

## EN BANC

**[ A.C. No. 11978 [Formerly CBD Case No. 10-2769], September 25, 2018 ]**

**KENNETH R. MARIANO, COMPLAINANT, VS. ATTY. JOSE N. LAKI, RESPONDENT.**

### DECISION

#### PER CURIAM:

Before us is a Affidavit-Complaint dated October 7, 2010 filed by complainant Kenneth R. Mariano (*Mariano*) against respondent Atty. Jose N. Laki (*Atty. Laki*), docketed as A.C. No. 11978 for dishonesty, unprofessional conduct and violation of the Code of Professional Responsibilities (*CPR*).<sup>[1]</sup>

The facts are as follows:

On January 7, 2009, Mariano alleged that he approached Atty. Laki to engage his legal services for the filing of a petition for annulment of his marriage. Atty. Laki then informed him to prepare the amount of P160,000.00, representing a package deal for his professional fee, docket fee and expenses for the preparation and filing of the petition, subject to an advance payment of P50,000.00. Mariano expressed surprise over the huge amount that Atty. Laki was asking, thus, the latter assured him that he could secure a favorable decision even without Mariano's personal appearance since he will file the petition for annulment before the Regional Trial Court (*RTC*) of Tarlac which is presided by a "friendly judge" and is known to be receptive to annulment cases.

Believing in Atty. Laki's assurances, Mariano initially paid Atty. Laki the amount of P50,000.00, as evidenced by a receipt<sup>[2]</sup> issued by Atty. Laki himself on January 7, 2009. Upon Atty. Laki's relentless follow-ups to pay the remaining balance, Mariano made the succeeding payments in the amounts of P40,000.00 and P60,000.00 on April 13, 2009 and August 2009, respectively, as evidenced by receipts<sup>[3]</sup> issued by Atty. Laki.

For almost a year thereafter, Mariano followed up with Atty. Laki the status of the petition. He then discovered that the petition has yet to be filed. Atty. Laki told him that the Presiding Judge of the RTC-Tarlac where he allegedly filed the petition has been dismissed by the Supreme Court, thus, he decided to withdraw the case since he did not expect the new presiding judge to be "friendly."

Doubtful of Atty. Laki's allegations, Mariano attempted to get a copy of the petition but the former told him that he still has to locate the copy in his office. Mariano tried several times to get hold of a copy of the petition but nevertheless failed, as it became very difficult to meet Atty. Laki. Mariano averred that he also tried calling Atty. Laki through his cellphone, but his calls were likewise rejected. These then

prompted Mariano to instead demand the return of his money considering that it was apparent that Atty. Laki failed to fulfill his duty as lawyer to file the petition for annulment.

Despite Mariano's demand to Atty. Laki to return his money, his demands were left unheeded. Atty. Laki promised Mariano that he would return the money in installments within two weeks because he still has to raise it, but Atty. Laki failed to make good of his promise. Later, Mariano's succeeding phone calls were rejected. Mariano also alleged that Atty. Laki's office in Guagua, Pampanga, was always closed. On August 29, 2010, per advise of another lawyer, Mariano sent a demand letter<sup>[4]</sup> to Atty. Laki which was served at the Integrated Bar of the Philippines (IBP), Pampanga Chapter, San Fernando, Pampanga, where the latter allegedly holds office as an IBP Director.

Aggrieved, Mariano filed the instant disbarment complaint against Atty. Laki for dishonesty, unprofessional conduct and violations of the CPR.

On October 11, 2010, the IBP-Commission on Bar Discipline (IBP-CBD) ordered Atty. Laki to submit his Answer on the complaint against him.<sup>[5]</sup>

On February 4, 2011, the IBP-CBD issued a Notice of Mandatory Conference/Hearing<sup>[6]</sup> notifying the parties to appear on March 4, 2011 with a warning that non-appearance by the parties shall be deemed a waiver of their right to participate in the proceedings.

On February 18, 2011, Atty. Laki moved for the cancellation and postponement of the mandatory conference on the ground that he has to appear for court hearings in Pampanga on the same day.<sup>[7]</sup>

On March 4, 2011, both Mariano and Atty. Laki failed to attend the rescheduled mandatory conference. As such, the Commission issued an Order<sup>[8]</sup> cancelling the scheduled conference and resetting it to April 15, 2011 with a stern warning to the parties that no further postponement will be entertained.

On April 15, 2011, Mariano was the only one who appeared before the Commission, and Atty. Laki was absent, despite notice, without any explanation. As such, the Commission issued an Order<sup>[9]</sup> noting that Atty. Laki again failed to appear despite warning and that he has yet to file an answer to the complaint. Consequently, the case was submitted for report and recommendation.

A month after, or on May 24, 2011, Atty. Laki filed a Manifestation with Motion,<sup>[10]</sup> explaining that he was suffering from acute bronchitis during the scheduled mandatory conference, and attached a medical certificate thereto. He, likewise, prayed that the Order submitting the case for report and recommendation be recalled and reconsidered, and that the mandatory conference be set preferably on June 24, 2011.

