Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

BENJAMIN M. KATIPUNAN, JR.,
Petitioner,

-versus-

ATTY. REBENE C. CARRERA,
Respondent.

A.C. No. 12661

Members:

PERALTA, C.J., *Chairperson,*
CAGUIOA,
REYES, J.C., JR.,
LAZARO-JAVIER, *and*
LOPEZ, *JJ.*

Promulgated:

FEB 19 2020

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DECISION

LAZARO-JAVIER, *J.*:

The Case

Complainant Benjamin M. Katipunan, Jr. charged respondent Atty. Rebene C. Carrera with violations of Canon 18, Rules 18.02, 18.03, and 18.04 of the Code of Professional Responsibility (CPR), Canon 15 of the Canons of Professional Ethics, the Lawyer's Oath, and Section 27, Rule 138 of the Revised Rules of Court.

The Complaint Affidavit

Complainant essentially alleged:

From October 12, 1996 until 2003, he worked as a seafarer with the rank of Master Mariner (shipmaster) for Philippine Transmarine Company, Inc. (PTC). He got separated from employment due to a heart ailment he contracted while in service. Although his condition rendered him totally and permanently disabled, his employer denied his claim for disability benefits, prompting him to file a case before the National Labor Relations Commission (NLRC). By Decision dated January 25, 2005, the Labor Arbiter ruled in his favor and awarded him total disability benefits of US$60,000.00.

Dissatisfied with the award, he appealed to the NLRC. He wanted an award of US$90,000.00 instead of just US$60,000.00. He engaged respondent as his counsel from the NLRC proceedings all the way to the Supreme Court. By Resolution dated April 6, 2006, the NLRC reversed. His motion for reconsideration was also denied per Resolution dated August 28, 2006.

Undaunted, he brought the case to the Court of Appeals on *certiorari* which affirmed the NLRC dispositions and likewise denied his motion for reconsideration.

On petition for review on *certiorari*, he sought affirmative relief from the Court. By Resolution dated August 11, 2008, the Court required him to submit a verified statement of the exact date when he filed his motion for reconsideration, an affidavit of service, and a verification and certification of non-forum shopping with competent proof of identity. On October 3, 2009, respondent filed a "*Verified Compliance and Statement of Material Dates*."

By Resolution dated January 27, 2010, the Court denied the petition for failure to sufficiently show that the Court of Appeals committed reversible error in rendering the assailed dispositions. Respondent received a copy of the resolution on February 25, 2010 but failed to inform him about it. And even when he paid respondent a visit in the latter's office and inquired regarding the case status, respondent replied that the case was still pending resolution.

His first visit happened sometime in March 2010. He only came to know of the decree of dismissal when he again paid respondent a visit on May 11, 2010. On that occasion, he inquired anew on the status of the case but respondent gave the same response, *i.e.* the case was still pending with the Supreme Court. He then decided right there and then to borrow the case folder from respondent to refresh himself on the details. To his surprise, he came across a copy of this Court's Resolution dated January 27, 2010 denying his petition. He confronted respondent about what happened but the latter merely shrugged it off saying that there was no more remedy. As it was, respondent did not even file a motion for reconsideration within fifteen (15) days from notice, thus, allowing the resolution to lapse into finality.

Had respondent timely informed him of the decree of denial, he could have instructed him to draft a motion for reconsideration, and if respondent was no longer willing to represent him, he could have engaged the services of another lawyer.

Petitioner, thereafter, sent respondent a letter dated June 23, 2010, demanding that the latter answer for the damages he suffered as a result of respondent's negligence and deceitful conduct. He followed-up with a second demand letter dated July 12, 2010.

On August 8, 2010, he received respondent's reply, accusing him of extortion. Thus, after some deep and lengthy reflection, he opted to administratively charge respondent before the Integrated Bar of the Philippines (IBP). Respondent miserably failed to perform the kind of competence and diligence required of him under Canon 18 of the CPR insofar as handling his (complainant's) case was concerned. In fact, the petition which respondent filed on his behalf did not even contain the material dates, nor bear the requisite proof of identity *vis-a-vis* the verification and certification of non-forum shopping.

