



Republic of the Philippines
Supreme Court
Baguio City

Wilfredo V. Ligtan
WILFREDO V. LIGHTAN
Division Clerk of Court
Third Division

JUN 16 2016

THIRD DIVISION

RENE B. HERMANO,

Complainant,

A.C. No. 7447

Present:

VELASCO, JR., J.,
Chairperson,

PERALTA,

PEREZ,

REYES, and

JARDELEZA, JJ.

- versus -

Promulgated:

ATTY. IGMEDIO S. PRADO, JR.,

Respondent.

April 18, 2016

Wilfredo V. Ligtan

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DECISION

REYES, J.:

This is an administrative complaint¹ filed by Rene B. Hermano (complainant) against Atty. Igmedio S. Prado, Jr. (respondent) for violating the Code of Professional Responsibility (CPR).

The Facts

The complainant engaged the services of the respondent as his defense counsel in Criminal Case Nos. 97-493 and 97-494, both for Homicide, for the death of Bonifacio Arante, Jr. and Dante Aguacito, respectively, on December 18, 1996, while he was in the performance of his duty as a police officer. On February 5, 1998, he was arraigned and pleaded not guilty of both charges before the Regional Trial Court (RTC) of Barotac Viejo, Iloilo, Branch 66. Thereafter, the two cases were jointly heard.²

¹ *Rollo*, pp. 1-7.

² *Id.* at 1.

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In 2003, after the presentation of evidence, the RTC ordered the parties to submit their respective memoranda. The respondent then charged the complainant the amount of Ten Thousand Pesos (₱10,000.00) for the preparation and filing of the memorandum, which the latter promptly paid.³

On April 5, 2005, the RTC promulgated its Decision⁴ in Criminal Case Nos. 97-493 and 97-494, finding the complainant guilty of both charges. On the same day, the complainant found out that the respondent did not file the required memorandum despite receipt of the full payment for its preparation and filing.⁵

Thereafter, the complainant conferred with the respondent and he was told that there is a good chance that the decision of the RTC will be reversed by the Court of Appeals (CA) on appeal. For the preparation of the appellant's brief, the respondent asked the complainant the amount of Fifteen Thousand Pesos (₱15,000.00), way ahead of the notice from the CA to file the same.⁶

Subsequently, the complainant received a notice dated August 8, 2005 from the CA, pertaining to CA-G.R. CEB-CR No. 00206, entitled "*People of the Philippines v. SPO1 Rene Hermanno*," requiring the filing of appellant's brief within 30 days from receipt thereof. He thus visited the respondent in his office to secure a copy of the appellant's brief but was informed by the respondent's secretary that he had filed a motion for an extension of time to file the said pleading.⁷

On October 13, 2005, barely two days before the lapse of the period to comply with the order of the CA, the complainant went to Iloilo City to confer with the respondent and to follow up on his request for a copy of the appellant's brief. The complainant was informed, however, by the respondent's secretary that she did not know the whereabouts of the respondent and had no idea whether the appellant's brief for the case had already been filed. The complainant tried calling the respondent through his cellular phone but he could not be reached.⁸

³ Id. at 2.

⁴ Rendered by Judge Rogelio J. Amador; id. at 8-25.

⁵ Id. at 2.

⁶ Id.

⁷ Id. at 2-3.

⁸ Id. at 3.

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On the following day, the complainant went back to Iloilo City to see if he could finally meet the respondent but to no avail. Aware that he only had two days left to submit the appellant's brief, he went around the city to look for a lawyer who would draft his appellant's brief so that it can be filed on time. However, no lawyer would accept his case. Fortunately, one lawyer referred him to Atty. Cornelio Panes (Atty. Panes). He went to the office of Atty. Panes and relayed to him his predicament. At first, Atty. Panes was hesitant to accept his case because of the short period of time remaining to file the appellant's brief and because the respondent was his good friend. Atty. Panes tried contacting the respondent but he still could not be reached. Ultimately, upon his persistent pleas, the complainant managed to convince Atty. Panes to prepare the appellant's brief for him.⁹

Eventually, Atty. Panes was able to finish the appellant's brief¹⁰ and filed it within the reglementary period. He also gave a copy of the said pleading to the complainant whom he allowed to pay his professional fees of Ten Thousand Pesos (P10,000.00) by installment.¹¹

