



Republic of the Philippines
Supreme Court
 Manila

EN BANC

ROBERTO P. NONATO,
 Complainant,

A.C. No. 10138
 (Formerly CBD Case No. 06-1876)

Present:

SERENO, C.J.,
 CARPIO,
 VELASCO, JR.,
 LEONARDO-DE CASTRO,
 BRION,
 PERALTA,*
 BERSAMIN,
 DEL CASTILLO,
 VILLARAMA, JR.,
 PEREZ,
 MENDOZA
 REYES,
 PERLAS-BERNABE,
 LEONEN,* and
 JARDELEZA, JJ.

- versus -

ATTY. EUTIQUIO M. FUDOLIN, JR.,
 Respondent.

Promulgated:

June 16, 2015

X-----
[Handwritten signature]

DECISION

PER CURIAM:

We resolve the administrative complaint¹ filed by Roberto P. Nonato (*complainant*) charging Atty. Eutiquio M. Fudolin, Jr. (*respondent*) with gross neglect of duty.

* On official leave.
¹ Rollo, pp. 2-8.

Factual Background

In a verified complaint dated October 18, 2006, the complainant alleged that his father, the late Restituto Nonato (*Restituto*), was the duly registered owner of a 479-sq.m. real property (*property*) at Hinigaran, Negros Occidental. The property became the subject of ejectment proceedings filed by Restituto against Anselmo Tubongbanua (*Anselmo*), before the Municipal Trial Court (*MTC*) of Hinigaran, Province of Negros Occidental, docketed as Civil Case No. MTC-282. When the complaint was filed, Restituto was represented by Atty. Felino Garcia (*Atty. Garcia*). However, at the pre-trial stage, Atty. Garcia was replaced by Atty. Fudolin, the respondent in the present case.

The complainant alleged that although his father Restituto paid the respondent his acceptance fees, no formal retainer agreement was executed. The respondent also did not issue any receipts for the acceptance fees paid.

The respondent, on the other hand, averred that Restituto, and not the complainant, engaged his services on Restituto's representation that they were relatives. For this reason, he accepted the case on a minimal acceptance fee of ₱20,000.00 and appearance fee of ₱1,000.00, and did not execute any formal retainer agreement.

The complainant asserted that during the pendency of the ejectment proceedings before the MTC, the respondent failed to fully inform his father Restituto of the status and developments in the case. Restituto could not contact the respondent despite his continued efforts. The respondent also failed to furnish Restituto copies of the pleadings, motions and other documents filed with the court. Thus, Restituto and the complainant were completely left in the dark regarding the status of their case.

After an exchange of initial pleadings in the ejectment proceedings, the MTC ordered the parties to submit their respective position papers. Since neither party complied with the court's directive, the MTC dismissed the complaint as well as the counterclaim on May 26, 2005.

The respondent filed a motion for reconsideration from the order of dismissal. He justified his failure to file the position paper by arguing that he misplaced the case records, adding that he was also burdened with numerous other cases. The MTC denied the motion.

The respondent filed a second motion for reconsideration, this time alleging that the ejectment case was a meritorious one such that its dismissal would cause injustice to Restituto (the plaintiff). He also filed a supplemental motion, but the court denied both motions.

On September 15, 2005, Restituto died and all his properties passed on to his heirs, the complainant among them.

The complainant alleges that he and his father Restituto did not know of the ejectment suit's dismissal as the respondent had failed to furnish them a copy of the MTC's dismissal order. The complainant also asserts that the respondent did not inform them about the filing of the motion for reconsideration or of its denial by the MTC. The complainant claims that he only found out that the case had been dismissed when he personally went to the Office of the MTC Clerk of Court and was informed of the dismissal.

Because of the patent negligence, the complainant informed the respondent that his failure to file the position paper could be a ground for his disbarment. Furthermore, the complainant, without the respondent's intervention, entered into an oral extrajudicial compromise with the daughter of defendant Anselmo.

On August 17, 2007, the respondent wrote the complainant and apologized for his repeated failure to communicate with him. He reasoned out that he failed to file the position paper due to his poor health. He also claimed that he had suffered a stroke and had become partially blind, which caused the delay in the preparation of the pleadings in the ejectment case.²

In his Answer³ dated December 22, 2006, the respondent asserted that at the time he received the MTC's directive to submit a position paper, he was already suffering from "Hypertensive Cardiovascular Disease, Atrial Fibrillation, Intermittent, and Diabetes Mellitus Type II." The respondent also alleged that further consultations confirmed that he had an undetected stroke and arterial obstruction during the previous months. His health condition led to his loss of concentration in his cases and the loss of some of the case folders, among them the records of the ejectment case. The respondent also claimed that he focused on his health for self-preservation, and underwent vascular laboratory examinations; thus, he failed to communicate with the late Restituto and the complainant.

