



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

OCA CIRCULAR NO. 144-2004

**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  
ATTORNEY'S OFFICE AND THE  
INTEGRATED BAR OF THE PHILIPPINES**

**SUBJECT: SUSPENSION FROM THE PRACTICE OF  
LAW FOR SIX (6) MONTHS OF ATTY.  
EMMANUEL M. BASA**

For the information and guidance of all concerned, quoted hereunder is the Decision of the Third Division dated June 29, 2004 in Administrative Case No. 5554, entitled "Luis de Guzman, represented by his son Rodrigo C. de Guzman vs. Atty. Emmanuel M. Basa", to wit:

"When a lawyer accepts to handle a case, whether for a fee or *gratis et amore*, he undertakes to give his utmost attention, skill and competence to it, regardless of its significance. Thus, his client, whether rich or poor, has the right to expect that he will discharge his duties diligently and exert his best efforts, learning and ability to prosecute or defend his (client's) cause with reasonable dispatch. Failure to fulfill his duties will subject him to grave administrative liability as a member of the Bar. For the overriding need to maintain the faith and confidence of the people in the legal profession demands that an erring lawyer should be sanctioned.

On August 14, 2000, Luis de Guzman, represented by his son Rodrigo C. de Guzman, filed with the Integrated Bar of the Philippines (IBP) a complaint against Atty. Emmanuel M. Basa for disbarment for having committed "misrepresentation and gross negligence in his duties as counsel."

However, this Court, in a Resolution dated February 26, 1997, dismissed complainant's petition for his failure to submit a certification of non-forum shopping **duly executed by him**.

Respondent rectified the error by filing with this Court a motion for reconsideration, attaching thereto the required certification signed by the complainant himself. Still, the motion was denied on the ground that the Court of Appeals did not commit any reversible error in dismissing complainant's appeal.<sup>6</sup>

On September 19, 1997, the dismissal of complainant's petition in G.R. No. 127190 became final and executory.<sup>7</sup>

Complainant claims that he "lost his case before the Court of Appeals and this Court, not on the merits, but due to technicality caused by respondent's dereliction of his duty as counsel."<sup>8</sup> "In effect," he adds, "it totally dissipated his quest for justice and thereby deprived him of all the remedies that may be availed of."<sup>9</sup> Complainant thus prayed that respondent be disbarred or suspended from the practice of law.

In his answer to the complaint before the IBP, respondent **admitted** the following material facts: (1) he received from complainant ₱5,000.00 as expenses to be incurred in filing the petition for certiorari with the Court of Appeals; (2) he was granted by the Court of Appeals in CA-G.R. CV No. 49928 three extensions of time to file the appellant's brief, but he filed it beyond the extended period due to his illness, resulting in the dismissal of his appeal; and (3) he signed the certification of non-forum shopping attached to the petition for review filed with this Court in G.R. No. 127190 because complainant was ill.<sup>10</sup> Respondent thus prayed that the complaint be dismissed.<sup>11</sup>

During the scheduled hearing of the instant case before the IBP, the parties agreed to submit it for resolution on the basis of the pleadings and other documents filed.

In its Report dated March 7, 2001,<sup>12</sup> the IBP Commission on Bar Discipline (CBD), through Commissioner Tyrone R. Cimafranca, found respondent negligent in the performance of his professional duty to his client, herein complainant, and recommended that:

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<sup>6</sup> Rollo at 3, 88.

<sup>7</sup> Entry of Judgment, *id.*

<sup>8</sup> Complainant, Rollo at 4.

<sup>9</sup> *Id.* at 3.

<sup>10</sup> Memorandum, Rollo at 86.

<sup>11</sup> Answer, Rollo at 28, 30-31.

<sup>12</sup> Rollo at 121-128.

1. The respondent be **REPRIMANDED** and **warned** that any similar or other complaint in the future for breach of his professional duties will be dealt with more severely; and

2. To **return** to the complainant, within fifteen (15) days from notice of the order, **the collected amount of ₱5,000.00**

Commissioner Cimafranca's Report was adopted and approved by the IBP Board of Governors in its Resolution No. XV-2001-259 dated October 27, 2001.<sup>13</sup>

The IBP then forwarded the records of CBD Case No. 00-756 to this Court.

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

Also, Rule 12.03, Canon 12 of the same Code requires that "A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so."

In his lawyer's sacred oath, respondent imposed upon himself the duty, among others, that he "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, x x x."

