

## EN BANC

[ A.C. No. 12072, December 09, 2020 ]

**NAPOLEON S. QUITAZOL, COMPLAINANT, VS. ATTY. HENRY S. CAPELA, RESPONDENT.**

### RESOLUTION

**LOPEZ, J.:**

A lawyer should never leave his client groping in the dark, for to do so would destroy the trust, faith, and confidence reposed not only in the lawyer so retained, but also in the legal profession as a whole.<sup>[1]</sup> What is more, when faced with an administrative complaint, a lawyer's misconduct is aggravated by his unjustified refusal to heed the order of the Integrated Bar of the Philippines (IBP).<sup>[2]</sup>

### ANTECEDENTS

Napoleon S. Quitazol (Napoleon) engaged the services of Atty. Henry S. Capela (Atty. Capela) in a civil case for breach of contract and damages before the Regional Trial Court (RTC) of Alaminos City, Pangasinan.<sup>[3]</sup> In the retainer agreement, Atty. Capela indicated his office address at Unit 1411, 14<sup>th</sup> Floor, Tower One & Exchange Plaza, Ayala Triangle 1, Ayala Avenue, Makati City. As acceptance fee, Napoleon agreed to deliver to Atty. Capela the possession of his Toyota Corolla GLI model, as well as its official receipt and certificate of registration.<sup>[4]</sup> Atty. Capela entered his appearance<sup>[5]</sup> and filed an answer before the RTC.<sup>[6]</sup> On February 12, 2014, a preliminary conference was held and the opposing counsel manifested the possibility of a compromise agreement, however, Atty. Capela was not present.<sup>[7]</sup> The agreement was then set to be heard on March 26,<sup>[8]</sup> May 7,<sup>[9]</sup> and August 6, 2014,<sup>[10]</sup> but Atty. Capela failed to appear. Left without a lawyer, Napoleon was constrained to agree to the Compromise Agreement,<sup>[11]</sup> which was approved by the RTC on August 19, 2014.<sup>[12]</sup> Napoleon felt shortchanged with Atty. Capela's non-appearance, thus, he demanded the return of the motor vehicle and P38,000.00,<sup>[13]</sup> but Atty. Capela did not yield.

Consequently, Napoleon instituted a Complaint<sup>[14]</sup> before the IBP Commission on Bar Discipline (IBP-CBD) against Atty. Capela for violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility (CPR). Napoleon alleged that Atty. Capela's continued absence during the hearings constitutes neglect of his duty to represent his client. Left without counsel, he was forced to enter into an amicable settlement to his damage and prejudice.

The IBP-CBD required Atty. Capela to submit his answer with a warning that failure to do so would render him in default, and the case shall be heard *ex-parte*. Atty. Capela did not file an answer. Later, the parties were notified to appear for a mandatory conference on March 26, 2015. The notice stated that non-appearance

by any of the parties shall be deemed a waiver of their right to participate in further proceedings.<sup>[15]</sup> At the mandatory conference, only Napoleon appeared.<sup>[16]</sup> Thus, the IBP issued an Order<sup>[17]</sup> noting Atty. Capela's failure to file an answer, and his absence during the mandatory conference. He was declared in default and considered to have waived his right to participate in further proceedings. Meantime, on April 30, 2015, Napoleon died and was substituted by his brother Frank S. Quitazol.<sup>[18]</sup>

In a Report and Recommendation dated May 29, 2015,<sup>[19]</sup> Investigating Commissioner Honesto A. Villamor found Atty. Capela administratively liable and ruled that he failed to contradict the allegations in the complaint. Atty. Capela's unjustified refusal to heed the directives of the IBP – to file an answer, to appear at the mandatory conference, and to file a position paper – constituted blatant disrespect amounting to conduct unbecoming a lawyer. The Commissioner recommended that Atty. Capela be meted the penalty of suspension from the practice of law for six months, thus:

WHEREFORE, premises considered, finding Respondent Atty. Henry S. Capela guilty of Violating Canon 18, 18.03, Canon 7, and Canon 11 x x x of the Code of Professional Responsibility and he is hereby recommended to be suspended for a period of six (6) months and to order him to return the amount of Two Hundred Thousand Pesos ([P]200,000.00) the value of the car which was given to him by the complainant within thirty (30) days and with a warning that repetition of the same or similar offense shall be dealt with more severely.

RESPECTFULLY SUBMITTED[.]<sup>[20]</sup>

On June 20, 2015, the IBP Board of Governors issued a Resolution that adopted and approved the findings of administrative liability, but modified the recommended penalty of suspension, from six months, to three years.<sup>[21]</sup>

Atty. Capela then filed an omnibus motion for reconsideration, denying that he served as counsel to Napoleon. Atty. Capela admitted that a retainer agreement, with Napoleon was drafted, but claimed that he did not receive a signed copy of the agreement nor any motor vehicle as payment for his legal services. Moreover, the complaint has no longer a leg to stand on, since Napoleon, through his substitute, issued an affidavit withdrawing the administrative case.<sup>[22]</sup> Anent the finding that he was guilty of conduct unbecoming a lawyer, Atty. Capela claimed that he was unaware of the complaint against him because he was no longer holding office at Makati City, where all the notices were sent. He was only apprised of the complaint when one Pacita Cala informed him of the assailed IBP Resolution.<sup>[23]</sup> The IBP Board of Governors denied Atty. Capela's motion for reconsideration.<sup>[24]</sup>

### **RULING OF THE COURT**

We adopt the conclusion and findings of the IBP, but modify the penalty imposed.

