

SECOND DIVISION

[A.C. No. 12044, July 23, 2018]

MARTIN J. SIOSON, COMPLAINANT, VS. ATTY. DIONISIO B. APOYA, JR., RESPONDENT.

DECISION

CAGUIOA, J:

Before this Court is a complaint for disbarment^[1] filed by complainant Martin J. Sioson (Sioson) against respondent Atty. Dionisio B. Apoya, Jr. (Atty. Apoya, Jr.).

The Factual Antecedents

Sioson alleged that on November 27, 2013, his friend, Allan C. Torregosa, brought Atty. Apoya, Jr. to his office to recommend the latter to handle Sioson's complaint for Qualified Theft pending before the Department of Justice (DOJ). Sioson immediately engaged the services of Atty. Apoya, Jr. in handling the petition for review he had earlier filed before the DOJ, in connection with his complaint for Qualified Theft titled, "Martin Jimenez Sioson and Mauro Jimenez Sioson, Jr. vs. Annaliza Sioson, et al." docketed as NPS Docket No. XV-10INV-12E-00273.

Atty. Apoya, Jr. required the payment of an acceptance fee of Ten Thousand Pesos (P10,000.00), appearance fee of Two Thousand Five Hundred Pesos (P2,500.00) per hearing and fifteen percent (15%) of whatever amount collected from the case as success fee. Atty. Apoya, Jr. also told Sioson that he would submit a manifestation before the DOJ to correct the allegations stated in Sioson's petition.

Sioson immediately issued Banco De Oro Check No. 0289017 to pay Atty. Apoya, Jr. P10,000.00 as acceptance fee. Atty. Apoya, Jr. then deposited the said check to his Bank of the Philippine Islands (BPI) Account No. 3503-0571-08, as evidenced by the machine copy of the dorsal portion of the subject check.

On December 6, 2013, Sioson sent a text message to Atty. Apoya, Jr. inquiring on the status of his case. Atty. Apoya, Jr. replied that he would file first a Notice of Entry of Appearance prior to the filing of the manifestation he and Sioson discussed on November 27, 2013.

On December 11, 2013, Sioson sent another text message to Atty. Apoya, Jr., requesting for a status update on the case. Atty. Apoya, Jr. told Sioson to wait for the order of the DOJ notifying the latter of the Notice of Entry of Appearance he had filed.

On February 20, 2014, Sioson went to the DOJ to follow up on his case. He discovered that Atty. Apoya, Jr. had not filed an Entry of Appearance in relation to his case. Sioson called Atty. Apoya, Jr. but the latter's phone could not be reached.

Sioson averred that Atty. Apoya, Jr. thereafter continued to ignore his text messages.

In a letter dated February 20, 2014, Sioson requested Atty. Apoya, Jr. for a status update on his petition for review. The said February 20, 2014 letter was received by a certain Juvy Paghel on February 21, 2014 based on the certification issued by the Philippine Postal Corporation.^[2] Atty. Apoya, Jr. did not respond to the said letter.

Sioson wrote another letter to Atty. Apoya, Jr., which was received by Lolita Apoya, the mother of Atty. Apoya, Jr.. In the said letter dated March 7, 2014, Sioson demanded for Atty. Apoya, Jr. to return the P10,000.00 he had given the latter as acceptance fee, to wit:

On February 20, 2014 at around 10 a.m., I went personally to Docket Section of the Department of Justice to check the status of my case entitled Martin Jimenez Sioson, [et al.] vs. Analiza Sioson, [et al.] docketed as XV-10-INV-12E-00273. Upon inquiry with the said unit, I was surprised to know that there was no pleading filed by you before the said office, not even a Notice of Entry of Appearance. I immediately texted you and you did not even bothered (sic) to reply. As far as I can remember, when you accepted my case on November 27, 2013, you informed me that you will file a manifestation before the Honorable Office, however, up to this date, there was none.

With this, I would like to ask for the return of the amount of Pesos: Ten Thousand (P10,000.00) which you asked from me as an acceptance fee and received by you on the same date, five (5) days upon receipt hereof. Likewise, I would like to ask for you to return all the documents I sent to you pertaining to my case so I could look for another Legal Counsel, to handle my case efficiently and effectively. Otherwise, I will be constrained to file a Disbarment Case against you before the Integrated Bar of the Philippines for violation of "Canon Code" specifically Canons 16 and 18.^[3]

On April 4, 2014, Sioson filed a Verified Complaint before the Commission on Bar Discipline of the Integrated Bar of the Philippines (CBD-IBP), praying that Atty. Apoya, Jr. be disciplined and be disbarred from the practice of law.