We sustain the IBP Board of Governor's finding that respondent was negligent in the performance of his professional duty towards complainant. Clearly, he violated the above Canons<sup>14</sup> and his lawyer's oath.

Firstly, respondent admitted that he did not seasonably file with the Court of Appeals the required appellant's brief in CA-G.R. CV No. 49928 resulting in the dismissal of the complainant's appeal. Despite several extensions to file the appellant's brief, respondent failed to do so. Instead, he filed two more motions for extension. While he eventually filed the appellant's brief, however, it was late, being beyond the last extension granted by the Appellate Court. His excuse that his illness caused such delay is flimsy and deserves no consideration.

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<sup>13</sup> *Id.* at 120.

<sup>14</sup> *Eduardo T. Abay vs. Atty. Raul T. Montesino*, A.C. No. 5718, December 4, 2003; *Arsenia Begornia vs. Atty. Arsenio Herrera*, A.C. No. 5024, February 20, 2003, 398 SCRA 1.

A motion for extension of time to file an appellant's brief carries with it the presumption that the applicant-lawyer will file the same within the period granted. As aptly stated in the IBP-CBD Report:

'Respondent failed to show in his Answer and other pleadings that he exercised that degree of competence and diligence required of him in prosecuting particularly the appeal of his client (now complainant) which resulted in its dismissal. If respondent really believed that his physical condition was the cause why he was not able to submit the requisite appellant's brief seasonably, resulting in its being expunged from the record, he should have excused himself from the case. A lawyer may withdraw his services when his mental or physical condition renders it difficult for him to carry out the employment effectively (see Rule 22.01 (d), Canon 22, Code of Professional Responsibility). That could have spared him and complainant from the 'undue strictness' shown by the Honorable Court of Appeals which expunged from the record the belated appellant's brief that he filed in the case.'<sup>15</sup>

Secondly, respondent's contention that he signed the certification of non-forum shopping in the petition for review in G.R. No. 127190 because the complainant was ill lacks merit. We quote with approval the IBP-CBD's finding on this matter, thus:

"Furthermore, respondent failed to show that he exercised that degree of competence and diligence required of him in prosecuting the appeal of complainant when he himself signed (instead of complainant) the certification of non-forum shopping, resulting in the dismissal of the petition for review on certiorari. He should know, as all lawyers are presumed to know, that it should be the petitioner (not the counsel) who should sign the certification of non-forum shopping in the petition. The explanation offered to justify such non-compliance – that complainant was too old, weak and ill to sign the said certification – is too flimsy and, therefore, untenable. If in the motion for reconsideration that he (respondent) subsequently filed, he was able to submit a certification duly signed by complainant, there is no reason why it could not be submitted earlier at the time that the petition for review on certiorari was filed."<sup>16</sup>

Thirdly, despite receipt from complainant the sum of ₱5,000.00 for the filing of a petition for certiorari with the Court of Appeals, respondent did not file the same. Thus, he should have returned the amount to complainant who, incidentally, is

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<sup>15</sup> Rollo at 126-127.

<sup>16</sup> *Id.* at 127.

now deceased.<sup>17</sup> In *Lothar Schulz vs. Atty. Marcelo G. Flores*,<sup>18</sup> we held that where a client gives money to his lawyer for a specific purpose, such as to file an action or appeal an adverse judgment, the lawyer should, upon failure to take such step and spend the money for it, immediately return the money to his client. Respondent's unjustified withholding of complainant's money is a gross violation of the general morality and professional ethics warranting the imposition of disciplinary action.<sup>19</sup> Again as correctly found by the IBP-CBD:

"The undersigned likewise finds respondent's failure to file a petition for certiorari despite having collected the initial amount of P5,000.00 for attorney's fees reprehensible. There is no doubt whatsoever that in the contract dated January 10, 1993 (Annex 'A', complaint) respondent committed to file said petition for complainant. His explanation as to why he failed to do so is gratuitous. It should not even be given any probative value as it would tend to violate the parol evidence rule.

A lawyer maybe disciplined for refusing to return to his client what he collected as payment for his professional services which he never rendered (see *Espere vs. Santos*, 96 Phil. 987).<sup>20</sup>

Under Section 27, Rule 138 of the Revised Rules of Court, this Court may disbar or suspend a lawyer for committing any gross misconduct specified therein, thus:

"SEC. 27. *Disbarment or 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 admission to practice, or for a willful disobedience of any lawful order of a superior court**, or for corruptly or willfully appearing as an attorney for a party in a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice." (Underscoring supplied)

In *Spouses Jeneline Donato and Mario Donato vs. Atty. Isaiah B. Asuncion, Sr.*,<sup>21</sup> we explained the concept of gross misconduct as any inexcusable, shameful or flagrant unlawful

<sup>17</sup> See Rollo at 131.

