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THIRD DIVISION

[A.C. No. 6056. September 9, 2015]

FELICISIMA MENDOZA *vda. de* ROBOSA, *complainant, vs.* **Attys. JUAN B. MENDOZA and EUSEBIO P. NAVARRO, JR.,** *respondents*.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; SUSPENSION OR DISBARMENT OF ATTORNEYS; REQUIRES PREPONDERANCE OF EVIDENCE AND IN CASE THE EVIDENCE OF THE PARTIES ARE EQUALLY BALANCED, THE EQUIPOISE DOCTRINE MANDATES A DECISION IN FAVOR OF THE RESPONDENT.—** The Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint. The evidence required in suspension or disbarment proceedings is preponderance of evidence. In case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent. For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.

2. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; HOW DETERMINED.—** Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may

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ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

3. LEGAL ETHICS; ATTORNEYS; CONTINGENT FEE ARRANGEMENT; TO BE VALID, IT MUST BE LAID DOWN IN AN EXPRESS CONTRACT AND THE AMOUNT FIXED AS CONTINGENT FEE MUST BE REASONABLE UNDER THE CIRCUMSTANCES OF THE CASE.— [A] contingent fee arrangement is valid in this jurisdiction and is generally recognized as valid and binding but must be laid down in an express contract. The validity of contingent fees depends, in large measure, upon the reasonableness of the amount fixed as contingent fee under the circumstances of the case. Nevertheless, when it is shown that a contract for a contingent fee was obtained by undue influence exercised by the attorney upon his client or by any fraud or imposition, or that the compensation is clearly excessive, the Court must, and will protect the aggrieved party. Apart from the allegations in her affidavit-complaint, Felicisima failed to establish by clear and satisfactory proof of the deception allegedly committed by Atty. Mendoza when she agreed in writing for the latter's contingent fees. Fraud and irregularity in the execution of their contingency fee contract cannot be deduced from the fact alone that Atty. Mendoza filed suit to enforce their contract.

4. ID.; ID.; GROSS NEGLIGENCE; FAILURE OF COUNSEL TO SUBMIT THE APPEAL BRIEF FOR HIS CLIENT WITHIN THE REGLEMENTARY PERIOD, A CASE OF; PENALTY.— With respect to Atty. Navarro, the facts on record clearly established his failure to live up to the standards of diligence and competence of the legal profession. Lawyers engaged to represent a client in a case bear the responsibility of protecting the latter's interest with warmth, zeal and utmost diligence. They must constantly keep in mind that their actions or omissions would be binding on the client. x x x Canon 18 of the CPR mandates that a lawyer shall serve his client with competence and diligence. Rule 18.03 further provides that a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable. x x x We have held that the failure of counsel to submit the appeal brief for his client within the reglementary period constitutes *inexcusable negligence*, an offense that entails

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disciplinary action. The filing of a brief within the period set by law is a duty not only to the client, but also to the court. The failure to file an appellate court brief without any justifiable reason thus deserves sanction. x x x In cases involving a lawyer's failure to file a brief or other pleading before an appellate court, this Court has imposed suspension from the practice of law for periods ranging from three to six months, and in most serious cases, even disbarment. We find the recommendation of the IBP-Board of Governors to suspend Atty. Navarro from the practice of law for six months appropriate under the circumstances. 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. For this Court will exercise its power to disbar only in clear cases of misconduct that seriously affects the standing and character of the lawyer as an officer of the court and a member of the bar.

5. ID.; ID.; LAWYER-CLIENT RELATIONSHIP; CHARACTERIZED AS ONE OF CONFIDENCE, FOR THERE IS EVER PRESENT THE NEED FOR THE LAWYER TO INFORM TIMELY AND ADEQUATELY THE CLIENT OF IMPORTANT DEVELOPMENTS AFFECTING THE CLIENT'S CASE.— Atty. Navarro's negligent handling of Felicisima's case was exacerbated by his failure to inform her of the status of her case. There was no mention in his pleadings of any attempt on his part to contact Felicisima at the crucial stages when Atty. Mendoza moved for execution pending appeal and the CA sent a directive for the filing of the appellant's brief. If indeed, he had already instructed Felicisima to look for another lawyer, he should have apprised her of these developments and explained to her the urgency of filing the notice of withdrawal of appearance and entry of appearance of a new counsel she may have already engaged. Atty. Navarro's failure to communicate vital information to his client violated Rule 18.04 x x x. The lawyer's duty to keep his client constantly updated on the developments of his case is crucial in maintaining the client's confidence. Indeed, the relationship of lawyer-client being one of confidence, there is ever present the need for the lawyer to inform timely and adequately the client of important developments affecting the client's case. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests.

