

FIRST DIVISION

[A.C. No. 11828, November 22, 2017]

**SPOUSES VICENTE AND PRECYWINDA GIMENA, COMPLAINANTS,
VS. ATTY. JOJO S. VIJIGA, RESPONDENT.**

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 Resolution^[2] 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 Resolution^[4] 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 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 Hearing^[8] to October 1, 2014. Respondent again failed to appear, and instead, filed another motion^[9] 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 Resolution^[10] 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. 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 reconsideration^[11] on January 4, 2016. In a Resolution^[12] 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.

x x x x

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 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

x x x x

Sec. 7. Appellants 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:

x x x x

(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 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