



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **October 7, 2020** which reads as follows:*

“A.C. No. 9942 - RENESONIA M. DESTREZA v. ATTY. ROY ALLAN T. ARELLANO

ANTECEDENTS

Complainant Renesonia M. Destreza charged Atty. Roy Allan T. Arellano with negligence which allegedly caused the dismissal of her case before the Court of Appeals.

Destreza alleged that Atty. Arellano was the counsel of her parents in Civil Case No. 02-103799 before the Regional Trial Court (RTC)-Branch 36, Manila City. On June 13, 2013, a court sheriff came to their house armed with a “break open order”. Apparently, Atty. Arellano failed to comment on the Motion for Issuance of Break Open Order filed by the adverse party which, as a result, was granted by the court.¹

She gave Atty. Arellano Fifteen Thousand Pesos (P15,000.00) as payment for his services. Despite this, he was negligent in handling the petition for annulment of judgment before the Court of Appeals, resulting as well in its dismissal.²

By Resolution dated August 28, 2013, the Court required Atty. Arellano to file his comment on the complaint within ten (10) days from notice. But he failed to comply, thus he was required to show cause why he should not be disciplinary dealt with or held in

- over – eight (8) pages ...

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¹ Rollo, p. 1.

² *Id.* at 1-2.

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contempt.³ On February 2, 2017, he submitted his explanation, paid the required fine, and filed his Comment. He essentially averred:

He was referred to Destreza by a colleague who represented the latter's parents in their case before the RTC. The case for accion reivindicatoria was entitled "*Elizabeth F. Magat v. Socorro A. Magat and Spouses Ireneo and Quezonía Destreza.*"⁴ By Decision dated January 19, 2009, RTC-Branch 36, Manila ruled in favor of Elizabeth F. Magat and ordered therein defendants to vacate the property subject of the case where Destreza's family home was built.⁵

He advised Destreza that the trial court's adverse judgment was already final and executory and even if a petition for annulment of judgment was filed, there was a slim chance for a reversal. He suggested instead that Destreza reach out to the opposing party, Elizabeth F. Magat for a settlement of the case. But Destreza insisted on filing the petition for annulment of judgment.⁶

He empathized with Destreza because they stand to lose their family home. He agreed to handle their case for a fee of Thirty Thousand Pesos (P30,000.00). Destreza, however, asked for more time to come up with the money and meantime, requested him to prepare the necessary petition. Out of the Fifteen Thousand Pesos (P15,000.00) given by Destreza, Five Thousand Pesos (P5,000.00) was used to pay for docket fees and other expenses.⁷

He filed before the Court of Appeals a petition for annulment of judgment and application for temporary restraining order and/or injunction. At this point, Destreza had paid him Ten Thousand Pesos (P10,000.00) and requested a deferment of the balance.⁸

The petition was initially dismissed by the Court of Appeals for failure of one of the parties to sign the required verification/certification against forum shopping. He, however, was able to reinstate the case by filing a motion for reconsideration.⁹

He reminded Destreza to settle the balance she owed him because he needed it when he was to file his Compliance with the Court of Appeals. Again, Destreza promised to pay him and requested

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³ *Id.* at 49, 51, 53.

⁴ *Id.* at 57-58.

⁵ *Id.* at 17-27.

⁶ *Id.* at 58.

⁷ *Id.* at 58-59.

⁸ *Id.* at 59.

⁹ *Id.* at 59-60.