Respondent's Answer

In his answer,[1] respondent basically countered:

He and complainant had a close and cordial relationship. Complainant was even his son's godfather. Because of their close association, he agreed to represent complainant in the case before the NLRC all the way to the Supreme Court. In view of the Court's denial of the petition, he inquired from complainant if he had new evidence or argument to persuade the Court regarding the merits of his case, but complainant was not able to offer anything new. Worse, complainant got the copy of the Resolution dated January 27, 2010 from the case file and kept it to himself.

In the absence of any new issue, matter, or evidence, a motion for reconsideration would only be a reiteration of the arguments previously raised and passed upon in full in the proceedings below. The Court may, therefore, just consider the motion dilatory and the suit, groundless, thereby exposing him to a possible citation for contempt.

Complainant has yet to pay him a single centavo from the time complainant engaged his services. He continuously sent complainant billing statements but complainant refused to settle them. He, nevertheless, handled complainant's case with utmost effort and within the bounds of law and human decency. He was surprised to have received a letter from complainant demanding the sum of US$90,000.00, equivalent to the disability benefits he was claiming. As a lawyer though, he could have never insured the success of complainant's case.

At any rate, he filed all the necessary pleadings and raised sound arguments at every stage of the proceedings. His alleged incompetence did not lead to the dismissal of the petition. It only pertained to deficiencies in

[1] *Rollo*, pp. 52-68.

form which he was able to rectify though a "*Verified Compliance and Statement of Material Dates.*" The Court could have just dismissed the case outright based on the deficiencies but the Court did not. It instead ordered respondent to file a compliance, which he did.

The truth is complainant's Certification of Fitness to Work dated June 17, 2003 which he himself executed made it difficult to convince the Court of Appeals and eventually, the Supreme Court to give due course to complainant's claim for total and permanent disability benefits. More, PTC was able to establish that at the time complainant was claiming total and permanent disability benefits, he was employed as training director in another shipping agency.

Report and Recommendation of the Integrated Bar of the Philippines Commission on Bar Discipline (IBP – CBD)

In its Report and Recommendation[2] dated July 21, 2011, the IBP-CBD recommended that respondent be meted the penalty of censure with warning that a repetition of the same will be dealt with more severely.

It held that respondent had exerted ordinary diligence in handling complainant's case, but had been remiss in his duty to promptly inform his client of the denial of his petition. He had the obligation to discuss the results of the case with his client. For until his retirement from the case is made of record, a lawyer continues to assume professional responsibility and any perceived difficulty in discharging his duties does not excuse him from performing it.

Resolutions of the IBP - Board of Governors (BOG)

By Resolution[3] dated March 20, 2013, the IBP Board of Governors affirmed. Respondent's motion for reconsideration[4] was denied under Resolution[5] dated April 20, 2017 for lack of any new argument which could have entailed a reversal of its findings. Complainant's own motion for reconsideration,[6] too, was denied under Resolution[7] dated February 16, 2019.

Per verification, no motion for reconsideration or petition for review was filed by either party as of October 22, 2019.[8] Nevertheless, the IBP elevated the entire case records to the Court since the IBP Resolution is merely

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[2] *Id.* at 265-268.
[3] *Id.* at 264.
[4] *Id.* at 269-277.
[5] *Id.* at 313.
[6] *Id.* at 314-319.
[7] *Id.* at 333.
[8] Report Agenda dated November 20, 2019 by Assistant Bar Confidant Amor P. Entila.

recommendatory in nature and does not attain finality without the Court's imprimatur.

