



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **February 26, 2020** which reads as follows:*

“A.C. No. 12626 – (JENNIFER S. DEL MAR v. ATTY. FRANCISCO O. AMIT, JR.)

Antecedents

Complainant Jennifer S. Del Mar charged Atty. Francisco P. Amit, Jr. with violations of Canon 3, 7, and 17 the Code of Professional Responsibility (CPR) for allegedly neglecting his duties as counsel for complainant. Del Mar essentially alleged:¹

In November 2010, on behalf of Athena School for Technical and Vocational Advancement, she engaged the services of Atty. Amit, Jr. to: (1) recover a motor vehicle (Ford Escape-Plate No. YDT 829) from a certain Dimitrios Alifrangis and (2) to reopen the indictment for rape against Dimitrios Alifrangis. For his engagement and services, she paid Atty. Amit, Jr. P150,000.00.

In December 2010, she went to Atty. Amit, Jr.’s office to follow up on the cases. He told her he was not able to file the replevin case pertaining to the stolen car because of the need to put up a bond. But he had already reported the loss of the car to the Land Transportation Office (LTO) and Traffic Management Group (TMG) in which case, the car may be intercepted anytime. This turned out to be false. For an inquiry with the LTO confirmed that no such report was submitted by Atty. Amit, Jr.

¹ Complaint-Affidavit dated September 12, 2011, *rollo*, pp. 4-11.

A handwritten signature in blue ink, located in the bottom right corner of the page.

As for the rape case, Atty. Amit, Jr. told her that the complainant therein must come forward to give her affidavit. Consequently, in the second week of December 2010, she informed Atty. Amit, Jr. that she herself searched and found the complainant to help speed up the re-opening of the rape case. She later on set up a meeting with complainant and Atty. Amit, Jr. but he did not arrive. She had since then been sending text messages to Atty. Amit, Jr. and visiting his office to ask for any update on the cases. Atty. Amit, Jr., however, consistently failed to respond each time. This prompted her to wait and take her chance to catch Atty. Amit, Jr. outside his office.

One day, she got the chance to finally catch Atty. Amit, Jr. as the latter was about to leave his office. He told her that he figured out a way to re-open the rape case against Alifrangis but she had to give him P50,000.00 which he would pay, in turn, to the prosecutor who will sign the resolution.

By letter dated May 30, 2011, she demanded that Atty. Amit, Jr. return the P150,000.00 she paid as legal fees. Atty. Amit, Jr., however, required her to present a special power of attorney from Athena School which she did. But Atty. Amit, Jr. never refunded the money.

Atty. Amit, Jr. violated the CPR when he: (1) declared that he can re-open the rape case and that a resolution thereon was ready to be signed by the prosecutor; (2) promised to file a replevin case to recover the vehicle of the school but did not; 3) asked for a huge professional fee but did not file the cases he promised to file; and 4) made himself scarce and evaded her when she asked for a case update.

In his Answer dated February 7, 2013, Atty. Amit, Jr. countered, in the main:

In the first week of December 2010, he advised Del Mar that to be able to re-open the rape case against Alifrangis, the complainant must file another affidavit-complaint. Thus, on December 9, 2010, when the complainant came to his office, he immediately prepared her complaint-affidavit and had it subscribed and sworn before the prosecutor.

In January 2011, he received a resolution from the investigating prosecutor dismissing the rape case. Mr. Droulez, president of Athena School got disappointed and instructed him to immediately recover

the car from Alifrangis at all cost even without filing the replevin case.

A few days after, Del Mar spotted the vehicle parked inside a residential area. When he and Del Mar went to the place, however, the vehicle was nowhere to be found anymore. On February 23, 2010, he wrote the City Director of Mandaue City Police Office, P/S Superintendent Noel Gillamac and asked for assistance. The latter assured him they would coordinate with the LTO-TMO for the seizure of the vehicle.

Sometime in June 2011, he received a text message from complainant demanding a full refund of the professional fees she paid. He asked for Del Mar's authority to demand the refund considering that his real client was not Del Mar but Athena School. Besides, he would only return P50,000.00 to her because he had rendered legal services. Del Mar refused and insisted on the full refund of professional fees.

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

In his Report and Recommendation dated January 2, 2014, the Investigating Commissioner found Atty. Amit, Jr. guilty of violating the Canons of the CPR and recommended his suspension from the practice of law for six (6) months.

The Investigating Commissioner found that despite repeated demands, Atty. Amit, Jr. failed to perform his obligations to institute an action for replevin. It was even Del Mar who located the stolen vehicle. All Atty. Amit, Jr. did was send a letter to the Mandaue Police Office to request for assistance to recover subject vehicle. Too, even after Del Mar requested the refund of professional fees, Atty. Amit, Jr. refused and even questioned her authority to recover the money.²

By Resolution dated December 13, 2014, the IBP-Board of Governors adopted the aforesaid Report and Recommendation.³

Atty. Amit, Jr. moved for reconsideration which the IBP Board of Governors partially granted under Resolution dated May 19, 2018. It reduced the penalty to reprimand with stern warning that repetition

² *Id.* at 93-97.