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APPEARANCES OF COUNSEL

Fortun Almodiel & Mendoza for complainant.

The Law Firm of Amurao Amurao & Associates for Atty. Juan B. Mendoza.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a complaint for disbarment against Atty. Juan B. Mendoza (Atty. Mendoza) for alleged deceitful acts against his client, and Atty. Eusebio P. Navarro, Jr. (Atty. Navarro) for negligence in the handling of his client's defense in the collection case filed by Atty. Mendoza.

Factual Antecedents

Eladio Mendoza (Eladio) applied for original registration of two parcels of land (Lot Nos. 3771 and 2489) situated in Calamba, Laguna before the Community Environment and Natural Resources Office (CENRO) at Los Baños, Laguna and Land Management Bureau (LMB) in Manila.[1] While his application was still pending, Eladio died leaving all his children as heirs to his estate; among them is herein complainant Felicisima Mendoza Vda. De Robosa (Felicisima). Eladio's children pursued the application and executed a Special Power of Attorney[2] (SPA) in favor of Felicisima. Their relative, Atty. Mendoza, prepared and notarized the said SPA. They also engaged the services of Atty. Mendoza as their counsel in the proceedings before the CENRO and LMB.

On February 20, 1993, upon the behest of Atty. Mendoza, Felicisima signed a Contract for Service[3] prepared by Atty.

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[1] *Rollo*, p. 91.

[2] *Id*. at 6-7. Dated September 13, 1992 but referred to as September 15, 1992 elsewhere in the records.

[3] *Id*. at 42.

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Mendoza. The said contract stipulated that in the event of a favorable CENRO or LMB resolution, Felicisima shall convey to Atty. Mendoza one-fifth (1/5) of the lands subject of the application or one-fifth (1/5) of the proceeds should the same property be sold.

The CENRO and the LMB proceedings resulted in the dismissal of Felicisima and her siblings' application for Lot No. 2489 and the partial grant of their application for Lot No. 3771.[4] The Bureau of Lands issued an Original Certificate of Title (OCT) covering one-third (1/3) or about 8,901 square meters of Lot No. 3771 in the names of Felicisima and her siblings. Subsequently, Felicisima and her siblings sold the land to Greenfield Corporation (Greenfield) and received the amount of ₱2,000,000.00 as down payment.

On October 15, 1998, Atty. Mendoza, joined by his wife Filomena S. Mendoza, filed in the Regional Trial Court (RTC) of Tanauan, Batangas a Complaint[5] against Felicisima and her siblings (Civil Case No. T-1080). Atty. Mendoza claimed that except for the amount of ₱40,000.00, Felicisima and her siblings refused to pay his attorney's fees equivalent to 1/5 of the proceeds of the sale of the land as stipulated in the Contract for Service.

In their Answer with Counterclaim,[6] Felicisima and her siblings denied the "existence and authenticity of the x x x Contract of Service," adding that it did not reflect the true intention of the parties as they only agreed to pay Atty. Mendoza ₱1,500.00 per appearance and up to ₱1,500.00 for gasoline expenses. They also asserted that, based on *quantum meruit*, Atty. Mendoza is not entitled to the claimed attorney's fees because they lost in one case and he failed to accomplish the titling of the land awarded to them, which would have enhanced the value of the property.

Felicisima and her siblings hired the services of Atty. Navarro as their counsel in Civil Case No. T-1080.

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[4] *Id*. at 1.

[5] *Id*. at 45-53.

[6] *Id*. at 54-57.

