SEVERINO RAMOS, COMPLAINANT, VS. ATTY. ELLIS JACOBA AND ATTY. OLIVIA VELASCO-JACOBA, RESPONDENTS.

A.C. No. 5505. September 27, 2001

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint for disbarment filed by complainant Severino Ramos against Atty. Ellis Jacoba for the latter's failure, as counsel for complainant and his wife, to file the appellant's brief in the Court of Appeals, as a result of which the appeal filed by complainant and his wife was dismissed and the decision of the Regional Trial Court against them became final.

Complainant Severino Ramos and his wife were defendants in a civil case[1] for collection of a sum of money before the Regional Trial Court, Branch 27, Cabanatuan City. As judgment was rendered against the spouses Ramos, they engaged the services of Atty. Ellis Jacoba and Atty. Olivia Velasco-Jacoba as their counsel to appeal the said decision to the Court of Appeals. However, despite the extensions of time granted to them totalling 135 days, Atty. Ellis Jacoba failed to file the appellants' brief, resulting in the dismissal of the appeal.[2] The complainant and his wife filed a motion for reconsideration of the dismissal of their appeal, but their motion was denied.[3]

Complainant subsequently filed a verified complaint, entitled "Sinumpaang Salaysay," before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP), in which he alleged that he and his wife paid P10,000.00 to respondents as attorney's fees and acceptance fee,[4] and, in addition, the amount of P8,000.00 for expenses in the preparation of the appellants' brief. Because Atty. Ellis Jacoba failed to file the appellants' brief, complainant prayed for his disbarment.

Respondents were required to answer the complaint against them but neither of them filed an answer despite two extensions of time granted to them for filing the same. Neither did they appear before the Commission on Bar Discipline of the IBP despite due notice to them. As a consequence, the allegations made and the evidence proffered by complainant remain uncontroverted.

On January 12, 2001, the Investigating Commissioner of the IBP recommended that -

> (a) respondent Atty. Ellis Jacoba be SUSPENDED from the practice of law for the period of SIX (6) months;
>
> (b) respondent Atty. Ellis Jacoba be ordered to return to complainant Severino Ramos the amount of Ten Thousand Pesos (P10,000.00) within fifteen (15) days from notice;
>
> (c) respondent Atty. Olivia Velasco-Jacoba be ADMONISHED to exercise more diligence in attending to legal matters entrusted by a client, with a WARNING that a repetition of the same negligent act charged in this complaint will be dealt with more severely.[5]

The IBP Board of Governors adopted and approved the report and recommendation of the Investigating Commissioner with the modification that respondent Atty. Ellis Jacoba be suspended from the practice of law for

three months for gross negligence and malpractice causing actual loss to complainant.[6]

After a review of the records of this case, the Court finds the IBP recommendation to be well taken. However, instead of a three-month suspension as recommended by the IBP Board of Governors, we find that the suspension of respondent Atty. Ellis Jacoba from the practice of law should be increased to one year considering that this is the second time he is found guilty of neglect of his client's case.

The records clearly show that respondent Atty. Ellis Jacoba was remiss in the performance of his duties to complainant. He was given by the Court of Appeals extensions of time totalling 135 days within which to file the appellants' brief, but he failed to file the same. No reason has been given in extenuation of respondent's failure.

What this Court said in another case is apropos:

> 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. 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.[7]

Indeed, a lawyer owes fidelity to the cause of his client. He should ever be mindful of the trust and confidence reposed in him, remembering always that his actions or omissions are binding on his clients.[8] In this case, the failure of respondent to file the appellants' brief resulted in the dismissal of the appeal. As a consequence, the adverse decision in the trial court against complainant and his wife became final and executory and they were made to pay P107,000.00 to the plaintiffs in Civil Case No. 2014-AF.[9] His wife was so aggrieved that she died upon learning of the final dismissal of their appeal.[10]

The Code of Professional Responsibility provides in particular:

> Rule 12.03. - A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.
>
> Rule 18.03. - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Thus, this Court has held:

> An attorney is bound to protect his client's interest to the best of his ability and with utmost diligence. (Del Rosario vs. Court of Appeals, 114 SCRA 159) A failure to file brief for his client certainly constitutes inexcusable negligence on his part. (People vs. Villar, 46 SCRA 107) The respondent has indeed committed a serious lapse in the duty owed by him to his client as well as to the Court not to delay litigation and to aid in the speedy administration of justice. (People vs. Daban, 43 SCRA 185; People vs. Estocada, 43 SCRA 515)[11]

As already noted, this is not the first violation committed by respondent. In Adm. Case No. 2594, this Court, in a resolution dated June 3, 1985, suspended Atty. Ellis Jacoba from the practice of law for a period of six (6) months for his failure to file an action for the recovery of possession of property despite the lapse of two and a half (2 1/2)

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years from receipt by him of P550.00 which his client gave him as filing and sheriff's fees. In addition, he was ordered to return the same amount to the complainant, Liberato Soriano, and warned that a repetition of the same or similar offense will be dealt with more severely.

Apparently, respondent Atty. Ellis Jacoba has not learned his lesson. Instead, he has shown an appalling indifference to his client's interest and willful neglect of his duties as an officer of the court, thus warranting the imposition of a more severe penalty on him. In addition, as the IBP recommends, respondent Atty. Ellis Jacoba should be ordered to return to complainant the amount of P10,000.00 considering that this amount represents his fees and no service was rendered by him to complainant. The additional P8,000.00 allegedly paid by complainant to respondents to defray the expenses for the preparation of the appellants' brief cannot be ordered reimbursed for lack of a receipt to prove such payment.

As regards the recommendation of the IBP that respondent Atty. Olivia Velasco-Jacoba be admonished, the records show that her participation was limited to the assistance she rendered complainant in filing the notice of appeal before the trial court. She does not appear as counsel for complainant in the records of the Court of Appeals. The Court, therefore, finds no basis for sanctioning or admonishing her .

WHEREFORE, in view of the foregoing, respondent Atty. Ellis Jacoba is SUSPENDED from the practice of law for one year effective upon finality hereof and ORDERED to return to complainant the amount of P10,000.00 with WARNING that a repetition of the same negligent act charged in this complaint will be dealt with even more severely. The complaint against respondent Atty. Olivia Velasco-Jacoba is dismissed for insufficiency of evidence.

SO ORDERED.

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

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[1] Civil Case No. 2014-AF entitled Sps. Porfirio Guittap and Gregoria Guittap v. Sps. Severino Ramos and Teodora Pascual.

[2] Exh. E.

[3] Exh. F.

[4] Exhs. B and C.

[5] Report of the Investigating Commissioner, p. 6.

[6] IBP Resolution No. XIV-2001-207.

[7] Aromin v.. Boncavil, 315 SCRA 1, 5 (1999) citing Santiago v.. Fojas, 248 SCRA 68, 73-74 (1995).

[8] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 17; In Re Vicente Y. Bayani, 337 SCRA 451 (2000).

[9] Sinumpaang Salaysay of Severino Ramos, March 7, 1999.

[10] Report of the Investigating Commissioner, p. 3.

[11] Ford v.. Daitol, 250 SCRA 7, 12 (1995) citing In Re: Santiago F. Marcos, 156 SCRA 844, 847 (1987) (emphasis in the original).

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