



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

OCA CIRCULAR NO. 43-2005

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 ATTORNEY'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT : SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS OF ATTY. BERNARDO G. JUANINO

For the information and guidance of all concerned, quoted hereunder is the Decision of the First Division dated February 18, 2005 in Administrative Case No. 5302, entitled "Marcial L. Abiero vs. Atty. Bernardo G. Juanino", to wit:

"A lawyer owes fidelity to the cause of his client at all times, mindful of the trust and confidence reposed in him. He must always serve with competence and diligence, and never neglect a legal matter entrusted to him. An attorney should endeavor to keep his client informed of the status of his case and respond within a reasonable time to the latter's request for information. Failure to comply with these abiding precepts of ethical conduct renders counsel liable for violating the canons of his profession.

On July 20, 2000, an administrative complaint¹ was filed by Marcial L. Abiero charging respondent Atty. Bernardo G. Juanino with negligence in connection with a legal matter entrusted to him.

It appears that complainant engaged the services of respondent of the law firm P.C. Nolasco and Associates as counsel *de parte* in NLRC NCR OCW Case No. 00-12-00904-95.² On January 29, 1998, Labor Arbiter Eduardo J. Carpio ruled in favor of complainant by ordering the respondents to pay complainant his unpaid wages and unpaid vacation leave pay, to refund his plane fare and to pay moral damages and attorney's fees.³

¹ Rollo, p. 1.

² Marcial O. Abiero v. Diamond-H Marine Services and Shipping Agency, Inc. et al.

³ Rollo, p. 48.

On appeal, the National Labor Relations Commission reversed the arbiter's decision and dismissed the case for lack of basis.⁴

For several times, complainant, either personally or through his designated agents, tried to follow up the status of the case. Each time, respondent would advise him to call on a later date at which time he may have some news for any development with the case.⁵

Respondent filed with the Court of Appeals a motion for extension of time to file a petition for review and paid the corresponding docket fee.

When complainant verified with the Court of Appeals the status of the case, he found out that respondent never filed a Petition for Review of his labor case. Consequently, the NLRC decision became final and executory. Thus, complainant filed this administrative complaint against respondent.

On August 30, 2000, respondent was required to file his comment within 10 days from notice.⁶ On September 25, 2000, respondent requested for additional time to file comment.⁷ Subsequently, respondent filed a series of motions for extension to file comment. On February 28, 2001, respondent was warned that no further extension shall be granted.⁸ Notwithstanding, and despite 11 extensions, respondent still failed to file his comment.

Consequently, on July 29, 2002, respondent was required to show cause why he should not be disciplinary dealt with or held in contempt for failure to comply with our directives.⁹

On September 2, 2002, respondent filed his *Compliance with Motion for Final Twelve (12) Day Extension With No Further Extension*.¹⁰

Finally, on September 17, 2002, respondent filed his comment¹¹ together with a *Motion to Admit Comment Filed One Day Late*.

In a Resolution dated October 21, 2002, respondent's *Motion to Admit Comment filed One Day Late* was referred to the Integrated Bar of the Philippines for investigation, report and recommendation.¹²

⁴ *Id.*, p. 65.

⁵ *Id.*, p. 1.

⁶ *Id.*, p. 67.

⁷ *Id.*, p. 68.

⁸ *Id.*, p. 85.

⁹ *Id.*, p. 145.

¹⁰ *Id.*, p. 147.

¹¹ *Id.*, pp. 150-154.

¹² *Id.*, p. 163.

As summarized, respondent alleged by way of defense, the following:

(1) that complainant became respondent's client after respondent handled these cases for complainant's uncle Aniceto Encio and his family namely Criminal Case No. F-10088, POEA Case No. M-91-06-602, I.S. No. 93 E-17909 and POEA Case No. L-93-04-610; that respondent successfully handled these cases which led to the dismissal of the criminal case against Aniceto Encio and recovery of monetary awards in the other cases; (2) that NLRC NCR OCW Case No. 00-12-00904-95 was referred by Aniceto Encio to respondent for handling; that herein complainant and Aniceto Encio requested respondent not to charge them an acceptance fee for said case and instead offered to pay respondent 30% of any monetary award recovered in said case; ... that on appeal to the National Labor Relations Commission, the Decision of Labor Arbiter Carpio was reversed and NLRC OCW Case No. 00-12-00904-95 was dismissed by the NLRC for lack of merit; ... (4) that at the time respondent advanced the docket fees, complainant and respondent did not have any agreement that a Petition for Certiorari would be filed with the Court of Appeals; ... (5) that weeks later, when complainant reimbursed respondent for the docket fees he had advanced, respondent advised complainant and his uncle that respondent intended to appeal the Decision of the NLRC to the Court of Appeals and so he filed a Petition for Extension of Time to File Petition ...; (7) that there was an error in judgment on respondent's part when instead of filing a Petition for Certiorari as originally intended, respondent chose to pursue another course of action, that of entertaining the idea of filing a Motion for Execution to enforce the Labor Arbiter's Decision against the other respondents who did not appeal said Decision; (8) that respondent pleads good faith in the subsequent course of action taken; that respondent entertained the idea that he could enforce the original Decision through a Motion for Execution; ... (9) that respondent tried his best to win complainant's labor case and in fact, he won it at the Labor Arbiter's level; (10) that respondent appeals to the sense of fairness of complainant; that in the 4 cases respondent handled for complainant and his uncle, respondent won 3 cases for them especially the criminal complaint for Homicide against complainant's uncle; that in said criminal case, respondent did not charge a single centavo for attorney's fees.¹³