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On March 29, 2000, the RTC rendered judgment in favor of Atty. Mendoza and against Felicisima and her siblings. The RTC ruled that Felicisima failed to substantiate her claim that she did not enter into a contingency contract for legal services with Atty. Mendoza, and ordered Felicisima to pay Atty. Mendoza ₱1,258,000.00 (for the land sold at ₱7,120,800.00) representing attorney's fees as well as the total cost of suit.[7]

Atty. Navarro then filed a Notice of Appeal[8] on behalf of Felicisima. However, Atty. Mendoza moved for an execution pending appeal with the RTC. Since no opposition was filed by Felicisima and her siblings, the RTC granted the said motion and issued a writ of execution, which resulted in the levy and eventual transfer of Felicisima's properties covered by Transfer Certificate of Title Nos. T-433859 and T-433860 in favor of Atty. Mendoza as the highest bidder in the execution sale.[9]

Meanwhile, the Court of Appeals (CA) ordered Felicisima to file an appellant's brief but Atty. Navarro failed to file the same within the period granted by the CA. Consequently, the CA dismissed Felicisima's appeal for non-compliance with Section 1(e), Rule 50 of the Revised Rules of Court.[10]

On June 3, 2003, Felicisima filed a complaint-affidavit for disbarment before this Court against Atty. Mendoza for allegedly deceiving her into signing the Contract for Service by taking advantage of her illiteracy, and against Atty. Navarro for dereliction of duty in handling her case before the CA causing her properties to be levied and sold at public auction.[11]

Felicisima alleges that Atty. Mendoza made her sign a document at her house without the presence of her siblings. Said document (Contract for Service) was written in English

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[7] *Id.* at 138-140.

[8] *Id.* at 141.

[9] *Id.* at 61-69.

[10] *Id.* at 29-30.

[11] *Id.* at 1-4.

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which she does not understand. She claims that Atty. Mendoza told her the document will shield her from her siblings' possible future claims on the property because she alone is entitled to the property as her siblings did not help her in processing the application for original registration. She was not given a copy of the said document and she discovered only during the trial that Atty. Mendoza anchors his claim over 1/5 of proceeds from the sale of the land awarded by the CENRO and LMB on the same document she had signed.[12]

As to Atty. Navarro, Felicisima claims that her case before the CA was neglected despite repeated follow-ups on her part. She also points out that Atty. Navarro abandoned her case before the RTC when the latter failed to file an opposition to Atty. Mendoza's motion for execution pending appeal, which resulted in the loss of her properties.[13]

In his Comment,[14] Atty. Mendoza avers that he has been a lawyer since 1954 and retired sometime in 1983 due to partial disability. He went back to practicing his profession in 1996 on a selective basis due to his disability but completely stopped a year after. Being 82 years of age at the time of filing his comment, Atty. Mendoza admits that he is now totally disabled, cannot walk on his own, cannot even write and sign his name, and can only move about with the help of his family for he has been suffering from a severe case of "acute gouty arthritic attack" which causes extreme difficulty in moving virtually all his joints. He points out that he had previously handled *pro bono* a concubinage case filed by Felicisima against her husband, having yielded to her repeated pleas as she was then financially hard-up and psychologically distraught. For the application with the CENRO and LMB, he agreed to be paid for his legal services on a contingent basis, which contract was subsequently found by the RTC to be valid. When it was time to collect his attorney's fees, Felicisima and her siblings refused to pay him without

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[12] *Id*. at 1-2.

[13] *Id*. at 2-3.

[14] *Id*. at 32-40.

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any justifiable reason and even threatened to shoot him if he continued to press for his compensation. This left Atty. Mendoza with no other recourse but to avail of the judicial process to enforce his claim.

Replying to the comment of Atty. Mendoza, Felicisima maintains that she did not understand the contents of the Contract for Service and if it was truly their agreement (contingent basis) they would not have given money to Atty. Mendoza amounting to ₱66,000.00. In fact, she points out that Atty. Mendoza failed to recover one of the lands applied for and to have the land awarded to them titled because he became ill. Further, she denies the allegation that she and her siblings threatened to shoot Atty. Mendoza for how could they do it to a lawyer who will certainly have them jailed. Besides, he never mentioned such incident during the hearing of the case.

