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SECOND DIVISION

[A.C. No. 4982. August 9, 2001]

KATRINA JOAQUIN CARIÑO, *petitioner, vs.* **ATTY. ARTURO DE LOS REYES,** *respondent.*

SYNOPSIS

Petitioner Katrina Joaquin Cariño seeks a review of the resolution of the Integrated Bar of the Philippines (IBP) dismissing the complaint for inexcusable negligence she filed against respondent Atty. Arturo de los Reyes. Complainant alleged that she engaged the services of respondent to file complaints for slander by deed, threats, and physical injuries against her relatives who themselves subsequently filed charges against complainant and her father for maltreatment, physical injuries, and threats with the Quezon City Prosecutor's Office. As agreed, complainant paid respondent the amount of ₱10,000.00 as acceptance fee. However, despite demands by complainant, respondent never filed the complaint-affidavits with the prosecutor's office for preliminary investigation. In dismissing petitioner's complaint, the IBP Investigating Commissioner stated that complainant's evidence was inadequate to justify the imposition of a disciplinary action. The commissioner further stated that if the intention of the respondent was to wreck havoc on the complainant, he would not even have bothered to return the ₱10,000.00 acceptance fee, a fact which was not disputed.

The Supreme Court found the petition meritorious. The Court did not agree with the findings of the IBP that petitioner's evidence is inadequate or insufficient to justify the imposition of disciplinary action against respondent. According to the Court, respondent violated his duty of fidelity to his client's cause. His conduct was also exacerbated by his attempt to evade responsibility, which fell short of what the law requires of him. The Court also ruled that the fact that, as claimed by respondent, he is a member of the IBP Commission investigating complaints against members of the bar, all the more should have impressed on him his duty of fidelity to his client's cause. That he returned the money paid to him does not diminish his responsibility but only mitigates the penalty. The Court reprimanded respondent with a warning to be henceforth more careful in the performance of his duty to his clients.

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SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DUTY OF FIDELITY TO CLIENT'S CAUSE, VIOLATED.—** Respondent's conduct in this case, exacerbated by his attempt to evade responsibility, falls short of what the law requires. The fact that, as claimed by him, he is a member of the IBP commission investigating complaints against members of the bar all the more should have impressed on him his duty of fidelity to his client's cause. That he returned the money paid to him does not diminish his responsibility but only mitigates the penalty.

2. **ID.; ID.; ID.; THE COURT FOUND RESPONDENT ATTORNEY'S EXPLANATION TOO FLIMSY.—** The Court finds respondent's explanation flimsy. His services were hired by petitioner six days after the occurrence of the incident giving rise to the filing of the charges and counter-charges for physical injuries, threats, and slander by deed filed by the parties before the *Lupong Tagapamayapa* of their *barangay.* It is improbable, therefore, that petitioner at that time would hire the services of respondent for a purpose other than in connection with petitioner's pressing legal concern, *i.e.*, the filing of the criminal complaints with the prosecutor's office. Moreover, the Court cannot believe that petitioner merely made up a case of evasion of clear duty by respondent to hold the latter liable for professional misconduct. On the other hand, respondent could have easily submitted the affidavits of his wife and/or that of Lily Jodloman to controvert petitioner's claims had he had not taken his professional engagement seriously.

APPEARANCES OF COUNSEL

Silverio Ruiz for complainant.

DECISION

MENDOZA, *J.*:

This is a petition for review of the Integrated Bar of the Philippines' (IBP) Resolution No. XIV-2000-460, dated July 29, 2000, dismissing the complaint for inexcusable negligence filed by Katrina Cariño against respondent Atty. Arturo de los Reyes.

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Complainant alleged that on March 3, 1998, she contracted the services of respondent, a former Quezon City prosecutor, to file complaints for slander by deed, threats, and physical injuries against her relatives Faye Lorenz, Godofreditas Lorenz, and Rosario Joaquin, who themselves subsequently filed charges against complainant and her father for maltreatment, physical injuries, and threats with the Quezon City Prosecutor's Office. As agreed, complainant paid respondent the amount of ₱10,000.00 as acceptance fee. However, despite demands by complainant, respondent never filed the complaint-affidavits with the prosecutor's office for preliminary investigation. On the other hand, with respect to the complaints filed by the Lorenzes and Joaquin, Quezon City Assistant Prosecutor Francisco Soller recommended the filing of informations for maltreatment, threats, and slight physical injuries against complainant and her father. The cases were subsequently filed before the Metropolitan Trial Court, Branch 41, Quezon City. Complainant alleged that respondent failed to protect their interest, for which reason they were forced to hire the services of another counsel, Atty. Ricardo J .M. Rivera, who promptly filed a motion for reinvestigation, which, however, was denied by the prosecutor's office.[1]

Respondent denied that he had agreed to represent petitioner in filing criminal complaints against petitioner's aforementioned relatives. He stated that his services were hired in connection with the filing of a case for partition of the lot occupied by petitioner and her father, on one hand, and their relatives in question, on the other hand. It was alleged that petitioner promised to furnish him the certification of the *Lupon ng Tagapamayapa* for the filing of the case in court as well as the Transfer Certificate of Title of the lot to be partitioned but, as petitioner failed to do so, respondent withdrew from the case and returned the acceptance fee of ₱10,000.00 paid by petitioner. Respondent added that he is a member of the Commission on Bar Discipline of the IBP investigating complaints against member of the bar, and he is mindful of the duties of members of the bar toward their clients.[2]

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[1] Complaint, pp. 1-6; *Rollo*, pp. 1-6.

