

SUPREME COURT OF THE PHILIPPINES  
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Republic of the Philippines  
Supreme Court  
Manila

**SECOND DIVISION**

**VICTORIA C. SOUSA,**  
*Complainant,*

**A.C. No. 7428**

Present:

**PERLAS-BERNABE, J.,**  
*Chairperson,*  
**REYES, A. JR.,\***  
**HERNANDO,**  
**INTING,**  
**ZALAMEDA,\*\* JJ.**

- versus -

**ATTY. J. ALBERT R.**  
**TINAMPAY,**  
*Respondent.*

Promulgated:

25 NOV 2019

X-----X

**DECISION**

**INTING, J.:**

*Once a lawyer agrees to handle a case, he is required to undertake the task with zeal, care, and utmost devotion. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause.<sup>1</sup>*

For the Court's resolution is a Complaint<sup>2</sup> for disbarment/suspension filed by Victoria C. Sousa (complainant) against Atty. J. Albert R. Tinampay (respondent) for professional misconduct and malpractice, fraud, misrepresentation, and conflict of interest.

<sup>1</sup> On leave.  
<sup>2</sup> Designated additional member per Special Order No. 2724 dated October 25, 2019.  
<sup>1</sup> *San Gabriel v. Atty. Sempio*, A.C. No. 12423, March 26, 2019.  
<sup>2</sup> *Rollo*, pp. 8-17.

Complainant is a co-defendant in Civil Case No. 103 entitled *Spouses Antonio L. Dominguez and Fe D. Dominguez v. Victoria Cabilan Sousa, et al.*, a case for annulment of sale. It was raffled to the Municipal Circuit Trial Court (MCTC) of Dauis, Panglao, Bohol, but was eventually dismissed for lack of jurisdiction.<sup>3</sup> It was later refiled with the Regional Trial Court (RTC) of Tagbilaran City and docketed as Civil Case No. 6657.<sup>4</sup> The RTC treated it as an original case. In connection with it, on January 13, 2000, complainant executed a Special Power of Attorney (SPA)<sup>5</sup> in favor of respondent, naming, constituting, and appointing him to be her attorney-in-fact.<sup>6</sup>

According to the complainant, respondent did not enter his appearance as her counsel in the proceedings before the MCTC.<sup>7</sup> Further, during the pre-trial of the refiled case in the RTC, complainant was declared in default since neither she nor her former counsel appeared; and although respondent was present, he remained silent and did not submit any notice for his substitution as the new counsel of the complainant. Respondent never admitted in open court that he is the legal counsel of the complainant, but he continuously accepted payment from the complainant.<sup>8</sup>

In his Comment<sup>9</sup> and Position Paper,<sup>10</sup> respondent countered that he was never the counsel of complainant. He insisted that Atty. Teofisto Cabilan was the counsel of record of the complainant, and that he represented complainant's co-defendants in Civil Case No. 6657.<sup>11</sup> In fact, there was never any retainer agreement between him and complainant engaging him as counsel. He admitted though that he had billed complainant for the case and was paid ₱41,500.00 as referral fee.<sup>12</sup>

<sup>3</sup> *Id.* at 258.

<sup>4</sup> Referred as Civil Case No. 6577 in some parts of the *rollo*.

<sup>5</sup> *Id.* at 21.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 14.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 59-65.

<sup>10</sup> *Id.* at 112-126.

<sup>11</sup> *Id.* at 62, 117-118.

<sup>12</sup> *Id.* at 119, 260.

*The Report and Recommendation of the  
Commission on Bar Discipline*

In the Report and Recommendation<sup>13</sup> dated January 14, 2010 of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), Investigating Commissioner Manuel T. Chan (Investigating Commissioner) found that respondent failed in his duty and responsibility in safeguarding the interest of complainant during the pre-trial of Civil Case No. 6657.<sup>14</sup> It recommended that he be reprimanded or censured on account of his actuations. It made the following findings:

Under the circumstances, it is relevant to inquire whether there was a legal obligation on the part of respondent to represent complainant in said pretrial—either as regular counsel or only as counsel on special appearance for that particular occasion. What appears to be indubitable was that there was a clear obligation on the part of respondent to represent complainant in said pretrial as her attorney-in-fact, considering that she was in the United States at that time and that he was her duly designated attorney-in-fact for the Dominguez case under the relevant SPA. The rationalization of respondent that no actual prejudice was inflicted upon complainant arising from the declaration of default, even if true, is not material at all in determining his liability.

x x x x

This Commissioner finds respondent clearly negligent and unmindful of his duties to complainant with regards to the Dominguez case during the pre-trial which resulted in her being declared in default. He was present during the proceedings, supposedly representing the other co-defendants (Cuals), and yet inexplicably did not do anything to protect the interest of complainant either as attorney-in-fact or counsel on special appearance in view of the absence of regular counsel. Moreover, respondent did not report such incident at least soon enough to complainant so that appropriate action could be taken to reverse the default order.