On his part, Atty. Navarro asserts that he did his best to win Felicisima's case although he was unsuccessful. He explains that even before handling Felicisima's case, he had been saddled by many cases involving politicians and sympathizers, having previously served as councilor in the Municipality of Sto. Tomas, Batangas for two consecutive terms. He thus emphasized to Felicisima that in order to "keep the case alive", he could file the Notice of Appeal in her behalf, and instructed her to look for another lawyer who has the time to attend to her case and that she would return to him only when she failed to get one. However, Atty. Navarro admits that since he was too preoccupied with so many cases in the local courts, he had altogether forgotten about Felicisima's case, not having seen her again as per their agreement.

Atty. Navarro avers that after a long time Felicisima suddenly showed up at his office complaining why there was no appellant's brief filed on her behalf at the CA. He claims that Felicisima blamed her and even accused him of conniving with Atty. Mendoza. Felicisima would not accept his explanation and she obviously failed to understand his earlier instruction as he had filed the Notice of Appeal precisely to give her enough time to secure the services of a new lawyer having told her that he was

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quite busy with his other cases. He therefore pleads for mercy and compassion if he had somehow committed some lapses considering that this is the first time he was charged administratively in his almost 39 years of law practice and that he is too willing to take complainant's cause if not for such apparent miscommunication between a lawyer and his client.[15]

On December 7, 2005, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[16]

On November 6, 2006, Felicisima filed a position paper[17] reiterating that Atty. Mendoza clearly abused the trust and confidence she reposed in him, depriving her of her material possessions by filing suit to enforce the Contract for Service. She asserted that they could not have entered into a contract with Atty. Mendoza for the conveyance of a portion of the land to be awarded by the Bureau of Lands as his attorney's fees because they already agreed to pay his fee per hearing plus transportation expenses and the sum of ₱40,000.00. She contended that Atty. Mendoza should be held liable for deceit and misrepresentation for tricking her to sign, to her detriment, a document that she did not understand.

As to Atty. Navarro, Felicisima maintained that he abandoned his responsibility to monitor and keep her updated of the status of her case before the CA. She also alleges that Atty. Navarro made it appear to her that he had already filed the appellant's brief when, in fact, there was no such undertaking. She thus prayed that Atty. Navarro be held liable for negligence in the conduct and manner of handling her case before the CA.

IBP's Report and Recommendation

After two postponements, the mandatory conference was finally held on September 25, 2006 where all parties appeared except

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[15] *Id.* at 91-96 (Comment of Atty. Navarro).

[16] *Id.* at 100.

[17] *Id.* at 176-189.

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for Atty. Mendoza. Upon termination of the hearing, the parties were required to file their position papers but only Felicisima complied.

On March 6, 2007, the Investigating Commissioner of the IBP-Commission on Bar Discipline (CBD) submitted her Report and Recommendation[18] finding Atty. Mendoza guilty of taking advantage of Felicisima's ignorance just to have the Contract for Service signed. She held that Atty. Mendoza violated Canon 17 of the Code of Professional Responsibility (CPR) that a lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed on him, as well as Rule 20.04, Canon 20 which exhorts lawyers to avoid controversies with clients concerning matters of compensation and to resort to judicial action only to prevent imposition, injustice or fraud.[19]

As to Atty. Navarro, the Investigating Commissioner held that his participation in politics affected his law practice and caused him to forget about Felicisima's case. Having failed to file the appellant's brief as ordered by the CA, Atty. Navarro even filed a Motion to Withdraw Appearance at a very late stage, leaving no time for Felicisima to secure the services of another lawyer. His infraction caused the eviction of Felicisima and her children from their residence by virtue of the writ of execution and public auction of her real properties. The Investigating Commissioner further said that Atty. Navarro's acts showed lack of diligence in violation of Canon 18 of the CPR and his Lawyer's Oath.[20]

The Investigating Commissioner recommended that both Atty. Mendoza and Atty. Navarro be suspended for two (2) years from the practice of law.[21]

On September 19, 2007, the IBP Board of Governors issued a Resolution[22] modifying the Investigating Commissioner's Report

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[18] *Id*. at 251-260.

