



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

OCA CIRCULAR NO. 116-2003

TO: THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARPA DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIAPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARPA CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC DEFENDER'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT: SUSPENSION OF ATTY. MICHAEL DIONEDA FOR SIX (6) MONTHS.

For the information and guidance of all concerned, quoted hereunder is the decision of the Second Division of the Supreme Court in Administrative No. 5162 entitled "EMILIANO COURT TOWNHOUSES HOMEOWNERS ASSOCIATION vs. ATTY. MICHAEL DIONEDA" dated March 20, 2003, to wit:

"x x x

On September 29, 1997, EMILIANO COURT TOWNHOUSES HOMEOWNERS ASSOCIATION (ECTHA) and Respondent Dioneda entered into a Retainer's Agreement wherein respondent lawyer agreed to handle the case of the complainant against LVF Realty, Mr. Tinsay, and BPI Family Savings Bank by way of filing a *Complaint-in-Intervention* in the Regional Trial Court of Valenzuela, Metro Manila, docketed as Civil Case No. 4890-V-96 for P20,000.00 as attorney's fees and P1,000.00 as appearance fee per hearing⁴. It was further agreed that respondent lawyer would update the complaint and work on the development of the case.⁵

In its complaint ECTHA alleged that Atty. Dioneda, after receiving the amount of P20,000.00, did nothing for the development of the case and to update the complaint on the status of ECTHA's intended *Complaint-in-Intervention*. Due to the insistence of the members of the association, Mr. Fernando Garcia, ECTHA President, was compelled to check the records of the case in the Regional Trial Court of Valenzuela, Branch 75, and secured a certification from the Branch Clerk of Court dated 5 July 1999 that there was no motion for intervention filed in the case.⁶

⁴ Rollo, p. 1

⁵ Ibid.

⁶ Id. At 2.

On behalf of ECTHA, Mr. Garcia repeatedly made oral demands for respondent to return the amount of P20,000.00 because he did not do anything to protect the rights and interests of the Association. Respondent Dioneda only made oral promises to pay, and in August 1999 he could no longer be contacted and the personnel in his office simply made excuses to Mr. Garcia.⁷

Through Mr. Garcia ECTHA referred the matter to Atty. Antonio L. Umali, who contacted respondent by telephone, still, no response was made by respondent. On 18 August 1999 a letter dated 17 August 1999 was sent to Dioneda, but again there was no response.⁸

In his comment filed before this Court, respondent Dioneda admitted that he and ECTHA entered into a Retainer's Agreement; however, he averred that the *Agreement* did not cover only the *Complaint-in-Intervention* as adverted to by the complainant. It also included the case before the Housing and Land Use Regulatory Board (HLURB) that the complainant filed against the developer of Emiliano Court Townhouses who refused to release to the members of the ECTHA their respective *Deed of Sale*.

At the time his legal services were engaged, Atty. Dioneda alleged that there was already a decision in favor of the complainant. Thereafter, respondent entered his appearance and filed a *Motion for Execution* with the HLURB. According to respondent Mr. Garcia would go with him and follow up the issuance of the *Writ of Execution* with the HLURB National Office. Respondent Dioneda further alleged that he wanted to pursue the *Writ of Execution* since he would attach it to the *Complaint-in-Intervention*, and that this was explained to the members of ECTHA. Respondent claimed that there was delay in the filing of the *Complaint-in-Intervention* because there was delay in the issuance by the HLURB of the *Writ of Execution*.

Respondent further averred that Mr. Garcia would call him at his residence and "spew invectives" at him. There would be no day that Mr. Garcia would not call respondent and hurl expletives at him and his parents. Respondent denied the allegation that ECTHA had made several demands on him and that he promised to pay sometime August 1999.

After receiving the demand letter of ECTHA, respondent immediately called up the residence of Mr. Garcia and informed him that he could get the money and the records of the case at his office. However, respondent informed ECTHA that a portion of the amount to be returned would be deducted as a reasonable fee for the efforts exerted by him. According to respondent, no representative of the complainant showed up at his law office.

Respondent Dioneda denied the charge that he never attended to the case of the complainant and that he did nothing to protect the interest of its members. He asserted that there was no intention on his part to defraud them.

