

FELICISIMO M. MONTANO, COMPLAINANT, VS. INTEGRATED BAR OF THE PHILIPPINES AND ATTY. JUAN S. DEALCA, RESPONDENTS.

A.C. No. 4215. May 21, 2001

Ponente: KAPUNAN, J.

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KAPUNAN, J.:

In a verified complaint filed before this Court on March 9, 1994, complainant Felicisimo M. Montano charged Atty. Juan Dealca with misconduct and prays that he be "sternly dealt with administratively." The complaint[1] is summarized as follows:

1. On November 14, 1992, the complainant hired the services of Atty. Juan S. Dealca as his counsel in collaboration with Atty. Ronando L. Gerona in a case pending before the Court of Appeals docketed as CA-G.R. CV No. 37467 wherein the complainant was the plaintiff-appellant.
2. The parties agreed upon attorney's fees in the amount of P15,000.00, fifty percent (50%) of which was payable upon acceptance of the case and the remaining balance upon the termination of the case. Accordingly, complainant paid respondent the amount of P7,500.00 representing 50% of the attorney's fee.
3. Thereafter, even before the respondent counsel had prepared the appellant's brief and contrary to their agreement that the remaining balance be payable after the termination of the case, Atty. Dealca demanded an additional payment from complainant. Complainant obliged by paying the amount of P4,000.00.
4. Prior to the filing of the appellant's brief, respondent counsel again demand payment of the remaining balance of 3,500.00. When complainant was unable to do so, respondent lawyer withdrew his appearance as complainant's counsel without his prior knowledge and/or conformity. Returning the case folder to the complainant, respondent counsel attached a Note dated February 28, 1993,[2] stating:

28 February 1994

Pepe and Del Montano,

For breaking your promise, since you do not want to fulfill your end of the bargain, here's your reward:

Henceforth, you lawyer for yourselves. Here are your papers.

Johnny

Complainant claimed that such conduct by respondent counsel exceeded the ethical standards of the law profession and prays that the latter be sternly dealt with administratively. Complainant later on filed motions praying for the imposition of the maximum penalty of disbarment.

After respondent counsel filed his comment on the complaint, the Court in the Resolution of August 1, 1994, referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The Investigating Commissioner found respondent counsel guilty of unprofessional conduct and recommended

that he be "severely reprimanded." However, in a Resolution[3] by the IBP Board of Governors on July 26, 1997, it was resolved that the penalty recommended by the Investigating Commissioner meted to respondent by amended to "three (3) months suspension from the practice of law for having been found guilty of misconduct, which eroded the public confidence regarding his duty as a lawyer."

Respondent counsel sought reconsideration of the aforementioned resolution of the IBP, alleging that the latter misapprehended the facts and that, in any case, he did not deserve the penalty imposed. The true facts, according to him, are the following:

- Complainant is being represented by Atty. Ronando L. Gerona in his case on appeal;
- Due to the ailment of Atty. Gerona's daughter, he could not prepare and submit complainant's appellant's brief on time;
- Complainant went to the respondent to do just that, i.e., prepare and submit his appellant's brief on time at the agreed fee of P15,000.00, 50% down and 50% upon its completion;
- Working overtime, respondent was able to finish the appellant's brief ahead of its deadline, so he advised the complainant about its completion with the request that the remaining balance of P7,500.00 be paid. Complainant paid P4,000.00 only, promising to pay the P3,500.00 "tomorrow" or on "later particular date." Please take note that, at this juncture, there was already a breach of the agreement on complainant's part.
- When that "tomorrow" or on a "later particular date" came, respondent, thru a messenger, requested the complainant to pay the P3,500.00 as promised but word was sent that he will again pay "tomorrow" or on "later date." This promise-non-payment cycle went on repeatedly until the last day of the filing of the brief. Please take note again that it was not the respondent but the complainant who sets the date when he will pay, yet fails to pay as promised;
- Even without being paid completely, respondent, of his own free will and accord, filed complainant's brief on time;
- After the brief was filed, respondent tried to collect from the complainant the remaining balance of P3,500.00, but the latter made himself scarce. As the records would show, such P3,500.00 remains unpaid until now;
- Sensing that something was amiss, respondent sent the February 28, 1993 note and case folder to the complainant, hoping that the latter would see personally the former about it to settle the matter between them;
- However, instead of seeing the respondent, complainant filed this case;
- Respondent was constrained to file his withdrawal with the Court of Appeals because of this case to avoid further misunderstanding since he was the one who signed the appellant's brief although Atty. Gerona was his counsel of record. Such withdrawal was accordingly granted by the appellate court;

xxx xxx xxx.[4]

Respondent counsel further averred that complainant's refusal to pay the agreed lawyer's fees, measly as it was, was deliberate and in bad faith; hence, his withdrawal as counsel was "just, ethical and proper." Respondent counsel concluded that not only was the penalty of suspension harsh for his act of merely trying to collect payment for his services rendered, but it indirectly would punish his family since he was the sole breadwinner with children in school and his wife terminally ill with cancer.

In its Resolution No. XIII-97-129 dated October 25, 1997, the IBP denied Atty. Dealca's motion for reconsideration, to wit:

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RESOLVED TO DENY Atty. Dealca's Motion For Reconsideration of the Board's Decision in the above-entitled case there being no substantive reason to reverse the finding therein. Moreover, the motion is improperly laid the remedy of the respondent is to file the appropriate pleading with the Supreme Court within fifteen (15) days from receipt of notice of said Decision pursuant to Sec. 12 [c] of Rule 139-B.[5]

On December 10, 1997, this Court noted the following pleadings filed in the present complaint,

(a)

notice and a copy of Resolution No. XII-97-154 dated July 26, 1997 of the Integrated Bar of the Philippines amending the recommendation of the Investigating Commissioner of reprimand to three (3) months suspension of respondent from the practice of law for having been found guilty of misconduct which eroded the public confidence regarding his duty as a lawyer;

(b)

complainant's motion for praying for the imposition of the maximum penalty of disbarment;

(c)

motion dated September 15, 1997 of respondent for reconsideration of the aforesaid resolution of July 26, 1997;

(d)

comment/opposition of respondent praying that the motion for the imposition of the maximum penalty be denied;

(e)

comment of complainant praying that the penalty of three (3) months suspension for the practice of law as recommended by the Integrated Bar of the Philippines pursuant to Resolution No. XII-97-154 be raised to a heavier penalty;

(f)

comment/manifestation/opposition of complainant praying that the respondent be disbarred; and

(g)

rejoinder of respondent praying that this case be dismissed for being baseless.[6]

and referred the same to the IBP for evaluation and report.

In compliance therewith, on March 28, 1998, the IBP issued Resolution No. XIII-98-42 referring the above-entitled case to Commissioner Vibar for evaluation, report and recommendation "in view of the Motion for Reconsideration granted by the Supreme Court."

The Investigating Commissioner, after referring the case, recommended that his original recommendation of the imposition of the penalty of reprimand be maintained, noting that respondent counsel had served the IBP well as President of the Sorsogon Chapter.[7] Accordingly, on February 23, 1999, the IBP Board of Governors, issued the following resolution:

[RESOLUTION NO. XIII-99-48]

xxx

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in 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, the Motion for Reconsideration be granted and that the penalty of REPRIMAND earlier recommended by the Investigating Commissioner be imposed on Atty. Juan S. Dealca.[8]

Complainant asked the IBP to reconsider the foregoing resolution but the motion was denied.[9]

On April 10, 2000, complainant filed with this Court a petition for review on certiorari in connection with Administrative Case No. 4215 against the IBP and respondent counsel averring that the IBP Board of Governors committed grave abuse of discretion when it overturned its earlier resolution and granted respondent counsel's motion for reconsideration on February 23, 1999. He claimed that the earlier resolution denying the motion for reconsideration issued on October 25, 1997 had already become final and executory; hence, any further action or motion subsequent to such final and executory judgment shall be null and void.

