

## THIRD DIVISION

**[ A.C. No. 10558, February 23, 2015 ]**

**MICHAEL RUBY, COMPLAINANT, VS. ATTY. ERLINDA B. ESPEJO  
AND ATTY. RUDOLPH DILLA BAYOT, RESPONDENTS.**

### R E S O L U T I O N

**REYES, J.:**

This is an administrative complaint<sup>[1]</sup> filed by Michael Ruby (complainant) with the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) against Atty. Erlinda B. Espejo (Atty. Espejo) and Atty. Rudolph Dilla Bayot (Atty. Bayot) (respondents) for violation of the Code of Professional Responsibility.

#### The Facts

The complainant alleged that he and his mother, Felicitas Ruby Bihla (Felicitas), engaged the services of the respondents in connection with a case for cancellation and nullification of deeds of donation. Pursuant to the retainer agreement<sup>[2]</sup> dated August 29, 2009, the complainant and Felicitas would pay Atty. Espejo the amount of P100,000.00 as acceptance fee, P70,000.00 of which was actually paid upon the signing of the agreement and the remaining P30,000.00 to be paid after the hearing on the prayer for the issuance of a temporary restraining order (TRO). The complainant and Felicitas likewise agreed to pay the amount of P5,000.00 as appearance fee for every hearing, which was apparently later reduced to P4,000.00.

On September 15, 2009, the complainant gave Atty. Espejo the amount of P50,000.00 as payment for filing fee.<sup>[3]</sup> On September 16, 2009, Atty. Espejo filed the complaint for nullification and cancellation of deeds of donation with the Regional Trial Court (RTC) of Quezon City, Branch 219. However, the actual filing fee that was paid by her only amounted to P7,561.00;<sup>[4]</sup> she failed to account for the excess amount given her despite several demand letters<sup>[5]</sup> therefor.

On September 23, 2009, Atty. Espejo allegedly asked the complainant to give Atty. Bayot the amount of P30,000.00 – the remaining balance of the acceptance fee agreed upon – notwithstanding that the prayer for the issuance of a TRO has yet to be heard. The complainant asserted that the same was not yet due, but Atty. Espejo told him that Atty. Bayot was in dire need of money. The complainant gave Atty. Bayot the amount of P8,000.00 supposedly as partial payment for the balance of the acceptance fee and an additional P4,000.00 as appearance fee for the September 22, 2009 hearing.<sup>[6]</sup>

On September 25, 2009, Atty. Espejo called the complainant informing him of the need to file a separate petition for the issuance of a TRO. She allegedly asked for P50,000.00 to be used as “representation fee.” The complainant was able to

bargain with Atty. Espejo and gave her P20,000.00 instead.<sup>[7]</sup>

Meanwhile, on September 24, 2009, the RTC issued an Order<sup>[8]</sup> denying the complainant's prayer for the issuance of a TRO. The complainant alleged that the respondents failed to apprise him of the denial of his prayer for the issuance of a TRO; that he only came to know of said denial on November 3, 2009 when he visited the RTC.<sup>[9]</sup>

On October 23, 2009, the complainant deposited the amount of P4,000.00 to the bank account of Atty. Bayot as appearance fee for the hearing on the motion to serve summons through publications, which was set at 2:00 p.m. on even date. However, Atty. Bayot allegedly did not appear in court and instead met with the complainant at the lobby of the Quezon City Hall of Justice, telling them that he already talked to the clerk of court who assured him that the court would grant their motion.<sup>[10]</sup>

Thereafter, the complainant alleged, the respondents failed to update him as to the status of his complaint. He further claimed that Atty. Bayot had suddenly denied that he was their counsel. Atty. Bayot asserted that it was Atty. Espejo alone who was the counsel of the complainant and that he was merely a collaborating counsel.

In its Order<sup>[11]</sup> dated January 7, 2010, the IBP-CBD directed the respondents to submit their respective answers to the complaint.

In his Answer,<sup>[12]</sup> Atty. Bayot claimed that he was not the counsel of the complainant; that he merely assisted him and Atty. Espejo. He averred that Atty. Espejo, with the complainant's consent, sought his help for the sole purpose of drafting a complaint. He pointed out that it was Atty. Espejo who signed and filed the complaint in the RTC.<sup>[13]</sup>

Atty. Bayot further pointed out that he had no part in the retainer agreement that was entered into by the complainant, Felicitas, and Atty. Espejo. He also denied having any knowledge as to the P50,000.00 that was paid to Atty. Espejo as filing fees.<sup>[14]</sup>

As to the P12,000.00 that was given him, he claimed that he was entitled to P4,000.00 thereof since the said amount was his appearance fee. He pointed out that he appeared before the RTC's hearing for the issuance of a TRO on September 22, 2009. On the other hand, the P8,000.00 was paid to him as part of the acceptance fee, which was then already due since the RTC had already heard their prayer for the issuance of a TRO.<sup>[15]</sup>

He also denied any knowledge as to the P20,000.00 that was paid to Atty. Espejo purportedly for "representation fee" that would be used to file a new petition for the issuance of a TRO.<sup>[16]</sup>

Atty. Bayot admitted that he was the one who drafted the motion to serve summons through publication, but pointed out that it was Atty. Espejo who signed and filed it in the RTC. He also admitted that he was the one who was supposed to attend the hearing of the said motion, but claimed that he was only requested to do so by Atty.

Espejo since the latter had another commitment. He denied requesting from the complainant the amount of P4,000.00 as appearance fee, alleging that it was the latter who insisted on depositing the same in his bank account.<sup>[17]</sup>

During the said hearing, Atty. Bayot claimed that when he checked the court's calendar, he noticed that their motion was not included. Allegedly, the clerk of court told him that she would just tell the judge to consider their motion submitted for resolution.<sup>[18]</sup>

On the other hand, Atty. Espejo, in her Answer,<sup>[19]</sup> denied asking for P50,000.00 from the complainant as filing fees. She insisted that it was the complainant who voluntarily gave her the money to cover the filing fees. She further alleged that she was not able to account for the excess amount because her files were destroyed when her office was flooded due to a typhoon. She also denied having asked another P50,000.00 from the complainant as "representation fee," asserting that the said amount was for the payment of the injunction bond once the prayer for the issuance of a TRO is issued.

### **Findings of the Investigating Commissioner**

On May 3, 2011, after due proceedings, the Investigating Commissioner issued a Report and Recommendation,<sup>[20]</sup> which recommended the penalty of censure against the respondents. The Investigating Commissioner pointed out that Atty. Bayot and the complainant had a lawyer-client relationship notwithstanding that the former was not the counsel of record in the case. That his admission that he was a collaborating counsel was sufficient to constitute a lawyer client relationship. Moreover, considering that Atty. Bayot initially received the amount of P12,000.00 from the complainant, the Investigating Commissioner opined that he can no longer deny that he was the lawyer of the complainant. The Investigating Commissioner further found that:

Parenthetically, Respondents had asked and demanded prompt payment of their attorney's fees or appearance fees and even asked for amounts for dubious purposes yet they, just the same, performed their duties to their clients leisurely and lethargically. Worse, when the trusting Complainant had noticed that his case was headed for disaster and wanted Respondents to explain their obviously slothful and listless services, they disappeared or became evasive thus fortifying the conclusion that they indeed have performed and carried out their duties to Complainant way below the standards set by the Code of [P]rofessional Responsibility.<sup>[21]</sup>

Nevertheless, the Investigating Commissioner found that the complainant failed to prove that he indeed suffered injury as a result of the respondents' conduct and, accordingly, should only be meted the penalty of censure.

### **Findings of the IBP Board of Governors**

On March 20, 2013, the IBP Board of Governors issued a Resolution,<sup>[22]</sup> which

adopted and approved the recommendation of the Investigating Commissioner, albeit with the modification that the penalty imposed upon Atty. Espejo and Atty. Bayot was increased from censure to suspension from the practice of law for a period of one year.

Atty. Bayot moved to reconsider the Resolution dated March 20, 2013 issued by the IBP Board of Governors.<sup>[23]</sup> The complainant likewise filed a motion for reconsideration, asking the IBP Board of Governors to order the respondents to refund to him the amount he paid to the respondents.<sup>[24]</sup> In the meantime, Atty. Espejo passed away.<sup>[25]</sup>

On March 22, 2014, the IBP Board of Governors issued a Resolution,<sup>[26]</sup> which dismissed the case insofar as Atty. Espejo in view of her demise. The IBP Board of Governors affirmed Atty. Bayot's suspension from the practice of law for a period of one year.

On December 3, 2014, the Court issued a Resolution,<sup>[27]</sup> which, *inter alia*, considered the case closed and terminated as to Atty. Espejo on account of her death. Accordingly, the Court's disquisition in this case would only be limited to the liability of Atty. Bayot.

### **The Issue**

The issue in this case is whether Atty. Bayot violated the Code of Professional Responsibility, which would warrant the imposition of disciplinary sanction.

### **Ruling of the Court**

After a thorough perusal of the respective allegations of the parties and the circumstances of this case, the Court modifies the findings of the Investigating Commissioner and the IBP Board of Governors.

Atty. Bayot claimed that he is not the counsel of record of the complainant in the case before the RTC. He pointed out that he had no part in the retainer agreement entered into by the complainant and Atty. Espejo. Thus, Atty. Bayot claimed, the complainant had no cause of action against him.

The Court does not agree.

It is undisputed that Atty. Espejo was the counsel of record in the case that was filed in the RTC. Equally undisputed is the fact that it was only Atty. Espejo who signed the retainer agreement. However, the evidence on record, including Atty. Bayot's admissions, points to the conclusion that a lawyer-client relationship existed between him and the complainant.

Atty. Bayot was the one who prepared the complaint that was filed with the RTC. He was likewise the one who prepared the motion to serve summons through publication. He likewise appeared as counsel for the complainant in the hearings of the case before the RTC. He likewise advised the complainant on the status of the case.

More importantly, Atty. Bayot admitted that he received P8,000.00, which is part of the acceptance fee indicated in the retainer agreement, from the complainant. It is true that it was Atty. Espejo who asked the complainant to give Atty. Bayot the said amount. However, Atty. Bayot admitted that he accepted from the complainant the said P8,000.00 without even explaining what the said amount was for.

The foregoing circumstances clearly established that a lawyer-client relationship existed between Atty. Bayot and the complainant. "Documentary formalism is not an essential element in the employment of an attorney; the contract may be express or implied. To establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession."<sup>[28]</sup> Further, acceptance of money from a client establishes an attorney-client relationship.<sup>[29]</sup> Accordingly, as regards the case before the RTC, the complainant had two counsels – Atty. Espejo and Atty. Bayot.

The Code of Professional Responsibility provides that:

**CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.**

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

x x x x

**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.

Accordingly, Atty. Bayot owes fidelity to the cause of the complainant and is obliged to keep the latter informed of the status of his case. He is likewise bound to account for all money or property collected or received from the complainant. He may be held administratively liable for any inaptitude or negligence he may have had committed in his dealing with the complainant.