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that the Compliance be filed first. Destreza also asked if he could take over their case before the trial court because their former counsel had already withdrawn from the case. She further offered to pay him additional Twenty Thousand Pesos (P20,000.00) as acceptance fee. At this point, he had already become cautious of Destreza because she continuously failed to pay him. He told her that he would like to settle the matter before the Court of Appeals first before considering to take the case pending before the trial court.¹⁰

Destreza had become desperate and asked him if he knew anyone from the trial court or the Court of Appeals who she could pay just to stop their impending ejection from their family home. This made him finally decide to disassociate himself from Destreza. He informed Destreza that he would no longer ask for the balance of his professional fees and advised her to look for another lawyer who would comply with the Court of Appeals' orders. Annoyed, Destreza threatened to file a disbarment case against him.¹¹

The case was referred to the Integrated Bar of the Philippines (IBP) for investigation.¹² During the mandatory conference, none of the parties appeared. Neither did the parties file their position papers.¹³

THE IBP'S REPORT AND RECOMMENDATION

In her August 13, 2018 Report and Recommendation, the Investigating Commissioner adjudged Atty. Arellano guilty of negligence and recommended his suspension from the practice of law for two (2) months.¹⁴

The Investigating Commissioner found that Atty. Arellano was not the counsel of Destreza's parents in the RTC case. Thus, he could not be expected, much less, faulted for his alleged failure to comment on the motion for issuance of break open order filed by the opposing party.¹⁵

By agreeing to handle the case, a lawyer impliedly stipulates to carry the case to its conclusion. Therefore, a lawyer may only withdraw from a case without his client's consent if it is for a good

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¹⁰ *Id.* at 60-61.
¹¹ *Id.* at 61.
¹² *Id.* at 67.
¹³ *Id.* at 76.
¹⁴ *Id.* at 91-95.
¹⁵ *Id.* at 94.

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cause and always with approval of the court. While Atty. Arellano had good reasons to withdraw his services even without his client's consent, *i.e.*, client's immoral conduct and continuous refusal to pay his professional fees, he failed to file a formal written withdrawal of appearance in court. His omission resulted in the dismissal of the petition before the Court of Appeals. Thus, assuming he was justified in terminating his services, Atty. Arellano cannot just do so and leave his client in the cold unprotected.¹⁶

By Resolution dated June 17, 2019, the IBP Board of Governors adopted the factual findings of the Investigating Commissioner but modified the recommended penalty to suspension from practice of law for two (2) months and fine of Ten Thousand Pesos (P10,000.00) for non-submission of the required pleading and failure to attend the mandatory conference.¹⁷

RULING

We adopt in full the IBP's factual findings and legal conclusions.

A lawyer, once he agrees to take up the cause of a client, owes fidelity to such cause and undertakes to carry it to its termination. He or she is not at liberty to abandon his or her client and withdraw his or her services without reasonable cause and only upon notice appropriate in the circumstances.¹⁸

Section 26, Rule 138 of the Revised Rules of Court provides:

Sec. 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 adverse party.

A lawyer may retire at any time from any action or special proceeding with the written consent of his client filed in court and with a copy thereof served upon the adverse party. Should the client refuse to give his consent, the lawyer must file an application

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¹⁶ *Id.* at 94-95.

¹⁷ *Id.* at 89-90.

¹⁸ *Venterez v. Atty. Cosme*, A.C. No. 7421, October 10, 2007.

with the court. The court, on notice to the client and adverse party, shall determine whether the lawyer ought to be allowed to retire. The application for withdrawal must be based on a good cause.

What constitute good cause for the withdrawal of services by the counsel are identified under Rule 22.01, Canon 22 of the Code of Professional Responsibility, *viz.*:

CANON 22 -- A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRCUMSTANCES.

Rule 22.01-- A lawyer may WITHDRAW his services in any of the following cases:

- a) **When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;**
- b) When the client insists that the lawyer pursue conduct violative of these canons and rules;
- c) When his inability to work with co-counsel will not promote the best interest of the client;
- d) When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
- e) **When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;**
- f) When the lawyer is elected or appointed to public office; and
- g) Other similar cases. (Emphasis supplied)

Here, Atty. Arellano had good reasons to withdraw his services.

