

EMILIA R. HERNANDEZ, COMPLAINANT, VS. ATTY. VENANCIO B. PADILLA, RESPONDENT.

A.C. No. 9387 (Formerly CBD Case No. 05-1562). June 20, 2012

Ponente: SERENO, J.

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SERENO, J.:

This is a disbarment case filed by Emilia Hernandez (complainant) against her lawyer, Atty. Venancio B. Padilla (respondent) of Padilla Padilla Bautista Law Offices, for his alleged negligence in the handling of her case.

The records disclose that complainant and her husband were the respondents in an ejectment case filed against them with the Regional Trial Court of Manila (RTC).

In a Decision[1] dated 28 June 2002, penned by Judge Rosmari D. Carandang (Judge Carandang), the RTC ordered that the Deed of Sale executed in favor of complainant be cancelled; and that the latter pay the complainant therein, Elisa Duigan (Duigan), attorney's fees and moral damages.

Complainant and her husband filed their Notice of Appeal with the RTC. Thereafter, the Court of Appeals (CA) ordered them to file their Appellants' Brief. They chose respondent to represent them in the case. On their behalf, he filed a Memorandum on Appeal instead of an Appellants' Brief. Thus, Duigan filed a Motion to Dismiss the Appeal. The CA granted the Motion in a Resolution[2] dated 16 December 2003.

No Motion for Reconsideration (MR) of the Resolution dismissing the appeal was filed by the couple. Complainant claims that because respondent ignored the Resolution, he acted with "deceit, unfaithfulness amounting to malpractice of law." [3] Complainant and her husband failed to file an appeal, because respondent never informed them of the adverse decision. Complainant further claims that she asked respondent "several times" about the status of the appeal, but "despite inquiries he deliberately withheld response [sic]," to the damage and prejudice of the spouses. [4]

The Resolution became final and executory on 8 January 2004. Complainant was informed of the Resolution sometime in July 2005, when the Sheriff of the RTC came to her house and informed her of the Resolution.

On 9 September 2005, complainant filed an Affidavit of Complaint[5] with the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP), seeking the disbarment of respondent on the following grounds: deceit, malpractice, and grave misconduct. Complainant prays for moral damages in the amount of P350,000.

Through an Order[6] dated 12 September 2005, Director of Bar Discipline Rogelio A. Vinluan ordered respondent to submit an answer to the Complaint. In his Counter-Affidavit/Answer, [7] respondent prayed for the outright dismissal of the Complaint.

Respondent explained that he was not the lawyer of complainant. He averred that prior to the mandatory conference set by the IBP on 13 December 2005, he had never met complainant, because it was her husband who had personally transacted with him. According to respondent, the husband "despondently pleaded to me to prepare

a Memorandum on Appeal because according to him the period given by the CA was to lapse within two or three days." [8] Thus, respondent claims that he filed a Memorandum on Appeal because he honestly believed that "it is this pleading which was required." [9]

Before filing the Memorandum, respondent advised complainant's husband to settle the case. The latter allegedly "gestured approval of the advice." [10]

After the husband of complainant picked up the Memorandum for filing, respondent never saw or heard from him again and thus assumed that the husband heeded his advice and settled the case. When respondent received an Order from the CA requiring him to file a comment on the Motion to Dismiss filed by Duigan, he "instructed his office staff to contact Mr. Hernandez thru available means of communication, but to no avail." [11] Thus, when complainant's husband went to the office of respondent to tell the latter that the Sheriff of the RTC had informed complainant of the CA's

Resolution dismissing the case, respondent was just as surprised. The lawyer exclaimed, "KALA KO BA NAKIPAG AREGLO NA KAYO." [12]

In his 5 January 2009 Report, [13] IBP Investigating Commissioner Leland R. Villadolid, Jr. found that respondent violated Canons 5, 17, and 18 of the Code of Professional Responsibility (the Code). He recommended that respondent be suspended from practicing law from 3 to 6 months.

The board of governors of the IBP issued Resolution No. XIX-2010-452 on 28 August 2010. Therein, they resolved to adopt and approve the Report and Recommendation of the Investigating Commissioner. Respondent was suspended from the practice of law for six months.

