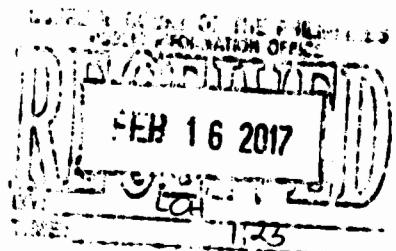




Republic of the Philippines
Supreme Court
Manila



FIRST DIVISION

HEIRS OF SIXTO L. TAN, SR., A.C. No. 5819
represented by **RECTO A. TAN,**
Complainants,

Present:

SERENO, CJ, Chairperson,
LEONARDO-DE CASTRO,
DEL CASTILLO,
PERLAS-BERNABE, and
CAGUIOA, JJ.

- versus -

ATTY. NESTOR B. BELTRAN,
Respondent.

FEB 01 2017

x ----- x

R E S O L U T I O N

SERENO, CJ:

Before this Court is an administrative complaint against respondent, Atty. Nestor B. Beltran. His derelictions allegedly consisted of his belated filing of an appeal in a criminal case and failure to relay a court directive for the payment of docket fees in a civil case to his clients – complainants Heirs of Sixto L. Tan, Sr. represented by Recto A. Tan. The latter also accused him of unduly receiving ₱200,000 as payment for legal services.

FACTS OF THE CASE

After agreeing to pay attorney's fees of ₱200,000, complainants engaged the services of respondent counsel for the filing of cases to recover their commercial properties valued at approximately ₱30 million.

On July 2001, complainants filed a criminal action for falsification of public documents and use of falsified documents against Spouses Melanio and Nancy Fernando and Sixto Tan, Jr. Docketed as I.S. No. 2001-037,¹ this case was dismissed by the provincial prosecutor of Albay.

¹ Rollo, pp. 1, 3.

Respondent was notified of the order of dismissal on 18 October 2001.² On 6 November 2001, he filed an appeal via a Petition for Review before the Secretary of the Department of Justice (SOJ). It was, however, filed beyond the 15-day reglementary period to perfect an appeal.³ Consequently, in his Resolution promulgated on 5 March 2002,⁴ the SOJ dismissed the belated Petition for Review. Respondent no longer filed a motion for reconsideration to remedy the ruling.

On 11 September 2001, complainants instituted a related civil suit to annul the sale of their commercial properties before the Regional Trial Court (RTC) of Naga City, docketed as Civil Case No. 2001-0329.⁵ After being given ₱7,000 by his clients, respondent tasked his secretary to pay the docket fees computed at ₱1,722.

Unfortunately, the Clerk of Court erred in the assessment of the docket fees. To correct the error, the RTC required the payment of additional docket fees through an Order dated 20 May 2002,⁶ which respondent received on 29 May 2002.⁷ However, two weeks earlier, on 13 May 2002, he had moved to withdraw as counsel with the conformity of his clients.⁸ No separate copy of the Order dated 20 May 2002 was sent to any of the complainants.⁹

The balance of the docket fees remained unpaid. Subsequently, the RTC dismissed the civil case, citing the nonpayment of docket fees as one of its bases.¹⁰

Aggrieved by their defeat, complainants wrote this Court a letter-complaint¹¹ asking that disciplinary actions be meted out to respondent. They likewise contended that he had unduly received ₱200,000 as attorney's fees, despite his failure to render effective legal services for them.

Respondent claimed¹² that he could no longer move for the reconsideration of the SOJ's dismissal of his belated Petition for Review as he had only learned of the dismissal after the period to file a motion for reconsideration had lapsed. He argued that while he prepared the Petition for Review, his clients themselves, through Nilo Tan and Recto Tan, signed and

² Id. at 4.

³ Id.

⁴ Id. at 3-4.

⁵ Id. at 101-107.

⁶ Id. at 137-141; the RTC Order dated 20 May 2002 was penned by Judge Novelita Villegas-Llaguno, Branch 22, Naga City.

⁷ Id. at 152; RTC Order dated 20 June 2002, p. 2.

⁸ Id. at 248; Motion to Withdraw as Counsel for Plaintiffs dated 13 May 2002.

⁹ Id. at 141; RTC Order dated 20 May 2002, p. 5.

¹⁰ Id.

¹¹ Id. at 1-2, 16-20, 87-100; letter filed on 23 August 2002, Reply to Comment filed on 29 January 2003, Memorandum filed on 16 July 2003.

