



Republic of the Philippines
Supreme Court
Manila

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE



THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated February 17, 2020, which reads as follows:

“A.C. No. 12667 (*Ceferino B. Garay, Jr. v. Atty. Bernardino M. Mortera*). – The instant disbarment case¹ was filed by Ceferino B. Garay, Jr. (complainant), against Atty. Bernardino M. Mortera (respondent) for allegedly abandoning and neglecting his duties as counsel for complainant.

Facts of the Case

Complainant engaged respondent as his counsel in a case² filed before the Construction Industry Arbitration Commission (CIAC) against Majestic Technical Skills Development and Landscape Corporation (Majestic) for unpaid monthly progress billings, interests, unpaid extra work, actual and moral damages, and attorney’s fees.³ CIAC rendered a Decision⁴ dated May 9, 2011, awarding complainant the unpaid monthly progress billings of ₱8,090,835.58 and interest amounting to ₱80, 908.36.

Complainant filed a Motion for Correction of Final Arbitral Award,⁵ which was denied by the CIAC in its Order⁶ dated June 7, 2011. Accordingly, complainant and Majestic both filed a Petition for Review⁷ before the Court of Appeals (CA) on July 2011. Since then, complainant has been following up with respondent on the status of the case. However, respondent has stopped communicating with complainant since 2014.⁸ On November 10, 2014, complainant was surprised that a Decision⁹ dated July 31, 2014 was already rendered by the CA. In the Decision, the CA deleted the award in favor of complainant and directed him to pay Majestic the amount of ₱1,714,533.53

¹ *Rollo*, Vol. I, pp. 1-10.

² *Id.* at 11-17.

³ *Id.* at 1.

⁴ *Id.* at 99-119.

⁵ *Id.* at 63-67.

⁶ *Id.* at 61-62.

⁷ *Id.* at 120-151.

⁸ *Id.* at 3.

⁹ *Id.* at 153-188.

and ₱14,767,323.12 with legal interest of 6% *per annum* from finality of judgment until fully paid.¹⁰ On August 11, 2014, a copy of the CA Decision was allegedly sent to respondent's office, but he was out of the country and was not informed by his staff. Since then, complainant tried to contact respondent to no avail until such time that the period to file a motion for reconsideration has lapsed. Because of this, complainant allegedly prepared and filed, by himself, a Motion to Admit the Attached Motion for Reconsideration.¹¹

On December 29, 2015, complainant received a copy of the CA Resolution dated December 17, 2015 denying his Motion to Admit the Attached Motion for Reconsideration, because it was not filed on time. At this point, complainant was still trying to contact respondent because without respondent's alleged negligence, he would have had a chance to win the case before the CA. As respondent was still unavailable, and considering the big amount involved in the case, complainant allegedly filed, by himself, a Petition for *Certiorari*¹² before the Court. The Court dismissed the petition on procedural grounds.¹³ For this reason, complainant tried to contact respondent, but there was no response.¹⁴

Distraught by the dismissal of his petition and keeping in mind the period required to file a motion for reconsideration, complainant filed a Motion for Reconsideration,¹⁵ allegedly without counsel, which was likewise denied by the Court in a Resolution dated July 25, 2016.¹⁶

Accordingly, the present disbarment Complaint¹⁷ was filed by complainant against respondent. The Complaint alleged that respondent's failure to timely file a motion for reconsideration with the CA, which resulted in the dismissal of the case, constitutes a violation of respondent's Oath of Office and Canons 17, 18, 18.03, and 18.04 of the Code of Professional Responsibility (CPR). Moreso, had respondent been vigilant in informing complainant regarding the status of the case, he would not have lost the case. Complainant averred that if respondent was not interested in pursuing the case, he should have told complainant so that he could have engaged another lawyer. Respondent, by not withdrawing his appearance as counsel for complainant, was bound to protect his client's cause; however, he neglected his duties.

In his Answer,¹⁸ respondent denied having "abandoned and neglected" complainant's case. He argued that when his staff received the Decision of the

¹⁰ Id. at 187-188.
¹¹ Id. at 189-193.
¹² Id. at 215-249.
¹³ Id. at 251-252.
¹⁴ Id. at 4-5.
¹⁵ Id. at 253-260.
¹⁶ Id. at 5.
¹⁷ Id. at 1-8.
¹⁸ Id. at 267-270.

CA on August 11, 2014, he was in Kennett, Missouri, USA, and complainant was “mentally dishonest” in claiming that he found out about the CA’s Decision only on November 10, 2014. He also argued that the Decision was furnished to both parties and their counsels. In addition, he and complainant were exchanging text messages and emails earlier than November 10, 2014 and he helped in the preparation of the Motion for Reconsideration and the Motion to Admit the Attached Motion for Reconsideration filed before the CA, both of which were allegedly done in his house in Bacoor, Cavite. He also claimed that complainant has “not really lost track of his whereabouts,” since complainant knew his former office in Pasay City and his new office in Ermita, Manila. He added that he was very patient with complainant even if he was being paid less. When complainant received on December 29, 2015, the resolution of the CA denying the Motion to Admit Attached Motion for Reconsideration, he tried to contact respondent, but there was no response. He was dismayed by the “unfriendly and ungrateful” tenor of the Complaint because he treated complainant as a brother, and he had been his adviser since 2008. In fact, it was through respondent and his brother that complainant was able to close a big contract with Majestic but they never received any consideration for it.