[19] *Id*. at 257-258.

[20] *Id*. at 258-259.

[21] *Id*. at 259-260.

[22] *Id.* at 249-250.

and Recommendation by lowering the period of suspension from two (2) years to six (6) months.

Atty. Navarro filed a motion for reconsideration[23] contending that the IBP Board of Governors failed to consider that after the filing of the Notice of Appeal, there was no more lawyer-client relationship between him and Felicisima. Insisting that there was a miscommunication between him and Felicisima regarding his instruction that she should engage the services of another lawyer after the filing of the Notice of Appeal, he stressed that she only later found it difficult to scout for a new lawyer because she was being charged exorbitant acceptance fees. Hence, Felicisima should be held equally negligent in not hiring the services of another lawyer despite a clear understanding to this effect. He further cites the lack of communication between him and Felicisima, which resulted in the late filing of the Notice of Withdrawal that she volunteered to file a long time ago.

In her comment to Atty. Navarro's motion for reconsideration, Felicisima reiterated that Atty. Navarro should be held liable for negligence in failing to update her of the status of the case and admitting such oversight. She claims that despite several demands, Atty. Navarro ignored them and made himself scarce.[24]

On February 28, 2012, the IBP-CBD forwarded the case to this Court for proper disposition pursuant to Section 12, Rule 139-B of the Rules of Court. Among the records transmitted was the Resolution dated January 15, 2012 denying the motion for reconsideration filed by Atty. Navarro.[25]

The Court's Ruling

The Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to prove the allegations in his complaint. The

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[23] *Id.* at 261-262.

[24] *Id.* at 263-266.

[25] *Id*. at 280-281.

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evidence required in suspension or disbarment proceedings is preponderance of evidence. In case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the respondent.[26] For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof.[27]

Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other.[28] It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.[29] Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

After a thorough review of the evidence and pleadings submitted by the parties, we hold that Felicisima was able to prove her charges against Atty. Navarro but not Atty. Mendoza.

Contract for Service with Atty. Mendoza a contract for contingent fees

The Contract for Service dated February 20, 1993 reads:

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[26] *Aba v. De Guzman, Jr.,* 678 Phil. 588, 601 (2011).

[27] *Alitagtag v. Garcia*, 451 Phil. 420, 423 (2003).

[28] *Aba v. De Guzman, Jr., supra* note 26, at 601, citing *Habagat Grill v. DMC-Urban Property Developer, Inc.*, 494 Phil. 603, 613 (2005); *Bank of the Philippine Islands v. Reyes*, 568 Phil. 188, 197 (2008).

[29] *Id*., citing *Republic v. Bautista*, 559 Phil. 360, 371 (2007).

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That the client hereby employs the Attorney as their counsel for the titling and recovery of their two parcels of land situated at Barangay Maunong, Calamba, Laguna, [Lot] No. 2489 with an area of approximately 21,784 Square Meters and [L]ot No. 3771 with an area of more or less 26,703 and in consideration of the services of the attorney, the client agrees to pay the following:

1. For the prosecution of said proceedings (titling and recovery of the said parcels of land and hearing at the Land Management Bureau, Manila, and at the Office of the Community Environment and Natural Resources Office at Los Baños, Laguna the client will give the Attorney one fifth (1/5[])] of the said two parcels of land or one fifth (1/5[])] of the selling price of the said properties if sold.

Said Attorney hereby accepts said employment on said terms and conditions and to do his best care, skill and ability, and at all times to protect the rights and interest of said client.

2. That the expenses of the proceedings, and such others as filing fees, expenses of publication, costs legally taxable and all others shall be for the account of the client.[30]

We cannot sustain the finding of the IBP that Atty. Mendoza misled Felicisima into signing the above contract which supposedly was intended to protect her from the claims of her siblings who did not spend for the application with the CENRO and LMB. Such finding was based solely on the statements of Felicisima in her affidavit-complaint. While Felicisima made a reference to her testimony before the RTC, she did not attach the transcript of stenographic notes of the said testimony detailing the circumstances of her signing the Contract for Service. Neither is the receipt by Atty. Mendoza of the sum of ₱40,000.00 after Felicisima and her siblings sold the land, by itself an indication of fraud and deceit in the execution of the Contract for Service.