The respondent further averred that his failure to file the position paper in the ejectment proceedings was not due to willful negligence but to his undetected stroke. He never revealed the gravity of his illness to his clients or to the court out of fear that his disclosure would affect his private practice.

Lastly, the respondent alleged that after the ejectment suit's dismissal, he exerted all efforts, to the point of risking his poor health, by filing successive pleadings to convince the court to reconsider its dismissal order. Because the dismissal was purely based on a technical ground, he maintained that his failure to file the position paper did not amount to the abandonment of his client's case.

² Id. at 37-39.

³ Id. at 41.

The IBP's Report and Recommendation

IBP Investigating Commissioner Acerey C. Pacheco issued his Report and Recommendation, finding the respondent guilty of both negligence and betrayal of his client's confidence. The Investigating Commissioner found that the respondent's failure to file the position paper in the ejection proceedings and to apprise the client of the status of the case demonstrated his negligence and lack of prudence in dealing with his clients.

The Investigating Commissioner likewise held that the respondent's failure to promptly inform his clients, including the complainant, of his medical condition deprived them of the opportunity to seek the services of other lawyers. Had he notified the complainant's father of his illness before the case was dismissed, the latter could have engaged the services of another lawyer, and the case would not have been dismissed on a mere technical ground.

The Investigating Commissioner recommended the respondent's suspension for one (1) month from the practice of law.

In a Resolution⁴ dated May 14, 2011, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation after finding it to be fully supported by the evidence on record and by the applicable laws and rules.

The complainant moved to reconsider the resolution but the IBP Board of Governors denied his motion in a resolution⁵ dated June 21, 2013.

The Issue

The issue in this case is whether or not the respondent could be held administratively liable for negligence in the performance of duty.

The Court's Ruling

Except for the recommended penalty, we adopt the findings of the IBP.

A lawyer is bound to protect his client's interests to the best of his ability and with utmost diligence.⁶ He should serve his client in a conscientious, diligent, and efficient manner; and provide the quality of service at least equal to that which he, himself, would expect from a competent lawyer in a similar situation. By consenting to be his client's counsel, a lawyer impliedly represents that he will exercise ordinary

⁴ Notice of Resolution No. XIX-2011-247, *rollo*, p. 505.

⁵ Notice of Resolution No. XX-2013-732; *rollo*, p. 503.

⁶ *Barbuco v. Beltran*, 479 Phil. 692 (2004).

diligence or that reasonable degree of care and skill demanded by his profession, and his client may reasonably expect him to perform his obligations diligently.⁷ The failure to meet these standards warrants the imposition of disciplinary action.

In this case, the record clearly shows that the respondent has been remiss in the performance of his duties as Restituto's counsel. His inaction on the matters entrusted to his care is plainly obvious. He failed to file his position paper despite notice from the MTC requiring him to do so. His omission greatly prejudiced his client as the Court in fact dismissed the ejectment suit.

In addition, the respondent failed to inform Restituto and the complainant of the status of the case. His failure to file the position paper, and to inform his client of the status of the case, not only constituted inexcusable negligence; but it also amounted to evasion of duty.⁸ All these acts violate the Code of Professional Responsibility warranting the court's imposition of disciplinary action. The pertinent provisions of the Code of Professional Responsibility provide:

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.

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.

In *Perla Compania de Seguros, Inc. v. Saquilabon*,⁹ we considered a lawyer's failure to file a brief for his client to be inexcusable negligence. We held that the lawyer's omission amounted to a serious lapse in the duty he owed his client and in his professional obligation not to delay litigation and to aid the courts in the speedy administration of justice.

Similarly in *Uy v. Tansinsin*,¹⁰ we ruled that a lawyer's failure to file the required pleadings and to inform his client about the developments in her case fell below the standard and amounted to a violation of Rule 18.03 of the Code of Professional Responsibility. We emphasized the importance of the lawyers' duty to keep their clients adequately and fully informed about the developments in their cases, and held that a client should never be left in the dark, for to do so would be to destroy the trust, faith, and confidence reposed in the retained lawyer and in the legal profession as a whole.

⁷ *Villaflores v. Limos*, 563 Phil. 453 (2007).

⁸ *Overgaard v. Valdez*, 558 Phil. 422 (2008).