Respondent filed a Motion for Reconsideration. [14] He prayed for the relaxation of the application of the Canons of the Code. On 14 January 2012, the IBP board of governors passed Resolution No. XX-2012-17 [15] partly granting his Motion and reducing the penalty imposed to one-month suspension from the practice of law.

Pursuant to Rule 139-B of the Rules of Court, acting Director for Bar Discipline Dennis A.B. Funa, through, a letter [16] addressed to then Chief Justice Renato C. Corona, transmitted the documents pertaining to the disbarment Complaint against respondent.

We adopt the factual findings of the board of governors of the IBP. This Court, however, disagrees with its Decision to reduce the penalty to one-month suspension. We thus affirm the six-month suspension the Board originally imposed in its 28 August 2010 Resolution.

Respondent insists that he had never met complainant prior to the mandatory conference set for the disbarment Complaint she filed against him. However, a perusal of the Memorandum of Appeal filed in the appellate court revealed that he had signed as counsel for the defendant-appellants therein, including complainant and her husband. [17] The pleading starts with the following sentence: "DEFENDANT[S]-APPELLANTS, by counsel, unto this Honorable Court submit the Memorandum and further allege that: x x x." [18] Nowhere does the document say that it was filed only on behalf of complainant's husband.

It is further claimed by respondent that the relation created between him and complainant's husband cannot be treated as a "client-lawyer" relationship, viz:

It is no more than a client needing a legal document and had it prepared by a lawyer for a fee. Under the factual milieu and circumstances, it could not be said that a client entrusted to a lawyer handling and prosecution of his case that calls for the strict application of the Code; x x x [19]

As proof that none of them ever intended to enter into a lawyer-client relationship, he also alleges that

complainant's husband never contacted him after the filing of the Memorandum of Appeal. According to respondent, this behavior was "very unusual if he really believed that he engaged" the former's services.[20]

Complainant pointed out in her Reply[21] that respondent was her lawyer, because he accepted her case and an acceptance fee in the amount of P7,000.

According to respondent, however, "[C]ontrary to the complainant's claim that he charged P7,000 as acceptance fee," "the fee was only for the preparation of the pleading which is even low for a Memorandum of Appeal: xxx." [22]

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.[23] Once a lawyer agrees to handle a case, it is that lawyer's duty to serve the client with competence and diligence.[24] Respondent has failed to fulfill this duty.

According to respondent, he merely drafted the pleading that complainant's husband asked from him. Respondent also claims that he filed a Memorandum of Appeal, because he "honestly believed" that this was the pleading required, based on what complainant's husband said.

The IBP Investigating Commissioner's observation on this matter, in the 5 January 2009 Report, is correct. Regardless of the particular pleading his client may have believed to be necessary, it was respondent's duty to know the proper pleading to be filed in appeals from RTC decisions, viz:

Having seen the Decision dated 18 June 2002 of the trial court, respondent should have known that the mode of appeal to the Court of Appeals for said Decision is by ordinary appeal under Section 2(a) Rule 41 of the 1997 Revised Rules of Civil Procedure. In all such cases, Rule 44 of the said Rules applies.[25]

When the RTC ruled against complainant and her husband, they filed a Notice of Appeal. Consequently, what should apply is the rule on ordinary appealed cases or Rule 44 of the Rules on Civil Procedure. Rule 44 requires that the appellant's brief be filed after the records of the case have been elevated to the CA. Respondent, as a litigator, was expected to know this procedure. Canon 5 of the Code reads:

CANON 5 — A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

The obligations of lawyers as a consequence of their Canon 5 duty have been expounded in *Dularia, Jr. v. Cruz*, [26] to wit:

It must be emphasized that the primary duty of lawyers is to obey the laws of the land and promote respect for the law and legal processes. They are expected to be in the forefront in the observance and maintenance of the rule of law. This duty carries with it the obligation to be well-informed of the existing laws and to keep abreast with legal developments, recent enactments and jurisprudence. It is imperative that they be conversant with basic legal principles. Unless they faithfully comply with such duty, they may not be able to discharge competently and diligently their obligations as members of the bar. Worse, they may become susceptible to committing mistakes.

In his MR, respondent begged for the consideration of the IBP, claiming that the reason for his failure to file the proper pleading was that he "did not have enough time to acquaint himself thoroughly with the factual milieu of the case." The IBP reconsidered and thereafter significantly reduced the penalty originally imposed.

