# SPOUSES WILLIAM ADECER AND TERESITA P. ADECER, COMPLAINANTS, VS. ATTY. EMMANUEL AKUT, RESPONDENT.

*ADM. CASE NO. 4809. May 03, 2006*

Ponente: TINGA, J.

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**TINGA, J.:**

Before the Court is a petition for disbarment filed by Spouses William and Teresita Adecer (complainants) against Attorney Emmanuel A. Akut (respondent).

The instant petition is an offshoot of Criminal Case No. 72790 entitled "People of the Philippines v. William Adecer and Teresita Adecer" in which complainants were charged with committing a crime punishable under Article 318 of the Revised Penal Code (Other Deceits), before the Municipal Trial Court in Cities, Cagayan de Oro, Branch No. 5 (MTCC). Respondent was their legal counsel in the criminal case.

On 25 March 1997, respondent received a copy of the MTCC's Decision[1] dated 12 March 1997 convicting complainants of Other Deceits and sentencing them to the penalty of arresto mayor[2] and a fine of not less than P30,000.00.[3] Complainants were also ordered to pay civil liability in the form of damages and attorneys fees totaling P66,000.00 to the private respondents in the criminal case.[4] On 26 March 1997, the Decision was promulgated in the absence of the complainants, who were accorded due notice. Complainants received a copy of the Decision via registered mail on 4 April 1997. Respondent received an additional copy of the Decision on even date.

Respondent had fifteen (15) days from 25 March 1997, or until 9 April 1997, to file either an appeal[5] or a petition for probation[6] in behalf of the complainants. However, it was only on 16 May 1997 - over a month after the Decision had become final and executory- that respondent filed a Petition for Probation.

The MTCC issued a Writ of Execution On 19 May 1997. The next day, a warrant of arrest was served on complainants[7] and they were incarcerated.[8]

On 28 May 1997, respondent filed a Memorandum in Support of the Petition for Probation stating, "[i]mmediately upon her receipt of a copy of the decision, accused Teresita Adecer contacted [her] lawyer but [her] lawyer was out of town during that time and so, while waiting for her lawyer to come home, she raised the required amount necessary to pay the civil indemnity awarded in the decision."[9] Respondent explained that complainant Teresita Adecer raised the money in the belief that an application for probation would not be granted unless all monetary awards are paid in full.[10] Respondent recounted that it was only on 16 May 1997, when complainant Teresita approached him and handed to him the money for the settlement of the civil liability, that he informed her that the application for probation should have been filed within the period for appeal.

The Petition for Probation was denied through a Resolution dated 7 June 1997. The MTCC held that the law does not permit the grant of probation after the lapse of the period for filing an appeal.[11] With regard to respondent's allegation that he was out of town during the period for filing an appeal, the MTCC examined the calendars of

various courts and ascertained that respondent had scheduled and attended hearings before several courts in Cagayan de Oro during said period. This prompted the MTCC to comment, "[t]he court does not know if defense counsel "suffered" a sudden lack of vitamins to make him forget his duties towards his clients."[12] It appears that complainants filed a Motion for Reconsideration with an Atty. Rogelio Zosa Bagabuyo as pro bono counsel for the complainants.[13] The motion was denied through a Resolution dated 30 June 1997.

The records also reflect that complainants filed a pleading entitled Urgent Omnibus Motions to Recall Writ of Execution and for a Second Motion for Reconsideration with Leave of Court dated 21 June 1997.[14] In answer to "insinuations" in said pleading, respondent, as former counsel of the complainants, filed a Manifestation dated 30 June 1997. He claimed therein that the complainants only had themselves to blame for failing to file a timely petition for probation. Allegedly, the complainants failed to comply with an agreement with respondent that they would immediately go to respondent's office to discuss the steps to be taken should they receive an adverse decision. Respondent claimed that during the time complainants desisted from approaching him, he could not make a choice in behalf of the complainants between the remedy of appeal and the benefits of probation. He recounted that complainants came to his office only on 9 May 1997, a month after the decision had become final and executory, with money to pay for the civil liability. He asked them to return the next day, but they returned only on 16 May 1997 after he "sent somebody to fetch them on several occasion[s]."[15]

