

FIRST DIVISION

[A.C. No. 9149, September 04, 2013]

JULIAN PENILLA, COMPLAINANT, VS. ATTY. QUINTIN P. ALCID, JR., RESPONDENT.

DECISION

VILLARAMA, JR., J.:

Before this Court is an administrative complaint^[1] filed against respondent Atty. Quintin P. Alcid, Jr. for violation of the Lawyer's Oath and the Code of Professional Responsibility, and for gross misconduct in the performance of his duty as a lawyer.

The antecedent facts follow:

Complainant Julian Penilla entered into an agreement with Spouses Rey and Evelyn Garin (the spouses) for the repair of his Volkswagen automobile. Despite full payment, the spouses defaulted in their obligation. Thus, complainant decided to file a case for breach of contract against the spouses where he engaged the services of respondent as counsel.

Respondent sent a demand letter to the spouses and asked for the refund of complainant's payment. When the spouses failed to return the payment, respondent advised complainant that he would file a criminal case for *estafa* against said spouses. Respondent charged P30,000 as attorney's fees and P10,000 as filing fees. Complainant turned over the relevant documents to respondent and paid the fees in tranches. Respondent then filed the complaint for *estafa* before Asst. City Prosecutor Jose C. Fortuno of the Office of the City Prosecutor of Quezon City. Respondent attended the hearing with complainant but the spouses did not appear. After the hearing, complainant paid another P1,000 to respondent as appearance fee. Henceforth, complainant and respondent have conflicting narrations of the subsequent events and transactions that transpired.

Complainant alleges that when the case was submitted for resolution, respondent told him that they have to give a bottle of Carlos Primero I to Asst. City Prosecutor Fortuno to expedite a favorable resolution of the case. Complainant claims that despite initial reservations, he later acceded to respondent's suggestion, bought a bottle of Carlos Primero I for P950 and delivered it to respondent's office.

Asst. City Prosecutor Fortuno later issued a resolution dismissing the *estafa* case against the spouses. Respondent allegedly told complainant that a motion for reconsideration was "needed to have [the resolution] reversed."^[2] Respondent then prepared the motion and promised complainant that he would fix the problem. On February 18, 2002, the motion was denied for lack of merit. Respondent then told complainant that he could not do anything about the adverse decision and presented the option of filing a civil case for specific performance against the spouses for the

refund of the money plus damages. Complainant paid an additional P10,000 to respondent which he asked for the payment of filing fees. After complainant signed the complaint, he was told by respondent to await further notice as to the status of the case. Complainant claims that respondent never gave him any update thereafter.

Complainant asserts having made numerous and unsuccessful attempts to follow-up the status of the case and meet with respondent at his office. He admits, however, that in one instance he was able to talk to respondent who told him that the case was not progressing because the spouses could not be located. In the same meeting, respondent asked complainant to determine the whereabouts of the spouses. Complainant returned to respondent's office on January 24, 2005, but because respondent was not around, complainant left with respondent's secretary a letter regarding the possible location of the spouses.

Complainant claims not hearing from respondent again despite his several letters conveying his disappointment and requesting for the return of the money and the documents in respondent's possession. Complainant then sought the assistance of the radio program "Ito ang Batas with Atty. Aga" to solve his predicament. Following the advice he gathered, complainant went to the Office of the Clerk of Court of the Caloocan City Metropolitan Trial Court and Regional Trial Court (RTC). Complainant learned that a civil case for Specific Performance and Damages was filed on June 6, 2002^[3] but was dismissed on June 13, 2002. He also found out that the filing fee was only P2,440 and not P10,000 as earlier stated by respondent. Atty. Aga of the same radio program also sent respondent a letter calling his attention to complainant's problem. The letter, like all of complainant's previous letters, was unheeded.

On January 9, 2006, complainant filed before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) the instant administrative case praying that respondent be found guilty of gross misconduct for violating the Lawyer's Oath and the Code of Professional Responsibility, and for appropriate administrative sanctions to be imposed.

Respondent harps a different tale.

In an Answer^[4] filed on January 30, 2006, respondent prayed that the case be dismissed for lack of merit. He denied charging complainant P10,000 as filing fees for the *estafa* case and claimed that he charged and received only P2,000. He also countered that the payment of P30,000 made by the complainant was his acceptance fee for both the *estafa* case and civil case. Respondent likewise denied the following other allegations of complainant: that he assured the success of the case before the prosecutor; that he asked complainant to give a bottle of Carlos Primero I to the prosecutor; that he promised to fix the case; and that he charged P10,000, as he only charged P5,000, as filing fee for the civil case.

Respondent explained that it was not a matter of indifference on his part when he failed to inform petitioner of the status of the case. In fact, he was willing to return the money and the documents of complainant. What allegedly prevented him from communicating with complainant was the fact that complainant would go to his office during days and times that he would be attending his daily court hearings.

