



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **September 5, 2022**, which reads as follows:*

“A.C. No. 13366 [Formerly CBD Case No. 15-4667] (Rosary B. Uyvico, Complainant, vs. Atty. Eduardo M. Arriba, Respondent). – Before the Court is a Complaint¹ for disbarment filed by Rosary B. Uyvico (complainant) against Atty. Eduardo M. Arriba (respondent) before the Integrated Bar of the Philippines (IBP) for allegedly neglecting his client’s case.

Antecedents

Sometime in April 2013, Robby Benson Mabalatan (Robby), complainant’s son, was charged with illegal sale of dangerous drugs in violation of Section 5 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. The case, filed before Branch 82, Regional Trial Court (RTC), Quezon City, was docketed as Crim. Case No. R-QZN-13-00025-CR.²

Complainant alleged that respondent agreed to be Robby’s counsel for the amount of ₱350,000.00 for which she paid ₱200,000.00 as downpayment; respondent issued a receipt which was not registered with the Bureau of Internal Revenue.³ She further alleged that: (1) respondent filed a petition for bail⁴ and was ordered to file a memorandum (subject memorandum) in support thereof; (2) on follow-up, respondent said to her that he already filed the subject memorandum; (3) she learned later on that respondent did not file the subject memorandum to the detriment of Robby; (4) she made several attempts to contact respondent in his office and also through his cellphone, but respondent did not reply to her messages; and (5) she was compelled to hire another lawyer after she lost confidence in respondent.⁵

¹ *Rollo*, pp. 8-9.

² *Id.* at 8. See also *id.* at 11, 51, 59-60.

³ *Id.*

⁴ *Id.* at 26-31.

⁵ *Id.* at 8.

To support her claims, complainant submitted (1) an acknowledgment receipt⁶ which showed that she paid ₱200,000.00 to respondent as his acceptance/professional fee and (2) a certification⁷ from the RTC which stated that respondent did not file a memorandum in Crim. Case No. R-QZN-13-00025-CR.

In his Answer,⁸ respondent admitted that complainant engaged his services to represent Robby; however, he contended that the agreed fee was ₱200,000.00 as shown in the acknowledgment receipt and not ₱350,000.00 as alleged by complainant. He explained that he only issued a handwritten acknowledgment receipt to complainant because a formal receipt was not available at the time of their meeting inside the Philippine National Police Custodial Center, Camp Crame, Quezon City.⁹

Respondent denied that he was negligent in handling Robby's case.¹⁰ In view of his engagement as Robby's counsel, he filed the following pleadings on the latter's behalf: Formal Entry of Appearance with Ex-Parte Motion to Set Case for Arraignment¹¹ dated May 9, 2013; Urgent Petition for Admission to Bail¹² dated May 9, 2013; Motion for Retention of Accused at PNP Custodial Center, Camp Crame, Quezon City,¹³ dated May 9, 2013; Motion for Production of CCTV Video Footage¹⁴ dated May 28, 2013; Motion to Transfer Detention of Accused from Quezon City Jail to Metro Manila District Jail¹⁵ dated August 1, 2013; and Motion for Early Resolution¹⁶ dated September 10, 2013. He further stated that during the hearing on the petition for bail, he actively participated and exhaustively conducted his cross examination of the prosecution witnesses.¹⁷

Respondent further denied having told complainant that he already filed the subject memorandum. He contended that: (1) he received an inquiry about the status of Robby's petition for bail via a cellphone call from complainant; (2) in the aforementioned call, respondent told complainant to wait for the resolution thereof; (3) he never received any message or call from complainant since then; and (4) complainant never called his office or went to his office although she knew his office address.¹⁸

⁶ Id. at 10.

⁷ Id. at 11.

⁸ Id. at 15-22.

⁹ Id. at 15.

¹⁰ Id. at 18.

¹¹ Id. at 23-25.

¹² Id. at 26-31.

¹³ Id. at 32-34.

¹⁴ Id. at 35-39.

¹⁵ Id. at 40-42.

¹⁶ Id. at 44-45.

¹⁷ Id. at 16.

¹⁸ Id. at 15-16.

Anent the subject memorandum, respondent said that he was the one who manifested to the RTC that he wanted to file a memorandum.¹⁹ To bolster his claim, he submitted the transcript of stenographic notes²⁰ (TSN) of the hearing held on February 6, 2015 which reads:

COURT:

So the Petition for Bail is now submitted for resolution.

