



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

OCA CIRCULAR NO. 77-2005

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. MELANIO MAURICIO, JR.

For the information and guidance of all concerned, quoted hereunder is the Resolution of the Third Division dated April 22, 2005 in Administrative Case No. 5655, entitled "Valeriana U. Dalisay vs. Atty. Melanio Mauricio, Jr.", to wit:

"The instant case stemmed from a verified letter-complaint dated February 21, 2002 filed with this Court by Valeriana U. Dalisay against Atty. Melanio "Batas" Mauricio, Jr. for demanding and receiving exorbitant attorney's fees but did not take any action on her case.

In her complaint, Dalisay alleged that she was impressed by the pro-poor and pro-justice advocacy of respondent, a media personality. So she engaged his services as her counsel in Civil Case No. 00-44, wherein she is the defendant, pending before the Municipal Trial Court of Binangonan, Rizal. After consulting with respondent, she handed to him all the pertinent documents. In turn, respondent demanded ₱25,000.00 as acceptance fee which she paid. Then respondent asked her to pay ₱8,000.00 as filing fee. She paid the amount although she knew that Civil Case No. 00-44 was already filed with the court.

After a month, complainant approached respondent to follow-up her case. Respondent demanded additional acceptance fee, or a total of ₱90,000.00, with the explanation that he can give a discount should she pay in cash. Respondent also asked her to pay him ₱3,000.00 as appearance fee.

Complainant raised an additional amount and paid respondent the total sum of ₱48,000.00. Adding to this amount ₱8,000.00 filing fee, her total payment was ₱56,000.00.

Complainant further alleged that notwithstanding her payments, respondent never rendered any legal service for her in Civil Case No. 00-044. As a result, she terminated their attorney-client relationship and demanded the return of her money and documents. However, he refused to do so.

In his comment, respondent denied complainant's charge. He claimed that Atty. Oliver Lozano referred her to him to defend her in Civil Case No. 00-044. He explained to her that she is not covered by the free legal service being rendered by his office. Thus, she would be treated as a regular client. Accordingly, his acceptance fee would be One Hundred Thousand (₱100,000.00) Pesos. In addition, she would be charged for any pleading and paper filed with the court, plus an appearance fee of ₱3,000.00.

A few days later, Atty. Lozano called respondent and asked him to reduce his acceptance fee. He then agreed and asked only ₱25,000.00 for which complainant was very grateful.

Respondent denied demanding ₱8,000.00 as filing fee in Civil Case No. 00-044. He clarified that such fee was intended for another case he would file for complainant, aside from Civil Case No. 00-044.

Respondent also alleged that he asked complainant to bring her son-in-law to his office for a conference and to submit to him the necessary documents to enable him to prepare the filing of the complaints in order to protect her rights over the subject property. But complainant did not heed his advice. Instead, she returned to his office and told him that she was no longer interested in retaining his services. She then demanded a refund of the amounts she paid.

According to respondent, he rendered legal services to complainant by way of legal advice and opinions on all her problems and those of her family. Consequently, he had every right to collect attorney's fees from her. He prayed that the instant complaint be dismissed.

On September 18, 2002, we resolved to refer this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In her Report and Recommendation dated January 13, 2004, Commissioner Lydia A. Navarro of the IBP Commission on Bar Discipline made the following findings –

"It is evident that for the amount of P56,000.00 paid by the complainant as reflected in the duly signed official receipts of respondent's law office, no action had been taken nor any pleadings prepared by the respondent except his alleged conferences and opinions rendered when complainant frequented his law office, as his legal services.

In view thereof, when complainant decided to withdraw respondent's services as her counsel due to inaction, it is quite fair and incumbent upon the respondent to return whatever amount the complainant had already paid in the amount of P56,000.00 and the latter to compensate respondent for reasonable consultation fees due him which was not included in their retained agreement."

and recommended as follows:

"Wherefore, premises considered, it is respectfully recommended that the complaint against Atty. Melanio 'Batas' Mauricio, Jr., be dismissed and the respondent be required to refund the amount of Fifty Six Thousand Pesos (P56,000.00) to the complainant within two (2) months from receipt hereof, with the advice to be more discreet and cautious in dealing with clients relative to assessment and receipt of required fees in the future, specially those assisted by him through referral and accommodation; otherwise severe penalty will be imposed.

Complainant is likewise ordered to pay respondent consultation fee equivalent to twenty percent (20%) of the whole amount of P56,000.00.

RESPECTFULLY SUBMITTED."¹

On February 27, 2004, the IBP Board of Governors passed Resolution No. XVI-2004-121 adopting and approving *in toto* the Report and Recommendation of Commissioner Navarro.

We cannot sustain the recommendation of the IBP Board of Governors that this case should be dismissed.

As found by IBP Investigating Commissioner Navarro, respondent agreed to handle Civil Case No. 00-044 on behalf of complainant for an acceptance fee of P25,000.00 which she paid. Respondent then demanded additional acceptance fee or a total of P48,000.00, instead of P25,000.00 initially agreed upon. In addition, respondent asked for P8,000.00 which according to him was intended as filing fee for a new case he was supposed to file. Hence, respondent received the total amount of P56,000.00 from complainant for his supposed legal services.

¹ Report and Recommendation, at 8-9.

When respondent accepted ₱56,000.00 from complainant, it was understood that he agreed to take up the latter's case and that an attorney-client relationship between them was established. From then on, it was expected of him to serve complainant with competence and attend to her case with fidelity, care and devotion.