First. As found by the IBP Investigating Commissioner, Destreza asked Atty. Arellano if he knew anyone she could pay just to stop their impending ejection from their property. *Ong v. Atty. Unto* ordained that the ethics of the legal profession rightly enjoin lawyers to act with the highest standards of truthfulness, fair play and nobility in the course of his practice of law.¹⁹ Destreza's act of asking Atty. Arellano to pay someone to settle her case equated to not only an immoral conduct but also an illegal act which Atty. Arellano correctly refused to accept.

Second. Destreza, deliberately failed to pay Atty. Arellano's professional fees. In *Somosot v. Atty. Lara*, the Court held:

What lightens the impact of the respondent's mishandling of the case is the complainant's own failings as a client. The non-payment of fees is a factor that we cannot simply disregard. As a

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¹⁹ 426 Phil. 531, 540 (2002).

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rule, law practice is not a pro bono proposition and a lawyer's sensitivity and concern for unpaid fees are understandable; lawyers incur expenses in running their practice and generally depend, too, on their law practice income for their living expenses.²⁰

Thus, while the practice of law is not a money-making trade, a lawyer is still entitled to a reasonable fee for the effort and work done in pursuing the cause of his client.

Nonetheless, assuming that Atty. Arellano was justified in withdrawing his services, he cannot just do so and leave his client in the cold, unprotected. A lawyer has no right to presume that his petition for withdrawal will be granted by the court. Until his withdrawal shall have been approved, the lawyer remains counsel of record who is expected by his clients, as well as by the court, to do what the interests of his clients require. He must still appear before the court to protect the interest of his clients by availing himself of the proper remedy, for the attorney-client relations are not terminated formally until there is a withdrawal of record.²¹

Here, without proper revocation of his authority and withdrawal as counsel, Atty. Arellano remains counsel of record for Destreza in the latter's case pending before the Court of Appeals. His failure to comply with the Court of Appeals' orders had resulted in the dismissal of the case. As such, Atty. Arellano must be held to account for his failure to protect the interest of his client.

Indeed, a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.²²

On the penalty, the Court has sound judicial discretion to impose penalty on erring lawyers. In similar cases, as in here, the Court imposed penalties ranging from a fine of Five Hundred Pesos (P500.00) with warning, reprimand to suspension of three (3) months or six (6) months, or even disbarment in aggravated cases.²³

In *Venterez v. Atty. Cosme*, the Court suspended Atty. Cosme from the practice of law for three (3) months because he failed to comply with the requirements for withdrawal of his services as counsel of record which resulted in the issuance of writ of execution against his client.²⁴

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²⁰ 597 Phil. 149, 166 (2009).

²¹ Supra note 18, 488-489.

²² *Id.* at 489-490.

²³ *Id.* at 490.

²⁴ *Id.*

In *Somosot v. Atty. Lara*, the latter got suspended for three (3) months for mishandling his client's case. There, Atty. Lara did not bother to contact his client despite the court's denial of his notice of withdrawal of appearance, thus, resulting in the dismissal of the case.²⁵

Here, considering that Atty. Arellano had performed his duties as Destreza's counsel, albeit he failed to properly withdraw his services as counsel of record, and this is his first offense, the penalty of **SUSPENSION** from the practice of law for two (2) months and a fine of Ten Thousand Pesos (P10,000) is deemed proper.

ACCORDINGLY, Atty. Roy Allan T. Arellano is found **GUILTY** of negligence. He is **SUSPENDED** from the practice of law for **TWO (2) MONTHS** effective upon receipt of this Resolution. He is **ORDERED** to pay a fine of Ten Thousand Pesos (P10,000.00).

Let a copy of this Resolution be entered in the personal records of Atty. Roy Allan T. Arellano as member of the Bar, and copies furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country.

The Notice of Resolution dated June 17, 2019 of the Integrated Bar of the Philippines' Board of Governors, transmitted by letter dated March 12, 2020 of Director Randall C. Tabayoyong, Integrated Bar of the Philippines' Commission on Bar Discipline, together with the records and compact disc containing the PDF file of the case, is **NOTED**.

SO ORDERED."

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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²⁵ Supra note 20, at 167-168.

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