⁹ 337 Phil. 555, 558 (1997).

¹⁰ 610 Phil. 709 (2009).

We also emphasized in *Villaflores v. Limos*¹¹ that the trust and confidence reposed by a client in his lawyer impose a high standard that includes the appreciation of the lawyer's duty to his clients, to the profession, to the courts, and to the public. Every case a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or for free.¹²

Because a lawyer-client relationship is one of trust and confidence, there is a need for the client to be adequately and fully informed about the developments in his case. A client should never be left groping in the dark; to allow this situation is to destroy the trust, faith, and confidence reposed in the retained lawyer and in the legal profession in general.¹³

The respondent has apparently failed to measure up to these required standards. He neglected to file the required position paper, and did not give his full commitment to maintain and defend his client's interests. Aside from failing to file the required pleading, the respondent never exerted any effort to inform his client of the dismissal of the ejectment case.

We also find the respondent's excuse – that he had an undetected stroke and was suffering from other illnesses – unsatisfactory and merely an afterthought. Even assuming that he was then suffering from numerous health problems (as evidenced by the medical certificates he attached), his medical condition cannot serve as a valid reason to excuse the omission to file the necessary court pleadings. The respondent could have requested an extension of time to file the required position paper, or at the very least, informed his client of his medical condition; all these, the respondent failed to do.

Furthermore, the respondent's subsequent filing of successive pleadings (after the ejectment case had been dismissed) significantly weakens his health-based excuse. His efforts not only contradict his explanation that his physical predicament forced him to focus on his illnesses; they also indicate that his illnesses (allegedly "Hypertensive Cardiovascular Disease, Atrial Fibrillation, Intermittent, and Diabetes Mellitus Type II") were not at all incapacitating.

All told, we find that the respondent violated Canon 17, Canon 18, and Rules 18.03 and 18.04 of the Code of Professional Responsibility. We, however, find the IBP's recommended penalty (one (1) month suspension from the practice of law) to be a mere slap on the wrist considering the gravity of the infractions committed. Thus, we deem it appropriate to impose

¹¹ *Supra* note 7.

¹² *Id.*

¹³ *Edquibal v. Ferrer, Jr.*, 491 Phil. 1 (2005).

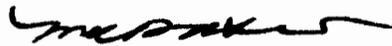
the penalty of two (2) years suspension, taking into account the respondent's acts and omissions, as well as the consequence of his negligence.

WHEREFORE, premises considered, we hereby **SUSPEND** Atty. Eutiquio M. Fudolin, Jr. from the practice of law for a period of two (2) years for violating Rules 18.03 and Rule 18.04, Canon 18, and Canon 17 of the Code of Professional Responsibility. We also **WARN** him that the commission of the same or similar act or acts shall be dealt with more severely.

Atty. Eutiquio M. Fudolin, Jr. is **DIRECTED** to formally **MANIFEST** to this Court, upon receipt of this Decision, the date of his receipt which shall be the starting point of his suspension. He shall furnish a copy of this Manifestation to all the courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let a copy of this decision be attached to Atty. Fudolin's records with the Office of the Bar Confidant and posted on the Supreme Court website as a notice to the general public.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice



ANTONIO T. CARPIO
Associate Justice



PRESBITERO J. VELASCO, JR.
Associate Justice

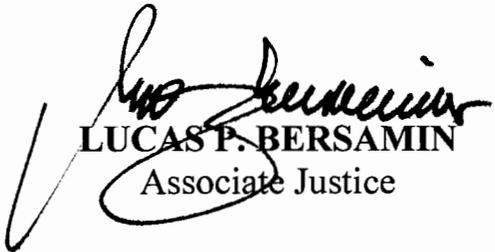


TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice

(On official leave)
DIOSDADO M. PERALTA
Associate Justice



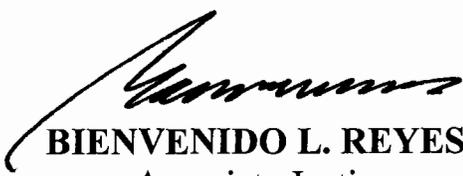
LUCAS P. BERSAMIN
Associate Justice


MARIANO C. DEL CASTILLO
Associate Justice


MARTIN S. VILLARAMA, JR.
Associate Justice

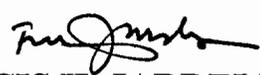

JOSE PORTUGAL PEREZ
Associate Justice


JOSE CATRAL MENDOZA
Associate Justice


BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice

(On official leave)
MARVIC M.V.F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice