



SUPREME COURT OF THE PHILIPPINES
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REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **04 December 2019** which reads as follows:*

"A.C. No. 11866 – GENNILYN P. LAMOSTRE v. ATTY. ROMAN J. CUISON, JR.

x ----- x

This administrative complaint charges Atty. Roman J. Cuison, Jr. (Atty. Cuison) with Grave Misconduct and violation of the Code of Professional Responsibility and seeks the imposition of an appropriate penalty therefor as well as the refund of the amount of ₱100,000.00.

In her Complaint¹ filed before the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), Gennilyn P. Lamostre (Lamostre) alleged that in July 2010, she engaged the legal services of respondent Atty. Cuison for the preparation of an affidavit-complaint against her husband, Noel S. Lamostre, to be filed before the Professional Regulation Commission (PRC) and for which she paid Atty. Cuison the amount of ₱4,000.00. Subsequently, Lamostre referred to Atty. Cuison the matter of the enforcement/execution of the case for support which she previously filed against her husband, docketed as SP. Civil Case No. 1115 before the Regional Trial Court (RTC) of Butuan City, Branch 1. Thereafter, she again engaged the services of Atty. Cuison for the filing of a petition for annulment of marriage. Relative thereto, Lamostre claimed that she paid Atty. Cuison the following amounts: ₱32,963.00 on October 17, 2010, November 19, 2010, and September 20, 2011; ₱15,745.00 on March 11, 2012; ₱20,408.00 on June 20, 2012; ₱30,442.00 on July 8, 2012; and ₱15,000.00 on September 3, 2012. Lamostre attached to her complaint the corresponding remittance receipts for the above-mentioned amounts.

Lamostre claimed that as of September 3, 2012, she had already paid Atty. Cuison a total amount of ₱118,558.00. However, to her dismay, she learned that Atty. Cuison actually did nothing except the preparation of the complaint-affidavit and pre-trial brief before the PRC; as regards SP. Civil Case No. 1115, Atty. Cuison merely filed an entry of appearance which was even denied by the RTC; and he totally failed to prepare a petition for the annulment of marriage.²

In view of the foregoing, Lamostre asked for the refund of the money she had remitted to Atty. Cuison but to no avail. To her surprise, Atty. Cuison even billed her the additional amount of ₱90,000.00. On February 4, 2013,

¹ Rollo, pp. 2-6.
² Id. at 4.

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Lamostre terminated the services of Atty. Cuison relative to the PRC case. Lamostre claimed that she was overwhelmingly disappointed with the actuations of Atty. Cuison and that she suffered mental anguish, serious anxiety, and psychological and physical sufferings as well as financial losses. She thus prayed that Atty. Cuison be found guilty of violating the Code of Professional Responsibility and meted the corresponding penalty therefor and ordered to return the amount of ₱100,000.00.³

In his Answer (with Special Affirmative Defenses and Counterclaim),⁴ Atty. Cuison admitted that his services were engaged by Lamostre for the preparation and filing of an administrative complaint against Noel S. Lamostre before the PRC for which he received the amount of ₱4,000.00. He explained though that his engagement was not confined to the preparation of the complaint-affidavit and filing thereof before the PRC; he averred that his services even extended to the preliminary conference and trial proper.

Atty. Cuison also alleged that Lamostre also referred to him the execution of the case for support *pendente lite* docketed as SP. Civil Case No. 1115 which was decided by the RTC of Butuan City, Branch 1. The case was amicably settled between the parties, but since Lamostre's husband violated the provisions of the agreement, she was thus constrained to engage his services for the enforcement thereof. Atty. Cuison stated that the case was originally handled by Atty. Nelbert T. Poculan (Atty. Poculan) but he eventually entered his appearance therein on representations of Lamostre that Atty. Poculan was no longer interested in handling the same.⁵

Atty. Cuison admitted receipt of the amount of ₱32,963.00 but claimed that the same was in payment for his legal services rendered in the PRC case as well as in SP. Civil Case No. 1115 and the proposed annulment and criminal cases. He also admitted receipt of the amount of ₱15,740.00 but qualified that the same was in payment for his preliminary evaluation and assessment of the propriety of filing the annulment case. Moreover, he admitted receipt of ₱20,408.00 but he failed to file the annulment case due to Lamostre's fault of not furnishing him the necessary documents such as the marriage contract. The same is true with ₱30,444.00 which Atty. Cuison admittedly received yet he still failed to file the annulment petition due to Lamostre's failure to supply him the needed documentation. Atty. Cuison also conceded having made the request for ₱30,000.00 supposedly as acceptance fee for handling SP. Civil Case No. 1115. However, he admitted that he did not go to Butuan City to make follow ups explaining that he had to wait until his entry of appearance had been acted upon by the trial court. He narrated that he sent a demand letter to Lamostre's husband relative to the enforcement of the agreement in SP. Civil Case No. 1115.⁶

³ *Id.* at 4-5.