¹² Id. at 7-16, 56-60, 160-172, 255-263; Comment filed on 7 January 2003, Rejoinder to Reply to Comment with Notice of Change of Address filed on 5 March 2003, Memorandum for the Respondent filed on 4 August 2003, Comment on the Memorandum for the Complainant filed on 18 August 2003.



filed the same. Thus, he imputed to complainants the belated filing of the appeal.

As for the dismissal of the civil action for nonpayment of docket fees, respondent disclaimed any fault on his part, since he had already withdrawn as counsel in that case.

Anent his receipt of ₱200,000 as attorney's fees, respondent denied collecting that amount. He only admitted that he had received ₱30,000 to cover expenses for "the preparation of the complaints, docket fee, affidavits, and other papers needed for the filing of the said cases."¹³ He did not deny his receipt of ₱7,000 for fees and other sundry expenses, of which ₱1,722 had already been paid to the Clerk of Court for docket fees. In any event, Atty. Beltran argued that ₱200,000 as attorney's fees was inadequate, considering that the property under dispute was worth ₱30 million.

FINDINGS OF THE IBP

In a Resolution dated 12 March 2003,¹⁴ this Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

The Investigating Commissioner of the IBP, in a Report dated 24 July 2006,¹⁵ found respondent guilty of neglect in handling the criminal case and recommended his suspension from the practice of law for three months. The gist of the report reads:¹⁶

The Respondent admits that the Petition for Review in this case was not filed. This key detail leads the Commissioner to conclude that **the Respondent was negligent in failing to seasonably file the Petition for Review in I.S. No. 2001-037.**

The Respondent's bare defense is that he allegedly left the filing of this petition to the Complainants, who filed it out of time. Even assuming this is true, the Respondent cannot disclaim negligence, being the lawyer and knowing that the case related to the Complainants' claims on properties the Respondent himself states are worth about PHP30 million. x x x.

Some of the Respondent's pleadings instead focus to the Motion for Reconsideration regarding the late Petition for Review's dismissal, which the Respondent explains by stating that the Complainants informed him of this when the period to file a Motion for Reconsideration had already lapsed. Even assuming this is true, it is irrelevant since it is clear that the Petition for Review itself was not seasonably filed. x x x. (Emphasis in the original)

¹³ Id. at 9; Comment filed on 7 January 2003, p. 3.

¹⁴ Id. at 27.

¹⁵ Id. at 311-326.

¹⁶ Id. at 320-321.

With respect to dismissal of the civil case, the Investigating Commissioner cleared respondent of any liability. The former gave credence to the fact that by the time respondent received the directive of the RTC requiring the payment of the balance of the docket fees, the latter had already filed his withdrawal from the case.

Finally, as regards the factual claim of complainants that they paid respondent attorney's fees amounting to ₱200,000, the Investigating Commissioner determined that their allegation was unfounded, as none of them produced receipts evidencing payment. At most, what the Investigating Commissioner found was that respondent only admitted to receiving ₱30,000 for expenses, aside from ₱5,278.¹⁷ The former recommended that respondent be ordered to restitution these sums to complainants.

In its Resolution dated 1 February 2007,¹⁸ the Board of Governors of the IBP resolved to fully dismiss the administrative case against respondent without any explanation. Neither party has filed a motion for reconsideration or petition for review thereafter.¹⁹

ISSUES OF THE CASE

- I. Whether respondent neglected legal matters entrusted to him when he belatedly filed an appeal before the SOJ, resulting in the dismissal of I.S. No. 2001-037
- II. Whether respondent is guilty of violation of the Code of Professional Responsibility and other ethical standards for failing to inform complainants of the RTC Order to pay the balance of the docket fees in Civil Case No. 2001-0329
- III. Whether respondent unduly received ₱200,000 as attorney's fees

RULING OF THE COURT

We set aside the unsubstantiated recommendation of the IBP Board of Governors. Its resolutions are only recommendatory and always subject to this Court's review.²⁰

***Respondent filed a belated appeal
before the SOJ.***

¹⁷ This amount represented the balance between the ₱7,000 he received from complainants for the payment of docket fees and the ₱1,722 he actually paid as docket fees to the Clerk of Court.

¹⁸ *Rollo*, p. 310.

¹⁹ Id. at 331; Report for Agenda of the Office of the Bar Confidant dated 10 August 2015.

²⁰ *Spouses Williams v. Enriquez*, A.C. No. 7329, 27 November 2013, 710 SCRA 620, 629.



In *Reontoy v. Ibadlit*,²¹ we ruled that failure of the counsel to appeal within the prescribed period constitutes negligence and malpractice. The Court elucidated that per Rule 18.03, Canon 18 of the Code of Professional Responsibility, “a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.”

