



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

OCA CIRCULAR NO. 51-2005

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
ONE (1) MONTH OF ATTY. JOSE MAX ORTIZ

For the information and guidance of all concerned, quoted hereunder is the Decision of the Second Division dated March 16, 2005 in Administrative Case No. 5485, entitled "Elmer Canoy vs. Atty. Jose Max Ortiz", to wit:

"There are no good reasons that would justify a lawyer virtually abandoning the cause of the client in the midst of litigation without even informing the client of the fact or cause of desertion. That the lawyer forsook his legal practice on account of what might be perceived as a higher calling, election to public office, does not mitigate the dereliction of professional duty. Suspension from the practice is the usual penalty, and there is no reason to deviate from the norm in this case.

A *Complaint*¹ dated 10 April 2001 was filed with the Office of the Bar Confidant by Elmer Canoy (Canoy) accusing Atty. Jose Max Ortiz (Atty. Ortiz) of misconduct and malpractice. It was alleged that Canoy filed a complaint for illegal dismissal against his former employer, Coca Cola Bottlers Philippines. The complaint was filed with the National Labor Relations Commission (NLRC) Regional Arbitration Board VI in Bacolod City.² Atty. Ortiz appeared as counsel for Canoy in this proceeding. In 1998, the labor arbiter hearing the complaint ordered the parties to submit their respective position papers. Canoy submitted all the necessary documents and records to Atty. Ortiz for the preparation of the position paper. Thereafter, he made several unfruitful visits to the office of Atty. Ortiz to follow-up the progress of the case. After a final visit at the office of Atty. Ortiz in April of 2000, during which

¹ Rollo, pp. 2-3.

² *Id.* at 2.

Canoy was told to come back as his lawyer was not present, Canoy decided to follow-up the case himself with the NLRC. He was shocked to learn that his complaint was actually dismissed way back in 1998, for failure to prosecute, the parties not having submitted their position papers.³ The dismissal was without prejudice. Canoy alleged that Atty. Ortiz had never communicated to him about the status of the case, much less the fact that he failed to submit the position paper.

The *Comment*⁴ filed by Atty. Ortiz is the epitome of self-hagiography. He informs the Court that since commencing his law practice in 1987, he has mostly catered to indigent and low-income clients, at considerable financial sacrifice to himself. Atty. Ortiz claims that for more than ten years, his law office was a virtual adjunct of the Public Attorney's Office with its steady stream of non-paying clients in the "hundreds or thousands."⁵ At the same time, he hosted a legal assistance show on the radio, catering to far flung municipalities and reaching "the people who need legal advice and assistance."⁶ Atty. Ortiz pursued on with this lifestyle until his election as Councilor of Bacolod City, a victory which he generously attributes to the help "of the same people whom he had helped by way of legal assistance before."⁷

Canoy was among those low-income clients whom Atty. Ortiz deigned to represent. The lawyer was apparently confident that the illegal dismissal case would eventually be resolved by way of compromise. He claims having prepared the position paper of Canoy, but before he could submit the same, the Labor Arbiter had already issued the order dismissing the case.⁸ Atty. Ortiz admits though that the period within which to file the position paper had already lapsed. He attributes this failure to timely file the position paper to the fact that after his election as Councilor of Bacolod City, "he was frankly preoccupied with both his functions as a local government official and as a practicing lawyer." Eventually, "his desire to help was beyond physical limitations," and he withdrew from his other cases and his "free legal services."⁹

According to Atty. Ortiz, "Mr. Canoy should have at least understood that during all that time, he was free to visit or call the office and be entertained by the secretary as [he] would normally report to the office in the afternoon as he had to attend to court trials and report to the Sanggunian office."¹⁰ He states that it was his policy to inform clients that they should be the ones to follow-up their cases with his office, as it would be "too difficult and a

³ *Id.* at 3.

⁴ *Id.* at 23-29.

⁵ *Id.* at 23.

⁶ *Id.* at 24.

⁷ *Ibid.*

⁸ *Id.* at 26.