⁴ *Id.* at 26-32.

⁵ *Id.* at 26-27.

⁶ *Id.* at 27-28.

Atty. Cuison admitted receipt of the total amount of ₱115,558.03 from Lamostre; that she visited him at his office on October 18, 2012 to follow up the petition for annulment and inquire about the hearing in SP. Civil Case No. 1115; and that he advised her that it would be premature to make follow ups in SP. Civil Case No. 1115 considering that the trial court has yet to act on his entry of appearance; and that as regards the annulment petition, the same could not yet be filed because of her failure to provide him the necessary documents for the filing of the same. Finally, Atty. Cuison admitted having billed Lamostre the additional amount of ₱90,000.00 broken down as follows: ₱40,000.00 for the PRC case; ₱30,000.00 for SP. Civil Case No. 1115; ₱10,000.00 for studying and assessing the merits of the annulment case; and ₱10,000.00 for the falsification of public document case; and that as a sign of good faith, he is willing to refund the amount of ₱25,558.03.⁷

Lamostre filed a Reply⁸ wherein she averred that it was Atty. Cuison who prevailed upon her to engage his legal services in SP. Civil Case No. 1115 and not the other way around; that when he filed his entry of appearance on October 30, 2012 in SP. Civil Case No. 1115, she had already made a demand a day earlier or on October 29, 2012 for the refund of her money; that Atty. Cuison's letter to her husband dated November 20, 2012 was a mere afterthought to make it appear that he did something for the case. She insisted that Atty. Cuison did not do anything regarding SP. Civil Case No. 1115. She also asserted that Atty. Cuison was trying to mislead this Court when he claimed that he did not receive any acceptance fee for the annulment case, the truth being that he already received the total amount of ₱65,595.00. Thus, it was absurd for Atty. Cuison to still charge her the amount of ₱10,000.00 for allegedly evaluating and assessing the merits of the petition. She also clarified that she personally filed a criminal case for violation of Republic Act No. 9262 (RA 9262) against her husband and not for falsification of public document as adverted to by Atty. Cuison. She maintained that Atty. Cuison's November 20, 2012 letter to her husband was a mere afterthought and was intended to cover up his inaction.

Atty. Cuison also filed a Rejoinder⁹ wherein he claimed that he had already substantially worked on the PRC case; and that the same could have been facilitated to its conclusion if not for the abrupt withdrawal made by Lamostre. Atty. Cuison also claimed that Lamostre was trying to mislead the IBP by claiming that she demanded the return of her money on October 29, 2013. He pointed out that on October 30, 2013, he even made an Entry of Appearance in SP. Civil Case No. 1115 where Lamostre affixed her signature signifying her conformity thereto. Atty. Cuison thus lamented the accusation of Lamostre that the filing of the Entry of Appearance was a mere afterthought. Atty. Cuison also tried to clarify that he was not the one who insisted on handling SP. Civil Case No. 1115; on the contrary, it was Lamostre who was persistent in engaging his services since she was disappointed with

⁷ *Id.* at 28-29.

⁸ *Id.* at 69-71.

⁹ *Id.* at 77-82.

the handling lawyer, Atty. Pocolan. He also maintained that he did not receive any acceptance fee for handling the execution phase of SP. Civil Case No. 1115. He also asserted that he had actively taken steps to protect the interest of Lamostre as shown by his letters¹⁰ to the Clerk of Court of the RTC, Butuan City, Branch 1. As regards the petition for annulment of marriage, Atty. Cuison justified his failure to file the same considering Lamostre's failure to furnish him copies of her marriage license and marriage contract. He manifested that he was not responsible for the filing of the criminal case for violation of RA 9262 against Lamostre's husband; and that he was contemplating on filing a different criminal case. Interestingly, this time, Atty. Cuison alleged that Lamostre demanded the refund of her money in December 2012.¹¹

In fine, Atty. Cuison insisted that he never took advantage of Lamostre; on the contrary, he treated her fairly. He stated that by billing her the amount of ₱90,000.00, he was only rightfully seeking payment for legal services rendered.¹²

Both parties appeared during the mandatory conference scheduled on December 3, 2013. Thereafter, Lamostre filed a Manifestation with Prayer¹³ stating that after much deliberation, she realized that she filed a baseless complaint against Atty. Cuison. She alleged that due to her problems with her husband, she momentarily vented her frustrations towards Atty. Cuison; and having realized her error, she is voluntarily moving for the dismissal of the present administrative case.¹⁴ In addition, Lamostre submitted an Affidavit¹⁵ claiming that she had come to realize that the cause of the delay in filing the annulment case was Atty. Cuison's deteriorating health and her failure to provide copies of the necessary documents. She also reiterated that she terminated the services of Atty. Cuison abruptly without giving him the chance to clear the matter with her. She also lost sight of the fact that Atty. Cuison had been efficiently handling her legal concerns for about seven years. Thus, she is voluntarily withdrawing the complaint and exonerating Atty. Cuison of any responsibility.¹⁶