In the case at bar, respondent similarly admits that he failed to timely file the Petition for Review before the SOJ. As a result of his delayed action, his clients lost the criminal case. Straightforwardly, this Court sanctions him for belatedly filing an appeal.

The excuse forwarded by respondent – that he delegated the filing of the Petition for Review to complainants – will not exculpate him from administrative liability. As correctly explained by the Investigating Commissioner of the IBP, respondent cannot disclaim negligence, since he was the lawyer tasked to pursue the legal remedies available to his clients.

Lawyers are expected to be acquainted with the rudiments of law and legal procedure. A client who deals with counsel has the right to expect not just a good amount of professional learning and competence, but also a wholehearted fealty to the client’s cause.²² Thus, we find that passing the blame to persons not trained in remedial law is not just wrong; it is reflective of the want of care on the part of lawyers handling the legal matters entrusted to them by their clients.²³

After surveying related jurisprudence,²⁴ the Investigating Commissioner recommended the suspension of respondent from the practice of law for three months given his infraction of filing a belated appeal before the SOJ. Yet, without explanation, the Board of Governors resolved to ignore the recommendation of the Investigating Commissioner.

Accordingly, this Court will not adopt an unsubstantiated resolution of the Board of Governors, especially when jurisprudence shows that we have penalized lawyers for filing belated motions and pleadings. In the resolution of this Court in *Reontoy*,²⁵ we suspended the counsel therein from the practice of law for two months, given that his belated filing of an appeal caused his client to lose the case. In *Fernandez v. Novero, Jr.*,²⁶ we likewise suspended the respondent counsel for a month after he filed a motion for reconsideration outside the reglementary period. In *Barbuco v. Beltran*,²⁷ this Court imposed a six-month suspension on the lawyer, who had belatedly filed a pleading, among other derelictions. We stressed in that case that the

²¹ 349 Phil. 1 (1998).

²² *Fernandez v. Novero, Jr.*, 441 Phil. 506 (2002).

²³ See *Macarilay v. Seriña*, 497 Phil. 348 (2005).

²⁴ *Francisco v. Portugal*, 519 Phil. 547 (2006); *Heirs of Ballesteros, Sr. v. Apiag*, 508 Phil. 113 (2005); *Dizon v. Laurente*, 507 Phil. 572 (2005); *Ferrer v. Tebelin*, 500 Phil. 1 (2005); and *Consolidated Farms Inc. v. Alpon, Jr.*, 493 Phil. 16 (2005).

²⁵ 362 Phil. 219 (1999).

²⁶ Supra note 22.

²⁷ 479 Phil. 692 (2004).

failure to file a brief within the reglementary period certainly constituted inexcusable negligence, more so if the delay of 43 days resulted in the dismissal of the appeal.

Respondent failed to inform complainants of the RTC Order requiring the payment of full docket fees.

Respondent argues that he was no longer bound to inform complainants of the RTC Order requiring the payment of full docket fees, given that he had already moved to withdraw as counsel with the conformity of the latter. We find that argument unjustified.

*Mercado v. Commission on Higher Education*²⁸ is instructive on the effect of the withdrawal of counsel with the conformity of the client:

As a rule, the withdrawal of a counsel from a case made *with* the written conformity of the client takes effect once the same is filed with the court. The leading case of *Arambulo v. Court of Appeals* laid out the rule that, in general, such kind of a withdrawal does not require any further action or approval from the court in order to be effective. In contrast, the norm with respect to withdrawals of counsels *without* the written conformity of the client is that they only take effect after their approval by the court.

The rule that the withdrawal of a counsel *with* the written conformity of the client is immediately effective once filed in court, however, is **not** absolute. *When the counsel's impending withdrawal with the written conformity of the client would leave the latter with no legal representation in the case*, it is an accepted practice for courts to **order the deferment of the effectiveness** of such withdrawal until such time that it becomes certain that service of court processes and other papers to the party-client would not thereby be compromised — either by the due substitution of the withdrawing counsel in the case or by the express assurance of the party-client that he now undertakes to himself receive serviceable processes and other papers. Adoption by courts of such a practice in that particular context, while neither mandatory nor sanctioned by a specific provision of the Rules of Court, is nevertheless justified as part of their inherent power to see to it that the potency of judicial processes and judgment are preserved. (Emphasis in the original)

On 29 May 2002, when respondent herein received the RTC Order dated 20 May 2002, complainants still had no new counsel on record. Therefore, Atty. Beltran should have acted with prudence by informing his previous clients that he had received the directive of the court requiring the payment of docket fees. After all, lawyers are officers of the court. Like the court itself, respondent is an instrument for advancing the ends of justice and

²⁸ 699 Phil. 419 (2012).



his cooperation with the court is due whenever justice may be imperiled if cooperation is withheld.²⁹

The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.³⁰ In this case, we consider the fact that not only did respondent file a belated appeal before the SOJ, but he also failed to act with prudence by failing to inform complainants of the RTC Order dated 20 May 2002.

