

## THIRD DIVISION

[ A.C. No. 11482, July 17, 2017 ]

**JOCELYN IGNACIO, COMPLAINANT, VS. ATTY. DANIEL T. ALVIAR, RESPONDENT.**

### DECISION

#### **TIJAM, J.:**

This is an administrative case filed by complainant Jocelyn Ignacio against respondent Atty. Daniel T. Alviar for violation of Canon 1<sup>[1]</sup>, Rule 1.01<sup>[2]</sup> of the Code of Professional Responsibility (CPR) for his alleged refusal to refund the amount of acceptance fees; Canon 12<sup>[3]</sup>, Rule 12.04<sup>[4]</sup> and Canon 18<sup>[5]</sup> Rule 18.03<sup>[6]</sup> for his alleged failure to appear in the criminal case he is handling and to file any pleading therein.

#### **The Facts**

In March 2014, respondent was referred to complainant for purposes of handling the case of complainant's son who was then apprehended and detained by the Philippine Drug Enforcement Agency (PDEA) in Quezon City. Respondent agreed to represent complainant's son for a stipulated acceptance fee of PhP100,000. Respondent further represented that he could refer the matter to the Commission on Human Rights to investigate the alleged illegal arrest made on complainant's son.<sup>[7]</sup>

After the initial payments of PhP20,000 and PhP30,000 were given to respondent, the latter visited complainant's son at the PDEA detention cell.<sup>[8]</sup> There, respondent conferred with complainant's son for some 20 minutes. After which, respondent left.<sup>[9]</sup>

Respondent, through his secretary, secured from the Office of the Pasay City Prosecutor plain copies of the case records. Respondent also verified twice from the Hall of Justice if the case was already filed in court.<sup>[10]</sup> It was at this time that respondent asked, and was paid, the remaining balance of PhP50,000. Subsequently, respondent filed his notice of appearance as counsel for complainant's son.<sup>[11]</sup>

Sometime in April 2014, complainant informed respondent that her son's arraignment was set on April 29, 2014. Respondent, however, replied that he cannot attend said arraignment due to a previously scheduled hearing. He committed to either find a way to attend the hearing or ask another lawyer-friend to attend it for him.

On April 26, 2014, complainant wrote a letter<sup>[12]</sup> to respondent informing the latter that she had decided to seek the intercession of another lawyer owing to the fact

that respondent cannot attend her son's scheduled arraignment. Complainant then requested that respondent retain a portion of the PhP100,000 to fairly remunerate respondent for the preparatory legal service he rendered. Respondent denies having received said letter.<sup>[13]</sup>

On the date of the arraignment, neither respondent nor his promised alternate, appeared. When asked, respondent replied that he forgot the date of arraignment.<sup>[14]</sup>

This incident prompted complainant to write another letter<sup>[15]</sup> dated May 6, 2014 to respondent, requesting the latter to formally withdraw as counsel and emphasized that respondent's withdrawal as counsel is necessary so that she and her son can hire another lawyer to take his stead. In said letter, complainant also reiterated her request that a portion of the PhP100,000 be remitted to them after respondent deducts his professional fees commensurate to the preparatory legal service he rendered.<sup>[16]</sup>

When respondent failed to take heed, complainant filed on June 16, 2014, the instant administrative complaint before the Commission on Bar Discipline, Integrated Bar of the Philippines.

At the proceedings therein, respondent failed to attend the initial mandatory conferences and to file his responsive pleading, citing as reason therefor the persistent threats to his life allegedly caused by a former client.<sup>[17]</sup> Upon finally submitting his Answer<sup>[18]</sup>, respondent denied having neglected his duties to complainant's son.

### **Report and Recommendation of the Commission on Bar Discipline**

On January 21, 2016, the Investigating Commissioner found respondent liable for negligence under Rule 18.03 of the CPR and recommended a penalty of six months suspension from the practice of law. The Investigating Commissioner observed that while respondent performed some tasks as lawyer for complainant's son, such do not command a fee of PhP100,000. It was also emphasized that respondent's failure to attend the arraignment shows the latter's failure to handle the case with diligence.<sup>[19]</sup>

As such, the Investigating Commissioner disposed:

**WHEREFORE, PREMISES CONSIDERED,** the undersigned recommends that respondent be meted out with the penalty of suspension for six (6) months from the practice of law and ordered to restitute the amount of One Hundred Thousand (Php100,000) Pesos to the complainant.