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⁷ Ibid.

⁸ Id. at 4.

The sole issue in this case is whether Atty. Dioneda violated Canons 17 and 18 of the *Code of Professional Responsibility*. Admittedly respondent received the amount of P20,00.00 as acceptance fee for handling a case to be filed in behalf of ECTHA. Despite receipt of the aforementioned fee, respondent allegedly failed to render the corresponding legal services to the complainant.

We agree with the Report of the IBP Commissioner Wilfredo E.J.E. Reyes as approved and adopted by the IBP Board of Governors.

Before the IBP Commission on the Bar Discipline, respondent Dioneda did not attend a single hearing to defend himself. Despite due notice, he did not attend the hearings scheduled on 19 March, 9 May, 20 June, 8 August and 14 December 2001. The parties were ordered to submit their respective position papers in the Order of 9 May 2001 of the CRD-IBP. Respondent never complied with the Order.

Respondent's lamentable attitude towards his client's case is clearly evident from his apparent disinterest in his own case for disbarment. Dioneda never bothered to present evidence in his defense. He disregarded all notices sent to him by the IBP Commission on Bar Discipline, which were personally served at his office address. He never appeared before the Commission despite several opportunities to do so and explain his side.

It is reasonable to conclude that under the doctrine of *res ipsa loquitur*, respondent committed an infringement of ethical standards. The act of receiving money as acceptance fee for legal services in handling the case of complainant ECTHA against LVF Realty, Mr. Tinsay and BPI Bank and subsequently failing to render such service is a clear violation of Canons 27 and 28 of the *Code of Professional Responsibility*. Not only that. The acts of inexcusable negligence in legal matters entrusted to him and disloyalty to his client constitute major breaches of respondent's oath as a lawyer.¹¹ These acts that are inimical to his client's interests render respondent liable.

A member of the legal profession owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability.¹² Public interest demands that an attorney exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice. Verily, the entrusted privilege to practice law carries with it the corresponding duties not only to the client but also to the court, to the bar and to the public. A lawyer's inability to properly discharge his duty to his client may also mean a violation of his correlative obligations to the court, to his profession and to the general public.

The duty of a lawyer 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. Acceptance of money from a client establishes an attorney-client relationship and gives

¹¹ The Lawyers Oath declares in part: "x x x I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion, with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God." See Rules of Court, Form 28.

¹² Agpalo, R., *Legal Ethics* 157 (4th ed., 1989)

rise to the duty of fidelity to the client's cause. The canons of the legal profession require that once an attorney agrees to handle a case, he should undertake the task with zeal, care and utmost devotion. Indeed, respondent neglected a legal matter entrusted to him by failing to file the *Complaint-in-Intervention* he undertook to handle, thus making him liable under Rule 18.03 of Canon 18.

In *Santos v. Lazaro* this Court recognized Rule 18.03 of the *Code of Professional Responsibility* as a basic postulate in legal ethics stating that when a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting his rights.¹³ The failure to exercise that degree of vigilance and attention expected of a good father of a family 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.¹⁴

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Following the latest rulings of this Court on disciplinary proceedings against erring attorneys, those found guilty of the same or similar acts were suspended for not less than six (6) months from the practice of law.

The facts of *Sencio v. Calvadores* bear a striking similarity to the present case.¹⁵ The respondent lawyer in *Sencio* did not return the money to the complainant after a demand therefore was made following his failure to file case. This Court took to task the respondent's attitude of not answering the complaint and in deliberately disregarding the orders and notices of the IBP on many occasions, holding that this attitude showed a character or disposition which stains the nobility of the legal profession as he chose not to appear at the scheduled hearings despite due notice and warnings given.¹⁶ The IBP appointed Commissioner had no other recourse but to receive the evidence of the complainant *ex-parte*.¹⁷

Accordingly, the respondent in *Sencio* was found guilty of violation of the lawyer's oath, malpractice and gross misconduct, suspended for six (6) months, and ordered to return to his client the amount of P12,000.00 with interest at 12 % per annum from the date of the promulgation of the resolution until the return of the amount.¹⁸

This Court in *Garcia v. Manuel* suspended the 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.¹⁹ The counselor-at-law was found guilty of gross misconduct, especially for ineffectively handling the case of his client and failing to return the money given by that same client.