³ *Id.* at 92.

of similar conduct shall be dealt with more severely. It also ordered Atty. Amit, Jr. to return the amount of P150,000.00 less the amount of billings/expenses for services rendered based on quantum meruit.⁴

The IBP-CBD held that a reduction of the penalty was justified because Atty. Amit, Jr. complied with his duty to re-file the rape case. He met with complainant in the rape case, prepared her complaint-affidavit, and had it subscribed and sworn to before the Assistant City Prosecutor. Later, the complaint got dismissed which he relayed to Del Mar.

Atty. Amit, Jr. offered to return P50,000.00 to Del Mar for his failure to file the replevin case. His refusal to return the full amount of P150,000.00 to Del Mar was justified because he believed in good faith that he rendered legal services pertaining to the rape case. More, he was willing to return the full amount if Del Mar had presented an SPA and Secretary's Certificate from Athena School.

He is, however, not completely faultless. His negligence in not informing his client about the developments of the case and his failure to respond to his client's calls and text messages fell short of the standard of diligence, care, and devotion which a lawyer was expected to give his or her client. Since this was Atty. Amit, Jr.'s first infraction and services had partially been rendered to his client, a lesser penalty is warranted.

Ruling

We adopt the factual findings and legal conclusions of the IBP-Board of Governors.

The relationship between a lawyer and a client is "imbued with utmost trust and confidence." Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients to the best of their ability without need to be reminded by either the client or the court.⁵

The following facts here are undisputed: Atty. Amit, Jr. got engaged to handle two (2) legal matters affecting his client. The first involves the filing of a replevin suit pertaining to his client's car; the

⁴ *Id.* at 107.

⁵ *Ramirez v. Atty. Buhayang-Margallo*, 752 Phil. 473, 480-481 (2015).

second involves a rape case which his client wants to reopen against Alifrangis.

For his engagement, he was paid P150,000.00. As it was, however, Atty. Amit, Jr. did not file a replevin suit, albeit, he sought the assistance of the Mandaue City Police Office to recover subject vehicle. As for the rape case, he did file a complaint for rape against Alifrangis, albeit it got dismissed by the Assistant City Prosecutor concerned.

As shown, Atty. Amit, Jr. fulfilled his duty to file the rape case against Alifrangis. The fact that it was later on dismissed was no longer his fault. But with respect to the replevin suit, what he did was only to report the loss of the car to the Mandaue City Police Office. Nothing more. The supposed replevin suit was never filed. For not filing the replevin suit, he signified his willingness to refund P50,000.00 to his client.

He also did not deny that Del Mar kept on following up on the case nor did he deny that she personally went to his office and even waited for him outside his office, taking her chance to be able to catch and talk to him about the cases. He did not deny either that he failed each time to respond to her follow-up or inquiries about the cases.

Indeed, his failure to file the replevin suit and failure to inform his client about the status of the cases despite the latter's repeated demands constitute a violation of the Canons of the CPR, viz.:

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.

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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 the client's request for information.

Once a lawyer consents to defend the cause of his client, he owes fidelity to such cause and must at all times be mindful of the trust and confidence reposed in him. He is bound to protect his client's interest to the best of his ability and perform his duties to his client with utmost diligence. Nothing less can be expected from a

member of the Philippine Bar. For having neglected a legal matter entrusted to him by his client, Atty. Amit, Jr. failed to serve his client with diligence and competence. His inexcusable negligence on such matter renders him liable for violation of Canons 17 and 18 of the CPR.⁶

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 reprimand to suspension of three (3) months or six (6) months, or even disbarment in aggravated cases.

In *Gimena v. Vijiga*, the Court ruled that the latter's failure to submit the appellants' brief and update his clients of the status of their appeal falls short of the ethical requirements set forth under the CPR. He got suspended for six (6) months from the practice of law and admonished to exercise greater care and diligence in the performance of his duties.⁷

In *Sison v. Atty. Valdez*, the Court suspended Atty. Valdez from the practice of law for three (3) months considering that he rendered some legal services to complainant albeit only in the initiatory stage; and he failed to duly update his client on the developments of the case.⁸

In *Vda. De Oribiana v. Atty. Gerio*, the latter got reprimanded and admonished for failure to file his client's appeal brief before the Court of Appeals within the reglementary period.⁹

Here, considering that Atty. Amit, Jr. complied with his duty to file the rape case; had offered to return a portion of the acceptance fee that he received in good faith; and this is his first offense, the penalty of REPRIMAND with STERN WARNING that repetition of similar conduct shall be dealt with more severely is deemed proper. He is ordered to return the amount of P50,000.00 out of P150,000.00 he received as professional fee for his failure to file his client's replevin suit.

WHEREFORE, Atty. Francisco O. Amit, Jr. is found **GUILTY** of violating Canon 17 and Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility (CPR). He is

⁶ *Abiero v. Atty. Juanino*, 492 Phil. 149, 157 (2005).

⁷ A.C. No. 11828, November 22, 2017, 845 SCRA 630, 637.

⁸ 814 Phil. 1007, 1015 (2017).

⁹ 177 Phil. 543, 549 (1979).

REPRIMANDED and **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely. He is also **ORDERED** to return the amount of P50,000.00 to Jennifer S. Del Mar.

SO ORDERED.” J. Reyes, Jr., J. on official leave.

Very truly yours,


LIBRADA C. BUENA
Division Clerk of Court

142

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