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[A.C. No. 5732. June 16, 2015]

ALFREDO C. OLVIDA, *complainant, vs.* **ATTY. ARNEL C. GONZALES**, *respondent*.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 18.04, CANON 18 THEREOF; A LAWYER SHOULD KEEP HIS CLIENT POSTED ON THE STATUS OF THE CASE.—** The respondent, Atty. Arnel C. Gonzales, is liable as charged. He grossly violated Canon 17 of the Code of Professional Responsibility which provides: **A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.** The complainant had all the reasons to terminate the respondent's services and to have him disciplined for his patent neglect of duty as lawyer. As the records show, the respondent gave the complainant the run-around for an unreasonably long period of time; the latter had to repeatedly inquire about and follow up the filing of the position paper in the DARAB case. On the matter alone of keeping complainant posted on the status of the case, the respondent failed to comply with his duty under Rule 18.04, Canon 18 that "**a lawyer shall keep the client informed of the status of the case and shall respond within a reasonable time to the client's request for information**."

2. **ID.; ID.; ID.; ID.; A LAWYER ENGAGED TO REPRESENT A CLIENT IN A CASE BEARS THE RESPONSIBILITY OF PROTECTING THE LATTER'S INTEREST WITH UTMOST DILIGENCE, AND HIS FAILURE TO FILE APPELLANT'S BRIEF CONSTITUTES A VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** The deadline for the filing of the position paper had come and gone, but the complainant was still trying to get information from the respondent and from his office on the matter. Inexplicably, at so late a period for the filing of the position paper and without even asking for extension to file the pleading, the respondent

remained unavailable until the complainant's receipt of a copy of the DARAB decision dismissing the case for lack of merit due to the respondent's failure to file a position paper. Canon 18 of the Code of Professional Responsibility requires that "**A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.** Accordingly, Rule 18.02 mandates that "**a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.**" As the Court said in *Biomi Sarenas-Ochagabia v. Atty. Balmes L. Ocampos:* "***A lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence. By failing to file appellant's brief, respondent was remiss in the discharge of such responsibility. He thus violated the Code of Professional Responsibility.***"

3. **ID.; ID.; ID.; A LAWYER'S DISHONEST AND UNETHICAL DEALING WITH HIS CLIENT SHOWS GROSS LACK OF PROFESSIONALISM, AND HIS LACK OF COMMITMENT TO AND GENUINE CONCERN FOR THE CLIENT'S CAUSE PUTS THE PRACTICE OF LAW IN A VERY BAD LIGHT.—** [T]he respondent kept to himself his receipt of a copy of the DARAB's adverse decision which he received even before the complainant received his own. This failure to communicate was downright dishonest and unethical and cannot but aggravate the respondent's inexcusable neglect in not filing a position paper in the case. It also showed the respondent's gross lack of professionalism in dealing with his client; worse than this, his office, through his secretary, had even made the complainant believe that the position paper had already been filed. We cannot, and should not, tolerate the respondent's lack of commitment to and genuine concern for the complainant's cause, for it puts the practice of law in a very bad light. He should be made to answer, not only for his negligence in the handling of the complainant's case before the DARAB, but also for his dishonest and unethical dealings in this case.

4. **ID.; ID.; ID.; A LAWYER SHOULD NOT ALLOW HIS CLIENT TO DICTATE THE PROCEDURE IN HANDLING THE CASE.—** We are appalled at the respondent's boldness in saying that his failure to file the position paper in the tenancy case was due to the complainant's fault. He lost sight of the fact that

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he was engaged by the complainant to plead his case in the tenancy dispute in the way he (respondent) believed the case should be handled, not in any other way. Under the Code of Professional Responsibility, a lawyer "**shall not allow his client to dictate the procedure in handling the case.**" Thus, we cannot accept his lame excuse that the complainant failed to provide him with the documents he needed in the preparation of the position paper and that he and the complainant had a difference of opinion on how the case should be handled. Notably, even the Investigator recognized that the complainant submitted documents to the respondent; whatever was lacking could not be submitted as the complainant could not even contact the respondent despite repeated attempts. In short, the respondent should have acted as a lawyer in the case, not as a mere agent waiting for the complainant's instructions. He should not have wasted several months doing nothing about the position paper he knew had to be filed as required by the DARAB Adjudicator. He should not have lied to the complainant making him believe that he was doing his work as his lawyer and that he had already filed the position paper. He should not have made himself scarce and kept the complainant in the dark on the status of the case. Before the time for filing lapsed, he should have been candid enough to tell the complainant that he could not file the required position paper and that it was time for him to engage another lawyer. This is the honorable thing to do under the circumstances, for a lawyer worthy of his license.