Respectfully Submitted.<sup>[20]</sup>

### **Resolution of the Board of Governors of the Integrated Bar of the Philippines**

On February 25, 2016, the IBP Board of Governors passed Resolution No. XXII-

2016-178<sup>[21]</sup> lowering the recommended penalty to reprimand with stern warning, thus:

RESOLVED to ADOPT with modification the recommendation of the Investigating Commissioner reducing the penalty to REPRIMAND WITH STERN WARNING.<sup>[22]</sup>

Pursuant to Rule 139-B, the records of the administrative case were transmitted by the IBP to the Court for final action. Complainant further seeks a review<sup>[23]</sup> of the Resolution No. XXII-2016-178 dated February 25, 2016.

### **The Issue**

The threshold issue to be resolved is whether respondent is guilty of negligence in handling the case of complainant's son.

### **The Ruling of the Court**

The Court affirms the Resolution No. XXII-2016-178 dated February 25, 2016 of the IBP Board of Governors, reducing the recommended penalty from six months to reprimand with stern warning. However, on the undisputed factual finding that respondent only performed preparatory legal services for complainant's son, he is not entitled to the entire PhP100,000 but only to fees determined on the basis of *quantum meruit*, Section 24, Rule 138, and Canon 20, Rule 20.01 of the CPR and that the remainder should be restituted to complainant.

Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.<sup>[24]</sup> Canon 18<sup>[25]</sup> of the CPR mandates that once a lawyer agrees to handle a case, it is the lawyer's duty to serve the client with competence and diligence.

In *Voluntad-Ramirez v. Atty. Bautista*<sup>[26]</sup>, the Court citing *Santiago v. Fojas*<sup>[27]</sup> expounds:

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, subject, however, to Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of [his] client, the 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 his 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 the 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 the bar, and helps maintain the respect of the community to the legal profession.<sup>[28]</sup>

We agree with the finding of the Investigating Commissioner that respondent failed to competently and diligently attend to the legal matter entrusted to him. It is undisputed that respondent came to see complainant's son, his client, only once for about 20 minutes and no more thereafter;<sup>[29]</sup> it is likewise undisputed that respondent failed to attend the scheduled arraignment despite the latter's commitment to either find a way to attend, or send a collaborating counsel to do so; <sup>[30]</sup> that he forgot the date of arraignment is an equally dismal excuse.

Equally revealing of respondent's negligence was his nonchalant attitude towards complainant's request for a refund of a portion of, not even the entire, PhP100,000. In his Answer before the IBP, respondent simply denied having received any of the letters sent by complainant.<sup>[31]</sup> Respondent's claim that it was complainant who failed to talk to him and his admission that he "forgot about complainant"<sup>[32]</sup> reveal his rather casual and lackadaisical treatment of the complainant and the legal matter entrusted to him.

If it were true that complainant already failed to communicate with him, the least respondent could have done was to withdraw his appearance as counsel. But even this measure, it appears, respondent failed to perform. His failure to take such action speaks of his negligence.

In administrative proceedings, only substantial evidence is required to warrant disciplinary sanctions. Substantial evidence is consistently defined as relevant evidence as a reasonable mind might accept as adequate to support a conclusion. <sup>[33]</sup> While the Court finds respondent guilty of negligence, We cannot ascribe to him any unlawful, dishonest, immoral or deceitful conduct nor causing undue delay and impediment to the execution of a judgment or misusing court processes. As such, and consistent with current jurisprudence, We find the penalty of reprimand with stem warning commensurate to his offense.<sup>[34]</sup>

As regards the restitution of the acceptance fees, We find it necessary to first distinguish between an attorney's fee and an acceptance fee as the former depends on the nature and extent of the legal services rendered, while the other does not.

On one hand, attorney's fee is understood both in its ordinary and extraordinary concept.<sup>[35]</sup> In its ordinary concept, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. While, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.<sup>[36]</sup> In the present case, the Investigating Commissioner referred to the attorney's fee in its ordinary concept.

On the other hand, acceptance fee refers to the charge imposed by the lawyer for mere acceptance of the case. The rationale for the fee is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. The opportunity cost of mere