



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 42-2004

TO : THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT : SUSPENSION FROM THE PRACTICE OF LAW FOR FIVE (5) YEARS OF ATTY. LUNA B. AVANCE

For the information and guidance of all concerned, quoted hereunder is the Decision of the Court En Banc dated December 11, 2003 in Administrative Case No. 5834, to wit:

“The relationship between a lawyer and a client is highly fiduciary; it requires a high degree of fidelity and good faith.¹ The Code of Professional Responsibility states:

CANON 17. – A LAWYER OWES FIDELITY TO 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.

We are once again called upon to reiterate these dicta in the instant administrative matter before us.

On July 31, 2001, Teresita D. Santeco filed a Verified Complaint² with the Committee on Bar Discipline of the Integrated Bar of the Philippines praying that appropriate sanctions be meted on respondent Atty. Luna B. Avance for mishandling Civil Case No. 97-275.

¹ *Espiritu v. Atty. Juan Cabredo IV*, A.C. No. 5831, 13 January 2003, citing *Angeles v. Uy*, 386 Phil. 6 [2000].

² Rollo, p. 1.

Complainant averred that she was the defendant in an action for ejectment docketed as Civil Case No. 50988 filed with Branch 62 of the Makati City Metropolitan Trial Court (MTC). On March 3, 1997, the trial court rendered judgment against her. Thereafter, she filed a supersedeas bond with the Clerk of Court of the Makati MTC.

Sometime in February 1997, during the pendency of the ejectment case, complainant filed an action to Declare Deed of Absolute Sale Null and Void and for Reconveyance with Damages with Branch 147 of the Makati City Regional Trial Court. The case was entitled, '*Feliciana David Santeco, et al. v. Ramon Gutierrez, et al.*,' and docketed as Civil Case No. 97-275.

On or before March 1998, complainant terminated the services of her then counsel and engaged the services of respondent Atty. Luna B. Avance as her counsel *de parte* in both cases. Complainant agreed to and did pay respondent P12,000.00 as acceptance fee for her services.³

In June 1997 and August 2000, complainant paid respondent the sums of P1,500.00 and P500.00 respectively in full satisfaction of their acceptance fee. However, respondent refused to issue to complainant the corresponding receipts therefore, despite demands to do so.

In an Order dated July 6, 1998 in Civil Case No. 97-275, the Presiding Judge of Branch 147 of the Makati City RTC expunged from the record the testimony of a witness for complainant, who was one of the plaintiffs therein.⁴ Respondent, as her counsel, filed a 'Motion to Reconsider and/or Set Aside Order of July 6, 1998.'⁵ The motion was denied by the trial court in an Order dated June 30, 1999.⁶ Thereafter, on August 27, 1999,⁷ Civil Case No. 97-275 was dismissed for failure to prosecute. Respondent filed a 'Motion to Reconsider and/or Set Aside Order of August 27, 1999.'⁸

Subsequently, respondent made representations with complainant that she was going to file a petition for certiorari with the Court of Appeals, assailing the dismissal of Civil Case No. 97-275. For the proposed service, respondent charged complainant the total sum of P3,900.00, which the latter paid.⁹ After waiting for some time without any word from respondent, complainant personally verified with the docket section of the Court of Appeals whether or not a petition for certiorari was filed. She was dismayed to discover that no such petition had been filed.

³ *Id.*, p. 19.

⁴ *Id.*, p. 20.

⁵ *Id.*, p. 22.

⁶ *Id.*, p. 25.

⁷ *Id.*, p. 27.

⁸ *Id.*, pp. 28-32.

⁹ *Id.*, p. 4.

Complainant also alleged that respondent took from her the official receipt and pictures of the torn-down structures which were the subject of Civil Case No. 50988, issued by the Clerk of Court of Branch 62 of the Makati City MTC, evidencing her deposit of the supersedeas bond. Respondent obtained the same under the pretext that she needed them in the motion for the withdrawal of complainant's deposit.

Complainant further averred that respondent told her to go to the court to claim the check for the supersedeas bond and have the same encashed with the Landbank. However, upon verification with the MTC, she discovered that there was no such check and that she needs to present the official receipt to withdraw said deposit. She tried to recover the official receipt from respondent but the latter kept avoiding her.

Thus, complainant filed an action against respondent before the *Barangay Office of Barangay Nangka, Marikina City*. Respondent, however, repeatedly failed to appear at the conciliation proceedings, despite notice of the hearings, prompting the *Lupong Tagapayapa*, to issue a certification to file action.¹⁰ Since then, respondent persistently avoided complainant and failed to represent her in Civil Case Nos. 50988 and 97-275. According to complainant, respondent just stopped appearing as her counsel of record without any justifiable reason. Hence, she prayed that appropriate sanctions be meted on respondent.