5. ID.; ID.; THREE-YEAR SUSPENSION FROM THE PRACTICE OF LAW IMPOSED FOR GROSS NEGLIGENCE AND DISHONESTY IN HANDLING THE CLIENT'S CASE.— In administrative complaints against lawyers, the Court has exercised its discretion on what penalty to impose on the basis of the facts of the case. Thus, for a lawyer's failure to file a brief or other pleading, the Court had imposed penalties ranging from reprimand, warning with fine, suspension, and in aggravated cases, disbarment. In the present case, the IBP Board of Governors imposed a four-month suspension from the practice of law on the respondent for his negligence in filing the required position paper. The established facts, however, show that the respondent was not only grossly negligent in the performance of his duties as the complainant's lawyer; he was also downright dishonest and unethical in his dealings with the complainant,

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an aspect of the case glossed over during the IBP investigation. For the injury he caused to the complainant and his family because of his malpractice, the respondent must be made to suffer the commensurate penalty, despite the fact that there was no motion for reconsideration of the IBP resolution. In this light, we deem a three-year suspension from the practice of law an appropriate penalty for the respondent's gross negligence and dishonesty in his handling of the complainant's tenancy case.

D E C I S I O N

***PER CURIAM*:**

We resolve the present administrative case which arose from the Affidavit/Complaint[1] dated April 15, 2002 of Alfredo C. Olvida (*complainant*)[2] submitted to the Office of the Chief Justice on April 29, 2002, against Atty. Arnel C. Gonzales (*respondent*) for *intentional negligence* due to respondent's failure to submit the complainant's position paper in his case before the Department of Agrarian Reform Adjudication Board (*DARAB*) in Davao City.

The Antecedents

The complainant alleged that in early November 2000, he engaged the services of the respondent in the filing and handling of a case for Termination of Tenancy Relationship *(case*) against tenant Alfonso Lumanta (*Lumanta*) who was no longer religiously paying the rentals for a 54,000-sq.m. coconut farm in Tibungco, Davao City, owned by his wife and under his administration. Lumanta had left the leased property unattended and in a sorry state.

On December 5, 2000, the complainant paid the respondent his acceptance fee of ₱15,000.00 and ₱700.00 as advance appearance fee. The respondent asked the complainant to

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[1] *Rollo*, pp. 3-8.

[2] *Id*. at 2; Olvida's letter dated April 19, 2002.

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provide him with copies of all pertinent documents and affidavits of his witnesses. The case was filed on January 22, 2001.[3] The complainant represented his wife Norma Rodaje-Olvida in the case.

At the hearing on February 21, 2001, the DARAB exerted efforts to resolve the case amicably, but the parties failed to come to an agreement, prompting the Board to require the parties to submit their position papers within 40 days from the date of the hearing.

On March 22, 2001, the complainant provided the respondent all pieces of documentary evidence, including his own affidavit, for the preparation of the position paper, as follows: (1 photocopy of the leasehold agreement;[4] (2) the complainant's affidavit;[5] (3) affidavit of Emma Comanda in support of the case against Lumanta;[6] (4) affidavit of Danilo Vistal for the same purpose as Comanda's affidavit;[7] (5) certification of Municipal Agrarian Office that the complainant and Lumanta failed to reach a settlement regarding the tenancy dispute;[8] (6) result of ocular inspection of disputed property;[9] and minutes of conciliation meeting between the parties conducted by the Barangay Lupon over the dispute.[10]

Thereafter, the complainant repeatedly called the respondent's office for information about the position paper. He did this until April 25, 2001, the last day of its submission, but failed to contact the respondent. Thus, he was compelled to go to the respondent's office; but again, he failed to see the respondent

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[3] *Id*. at 175-186.

