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Third Division

SEP 06 2017



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

JOCELYN IGNACIO,
Complainant,

A.C. No. 11482

Present:

- versus -

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
JARDELEZA,
TIJAM, and
REYES, JR., JJ.

ATTY. DANIEL T. ALVIAR,
Respondent.

Promulgated:
July 17, 2017

Wilfredo V. Lapid

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DECISION

TIJAM, J.:

This is an administrative case filed by complainant Jocelyn Ignacio against respondent Atty. Daniel T. Alviar for violation of Canon 1¹, Rule 1.01² of the Code of Professional Responsibility (CPR) for his alleged refusal to refund the amount of acceptance fees; Canon 12³, Rule 12.04⁴ and Canon 18⁵, Rule 18.03⁶ for his alleged failure to appear in the criminal case he is handling and to file any pleading therein.

¹CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

²Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

³CANON 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

⁴Rule 12.04 - A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

⁵CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

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The Facts

In March 2014, respondent was referred to complainant for purposes of handling the case of complainant's son who was then apprehended and detained by the Philippine Drug Enforcement Agency (PDEA) in Quezon City. Respondent agreed to represent complainant's son for a stipulated acceptance fee of PhP100,000. Respondent further represented that he could refer the matter to the Commission on Human Rights to investigate the alleged illegal arrest made on complainant's son.⁷

After the initial payments of PhP20,000 and PhP30,000 were given to respondent, the latter visited complainant's son at the PDEA detention cell.⁸ There, respondent conferred with complainant's son for some 20 minutes. After which, respondent left.⁹

Respondent, through his secretary, secured from the Office of the Pasay City Prosecutor plain copies of the case records. Respondent also verified twice from the Hall of Justice if the case was already filed in court.¹⁰ It was at this time that respondent asked, and was paid, the remaining balance of PhP50,000. Subsequently, respondent filed his notice of appearance as counsel for complainant's son.¹¹

Sometime in April 2014, complainant informed respondent that her son's arraignment was set on April 29, 2014. Respondent, however, replied that he cannot attend said arraignment due to a previously scheduled hearing. He committed to either find a way to attend the hearing or ask another lawyer-friend to attend it for him.

On April 26, 2014, complainant wrote a letter¹² to respondent informing the latter that she had decided to seek the intercession of another lawyer owing to the fact that respondent cannot attend her son's scheduled arraignment. Complainant then requested that respondent retain a portion of the PhP100,000 to fairly remunerate respondent for the preparatory legal service he rendered. Respondent denies having received said letter.¹³

On the date of the arraignment, neither respondent nor his promised alternate, appeared. When asked, respondent replied that he forgot the date of arraignment.¹⁴

⁶Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

⁷*Rollo*, p. 24.

⁸*Id.* at 2.

⁹*Id.*

¹⁰*Supra* note 7.

¹¹*Rollo*, p. 3.

¹²*Id.* at 7.

¹³*Id.* at 26.

¹⁴*Id.* at 3.

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This incident prompted complainant to write another letter¹⁵ dated May 6, 2014 to respondent, requesting the latter to formally withdraw as counsel and emphasized that respondent's withdrawal as counsel is necessary so that she and her son can hire another lawyer to take his stead. In said letter, complainant also reiterated her request that a portion of the PhP100,000 be remitted to them after respondent deducts his professional fees commensurate to the preparatory legal service he rendered.¹⁶

When respondent failed to take heed, complainant filed on June 16, 2014, the instant administrative complaint before the Commission on Bar Discipline, Integrated Bar of the Philippines.

At the proceedings therein, respondent failed to attend the initial mandatory conferences and to file his responsive pleading, citing as reason therefor the persistent threats to his life allegedly caused by a former client.¹⁷ Upon finally submitting his Answer¹⁸, respondent denied having neglected his duties to complainant's son.

Report and Recommendation of the Commission on Bar Discipline

On January 21, 2016, the Investigating Commissioner found respondent liable for negligence under Rule 18.03 of the CPR and recommended a penalty of six months suspension from the practice of law. The Investigating Commissioner observed that while respondent performed some tasks as lawyer for complainant's son, such do not command a fee of PhP100,000. It was also emphasized that respondent's failure to attend the arraignment shows the latter's failure to handle the case with diligence.¹⁹

As such, the Investigating Commissioner disposed:

WHEREFORE, PREMISES CONSIDERED, the undersigned recommends that respondent be meted out with the penalty of suspension for six (6) months from the practice of law and ordered to restate the amount of One Hundred Thousand (Php100,000) Pesos to the complainant.