[2] Comment, pp. 1-7; *id.*, pp. 10-16.

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Petitioner admits the return of the ₱10,000.00 acceptance fee, but says that the money was paid only after repeated demands made by her to respondent and after she had threatened to charge respondent with estafa.[3]

On June 14, 1999, the Court referred the case to the IBP for investigation, report, and recommendation. In its resolution, dated July 29, 2000, the IBP dismissed the complaint for insufficiency of evidence. Hence this petition under Rule 139-B, §12(c).

We find the petition meritorious.

In dismissing petitioner's complaint, the IBP Investigating Commissioner[4] stated:

> [C]omplainant's and respondent's version of the incident which gave rise to the present complaint are poles apart. Consequently, the Commission had to weigh very well the evidence adduced by both parties. When juxtaposed against each other, the Commission finds complainant's evidence inadequate to justify the imposition of disciplinary action against the respondent. Certainly, if the intention of the respondent was to wreck havoc on the complainant, he would not even have bothered to return the ₱10,000.00 acceptance fee, a fact which is not being disputed.
>
> All persons are presumed innocent of the charge/s against [them] by reason of constitutional and statutory dicta. To overcome this presumption, strong and convincing evidence must be adduced.
>
> In the case at bar, this Commission finds complainant's evidence inadequate or insufficient to overcome said presumption. Accordingly, there is no other option but to deny due course to complainant's complaint.[5]

The Court cannot subscribe to this finding.

In her complaint, petitioner narrated in detail the circumstances of her employment of respondent's legal services. She alleged:

> [I]n the morning of February 25, 1998, at around 9:00 o'clock, my father, Virgilio S. Joaquin, and I were the unfortunate victims of physical assault, slander by deed and threats committed by our relatives, Rosario

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[3] Reply, pp. 1-2; *id.*, pp. 25-26.

[4] Victor C. Fernandez.

[5] Report, pp. 3-4.

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M. Joaquin, Faye Maybelle J. Lorenz and Godofreditas Lorenz. Resultantly, we filed with the *Barangay* a complaint for said crimes against the offenders, who, in turn, filed countercharges against us for maltreatment, physical injuries and threats. On March 3, 1998, while conciliation hearings on the charges and countercharges were being undertaken by the *Barangay,* I and my father hired the legal services of Atty. Arturo de los Reyes, a former Quezon City Prosecutor, who was referred to us by a family friend and neighbor, Lily Jodloman. After briefing him of our legal problem, Atty. Reyes agreed to be our lawyer in the cases for a fee of ₱10,000.00 plus ₱1,000.00 per court appearance. For the purpose of preparing our affidavit-complaint, I furnished Atty. Reyes a xerox copy each of the medical certificate of my father; our joint-statement concerning the incident, and a police blotter. Atty. Reyes assured us that our affidavit-complaint would be prepared by him at the soonest possible time.

On March 17, 1998, at 12:00 noon, I paid Atty. Reyes [the] acceptance fee of ₱10,000.00.

[I]n the evening of April 6, 1998, I handed to Atty. Reyes the Certification to File Action issued by the *Barangay* concerning our criminal complaint for slight physical injuries, slander by deed and threat against our aforementioned tormentors. I informed Atty. De los Reyes that a Certificate to File Action on the countercharges [filed by] our tormentors ha[d] likewise been issued by the *Barangay.* And [i]n the morning of April 10, 1998, Atty. Reyes informed me that he had already gone over the Certification to File Action. He forewarned and assured me: "*Pagnauna silang magfile, kayo ng father mo ang maihahabla. Kayo ang makukulong. Pero huwag kang mag-alala itataya ko ang profesyon ko para sayo.*"

[I]n the morning of April 13, 1998, I telephoned Atty. Reyes and asked him if I and my father could already sign the affidavit-complaint against our tormentors so that it could be filed with the Quezon City Prosecutor's Office, but he told me that he has not yet prepared it. He assured me that he would work on it in the evening of said date. The following day at around 9:00 a.m. I followed up the matter thru his beeper, Atty. Reyes did not respond. At 8:30 p.m. of that date, I received a telephone call from Atty. Reyes. He told me that he had misplaced the Certification to File Action. Forthwith my father rushed to Atty. Reyes' residence and gave him a copy thereof.

From April 15 to 19, 1998, I repeatedly followed up the preparation of our affidavit complaint thru beeper messages to Atty. Reyes, but he had inexplicably failed to respond. Finally, [i]n the morning on April 20,

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1998, Atty. Reyes called up and informed me that he has not yet finished the affidavit-complaint, because his secretary did not report for work. Extremely disappoint[ed] by the delay in the preparation of our affidavit-complaint and the filing thereof with the Prosecutor's Office of Quezon City, I offered to do the typing for him, but Atty. Reyes said: "*Huwag na, nakakahiya naman sa iyo. Pag report ng secretary ko, ipapatype ko at tatawagan ko kayo ng father mo. Pasensiya ka na ha*!"