Upon the other hand, Atty. Mendoza presented the RTC Decision in Civil Case No. T-1080 dated March 29, 2000, the relevant portions of which state:

It is not disputed that Atty. Mendoza was paid ₱1,000.00 for every appearance and he was also given ₱300.00 for hiring a vehicle

[30] *Rollo*, p. 42.

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and driver for each scheduled hearing. He also received ₱40,000.00 from Felicisima Mendoza when defendants' one-third portion of Lot No. 3771 was sold.

Atty. Mendoza filed the instant case to collect one-fifth of the sale price of defendants' land which was sold for ₱7,120,800.00 or the amount of ₱1,424,000.00 minus the amount of ₱40,000.00 he received, or the amount of ₱1,384,000.00.

During her testimony, Felicisima Mendoza admitted the authenticity of the Special Power of Attorney whereby her brothers and sisters authorized her to secure the services of the plaintiff Juan Mendoza adding that it was in writing, in English and was explained to her before she signed it; that on the basis of the authority given her by her brothers and sisters she engaged the services of Atty. Mendoza; that the signature in the document, entitled Contract of Service, is that of her name which she signed in "his house."

On the basis of the evidence, the Court finds no ground to support Felicisima's claim that she did not enter into any written agreement with the plaintiff, Juan Mendoza, for the latter to render legal services and the corresponding compensation therefor as set forth in the Contract of Service. However, the Court finds that the amounts received by the plaintiff Juan Mendoza from defendant Felicisima Mendoza during the course of his legal services for the twenty hearings in the amount of ₱1,300.00 per hearing or a total of ₱26,000.00 should also be deducted from his claim of ₱1,384,000.00 leaving an unpaid balance of ₱1,258,000.00 due plaintiff Juan Mendoza for legal services rendered the defendants.[31]

Given the above finding of the RTC that Felicisima in fact entered into a contract for legal services with Atty. Mendoza, thus debunking her defense in her Answer denying the existence and authenticity of the said document, it appears that Felicisima raised the issue of voluntariness of her signing the Contract for Service only during the hearing when she supposedly testified that, having reached only Grade IV and trusting completely her lawyer cousin, Atty. Mendoza who told her that the document will protect her from the claims of her siblings, she actually

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[31] *Id*. at 140.

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signed the Contract for Service.[32] The RTC, however, found the evidence adduced by Felicisima as insufficient to defeat Atty. Mendoza's claim for attorney's fees. Said judgment had attained finality and even pending appeal was already executed on motion by Atty. Mendoza.

It bears to stress that a contingent fee arrangement is valid in this jurisdiction and is generally recognized as valid and binding but must be laid down in an express contract.[33] The validity of contingent fees depends, in large measure, upon the reasonableness of the amount fixed as contingent fee under the circumstances of the case.[34] Nevertheless, when it is shown that a contract for a contingent fee was obtained by undue influence exercised by the attorney upon his client or by any fraud or imposition, or that the compensation is clearly excessive, the Court must, and will protect the aggrieved party.[35]

Apart from the allegations in her affidavit-complaint, Felicisima failed to establish by clear and satisfactory proof of the deception allegedly committed by Atty. Mendoza when she agreed in writing for the latter's contingent fees. Fraud and irregularity in the execution of their contingency fee contract cannot be deduced from the fact alone that Atty. Mendoza filed suit to enforce their contract.

Atty. Navarro's Gross Negligence

With respect to Atty. Navarro, the facts on record clearly established his failure to live up to the standards of diligence and competence of the legal profession.

Lawyers engaged to represent a client in a case bear the responsibility of protecting the latter's interest with warmth,

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[32] *Id*. at 179.

[33] *Rayos v. Hernandez,* 544 Phil. 447, 460 (2007), citing *Law Firm of Raymundo A. Armovit v. Court of Appeals,* 279 Phil. 18, 26 (1991) and *Corpus v. Court of Appeals,* 187 Phil. 289, 303-304 (1980).

[34] *Malonso v. Principe,* 488 Phil. 1, 21 (2004), citing *Amalgamated Laborers' Association v. CIR,* 131 Phil. 374, 383 (1968).