Recommendation of the Integrated Bar of the Philippines Commissioner and Board of Governors

On August 30, 2018, the Integrated Bar of the Philippines (IBP) Investigating Commissioner submitted a Report and Recommendation¹⁹ and found respondent negligent in handling complainant’s case. The Investigating Commissioner recommended his suspension of one year from the practice of law, and that he be reprimanded for failure to file the required position paper in the proceedings.²⁰

The Investigating Commissioner found that respondent was negligent when he failed to timely file a motion for reconsideration of the Decision dated July 31, 2014 of the CA. His justification that he was in the USA when he received the Decision was not an excuse. Even assuming that complainant knew about his trip, his failure to effect a system to adequately protect his client’s cause was considered negligence and a betrayal of his client’s trust. As counsel, it was his duty to take necessary steps and ordinary care as his client’s interests may require. The failure of his client to pay him fees did not warrant abandonment of the case.²¹

In addition, the Investigating Commissioner considered respondent’s argument that he and complainant were furnished by the CA with a copy of its Decision dated July 31, 2014 as a clear acknowledgment that respondent received the same. Nonetheless, respondent did not mention any steps he had taken, if any, to protect his client’s interest. What was clear from the records

¹⁹ *Rollo*, Vol. II, pp. 164-170.

²⁰ *Id.* at 170.

²¹ *Id.* at 168-169.

was that complainant had to sign and file by himself a belated Motion to Admit the Attached Motion for Reconsideration before the CA, a Petition for *Certiorari* and a Motion for Reconsideration with the Court.²²

In a Resolution²³ dated February 16, 2019, the IBP Board of Governors adopted the Report and Recommendation of the Investigating Commissioner with modification, by imposing the penalty of six months suspension from the practice of law with a stern warning against respondent.

On July 15, 2019, respondent filed a Manifestation²⁴ that he would no longer file a motion for reconsideration and he would stop practicing law as mandated by the IBP Board of Governors.

Ruling of the Court

The Court adopts the findings of the Investigating Commissioner and the recommendation of the IBP Board of Governors.

Canons 17, 18, and Rules 18.03 and 18.04 of the CPR state:

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.

x x x x

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 this case, respondent's failure to communicate with his client regarding the status of the case and his failure to timely file a motion for reconsideration before the CA, despite due notice and without proper justification, exhibits his inexcusable lack of care and diligence in managing his client's cause, which are in violation of Canons 17 and 18, and Rules 18.03 and 18.04 of the CPR. As such, he neglected the legal matters entrusted to him for which he must be clearly held administratively liable.

A lawyer has a duty to serve his or her client with competence and diligence. Abandoning a client by refusing to see or talk to him or her, refusing to answer calls to his or her cellular phone, and not replying to a client is

²² Id. at 162.
²³ Id. at 162-163.
²⁴ Id. at 159-160.

violative of Canon 18 and Rule 18.03 of the CPR.²⁵ Respondent's defense that complainant knew the location of his house and office, hence not losing track of his whereabouts, is not tenable. As a lawyer, it was his duty to update the client with the case status and to communicate with him. Likewise, being paid less is not an excuse to abandon the cause of his client. A lawyer may not justify the failure to file a pleading on the ground that a client had not fully paid the agreed attorney's fees.²⁶ An attorney is bound to protect his or her client's interest to the best of his or her ability and with utmost diligence.²⁷

The practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally. This Court has been exacting in its expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission that might lessen the trust and confidence of the public.²⁸

WHEREFORE, the Court **ADOPTS** and **AFFIRMS** the Resolution dated February 16, 2019 of the Integrated Bar of the Philippines Board of Governors in CBD Case No. 16-5155 and **ORDERS** the **SUSPENSION** of respondent Atty. Bernardino M. Mortera from the practice of law for **SIX (6) MONTHS** from finality of this Resolution, with a **STERN WARNING** that a commission of the same or similar acts in the future shall be dealt with more severely.

Let a copy of this Resolution be entered in the personal records of respondent as a member of the Bar, and copies furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

SO ORDERED."

Very truly yours,

Misael Domingo C. Battung, III
MISAEL DOMINGO C. BATTUNG, III
Division Clerk of Court *8/9/15/2020*

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²⁵ *Ferrer v. Tebelin*, 500 Phil. 1, 10 (2005).

²⁶ *Tan v. Lapak*, 402 Phil. 920, 932 (2001).

²⁷ *Id.*

²⁸ *Villaflores v. Limos*, 563 Phil. 453, 463 (2007).

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