[4] *Id*. at 9.

[5] *Id*. at 15-19.

[6] *Id*. at 25-26.

[7] *Id*. at 27-29.

[8] *Id*. at 30.

[9] *Id*. at 31.

[10] *Id*. at 32-36.

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whose secretary could not provide him any information about the status of the case.

After fruitlessly going back and forth the respondent's office, the complainant finally contacted the respondent's secretary, Marivic Romero, about the position paper. Romero told him that the position paper had already been filed. When he asked for a copy, Romero replied that there was none as it was the respondent himself who prepared the position paper on his computer.

Due to his commitments as Regional Legal Assistant for the Federation of Free Workers, the complainant momentarily neglected to follow up the matter with the respondent, until he received on December 13, 2001 — nine months after the expiration of the period for the filing of the position paper — a copy of the decision[11] of Regional Agrarian Reform Adjudicator Norberto P. Sinsona dismissing the case for lack of merit. When he read the text of the decision, he discovered that the respondent did not file the position paper in the case.[12] The decision stated that the respondent failed to submit a position paper despite ample time to do so.[13]

The complainant felt gravely aggrieved by this turn of events, especially after he learned that the respondent already had a copy of the decision even before he received his own, and had not informed him about it. The complainant terminated[14] the respondent's services. As there was an urgent need to file a motion for reconsideration, the complainant engaged the services of another lawyer to handle the case.

In a Resolution[15] dated September 2, 2002, this Court required the respondent to comment on the complaint. Over a period

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[11] *Id*. at 264-267.

[12] *Supra* note 1, at 6, par. 29.

[13] *Id*. at 6-7, par. 30.

[14] *Rollo*, p. 96; complainant's letter to respondent dated December 18, 2001.

[15] *Id*. at 97.

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of several years, the respondent filed several motions for extension of time to file his comment allegedly due, among others, to changes in his office address,[16] and to his alleged preoccupation in attending to his wife who was afflicted with brain tumor.[17] Despite Court notices for him to show cause for his failure to comment, the respondent failed to comply with the Court's directive. His inaction came to a head when the Court fined him[18] ₱2,000.00 for non-compliance with the show cause Resolution of January 19, 2009.[19]

Respondent's Comment

Finally, on March 17, 2010, more than seven years after he was first required by the Court to do so, the respondent filed his comment.[20] He prayed for a dismissal of the complaint, contending that the complainant's accusations[21] were merely products of his fertile imagination and scheming mind. He explained that the complainant pressed charges against him not because he failed to file a position paper — under DARAB rules, the filing of a position paper can be dispensed with — but because he lost the case.

The respondent pointed out that the complainant lost the case because there was a difference of opinion between them; the complainant wanted to impose upon him his own view and opinion and would dictate to him what he wanted to be done in the course of the proceedings, while refusing all his advice on how to pursue the case. The complainant in fact failed to submit to him all the pieces of documentary evidence he needed.

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[16] *Id*. at 101 & 120; Manifestation/Explanation, with Urgent Motion for Extension of Time to File Comment, dated July 14, 2005, par. 3; and Manifestation/Notice of Change of Address, with Urgent Motion for Extension of Time to File Comment dated February 2, 2006.

[17] *Id*. at 154; Manifestation to File Comment dated February 3, 2010, par. 2.

[18] *Id*. at 147; Resolution dated January 20, 2010.

[19] *Id*. at 146.

[20] *Id*. at 162-171.

[21] Pars. 15-37 of the Affidavit/Complaint.

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Referral to the Integrated Bar of the Philippines (*IBP*)

On August 9, 2010, the Court referred[22] the case to the IBP for investigation, report, and recommendation. The IBP assigned the case to Investigating Commissioner Oliver A. Cachapero who submitted a Report and Recommendation[23] dated July 15, 2011 to the IBP Board of Governors.