Whether such negligence was committed in his professional capacity in that respondent failed to represent complainant as legal counsel in said pre-trial, or such negligence is in his private capacity in that he failed to represent respondent as attorney-in-fact in said pre-trial does not really matter. x x x. The Code of Professional Responsibility is replete with provisions which oblige the lawyer to

<sup>13</sup> *Id.* at 257-264.

<sup>14</sup> *Id.* at 262-263.

observe candor, fairness and loyalty in all his dealings and transactions with his client, to be faithful to the cause of his client and to serve his client with competence and diligence. Certainly, the failure of respondent to represent and to protect the interest of complainant during the said pretrial violates such canons and could be considered a misconduct.<sup>15</sup>

*The Resolution and Extended Resolution of the IBP  
Board of Governors*

Per Resolution No. XIX-2010-601<sup>16</sup> dated October 9, 2010, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of the Investigating Commissioner. It found respondent guilty of grave misconduct and meted out the penalty of suspension from the practice of law for a period of one year. He was likewise ordered to return to complainant the sum of ₱202,500.00 as well as the amount of \$2,168.00, within 60 days from finality of the judgment.<sup>17</sup>

However, in a Resolution<sup>18</sup> dated June 9, 2012, the IBP Board of Governors granted respondent's motion for reconsideration and reversed and set aside its previous Resolution No. XIX-2010-601, with a warning that respondent be more circumspect in his future dealings. It stated:

It bears pointing out that the cases handled by Respondent for Complainant as well as those for her protégé, the Cuals, were all brought to a successful conclusion. As to the money in question, it can be gleaned from the enumerated events and instructions of Complainant to Respondent as to how her funds should be disbursed, that she is indeed a whimsical lady who is used to getting what she wants. It is now obvious that it was only when she dealt with Respondent in an "unprofessional" manner that matters became complicated; it was then that herein Respondent rebuked her "unprofessional" demands which ultimately gave rise to the instant case.<sup>19</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *Rollo*, pp. 255-256.

<sup>17</sup> *Id.* at 255.

<sup>18</sup> *Id.* at 335-336.

<sup>19</sup> *Id.* at 336.

Ultimately, the question herein is whether or not the IBP Board of Governors is correct in absolving respondent of any liability.<sup>20</sup>

Complainant insisted in her Petition for Review on *Certiorari*<sup>21</sup> that respondent is her counsel considering that she even executed an SPA authorizing him to appear and represent her in Civil Case No. 6657.<sup>22</sup> Respondent never denied the validity and due execution of the SPA. According to complainant, she was declared in default and was prejudiced by respondent's negligence.<sup>23</sup> Completely unaware of the order of default against her, complainant continued to remit payments to respondent which the latter accepted. Under the circumstances, she asserted that respondent is guilty of gross misconduct for failing to account for the various amounts he received from her. The fiduciary nature of the relationship between counsel and client imposes on the lawyer the duty to account for the money or property collected or received for or from the client.<sup>24</sup>

On the other hand, in his Comment,<sup>25</sup> respondent reiterated that complainant was updated minute by minute of all the proceedings. She was well represented, through the Cual family, and he had an updated accounting of all her remittances. He also maintained that the billings he sent to complainant were for his services to the Cual family charged against their land where complainant constructed her residential/vacation house.<sup>26</sup>

### *Our Ruling*

After a careful review of the records of the case, the Court finds that respondent was negligent and unmindful of his sworn duties to complainant.

The relationship between an attorney and his/her client is one imbued with utmost trust and confidence. Clients are led to expect that lawyers would be ever-mindful of their cause and exercise the required degree of diligence in handling their affairs. In addition, the lawyer is

<sup>20</sup> *Id.* at 355.

<sup>21</sup> *Id.* at 348-365.

<sup>22</sup> *Id.* at 359.

<sup>23</sup> *Id.* at 358.

<sup>24</sup> *Id.* at 360-362.

<sup>25</sup> *Id.* at 406-411.