However, there is nothing in the records to show that respondent entered his appearance as counsel of record for complainant in Civil Case No. 00-044. He did not even follow-up the case which remained pending up to the time she terminated his services.

As to the ₱8,000.00, allegedly as docket fees for other cases, paid to respondent by complainant, the Investigating Commissioner found that **“there was no evidence nor any pleadings submitted to show that respondent filed any case considering that the filing fee had to be paid simultaneously with the filing of a case.”**

Canons 17 and 18 of the Code of Professional Responsibility, the body of rules governing the conduct of every member of the Bar in this jurisdiction, provides:

“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.”

More specifically, Rule 18.03 states:

“A LAWYER SHALL NOT NEGLECT A LEGAL MATTER ENTRUSTED TO HIM, AND HIS NEGLIGENCE IN CONNECTION THEREWITH SHALL RENDER HIM LIABLE.”

Also, respondent's Attorney's Oath declares that respondent shall impose upon himself the sacred duty, among others, that he will not delay any man for money or malice, and will conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity to courts as well as to his clients.

A member of the legal profession owes his client entire devotion to his genuine interest and warm zeal in the maintenance and defense of his rights.² An attorney is expected to exert his best efforts and ability to protect his client's case, for

² Agpalo, R., Legal Ethics at 157 (4th ed., 1989).

his unwavering loyalty to his client likewise serves the ends of justice. Indeed, the entrusted privilege of every lawyer to practice law carries with it his corresponding duties, not only to his client, but also to the court, to the bar and to the public.

In *Santos vs. Lazaro*,³ we held that Rule 18.03 of the *Code of Professional Responsibility*, above-quoted, is a basic postulate in legal ethics. Verily, when a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting his rights. The failure to exercise that degree of vigilance and attention makes such lawyer unworthy of the trust reposed in him by his client and makes him answerable not just to his client but also to the legal profession, the courts and society.⁴

Respondent insists that he is entitled to attorney's fees since he gave legal advice and opinions to complainant on her problems and those of her family. Just like any other professional, a lawyer is entitled to collect fees for his services. However, he should charge only a reasonable amount of fees. Canon 20 of the *Code of Professional Responsibility* mandates that "A lawyer shall charge only fair and reasonable fees." There is, however, no hard and fast rule which will serve as guide in determining what is or what is not a reasonable fee. That must be determined from the facts of each case.⁵ The power to determine the reasonableness or the unconscionable character of a lawyer's fee is a matter falling within the regulatory prerogative of the Court.⁶

It is now clear to us that since respondent did not take any step to assist complainant in her case, charging P56,000.00 is improper. While giving legal advice and opinion on complainant's problems and those of her family constitutes legal service, however, the attorney's fee must be reasonable. Obviously, P56,000.00 is exorbitant.

We cannot understand why respondent initially demanded P8,000.00 as filing fee from complainant when he very well knew that the docket fee for Civil Case No. 00-044 had been paid. If it was intended as a docket fee for another case, why did he not file the corresponding complaint?

By his inaction in Civil Case No. 00-044, respondent violated Canons 17, 18 and 18.03, earlier cited, as well as his Oath as an attorney. Likewise, in collecting from complainant exorbitant consulting fee, respondent violated Canon 20 of the same Code. For all these violations, respondent should be penalized.

³ Adm. Case No. 5085, February 6, 2003.

⁴ *Id.*

⁵ *De Guzman vs. Visayan Rapid Transit, Co., Inc.*, 68 Phil 643, 648 (1939).

⁶ *Roldan vs. Court of Appeals*, G.R. No. 97006, February 9, 1993, 218 SCRA 713.

The facts of *Sencio vs. Calvadores*,⁷ bear a striking similarity to the present case. Respondent lawyer *Sencio* did not return the money to complainant despite demand following his failure to file the case. We found him guilty of violation of the lawyer's oath, malpractice and gross misconduct and suspended him for six (6) months, and ordered to return to his client the amount of ₱21,000.00 with interest at 12% per annum from the date of the promulgation of our Resolution until the return of the amount.

In *Garcia vs. Manuel*,⁸ we suspended respondent lawyer from the practice of law for six (6) months and ordered him to render an accounting of all monies he received from the complainant. We found him guilty of gross misconduct.

WHEREFORE, respondent Atty. Melanio Mauricio, Jr. is hereby found **GUILTY** of malpractice and gross misconduct for violating Canons 17, 18, Rule 18.03 and 20 of the Code of Professional Responsibility and the Lawyer's Oath. He is **SUSPENDED** from the practice of law for a period of **six (6) months** effective from notice, and **STERNLY WARNED** that any similar infraction in the future will be dealt with more severely. He is further ordered to **RETURN**, within ten (10) days, also from notice, the sum of ₱56,000.00 to complainant Valeriana U. Dalisay and submit to this Court proof of his compliance within three (3) days therefrom.

Let copies of this Decision be furnished the Court Administrator for his distribution to all courts of the land, the IBP, the Office of the Bar Confidant, and entered into respondent's personal records as a member of the Philippine Bar.

SO ORDERED."

Copy of the Decision was received by the respondent on May 4, 2005 as shown by Registry Return Receipt No. 45321.

27 July 2005.

PRESBITERO J. VELASCO, JR.
Court Administrator

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⁷ Adm. Case No. 5841, February 20, 2003.

⁸ Adm. Case No. 5811, January 20, 2003.