Report and Recommendation of the Investigating Commissioner

The Investigating Commissioner¹⁷ found that Atty. Cuison received the following amounts: ₱4,000.00 for handling the PRC case; ₱32,963.00 for handling the execution phase of SP. Civil Case No. 1115; and ₱66,595.00 for handling the annulment case. The Investigating Commissioner opined that since there was no contract as regards attorney's fees, the same must be based

¹⁰ *Id.* at 72-73.

¹¹ *Id.* at 79.

¹² *Id.*

¹³ *Id.* at 105-106.

¹⁴ *Id.* at 105.

¹⁵ *Id.* at 107.

¹⁶ *Id.*

¹⁷ Commissioner Erwin L. Aguilera.

on the principle of *quantum meruit*; that Atty. Cuison be compensated based on the scope of the services he rendered.¹⁸

As regards SP. Civil Case No. 1115, the Investigating Commissioner noted that Atty. Cuison had planned to visit the RTC, Butuan City, for which effort he should be compensated. He concluded that based on the principle of *quantum meruit*, Atty. Cuison is entitled to the payments made by Lamostre. In fine, the Investigating Commissioner found no basis to hold Atty. Cuison administratively liable. Interestingly, though, he issued a warning to Atty. Cuison that he will be severely dealt with if he commits the same or similar act, *viz.*:

WHEREFORE, the instant complaint filed against ATTY. ROMAN J. CUISON, JR. is hereby DISMISSED. He is further WARNED that a repetition of the same or similar conduct will be dealt with more severely.¹⁹ (Emphasis in the original)

Recommendation of the IBP-Board of Governors (BOG)

In a November 5, 2016 Resolution No. XXII-2016-589, the IBP-BOG adopted the findings of fact and recommendation of the Investigating Commissioner to dismiss the complaint.²⁰

Our Ruling

Contrary to the findings of the IBP, we find Atty. Cuison remiss in his duties as counsel for Lamostre, particularly as regards his engagement in SP. Civil Case No. 1115 and the annulment of marriage case.

Pertinent to the PRC case, we find that Atty. Cuison efficiently handled the same. We accord credence to his explanation that the PRC case could have been facilitated to its conclusion were it not for the withdrawal made by Lamostre.

However, the same is not true with regard to SP. Civil Case No. 1115 and the annulment of marriage case. As pointed out by the Investigating Commissioner, and as Atty. Cuison himself admitted, he already received the amount of ₱32,963.00 for handling the execution phase of SP. Civil Case No. 1115. However, despite being remunerated, he did not do anything about the said case. Per his admission, the most that he did in the said case was to send a demand letter to Lamostre's husband and to file an Entry of Appearance which was denied by the trial court upon the opposition of Atty. Poculan. He also made representations to Lamostre that he will be going to Butuan City to check with the trial court but he did not follow through with his promise. In short, his services as regards SP. Civil Case No. 1115 were too insignificant

¹⁸ *Rollo*, pp. 124-131.

¹⁹ *Id.* at 131.

²⁰ *Id.* at 122.

and immaterial as to entitle him to attorney's fees. The amount of ₱32,963.00 was, thus, not commensurate to the services he rendered.

We also find Atty. Cuison not entitled to any remuneration as regards the annulment case. Indeed, he claimed to have made an assessment and evaluation of the merits of the case but we find the same self-serving and uncorroborated. He did not even present proof of the assessment he supposedly made. The most that he did was to decide whether to file the case in Cotabato City or Butuan City. Other than this, he did nothing. The fact remains that no petition was ever prepared, much less filed before the proper RTC. We are not persuaded by his argument that he failed to prepare the petition due to the failure of Lamostre to provide him copies of the marriage contract and marriage license. As a seasoned lawyer, Atty. Cuison ought to know that he can properly request copies of these public records from the government agency or agencies concerned. He can request from the Office of the Local Civil Registrar copies of the marriage contract and marriage license, or certification of no marriage license or no marriage, for that matter. He need not wait for Lamostre to return to the Philippines from her job in Israel in order to get hold of those documents. Thus, there was no merit in his protestation that the failure to file the annulment of marriage case was caused by Lamostre's omission to furnish him copies of the said documents.