Issue

Did respondent violate the CPR, Canons of Professional Ethics, the Lawyer's Oath, and Section 27, Rule 138 of the Revised Rules of Court when he allegedly failed to inform complainant that the latter's petition for review on *certiorari* in G.R. No. 183172 was already denied?

Ruling

The Court adopts the factual findings of the IBP-CBD but modifies the recommended penalty.

Respondent violated the lawyer's oath when he neglected complainant's case after filing the petition for review.

The Lawyer's Oath is not a mere formality recited for a few minutes in the glare of flashing cameras and before the presence of select witnesses. The lawyer must conduct himself beyond reproach at all times and live strictly according to his or her oath and the Code of Professional Responsibility.[9]

As a member of the Bar, respondent pledged to assist his clients with full competence and utmost diligence enshrined under the Lawyer's Oath to delay no man for money or malice, and conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients.

By taking the lawyer's oath, respondent became a guardian of the law and an indispensable instrument for the orderly administration of justice. As such, he can be disciplined for any conduct, in his professional or private capacity, which renders him unfit to continue to be an officer of the court.[10]

Here, respondent failed to live up to his duties and responsibilities. He served as counsel for complainant before the NLRC and all the way to this Court. As it was though, he never did anything more to protect his client's interest after he filed the petition for review on *certiorari* before the Court onward.

Respondent violated the CPR

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[9] See *In re: Petition to take Lawyer's Oath, Arthur Cuevas, Jr.*, 348 Phil. 841, 846-847 (1998).
[10] See *Nulada v. Paulma*, 784 Phil. 309, 315 (2016).

when he did not apprise complainant of the case status.

The moment the lawyer-client relationship commences, the relationship of the lawyer and the client becomes imbued with trust and confidence. Thereupon, the lawyer is bound to serve his or her clients with full competence, and to attend to their cause with utmost diligence, care and devotion. In accordance with this highly fiduciary relationship, the client expects the lawyer to be always mindful of the former's cause and to be diligent in handling his or her legal affairs.

As an essential part of this highly fiduciary relationship, the client is entitled to a periodic and full status update from the lawyer pertaining to the case,[11] *viz.*:

> **CANON 18** — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
>
> **Rule 18.02** - A lawyer shall not handle any legal matter without adequate preparation.
>
> **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 client's request for information.

Here, complainant requested for an update on the case twice, first in March, and second in May 2010. But instead of being truthful to complainant, respondent lied through his teeth, claiming that the case was still pending resolution even though he was already aware that it already got dismissed as early as February 25, 2010. When complainant eventually uncovered the truth, he confronted respondent who simply shrugged it off saying there was nothing more he could do.

When a client requests for a follow-up on his case, the update from the lawyer must not only be prompt, but also full and effective. The lawyer must not merely brush aside the client's request without even perusing the case records. For the client is entitled to a full-disclosure on the material developments on his case.[12] To be clear, a lawyer need not wait for their clients to ask for information but must advise them without delay about matters essential for them to avail of legal remedies.[13]

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[11] See *Ramiscal v. Orro*, 781 Phil. 318, 322 (2016).
[12] See *Spouses Garcia v. Bala*, 512 Phil. 486, 492 (2005).
[13] See *Spouses Montecillo v. Gatchalian*, 811 Phil. 636, 643 (2017).

When respondent repeatedly failed to apprise complainant of the decree of denial of the latter's petition, respondent is deemed to have failed to fulfill his duties under Rules 18.03 and 18.04 of the CPR.

In ***Ramirez v. Buhayang-Margallo***,[14] Atty. Margallo erroneously assumed that complainant Ramirez was no longer interested to pursue the appeal, causing complainant to lose any chance to have the case reviewed by a higher court. Atty. Margallo failed to exhaust all possible means to protect Ramirez's interest, contrary to what she had sworn to do as a member of the legal profession. She was, therefore, held liable for violating Canon 18, Rules 18.03 and 18.04 of the CPR.