[35] *Id*., citing *Tanhueco v. De Dumo,* 254 Phil. 704, 713 (1989).

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zeal and utmost diligence.[36] They must constantly keep in mind that their actions or omissions would be binding on the client.[37]

In this case, Atty. Navarro agreed to represent Felicisima and her siblings in Civil Case No. T-1080 and as their counsel he filed the Answer with Counterclaim. He likewise attended the hearings of the case until the RTC rendered an adverse judgment. However, after filing the Notice of Appeal, nothing was heard of again from him. He did not file any opposition when Atty. Mendoza moved for execution pending appeal, which resulted in the sale of Felicisima's properties at public auction and eventual eviction of Felicisima and her children from the said premises. Worse, he failed to file an appellant's brief despite receipt of the order from the CA directing him to do so within the period specified therein, and to file a motion for reconsideration when the appeal was dismissed due to non-filing of such brief. His motion for extension of time to submit an appellant's brief was filed **93** days late and was thus denied by the CA. Barely a week after, he filed a notice of withdrawal of appearance bearing the conformity of his clients which was granted. It is evident from the foregoing that Atty. Navarro failed to inform Felicisima of the status of the case so that the latter was surprised upon being served the eviction order of the court and eventual dismissal by the CA of their appeal.

Canon 18 of the CPR mandates that a lawyer shall serve his client with competence and diligence. Rule 18.03 further provides that a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

Thus:

Once he agrees to take up the cause of a client, a lawyer owes fidelity to such cause and must always be mindful of the trust and

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[36] *Credito v. Sabio,* 510 Phil. 92, 97 (2005), citing *Macarilay v. Serina,* 497 Phil. 348 (2005); *Reyes v. Vitan,* 496 Phil. 1, 4-5 (2005); and *Amaya v. Tecson,* 491 Phil. 111, 117 (2005).

[37] *Id*., citing *Tamayo v. Tamayo, Jr.*, 504 Phil. 179, 185 (2005); *Torres v. Orden,* 386 Phil. 216, 220 (2000); and *Manila Electric Company v. Court of Appeals,* G.R. No. 88396, July 4, 1990, 187 SCRA 200, 208.

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confidence reposed in him. He must serve the client with competence and diligence and champion the latter's cause with wholehearted fidelity, care and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and 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. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar and helps maintain the respect of the community to the legal profession.[38]

Atty. Navarro's asseveration that he had instructed Felicisima to look for another lawyer and given them the Notice of Withdrawal of Appearance for them to file in the CA, fails to convince. If it is true that he did not agree to continue being Felicisima's counsel before the CA, he should have immediately filed the Notice of Withdrawal of Appearance himself after filing the Notice of Appeal. Despite receipt of the order to file appellant's brief from the CA, he did not inform Felicisima about it nor did he inquire from the latter whether they already secured the services of a new counsel. That such withdrawal was filed long after the expiration of the period to file appellant's brief and the denial by the CA of the motion for extension also belatedly filed by him, clearly indicate that *he never updated Felicisima on the status of their appeal*, such information being crucial after Atty. Mendoza succeeded in having the judgment executed pending appeal.

Atty. Navarro, in fact, admitted that he forgot about Felicisima's case due to his political activities. Despite having

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[38] *Ramos v. Jacoba,* 418 Phil. 346, 351 (2001), cited in *Fajardo v. Dela Torre,* 471 Phil. 21, 28-29 (2004).

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received notices from the CA, he allowed the period of filing the appellant's brief to lapse and failed to file a motion for extension before such period expired. He did file a motion for extension but only three months later and when such motion was denied, he finally moved to withdraw from the case. There being no appellant's brief filed, the CA granted Atty. Mendoza's motion to dismiss the appeal. Under the circumstances, Atty. Navarro was grossly negligent in his duties, resulting in great prejudice to Felicisima who lost her properties to satisfy the judgment in favor of Atty. Mendoza.

