

SECOND DIVISION

[A.C. No. 7428, November 25, 2019]

VICTORIA C. SOUSA, COMPLAINANT, VS. ATTY. J. ALBERT R. TINAMPAY, RESPONDENT.

DECISION

INTING, J.:

Once a lawyer agrees to handle a case, he is required to undertake the task with zeal, care and utmost devotion. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.

[1]

For the Court's resolution is a Complaint^[2] for disbarment/suspension filed by Victoria C. Sousa (complainant) against Atty. J. Albert R. Tinampay (respondent) for professional misconduct and malpractice, fraud, misrepresentation and conflict of interest.

Complainant is a co-defendant in Civil Case No. 103 entitled *Spouses Antonio L. Dominguez and Fe D. Dominguez v. Victoria Cabilan Sousa, et al.*, a case for annulment of sale. It was raffled to the Municipal Circuit Trial Court (MCTC) of Dauis, Panglao, Bohol, but was eventually dismissed for lack of jurisdiction.^[3] It was later refiled with the Regional Trial Court (RTC) of Tagbilaran City and docketed as Civil Case No. 6657.^[4] The RTC treated it as an original case. In connection with it, on January 13, 2000, complainant executed a Special Power of Attorney (SPA)^[5] in favor of respondent, naming, constituting, and appointing him to be her attorney-in-fact.^[6]

According to the complainant, respondent did not enter his appearance as her counsel in the proceedings before the MCTC.^[7] Further, during the pre-trial of the refiled case in the RTC, complainant was declared in default since neither she nor her former counsel appeared; and although respondent was present, he remained silent and did not submit any notice for his substitution as the new counsel of the complainant. Respondent never admitted in open court that he is the legal counsel of the complainant, but he continuously accepted payment from the complainant.^[8]

In his Comment^[9] and Position Paper,^[10] respondent countered that he was never the counsel of complainant. He insisted that Atty. Teofisto Cabilan was the counsel of record of the complainant, and that he represented complainant's co-defendants in Civil Case No. 6657.^[11] In fact, there was never any retainer agreement between him and complainant engaging him as counsel. He admitted though that he had billed complainant for the case and was paid P41,500.00 as referral fee.^[12]

The Report and Recommendation of the Commission on Bar Discipline

In the Report and Recommendation^[13] dated January 14, 2010 of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), Investigating Commissioner Manuel T. Chan (Investigating Commissioner) found that respondent failed in his duty and responsibility in safeguarding the interest of complainant during the pre-trial of Civil Case No. 6657.^[14] It recommended that he be reprimanded or censured on account of his actuation. It made the following findings:

Under the circumstances, it is relevant to inquire whether there was a legal obligation on the part of respondent to represent complainant in said pretrial-either as regular counsel or only as counsel on special appearance for that particular occasion. What appears to be indubitable was that here was a clear obligation on the part of respondent to represent complainant in said pretrial as her attorney-in-fact, considering that she was in the United States at that time and that he was her duly designated attorney-in-fact for the Dominguez case under the relevant SPA. The rationalization of respondent that no actual prejudice was inflicted upon complainant arising from the declaration of default, even if true, is not material at all in determining his liability.

x x x x

This Commissioner finds respondent clearly negligent and unmindful of his duties to complainant with regards to the Dominguez case during the pre-trial which resulted in her being declared in default. He was present during the proceedings, supposedly representing the other co-defendants (Cuals), and yet inexplicably did not do anything to protect the interest of complainant either as attorney-in-fact or counsel on special appearance in view of the absence of regular counsel. Moreover, respondent did not report such incident at least soon enough to complainant so that appropriate action could be taken to reverse the default order.