Commissioner Cachapero found the respondent negligent in discharging his duties as a lawyer in the handling of complainant's case against his former tenant Lumanta. He faulted respondent, as the complainant did, for his failure to file a position paper in the case. He disagreed with the respondent's assertion that the *Position Paper is unimportant and that his client had failed to submit the necessary papers or documents to support his cause of action. His defiant action militates against his duty to his client*[24] *x x x when he was directed to submit Position Paper, Respondent must have set aside his personal views and submitted the same. It was a directive from the Adjudicator and his submission of the same would not at all hurt the chances of his client to obtain a favourable decision. In fact, it would have bolstered his client's chances but the chances of this happening remains (sic) entirely in his hands*.[25]

Commissioner Cachapero recommended respondent's SUSPENSION from the practice of law for a period of four (4) months.

On February 13, 2013, the IBP Board of Governors passed Resolution No. XX-2013-164,[26] adopting and approving the recommendation of Commissioner Cachapero. Accordingly, it suspended respondent from the practice of law for four months.

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[22] *Rollo*, pp. 363-364; Resolution dated August 9, 2010.

[23] *Id*. at 438-440.

[24] *Id*. at 440, par. 2.

[25] *Id*. at par. 3.

[26] *Id*. at 437.

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On October 7, 2013, the IBP Commission on Bar Discipline transmitted[27] to the Court a Notice of Resolution, together with the records of the case and the information that "no motion for reconsideration has been filed by either party."

The Court's Ruling

Except for the penalty imposed on the respondent, we find the IBP Board of Governors' Resolution No. XX-2013-164 well-founded in law and in fact.

The respondent, Atty. Arnel C. Gonzales, is liable as charged. He grossly violated Canon 17 of the Code of Professional Responsibility which provides: **A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.**

The complainant had all the reasons to terminate the respondent's services and to have him disciplined for his patent neglect of duty as lawyer. As the records show, the respondent gave the complainant the run-around for an unreasonably long period of time; the latter had to repeatedly inquire about and follow up the filing of the position paper in the DARAB case. On the matter alone of keeping complainant posted on the status of the case, the respondent failed to comply with his duty under Rule 18.04, Canon 18 that "**a lawyer shall keep the client informed of the status of the case and shall respond within a reasonable time to the client's request for information**."

The deadline for the filing of the position paper had come and gone, but the complainant was still trying to get information from the respondent and from his office on the matter. Inexplicably, at so late a period for the filing of the position paper and without even asking for extension to file the pleading, the respondent remained unavailable until the complainant's receipt of a copy of the DARAB decision dismissing the case for lack of merit due to the respondent's failure to file a position paper.

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[27] *Id*. at 436.

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Canon 18 of the Code of Professional Responsibility requires that "**A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.** Accordingly, Rule 18.02 mandates that "**a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.**" As the Court said in *Biomi Sarenas-Ochagabia v. Atty. Balmes L. Ocampos*:[28] "***A lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence. By failing to file appellant's brief, respondent was remiss in the discharge of such responsibility. He thus violated the Code of Professional Responsibility.***"

Also, in *In Re: Atty. David Briones*,[29] we held that ***the failure of the counsel to submit the required brief within the reglementary period is an offense that entails disciplinary action. x x x His failure to file an appellant's brief x x x has caused the appeal to remain inactive for more than a year, to the prejudice of his client, the accused himself, who continues to languish in jail pending the resolution of his case.***[30]

The respondent is no less responsible than the two erring lawyers in the above-cited cases for his failure to file the position paper in the DARAB case, which caused complainant and his family so much grief, considering, as complainant lamented, that they suffered emotional shock, heartaches, and sleepless nights because of the expenses they had incurred that aggravated their longstanding problems with their tenant.[31]

Further, the respondent kept to himself his receipt of a copy of the DARAB's adverse decision which he received even before the complainant received his own. This failure to

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[28] 466 Phil. 1, 6 (2004), citing *Ford v. Datol*, A. C. No. 3736, November 16, 1995, 250 SCRA 7, 12.

[29] A.C. No. 5486, 415 Phil. 203, (2001).

[30] *Id*. at 208.

[31] *Supra* note 1, at 7, par. 32.

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communicate was downright dishonest and unethical and cannot but aggravate the respondent's inexcusable neglect in not filing a position paper in the case. It also showed the respondent's gross lack of professionalism in dealing with his client; worse than this, his office, through his secretary, had even made the complainant believe that the position paper had already been filed.