<sup>18</sup> A.C. No. 4219, December 8, 2003.

<sup>19</sup> *Lothar Schulz vs. Atty. Marcelo G. Flores, id.*, citing *Sencio vs. Atty. Roberto Calvadores*, A.C. No. 5841, January 20, 2003; *Reyes vs. Maglaya*, 243 SCRA 214, 219 (1995).

<sup>20</sup> Rollo at 127-128

<sup>21</sup> A.C. No. 4914, March 3, 2004, citing *SPO2 Jose B. Yap vs. Judge Aquilino A. Inopiquez, Jr.*, A.M. No. MTJ-02-1431, May 9, 2003.

conduct on the part of a person concerned in the administration of justice which is prejudicial to the rights of the parties or to the right determination of the cause. Such conduct is generally motivated by a premeditated, obstinate or intentional purpose. The term, however, does not necessarily imply corruption or criminal intent.

To our mind, respondent's dereliction of duty amounts to gross misconduct. Certainly, he misused the judicial processes and abused the trust and confidence reposed upon him by complainant. We have consistently held that a lawyer should never neglect a legal matter entrusted to him, otherwise his negligence in fulfilling his duty subjects him to disciplinary action.<sup>22</sup> Respondent is reminded that the practice of law is a special privilege bestowed only upon those who are competent intellectually, academically and morally.<sup>23</sup> We have been exacting in our expectations for the members of the Bar to always uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence of the public.<sup>24</sup>

Hence, we cannot sustain the IBP Board of Governors' recommendation that respondent should only be reprimanded. For violating Rule 12.03, Canon 12, and Rule 18.03, Canon 18 of the Code of Professional Responsibility, which constitutes gross misconduct, as well as his lawyer's oath, he should be suspended from the practice of law for six (6) months.<sup>25</sup>

**WHEREFORE**, respondent Atty. Emmanuel M. Basa is hereby found guilty of gross misconduct in violation of Canons 12 and 18 of the Code of Professional Responsibility and his lawyer's oath. He is **SUSPENDED** from the practice of law for **six (6) months** effective from notice and is **WARNED** that any similar infraction in the future will be dealt with more severely. He is further ordered to **RETURN**, within five (5) days, also from notice, the sum of ₱5,000.00 directly to the heirs of complainant and submit to this Court the proof of his compliance within three (3) days therefrom.

A copy of this Decision shall be entered in the records of respondent as a member of the Bar. Further, let copies of this

<sup>22</sup> *Luthgarda F. Fernandez vs. Atty. Fidel M. Cabrera II*, A.C. No. 5623, December 11, 2003, citing *Perea vs. Atty. Almadro*, A.C. No. 5246, March 20, 2003.

<sup>23</sup> *Re: Administrative Case No. 44 of the Regional Trial Court, Branch IV, Tagbilaran City against Atty. Samuel C. Occeña*, A.C. No. 2841, July 3, 2002, 383 SCRA 636.

<sup>24</sup> *Milagros N. Aldovino, et al. vs. Atty. Pedro C. Pujalte, Jr.*, A.C. No. 5082, February 9, 2004; *Honorio Manalang, et al. vs. Atty. Francisco F. Angeles*, A.C. No. 1558, March 10, 2003; *Maligsa vs. Cabanting*, A.C. No. 4539, May 14, 1997, 272 SCRA 408.

<sup>25</sup> Pursuant to our rulings in *Spouses Jeneline Donato and Mario Donato vs. Atty. Isaiah B. Asuncion, Sr.*, A.C. No. 4914, March 3, 2004; *Lothar Schulz vs. Atty. Marcelo G. Flores*, *supra*; *Eduardo T. Abay vs. Atty. Raul T. Montesino*, *supra*; and *Arsenia T. Begornia vs. Atty. Arsenio A. Herrera*, *supra*.

Decision be served on the IBP as well as the Court Administrator, who is directed to circulate these to all the courts in the country for their information and guidance.

**SO ORDERED.”**

Copy of the decision was received by respondent on 30 July 2004 as shown by Registry Return Receipt No. 12542.

23 November 2004.



**PRESBITERO J. VELASCO, JR.**  
Court Administrator

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