<sup>26</sup> *Id.* at 406-407.

expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.<sup>27</sup>

A lawyer's duty of competence and diligence includes not just reviewing the cases entrusted to the counsel's care or giving sound legal advice. Significantly, it consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, as well as prosecuting the handled cases with reasonable dispatch.<sup>28</sup> Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation.<sup>29</sup> Canon 17 and Canon 18, Rule 18.03 and 18.04 of the Code of Professional Responsibility (CPR) clearly provide:

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.

x x x x

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.

It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. Every lawyer has the right to decline employment but once he agrees to take on the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. At that point, he owes entire devotion to the interest of the client, warm zeal in

<sup>27</sup> *Ball v. Atty. Mataro*, A.C. No. 12294 (Resolution), January 30, 2019 citing *Caranza Vda. De Saldivar v. Atty. Cabanes, Jr.*, 713 Phil. 530 (2013).

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

the maintenance and defense of his client's rights, as well as the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. Simply put, a client is entitled to the benefit of any and every remedy authorized by the law and he may expect his lawyer to assert every such remedy or defense.<sup>30</sup>

In relation to the foregoing, in *United Coconut Planters Bank v. Atty. Noel*,<sup>31</sup> the Court suspended the respondent from the practice of law for three years after committing inexcusable negligence in failing to file an answer on behalf of complainant in one case and for which reason, the latter was declared in default. The Court found that he grossly neglected his duty as counsel to the extreme detriment of his client. He willingly and knowingly allowed the default order to attain finality and let judgment to be rendered against his client on the basis of *ex parte* evidence. He also failed to assert any of the defenses and remedies available to his client under the applicable laws. These constitute inexcusable negligence warranting an exercise by the Court of its power to discipline him.

Moreover, in *Reyes v. Atty. Vitan*,<sup>32</sup> it was held that the act of receiving money as acceptance fee for the legal services in handling complainant's case and then failing to render such services is a clear violation of Canon 18 of the CPR, thus:

When respondent accepted the amount of ₱17,000.00 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 his client, herein complainant, with competence and attend to his cause with fidelity, care and devotion.

The act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the *Code of Professional Responsibility* which provides that a lawyer shall serve his client with competence and diligence.<sup>33</sup>

<sup>30</sup> *United Coconut Planters Bank v. Atty. Noel*, A.C. No. 3951, June 19, 2018 citing *Santiago v. Atty. Fojas*, 318 Phil. 79, 86-87 (1995).

<sup>31</sup> A.C. No. 3951, June 19, 2018.

<sup>32</sup> 496 Phil. 1 (2005).

<sup>33</sup> *Id.* at 4.

In the present case, evidence shows that complainant availed herself of the legal services of respondent as evidenced by the SPA she executed in his favor on January 13, 2000. The pertinent portion of the document reads:

I, VICTORIA C. SOUSA, a citizen of the United States of America by marriage but a Filipino by birth, of legal age, married, temporarily residing at 182 Pres. Carlos P. Garcia North Ave., Tagbilaran City, Philippines, do hereby name, constitute, and appoint my legal counsel, Atty. J. Albert R. Tinampay, a Filipino, of legal age, married to Tita Lim-Tinampay, with office address at Bohol Quality Complex, Tagbilaran City, 6300, Philippines, to be my true and lawful attorney-in-fact, for me and in my name, place and stead, to do and perform the following acts and things to wit:

*To represent me before any court, person or office relative to whatever properties I have acquired wherever located in the Philippines; to appear for and in my in all stages all cases filed for or against me, including Civil Case No. 6358, RTC-Bohol, Sousa v. Dominguez, et al., Civil Case No. 103, 14<sup>th</sup> Municipal Circuit Trial Court of Davis-Panglao, Bohol, Dominguez, et al. V. Victoria Cabilan Sousa, et al., and in all other cases that may be filed by or against me, whether it be civil, criminal, administrative or whatever; to appear in all stages, including pre-trial and amicable settlement; to sign for and in my behalf any other document relative thereto...*<sup>34</sup>  
(Underscoring supplied.)

As expressly stated, respondent shall represent complainant in all the cases filed for or against her. These include Civil Case No. 6657, previously docketed as Civil Case No. 103, pending before the RTC of Tagbilaran City. The SPA, considerably, categorically directed respondent to appear in all stages of the case such as the pre-trial conference. Here, respondent was present during the pre-trial stage of Civil Case No. 6657, but failed to represent complainant well enough and protect her interest either as an attorney-in-fact, or by way of special appearance. Consequently, complainant was declared in default. The situation became worse when respondent failed to at least inform the complainant about the progress of the case so that proper action could be taken to reverse the default order.