The IBP-CBD called for a mandatory conference on April 28, 2006. Only complainant and his counsel attended.^[5] The conference was reset and terminated on June 9, 2006. The parties were directed to file their verified position papers within 15 days,^[6] to which complainant and respondent complied.^[7]

On July 18, 2006, respondent filed a Reply^[8] praying for the dismissal of the case for lack of factual and legal bases. He stated that he had performed his duties as complainant's counsel when he filed the criminal case before the Office of the City Prosecutor of Quezon City and the civil case before the RTC of Caloocan City. He averred that he should not be blamed for the dismissal of both cases as his job was to ensure that justice is served and not to win the case. It was unethical for him to guarantee the success of the case and resort to unethical means to win such case for the client. He continued to deny that he asked complainant to give the prosecutor a bottle of Carlos Primero I and that the filing fees he collected totalled P20,000. Respondent argued that it is incredulous that the total sum of all the fees that he had allegedly collected exceeded P30,000 – the amount being claimed by complainant from the spouses.

In its Report and Recommendation^[9] dated September 12, 2008, the IBP-CBD recommended the suspension of respondent from the practice of law for six months "for negligence within the meaning of Canon 18 and transgression of Rule 18.04 of the Code of Professional Responsibility," viz:

In the case under consideration, there are certain matters which keep sticking out like a sore thumb rendering them difficult to escape notice.

One is the filing of a criminal complaint for estafa arising out of a violation of the contract for repair of the Volks Wagon (sic) car. It is basic that when an act or omission emanates from a contract, oral or written, the consequent result is a breach of the contract, hence, properly actionable in a civil suit for damages. As correctly pointed out by the Investigating Prosecutor, the liability of the respondent is purely civil in nature because the complaint arose from a contract of services and the respondent (spouses Garin) failed to perform their contractual obligation under the contract.

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Another one is the filing of a civil complaint for specific performance and damages (after the dismissal of the criminal complaint for estafa) in the Regional Trial Court of Caloocan City where the actual damages claimed is P36,000.00.

It is also basic that the civil complaint for P36,000.00 should have been filed with the MTC [which] has jurisdiction over the same. One of the "firsts" that a lawyer ascertains in filing an action is the proper forum or court with whom the suit or action shall be filed. In June 2002 when the civil complaint was filed in court, the jurisdiction of the MTC has already expanded such that the jurisdictional amount of the RTC is already P400,000.00.

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Another thing is the various follow-ups made by respondent's client as evidenced by the letters marked as Exhibits "D", "E", "F", "G" and "H" which were all received by complainant's secretary, except for Exhibit "H" which was received by Atty. Asong, not to mention Exhibit "M" which was sent by "Atty. Aga". These efforts of the complainant were not reciprocated by the respondent with good faith. Respondent chose to ignore them and reasoned out that he is willing to meet with the complainant and return the money and documents received by reason of the legal engagement, but omitted to communicate with him for the purpose of fixing the time and place for the meeting. This failure suggests a clear disregard of the client's demand which was done in bad faith on the part of respondent.^[10]

On December 11, 2008, the IBP Board of Governors issued Resolution No. XVIII-2008-646, adopting and approving the recommendation of the IBP-CBD. The Resolution^[11] reads:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of Canon 18 and Rule 18.04 of the Code of Professional Responsibility for his negligence, Atty. Quintin P. Alcid, Jr. is hereby **SUSPENDED** from the practice of law for six (6) months.

On April 24, 2009, respondent sought reconsideration^[12] and asked that the penalty of suspension be reduced to warning or reprimand. After three days, or on April 27, 2009, respondent filed a "Motion to Admit Amended 'Motion for Reconsideration' Upon Leave of Office."^[13] Respondent asserted that the failure to inform complainant of the status of the cases should not be attributed to him alone. He stressed that complainant had always been informed that he only had time to meet with his clients in the afternoon at his office in Quezon City. Despite such notice, complainant kept going to his office in Tandang Sora. He admitted that though he committed lapses which would amount to negligence in violation of Canon 18 and Rule 18.04, they were done unknowingly and without malice or bad faith. He also stressed that this was his first infraction.

In its Resolution No. XIX-2011-473 dated June 26, 2011, the IBP Board of Governors denied respondent's Motion for Reconsideration for lack of merit.^[14] On August 15, 2011, respondent filed a second Motion for Reconsideration^[15] which was no longer acted upon due to the transmittal of the records of the case to this Court by the IBP on August 16, 2011.^[16]

On September 14, 2011, the Court issued a Resolution^[17] and noted the aforementioned Notices of Resolution dated December 11, 2008 and June 26, 2011. On December 14, 2011, it issued another Resolution^[18] noting the Indorsement