In his letter-reply filed on February 7, 2003, complainant averred the following statements originally in the vernacular:

... it is not true that there was no acceptance fee because complainant paid respondent the amount of P1,500 plus the amount of P500 per hearing but no receipts were issued for these payments; that there is no truth to respondent's allegation that complainant was in the province because complainant's uncle called respondent 3

¹³ Report and Recommendation of the Commission on Bar Discipline, Integrated Bar of the Philippines, pp. 2-5. IBP Investigating Commissioner is Milagros V. San Juan.

times a week to follow-up the Petition for Review; that it was actually complainant who paid for the docket fees but respondent who physically paid the same to the Court of Appeals; and that respondent made several promises to complainant's uncle regarding the status of the Petition for Review but nothing came out of said promises.¹⁴

The lone issue for resolution is whether respondent violated Canons 17 and 18 of the Code of Professional Responsibility.

In its Report and Recommendation, the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP),¹⁵ held that there was no sufficient justification for respondent's failure to file the petition for review with the Court of Appeals. It found that respondent was aware of the period for filing said petition because he himself paid the docket fees and filed the *Motion for Extension of Time to File the Petition for Review*. His claim that he was pursuing another legal remedy in the labor case did not justify his failure to file the petition for review within the prescribed period. Complainant had placed his trust in respondent to handle his claims against his previous employer. Failure to comply with his legal duty as counsel of complainant in NLRC NCR OCW Case No. 00-12-00904-95 has caused damage and prejudice to the latter. Thus, in failing to file the petition for review, respondent was held to have breached Canons 17 and 18 of the Code of Professional Responsibility. The Commission on Bar Discipline of IBP recommended that respondent be suspended from the practice of law for a period of six (6) months.¹⁶

The Board of Governors of the Integrated Bar of the Philippines, adopted the Report and Recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's violation of Canons 17 & 18 of the Code of Professional Responsibility by failing to file the Petition for Certiorari, Atty. Bernardo G. Juanino is hereby SUSPENDED from the practice of law for six (6) months.¹⁷

We agree with the findings of the IBP Investigating Commissioner.

The lawyer has the duty to exert his best judgment in the prosecution or defense of the case entrusted to him and to exercise

¹⁴ *Id.*, pp. 5-6.

¹⁵ *Id.*, pp. 6-7.

¹⁶ *Id.*

¹⁷ Resolution No. XV-2003-337, Adm. Case No. 5302, Marcial L. Abiero v. Atty. Bernardo G. Juanino, 21 June 2003.

reasonable and ordinary care and diligence in the pursuit or defense of the case.¹⁸ By his own admission, respondent entertained the idea of filing a motion for execution, thus:

I honestly believed then that since the other respondents did not appeal the Decision to the Commission of the NLRC, I could enforce the Decision (See THIRD REASON) against these other respondents who did not appeal. So undersigned went to Honorable Labor Arbiter Eduardo J. Carpio and explained to him about my plan to file a Motion for Execution against the other respondents who did not appeal the Decision to the Commission of the NLRC. I was not able to see him the first two times that I went as I was informed he was assigned to certain task force and when I saw him the third time, Honorable Labor Arbiter Eduardo J. Carpio informed me that since decision was reversed on appeal and the complaint dismissed, there would be no basis for filing a Motion for Execution to enforce Decision. I was dumbfounded as the period to file a Petition for Certiorari already expired.¹⁹

As a lawyer, respondent should know that he is not required to seek prior approval from the labor arbiter before he could file a motion for execution. Notwithstanding, he presented himself, not once, but thrice, before the office of the arbiter to discuss his plan to file a motion for execution, only to discover that such recourse was not feasible. Worse, while respondent was waiting for the arbiter's opinion, the period to file the petition before the Court of Appeals continued to run, as in fact, it eventually expired.

