

SECOND DIVISION

[A.C. NO. 5485, March 16, 2005]

**ELMER CANOY, COMPLAINANT, VS. ATTY. JOSE MAX ORTIZ,
RESPONDENT.**

DECISION

TINGA, J.:

There are no good reasons that would justify a lawyer virtually abandoning the cause of the client in the midst of litigation without even informing the client of the fact or cause of desertion. That the lawyer forsook his legal practice on account of what might be perceived as a higher calling, election to public office, does not mitigate the dereliction of professional duty. Suspension from the practice is the usual penalty, and there is no reason to deviate from the norm in this case.

A *Complaint*^[1] dated 10 April 2001 was filed with the Office of the Bar Confidant by Elmer Canoy (Canoy) accusing Atty. Jose Max Ortiz (Atty. Ortiz) of misconduct and malpractice. It was alleged that Canoy filed a complaint for illegal dismissal against his former employer, Coca Cola Bottlers Philippines. The complaint was filed with the National Labor Relations Commission (NLRC) Regional Arbitration Board VI in Bacolod City.^[2] Atty. Ortiz appeared as counsel for Canoy in this proceeding. In 1998, the labor arbiter hearing the complaint ordered the parties to submit their respective position papers. Canoy submitted all the necessary documents and records to Atty. Ortiz for the preparation of the position paper. Thereafter, he made several unfruitful visits to the office of Atty. Ortiz to follow-up the progress of the case. After a final visit at the office of Atty. Ortiz in April of 2000, during which Canoy was told to come back as his lawyer was not present, Canoy decided to follow-up the case himself with the NLRC. He was shocked to learn that his complaint was actually dismissed way back in 1998, for failure to prosecute, the parties not having submitted their position papers.^[3] The dismissal was without prejudice. Canoy alleged that Atty. Ortiz had never communicated to him about the status of the case, much less the fact that he failed to submit the position paper.

The *Comment*^[4] filed by Atty. Ortiz is the epitome of self-hagiography. He informs the Court that since commencing his law practice in 1987, he has mostly catered to indigent and low-income clients, at considerable financial sacrifice to himself. Atty. Ortiz claims that for more than ten years, his law office was a virtual adjunct of the Public Attorney's Office with its steady stream of non-paying clients in the "hundreds or thousands."^[5] At the same time, he hosted a legal assistance show on the radio, catering to far-flung municipalities and reaching "the people who need legal advice and assistance."^[6] Atty. Ortiz pursued on with this lifestyle until his election as Councilor of Bacolod City, a victory which he generously attributes to the help "of the same people whom he had helped by way of legal assistance before."^[7]

Canoy was among those low-income clients whom Atty. Ortiz deigned to represent. The lawyer was apparently confident that the illegal dismissal case would eventually be resolved by way of compromise. He claims having prepared the position paper of Canoy, but before he could submit the same, the Labor Arbiter had already issued the order dismissing the case.^[8] Atty. Ortiz admits though that the period within which to file the position paper had already lapsed. He attributes this failure to timely file the position paper to the fact that after his election as Councilor of Bacolod City, "he was frankly preoccupied with both his functions as a local government official and as a practicing lawyer." Eventually, "his desire to help was beyond physical limitations," and he withdrew from his other cases and his "free legal services."^[9]

According to Atty. Ortiz, "Mr. Canoy should have at least understood that during all that time, he was free to visit or call the office and be entertained by the secretary as [he] would normally report to the office in the afternoon as he had to attend to court trials and report to the Sanggunian office."^[10] He states that it was his policy to inform clients that they should be the ones to follow-up their cases with his office, as it would be "too difficult and a financial burden to attend making follow-ups with hundreds of clients, mostly indigents" with only two office personnel.^[11]

Nonetheless, Atty. Ortiz notes that the dismissal of Canoy's complaint was without prejudice, thus the prescriptive period had been tolled. He claims not being able to remember whether he immediately informed Canoy of the dismissal of the case, though as far as he could recall, Canoy had conveyed a message to him that he had a lawyer to handle the case, thus his office did not insist on refileing the same.^[12]

The matter was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.^[13] Canoy eventually submitted a motion withdrawing the complaint, but this was not favorably acted upon by the IBP in view of the rule that the investigation of a case shall not be interrupted or terminated by reason of withdrawal of the charges.^[14] Eventually, the investigating commissioner concluded that "clearly, the records show that [Atty. Ortiz] failed to exercise that degree of competence and diligence required of him in prosecuting his clients' (sic) claim," and recommended that Atty. Ortiz be reprimanded.^[15] The IBP Commission on Discipline adopted the recommendation, with the slight modification that Atty. Ortiz be likewise warned that a repetition of the same negligence shall be dealt with more severely in the future.

The Court is sensitive to the difficulties in obtaining legal representation for indigent or low-income litigants. Apart from the heroic efforts of government entities such as the Public Attorney's Office, groups such as the IBP National Committee on Legal Aid and the Office of Legal Aid of the UP College of Law have likewise been at the forefront in the quest to provide legal representation for those who could not otherwise afford the services of lawyers. The efforts of private practitioners who assist in this goal are especially commendable, owing to their sacrifice in time and resources beyond the call of duty and without expectation of pecuniary reward.

Yet, the problem of under-representation of indigent or low-income clients is just as grievous as that of non-representation. Admirable as the apparent focus of Atty. Ortiz's legal practice may have been, his particular representation of Canoy in the

latter's illegal dismissal case leaves much to be desired.

Several of the canons and rules in the Code of Professional Responsibility guard against the sort of conduct displayed by Atty. Ortiz with respect to the handling of Canoy's case.

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.

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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.

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CANON 22-A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

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Rule 22.02 - A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

Atty. Ortiz should have filed the position paper on time, owing to his duty as counsel of Canoy to attend to this legal matter entrusted to him. His failure to do so constitutes a violation of Rule 18.03 of the Code of Professional Responsibility.

Once he agrees to take up the cause of a client, a 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 of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to