In fine, we find Atty. Cuison negligent in the performance of his duties as a lawyer for which he must be made administratively accountable. Rule 18.03, Canon 18, and Rule 20.01, Canon 20, of the Code of Professional Responsibility specifically provide:

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 20.01 – A lawyer shall be guided by the following factors in determining his fees:

- a) The time spent and the extent of the services rendered or required;
- b) The novelty and difficulty of the questions involved;
- c) The importance of the subject matter;
- d) The skill demanded;
- e) The probability of losing other employment as a result of acceptance of the proffered case;
- f) The customary charges for similar services and the schedule of fees of the IBP Chapter to which he belongs;
- g) The amount involved in the controversy and the benefits resulting to the client from the service;
- h) The contingency or certainty of compensation;

- i) The character of the employment, whether occasional or established; and
- j) The professional standing of the lawyer.

The ruling in *Reyes v. Vitan*²¹ is relevant, viz.:

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. More specifically, Rule 18.03 states:

“Rule 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him 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. An attorney is expected to 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.

In *Santos vs. Lazaro*, we held that Rule 18.03 of the Code of Professional Responsibility, above-quoted, is a basic postulate in legal ethics. Indeed, when a lawyer takes a client's cause, he covenants that he will exercise due diligence in protecting his rights. 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.

Significantly, respondent also violated his oath as a lawyer, which declares in part, that he will not delay any man for money or malice and will 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 client.²²(Citation omitted)

Since Atty. Cuison's services in SP. Civil Case No. 1115 were insignificant and useless, he is not entitled to be fully remunerated and must therefore return the amount of ₱25,000.00. As regards the annulment case, records show that Atty. Cuison did not perform any services relative thereto and hence, he is not entitled to any remuneration and must return the full amount of ₱66,595.00. The said amounts should earn legal interest of six (6%) per annum from date of promulgation of this Resolution until fully returned.²³

²¹ 496 Phil. 1, 4-5 (2005).

²² *Id.* at 4-5.

²³ *Zarate-Bustamante v. Libatique*, 418 Phil. 249, 255 (2001).

In similar cases, the Court has imposed the penalty of suspension from the practice of law ranging from four²⁴ to six months²⁵ for the counsel's negligence. Under the present circumstances, we find the penalty of suspension for a period of four months commensurate to Atty. Cuison's infraction.

Finally, Lamostre's belated desistance will not change the outcome of this case. Unfortunately for Atty. Cuison, "[t]he desistance is of no moment. We reiterate the rule that an affidavit of desistance does not warrant the dismissal of an administrative case."²⁶ It is settled that "in administrative proceedings against lawyers, the complainant's desistance or withdrawal does not terminate the proceedings."²⁷ This is particularly true in this case since the grounds for Lamostre's desistance have nothing to do with the merits, or lack thereof, of the case. Instead, she merely adverted to Atty. Cuison's deteriorating health and her alleged realization, albeit erroneous, that she caused the failure of the filing of the petition for the annulment of marriage and that her personal problems aggravated the situation.

ACCORDINGLY, We impose on Atty. Roman J. Cuison, Jr. the penalty of **FOUR (4) MONTHS SUSPENSION** from the practice of law for violation of Rule 18.03 of the Code of Professional Responsibility, effective upon receipt of a copy of this Resolution. Atty. Cuison is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Atty. Cuison is also **ORDERED** to **RETURN** to complainant Gennilyn P. Lamostre the amount of Ninety-One Thousand Five Hundred Ninety-Five Pesos (₱91,595.00) with legal interest of six percent (6%) per *annum* from the date of promulgation of this Resolution until the full amount is returned.

Atty. Cuison is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let a copy of this Resolution be attached to Atty. Cuison's record in this Court as attorney. Further, let copies of this Resolution be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

²⁴ See *Villarias-Riesenbeck v. Abarrientos*, 484 Phil. 415, 424 (2004).

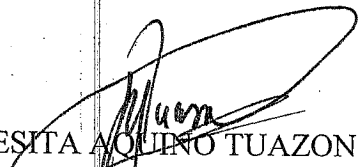
²⁵ See *Reyes v. Vitan*, supra note 13; see also *Solidon v. Macalalad*, 627 Phil. 284, 292 (2010); *Pariñas v. Paguinto*, 478 Phil. 239, 247 (2004); *Sencio v. Calvadores*, 443 Phil. 490, 495 (2003); *Garcia v. Manuel*, 443 Phil. 479, 489 (2003).

²⁶ *Guro v. Doronio*, 444 Phil. 827, 832 (2003).

²⁷ *Ylaya v. Gacott*, 702 Phil. 390, 420 (2013).

SO ORDERED. (Perlas-Bernabe, J., on official business; Zalameda, J., on official leave.)

Very truly yours,



TERESITA AQUINO TUAZON
Deputy Division Clerk of Court *whh 12/20*
26 DEC 2019

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*For circularization to all courts