ATTY. ARRIBA:

Your Honor, there was a change of heart, instead of presenting evidence, we want to file a memorandum, Your Honor. Only on the part of the movants, Your Honor. We don't expect any memorandum from the Prosecution considering that they already presented their evidence, Your Honor.

x x x x

PROS. OCAMPO:

Provided that the contents of the memorandum will be based on the evidence presented?

ATTY. ARRIBA:

No legal issues, Your Honor. We will not interject any points not discussed during the presentation of evidence, Your Honor.

COURT:

*Both counsel for all the accused are given fifteen (15) days from today, their option to file their respective memorandum, copy furnish the Prosecutor and the prosecution is given the option to comment or not on the same.*²¹

Respondent stressed that the filing of the subject memorandum was *optional* and discretionary on his part.²² He stated that after he reviewed the TSN, he honestly believed that the filing of the subject memorandum would be an exercise in futility; thus, he opted to forgo the filing thereof.²³ Respondent further stated that the prosecution was able to discharge its burden to show that the evidence of Robby's guilt is strong; hence, it could not be said that he was negligent and maliciously taking Robby's case for granted as the denial of the petition for bail was inevitable.²⁴

¹⁹ Id. at 17.

²⁰ Id. at 60-100.

²¹ Id. at 99-100. Italics and underscoring supplied.

²² Id. at 18.

²³ Id. at 17.

²⁴ Id. at 158.

Citing Rule 19.03²⁵ of the Code of Professional Responsibility (CPR) and Rule 24²⁶ of the Canons of Professional Ethics, respondent argued that the question as to whether the filing of memorandum is necessary is a matter of procedure for the lawyer's sole determination as a matter of right.²⁷ He pointed out that although Robby's co-accused, *i.e.*, Sherwin Campos Lim and Bryan Lansang Esguerra, filed their memorandum²⁸ through their counsel, the RTC still denied their petition for bail after finding enough evidence to justify their continued detention without the benefit of bail.²⁹ He stressed that a perusal of the RTC Order³⁰ dated March 19, 2015 neither showed nor suggested that Robby's petition for bail was denied for failure of respondent to file the subject memorandum.³¹

In her Reply,³² complainant maintained that as Robby's mother, she naturally made constant efforts to communicate with respondent. Thus, respondent's claim that he did not receive messages from her is unbelievable.

Complainant reiterated her allegation that respondent told her that the subject memorandum was already filed in court. Assuming that this allegation was unsubstantiated, complainant pointed out that respondent's denial thereof was also unsubstantiated.³³ She further maintained that respondent could have at least called and explained to her why it was not necessary to file the subject memorandum. She bemoaned that had respondent informed her of his honest belief as to the weakness of Robby's case, she could have pleaded him to at least try or she could have sought a second opinion.³⁴

In an Order³⁵ dated June 4, 2018, the IBP Commission on Bar Discipline directed the parties to submit their respective memoranda. Both parties complied on September 13, 2018.³⁶

IBP Report and Recommendation

²⁵ RULE 19.03 A lawyer shall not allow his client to dictate the procedure in handling the case.

²⁶ 24. *Right of lawyer to control the incidents of the trial*

As to incidental matters pending trial, not affecting the merits of the cause, or working substantial prejudice to the rights of the client, such as forcing the opposite lawyer to trial when he is under affliction or bereavement; forcing the trial on a particular day to the injury of the opposite lawyer when no harm will result from a trial at different time; agreeing to an extension of time for signing a bill of exceptions, cross interrogatories and the like, the lawyer must be allowed to judge. In such matters no client has a right to demand that his counsel shall be illiberal, or that he does anything therein repugnant to his own sense of honor and propriety.

²⁷ *Rollo*, pp. 18 and 158.

²⁸ *Id.* at 46-50.

²⁹ *Id.* at 17, 51-52.

³⁰ *Id.* at 51-52. Penned by Acting Presiding Judge Lily Ann M. Padaen.

³¹ *Id.* at 17-19.

³² *Id.* at 101-102.

³³ *Id.*

³⁴ *Id.* at 102.

³⁵ *Id.* at 328-329. Penned by Commissioner Emmanuel C. Palacios, Jr.

³⁶ *Id.* at 336-342; 345-348.

