

## THIRD DIVISION

[ A. C. NO. 7504, November 23, 2007 ]

**VIRGINIA VILLAFLORES, COMPLAINANT, VS. ATTY. SINAMAR E. LIMOS, RESPONDENT.**

### RESOLUTION

**CHICO-NAZARIO, J.:**

Before Us is a Complaint<sup>[1]</sup> for Disbarment filed by complainant Virginia Villaflores against respondent Atty. Sinamar Limos, charging the latter with Gross Negligence and Dereliction of Duty.

Complainant Virginia Villaflores is the defendant in Civil Case No. 1218-BG entitled, "*Spouses Sanchez represented by Judith Medina vs. Spouses Villaflores,*" filed before the Regional Trial Court (RTC) of Bauang, La Union, Branch 33.

Receiving an unfavorable judgment, complainant sought the help of the Public Attorney's Office (PAO) to appeal her case to the Court of Appeals. The PAO filed for her a Notice of Appeal with the RTC.

On 1 September 2004, complainant received a copy of a Notice<sup>[2]</sup> from the Court of Appeals requiring her to file her appellant's brief within 45 days from receipt thereof.

Immediately thereafter, complainant approached respondent, who had previously handled her son's case, to file on her behalf the required appellant's brief. Since respondent agreed to handle the appeal, complainant handed to respondent on 8 September 2004 the amount of P10,000.00 as partial payment of the latter's acceptance fee of P20,000.00, together with the entire records of the case. The following day, on 9 September 2004, complainant paid the balance of respondent's acceptance fee in the amount of P10,000.00. These payments were duly received and acknowledged<sup>[3]</sup> by the respondent.

On 21 September 2004, an Employment Contract<sup>[4]</sup> was executed between complainant and respondent whereby the former formally engaged the latter's professional services. Upon the execution of said contract, complainant again paid the respondent the amount of P2,000.00 for miscellaneous expenses.<sup>[5]</sup>

On 14 January 2005, complainant received a copy of a Resolution<sup>[6]</sup> dated 6 January 2005 issued by the Court of Appeals dismissing her appeal for failure to file her appellant's brief within the reglementary period. Thus, on 17 January 2005, complainant went to respondent's office but failed to see respondent.

After several unsuccessful attempts to talk to the respondent, complainant went to Manila on 18 January 2005 to seek help from another lawyer who agreed to handle

the case for her. On 19 January 2005, complainant went back to the respondent's office to retrieve the records of her case. Respondent allegedly refused to talk to her.

Aggrieved by respondent's actuations, complainant filed the instant administrative complaint against respondent.

In her Answer,<sup>[7]</sup> respondent admitted her issuance of the acknowledgment receipts for the aggregate amount of P22,000.00, the execution of the Employment Contract between her and complainant, and the issuance by the Court of Appeals of the Notice to File Appellant's Brief and Resolution dated 6 January 2005. She, however, denied all other allegations imputed against her. Respondent argued that the non-filing of the appellant's brief could be attributed to the fault of the complainant who failed to inform her of the exact date of receipt of the Notice to File Appellant's Brief from which she could reckon the 45-day period to file the same. Complainant allegedly agreed to return to respondent once she had ascertained the actual date of receipt of said Notice, but she never did. Complainant supposedly also agreed that in the event she could not give the exact date of receipt of the Notice, respondent would just wait for a new Order or Resolution from the Court of Appeals before she would file the appropriate pleading. Respondent further contended that she had, in fact, already made preliminary study and initial research of complainant's case.

Pursuant to the complaint, a hearing was conducted by the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) at the IBP Building, Ortigas Center, Pasig City, on 17 June 2005.

On 11 April 2006, Investigating Commissioner Acerey C. Pacheco submitted his Report and Recommendation,<sup>[8]</sup> finding respondent liable for gross negligence and recommending the imposition upon her of the penalty of one year suspension, to wit:

WHEREFORE, it is respectfully recommended that herein respondent be declared guilty of gross negligence in failing to file the required appellants' brief for which act she should be suspended from the practice of law for a period of one (1) year. Also, it is recommended that the respondent be ordered to return the amount of P22,000.00 that she received from the complainant.

Thereafter, the IBP Board of Governors passed Resolution<sup>[9]</sup> No. XVII-2006-584 dated 15 December 2006, approving with modification the recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, 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 gross negligence in failing to file the required appellant's brief, Atty. Sinamar E. Limos is hereby SUSPENDED from the practice of law for three (3) months with Warning that a repetition of similar conduct will be dealt with more severely and

ORDERED TO RETURN the amount of P22,000.00 she received from complainant.

The core issue in this administrative case is whether the respondent committed culpable negligence in handling complainant's case as would warrant disciplinary action.

After a careful review of the records and evidence, we find no cogent reason to deviate from the findings and the recommendation of the IBP Board of Governors and, thus, sustain the same. Respondent's conduct in failing to file the appellant's brief for complainant before the Court of Appeals falls below the standards exacted upon lawyers on dedication and commitment to their client's cause.

The relation of attorney and client begins from the time an attorney is retained.<sup>[10]</sup> To establish the professional relation, it is sufficient that the advice and assistance of an attorney are sought and received in any manner pertinent to his profession.<sup>[11]</sup>

It must be noted that as early as 8 September 2004, respondent already agreed to take on complainant's case, receiving from the latter partial payment of her acceptance fee and the entire records of complainant's case. The very next day, 9 September 2004, complainant paid the balance of respondent's acceptance fee. Respondent admitted her receipt of P20,000.00 as acceptance fee for the legal services she is to render to complainant and P2,000.00 for the miscellaneous expenses she is to incur in handling the case, and the subsequent execution of the employment contract between her and complainant. Hence, it can be said that as early as 8 September 2004, respondent's rendition of legal services to complainant had commenced, and from then on, she should start protecting the complainant's interests. The employment contract between respondent and complainant already existed as of 8 September 2004, although it was only reduced into writing on 21 September 2004. In short, respondent's acceptance of the payment for her professional fees and miscellaneous expenses, together with the records of the case, effectively bars her from disclaiming the existence of an attorney-client relationship between her and complainant.

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 a client, the lawyer owes fidelity to such cause and must be mindful of the trust and confidence reposed in him.<sup>[12]</sup> 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.

As ruled in *Rabanal v. Tugade*<sup>[13]</sup>:

Once he agrees to take up 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. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and 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. This simply means that his client is entitled to the benefit