⁹ *Ibid.*

¹⁰ *Ibid.*

financial burden to attend making follow-ups with hundreds of clients, mostly indigents” with only two office personnel.¹¹

Nonetheless, Atty. Ortiz notes that the dismissal of Canoy’s complaint was without prejudice, thus the prescriptive period had been tolled. He claims not being able to remember whether he immediately informed Canoy of the dismissal of the case, though as far as he could recall, Canoy had conveyed a message to him that he had a lawyer to handle the case, thus his office did not insist on refileing the same.¹²

The matter was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.¹³ Canoy eventually submitted a motion withdrawing the complaint, but this was not favorably acted upon by the IBP in view of the rule that the investigation of a case shall not be interrupted or terminated by reason of withdrawal of the charges.¹⁴ Eventually, the investigating commissioner concluded that “clearly, the records show that [Atty. Ortiz] failed to exercise that degree of competence and diligence required of him in prosecuting his clients’ (sic) claim,” and recommended that Atty. Ortiz be reprimanded.¹⁵ The IBP Commission on Discipline adopted the recommendation, with the slight modification that Atty. Ortiz be likewise warned that a repetition of the same negligence shall be dealt with more severely in the future.

The Court is sensitive to the difficulties in obtaining legal representation for indigent or low-income litigants. Apart from the heroic efforts of government entities such as the Public Attorney’s Office, groups such as the IBP National Committee on Legal Aid and the Office of Legal Aid of the UP College of Law have likewise been at the forefront in the quest to provide legal representation for those who could not otherwise afford the services of lawyers. The efforts of private practitioners who assist in this goal are especially commendable, owing to their sacrifice in time and resources beyond the call of duty and without expectation of pecuniary reward.

Yet, the problem of under-representation of indigent or low-income clients is just as grievous as that of non-representation. Admirable as the apparent focus of Atty. Ortiz’s legal practice may have been, his particular representation of Canoy in the latter’s illegal dismissal case leaves much to be desired.

Several of the canons and rules in the Code of Professional Responsibility guard against the sort of conduct displayed by Atty. Ortiz with respect to the handling of Canoy’s case.

¹¹ *Ibid.*

¹² *Id.* at 27.

¹³ In a Resolution dated 4 December 2002. *Id.* at 41.

¹⁴ *See* IBP Report and Recommendation, p. 2.

¹⁵ *Id.* at 3.

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.

...

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.

...

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

...

Rule 22.02- A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

Atty. Ortiz should have filed the position paper on time, owing to his duty as counsel of Canoy to attend to this legal matter entrusted to him. His failure to do so constitutes a violation of Rule 18.03 of the Code of Professional Responsibility.

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 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.¹⁶

If indeed Atty. Ortiz's schedule, workload, or physical condition was such that he would not be able to make a timely filing, he should have informed Canoy of such fact. The relationship of lawyer-client being one of confidence, there is ever present the need for the client to be adequately and fully informed of the developments of the case and should not be left in the dark as to the mode and manner in which his/her interests are being defended.¹⁷

There could have been remedies undertaken to this inability of Atty. Ortiz to file on time the position paper had Canoy been told of such fact, such as a request for more time to file the position paper, or maybe even the hiring of collaborating counsel or substitution of Atty. Ortiz as counsel. Since Atty. Ortiz did not exercise the necessary degree of care by either filing the position paper on time or informing Canoy that the paper could not be submitted seasonably, the ignominy of having the complaint dismissed for failure to prosecute could not be avoided.

That the case was dismissed without prejudice, thus allowing Canoy to refile the case, hardly serves to mitigate the liability of Atty. Ortiz, as the failure to file the position paper is *per se* a violation of Rule 18.03.¹⁸

Neither is the Court mollified by the circumstance of Atty. Ortiz's election as a City Councilor of Bacolod City, as his adoption of these additional duties does not exonerate him of his negligent behavior. The Code of Professional Responsibility does allow a lawyer to withdraw his legal services if the lawyer is elected or appointed to a public office.¹⁹ Statutes expressly prohibit the occupant of particular public offices from engaging in the practice of law, such as governors and mayors,²⁰ and in such instance, the attorney-client relationship is terminated.²¹ However, city councilors are allowed to practice their profession or engage in any occupation except during session hours, and in the case of lawyers such as Atty. Ortiz, subject to certain prohibitions which are not relevant to this case.²² In such case, the lawyer nevertheless had the choice to withdraw his/her services.²³ Still, the severance of the

¹⁶ *Santeco v. Atty. Avance*, A.C. No. 5834, 11 December 2003, 418 SCRA 6, 13; *citing Ramos v. Jacoba*, A.C. No. 5505, 27 September 2001.