In his Report and Recommendation³⁷ dated October 16, 2019, Commissioner Jose Alfonso M. Gomos (Commissioner Gomos) found the allegation of complainant that respondent told her of his filing of the subject memorandum to be unsubstantiated. As to the issue of non-filing of the subject memorandum, Commissioner Gomos agreed with respondent that the non-filing thereof was an exercise of respondent's right, as a lawyer, to control all the incidents of the trial.³⁸

Commissioner Gomos, however, found that respondent violated Rule 18.04 of the CPR and recommended that he be admonished for failing to inform his clients of his decision not to file the subject memorandum, or to explain the reason for non-filing thereof, to wit:

4.6 While we find the suggestion of misrepresentation on the part of the respondent unsubstantiated, we note that somehow, the latter failed to communicate to the complainant his decision not to file memorandum, or better yet, to have explained to the latter the reason for such decision. As complainant lamented, respondent *"should have been candid about his misgivings"* on the case, so she *"could have solicited another attorney who has a more positive outlook on the success of the case."*

4.6.1 Rule 18.04 of the Code of Professional Responsibility (CPR) requires lawyers to *"keep the client informed of the status of his case..."*

4.6.2 Under the circumstances, we see that the respondent fell short in complying with the aforequoted requirement.

V. RECOMMENDATION

It is therefore, respectfully recommended that respondent be ADMONISHED to keep his clients informed of the status of their cases as required by Rule 18.04 of the CPR.³⁹

On February 28, 2020, the IBP Board of Governors (IBP Board) resolved to reverse and set aside Commissioner Gomos' Report and Recommendation after finding that no unethical conduct was committed by respondent.⁴⁰

In an Extended Resolution⁴¹ dated June 20, 2021, the IBP Board found that respondent has sufficiently demonstrated that he committed no lapse of duty in representing Robby.⁴² Thus, the IBP Board recommended that the complaint be dismissed with warning against respondent, viz.:

³⁷ Id. at 362-366.

³⁸ Id. at 365-366.

³⁹ Id. at 366. Emphasis omitted; italics in the original.

⁴⁰ Id. at 360.

⁴¹ Id. at 367-370. Penned by Deputy Director for Bar Discipline Ramon Manolo A. Alcasabas.

⁴² Id. at 369.

“RESOLVED to REVERSE, as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case and, considering that no unethical conduct was committed by respondent, the case is hereby recommended to be DISMISSED with Warning against Respondent.”

SO ORDERED.⁴³

Issue

The issue for the Court’s resolution is whether respondent should be disciplined for neglecting his client’s case.

Our Ruling

The Court affirms and approves the findings and recommendation of the IBP Board.

As aptly found by Commissioner Gomos, complainant failed to substantiate her allegation that respondent told her of his alleged filing of the subject memorandum.⁴⁴

Notably, complainant failed to recount when and how respondent misled her into believing that he already filed the subject memorandum or when and how she made inquiries to respondent regarding Robby’s case. More, she did not present any documentary or electronic evidence to support her allegations.

Complainant’s contention that respondent had to substantiate his denial is utterly bereft of merit. It is a basic judicial precept that the one who alleges must prove. More, a lawyer is presumed innocent of the charges against him.⁴⁵ It must be stressed that in administrative proceedings, the burden is on the complainant to establish his or her case by substantial evidence—“that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.”⁴⁶

Anent respondent’s non-filing of the subject memorandum, the Court finds that he merely exercised his discretion as Robby’s counsel to control the incidents of the trial. Considering that the filing thereof is merely optional,⁴⁷ it cannot be said that respondent was negligent in handling Robby’s case when he opted not to file it.

In fine, respondent’s conduct in the case does not warrant disciplinary action. Nonetheless, the Court finds that his failure to inform his clients of his decision not to file the subject memorandum

⁴³ Id. at 369-370. Emphasis omitted.

⁴⁴ Id. at 365-366.

⁴⁵ *Atty. Dela Cruz v. Atty. Diesmos*, 528 Phil. 927, 933-934 (2006).

⁴⁶ *Dillon v. Atty. De Quiroz*, A.C. No. 12876, January 12, 2021.

⁴⁷ See TSN, February 6, 2015; *rollo*, p. 100.

falls short of the highest standard of transparency which a client expects from his or her counsel.⁴⁸ Thus, this warrants a warning from the Court that similar misconduct committed in the future will be dealt with more severely by the Court.

WHEREFORE, the Extended Resolution dated June 20, 2021 of the Integrated Bar of the Philippines Board of Governors in CBD Case No. 15-4667 is hereby **ADOPTED**. Accordingly, the Complaint against Atty. Eduardo M. Arriba is **DISMISSED** with a **WARNING** that a repetition of the same or similar acts will be dealt with more severely by the Court.

SO ORDERED.”

By authority of the Court:

~~Misael Domingo C. Battung III~~
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court *JB 11/7/22*

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⁴⁸ See *id.* at 369.

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