Sometime thereafter, the complainant learned that the Office of the Solicitor General (OSG) had filed a motion to dismiss his appeal¹² before the CA. He only learned of the existence of the said motion in a spontaneous visit to the respondent's office on February 2, 2006. With the respondent still out of reach, the complainant contacted Atty. Panes and informed him about the motion. Atty. Panes thereafter filed a Comment¹³ thereto and attached the necessary documents. The CA denied the OSG's motion to dismiss and gave due course to the appeal in Resolution¹⁴ dated April 21, 2006.¹⁵

On November 8, 2006, the complainant received a call from Atty. Panes, informing him that the CA had rendered a Decision¹⁶ dated October 26, 2006, setting aside the appealed decision of the RTC and acquitting him of the two (2) counts of homicide filed against him.¹⁷

⁹ Id.

¹⁰ Id. at 27-50.

¹¹ Id. at 4.

¹² Id. at 52-57.

¹³ Id. at 58-61.

¹⁴ Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Isaias P. Dicdican and Apolinario D. Bruselas, Jr. concurring; id. at 63.

¹⁵ Id. at 5.

¹⁶ Penned by Associate Justice Agustin S. Dizon, with Associate Justices Pampio A. Abarintos and Priscilla Baltazar-Padilla concurring; id. at 66-81.

¹⁷ Id. at 6.

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On February 23, 2007, the complainant filed the present administrative complaint against the respondent for failing to live up to his responsibilities as counsel under the CPR. He asseverates that due to the respondent's negligence, he almost lost his appeal and could have been sent to prison had he not sought the help of Atty. Panes, who promptly prepared and filed his appellant's brief. He likewise laments the fact that the respondent collected professional fees from him but failed to file the necessary pleadings required by the court.

In his Comment,¹⁸ the respondent denied neglecting the complainant's case and claimed that he had consistently informed him of the status of the case. He alleged that when he informed the complainant about the extension of time to file his appeal, the latter told him that he had already found a new lawyer to represent him. He added that he even sent the complainant a text message regarding the OSG's filing of a motion to dismiss his appeal with the CA.

Subsequently, the Court referred the instant administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.¹⁹

In the Report and Recommendation²⁰ dated August 27, 2008, the Investigating Commissioner recommended that the respondent be suspended for a period of three (3) months and be ordered to return the fees he collected for services that he failed to perform.²¹

On September 20, 2008, the IBP Board of Governors (the Board) issued Resolution No. XVIII-2008-483,²² disposing thus:

RESOLVED to ADOPT and APPPROVE, 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 as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's failure to inform complainant about the status of his case, Atty. Igmedio S. Prado, Jr. is hereby **SUSPENDED** from the practice of law for three (3) months and **Ordered to Return** to complainant the amount of Twenty Five Thousand (P25,000.00) Pesos representing the fees for legal services that were not performed.²³

¹⁸ Id. at 88-93.

¹⁹ Court's Resolution dated August 13, 2007; id. at 102.

²⁰ Id. at 113-119.

²¹ Id. at 119.

²² Id. at 112.

²³ Id.

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Aggrieved, the respondent filed a motion for reconsideration of the foregoing resolution.²⁴ Then, on June 26, 2011, the Board denied the motion in its Resolution No. XIX-2011-456,²⁵ which held:

RESOLVED to unanimously DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings of the Board and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, for lack of substantial ground or reason to disturb it, the Board of Governor's *Resolution No. XVIII-2008-483 dated September 20, 2008* is hereby **AFFIRMED**.²⁶

Ruling of the Court

The Court sustains the findings and recommendation of the IBP with modification.

The CPR provides:

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.

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Rule 18.02 - A lawyer shall not handle any legal matter without adequate preparation.

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 bears stressing that from the time a lawyer accepts a case, he binds himself to serve and protect his client's interest to the best of his ability. He undertakes to exert all legal efforts to pursue the cause of his client and help him exhaust all available remedies.

²⁴ Id. at 120-124.

²⁵ Id. at 160.

²⁶ Id.