In an Order<sup>[11]</sup> dated June 3, 2011, the Commission, in the interest of justice, set aside its previous Order considering the case was submitted for report and recommendation, and set anew the mandatory conference on July 15, 2011.

On July 15, 2011, Mariano and Atty. Laki both appeared on the rescheduled mandatory conference, but the counsel of Mariano was absent, thus, the conference was reset on August 26, 2011. The Commission also noted that Atty. Laki has still not filed his Answer to the Complaint.<sup>[12]</sup>

On October 14, 2011, the case was re-assigned to Commissioner Leland R. Villadolid, Jr., and the parties were notified to appear before the Commission for the mandatory conference on November 29, 2011.<sup>[13]</sup>

On November 24, 2011, Atty. Laki filed an Urgent Motion for Postponement<sup>[14]</sup> on the ground that he has two scheduled court hearings on the scheduled mandatory conference on November 29, 2011.

On November 29, 2011, it was only Mariano who appeared before the Commission. The Commission, however, noted Atty. Laki's urgent motion for postponement on record and issued an Order<sup>[15]</sup> granting his motion for postponement to January 17, 2012. It also noted that Atty. Laki has still not submitted his Answer, thus, was given a final period of fifteen (15) days to file it.

On January 17, 2012, there was still no appearance on the part of Atty. Laki but his secretary, a certain Michael Brutas, appeared and informed the Commission that Atty. Laki would not be able to appear because his "*kinakapatid*" passed away. Mariano interposed objections arguing that the case has been pending for quite some time already, and that Atty. Laki has failed to submit his Answer to the complaint despite numerous notices. Finding merit in Mariano's arguments, the Commission denied the request of Atty. Laki for postponement. The Commission terminated the mandatory conference and gave Mariano fifteen (15) days to submit his verified position paper, after which, the case was submitted for report and recommendation.<sup>[16]</sup>

On February 17, 2012, Mariano filed his Position Paper<sup>[17]</sup> in compliance with the Order of the Commission. However, Atty. Laki still failed to submit his Answer to the Complaint. He was eventually declared in default. Thus, the instant case was submitted for report and recommendation.<sup>[18]</sup>

However, on March 28, 2012, Atty. Laki filed a Motion for Reconsideration with Motion to Lift the Order of Default as he claimed that his absence during the scheduled mandatory conference on January 17, 2012 was unintentional and was not meant to delay the proceedings.<sup>[19]</sup>

In its Report and Recommendation<sup>[20]</sup> dated August 20, 2015, the IBP-CBD recommended that Atty. Laki be disbarred from the practice of law. It, likewise, recommended that Atty. Laki be ordered to return to the complainant the amount of P150,000.00 which he received as professional fee. In Resolution No. XXII-2016-323,<sup>[21]</sup> the IBP-Board of Governors adopted and approved the IBP-CBD's report and recommendation.

After a review of the records of the case, We resolve to sustain the findings and recommendation of the IBP-Board of Governors.

The ethics of the legal profession rightly enjoin every lawyer to act with the highest standards of truthfulness, fair play and nobility in the course of his practice of law. Lawyers are prohibited from engaging in unlawful, dishonest, immoral or deceitful conduct and are mandated to serve their clients with competence and diligence. To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty, and integrity of the profession.<sup>[22]</sup>

Canon 1, Rule 1.01 of the Code provides that "[lawyers] shall not engage in unlawful, dishonest, immoral or deceitful conduct." By taking the lawyer's oath, lawyers become guardians of the law and indispensable instruments for the orderly administration of justice. As such, they can be disciplined for any conduct, in their professional or private capacity, which renders them unfit to continue to be officers of the court.<sup>[23]</sup>

The rule on the accounting of monies and properties received by lawyers from clients as well as their return upon demand is explicit. Canon 16, Rules 16.01, 16.02 and 16.03 of the CPR provides:

**CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEY AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.**

**Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.**

**Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.**

**Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand.**

In the instant case, it is clear that Atty. Laki violated his sworn duties under the CPR. Not only did he fail to file the petition for annulment of marriage despite receipt of the acceptance fee in the amount of P150,000.00, he also failed to account for the money he received. He also failed to keep his client abreast with the developments and status of the case as he actually never provided Mariano a copy of the petition despite demand. Worse, after receiving his acceptance fee, Atty. Laki also made it difficult for his client to contact him, as in fact Mariano felt that he was being avoided.

Having received payment for services which were not rendered, Atty. Laki was unjustified in keeping Mariano's money. His obligation was to immediately return the said amount. His refusal to do so despite repeated demands constitutes a violation of his oath where he pledges not to delay any man for money and swears to conduct himself with good fidelity to his clients. His failure to return the money, also gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of, the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics, as it impairs public