*There is an attorney-client  
relationship between  
Napoleon and Atty. Capela.*

It cannot be overemphasized that the practice of law is a profession. It is a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character.<sup>[25]</sup> 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 client's interests, and take all steps, or do all acts necessary.<sup>[26]</sup> Thus, lawyers are required to maintain, at all times, a high standard of legal proficiency, and to devote their full attention, skill and competence to their cases, regardless of their importance, and whether they accept them for a fee, or for free.<sup>[27]</sup>

In this case, the legal service of Atty. Capela was engaged by Napoleon to handle a civil case before the RTC of Alaminos City, Pangasinan. Atty. Capela entered his appearance as Napoleon's counsel, moved for extension of time, and filed an answer. Atty. Capela's contention, that he did not receive a copy of the signed retainer agreement to prove an attorney-client relationship, is not credible. He would not have undertaken to enter his appearance, as well as, move for extension and file a pleading if he was not representing Napoleon.

Moreover, a written contract or retainer agreement, is not an essential element in the employment of an attorney; a contract may be express or implied. To establish a lawyer-client relationship, 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> as in this case. Neither is the claim that no payment was received, defeat the existence of the relationship. It is not necessary that any retainer should have been paid, promised, or charged for, to constitute professional employment.<sup>[29]</sup>

*Atty. Capela's failure to attend hearings constitutes negligence.*

A lawyer's neglect of a legal matter entrusted to him constitutes inexcusable negligence for which he must be held administratively liable.<sup>[30]</sup> From the perspective of ethics in the legal profession, a lawyer's lethargy in carrying out his duties, is both unprofessional and unethical.<sup>[31]</sup> Rule 18.03, Canon 18 of the CPR embody this principle:

CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Whenever lawyers take on their client's causes, they pledge to exercise due diligence in protecting the client's rights. Their failure to exercise that degree of vigilance and attention expected of a good father of a family makes them unworthy of the trust reposed in them by their client and make them answerable to their client, the courts and society.<sup>[32]</sup> Here, Atty. Capela failed to exercise the required diligence in handling his client's cause. His failure to attend, despite notice, the four scheduled hearings on February 12, March 26, May 7, and August 6, 2014, constitutes inexcusable negligence. As the complainant's counsel of record, Atty. Capela is responsible for the conduct of the case in all its stages. His duty of competence and diligence includes not merely reviewing the case, and giving the

client sound legal advice, but also properly representing the client in court, attending scheduled hearings, preparing and filing required pleadings, and prosecuting the case with reasonable dispatch, without waiting for the client, or the court to prod him to do so. A lawyer should not sit idly by, and leave the rights of his client in a state of uncertainty.<sup>[33]</sup> Clearly, Atty. Capela was unjustifiably remiss in his duty as legal counsel to Napoleon.

*The affidavit of withdrawal, executed by Napoleon's substitute does not excuse Atty. Capela's negligence.*

An affidavit of withdrawal or desistance does not terminate the disciplinary proceedings against an errant lawyer. Section 5, Rule 139-B of the Rules of Court state that "*[n]o investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges, or failure of the complainant to prosecute the same, unless the Supreme Court motu proprio or upon recommendation of the IBP Board of Governors, determines that there is no compelling reason to continue with the disbarment or suspension proceedings against the respondent.*"<sup>[34]</sup> A case of suspension or disbarment may proceed regardless of the interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of negligence has been duly proved.<sup>[35]</sup> This rule is premised on the nature of disciplinary proceedings,<sup>[36]</sup> to wit:

[D]isciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, it also involves neither a plaintiff nor a prosecutor. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who, by their misconduct, have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.<sup>[37]</sup>

Jurisprudence is replete with cases holding that an affidavit of desistance is immaterial in administrative proceedings. In *Spouses Soriano v. Atty. Reyes*,<sup>[38]</sup> we suspended the lawyer for his failure to file a pre-trial brief, notwithstanding an affidavit of withdrawal. Likewise, the respondent lawyer in *Angalan v. Atty. Delante*,<sup>[39]</sup> was disbarred, despite an affidavit of desistance, for taking advantage of his clients and transferring the title of their property to his name. In *Ylaya v. Atty. Gacott*<sup>[40]</sup> the disciplinary case continued against the negligent lawyer although the complainant moved to withdraw the complaint. Applying these precepts, Napoleon's affidavit of withdrawal neither exonerates Atty. Capela nor puts an end to the