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In *Belleza v. Atty. Macasa*,²⁷ the Court emphasized:

A lawyer who accepts professional employment from a client undertakes to serve his client with competence and diligence. 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.²⁸ (Citations omitted)

Upon engagement of his services, it is incumbent upon a lawyer to thoroughly study the circumstances of the case in order to determine the most suitable course of action or defense for his client. He must survey the facts and the parties involved so that he may be able to trace the source of his client's predicament and devise a legal strategy in order to resolve the same. He must take appropriate action out of his investigation and prepare the necessary pleading in court and file it on time. In performing his responsibilities, he must be mindful of the prescriptive period in taking an action because failing to do so could lose the client his case.

In the instant case, the respondent failed to discharge his duties as counsel. He failed to prepare and file a memorandum on the complainant's behalf despite the RTC's order to do so. The memorandum could have been a helpful medium for the complainant to establish his claim of self-defense in the criminal cases charged against him. However, due to the respondent's negligence, the complainant lost the opportunity and was convicted of the charges. This was notwithstanding the fact that the complainant paid him the amount of ₱10,000.00 to prepare the said memorandum.

The respondent's negligence did not end here. He had the temerity to insinuate to the complainant that there is a good chance that the decision of the RTC will be overturned by the CA should they appeal the case. Out of desperation of his plight, the complainant readily acquiesced and willingly paid out the amount of ₱15,000.00, which the respondent required as his professional fees. Barely two days before the lapse of the period of filing the appellant's brief, however, the respondent was nowhere to be found and did not even bother to communicate with the complainant to inform him of the status of his case.

²⁷ 611 Phil. 179 (2009).

²⁸ Id. at 188.

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In *The Heirs of Ballesteros, Sr. v. Atty. Apiag*,²⁹ the Court stated:

The Court has repeatedly stressed that the lawyer-client relationship is highly fiduciary. There is always a need for the client to receive from the lawyer periodic and full updates on developments affecting the case. The lawyer should apprise the client on the mode and manner that the lawyer is utilizing to defend his client's interests.³⁰ (Citations omitted)

Due to the respondent's negligence, the complainant was constrained to immediately scout for a new lawyer who can prepare and file the appellant's brief for his case. With the short period of time before the lapse of the period to file the appellant's brief, the complainant had a tough time looking for a lawyer who will salvage him from his quandary. The complainant's concern was not baseless as the respondent had previously reneged on his responsibility as counsel when he failed to file the memorandum required by the RTC. Luckily for the complainant, he was able to engage the services of Atty. Panes despite the latter's initial hesitation because of the work entailed in the drafting of the appellant's brief and the little time remaining to prepare and file the same.

The seriousness of the respondent's negligence cannot be overemphasized. Under the Rules of Court, the failure to file the appellant's brief within the reglementary period may warrant the dismissal of an appeal.³¹ The respondent's laxity could have cost the complainant his liberty, and his family, a source of living. It could have amounted to some agonizing years in prison for the complainant for doing something that is justified under the law. The respondent's negligence is gross and inexcusable. It is exactly the opposite of what is required of him as an officer of the court.

In *Vda. de Enriquez v. Atty. San Jose*,³² the Court emphasized, thus:

[W]hen a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting the latter's rights. Failure to exercise that degree of vigilance and attention expected of a good father of a family makes the lawyer unworthy of the trust reposed in him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society. Until the lawyer's withdrawal is properly done, the lawyer is expected to do his or her best for the interest of the client.³³

²⁹ 508 Phil. 113 (2005).

³⁰ Id. at 126.

³¹ RULES OF COURT, Rule 50, Section 1(e).

³² 545 Phil. 379 (2007).

³³ Id. at 383-384.

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Moreover, in *Fernandez v. Atty. Cabrera II*,³⁴ the Court reiterated that:

The failure to exercise that degree of vigilance and attention expected of an Officer of the Court makes such lawyer unworthy of the trust reposed in him by his clients and makes him answerable not just to his client but also to the legal profession, the courts, and the society. x x x.³⁵

The Court also notes that the respondent's failure to return the money given to him by the complainant despite non-performance of the agreed legal services is in violation of Canon 16³⁶ of the CPR. In *Meneses v. Atty. Macalino*,³⁷ the Court underscored, thus:

The Code mandates that every "lawyer shall hold in trust all moneys and properties of his client that may come into his possession." The Code further states that "[a] lawyer shall account for all money or property collected or received for or from the client." Furthermore, "[a] lawyer shall deliver the funds and property of his client when due and upon demand."