However, we cannot put the blame solely on Atty. Beltran for the nonpayment of the docket fees in the civil case. Although not discussed by the Investigating Commissioner, the records reveal that even if complainants' new counsel learned about the ruling on 30 May 2002, the former still failed to pay the additional docket fees.³¹

Taking into consideration the attendant circumstances herein vis-à-vis the aforementioned administrative cases decided by this Court, we deem it proper to impose on Atty. Beltran a two-month suspension from the practice of law for belatedly filing an appeal before the SOJ. We also admonish him to exercise greater care and diligence in the performance of his duty to administer justice.

Complainants failed to prove that respondent received ₱200,000 as attorney's fees.

In administrative cases against lawyers, the quantum of proof required is preponderance of evidence.³² Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.³³

Complainants have the burden to discharge that required quantum of proof.³⁴ Here, as accurately assessed by the Investigating Commissioner, the records do not bear any receipt proving Atty. Beltran's collection of ₱200,000 as attorney's fees.

Complainants venture to argue that these sums were paid to respondent without receipts. However, that bare argument has no other supporting evidence – object, documentary, or testimonial. Even during the hearing of this case before the IBP, when confronted with particular

²⁹ *In re: Cunanan*, 94 Phil. 534 (1954) citing the *Opinion of the Justices to the Senate Supreme Judicial Courts of Massachusetts*, 180 N.E. 725, 727 (1932).

³⁰ *Tiburdo v. Puno*, A.C. No. 10677, 18 April 2016.

³¹ *Rollo*, pp. 152-153; RTC Order dated 20 June 2002, pp. 2-3.

³² *Sultan v. Macabanding*, A.C. No. 7919, 8 October 2014, 737 SCRA 530.

³³ *De Jesus v. Risos-Vidal*, 730 Phil. 47 (2014).

³⁴ *Bucad v. Frias*, A.C. No. 11068, 6 April 2016.

questions regarding the sums paid to respondent, complainants could not answer when and where they gave installment payments to Atty. Beltran.³⁵

General allegations will not meet the evidentiary standard of preponderance of evidence.³⁶ Hence, we adopt the factual finding of the Investigating Commissioner that complainants failed to prove their claim of payment to respondent of ₱200,000 as attorney's fees.

As a final point, the Court must clarify that the resolution of this case should not include a directive for the return of the ₱35,278 as the Investigating Commissioner recommended.

The Investigating Commissioner did not explain the recommendation for the restitution of that sum. Moreover, complainants do not contest that respondent received this sum for fees and other sundry expenses. Neither do the records show that they demanded the return of this amount from respondent. In consideration of these facts, the proper corrective action is to order the accounting of the full sum of ₱35,278.

WHEREFORE, in view of the foregoing, respondent Atty. Nestor B. Beltran is **SUSPENDED FOR TWO MONTHS** from the practice of law with a warning that a repetition of the same or similar acts shall be dealt with more severely. He is **ADMONISHED** to exercise greater care and diligence in the performance of his duties. He is also **ORDERED TO ACCOUNT** for the ₱35,278 he received from his clients, with the obligation to return the entire amount, or so much thereof remaining, to complainants.

This Decision shall take effect immediately upon receipt by Atty. Nestor B. Beltran of a copy of this Decision. He shall inform this Court and the Office of the Bar Confidant in writing of the date he received a copy of this Decision. Copies of this Decision shall be furnished the Office of the Bar Confidant, to be appended to respondent's personal record, and the Integrated Bar of the Philippines. The Office of the Court Administrator is directed to circulate copies of this Decision to all courts concerned.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

³⁵ *Rollo*, pp. 285-288; TSN, 26 June 2003, pp. 20-23.

³⁶ See *Union Motor Corp. v. Court of Appeals*, 414 Phil. 33 (2001).

WE CONCUR:

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

Mariano Castillo
MARIANO C. DEL CASTILLO
Associate Justice *Estela M. Perlas-Bernabe*
ESTELA M. PERLAS-BERNABE
Associate Justice

Alfredo Benjamin S. Caguioa
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice