

OCA CIRCULAR NO. 7-2004, January 29, 2004

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TO:

THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI' A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT:

SUSPENSION FROM THE PRACTICE OF LAW FOR ONE (1) MONTH OF ATTY. RENE O. MEDINA

For the information and guidance of all concerned, quoted hereunder is the Decision of the Court En Bane dated September 30, 2003 in Administrative Case No. 5854, to wit:

In a verified complaint [1] dated March 20, 2002 , filed before the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP), complainant Nora E. Miwa seeks the disbarment or suspension from law practice of respondent, Atty. Rene O. Medina, for gross negligence in the handling of her case. Complainant alleges that Atty. Medina's negligent and deceitful conduct effectively deprived her of a day in court, as a result of which she lost her case and her property taken by order of the court. More specifically, Atty. Medina stands charged in CBD Case No. 02-951 with violating the Attorney's Oath as well as Canons 2 [2] , 10 [3], 12 [4] , and 18 [5] of the Code of Professional Responsibility.

The facts, as gleaned from the record, are as follows:

On April 2, 1998 , Nora E. Miwa was named as defendant in Civil Case No. 5147 for quieting of title, recovery of possession, and damages before the Regional Trial Court of Surigao City , Branch 29.

On August 24, 1998 , Miwa secured respondent's services as her counsel in Civil Case No. 5147.

On September 14, 1998 , respondent herein filed -Miwa's answer to the complaint in Civil Case No. 5147.

In its order dated December 18, 1998 , the RTC set the pre- trial conference for February 8, 1999 . Ilie scheduled .pre-trial conference, however, did not push through as herein respondent failed to receive notice therefore. Hence, the RTC reset the pre-trial to March 26, 1999 .

On February 26, 1999 , respondent filed his pre-trial brief

However, no pre-trial conference was actually held at all. As explained by the trial court:

Pre-trial was scheduled several times and the records would show that at no single instance did the defendant,

herself appeared (sic) despite the fact that she was sent notices for all every scheduled hearing at her address thru registered mail. Due to the fact that pre-trial conference could not be conducted on several occasions, pre-trial "was terminated, on October 22, 1999 fay then Acting Presiding Judge Diomedes M. Eviota[6]

Trial on the merits then proceeded until the plaintiffs in Civil

Case No. 5147 rested their case. During the trial, the RTC made the following observations:

When it was the defendant's turn to present her evidence, several postponements were asked for that this Court on November 22, 2000 ordered the defendant to reimburse the plaintiff's P10,000.00 for the transportation expenses and appearance fee of plaintiff's counsel. (That order is until now ignored-despite efforts by this Court to effect the same as per Sheriffs return dated March 22,2001). In an Order of this Court dated 'Aprils 3001, the defendant-was deemed to have waived her right.to ;present her evidence and her counsel was fined P500.00.[7]

Miwa, through counsel, moved for reconsideration of the trial court's order of April 2, 2001 . Respondent also moved to withdraw as counsel for Miwa. The trial court denied both motions in its order of June 21,2001 . The trial court noted that:

If as alleged, counsel has not received the Order of this Court directing waiver on the part of the defendant to present evidence, why file the instant motion to reconsider said Order? The order was dated April 2, 2001 and was received by defendant's counsel, according to the records, on April 20,2001 . Yet he filed this Motion after the lapse of 40 days.

Besides, the Order of this Court dated April 2, 2001 sought to be reconsidered is a mere consequence (of) the non- appearance of defendant and her counsel, without explanation nor excuse on the scheduled hearing on even date. The notice of hearing on said date was received by the movant on February 19, 2001 . Yet he did not bother to move for postponement. Her counsel could not have been busy in his role as campaign manager of LAKAS-NUCD for the election period commenced on March 31, 2001 . Unless, of course, counsel admits that he had been busy campaigning prior to the campaign period allowed by law. He had sufficient time from February 19 to March 31,2001 to inform this Court. Yet he did not bother to do so. He just ignored the lawful orders of this Court when as a lawyer and an officer of this Court, his first priority is his duties before the courts of law.

Furthermore, the instant case had been, on motion of the defendant, postponed twice. As a matter of fact, in the Order of this Court dated November 22, 2000, then Acting Presiding Judge Diomedes M. Eviota had ordered defendant to pay reimbursement of P10,000.00 for the transportation expenses and appearance fee of Atty. Durante, plaintiffs counsel, for filing a Motion for Postponement only a day prior to the hearing and was admonished to make timely motion for postponement. The records would indubitably show that he received the Order setting the hearing for November 22, 2000 on October 9, 2000 . With due diligence, counsel could have filed his motion for postponement several days prior to the scheduled hearing so as not to cause inconvenience to the other party and as a matter of professional courtesy to the opposing counsel of record. Yet, he did not bother to do so [8]

In denying respondent's motion to withdraw as counsel, the trial court ratiocinated;-

Defendant's counsel further alleged that the defendant had already severed their client-lawyer relationship. Again this is a denial pregnant with admission indicating falsity. If it were true, then counsel (has) no personality whatsoever to file the instant Motion for and in behalf of the defendant In effect, this Motion is a mere scrap of paper if the same were true.

On the other hand, only on May 30,2001 has this Court been informed of such termination of client-lawyer relationship. Prior to that, Atty. Medina is still counsel on record of the defendant and has the duty to inform

his client of lawful orders of this Court. For notice to counsel is notice to party.

Moreover, it is alleged in his Motion that the defendant "has retained the services of another lawyer to appear for her in another case before the Municipal Trial Court of Surigao City " That was another case before the MTC, not necessarily in this case before (the) RTC. When such client-lawyer relationship was terminated is not all too clear. The date is important for notice to counsel on record is notice to the party[9].

On August 6, 2001, the RTC rendered judgment in Civil Case No. 5147 declaring the plaintiff the absolute owner of the property, ordered Miwa to vacate and deliver possession of the lot, demolish and remove all structures built therein, and pay the plaintiff exemplary damages, attorney's fees, and the costs of suit

Hence, the filing of the instant complaint before the IBP Committee on Bar Discipline, with complainant Miwa alleging that respondent:

- (a) failed to give importance to his office as a lawyer and officer of the court by failing to appear three (3) times on scheduled hearings, thus resulting in the trial court's ruling that she had waived her right to present her evidence;
- (b) showed grave disrespect to the court and utter ignorance of the Rules of Court by filing a motion for postponement only one (1) day before a scheduled hearing;
- (c) exhibited gross negligence and brazen omission of his duties, by filing a motion for reconsideration and motion to withdraw as counsel forty (40) days too late, despite knowing that the reglementary period for filing a motion to reconsider is fifteen (15) days from receipt of the order.

In his answer to the complaint, respondent stated that whatever lapses and negligence he might have committed were never intentional but were due to the heavy burden he shouldered as a campaign manager of LAKAS-NUCD. Respondent likewise signified his willingness to face sanctions, for the lapses and negligence on his part.

On August 3, 2002, the Board of Governors of the IBP passed Resolution No. XV-2002-459 disposing of CBD Case No. 02-951 as follows:

RESOLVED TO ADOPT AND APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as ANNEX "A" and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and in view of violation of Canon 18, Rule 18.01, 18.02 and 18.03 of the Code of Professional Responsibility, Respondent is hereby SUSPENDED from the practice of law; for one (1) month with a stern WARNING that a repetition shall warrant a more severe penalty.[10]

On October 15, 2002, Miwa filed an appeal with the Office of the Bar Confidant claiming that since she lost possession of a 3,700 square meters beach resort with a market value of P4 million due to respondent's unprofessional conduct, a more severe penalty was called for.

From the facts, it appears that respondent violated Canon 18 of the Code of Professional Responsibility, with specific reference to Rule 18.03.[11] In fact, respondent admitted his lapses and negligence before the IBP Committee on Bar Discipline. Hence, the only question for our resolution is the propriety of the penalty imposed.

In this case, however, we note that complainant is not exactly without blame. Recall that she herself did not appear personally at the several pre-trial conferences scheduled by the RTC. Under Rule 18, Section 4[12] of the 1997 Rules of Civil Procedure, it is obligatory upon both a party, to appear at pre-trial, given its mandatory character, may cause her to be non-suited or considered as in default[13]. Recall further that complainant was given every opportunity to fully ventilate her defenses before the court and thus allow Civil Case No. 5147 to be

decided completely on the merits. Yet, complainant never once appeared at trial and was not even bothered by the several postponements sought by her counsel until the trial court finally had to rule that she had waived her right to present her evidence as a result of her counsel's dilatory tactics. *Vigilantibus, non dormientibus, jura subveniunt*. [14] Complainant cannot now come to us to say that her erring lawyer be penalized severely without any mitigating circumstances at all.

We note also respondent's avowal that work as campaign manager- for a political party during the 2001 elections took too much of his time, and that this circumstance might have understandably prejudiced his client's cause. This Court must again remind lawyers to handle only as many cases as they can efficiently handle[15]. For it is not enough that a practitioner is qualified to handle a legal matter, he is also required to prepare adequately and give the appropriate attention to his legal work. A lawyer owes entire devotion to the cause of his client, warmth and zeal in the defense and maintenance of his rights, and the exertion of his learning and utmost ability that nothing can be taken or withheld from his client except in accordance with law. By failing to show zeal and fidelity to his client's cause, we are constrained to conclude that respondent acted with gross negligence. .

WHEREFORE, respondent ATTY. RENE O. MEDINA, is SUSPENDED, as recommended by the IBP Board of Governors, for one (1) month from the practice of law. He is also ORDERED to pay a FINE of Two Thousand (P2,000) Pesos for gross negligence, resulting in the violation of the Code of Professional Responsibility, with a STERN WARNING that a repetition of the same or a similar offense in the future will warrant a more severe penalty. Let copies of this Resolution be furnished the Bar Confidant and be spread upon the records of Atty. Rene O. Medina.

SO ORDERED."

Copy of the decision was received by respondent on October 29, 2003.

__29__ January 2004.

JOSE P. PEREZ

Acting Court Administrator

[1]Rollo, pp. 1-7.

[2]A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.

[3]A lawyer owes candor, fairness and good faith to the court.

[4] A lawyer shall exert every effort and consider it but duty to assist in the speedy and efficient administration of justice.

[5] A lawyer shall serve his client with competence and diligence.

[6] Rollo, p.30.

[7] Ibid.

[8] Id.At 23-24.

[9] Id.At 24-25.

[10] Id. at 60.

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

[12] SEC. 4. Appearance of parties. - It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefore or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts, and of documents.

[13] FERIA and NOCHE, I CIVIL PROCEDURE ANNOTATED (2001 Ed.) 473.

[14] Laws come to the assistance of the vigilant, not of the sleepy.

[15]Legarda v. Court of Appeals, G.R. No. 94457,18 March 1991,195 SCRA 418,428.

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