Respectfully Submitted.²⁰

¹⁵Id. at 9.

¹⁶Id.

¹⁷Id. at 20-21.

¹⁸Id. at 23-29.

¹⁹Id. at 64.

²⁰Id. at 65.

Resolution of the Board of Governors of the Integrated Bar of the Philippines

On February 25, 2016, the IBP Board of Governors passed Resolution No. XXII-2016-178²¹ lowering the recommended penalty to reprimand with stern warning, thus:

RESOLVED to ADOPT with modification the recommendation of the Investigating Commissioner reducing the penalty to REPRIMAND WITH STERN WARNING.²²

Pursuant to Rule 139-B, the records of the administrative case were transmitted by the IBP to the Court for final action. Complainant further seeks a review²³ of the Resolution No. XXII-2016-178 dated February 25, 2016.

The Issue

The threshold issue to be resolved is whether respondent is guilty of negligence in handling the case of complainant's son.

The Ruling of the Court

The Court affirms the Resolution No. XXII-2016-178 dated February 25, 2016 of the IBP Board of Governors, reducing the recommended penalty from six months to reprimand with stern warning. However, on the undisputed factual finding that respondent only performed preparatory legal services for complainant's son, he is not entitled to the entire PhP100,000 but only to fees determined on the basis of *quantum meruit*, Section 24, Rule 138, and Canon 20, Rule 20.01 of the CPR and that the remainder should be restituted to complainant.

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.²⁴ Canon 18²⁵ of the CPR mandates that once a lawyer agrees to handle a case, it is the lawyer's duty to serve the client with competence and diligence.

In *Voluntad-Ramirez v. Atty. Bautista*²⁶, the Court citing *Santiago v. Fojas*²⁷ expounds:

²¹Id. at 59.

²²Id.

²³Through a pleading denominated as "*Manifestation and Motion to Admit Motion for Reconsideration and Motion for Review*" dated March 27, 2017.

²⁴*Hernandez v. Atty. Padilla*, A.C. No. 9387, June 20, 2012, citing *Fernandez v. Atty. Cabrera*, 463 Phil. 352 (2003).

²⁵Supra note 5.

²⁶A.C. No. 6733, October 10, 2012.

²⁷A.C. No. 4103, September 7, 1995, 248 SCRA 68.



It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of [his] client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care and devotion. Elsewise stated, he owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of the law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.²⁸

We agree with the finding of the Investigating Commissioner that respondent failed to competently and diligently attend to the legal matter entrusted to him. It is undisputed that respondent came to see complainant's son, his client, only once for about 20 minutes and no more thereafter;²⁹ it is likewise undisputed that respondent failed to attend the scheduled arraignment despite the latter's commitment to either find a way to attend, or send a collaborating counsel to do so;³⁰ that he forgot the date of arraignment is an equally dismal excuse.

Equally revealing of respondent's negligence was his nonchalant attitude towards complainant's request for a refund of a portion of, not even the entire, PhP100,000. In his Answer before the IBP, respondent simply denied having received any of the letters sent by complainant.³¹ Respondent's claim that it was complainant who failed to talk to him and his admission that he "forgot about complainant"³² reveal his rather casual and lackadaisical treatment of the complainant and the legal matter entrusted to him.

If it were true that complainant already failed to communicate with him, the least respondent could have done was to withdraw his appearance

²⁸Id.

²⁹See respondent's *Answer*; *Rollo*, p. 25.

³⁰Id.

³¹Id. at 27.

³²Id.



as counsel. But even this measure, it appears, respondent failed to perform. His failure to take such action speaks of his negligence.

In administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions. Substantial evidence is consistently defined as relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³³ While the Court finds respondent guilty of negligence, We cannot ascribe to him any unlawful, dishonest, immoral or deceitful conduct nor causing undue delay and impediment to the execution of a judgment or misusing court processes. As such, and consistent with current jurisprudence, We find the penalty of reprimand with stern warning commensurate to his offense.³⁴

As regards the restitution of the acceptance fees, We find it necessary to first distinguish between an attorney's fee and an acceptance fee as the former depends on the nature and extent of the legal services rendered, while the other does not.

On one hand, attorney's fee is understood both in its ordinary and extraordinary concept.³⁵ In its ordinary concept, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. While, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.³⁶ In the present case, the Investigating Commissioner referred to the attorney's fee in its ordinary concept.

On the other hand, acceptance fee refers to the charge imposed by the lawyer for mere acceptance of the case. The rationale for the fee is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. The opportunity cost of mere acceptance is thus indemnified by the payment of acceptance fee. However, since acceptance fee compensates the lawyer only for lost opportunity, the same is not measured by the nature and extent of the legal services rendered.³⁷

In this case, respondent referred to the PhP100,000 as his acceptance fee while to the complainant, said amount answers for the legal services which respondent was engaged to provide. Preceding from the fact that complainant agreed to immediately pay, as she, in fact, immediately paid the sums of PhP20,000, PhP30,000 and PhP50,000, said amounts undoubtedly

³³Re: *Anonymous Complaint against Ms. Hermogena F. Bayani for Dishonesty*, A.M. No. 2007-22-SC, February 1, 2011.

³⁴See *Carino v. Atty. De Los Reyes*, A.C. No. 4982, August 9, 2001; *Cristobal v. Atty. Renta*, A.C. No. 9925, September 17, 2014,

³⁵*Traders Royal Bank Employees Union-Independent, v. NLRC*, 336 Phil. 705, 712 (1997).

³⁶*Ortiz v. San Miguel Corporation*, 582 Phil. 627, 640 (2008).

³⁷*Dalupan v. Atty. Gacott*, A.M. No. 5067, June 29, 2015.

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pertain to respondent's acceptance fee which is customarily paid by the client upon the lawyer's acceptance of the case.

Be that as it may, the Court had not shied from ordering a return of acceptance fees in cases wherein the lawyer had been negligent in the handling of his client's case. Thus, in *Carino v. Atty. De Los Reyes*,³⁸ the respondent lawyer who failed to file a complaint-affidavit before the prosecutor's office, returned the PhP10,000 acceptance fee paid to him and was admonished to be more careful in the performance of his duty to his clients. Likewise, in *Voluntad-Ramirez v. Baustista*,³⁹ the respondent lawyer was ordered to return the PhP14,000 acceptance fee because he did nothing to advance his client's cause during the six-month period that he was engaged as counsel.

This being the case, the next query to be had is how much of the acceptance fee should respondent retribute. In this regard, the principle of *quantum meruit* (as much as he deserves) may serve as a basis for determining the reasonable amount of attorney's fees. *Quantum meruit* is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without working for it.

Also, Section 24, Rule 138 should be observed in determining respondent's compensation, thus:

SEC. 24. *Compensation of attorney's; agreement as to fees.* An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

The criteria found in the Code of Professional Responsibility are also to be considered in assessing the proper amount of compensation that a lawyer should receive.⁴⁰ Canon 20, Rule 20.01 provides:

CANON 20 A LAWYER SHALL CHARGE ONLY FAIR AND REASONABLE FEES.

Rule 20.01. A lawyer shall be guided by the following factors in determining his fees:

³⁸Supra note 34.

³⁹Supra note 26.

⁴⁰*Masmud v. NLRC*, G.R. No. 183385, February 13, 2009.

- (a) The time spent and the extent of the services rendered or required;
- (b) The novelty and difficulty of the question involved;
- (c) The importance of the subject matter;
- (d) The skill demanded;
- (e) The probability of losing other employment as a result of acceptance of the proffered case;
- (f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;
- (g) The amount involved in the controversy and the benefits resulting to the client from the service;
- (h) The contingency or certainty of compensation;
- (i) The character of the employment, whether occasional or established; and
- (j) The professional standing of the lawyer.

Here, respondent only conferred once with the complainant's son for 20 minutes, filed his entry of appearance, obtained copies of the case records and inquired twice as to the status of the case. For his efforts and for the particular circumstances in this case, respondent should be allowed a reasonable compensation of PhP3,000. The remainder, or PhP97,000 should be returned to the complainant.

WHEREFORE, We find Atty. Daniel T. Alviar **LIABLE** for violation of Canon 18 and Rule 18.03 of the Code of Professional Responsibility and he is hereby **REPRIMANDED** with a stern warning that a repetition of the same or similar act would be dealt with more severely. Atty. Daniel T. Alviar is ordered to **RESTITUTE** to complainant the amount of PhP97,000 out of the Php100,000 acceptance fee.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

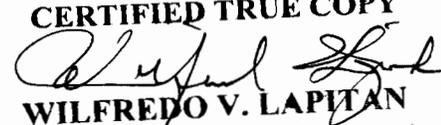
WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


LUCAS P. BERSAMIN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice


ANDRES B. REYES, JR.
Associate Justice

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