We have held that the failure of counsel to submit the appeal brief for his client within the reglementary period constitutes *inexcusable negligence*,[39] an offense that entails disciplinary action.[40] The filing of a brief within the period set by law is a duty not only to the client, but also to the court.[41] The failure to file an appellate court brief without any justifiable reason thus deserves sanction.[42]

Atty. Navarro's negligent handling of Felicisima's case was exacerbated by his failure to inform her of the status of her case. There was no mention in his pleadings of any attempt on his part to contact Felicisima at the crucial stages when Atty. Mendoza moved for execution pending appeal and the CA sent a directive for the filing of the appellant's brief. If indeed, he had already instructed Felicisima to look for another lawyer, he should have apprised her of these developments and explained to her the urgency of filing the notice of withdrawal of appearance and entry of appearance of a new counsel she may have already engaged.

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[39] *Figueras v. Jimenez,* A.C. No. 9116, March 12, 2014, 718 SCRA 450, 458; *Perla Compania de Seguros, Inc. v. Saquilaban,* 337 Phil. 555, 558 (1997); *Ford v. Daitol,* 320 Phil. 53, 58-59 (1995); *In Re: Atty. Santiago F. Marcos,* 240 Phil. 769, 771-772 (1987); and *People v. Villar, Jr.,* No. L-34092, July 29, 1972, 46 SCRA 107.

[40] *People v. Cawili,* 145 Phil. 605, 608 (1970), cited in *Edquibal v. Ferrer, Jr.,* 491 Phil. 1, 7 (2005).

[41] *Blaza v. Court of Appeals,* 245 Phil. 408, 413 (1988).

[42] *Abay v. Montesino,* 462 Phil. 496, 500 (2003).

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Atty. Navarro's failure to communicate vital information to his client violated Rule 18.04 which provides:

> 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.

The lawyer's duty to keep his client constantly updated on the developments of his case is crucial in maintaining the client's confidence. Indeed, the relationship of lawyer-client being one of confidence, there is ever present the need for the lawyer to inform timely and adequately the client of important developments affecting the client's case. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests.[43]

In cases involving a lawyer's failure to file a brief or other pleading before an appellate court, this Court has imposed suspension from the practice of law for periods ranging from three to six months, and in most serious cases, even disbarment.[44]

We find the recommendation of the IBP-Board of Governors to suspend Atty. Navarro from the practice of law for six months appropriate under the circumstances. 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. For this Court will exercise its power to disbar only in clear cases of misconduct that seriously affects the standing and character of the lawyer as an officer of the court and a member of the bar.[45]

WHEREFORE, the Court finds respondent Atty. Eusebio P. Navarro, Jr. **GUILTY** of violation of Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility, and is hereby **SUSPENDED** from the practice of law for six (6) months

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[43] *Mejares v. Romana,* 469 Phil. 619, 629 (2004), citing *Tolentino v. Mangapit,* 209 Phil. 607, 611 (1983) and *Alcala v. De Vera,* 155 Phil. 33, 41 (1974).

[44] *Edquibal v. Ferrer, Jr., supra* note 40, at 8.

[45] *Mejares v. Romana, supra* note 43, at 633, citing *Punla v. Soriano,* 209 Phil. 290, 293 (1983).

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effective upon finality of this Decision, with warning that a repetition of the same or similar violation shall be dealt with more severely. The charges against Atty. Juan B. Mendoza are **DISMISSED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 160619. September 9, 2015]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (FOURTH DIVISION), JESSIE CASTILLO, MELENCIO ARCIAGA and EMERENCIANO ARCIAGA,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; WHERE THE INFORMATION IS INSUFFICIENT AND THUS CANNOT BE THE BASIS OF ANY VALID CONVICTION, THE COURT MUST DROP THE CASE IMMEDIATELY AND SAVE AN ACCUSED FROM THE ANXIETY AND INCONVENIENCE OF A USELESS TRIAL.— The main purpose of an Information is to ensure that an accused is formally informed of the facts and the acts constituting the offense charged. Where insufficient, an accused in a criminal case can file a motion to have the Information against him quashed and/or dismissed before he enters his plea. A motion to quash challenges the efficacy of an Information and compels the court to determine whether the Information suffices to require an accused to endure the rigors of a trial. Where the Information is insufficient and