After the filing of the administrative complaint, docketed as CBD Case No. 01-861, an Order dated August 1, 2001¹¹ was issued by the Commission on Bar Discipline requiring respondent to submit her Answer within fifteen (15) days from receipt thereof. A copy of said Order was received by respondent on August 8, 2001. Respondent failed to file her Answer, which compelled complainant to file a 'Motion to Declare Respondent In Default And To Set Case For Hearing Ex Parte'.¹² She furnished respondent copy of the motion by personal service. The copy was received by one Kins Avance on October 3, 2001.¹³

Respondent still failed to file her Answer. Thus, the Commission on Bar Discipline issued an Order dated October 30, 2001 setting the case for hearing on November 20, 2001. This Order was received by respondent on November 8, 2001, as reflected in the Registry Return Receipt thereof.

On the scheduled hearing on November 20, 2001, only the complainant appeared.¹⁴ In order to abbreviate proceedings, the Commission on Bar Discipline issued an Order¹⁵ requiring both

¹⁰ *Id.*, p. 6.

¹¹ *Id.*, p. 7.

¹² *Id.*, p. 8.

¹³ *Id.*

¹⁴ *Id.*, p. 11.

¹⁵ *Id.*, p. 12.

parties to submit their respective memoranda within twenty (20) days from receipt, after which the case shall be deemed submitted for decision with or without memoranda. Respondent received a copy of the Order on November 27, 2001, per the Registry Return Receipt.

Pursuant to the foregoing Order, complainant filed her Position Paper on December 13, 2001.¹⁶ Again, respondent did not file her memorandum.

On March 14, 2002, Investigating Commissioner Lydia A. Navarro submitted a Report finding respondent culpable as charged and recommended that she be suspended from the practice of law for two (2) years. She found that:

As it is, respondent violated Canon 16 of the Code of Professional Responsibility for having failed to account to the complainant the official receipt of the supersedeas bond she got from complainant to withdrew (*sic*) the same from the court relative to the ejectment case.

Respondent also violated Canon 18.03 for having failed to file the [petition for] certiorari before the Court of Appeals as she promised the complainant and even got litigation expenses relative to the same.

Likewise, respondent violated Canon 20 when she discontinued her legal services for complainant without any notice of withdrawal and even ignored the issuances of the Commission for her to answer the complaint filed against her.

On August 3, 2002, the Board of Governors of the Integrated Bar of the Philippines issued Resolution No. XV-02-408, adopting and approving the report and recommendation of the Investigating Commissioner.

While we agree that indeed respondent is liable, we find the recommended penalty not commensurate to the degree of her malfeasance.

There can be no question that respondent was grossly remiss in the performance of her duties as counsel for complainant. The records show that in engaging the services of respondent, complainant agreed to and did pay respondent P12,000.00 as acceptance fee.¹⁷ It also appears that on April 20, 1998, a witness for complainant in Civil Case No. 97-275 testified before the court on direct examination. For lack of material time, the cross-examination was reset to June 1, 1998. However, the witness failed to attend the hearing on the said date. Respondent, on the other hand, arrived late. Over the vehement objections of defense counsel,

¹⁶ *Id.*, pp. 13-18.

¹⁷ *Id.*, p. 19.

the trial court reset the hearing on July 6, 1998, with the warning that in the event the witness fails to appear on said date, her direct examination shall be expunged. The witness again failed to appear at the next hearing because she went to Baguio. Respondent was likewise not around when the case was called. Thus, on motion of adverse counsel, the trial court ordered that the testimony of the witness be stricken off the record.¹⁸

These incidents show respondent's lackadaisical manner in handling her client's cause. Again, for respondent's failure to appear during the hearings scheduled on August 23 and 27, 1999, Civil Case No. 97-275 was dismissed for failure to prosecute.¹⁹ Her failure to appear during those hearings constitutes inexcusable negligence as it proved fatal to the cause of complainant.²⁰ She thereafter filed a Motion to Reconsider and/or Set Aside Order of August 27, 1999 on *February 8, 2000*²¹ - way beyond the reglementary period for the filing thereof. She proffered the lame excuse that notices sent to her were returned to the trial court with the notation: 'Moved.'²² However, it was her duty to notify the court of the change in her address, if she had indeed moved.

Even as the aforesaid motion for reconsideration was pending, she made representations with complainant that she would file a petition for certiorari with the Court of Appeals assailing the trial court's dismissal of Civil Case No. 97-275. For the filing and preparation thereof, she charged and was paid the sum of P,3900.00 by complainant.²³ Respondent, however, did *not* file the petition without notifying the complainant.

Rule 18.03 of the Code of Professional Responsibility mandates that a lawyer shall not neglect a legal matter entrusted to him. Her negligence in connection therewith shall render her liable. Verily -

Once he agrees to take up the cause of a client, a 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 the 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 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

¹⁸ *Id.*, p. 25.

¹⁹ *Id.*, p. 27.

²⁰ See *Rizalino Fernandez v. Atty. Reynaldo Novero, Jr.*, A.C. No. 5394, 2 December 2002.

²¹ Rollo, pp. 28-36.

²² *Id.*, pp. 29-30.

²³ *Id.*, p. 19.