Similarly, in ***Cabauatan v. Venida***,[15] respondent Atty. Freddie A. Venida was suspended from the practice of law as he had been remiss in handling his client's case. Complainant made several follow-ups with respondent but the latter ignored her and made her believe that he was diligently handling her case. Complainant was surprised when she received notice from the Court of Appeals informing her that her appeal had been abandoned and her case, dismissed. For his failure to file an appeal, the dismissal lapsed into finality. The Court held that Atty. Freddie A. Venida violated Rule 18.04, Canon 18 of the CPR.

Lastly, in ***Caranza Vda. de Saldivar v. Cabanes, Jr.***,[16] Atty. Ramon SG Cabanes, Jr. neglected to inform his client about the Court of Appeals' ruling which he had duly received, thereby precluding his client from availing of any further remedies. The Court found him guilty of violating Rules 18.03 and 18.04 of Canon 18 of the CPR.

So must it be.

Respondent was not justified in deciding on his own whether to pursue a motion for reconsideration before the Court.

Complainant is entitled to the benefit of any and every remedy and defense authorized by law, and is expected to rely on the lawyer to assert every such remedy or defense.[17] We, therefore, emphasize that a lawyer is not in the position to rule on the merits of his or her complainant's case. Neither can a lawyer unilaterally decide whether to forego the very last remedy available to his or her client.

As the facts here stand, respondent, on his own, opted to no longer file a motion for reconsideration in complainant's case since respondent opined

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[14] 752 Phil. 473, 479 (2015).
[15] 721 Phil. 733, 738 (2013).
[16] 713 Phil. 530, 539-540 (2013).
[17] Supra note 12.

there was no new issue, matter or evidence to offer anyway for the purpose of convincing the Court to favorably rule for his client. Worse, respondent did not even relay to his client that he chose not to move for reconsideration of the decree of denial. Neither did he terminate his services as complainant's counsel pursuant to Sec. 26, Rule 138 of the Rules of Court, *viz.*:

> **Section 26.** *Change of attorneys.* — An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire. In case of substitution, the name of the attorney newly employed shall be entered on the docket of the court in place of the former one, and written notice of the change shall be given to the advance party.
>
> A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract. However, the attorney may, in the discretion of the court, intervene in the case to protect his rights. For the payment of his compensation the attorney shall have a lien upon all judgments for the payment of money, and executions issued in pursuance of such judgment, rendered in the case wherein his services had been retained by the client.

Without complying with Sec. 26, the attorney of record for one party remains his or her counsel on whom notices should be served. For its part, the Court may recognize no other representation on behalf of the client except such counsel of record until a formal substitution of attorney is effected.[18] Until then, the lawyer of record is deemed continuously required to exert "utmost learning and ability" to the end that nothing shall be taken away or be withheld from his or her clients, save by the rules of law[19] pursuant to Canon 15 of the Code of Professional Ethics:

> **Canon 15.** *How far a lawyer may go in supporting a client's cause*
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> Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim. often set up by the unscrupulous for the defense of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client's cause.
>
> It is improper for a lawyer to assert in argument his personal belief in his client's innocence or in the justice of his cause.
>
> ***The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his***

[18] See *Anastacio-Briones v. Zapanta*, 537 Phil. 218, 222-223 (2006).
[19] See *Gomez v. Hon. Presiding Judge, RTC, Br. 15, Ozamis City*, 319 Phil. 555, 563 (1995).

> ***utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied.*** No fear of judicial disfavor or public popularity should restrain him from the full discharge of his duty. In the judicial forum the 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. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client. (*Emphasis supplied*)

Had respondent been so minded to notify complainant of his desire not to file a motion for reconsideration, or at least of this Court's adverse ruling, complainant could have engaged the services of another lawyer to protect his interest in the case. We, thus, underscore respondent's duty to inform his client of the status of the case and the options the latter had under the circumstances and give him sufficient time to make a choice.

