

FIRST DIVISION

[A.C. No. 11323, September 14, 2016]

**NICOLAS ROBERT MARTIN EGGER, COMPLAINANT, VS. ATTY.
FRANCISCO P. DURAN, RESPONDENT.**

D E C I S I O N

PERLAS-BERNABE, J.:

For the Court's resolution is a Complaint^[1] dated November 27, 2014 filed before the Integrated Bar of the Philippines (IBP) by complainant Nicolas Robert Martin Egger (complainant) against respondent Atty. Francisco P. Duran (respondent), praying that the latter be meted disciplinary sanctions for his failure to perform his undertaking as counsel and to return complainant's money despite demand and earlier promise to do so, in violation of the Code of Professional Responsibility (CPR).

The Facts

Complainant alleged that on January 22, 2014, he engaged respondent's services to file on his behalf a petition for the annulment of his marriage. As consideration therefor, complainant deposited the total amount of P100,000.00 to respondent's bank account, spread over two (2) tranches of P50,000.00 each. Despite such payment, respondent never prepared, much less filed, said petition. This prompted complainant to terminate respondent's services due to loss of trust and confidence. Further, complainant, through his wife,^[2] Dioly Rose Reposo (Reposo), wrote a letter^[3] demanding for the return of the P100,000.00 he gave to respondent as lawyer's fees. In reply, respondent wrote complainant a letter^[4] promising the return of the aforesaid amount before the end of May 2014. However, respondent did not fulfill his promise, prompting complainant to hire a new counsel, who in turn, wrote another letter^[5] demanding for the return of the said lawyer's fees. As the second demand letter went unheeded, complainant filed the instant case against respondent.^[6]

In various issuances, the IBP-Commission on Bar Discipline (IBP CBD) required respondent to file his Answer,^[7] as well as to appear in the mandatory conference,^[8] but the latter failed to do so. Resultantly, the IBP issued an Order^[9] dated March 18, 2015 submitting the case for report and recommendation.

On March 26, 2015, however, respondent belatedly filed his Answer^[10] praying for the dismissal of the instant complaint. Respondent averred that he had no lawyer-client relationship with complainant as his client was the latter's wife, Reposo. Further, while respondent admitted the receipt of P100,000.00 and that no petition for annulment was filed, he denied being remiss in his duties as a lawyer, explaining that such non-filing was due to, *inter alia*, Reposo's failure to pay the full acceptance

fee amounting to P150,000.00, as well as to produce her psychiatric evaluation report. Finally, respondent claimed that his failure to return the P100,000.00 fee he collected was due to the fact that he lost most of his assets due to Typhoon Yolanda. Nevertheless, he signified his intention to return said fee as soon as he recovers from his dire financial condition.^[11]

The IBP's Report and Recommendation

In its Report and Recommendation^[12] dated April 21, 2015, the IBP-CBD found respondent administratively liable and, accordingly, recommended that he be meted the penalty of suspension from the practice of law for a period of six (6) months and ordered to return the amount of P100,000.00 with legal interest from April 25, 2014 to complainants. It was likewise recommended that respondent show compliance with such directives within thirty (30) days from the finality of the suspension order by the Court.^[13] Essentially, the IBP-CBD found respondent guilty of violating Canon 18 of the CPR for neglecting a legal matter entrusted to him (*i.e.*, the filing of the petition for annulment of marriage), and Canon 16 of the same for his failure to hold in trust all the money he received from complainant.^[14]

In a Resolution^[15] dated June 20, 2015, the IBP Board of Governors adopted and approved the aforesaid report and recommendation with modification deleting the imposition of legal interest.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable for violating the CPR.

The Court's Ruling

A judicious perusal of the records reveals that sometime in January 2014, complainant and Reposo had already forged a lawyer-client relationship with respondent, considering that the latter agreed to file a petition for annulment of marriage in their behalf, and in connection therewith, received the aggregate amount of P100,000.00 representing legal fees. Case law instructs that a lawyer-client relationship commences when a lawyer signifies his agreement to handle a client's case and accepts money representing legal fees from the latter,^[16] as in this case. Respondent's contention that he only has a lawyer-client relationship with Reposo but not with her husband, the complainant, is belied by the letter^[17] dated April 25, 2014 signed by no less than Reposo herself which shows that she and complainant *jointly* sought the services of respondent to work on their annulment case, but had to eventually withdraw therefrom on account of respondent's failure to render any actual legal service despite their agreement and payment of legal fees amounting to P100,000.00.

Once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him.^[18] This is commanded by Rule 18.03, Canon 18 of the CPR, which reads:

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.

However, respondent admittedly breached this duty when he failed to prepare, much less file, the appropriate pleading to initiate complainant and Reposo's case. before the proper court. Respondent's additional contention that his failure to file the petition was due to complainant and Reposo's failure to remit the full acceptance fee of P150,000.00 is not an excuse to abandon his client's cause considering that his duty to safeguard his client's interests commences from his retainer until his effective discharge from the case or the final disposition of the entire subject matter of litigation. To reiterate, respondent's act of agreeing to handle complainant's case, coupled with his acceptance of the partial payment of P100,000.00, already established an attorney-client relationship that gave rise to his duty of fidelity to the client's cause.^[19] Indubitably, respondent's neglect of a legal matter entrusted him by complainant and Reposo constitutes inexcusable negligence for which he must be held administratively liable.

Further, respondent also violated Rules 16.01 and 16.03, Canon 16 of the CPR when he failed to return the amount of P100,000.00 representing the legal fees that complainant paid him, viz.:

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS 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.

x x x x

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

"The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. Such act is a gross violation of general morality, as well as of professional ethics."^[20]

Having established respondent's administrative liability, the Court now determines the proper penalty to be imposed upon him.

Case law provides that in similar instances where lawyers neglected their client's affairs and at the same time failed to return the latter's money and/or property despite demand, the Court imposed upon them the penalty of suspension from the