Whether such negligence as committed in his professional capacity in that respondent failed to represent complainant as legal counsel in said pre-trial, or such negligence is in his private capacity in that he failed to represent respondent as attorney-in-fact in said pre-trial does not really matter. x x x. The Code of Professional Responsibility is replete with provisions which oblige the lawyer to observe candor, fairness and loyalty in all his dealings and transactions with his client, to be faithful to the cause of his client and to serve his client with competence and diligence. Certainly, the failure of respondent to represent and to protect the interest of complainant during the said pretrial violates such canons and could be considered a misconduct.^[15]

The Resolution and Extended Resolution of the IBP Board of Governors

Per Resolution No. XIX-2010-601^[16] dated October 9, 2010, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of the Investigating Commissioner. It found respondent guilty of grave misconduct and meted out the penalty of suspension from the practice of law for a period of one year. He was likewise ordered to return to complainant the sum of P202,500.00 as

well as the amount of \$2,168.00, within 60 days from finality of the judgment.^[17]

However, in a Resolution^[18] dated June 9, 2012, the IBP Board of Governors granted respondent's motion for reconsideration and reversed and set aside its previous Resolution No. XIX-2010-601, with a warning that respondent be more circumspect in his future dealings. It stated:

It bears pointing out that the cases handled by Respondent for Complainant as well as those for her protegee, the Cuals, were all brought to a successful conclusion. As to the money in question, it can be gleaned from the enumerated events and instructions of Complainant to Respondent as to how her funds should be disbursed, that she is indeed a whimsical lady who is used to getting what she wants. It is now obvious that it was only when she dealt with Respondent in an "unprofessional" manner that matters became complicated; it was then that herein Respondent rebuked her "unprofessional" demands which ultimately gave rise to the instant case.^[19]

Ultimately, the question herein is whether or not the IBP Board of Governors is correct in absolving respondent of any liability.^[20]

Complainant insisted in her Petition for Review on *Certiorari*^[21] that respondent is her counsel considering that she even executed an SPA authorizing him to appear and represent her in Civil Case No. 6657.^[22] Respondent never denied the validity and due execution of the SPA. According to complainant, she was declared in default and was prejudiced by respondent's negligence.^[23] Completely unaware of the order of default against her, complainant continued to remit payments to respondent which the latter accepted. Under the circumstances, she asserted that respondent is guilty of gross misconduct for failing to account for the various amounts he received from her. The fiduciary nature of the relationship between counsel and client imposes on the lawyer the duty to account for the money or property collected or received for or from the client.^[24]

On the other hand, in his Comment,^[25] respondent reiterated that complainant was updated minute by minute of all the proceedings. She was well represented, through the Cual family, and he had an updated accounting of all her remittances. He also maintained that the billings he sent to complainant were for his services to the Cual family charged against their land where complainant constructed her residential/vacation house.^[26]

Our Ruling

After a careful review of the records of the case, the Court finds that respondent was negligent and unmindful of his sworn duties to complainant.

The relationship between an attorney and his/her client is one imbued with utmost trust and confidence. Clients are led to expect that lawyers would be ever-mindful of their cause and exercise the required degree of diligence in handling their affairs. In addition, the lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill and competence to the case,

regardless of its importance and whether he accepts it for a fee or for free.^[27]

A lawyer's duty of competence and diligence includes not just reviewing the cases entrusted to the counsel's care or giving sound legal advice. Significantly, it consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, as well as prosecuting the handled cases with reasonable dispatch.^[28] Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation.^[29] Canon 17 and Canon 18, Rule 18.03 and 18.04 of the Code of Professional Responsibility (CPR) clearly 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.

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 client's request for information.

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. Every lawyer has the right to decline employment but once he agrees to take on the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. At that point, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, as well as 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 law, legally applied. Simply put, a client is entitled to the benefit of any and every remedy authorized by the law and he may expect his lawyer to assert every such remedy or defense.^[30]

In relation to the foregoing, in *United Coconut Planters Bank v. Atty. Noel*,^[31] the Court suspended the respondent from the practice of law for three years after committing inexcusable negligence in failing to file an answer on behalf of complainant in one case and for which reason, the latter was declared in default. The Court found that he grossly neglected his duty as counsel to the extreme detriment of his client. He willingly and knowingly allowed the default order to attain finality and let judgment to be rendered against his client on the basis of *ex parte* evidence. He also failed to assert any of the defenses and remedies available to his client under the applicable laws. These constitute inexcusable negligence warranting an exercise by the Court of its power to discipline him.

Moreover, in *Reyes v. Atty. Vitan*,^[32] it was held that the act of receiving money as