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 negligence 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.²⁴

Aggravating her gross negligence in the performance of her duties, respondent abruptly stopped appearing as complainant's counsel even as proceedings were still pending – with neither a withdrawal nor an explanation for doing so. This was in gross violation of the following:

CANON 22. A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES. (Italics supplied)

It must be remembered that while the right of the client to terminate the relation is absolute, i.e., with or without cause,²⁵ the right of the attorney to withdraw or terminate the relation other than for sufficient cause is considerably restricted.²⁶ Among the fundamental rules of ethics is the principle that an attorney who undertakes to conduct an action impliedly stipulates to carry it to its termination.²⁷ He is not at liberty to abandon it without reasonable cause.²⁸

The grounds wherein a lawyer may withdraw his services are well-defined,²⁹ and the abruptness of respondent's withdrawal hardly fits into *any* of them. Be that as it may, whether or not a lawyer has a valid cause for withdrawing from a case, he can not just do so and leave the client out in the cold unprotected.³⁰ An attorney may only retire from a case either by written consent of his client or by permission of the court *after due notice and hearing*, in which event

²⁴ Ramos v. Jacoba, A.C. No. 5505, 27 September 2001.

²⁵ Rincomada Telephone Co., Inc. v. Buenviaje, 263 Phil. 162 [1990], citing Aro v. Nariawa, 137 Phil. 745 [1969].

²⁶ Pineda, E.L. Legal and Judicial Ethics, 1999 ed., p. 300, citing 7. C.J.S. 940.

²⁷ *Id.*

²⁸ *Id.*, citing Stork v. Mishel, 6 ALR 174.

²⁹ Rule 22.01. – A lawyer may withdraw his services in any of the following cases:

- a) When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
- b) When the client insists that the lawyer pursue conduct violative of these canons and rules;
- c) When his inability to work with co-counsel will not promote the best interest of his client;
- d) When the mental and physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
- e) When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
- f) When the lawyer is elected or appointed to public office; and
- g) Other similar cases.

³⁰ Pineda, Legal and Judicial Ethics, *supra*, p. 300.

the lawyer should see to it that the name of the new counsel is recorded in the case.³¹

Respondent's consistent refusal to comply with lawful orders in the proceedings before the Commission on Bar Discipline, with no explanation offered to justify them, not only underscores her utter lack of respect for authority, but also a defiance for law and order which is at the very core of her profession. Such defiance is anathema to those who seek a career in the administration of justice because *obedience* to the dictates of the law and justice is demanded of every lawyer. How else would respondent even endeavor to serve justice and uphold the law when she disdains to follow even simple directives? The first and foremost command of the Code of Professional Responsibility could not be any clearer:

CANON 1. A LAWYER SHALL UPHOLD THE
CONSTITUTION, OBEY THE LAWS OF
THE LAND AND PROMOTE RESPECT
FOR LEGAL PROCESSES.

The inevitable conclusion is that respondent gravely abused the confidence that complainant reposed in her and with palpable bad faith. Her persistent refusal to comply with lawful orders directed at her without any explanation for doing so, is contumacious conduct which merits no compassion.

A lawyer has the duty to uphold the integrity and dignity of the legal profession at all times and to *faithfully* perform her duties to society, to the bar, to the courts and to her clients.³² We can not tolerate any misconduct that tends to besmirch the fair name of an honorable profession.

All told, respondent has dismally failed to do her duty to her client and has clearly violated the Code of Professional Responsibility. Respondent's actions erode the public perception of the legal profession. They constitute gross misconduct, and the sanctions for such malfeasance is provided by Section 27, Rule 138 of the Rules of Court which states:

SEC. 27. *Disbarment and suspension of attorneys by Supreme Court, grounds therefore.* – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party without authority to do so.

³¹ *Guanzon v. Aragon*, 107 Phil. 315 [1960]; see also Section 26, Rule 138 Rules of Court.

³² *Teodolfo Reyes v. Atty. Rolando Javier*, A.C. No. 5574, 2 February 2002.

The penalty of suspension 'for a period of two (2) years' recommended by the Board of Governors of the IBP is too light and inadequate given the prevailing facts of this case. For the deliberate violation and defiance of not merely one but *several* Canons of the Code of Professional Responsibility, coupled with palpable bad faith and dishonesty in her dealings with complainant, respondent deserves a graver penalty -- that of suspension for a period of five (5) years from the practice of law.³³

WHEREFORE, in view of all the foregoing, respondent **ATTY. LUNA B. AVANCE** is found **GUILTY** of gross misconduct and is hereby **SUSPENDED** from the practice of law for a period of five (5) years. She is directed to return to complainant the amount of P3,900.00 within ten (10) days from notice.

This decision shall take effect immediately. Copies thereof shall be furnished the Office of the Bar Confidant, to be appended to respondent's personal record. The Court Administrator shall also furnish all lower courts with copies of this Decision.

SO ORDERED."

Copy of the decision was received by respondent on January 7, 2004, as manifested in her January 15, 2004 "Motion to Reconsider Decision dated December 11, 2003."

11 March 2004.

PRESBITERO J. VELASCO, JR.
Court Administrator

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³³ Soledad Nuñez v. Atty. Romulo Ricafort, A.C. No. 5054, 29 May 2002.