¹³ Adm. Case No. 5085, 6 February 2003.

¹⁴ *Ibid*

¹⁵ Adm. Case No. 5841, 20 January 2003.

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ Adm. Case No. 5811, 20 January 2003

In *Rabanal v. Tugade*²⁰ and *Calen v. Paguirigan*,²¹ the respondent lawyers who failed to file a brief to the detriment of their respective client were suspended by this Court for six (6) months on the first offense.

The respondent attorney in *Aromin v. Boncavil* was found to have violated Canons 15, 17 and 18 of the Code of Professional Responsibility.²² He was suspended for six (6) months and warned that a repetition of a similar offense would be dealt with more severely.

As to the amount of Atty. Dioneda's compensation for his legal services, the general rule as to the conclusiveness of a valid written contract fixing attorney's fees cannot find application the case at bar. This is due largely to the complainant's request for a full refund of the attorney's fees given, and the respondent's counter-proposal that a portion of the amount be deducted as a reasonable fee for the efforts exerted by him. In a situation where both parties are deemed to have impliedly disregarded the contract and placed themselves in the position as though there was no express stipulation as to the attorney's fees, the lawyer's compensation shall be determined on the basis of *quantum meruit*²³

Despite this settled principle of law on the compensation of an attorney for legal services, we rule against respondent lawyer in the present case.

To deserve compensation for his legal services based on *quantum meruit*, respondent Dioneda must prove by substantial evidence that he is entitled to a reasonable fee for his efforts in pursuing the complainant's case with the Court taking into account certain factors in fixing the amount of his fees.²⁴ However, due to respondent's conspicuous absence at the Administrative hearings for his disbarment set by the IBP's Commission on Bar Discipline on at least five different occasions, and the apparent lack of findings of fact to support the position of respondent, evidence required to establish attorney's fee was never adduced. For having missed several opportunities to present in his favor without any satisfactory explanation as to his non-appearance, we are constrained to deny him compensation for his legal services on the basis of *quantum meruit* due to the lack of any factual basis to determine the value of his work as complainant's counsel.

Finally, *Rivera v. Corra*²⁵ reiterates the purpose of administrative cases against lawyers in this manner -

The primary objective of administrative cases against lawyers is not only to punish and discipline the individual lawyers but also to erring individual lawyers but also to safeguard the administration of justice by protecting the courts and the public from the misconduct of lawyers, and to remove from the legal profession persons whose

²⁰ Adm. Case No. 1372, 27 June 2002

²¹ Adm. Case No. 5558, 7 March 2002

²² Adm. Case No. 5135, 22 September 1999

²³ *Agpalo, R.*, at 331, citing *Francisco v. Matias*, 119 Phil. 351 (1964), and *Delgado v. De La Rama*, 43 Phil. 419 (1922)

²⁴ *Id.* at 332-240.

²⁵ Adm. Case No. 3548, 4 July 2002.

utter disregard of their lawyer's oath has proven them unfit to continue discharging the trust reposed in them as members of the bar. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character or unworthy to continue as an officer of the court.

It must be stressed that the power to discipline advocates of the law should be exercised with extreme care, primarily on the notion of preserving the nobility of the law as a profession rather than on the incidental purpose of vindication the rights of private parties against erring lawyers. The indispensable duty of this Court as the guardian of the bench and bar remains that of maintaining the people's respect for the rule of law and the efficient administration of justice, while at the same time restoring the community's faith in the legal profession.

WHEREFORE, respondent Atty. Michael Dioneda is **SUSPENDED** from the practice of law for six (6) months, which shall take effect from the date of notice of receipt of the finality of this Decision, with a **WARNING** that repetition of the or similar acts will merit a more severe penalty and is **ORDERED** to **RETURN** to complainant Emiliano Court Townhouses Homeowners Association the amount of Twenty Thousand Pesos (P20,000.00), with interest of twelve percent (12%) per annum from the date of promulgation of this Decision until the full amount as directed is returned.

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Copy of the Decision was received by Atty. Dioneda on April 14, 2003 as per Registry Return Receipt No.10670.

August ²⁹, 2003.

PRESBITERO J. VELASCO, JR.
Court Administrator