Failure to appeal to the Court of Appeals despite instructions by the client to do so constitutes inexcusable negligence on the part of the counsel. Once a lawyer consents to defend the cause of his client, he owes fidelity to such cause and must at all times be mindful of the trust and confidence reposed in him. He is bound to protect his client's interest to the best of his ability and perform his duties to his client with utmost diligence. Nothing less can be expected from a member of the Philippine Bar. For having neglected a legal matter entrusted to him by his client, respondent did not serve his client with diligence and competence. His inexcusable negligence on such matter renders him liable for violation of Canons 17 and 18 of the Code of Professional Responsibility.²⁰

As we held in the recent case of *Barbuco v. Atty. Beltran*,²¹ an attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. Thus, failure to file brief for his

¹⁸ *Parifias v. Atty. Paguinto*, A.C. No. 6297, 13 July 2004, pp. 6-7.

¹⁹ Comment, p. 4; Rollo, p. 153.

²⁰ Canon 17 of the Code of Professional Responsibility provides that "[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 states that "[a] lawyer shall serve his client with competence and diligence." Specifically, Canon 18, Rule 18.03 provides that "[a] lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

²¹ A.C. No. 5092, 11 August 2004, p. 4.

client certainly constitutes inexcusable negligence on his part, especially if such failure took the form of filing a pleading after the deadline for filing the same has passed. Respondent has indeed committed a serious lapse in judgment in failing to perform his professional duty to his client under the canons of his profession.

The failure to timely file a pleading is by itself a sin of omission on the part of the respondent. However, complainant's travails were further compounded by the failure of the respondent to maintain an open line of communication with his client in direct contravention of Canon 18, Rule 18.04 of the Code of Professional Responsibility which requires a lawyer to keep his client informed of the status of his case and respond within a reasonable time to the client's request for information.²²

In *Legarda v. Court of Appeals*,²³ counsel's failure to exercise due diligence in protecting the interest of his client caused the latter material prejudice. The moment counsel takes a client's cause, he covenants that he will exert all effort for its prosecution until its final resolution. A lawyer who fails to exercise due diligence or abandon's his client's cause makes him unworthy of the trust reposed on him by the latter; he owes fealty, not only to his client, but also to the Court of which he is an officer.²⁴

We observed in *Pariñas v. Atty. Paguinto*²⁵ that a lawyer should give adequate attention, care and time to his client's case. Once he agrees to handle a case, he should undertake the task with dedication and care. If he fails in this duty, he is not true to his oath as a lawyer. Thus, a lawyer should accept only as much cases as he can efficiently handle in order to sufficiently protect his clients' interests. It is not enough that a lawyer possesses the qualification to handle the legal matter; he must also give adequate attention to his legal work. Utmost fidelity is demanded once counsel agrees to take the cudgels for his client's cause.

In *Barbuco v. Atty. Beltran, Guiang v. Atty. Antonio*,²⁶ and *Sps. Villaluz v. Judge Armenta*,²⁷ the Court suspended counsel for six months upon a finding that their failure to perfect an appeal was inexcusable and persuasively demonstrative of negligence and malpractice, a violation of Rule 18.03 of the Code of Professional Responsibility which declares that "a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable."

We cannot overstate the duty of a lawyer to uphold the integrity and dignity of the legal profession at all times. He can do

²² *Id.*

²³ G.R. No. 94457, 10 June 1992, 209 SCRA 722, 730-731.

²⁴ *Id.*

²⁵ A.C. No. 6297, 13 July 2004, p. 7.

²⁶ A.C. No. 2473, 3 February 1993, 218 SCRA 381, 384.

²⁷ 348 Phil. 776, 784 (1998).

this by faithfully performing his duties to society, to the bar, to the courts and to his clients.²⁸

Incidentally, we note that respondent delayed the filing of the comment for more than two (2) years. Despite numerous extensions, which were all granted, still, he filed the comment one (1) day late. By neglecting his duties to his client and to this Court, respondent transgressed the canons of legal ethics enshrined in the Code of Professional Responsibility. Such misconduct should not be countenanced.

WHEREFORE, in view of the foregoing, respondent Atty. Bernardo G. Juanino is found guilty of negligence and is **SUSPENDED** from the practice of law for six (6) months effective upon receipt of this Decision, with a **WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the Philippines, for their information and guidance.

SO ORDERED.”

Copy of the Decision was received by the respondent on March 30, 2005 as shown by Registry No. 31307.

22 April 2005.

PRESBITERO J. VELASCO, JR.
Court Administrator

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²⁸ Reyes v. Atty. Javier, 426 Phil. 243, 248 (2002).