The CBD-IBP issued an Order requiring Atty. Apoya, Jr. to submit a duly verified Answer, within fifteen (15) days from receipt of the order.^[4]

In his Answer dated May 21, 2014, Atty. Apoya, Jr. vehemently denied that Sioson was his client. He alleged that he does not know Sioson personally, to wit:

2. That there is no Attorney Client relationship, exist (sic) between the respondent and the complainant in this case. **Respondent came to surprised when he received an order requiring him to file an answer with respect to the complaint of herein alleged complainant.**

3. That sometimes on March 7, 2014 the said Martin J. Sioson had sent a letter address[ed] to the respondent asking for the return of the documents and money in the amount of P10,000.00 which he allegedly

stated in his letter that respondent received from him as Acceptance fee to handled his case Qualified Theft against Analiza Sioson. That in his letter there is also a threat that if respondent refused to return the documents and money he will be constrained to file a disbarment case against the respondent. **Respondent respectfully stressed that he never had an occasion to met herein complainant. Respondent never received any amount from the complainant representing as acceptance fee. Respondent likewise never received any documents (sic) from the complainant pertaining to the case Qualified Theft he mentioned in his letter.** That there is absolutely no attorney-client relationship exist (sic) between the respondent and the complainant in this case. Thus, respondent felt a (sic) coercion and threat with respect to the said letter came from the complainant for compelling respondent to return something which he did not received (sic) from the complainant and threatening to harm and or (sic) filing an administrative against the respondent. Consequently, respondent filed Criminal Complaint (sic) GRAVE THREATS and GRAVE COERCION against the complainant before the office of the City Prosecutor of Caloocan City.^[5]

On July 9, 2014, the CBD-IBP issued a Notice setting the mandatory conference/hearing of the subject complaint on August 13, 2014.^[6]

On August 11, 2014, Sioson filed his Mandatory Conference Brief.^[7]

On August 13, 2014, Atty. Apoya, Jr. filed his Mandatory Conference Brief.^[8] The mandatory conference of the case held on the same day was rescheduled to September 17, 2014 after Atty. Apoya, Jr. failed to attend the same.^[9]

On September 17, 2014, the mandatory conference was again rescheduled to October 22, 2014 after Atty. Apoya, Jr. filed an Urgent Motion to Cancel Hearing^[10] due to a scheduled court hearing he had to attend in San Fernando City, La Union.

In an Order dated October 22, 2014, Investigating commissioner Erwin L. Aguilera gave Sioson and Atty. Apoya, Jr. a period often (10) days from their receipt of the subject Order to submit their respective verified position papers.^[11]

In November, 2014, Sioson and Atty. Apoya, Jr. filed their respective verified position papers.^[12]

After due proceedings, Investigating Commissioner Erwin L. Aguilera rendered a Report and Recommendation^[13] on November 26, 2014, recommending that Atty. Apoya, Jr. be suspended from the practice of law for a period of six (6) months and that he be ordered to return the amount of Ten Thousand Pesos (P10,000.00) to Sioson, to wit:

Thus, we find the confluence of the evidence submitted by the complainant to have clearly, convincingly and satisfactorily shown that indeed the respondent has authored this reprehensible act. Respondent committed deceitful and dishonest acts by misrepresenting that he had already filed a Notice of Appearance on behalf of the Petition for Review and pocketing the amount of P10,000.00.

Respondent even went to the extent of denying that the meat of the allegation is baseless and no such evidence could prove of the existence of the valued [lawyer-client] relationship. After he was asked to return the documents and money, he made himself scarce. He ignored all communications sent to him by the complainant. After the disbarment complaint was filed, he was firm and compose thereafter he file his answer. He totally disregarded the bone of contention and faced everything through the assertion of complete denial.^[14]

Commissioner Aguilera did not give credence to Atty. Apoya, Jr.'s defense of denial:

Moreover, the undersigned cannot believe that complainant merely made up a case of evasion of clear duty by respondent to hold the latter liable for professional misconduct. On the other hand, respondent could have easily submitted the affidavits of his mother Lolita Apoya and/or that of Juvy Paghel to controvert the complainant's claims had he not taken his professional engagement seriously.^[15]

The dispositive portion of Commissioner Aguilera's Report and Recommendation reads as follows:

WHEREFORE, respondent Atty. Dionisio B. Apoya, Jr. is ordered **SUSPENDED** from the practice of law for a period of six (6) months. And is ordered to return the amount of P10,000.00 paid by to(sic) the complaint(sic).

RESPECTFULLY SUBMITTED.^[16]

On February 20, 2015, the IBP Board of Governors passed a Resolution^[17] adopting and approving the findings and recommendation of Investigating Commissioner Aguilera, thus:

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", and finding the recommendation to be fully supported by the evidence on record and applicable laws, and violation of Canon 16, Rule 16.01, Rule 16.03, Canon 18 and Rule 18.03, Atty. Dionisio B. Apoya, Jr. is hereby **SUSPENDED from the practice of law for six (6) months and Ordered to Return the amount of Ten Thousand (P10,000.00) Pesos to Complainant.**^[18]

Atty. Apoya, Jr. filed a Motion for Reconsideration^[19] asserting that the February 20, 2015 Resolution of the IBP Board of Governors was based on a misapprehension of facts. Atty. Apoya, Jr. insisted that he never met Sioson on November 27, 2013, the day Sioson supposedly engaged his services. He averred that he never ignored the February 20, 2014 and March 7, 2014 letters from Sioson. In fact, he immediately filed criminal cases for Grave Threats and Grave Coercion against Sioson because of the latter's scheme to use the instant administrative case as leverage for the criminal cases respondent Apoya, Jr. filed against Sioson.