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THIRD DIVISION

[A.C. No. 11059, November 09, 2016]

JOSE ANTONIO F. BALINGIT, COMPLAINANT, VS. ATTY. RENATO M. CERVANTES AND ATTY. TEODORO B. DELARMENTE, RESPONDENTS.

D E C I S I O N

JARDELEZA, J.:

This resolves the administrative complaint[1] filed by Jose Antonio F. Balingit (complainant) against Arty. Renato M. Cervantes and Atty. Teodoro B. Delarmente (respondents).

Facts

Complainant is a former Filipino citizen who subsequently became a naturalized British citizen.[2] On July 9, 2011, complainant's two (2) sons, Jose Antonio Balingit, Jr. (Jose Antonio, Jr.) and Carlo Balingit (Carlo), who were on board their respective motorcycles, figured in a head-on collision with the car driven by David A. Alizadeh (David). Carlo sustained serious physical injuries, while Jose Antonio, Jr. was pronounced dead on arrival at the hospital. Kristopher Rocky Kabigting, Jr. (Kristopher), Jose Antonio Jr.'s passenger, also suffered physical injuries. As a result, on July 13, 2011, an information[3] for criminal negligence was filed against David with the Municipal Trial Court in Cities (MTCC), Antipolo City.

Subsequently, complainant, together with Carlo, Kristopher, and the heirs of Jose Antonio Jr., engaged the legal services of respondents in filing a separate civil suit for damages and an administrative case with the Professional Regulation Commission (PRC) against David, who recently passed the physician board exam at that time.[4] Thus, on August 8, 2011, Atty. Cervantes sent a demand letter[5] to David for payment of P2,000,000.00 plus 25% thereof as attorney's fees. Also, on August 22, 2011, Atty. Cervantes sent a letter[6] to the PRC informing the latter of the pending criminal case against David and requesting that the issuance of David's license to practice medicine be deferred or suspended until the termination of David's criminal case. On September 16, 2011, the PRC replied[7] and informed Atty. Cervantes of the requirements in order to file an administrative case against David.

Meanwhile, Atty. Cervantes prepared and signed an Agreement[8] dated August 18, 2011 embodying the terms of respondents' engagement. Addressed to Kristopher, Carlo, and the heirs of Jose Antonio, Jr., the Agreement provided:

> This will formalize our agreement whereby our law firm shall represent you in the **civil case for damages** to be filed against DAVID A.

ALIZADEH, et al., relative to that tragic incident on **July 9, 2011** that occurred in Antipolo City. We hereby confirm the terms for the handling thereof, to wit:

1. **Acceptance Fee.** Treating you as a most favored client, our acceptance fee is only **Thirty Thousand Pesos (P30,000.00)** to be paid upon the signing hereof;

2. **Appearance Fee. Four Thousand Pesos (P4,000.00)** for every appearance by any of our lawyer/s before the court;

3. **Success Fee. Twenty Percent (20%)** of any amount that may be actually collected by reason of the successful handling of the case;

4. **Official and other Fees,** such as docket fees, transcript of stenographic notes, expenses for messengerial, mailing, photocopying services and expenses for representation shall be for your account.[9] (Emphasis in the original.)

Kristopher, Carlo, and the heirs of Jose Antonio, Jr. did not sign the Agreement.[10] Just the same, complainant paid the sum of P45,000.00 as partial acceptance fee for the filing of the civil suit for damages as evidenced by a handwritten receipt issued by Atty. Delarmente.[11] In addition, Atty. Cervantes allegedly received P10,000.00 from Imelda Balingit (Imelda), complainant's daughter-in-law, without issuing any receipt.[12] However, despite respondents' receipt of the P45,000.00 and complainant's submission to respondents of the necessary documents,[13] as of December 19, 2011, when the present complaint was filed, and until today, respondents have failed to institute the separate civil suit for damages agreed upon.[14]

Meanwhile, the criminal case was referred to mediation by the trial court for possible settlement of the civil aspect of the case. During the negotiations, complainant and the representatives of David agreed to settle.[15] Thus, on October 13, 2011, a Compromise Agreement[16] was signed by complainant, one Anthony T. Balingit, Carlo, and the representatives of David. David agreed to pay P1,000,000.00 in exchange for the execution of an affidavit of desistance in the criminal case and dismissal and/or withdrawal of any civil case for damages.[17] The Agreement was set for the consideration and approval of the MTCC Antipolo City on November 9, 2011.[18]

Atty. Cervantes, upon discovering that complainant entered into a Compromise Agreement, attended the November 9, 2011 hearing and demanded 10% of the amount of the compromise as attorney's fees and P5,000.00 as appearance fee from complainant.[19] Complainant refused on the ground that the compromise was entered into before the mediator.[20] On November 10, 2011, Atty. Cervantes sent a demand letter[21] to complainant seeking payment of P100,000.00 as attorney's fees, representing 10% of the amount of the compromise, and appearance fee of P5,000.00 for his attendance in the November 9, 2011 hearing. As complainant still refused to pay, Atty. Cervantes filed a criminal complaint[22] for *estafa* against

complainant, his wife, and his sons, as well as a complaint for deportation with the Bureau of Immigration, on the ground that complainant and his family are undesirable British aliens.[23]

On December 19, 2011, complainant filed the present disbarment case against respondents before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD).[24] On even date, the latter required respondents to file their answer.[25] Respondents filed separate motions for extension of time to submit their answers praying that they be given until February 9, 2012 to file their respective answers.[26]

Atty. Delarmente failed to file his answer whereas Atty. Cervantes filed a motion to admit his verified answer[27] only on March 27, 2012.

Atty. Cervantes denies receiving P10,000.00 from Imelda and claims that he learned of complainant's payment of P45,000.00 only later.[28] As for his failure to file the separate civil suit for damages, Atty. Cervantes claims that he has not received the acceptance and docket fees to file the case.[29]

Atty. Cervantes also argues that the Compromise Agreement has no legal effect since complainant is not a compulsory heir of Jose Antonio, Jr., who was legally married with two (2) children. Hence, it should have been the heirs of the deceased that entered into the Compromise Agreement. Just the same, Atty. Cervantes asserts that he should be paid his portion of the settlement as his attorney's fees since it was due to the demand letters he sent to David and the complaint he filed with the PRC that moved David's family to enter into a Compromise Agreement.[30]

Investigating Commissioner Atty. Peter Irving C. Corvera (Commissioner Corvera) set the case for mandatory conference and required the parties to submit their respective mandatory conference briefs.[31] Respondents, however, did not submit their conference briefs and repeatedly failed to appeal in the mandatory conference despite notice. On motion of complainant's counsel, Commissioner Corvera terminated the mandatory conference and required all parties to submit their respective verified position papers.[32] Complainant complied with the Commissioner's directive and filed his Position Paper[33] on October 11, 2012 but respondents again failed to submit their verified position papers.

In his Report and Recommendation[34] dated January 2, 2014, Commissioner Corvera found respondents guilty of grave misconduct and violation of Rule 1.03, Canon 15, Canon 20, and Rule 20.04 of the Code of Professional Responsibility (CPR) and recommended that they be suspended from the practice of law for six (6) months.

On December 13, 2014, the IBP Board of Governors passed Resolution No. XXI-2014-886[35] adopting and approving the Report and Recommendation of the Investigating Commissioner but reducing the penalty to suspension from the practice of law for three (3) months.

Ruling

We affirm the Report and Recommendation of the IBP-CBD finding respondents guilty of being remiss in their duties as counsels for complainant.

It is a core ethical principle that lawyers owe fidelity to their clients' cause and must always be mindful of the trust and confidence reposed in them. They are duty bound to observe candor, fairness, and loyalty in all their dealings and transactions with their clients.[36] Every case lawyers handle deserves their full and undivided attention, diligence, skill and competence, regardless of its importance and whether they accept it for a fee or for free, and to constantly keep in mind that not only the property but also the life of their clients may be at stake.[37] Relevant provisions of the CPR provide:

> CANON 15 - A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.
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> CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his profession.
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> > Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.
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> 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.

Respondents clearly transgressed the foregoing rules when they failed and refused to file the separate civil action for damages against David despite their receipt of payment and the relevant documents from complainant. We cannot give credence to Atty. Cervantes' defense that because complainant did not pay the requisite filing and acceptance fees, he was not able to file the separate civil case for damages. The receipt Atty. Delarmente issued clearly indicated that the sum of P45,000.00 paid by the complainant covers the acceptance and filing fees for the civil suit.[38]

We have repeatedly held that when a lawyer accepts a case, he undertakes to give his utmost attention, skill, and competence to it. His client has the right to expect that he will discharge his duties diligently and exert his best efforts, learning, and ability to prosecute or defend his client's cause with reasonable dispatch.[39]

Worse, Atty. Cervantes demanded payment of P5,000.00 appearance fee and 10% of the settlement as success fee even though the hearing was for the criminal case and the Compromise Agreement was entered in the course of the criminal proceedings; thus, outside the scope of respondents' engagement. Indeed, it is highly improper for a lawyer to impose additional professional fees upon his client which were never mentioned nor agreed upon at the time of the engagement of his services.[40]

Assuming respondents are entitled to additional payment of professional fees, their manner of enforcing it still warrants disciplinary sanction. Rule 20.4 of the CPR advises lawyers to avoid controversies with clients concerning their compensation