



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE
RECEIVED
 JAN 22 2018
 BY: LOH
 TIME: 3:49

FIRST DIVISION

**SPOUSES VICENTE and
 PRECYWINDA GIMENA,**
 Complainants,

A.C. No. 11828

Present:

SERENO, *C.J.*,
Chairperson,
 LEONARDO-DE CASTRO,
 DEL CASTILLO,
 JARDELEZA, and
 TIJAM, *JJ.*

- versus -

ATTY. JOJO S. VIJIGA,
 Respondent.

Promulgated:

NOV 22 2017

X-----X

DECISION

TIJAM, J.:

The relationship between lawyers and clients is a professional relationship as well as a fiduciary and confidential one. One consequence of such professional relationship is the obligation of a lawyer to efficiently manage his cases and update his clients of the status of the same.

ANTECEDENTS

This administrative case stems from the complaint brought by the Spouses Vicente and Precywinda Gimena (complainants), against Atty. Jojo S. Vijiga (respondent) for the latter's failure to file the appellants' brief in their behalf, resulting in the dismissal of their appeal in the Court of Appeals

(CA).

In their complaint, Spouses Gimena alleged that they hired the respondent to represent them in a civil case for nullity of foreclosure proceedings and voidance of loan documents filed against Metropolitan Bank and Trust Company, involving eight parcels of land (subject properties), docketed as Civil Case No. C-21053, assigned to the Regional Trial Court (RTC) of Caloocan City, Branch 126.

After trial on the merits, the RTC dismissed the action in its Decision dated June 6, 2011.

Aggrieved by the adverse decision, the complainants then brought the case to the appellate court, docketed as CA G.R. CV No. 98271.¹

On June 7, 2012, the CA issued a notice requiring complainants, (appellants therein), to file the appellants' brief in accordance with Sec. 7, Rule 44 of the Rules of Court.

Respondent failed to file the brief. As a result, the CA issued a Resolution² dated September 21, 2012.

On October 11, 2012, respondent filed an Omnibus Motion seeking the reconsideration of the September 21, 2012 Resolution, citing illness and the damage to his law office due to monsoon rains, as reasons for his failure to file the appellants' brief.³

The CA granted the motion in its Resolution dated January 3, 2013, and reinstated complainants' appeal. Complainants were then given a period of fifteen (15) days within which to file the required brief.

Respondent failed to file the appellants' brief within the given period. Hence, the CA issued a Resolution⁴ on March 15, 2013 dismissing the appeal. Complainants alleged that the March 15, 2013 Resolution became final and executory and was entered in the Book of Entries of Judgment of the CA on April 27, 2013.

Complainants alleged that throughout the proceedings in the CA, respondent did not apprise them of the status of their case. They were thus surprised when a bulldozer suddenly entered their properties. Complainants thereafter inquired on the status of their case, and it was then that they

¹Rollo, p. 3.

²Id. at 10-11.

³Id. at 4.

⁴Id. at 12-13.

W

discovered that their appeal was dismissed.⁵

Complainants alleged that respondent violated Canon 17 and 18 of the Code of Professional Responsibility and his oath as a lawyer. They claimed that respondent's lapse is not excusable and is tantamount to gross ignorance, negligence and dereliction of duty.

For his part, respondent denied that he abandoned and neglected complainants' appeal. He averred that he was able to talk to complainant Vicente, via telephone, after the CA dismissed the appeal in its Resolution dated September 21, 2012. Complainant Vicente purportedly told respondent not to pursue the appeal considering that the subject properties are already in the possession of the bank.⁶

FINDINGS OF THE INTEGRATED BAR OF THE PHILIPPINES (IBP)

The dispute was set for mandatory conference on August 20, 2014. Only complainants and their counsel appeared during the conference, despite the notice being received by respondent.⁷ Respondent filed an Ex-Parte and Urgent Motion to Reset the Scheduled Hearing⁸ to October 1, 2014. Respondent again failed to appear, and instead, filed another motion⁹ to reset the hearing to November 5, 2014. Respondent reasoned that he was set to attend hearings on the scheduled date and time.

Investigating Commissioner Arsenio Adriano recommended that respondent be suspended from the practice of law for six (6) months.

The IBP Board of Governors issued a Resolution¹⁰ on June 6, 2015, adopting and approving the Report and Recommendation of the Investigating Commissioner.

RESOLUTION NO. XXI-2015-408
CBD Case No. 14-4217
Sps. Vicente and Precywinda Gimena
vs. Atty. Jojo S. Vijiga

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", finding the recommendation to be fully supported by the evidence on record and applicable laws. Thus, Respondent Atty.

⁵Id. at 5.

⁶Id. at 31.

⁷Id. at 28.

⁸Id. at 36-38.

⁹Id. at 71-74.

¹⁰Id. at 82.