Respondent's neglect of the legal matter entrusted to him constitutes flagrant violations of the tenets of the CPR. It constitutes

<sup>34</sup> Rollo, p. 21.



inexcusable negligence for which he must be held administratively liable.<sup>35</sup>

Anent the proper penalty to be imposed on respondent, jurisprudence tells us that in instances where the lawyer commits similar acts against their respective clients, the Court imposed on them the penalty of suspension from the practice of law. In *Segovia-Ribaya v. Atty. Lawsin*,<sup>36</sup> the respondent was suspended for a period of one year for his failure to perform his undertaking under his retainership agreement with his client and to return the money given to him by the latter.<sup>37</sup> Similarly, in *Go v. Atty. Buri*,<sup>38</sup> the erring lawyer was suspended for a period of two years for neglecting her client's affairs and in failing to return the latter's money and/or property despite demand.

In this case, the Court finds the suspension of one year sufficient for respondent's misconduct appropriate. Considering that this is his first administrative offense, such penalty, and not disbarment as prayed for by complainant, serves the purpose of protecting the interest of the public and the legal profession.

Finally, the Court observes that while the complainant alleged that respondent received ₱202,500.00 and \$2,168.00, only the following amounts were supported by evidence, viz.: (1) ₱111,500.00,<sup>39</sup> (2) ₱9,500.00,<sup>40</sup> (3) \$500.00,<sup>41</sup> (4) \$250.00,<sup>42</sup> and (5) \$200.00.<sup>43</sup> Since respondent failed to render legal service to complainant, he should have promptly accounted for and returned the money to her. The Court finds it appropriate to order the respondent to return to complainant the legal fee amounting to ₱121,000.00. In addition, he shall return to complainant \$950.00 which complainant advanced to him as part of the legal fees, computed at the exchange rate prevailing at the time of payment. Both amounts shall be paid within 10 days from receipt of this Decision and interest at the rate of 6% *per annum* is imposed on them, which shall

<sup>35</sup> *San Gabriel v. Atty. Sempio*, *supra* note 1.

<sup>36</sup> 721 Phil. 44 (2013).

<sup>37</sup> *Id.* at 53.

<sup>38</sup> A.C. No. 12296, December 4, 2018.

<sup>39</sup> *Rollo*, p. 397.

<sup>40</sup> *Id.* at 398.

<sup>41</sup> *Id.* at 400.

<sup>42</sup> *Id.* at 401.

<sup>43</sup> *Id.* at 402.

accrue from the time of respondent's receipt of this Decision until full payment.<sup>44</sup>


**WHEREFORE**, the Court finds respondent Atty. J. Albert Tinampay **GUILTY** of violating Canons 17, 18 and Rules 18.03 and 18.04 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one (1) year effective immediately upon receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely in the future. Respondent is likewise **ORDERED** to return the amounts of ₱121,000.00 and \$950.00, computed at the exchange rate prevailing at the time of actual payment which shall earn legal interest at the rate of 6% *per annum* from the finality of this Decision until fully paid. Respondent shall submit to the Court proof of restitution within ten (10) days from payment. Failure to comply with this directive shall warrant the imposition of a more severe penalty.

Let all the courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Decision. Let a copy of this Decision be entered in the records of respondent.

**SO ORDERED.**

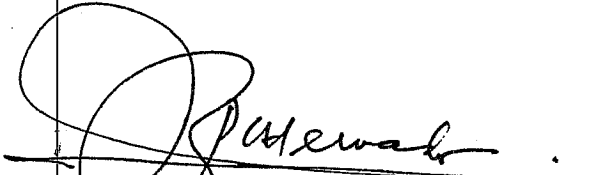
  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

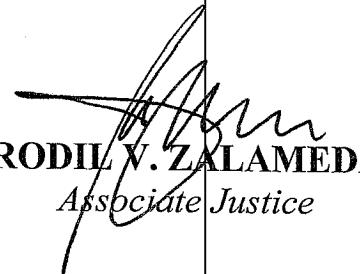
  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

<sup>44</sup> *San Gabriel v. Atty. Sempio, supra note 1.*

(On leave)  
**ANDRES B. REYES, JR.**  
*Associate Justice*



**RAMON PAUL L. HERNANDO**  
*Associate Justice*



**RODIL V. ZALAMEDA**  
*Associate Justice*