

## EN BANC

**[ A.C. No. 10713 [Formerly CBD Case No. 15-4731], September 08, 2020 ]**

**BRYCE RUSSEL MITCHELL, COMPLAINANT, VS. ATTY. JUAN PAOLO F. AMISTOSO, RESPONDENT.**

### DECISION

#### **PERALTA, C.J.:**

Before us is a Complaint-Affidavit<sup>[1]</sup> filed by Bryce Russel Mitchell (*complainant*) against respondent Atty. Juan Paolo F. Amistoso (*Atty. Amistoso*), docketed as A.C. No. 10713 for violation of Lawyer's Oath and Code of Professional Responsibility.

The facts are as follows:

Complainant Bryce Russel Mitchell, a citizen of Canada, married, and with residence at 848-F Mayon St., Plaridel 1, Malabanas, Angeles City, Pampanga, alleged that he and Atty. Amistoso had agreed to a professional fee in the amount of Six Hundred Fifty Thousand Pesos (P650,000.00) for the handling of complainant's annulment case, as indicated in the engagement proposal. The annulment case was thereafter filed and docketed as Civil Case No. 13-13953, entitled "*Bryce Russel Mitchell vs. Mitchie Mae Benerable*" before Branch 113, Regional Trial Court of Pasay City.

During the pendency of the case, complainant alleged that Atty. Amistoso made several cash advances from him, and the total amount he gave to him amounted to P800,000.00, which was over and above the agreed professional fee. Complainant further averred that, on March 26, 2014, Atty. Amistoso, due to financial difficulties, also borrowed money from him in the amount of P65,000.00, as evidenced by a promissory note marked as Annex "B" of the Complaint-Affidavit.

However, in the course of the annulment case, complainant lamented that Atty. Amistoso vanished completely and failed to return his e-mails and telephone calls. During the scheduled hearings of the case, Atty. Amistoso also failed to appear, as evidenced by Court Orders dated August 28, 2014 and September 25, 2014, respectively.<sup>[2]</sup> Thus, complainant was constrained to hire another lawyer, as collaborating counsel, to handle his annulment case, as evidenced by Formal Entry of Appearance<sup>[3]</sup> dated November 4, 2014.

On February 23, 2015, the Court resolved to require Atty. Amistoso to Comment on the complaint filed against him for violation of the lawyer's oath and the Code of Professional Responsibility.<sup>[4]</sup>

In a Resolution<sup>[5]</sup> dated August 5, 2015, the Court resolved to dispense with the filing of the Comment of Atty. Amistoso, it appearing that the latter has failed to file

his Comment on the complaint against him. The Court, thus, resolved to refer the instant complaint to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from receipt.

Before the IBP, a mandatory conference was scheduled on November 26, 2015, but only the complainant appeared. The Commissioner then proceeded to direct the IBP staff to locate the addresses of Atty. Amistoso. Succeeding notices of the conference were sent to Atty. Amistoso's other addresses, but the latter still failed to appear during the scheduled conferences. Thus, on March 9, 2016, the Commissioner ordered the conference terminated and directed the parties to file their respective Position Papers. Both parties, however, failed to file their Position Papers. Thus, the instant case was submitted for report and recommendation.

In its Report and Recommendation<sup>[6]</sup> dated November 10, 2017, the IBP-Commission on Bar Discipline (IBP-CBD) recommended that Atty. Amistoso be suspended from the practice of law for two (2) years for his breach of duties under Canons 17 and 18, and Rule 16.04 of the Code of Professional Responsibility.

In a Resolution<sup>[7]</sup> dated June 29, 2018, the IBP-Board of Governors adopted and approved, with modification, the IBP-CBD's report and recommendation, and instead recommended that Atty. Amistoso be suspended from the practice of law for two (2) years and fined in the amount of Ten Thousand Pesos (P10,000.00). It, likewise, recommended that Atty. Amistoso be ordered to return to the complainant the amount of Eight Hundred Sixty-Five Thousand Pesos (P865,000.00).

### ***RULING***

We sustain the findings of the IBP-CBD, except its recommended penalty.

Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such.<sup>[8]</sup>

Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.<sup>[9]</sup> Corollary, an administrative proceeding against a lawyer continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or *as in this case*, the failure of respondent to answer the charges against him despite numerous notices.

Here, the Court has given Atty. Amistoso several opportunities to answer the complaint against him yet no answer came. From the records, the Resolution dated February 23, 2015 sent by the Court to Atty. Amistoso was received by the latter on March 26, 2015 per Court's Registry Return Card No. 23101, yet he failed to comply with the Court's reminders.

The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Silence in such cases is almost always construed as implied admission of the truth thereof. Consequently, we are left with no choice but to deduce his implicit admission of the charges levelled against him. *Qui facit consentive videtur*. Silence gives consent. This instant administrative case will, thus, proceed despite Atty. Amistoso's unwillingness to cooperate in the proceedings.

In the instant case, records show that complainant engaged the services of Atty. Amistoso for the filing of a civil case for annulment of marriage. However, despite such agreement, complainant lamented that Atty. Amistoso failed to comply with his undertakings without giving any valid reason, as shown by his failure to attend the court hearings for the annulment case. He, likewise, failed to communicate with complainant, without any reason, thus, left his client's cause in quandary.

It must be stressed that no lawyer is obliged to advocate for every person who may wish to become his client, but once he agrees to take up the cause of his client, the lawyer owes fidelity to such cause and must be mindful of the trust and confidence reposed in him. Among the fundamental rules of ethics is the principle that an attorney who undertakes an action impliedly stipulates to carry it to its termination, that is, until the case becomes final and executory. A lawyer is not at liberty to abandon his client and withdraw his services without any reasonable cause and only upon notice appropriate in the circumstances. Any dereliction of duty by a counsel affects the client.<sup>[10]</sup>

Canon 18, Rule 18.03 requires that a lawyer "shall not neglect a legal matter entrusted to him, and his negligence in connection [therewith] shall render him liable." What amounts to carelessness or negligence in a lawyer's discharge of his duty to his client is incapable of an exact formulation, but the Court has consistently held that the mere failure of a lawyer to perform the obligations due his client is *per se* a violation.<sup>[11]</sup> Thus, by mere failing to attend court hearings with justifiable reasons, and simply vanishing in thin air, Atty. Amistoso was remiss in the discharge of his responsibility. He, thus, violated the Code of Professional Responsibility.

Further, it likewise appeared that Atty. Amistoso obtained a loan from complainant in the amount of P65,000.00, and failed to return the same, as evidenced by the promissory note he issued in favor of the complainant, in violation of Rule 16.04 of the CPR.<sup>[12]</sup>

We have previously emphasized that it is unethical for a lawyer to obtain loans from complainant during the existence of a lawyer-client relationship between them. The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of