*Jojo S. Vijiga is hereby found guilty of violation of Canon 18, Rule 18.03 of the Code of Professional Responsibility and **SUSPENDED from the practice of law for six (6) months.***

Respondent filed a motion for reconsideration¹¹ on January 4, 2016. In a Resolution¹² dated January 27, 2017, the Board of Governors denied respondent's motion for reconsideration.

RESOLUTION NO. XXII-2017-788
CBD Case No. 14-4217
Sps. Vicente and Precywinda Gimena vs.
Atty. Jojo S. Vijiga

RESOLVED to DENY the Motion for Reconsideration there being no new reason and/or new argument adduced to reverse the previous findings and decision of the Board of Governors.

ISSUE OF THE CASE

Did the respondent violate his ethical duties as a member of the Bar in his dealings with the complainants?

RULING OF THE COURT

We adopt the findings and recommendation of the IBP. The Court finds that the suspension of respondent from the practice of law is proper.

The Code of Professional Responsibility (CPR) is clear. A lawyer owes his client competent and zealous legal representation.

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.

XXXX

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.

Respondent's failure to submit the appellants' brief and update his

¹¹Id. at 85-91.

¹²Id. at 98.

M

clients, complainants herein, of the status of their appeal falls short of the ethical requirements set forth under the CPR.

A lawyer is not required to represent anyone who consults him on legal matters.¹³ Neither is an acceptance of a client or case, a guarantee of victory. However, being a service-oriented occupation, lawyers are expected to observe diligence and exhibit professional behavior in all their dealings with their clients. Lawyers should be mindful of the trust and confidence, not to mention the time and money, reposed in them by their clients.

When a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the clients' interests and take all steps or do all acts necessary therefor.¹⁴

The necessity and repercussions of non-submission of an appellant's brief are provided for in the Rules of Court, to wit:

RULE 44
ORDINARY APPEALED CASES

xxxx

Sec. 7. Appellant's brief.

It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

RULE 50
DISMISSAL OF APPEAL

Section 1. *Grounds for dismissal of appeal.*

An **appeal may be dismissed** by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

xxxx

(e) **Failure of the appellant to serve and file the required number of copies of his brief** or memorandum within the time provided by these Rules; x x x (Emphasis supplied)

As a lawyer, respondent is presumed to be knowledgeable of the procedural rules in appellate practice. He is presumed to know that dismissal is an inevitable result from failure to file the requisite brief within the period stated in the Rules of Court. In this case, the fact that the appeal was twice

¹³*Villaflores v. Atty. Limos*, 563 Phil. 453 (2007).

¹⁴See: *Uy v. Atty. Tansinsin*, 610 Phil. 709, 714 (2009).

dismissed further highlights respondent's indifference to his client's cause. Interestingly, respondent failed to offer any explanation as to why he failed to submit the appellants' brief within the 45-day period from his receipt of the notice to file the same, resulting to the dismissal of the appeal for the first time. To the mind of this Court, such failure is an unequivocal indication of his guilt in the administrative charge. Indeed, failure to file the required pleadings is *per se* a violation of Rule 18.03 of the Code of Professional Responsibility, as cited above.¹⁵

His failure to file the appellants' brief, despite the CA's grant of leniency in reconsidering its initial dismissal of the appeal further compounds respondent's inadequacies. In this case, respondent's neglect of his professional duties led to the loss of complainants' properties and has left them bereft of legal remedies. They lost their case not because of merits but because of technicalities, specifically the respondent's failure to file the required pleadings. Certainly, the situation in the case at bar, is one such evil that the CPR intended to avoid.

Worse, respondent's failure to inform complainants of the unfortunate fate of their appeal further amplifies his lack of competence and diligence. As an officer of the court, it was respondent's duty to inform his client of whatever important information he may have acquired affecting his client's case. The purpose of informing the client is to minimize misunderstanding and loss of trust and confidence in the attorney. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests.¹⁶

This Court fails to find merit to respondent's claim that complainant Vicente directed him not to pursue the appeal. If that was true, candor and respect of the courts would have impelled respondent to file a motion to withdraw their appeal. Further, if indeed it was true that complainants lost interest in pursuing the appeal, they would not have secured the services of another counsel and file before the CA a motion to set aside the entry of judgment.

Apropos is this Court's ruling in *Reynaldo G. Ramirez v. Atty. Mercedes Buhayang-Margallo*¹⁷:

A problem arises whenever agents, entrusted to manage the interests of another, use their authority or power for their benefit or fail to discharge their duties. In many agencies, there is information asymmetry between the principal and the entrusted agent. That is, there are facts and events that the agent must attend to that may not be known by the principal.

¹⁵See: *Canoy v. Atty. Ortiz*, 493 Phil. 553, 558 (2005).

¹⁶See: *Layos v. Atty. Villanueva*, 749 Phil. 1, 6 (2014).

¹⁷752 Phil. 473 (2015).