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Consequently, if the lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client.³⁸ (Citations omitted)

For his supposed professional fees, the respondent charged the complainant the amount of ₱10,000.00 for the preparation and filing of memorandum with the RTC. Subsequently, he asked the complainant the amount of ₱15,000.00 to handle his appeal with the CA, particularly to prepare his appellant's brief. The respondent, however, failed to render the legal services he undertook to perform. More lamentably, he did not even have the decency to return the money to the complainant despite the dismal manner by which he handled his case. His failure to account for the money he received or to return the same to the complainant is indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainant warrants the imposition of disciplinary action.³⁹

³⁴ 463 Phil. 352 (2003).

³⁵ Id. at 357.

³⁶ Canon 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his profession.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

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³⁷ 518 Phil. 378 (2006).

³⁸ Id. at 385.

³⁹ Id. at 386.

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Indisputably, the respondent miserably failed to live up to the standards of competence, diligence and integrity expected of him. It bears remembering that “[l]awyers are expected to always live up to the standards embodied in the [CPR] because an attorney-client relationship is highly fiduciary in nature and demands utmost fidelity and good faith. Those who violate the [CPR] must be disciplined.”⁴⁰

Considering the seriousness of his negligence, the Court finds that the recommended penalty of three (3) months of suspension from the practice of law is too light for the violations committed by the respondent. In *Talento, et al. v. Atty. Paneda*,⁴¹ the Court imposed a penalty of one (1) year of suspension from the practice of law for therein respondent’s failure to file the appeal brief for his client and for failure to return the money paid for legal services that were not performed. On the other hand, in *Atty. San Jose*,⁴² therein respondent’s negligence in handling his client’s cause merited a suspension of six (6) months from the practice of law. Likewise, in *Spouses Rabanal v. Atty. Tugade*,⁴³ therein respondent’s failure to file the appellant’s brief meted out a penalty of suspension for six (6) months. There were even cases when the penalty imposed was two (2) years of suspension from the practice of law.⁴⁴ It is clear therefore that in the previous rulings of this Court, those found guilty of the same or similar acts were suspended for not less than six (6) months from the practice of law.

Accordingly, the Court modifies the respondent’s penalty to six (6) months of suspension from the practice of law.

WHEREFORE, the Court finds respondent Atty. Igmedio S. Prado, Jr. **GUILTY** of violation of Canon 16, Rule 16.01, Canons 17 and 18, Rules 18.02, 18.03 and 18.04 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for six (6) months effective upon finality of this Decision and **ORDERS** him to return the amount of ₱25,000.00 to complainant Rene B. Hermano for legal services he failed to render within thirty (30) days from receipt of this Decision. He is further **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Igmedio S. Prado, Jr. as an attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

⁴⁰ *Villanueva v. Atty. Gonzales*, 568 Phil. 379, 389 (2008).

⁴¹ 623 Phil. 662 (2009).


⁴² *Supra* note 32.

⁴³ 432 Phil. 1064 (2002).

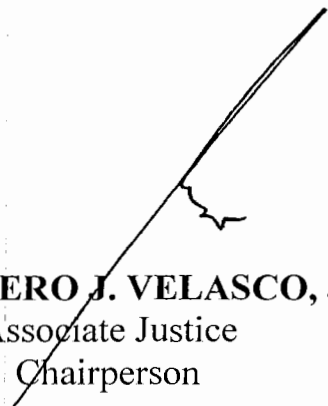
⁴⁴ *Villanueva v. Atty. Gonzales*, *supra* note 40; *Small v. Atty. Banares*, 545 Phil. 226 (2007).

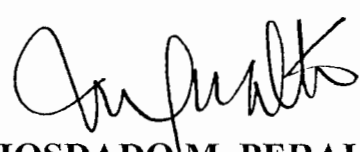
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SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

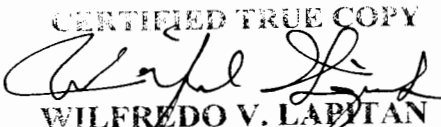
WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

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