On 29 July 1997, while serving their sentence at the Lumbia Detention and Rehabilitation Center, complainants filed the instant administrative case praying that respondent be disbarred and ordered to reimburse complainants of expenses, with interest and damages.[16]

In his Comment dated 22 February 1998, respondent reiterated his account in the Memorandum in Support of the Petition for Probation dated 28 May 1997 on why a timely petition for probation was not filed. However, his explanation evolved somewhat since the last time. This time, he stated that complainants deliberately failed to meet with him seasonably for the signing of the verification of the Petition for Probation.[17] On the MTCC's finding that respondent appeared before Cagayan de Oro courts during the period to file an appeal, he retorted that he moved for the postponement of most of these hearings and attended only the more important ones.[18] He explained that he was out of his office most of the time because starting February 1997, he and his wife were always out of town looking for faith healers to cure the malignant brain tumor of his wife, who succumbed to the cancer on 1 August 1997.[19] Allegedly, after attending the "important" hearings, he immediately went out of town seeking faith healers.[20]

The instant case was referred by this Court to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[21] On 29 October 2003, Commissioner Wilfredo E.J.E. Reyes filed a Manifestation before this Court reporting that the records of the case were lost due to a carnapping incident.

On 7 November 2003, the records of the case were reconstituted. Stipulations were made and the parties agreed that the case would be deemed submitted for decision upon their filing of their respective Supplemental Position Papers.[22] Furthermore, despite complainants' several allusions to deceit on the part of respondent, the parties agreed on a single issue for resolution, i.e., whether respondent is administratively liable for a violating the principles of legal ethics and the Code of Professional Responsibility in filing the Petition for Probation beyond the reglementary period.[23]

In his Report and Recommendation dated 15 July 2005, Commissioner Reyes found that respondent failed to exercise the proper diligence in dealing with the case of his clients and recommended that respondent be suspended from the practice of law for one (1) month and admonished henceforth to be more careful in the performance of his duties to his clients. The IBP Board of Governors resolved to adopt and approve the findings


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of Commissioner Reyes with the modification that respondent instead be suspended for six (6) months. The case is now on review by this Court pursuant to Section 12 (b), Rule 139-B of the Revised Rules of Court.[24]

We affirm the findings of the Investigating Commissioner and adopt the recommendation of the Board of Governors.

The Code of Professional Responsibility mandates that a lawyer shall serve his client with competence and diligence.[25] He shall not handle any legal matter without adequate preparation.[26] Nor shall he neglect a legal matter entrusted to him; his negligence in connection therewith shall render him liable.[27]

Respondent is bound by the representations he made in his Memorandum in Support of the Petition for Probation, i.e., that a timely petition for probation was not filed due to the fact that he was out of town and that complainants were laboring under the misapprehension that the civil liability must be paid in full before probation could be availed of. Either of his two "explanations" is enough ground to render him liable for negligence under the Code of Professional Conduct. First, despite his receipt of a copy of the Decision and the consequent running of the fifteen (15)-day period to file a petition for probation, respondent went out of town without contacting complainants to give them proper legal advice. Furthermore, his admission that complainants were [1] under the impression that they first had to pay off their civil liabilities prior to filing a petition for probation and [2] unaware that they had only fifteen (15) days from their counsel's receipt of a copy of the decision to file their petition, proves that he failed to give complainants timely legal advise.

We consider first the implications of respondent's allegation that he was out of town as his justification to the MTCC for failing to file a timely petition.

At the outset, it must be remembered that respondent was given a copy of the Decision while he was in town. Surely, he could have addressed his clients' need during that time. At the very least, he should have made room in his schedule to confer with complainants on what course of action to take in furtherance of their cause and to prepare the necessary legal moves toward such end.