We cannot, and should not, tolerate the respondent's lack of commitment to and genuine concern for the complainant's cause, for it puts the practice of law in a very bad light. He should be made to answer, not only for his negligence in the handling of the complainant's case before the DARAB, but also for his dishonest and unethical dealings in this case.

The respondent tried to evade liability by shifting the blame on the complainant for the non-filing of the position paper. He claimed that the complainant refused to provide him with the documentary evidence he needed and to follow his advice on how the case should proceed. For instance, he averred that had the documentary evidence been attached to the complaint, the filing of the position paper could have been dispensed with.

We are appalled at the respondent's boldness in saying that his failure to file the position paper in the tenancy case was due to the complainant's fault. He lost sight of the fact that he was engaged by the complainant to plead his case in the tenancy dispute in the way he (respondent) believed the case should be handled, not in any other way. Under the Code of Professional Responsibility, a lawyer "**shall not allow his client to dictate the procedure in handling the case.**"[32] Thus, we cannot accept his lame excuse that the complainant failed to provide him with the documents he needed in the preparation of the position paper and that he and the complainant had a difference of opinion on how the case should be handled. Notably, even the Investigator recognized that the complainant submitted documents to the respondent; whatever was lacking could not be submitted as the complainant could not even contact the respondent despite repeated attempts.

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[32] CANON 19; Rule 19.03.

In short, the respondent should have acted as a lawyer in the case, not as a mere agent waiting for the complainant's instructions. He should not have wasted several months doing nothing about the position paper he knew had to be filed as required by the DARAB Adjudicator. He should not have lied to the complainant making him believe that he was doing his work as his lawyer and that he had already filed the position paper. He should not have made himself scarce and kept the complainant in the dark on the status of the case. Before the time for filing lapsed, he should have been candid enough to tell the complainant that he could not file the required position paper and that it was time for him to engage another lawyer. This is the honorable thing to do under the circumstances, for a lawyer worthy of his license.

The appropriate penalty for respondent's case

In administrative complaints against lawyers, the Court has exercised its discretion on what penalty to impose on the basis of the facts of the case. Thus, for a lawyer's failure to file a brief or other pleading, the Court had imposed penalties ranging from reprimand, warning with fine, suspension, and in aggravated cases, disbarment.[33]

In the present case, the IBP Board of Governors imposed a four-month suspension from the practice of law on the respondent for his negligence in filing the required position paper. The established facts, however, show that the respondent was not only grossly negligent in the performance of his duties as the complainant's lawyer; he was also downright dishonest and unethical in his dealings with the complainant, an aspect of the case glossed over during the IBP investigation.

For the injury he caused to the complainant and his family because of his malpractice, the respondent must be made to

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[33] *Supra* note 28, at 7-8, citing *Vda. De Orbiana v. Gerio,* A.C. No. 1582, February 28, 1979, 88 SCRA 586; *Basas v. Icawat,* A.C. No. 4282, August 24, 2000, 338 SCRA 648; *Rabanal v. Tugade,* A.C. No. 1372, June 27, 2002, 383 SCRA 484; and *Mariveles v. Mallari,* A.C. No. 3294, February 7, 1993, 219 SCRA 44.

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suffer the commensurate penalty, despite the fact that there was no motion for reconsideration of the IBP resolution. In this light, we deem a three-year suspension from the practice of law an appropriate penalty for the respondent's gross negligence and dishonesty in his handling of the complainant's tenancy case.

WHEREFORE, premises considered, respondent Atty. Arnel C. Gonzales is **SUSPENDED from the practice of law for three (3) years**, effective upon finality of this decision, with a **warning** that a repetition of the same offense shall be dealt with more severely.

Atty. Arnel C. Gonzales is **DIRECTED** to formally **MANIFEST** to this Court, upon receipt of this Decision, the date of his receipt which shall be the starting point of his suspension. He shall furnish a copy of this Manifestation to all the courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let a copy of this decision be attached to Atty. Gonzales' records with the Office of the Bar Confidant and posted on the Supreme Court website as a notice to the general public.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

Peralta and *Leonen, JJ.,* on official leave.