We give credence to these narrations considering Atty. Macalalad's failure to contradict them or deny their veracity, in marked contrast with his vigorous denial of Atty. Solidon's allegations.

We consider, too, that other motivating factors - specifically, the monetary consideration and the fixed period of performance - should have made it more imperative for Atty. Macalalad to promptly take action and initiate communication with his clients. He had been given initial payment and should have at least undertaken initial delivery of his part of the engagement.

We further find that Atty. Macalalad's conduct refutes his claim of willingness to perform his obligations. If Atty. Macalalad truly wanted to file the petition, he could have acquired the necessary information from Atty. Solidon to enable him to file the petition even pending the IBP Commission on Bar Discipline investigation. As matters now stand, he did not take any action to initiate communication. These omissions unequivocally point to Atty. Macalalad's lack of due care that now warrants disciplinary action.

In addition to the above finding of negligence, we also find Atty. Macalalad guilty of violating Rule 16.01 of the Code of Professional Responsibility which requires a lawyer to account for all the money received from the client.

In this case, Atty. Macalalad did not immediately account for and promptly return the money he received from Atty. Solidon even after he failed to render any legal service within the contracted time of the engagement.[22]

The Penalty

Based on these considerations, we modify the IBP Commission on Bar Discipline's recommended penalty by increasing the period of Atty. Macalalad's suspension from the practice of law from three (3) months, to six (6) months.[23] In this regard, we follow the Court's lead in *Pariñas v. Paguinto*[24] where we imposed on the respondent lawyer suspension of six (6) months from the practice of law for violations of Rule 16.01 and Rule 18.03 of the Code of Professional Responsibility.

WHEREFORE, premises considered, we hereby AFFIRM WITH MODIFICATION Resolution No. XVIII-2008-336 dated July 17, 2008 of the Board of Governors of the IBP Commission on Bar Discipline. We impose on Atty. Ramil E. Macalalad the penalty of SIX (6) MONTHS SUSPENSION from the practice of law for violations of Rule 16.03 and Rule 18.03 of the Code of Professional Responsibility, effective upon finality of this Decision. Atty. Macalalad is STERNLY WARNED that a repetition of the same or similar acts will be dealt with more severely.

Atty. Macalalad is also ORDERED to RETURN to Atty. Elmer C. Solidon the amount of Fifty Thousand Pesos (P50,000.00) with interest of twelve percent (12%) per annum from the date of promulgation of this Decision until the full amount is returned.

Let copies of this Decision be furnished the Office of the Bar Confidant and noted in Atty. Macalalad's record as a member of the Bar.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Abad, and Perez, JJ., concur.

[1] Rollo, pp. 1-2.

[2] A lawyer shall account for all money or property collected or received for or from the client.

[3] A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

[4] 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.

[5] Rollo, pp. 77-81.

[6] Id. at 9-13.

[7] Id. at 65-70.

[8] *Asa v. Castillo*, A.C. No. 6501, August 31, 2006, 500 SCRA 309, 322.

[9] A.C. No. 3455, April 14, 1998, 288 SCRA 687, 690; cited in Pineda, *LEGAL AND JUDICIAL ETHICS*, p. 235 (1999 edition).

[10] A.C. No. 5486, August 15, 2001, 363 SCRA 1, 5.

[11] 443 Phil. 479, 486 (2003).

[12] 496 Phil. 1, 4 (2005).

[13] A.C. No. 5485, March 16, 2005, 453 SCRA 410, 418.

[14] Id. at 421.

[15] 497 Phil 348, 360 (2005), cited in *Heirs of Ballesteros v. Apiag*, A.C. No. 5760, September 30, 2005, 471 SCRA 111, 123.

[16] A.C. No. 5760, September 30, 2005, 471 SCRA 111, 123.

[17] A.C. No. 7504, November 23, 2007, 538 SCRA 140,149.

[18] *Enriquez v. San Jose*, A.C. No. 3569, February 23, 2007, 516 SCRA 486, 489-490.

[19] Id. at 490.

[20] Ibid.

[21] Rollo, pp. 82-83.

[22] *Villanueva v. Atty. Gonzales*, A.C. No. 7657, February 12, 2008, 544 SCRA 410, 415.

[23] *Dizon v. Laurente*, A.C. No. 6597, September 23, 2005, 470 SCRA 595, 603; *Villaflores v. Limos*, supra note 17, p. 52; *Reyes v. Viton*, supra note 12, p. 6; *Heirs of Ballesteros v. Apiag*, supra note 16, p. 128; *Enriquez v. San Jose*, supra note 18, p. 492; *In re: Atty. David Briones*, supra note 10, p. 7.

[24] 478 Phil. 239, 247 (2004).

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