Furthermore, respondent was not away for the entirety of the crucial period and could have attended to his clients' needs during the instances he was in Cagayan de Oro. And even if respondent had left town during the entire fifteen (15)-day period, in this age of cellular phones, long distance telephone accessibility, and even overnight mail delivery, it is highly unlikely that respondent would not be able to attend to his clients' needs were he so inclined. He could at least have found a way to speak to his clients to inform them regarding the short window within which to file their petition. He could even have prepared a petition and mailed the same to his clients in order that they could sign it and themselves file it in court; or as intimated by the MTCC, he could have filed a motion for extension of time to file a petition for probation.[28]

There are many ways to provide proper representation for his clients and many things which respondent could have done that would give this Court the impression that he had the least bit of concern for his clients' cause. But nothing of the sort was presented by respondent. Since he is primarily responsible for filing the vital pleading that would have made possible for his clients to avail of probation, we find that respondent's omission is a culpable act of negligence for which he must be held liable.

Furthermore, when the MTCC decided to take judicial notice of his scheduled hearings within Cagayan de Oro to expose his lie, respondent "explained" that he was in town to attend some of the more "important hearings" but was out of town most of the time. Aside from the fact that respondent had attempted to deceive the court by initially stating without qualification that he was out of town, he later on uttered words which reveal his notion that some of his cases were more important, and therefore, given more immediate attention than others. Every

case a lawyer accepts deserves his full attention, skill and competence, regardless of his impression that one case or hearing is more important than the other.[29]

Respondent has attached a death certificate showing that his wife died from cardiac arrest close to the period in question. We commiserate with respondent for the loss of his wife, and appreciate fully that during the period of a man's existence when the sense of mortality and loss is most closely felt more then ever, it would appear that no responsibility is more important than tending to loved ones. However, such is the lawyer's charge that no personal consideration should stand in the way of performing a legal duty.[30] In these situations, it is only fair that a lawyer should lighten his case load lest he prejudice his clients' cases.

We have held that the failure of an attorney to file a timely motion for reconsideration or an appeal renders him liable for negligence under the Code of Professional Responsibility.[31] In the instant case, the negligence exhibited by the respondent is made more grievous by the fact that the Decision to be acted upon is one that subjects his clients to incarceration. The liberty of one's clients is not to be taken lightly, whether the sentence is for destierro or reclusion perpetua. Litigants entrust their properties, liberties, and even lives, in the hands of their lawyers, who must protect these values with utmost zeal and vigilance.

What compounds respondent's negligence is his indifference to complainants' plight. He abruptly dismissed his failure to communicate with complainants by stating that, "even if [complainants'] house is near respondent's office, yet respondent does not know [where] their house [is] as he ha[s] never gone to said house. It has never been the practice of respondent to visit his clients in their home. It must be the client who must go to him."[32]

Respondent's choice to be oblivious to his clients' place of residence is his prerogative. This, however, neither excuses nor explains why he was unable to contact his clients by telephone or cellular phone to properly advise them of their legal options. Furthermore, in adopting this style of dealing with clients, respondent takes the obvious risk of being incapable of contacting his clients during crucial periods. He should, thus, be prepared to be held in the event that his manner of dealing with clients results in the latter's being deprived of remedies to which they would otherwise be entitled, for it is the duty of an attorney to advise his client promptly whenever he has any information which is important that the client receive.[33]

To cover his own inattention, respondent even blamed his clients for their ignorance by stating that they were under the wrong impression that the civil liability should be paid in full before they could ask for probation. The laymen's lack of knowledge of substantive and procedural law is the exact reason why they hire the services of counsel. It was counsel's responsibility to look after the welfare of his clients by communicating with them to determine whether they would take the avenue of an appeal or a petition for probation and to thereafter prepare and file the relevant pleading.

We note the IBP Investigating Commissioner's observation that complainants themselves did not show much interest in their own case. Indeed, complainants did not attend hearings of their case; the decision was promulgated in their absence; during trial, complainants were thrice ordered arrested for their failure to attend hearings; thrice, too, respondent had to file a motion for reconsideration of the orders of arrest. It is true that the client must, with regard to his case, exercise that standard of case which an ordinary prudent man bestows upon his important business.[34] However, complainants' lackadaisical attitude is relevant only with regard to the binding effect upon them of the lapse of the fifteen (15)-day period and their loss of the fight to file the petition for probation. The instant administrative proceeding concerns respondent's omission, not those of his clients.