This information asymmetry is even more pronounced in an attorney-client relationship. **Lawyers are expected not only to be familiar with the minute facts of their cases but also to see their relevance in relation to their causes of action or their defenses.** The salience of these facts is not usually patent to the client. It can only be seen through familiarity with the relevant legal provisions that are invoked with their jurisprudential interpretations. More so with the intricacies of the legal procedure. It is the lawyer that receives the notices and must decide the mode of appeal to protect the interest of his or her client.

Thus, the relationship between a lawyer and her client is regarded as highly fiduciary. **Between the lawyer and the client, it is the lawyer that has the better knowledge of facts, events, and remedies.** While it is true that the client chooses which lawyer to engage, he or she usually does so on the basis of reputation. It is only upon actual engagement that the client discovers the level of diligence, competence, and accountability of the counsel that he or she chooses. In some cases, such as this one, the discovery comes too late. Between the lawyer and the client, therefore, it is the lawyer that should bear the full costs of indifference or negligence.¹⁸ (Emphasis supplied)

True, for respondent's failure to protect the interest of complainants, respondent indeed violated Canon 17 and Canon 18 of the Code of Professional Responsibility. Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally.

The penalty to be meted to an erring lawyer rests on sound judicial discretion. In cases of similar nature, this Court imposed penalties ranging from a reprimand to suspension of three months or six months, and even disbarment in aggravated cases.¹⁹ In *Rene B. Hermano v. Atty. Igmedio S. Prado, Jr.*²⁰, this Court suspended Atty. Prado from the practice of law for six months for his failure to file an appellant's brief that could have resulted to the dismissal of the case had it not been for the intervention of another lawyer. In *Felicisima Mendoza Vda. De Robosa v. Mendoza and Navarro, Jr.*²¹, respondent therein was suspended for six months for a similar infraction. Also, in *Cesar Talento, et al. v. Atty. Agustin F. Paneda*²², one year of suspension from the practice of law was imposed to therein respondent for his failure to file the appeal brief for his client and for failure to return the money paid for legal services that were not performed. On the other hand, in *Fidela Vda. De Enriques v. Atty. Manuel G. San Jose*²³, therein respondent's negligence in handling his client's cause merited a suspension of six months from the practice of law.

¹⁸Id. at 483.

¹⁹*Dumanlag v. Atty. Intong*, A.C. No. 8638, October 10, 2016; *Villaflores vs. Atty. Limos*, supra note 13, at 463-464.

²⁰A.C. No. 7447, April 18, 2016, 789 SCRA 441.

²¹A.C. No. 6056, September 09, 2015, 770 SCRA 141, 160.

²²623 Phil. 662 (2009).

²³545 Phil. 379 (2007).

M

In this case, the fact that the complaining parties now stand to lose eight parcels of land which they claim to own due to respondent's failure to perform his professional and ethical duties, We deemed justified the suspension of respondent from the practice of law for six months.

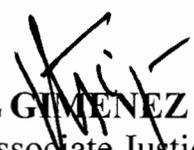
In affirming the recommendation of the IBP, this Court is mindful of its earlier ruling in *Ofelia R. Somosot v. Atty. Gerardo F. Lara*²⁴:

The general public must know that the legal profession is a closely regulated profession where transgressions merit swift but commensurate penalties; it is a profession that they can trust because we guard our ranks and our standards well. The Bar must sit up and take notice of what happened in this case to be able to guard against any repetition of the respondent's transgressions, particularly his failure to report the developments of an ongoing case to his clients. Unless the Bar takes a proactive stance, we cannot really blame members of the public who are not very well disposed towards, and who may even distrust, the legal profession after hearing experiences similar to what the complainant suffered. The administration of justice is served well when we demonstrate that effective remedies exist to address the injustice and inequities that may result from transgressions by those acting in the dispensation of justice process.²⁵

WHEREFORE, in view of the foregoing, respondent Atty. Jojo S. Vijiga is **SUSPENDED FOR SIX (6) MONTHS** from the practice of law with a warning that a repetition of the same or similar acts shall be dealt with more severely. He is **ADMONISHED** to exercise greater care and diligence in the performance of his duties.

This Decision shall take effect immediately upon receipt of Atty. Jojo S. Vijiga of a copy of this Decision. He shall inform this Court and the Office of the Bar Confidant in writing of the date he received a copy of this Decision. Copies of this Decision shall be furnished the Office of the Bar Confidant, to be appended to respondent's personal record, and the Integrated Bar of the Philippines. The Office of the Court Administrator is directed to circulate copies of this Decision to all courts concerned.

SO ORDERED.


NOEL GIMENEZ TIJAM
Associate Justice

²⁴597 Phil. 149 (2009).

²⁵Id. at 167-168.

WE CONCUR:



MARIA LOURDES P. A. SERENO

Chief Justice

Chairperson



TERESITA J. LEONARDO-DE CASTRO

Associate Justice



MARIANO C. DEL CASTILLO

Associate Justice



FRANCIS H. JARDELEZA

Associate Justice