To dispense with the filing of the motion for reconsideration altogether as he deemed fit, is not the "utmost diligence" required of a lawyer in rendering services to a client. When respondent withheld information on the denial of complainant's petition before the Court, at least two (2) opportunities got lost, (1) complainant's opportunity to persuade the Court regarding the merits of his claim on reconsideration, and (2) the Court's opportunity to take a second hard look on the merits of the claim and rectify reversible error, if any.

In ***Toquib v. Tomol, Jr.***,[20] the Court suspended Atty. Valeriano Tomol, Jr. for violating Canon 15 of the Canons of Professional Ethics when he failed to inform his client of the adverse decision he duly received. Copy of the decision dated May 25, 1961 was served upon Atty. Tomol through his representative on June 7, 1961. He did not as much as notify his client of the adverse ruling and allowed it to lapse into finality.

Penalty

A lawyer's neglect of a legal matter entrusted him by his client constitutes inexcusable negligence for which he must be held administratively liable.[21]

> **Section 27.** Attorneys removed or suspended by Supreme Court on what grounds. — A member of the bar may be removed 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 the admission to

[20] 136 Phil. 1-6 (1969).
[21] See *Morales v. Borres, Jr.*, A.C. No. 12476, June 10, 2019.

> practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to 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. (*Emphasis supplied*)

All told, while we affirm the findings of the IBP-CBD as regards respondent's culpability, we cannot sustain the recommended penalty of censure.

In ***Figueras v. Jimenez***,[22] Atty. Diosdado B. Jimenez had been remiss in the performance of his duties as counsel for failure to timely file appellant's brief causing the dismissal of the appeal. For his negligence, he was found administratively liable for violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility and was suspended from the practice of law for one (1) month.

Similarly, We deem it proper to impose a one (1) month suspension on respondent for his negligent failure to apprise complainant on the Court's decree of denial and inform complainant that he opted not to file a motion for reconsideration allowing it to lapse into finality, in violation of the Lawyer's Oath and Canon 18, Rules 18.03 and 18.04 of the CPR, and Canon 15 of the Canon of Professional Ethics.

Final Note

A lawyer should never leave his or her client groping in the dark, for to do so would destroy the trust, faith, and confidence reposed not only in the lawyer so retained, but also in the legal profession as a whole.[23] Aside from delivering efficient and effective legal services, lawyers must also timely and adequately inform the clients about the status of the case. The lawyer's duty to keep his clients constantly updated on the developments of his case is crucial in maintaining the latter's confidence.[24]

WHEREFORE, **Atty. Rebene C. Carrera** is **GUILTY of** violating the Lawyer's Oath, Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility, and Canon 15 of the Canons of Professional Ethics. He is **SUSPENDED** from the practice of law for one (1) month with **STERN WARNING** that a repetition of the same or any similar act shall be dealt with more severely.

This Decision takes effect immediately. Let copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the

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[22] 729 Phil. 101, 106-107 (2014).
[23] See *Uy v. Tansinsin*, 610 Phil. 709, 716 (2009).
[24] See Resolution in *Heirs of Tungpalan v. Abarquez*, A.C. No. 7726, February 24, 2016.

Philippines, and the Office of the Court Administrator for circulation to all the courts.

Atty. Rebene C. Carrera must inform the Office of the Bar Confidant of the exact date when he received this Decision for the purpose of reckoning the start of his one (1)-month suspension from the practice of law.

After completing his one (1)-month suspension, Atty. Rebene C. Carrera is required to submit to the Office of the Bar Confidant the corresponding certifications from the Office of the Executive Judge of the court where he principally practices his profession and from the Integrated Bar of the Philippines Local Chapter of his affiliation affirming that he has ceased and desisted from the practice of law during his suspension.

Within two (2) weeks from submission of these certifications, the Office of the Bar Confidant shall submit the same to the Court.

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

MARIO V. LOPEZ
Associate Justice