The lawyer should serve his client in a conscientious, diligent and efficient manner and he should provide a quality of services at least equal to that which lawyers generally would expect of a competent lawyer in the like situation.[35] By agreeing to be his client's counsel, he represents that he will exercise ordinary diligence or that

reasonable degree of care and skill having reference to the character of the business he undertakes to do, to protect the client's interests and take all steps or do all acts necessary therefor, and his client may reasonably expect him to discharge his obligations diligently.[36] Respondent has failed to measure up to his oath.

WHEREFORE, the petition is GRANTED. Atty. Emmanuel A. Akut is hereby SUSPENDED from the practice of law for six (6) months and ADMONISHED henceforth to be more circumspect in the performance of his duties to his clients, with the caveat that commission of the same or similar offense will be dealt with more severely.

**SO ORDERED.**

Quisumbing, (Chairman), Carpio, Carpio-Morales, and Velasco, Jr., JJ., concur.

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[1] Penned by Judge Ernesto Gabor Malferrari of the Cagayan de Oro MTCC, Branch 5.

[2] Four months and one day to six months.

[3] Complainants were sentenced to the penalty of Arresto Mayor (Four Months and One Day to Six Months) and a fine not less than P30,000.00. Rollo, p. 46.

[4] On the civil aspect of the case, complainants were ordered to pay the private complainant P30,000.00 by way of moral damages, P10,000.00 in exemplary damages, P20,000.00 for attorney's fees, and P6,000.00 by way of litigation expenses, all of which are to earn 6% per annum from date of judgment. Id. at 46.

[5] Rule 40, Section 2.

[6] Section 4, Presidential Decree No. 968, as amended, Grant of Probation. - Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant and upon application by said defendant within the period for perfecting an appeal ... place the defendant on probation.

[7]Rollo, Folder I, p. 4.

[8] See Id. at 169.

[9] Id. at 15.

[10] Id. at 15.

[11] Citing Francisco v. Court of Appeals, 243 SCRA 384, (1996).

[12] Rollo, Folder I, p. 9.

[13] See Id. at 2.

[14]Id. at 19.

[15] Rollo, Folder I, p. 20.

[16] Id. at 29.

[17]Id. at 31.

[18]Id. at 38.

[19] Id. at 60. Notably, however, the cause of death indicated in the Certificate of Death is cardiac arrest; id. at p. 72.


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[20] Id. at 38.

[21] Through a Resolution dated 15 November 1999; id. at 80.

[22] Report and Recommendation of IBP Commissioner Wilfredo E.J.E. Reyes, p. 12.

[23] Id.

[24] Section 12 x x x

(b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the record of the case, shall forthwith be terminated to the Supreme Court for final action.

[25] Canon 18, Code of Professional Responsibility.

[26] Rule 18.02, Code of Professional Responsibility.

[27] Rule 18.03, Code of Professional Responsibility.

[28] Rollo, Folder I, pp. 11 and 12.

[29] Regardless, too, of whether he accepts it for free or for a fee. See, Santiago et al, v. Fojas, A.C. No. 4103, 7 September 1995, 248 SCRA 68, 75-76.

[30]See Alvero v. De la Rosa, 76 Phil, 428, 435 (1946).

[31] Adaza v. Barinaga, A.C. No. 1604, 29 May 1981, 104 SCRA 684; Guiang v. Antonio, A.C. No. 2473, 3 February 1993, 218 SCRA 381.

[32] Rollo, Folder I p. 37; See also Rollo, Folder II, p. 31.

[33] Ruben E. Agpalo, Comments on the Code of Professional Responsibility and the Code of Judicial Conduct, c. 2001, p. 206, citing Baker v. Humphrey, 101 US 494, 25 L ed 1065 (1979).

[34] Fernandez v. Tan Tiong Tick, G.R. No. L-15877, 28 April 1961, 1 SCRA 1138, 1144.

[35] ABA, Code of Professional Conduct, p. 8, as cited in Legal and Judicial Ethics, Ernesto Pineda, c. 1995, p. 200.

[36]Ruben E. Agpalo, Comments on the Code of Professional Responsibility and the Code of Judicial Conduct, c. 2001, p. 192.

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