On April 21, 1998, at 5:00 p.m., Atty. Reyes met me at the house of my friend, Lily Jodloman, whose house is only across the street from ours. My friend Lily expressed grave concern about the unreasonable delay in the filing of our criminal complaint, and this time, Atty. Reyes gave another reason. He claimed that he was tasked by the IBP to monitor the coming national and local elections. He promised to finish our affidavit-complaint in the evening of that date and to personally file it with the Office of the Prosecutor of Quezon City.

The following, (April 22, 1998), at 8:00 o'clock, I called up Atty. Reyes, but I was told by his wife that he had already left. I requested for a return call, which request I repeated several times thru his beeper, but to no avail. Finally at 11:00 p.m., Atty. Reyes called up and said, "*Masama ang nangyari.*" And I retorted, "*Ano bang masama ang nangyari? Nagawa na ho ba ninyo ang affidavit namin*?" He sounded evasive in his reply and merely said, "*0 sige, Kit ha, magtawagan na lang tayo bukas kasi kadarating ko lang galing sa election meeting. O bukas tatawagan kita ha.*" But he did not call me the whole day of April 23, 1998. Neither did he call on April 24, 25, 26 and 27, 1998, despite repeated calls from me by telephone and by beeper messages.

On April 28, 1998, at 10:30 p.m., Atty. Reyes at last called up. He said that his secretary did not report for work the previous days and he could not give me a feedback. He further said: "*Naku Kit, sigurado na bukas, sasamahan mo ako bukas sa pagfile ha. Maghintay ka ng call ko sa hapon natin ipa-file.*" Because of this assurance by Atty. Reyes, I cancelled all my appointments on April 29, 1998 and waited the whole day for his call, but he never did. In response to my beeper message, he called up in the evening and explained that there was an emergency meeting called by LAKAS - NUCD that kept him busy the whole day. He again promised to finish our affidavit-complaint and file it in few days.

On May 4, 1998, at around 9:30 a.m., I got the surprise of my life when I received a resolution from the Office of the City Prosecutor of Quezon City, finding probable cause concerning the supposed countercharges against us that were filed in the *Barangay* after we had

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filed ours, by our tormentors, Faye Maybelle J. Lorenz and Rosario M. Joaquin, for maltreatment, physical injuries and threats. I then realized that the countercharges of our tormentors against us were filed with the Quezon City Prosecutor's Office ahead of our complaint, which has yet to be filed with said office by our lawyer[6]....

Respondent was unable to controvert the foregoing account. Instead, he claimed that he was hired by petitioner to file a case for partition, but, because the latter failed to give him the documents to be used in filing of the case, he decided to withdraw his representation.

The Court finds respondent's explanation flimsy. His services were hired by petitioner six days after the occurrence of the incident giving rise to the filing of the charges and counter-charges for physical injuries, threats, and slander by deed filed by the parties before the *Lupong Tagapamayapa* of their *barangay*. It is improbable, therefore, that petitioner at that time would hire the services of respondent for a purpose other than in connection with petitioner's pressing legal concern, *i.e.*, the filing of the criminal complaints with the prosecutor's office. Moreover, the Court cannot believe that petitioner merely made up a case of evasion of clear duty by respondent to hold the latter liable for professional misconduct. On the other hand, respondent could have easily submitted the affidavits of his wife and/or that of Lily Jodloman to controvert petitioner's claims had he had not taken his professional engagement seriously.

Rule 18.03 of the Code of Professional Responsibility provides –

> A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

What this Court said in *Santiago v. Fojas*[7] was totally lost on petitioner, to wit:

> It is axiomatic that no lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client.

[6] Complaint, pp. 1-4; *Rollo*, pp. 1-4.

[7] 248 SCRA 68, 73-74 (1995).

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...[However,] once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and 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. ...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.

Respondent's conduct in this case, exacerbated by his attempt to evade responsibility, falls short of what the law requires. The fact that, as claimed by him, he is a member of the IBP commission investigating complaints against members of the bar all the more should have impressed on him his duty of fidelity to his client's cause. That he returned the money paid to him does not diminish his responsibility but only mitigates the penalty.

On the other hand, there is no merit in petitioner's claim that, as a result of respondent's failure to file the complaint for threats, prescription set in. Pursuant to Art. 90, in relation to Art. 283 of the Revised Penal Code, the prescriptive period for filing a complaint for threats is five years. In any event, the interests of petitioner and that of her father are not altogether without legal protection as they can controvert the charges against them in the proceedings before the trial court.

WHEREFORE, the Integrated Bar of the Philippines' Resolution No. XIV-2000-460, dated July 29, 2000, is *SET ASIDE* and respondent Atty. Arturo de los Reyes is *REPRIMANDED* with warning to be henceforth more careful in the performance of his duty to his clients.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, Buena, and *De Leon, Jr., JJ.*, concur.