Respondent's plea for leniency should not have been granted.

The supposed lack of time given to respondent to acquaint himself with the facts of the case does not excuse his

negligence.

Rule 18.02 of the Code provides that a lawyer shall not handle any legal matter without adequate preparation. While it is true that respondent was not complainant's lawyer from the trial to the appellate court stage, this fact did not excuse him from his duty to diligently study a case he had agreed to handle. If he felt he did not have enough time to study the pertinent matters involved, as he was approached by complainant's husband only two days before the expiration of the period for filing the Appellant's Brief, respondent should have filed a motion for extension of time to file the proper pleading instead of whatever pleading he could come up with, just to "beat the deadline set by the Court of Appeals." [27]

Moreover, respondent does not deny that he was given notice of the fact that he filed the wrong pleading. However, instead of explaining his side by filing a comment, as ordered by the appellate court, he chose to ignore the CA's Order. He claims that he was under the presumption that complainant and her husband had already settled the case, because he had not heard from the husband since the filing of the latter's Memorandum of Appeal.

This explanation does not excuse respondent's actions.

First of all, there were several remedies that respondent could have availed himself of, from the moment he received the Notice from the CA to the moment he received the disbarment Complaint filed against him. But because of his negligence, He chose to sit on the case and do nothing.

Second, respondent, as counsel, had the duty to inform his clients of the status of their case. His failure to do so amounted to a violation of Rule 18.04 of the Code, which reads:

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.

If it were true that all attempts to contact his client proved futile, the least respondent could have done was to inform the CA by filing a Notice of Withdrawal of Appearance as counsel. He could have thus explained why he was no longer the counsel of complainant and her husband in the case and informed the court that he could no longer contact them. [28] His failure to take this measure proves his negligence.

Lastly, the failure of respondent to file the proper pleading and a comment on Duigan's Motion to Dismiss is negligence on his part. Under 18.03 of the Code, a lawyer is liable for negligence in handling the client's case, viz:

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

Lawyers should not neglect legal matters entrusted to them, otherwise their negligence in fulfilling their duty would render them liable for disciplinary action. [29]

Respondent has failed to live up' to his duties as a lawyer. When a lawyer violates his duties to his client, he engages in unethical and unprofessional conduct for which he should be held accountable.

WHEREFORE, respondent Atty. Venancio Padilla is found guilty of violating Rules 18.02, 18.03, 18.04, as well as Canon 5 of the Code of Professional Responsibility. Hence, he is **SUSPENDED** from the practice of law for **SIX (6) MONTHS** and **STERNLY WARNED** that a repetition of the same or a similar offense will be dealt with more severely.

Let copies of this Resolution be entered into the personal records of respondent as a member of the bar and furnished to the Bar Confidant, the Integrated Bar of the Philippines, and the Court Administrator for circulation

to all courts of the country for their information and guidance.

No costs.

SO ORDERED.

Carpio, (Chairperson), Brion, Perez, and Reyes, JJ., concur.

[1] Rollo, Vol. I, pp. 14-24.

[2] Id. at 43-44.

[3] Id. at 1.

[4] Id.

[5] Id. at 1-2.

[6] Id. at 45.

[7] Id. at 52-56.

[8] Id at 53.

[9] Id at 54.

[10] Id.

[11] Id.

[12] Id.

[13] Rollo, Vol. II, pp. 2-15.

[14] Id. at 16-20.

[15] Rollo, Vol. II (page not indicated).

[16] Id. at.

[17] See rollo, Vol. I, p. 39.

[18] Id. al 25.

[19] Rollo, Vol. II. p. 18.

[20] Id at 19.

[21] Rollo, Vol I, pp. 76-77.

[22] Rollo, Vol. II, p. 18.

[23] Fernandez v. Atty. Cabrera, 463 Phil. 352 (2003).

[24] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18.

[25] Rollo, Vol. II, pp. 9-10

[26] A.C. No. 6854, 27 April 2007, 522 SCRA 244, 255 citing Santiago v. Rafanan, A.C. No. 6252, 483 Phil. 94,

105(2004).

[27] Rollo, Vol. II, p. 18.

[28] "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 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." (Rules of Court, Rule 138, Sec. 26)

[29] Perea v. Atty. Almadro, 447 Phil. 434 (2003).

[30] Fernandez, supra note 23.

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