¹⁷ *Garcia v. Atty. Manuel*, A.C. No. 5811, 20 January 2003, 395 SCRA 386, 390.

¹⁸ *See Endaya v. Atty. OCA*, A.C. No. 3967, 3 September 2003, 410 SCRA 244, 253. "Respondent's failure to file the affidavits and position paper at the MCTC did not actually prejudice his clients, for the court nevertheless rendered a decision favorable to them. However, the failure is *per se* a violation of Rule 18.03."

¹⁹ *See* Rule 22.01 (f), Code of Professional Responsibility.

²⁰ *See* Section 90 (a), Local Government Code.

²¹ R. AGPALO, *THE CODE OF PROFESSIONAL RESPONSIBILITY* (1st ed., 1991), at 299; *citing Aquino v. Blanco*, 79 Phil. 647 (1947) & *Omico Mining & Industrial Corp. v. Vallejos*, 63 SCRA 285 (1975).

²² *See* Section 90 (b), Local Government Code.

²³ AGPALO, *supra* note 21, at 300.

relation of attorney-client is not effective until a notice of discharge by the client or a manifestation clearly indicating that purpose is filed with the court or tribunal, and a copy thereof served upon the adverse party, and until then, the lawyer continues to be counsel in the case.²⁴

Assuming that Atty. Ortiz was justified in terminating his services, he, however, cannot just do so and leave complainant in the cold unprotected.²⁵ Indeed, Rule 22.02 requires that a lawyer who withdraws or is discharged shall, subject to a lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter. Atty. Ortiz claims that the reason why he took no further action on the case was that he was informed that Canoy had acquired the services of another counsel. Assuming that were true, there was no apparent coordination between Atty. Ortiz and this new counsel.

In fact, it took nearly two years before Canoy had learned that the position paper had not been filed and that the case had been dismissed. This was highly irresponsible of Atty. Ortiz, much more so considering that Canoy was one of the indigent clients whom Atty. Ortiz proudly claims as his favored clientele. It does not escape the Court's attention that Atty. Ortiz faults Canoy for not adequately following up the case with his office.²⁶ He cannot now shift the blame to complainant for failing to inquire about the status of the case, since, as stated above, it was his duty as lawyer to inform his clients of the status of cases entrusted to him.²⁷

The appropriate sanction is within the sound discretion of this Court. In cases of similar nature, the penalty imposed by the Court consisted of either a reprimand, a fine of five hundred pesos with warning, suspension of three months, six months, and even disbarment in aggravated cases.²⁸ Given the circumstances, the Court finds the penalty recommended by the IBP too lenient and instead suspends Atty. Ortiz from the practice of law for one (1) month. The graver penalty of suspension is warranted in lieu of an admonition or a reprimand considering that Atty. Ortiz's undisputed negligence in failing to timely file the position paper was compounded by his failure to inform Canoy of such fact, and the successive dismissal of the complaint.

Lawyers who devote their professional practice in representing litigants who could ill afford legal services deserve commendation. However, this mantle of public service will not deliver the lawyer, no matter how well-meaning, from the consequences of negligent acts. It is not enough to say that all

²⁴ *Baquiran v. Court of Appeals*, 112 Phil. 764 (1961) & *Bacarro v. Court of Appeals*, 37 SCRA 36 (1971), cited in *AGPALO*, *supra* note 21, at 294.

²⁵ *Orcino v. Gaspar*, 344 Phil. 792, 800 (1997).

²⁶ *Supra* note 12.

²⁷ *Zarate-Bustamante v. Atty. Libatique*, 418 Phil. 249, 255 (2001)

²⁸ *Endaya v. Atty. OCA*, *supra* note 18, at 255-256, *citing* cases.

pauper litigants should be assured of legal representation. They deserve quality representation as well.

WHEREFORE, respondent Atty. Jose Max S. Ortiz is ordered SUSPENDED from the practice of law for one (1) month from notice, with the warning that a repetition of the same negligence will be dealt with more severely. Let a copy of this decision be attached to respondent's personal record in the Office of the Bar Confidant and copies be furnished to all chapters of the Integrated Bar of the Philippines and to all the courts in the land.

SO ORDERED."

Copy of the decision was received by respondent on April 12, 2005 as shown by Registry Return Receipt No. 35987.

05 May 2005.

PRESBITERO J. VELASCO, JR.
Court Administrator