When the Court issued the resolution of December 10, 1997 treating the several pleadings filed in the present complaint, it should be noted that the IBP resolution denying respondent's motion for reconsideration (Resolution No. XIII-97-129) dated October 25, 1997, for some reason, had not yet reached this Court. As of that date, the only IBP resolution attached to the records of the case was Resolution No. XII-97-54 amending the administrative sanction from reprimand to three months suspension. Hence, at the time the pleadings were referred back to the IBP in the same resolution, the Court was not aware that the IBP had already disposed of the motion for reconsideration filed by respondent counsel.

Thus, when the IBP was informed of the said Court resolution, it construed the same as granting Atty. Dealca's motion for reconsideration and as an order for IBP to conduct a re-evaluation of the case. The IBP assumed that its resolution of October 25, 1997 was already considered by this Court when it referred the case back to the IBP. It failed to notice that its resolution denying the motion for reconsideration was not among those pleadings and resolution referred back to it.

Hence, on the strength of this Court's resolution which it had inadvertently misconstrued, the IBP conducted a re-evaluation of the case and came up with the assailed resolution now sought to be reversed. The Court holds that the error is not attributable to the IBP. It is regrettable that the procedural infirmity alleged by complainant actually arose from a mere oversight which was attributable to neither party.

Going into the merits, we affirm the findings made by the IBP that complainant engaged the services of respondent lawyer only for the preparation and submission of the appellant's brief and the attorney's fees was payable upon the completion and submission of the appellant's brief and not upon the termination of the case.

There is sufficient evidence which indicates complainant's willingness to pay the attorney's fees. As agreed upon, complainant paid half of the fees in the amount of P7,500.00 upon acceptance of the case. And while the remaining balance was not yet due as it was agreed to be paid only upon the completion and submission of the brief, complainant nonetheless delivered to respondent lawyer P4,000.00 as the latter demanded. This, notwithstanding, Atty. Dealca withdrew his appearance simply because of complainant's failure to pay the remaining balance of P3,500.00, which does not appear to be deliberate. The situation was aggravated by respondent counsel's note to complainant withdrawing as counsel which was couched in impolite and insulting language.[10]

Given the above circumstances, was Atty. Dealca's conduct just and proper?

We find Atty. Dealca's conduct unbecoming of a member of the legal profession. Under Canon 22 of the Code of Professional Responsibility, lawyer shall withdraw his services only for good cause and upon notice appropriate in the circumstances. Although he may withdraw his services when the client deliberately fails to pay the fees for the services,[11] under the circumstances of the present case, Atty. Dealca's withdrawal was unjustified as complainant did not deliberately fail to pay him the attorney's fees. In fact, complainant exerted honest efforts to fulfill his obligation. Respondent's contemptuous conduct does not speak well of a member of the bar considering that the amount owing to him was only P3,500.00. Rule 20.4 of Canon 20, mandates that a lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud. Sadly, for not so large a sum owed to him by complainant, respondent lawyer failed to act in accordance with the demands of the Code.

The Court, however, does not agree with complainant's contention that the maximum penalty of disbarment should be imposed on respondent lawyer. The power to disbar must be exercised with great caution. Only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and member of the bar will disbarment be imposed as a penalty. It should never be decreed where a lesser penalty, such as temporary suspension, would accomplish the end desired.[12] In the present case, reprimand is deemed sufficient.

WHEREFORE, in view of the foregoing, respondent Atty. Juan S. Dealca is REPRIMANDED with a warning that repetition of the same act will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Pardo, and Ynares-Santiago, JJ., concur.

[1] Rollo, pp. 1-3.

[2] Id., at 4.

[3] Id., at 23.

[4] Id., at 53-55.

[5] Id., at 143.

[6] Id., at 100.

[7] Id., at 117-118.

[8] Id., at 116.

[9] Id., at 150.

[10] See Note 2.

[11] Canon 22, Rule 22.01, (e); see also *Orcino vs. Gaspar*, 279 SCRA 379 (1997).

[12] *Resurreccion vs. Sayson*, 300 SCRA 129 (1998).

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