

JOSEFINA B. FAJARDO, COMPLAINANT, VS. ATTY. DANILO DELA TORRE, RESPONDENT.

A.C. No. 6295. April 14, 2004

Ponente: YNARES-SATIAGO, J.

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YNARES-SATIAGO, J.:

Complainant was the defendant in Civil Case No. 581 for Forcible Entry, entitled, “Felisa Imperial versus Josefina Fajardo”, and the plaintiff in Civil Case No. 582 for Unlawful Detainer, entitled, “Josefina B. Fajardo versus Felisa Imperial.” The cases were consolidated and tried jointly by the Municipal Trial Court of Ba-ao, Camarines Sur, which rendered judgment in favor of Imperial.[1] Complainant’s counsel, respondent herein, appealed to the Regional Trial Court of Iriga City, which affirmed the appealed decision.

Hence, complainant instructed respondent to file a petition for review with the Court of Appeals. Respondent demanded the amount of P4,300.00[2] for the preparation and filing of the petition which complainant complied by remitting the amount to respondent.

It appears that the petition for review was later dismissed by the Court of Appeals on the grounds of insufficient payment of docket fees and failure to attach the certified true copy of the assailed decision. Complainant only learned of the resolution dismissing her petition when her opponent, Imperial, filed a motion for new trial attaching a copy thereof in the separate action filed by complainant with the RTC of Iriga City for recovery of possession.

Complainant thus filed a complaint charging respondent of “Gross Ignorance of the Law and Negligence in the Performance of Profession.”[3]

The Integrated Bar of the Philippines Commission on Bar Discipline directed respondent to answer the complaint. Despite receipt of the Order of the IBP-CBD, respondent failed to answer the Complaint.

Subsequently, the IBP Commission on Bar Discipline issued a Notice dated February 13, 2001[4] setting the case for hearing on March 13, 2001. Again, despite receipt by respondent of the notice, he failed to appear at the scheduled hearing. Complainant was allowed to present her evidence ex parte.

On September 22, 2003, the IBP-CBD submitted its Report finding respondent liable as charged and recommending that he be fined P1,500.00 and suspended from the practice of law for a period ranging from four (4) to six (6) months. The IBP Board of Governors adopted the findings of the Investigating Commissioner but reduced the suspension to one (1) month.

While we agree with the finding that respondent is liable for negligence, we find inadequate the recommended period of suspension. Hence, we impose on respondent the penalty of suspension from the practice of law for a period of one (1) year.

In *Ingles v. Dela Serna*,[5] it was held:

Complaints against lawyers for misconduct are normally addressed to the Court. If, at the outset, the Court finds the complaint to be clearly wanting in merit, it outrightly dismisses the case. If, however, the Court deems it necessary that further inquiry should be made, such as when the matter could not be resolved by merely evaluating the pleadings submitted, referral is made to the IBP for formal investigation of the case during which the parties are accorded an opportunity to be heard. An ex parte investigation may only be conducted when respondent fails to appear despite reasonable notice. Hereunder are some of the pertinent provisions of Rule 139-B of the Rules of Court on this matter, viz:

x x x x x x x x.

SEC. 8. Investigation. – Upon joinder of the issues or upon failure of respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on his behalf and be heard by himself and counsel. However, if, upon reasonable notice, the respondent fails to appear, the investigation shall proceed ex parte.

The Investigator shall terminate the investigation within three (3) months from the date of its commencement, unless extended for good cause by the Board of Governors, upon prior application.

Willful failure or refusal to obey a subpoena or any other order issued by the Investigator shall be dealt with as for indirect contempt of Court. The corresponding charge shall be filed by the Investigator with the before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. The IBP Board of Governors may thereafter conduct hearings, if necessary in accordance with the procedure set forth in this Rule for hearings set before the Investigator. Such hearing shall, as far as practicable, be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within a like period of fifteen (15) days issue a resolution setting forth its findings and recommendations, which shall forthwith be transmitted to the Supreme Court for final action and if warranted, the imposition of the penalty.

The procedure outlined by the Rules are meant to ensure that the innocents are spared from wrongful condemnation and that only the guilty are meted their just due. Obviously, these requirements are not to be taken lightly. (Emphasis and italics supplied)

The records show that from the time respondent was directed to file his answer up to the time the IBP Board of Governors issued a Resolution adopting the recommendation of the Investigating Commissioner, nothing was heard from respondent despite due notice. Hence, he is deemed to have waived the opportunity to present witnesses on his behalf or to be heard by himself and counsel.

The records show that respondent asked for the amount of P4,300.00 for the preparation of the petition for review to be filed with the Court of Appeals, which amount was itemized as follows:

Postage

-

P 350.00

(bulky -21 copies plus annexes)

Xerox copies (@ 500 pages) (clear copy)

-

750.00

Miscellaneous

-

200.00

Legal fees

-

P 3,000.00

P4,300.00[6]

However, the Resolution of the Court of Appeals which dismissed the petition reads:

Before Us is a Petition for Review filed on January 27, 2000. From the records, it appears that the said petition is not sufficient in form. For one, the payment of the docketing fees remitted by the petitioner was for only P650.00, which is short by P280.00. Likewise, the attached copy of the questioned RTC Decision dated December 15, 1999 is merely a plain photocopy, in violation of Sec. 2(d) of Rule 42 of the 1997 Rules of Court.

WHEREFORE, for violation of Sec. 1 and Sec. 2(d) in relation to Sec. 3 of Rule 42 of the 1997 Rules of Court, the instant petition is hereby DISMISSED.

SO ORDERED. (Emphasis and italics supplied)[7]

Respondent was not only remiss in the preparation of the petition, but may have misappropriated a portion of the sum remitted to him by complainant for the purpose of filing the petition because the docketing fees he remitted was short of P280.00. What is worse is that respondent failed to inform complainant of the actual status of the appeal. Such behavior cannot and should not be countenanced because they run afoul with the following provisions of the Code of Professional Responsibility:

CANON 15. – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

CANON 16. – A lawyer shall hold in trust all moneys and property collected or received for or from the client.
Rule 16.01. – A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02. – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03. – A lawyer shall deliver the funds and the property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have lien to same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

x x x x x x x x

CANON 17. – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence in him.

x x x x x x x x

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.

It appears that complainant learned about the dismissal of her petition only through the copy of the appellate court’s resolution appended to an omnibus motion for new trial and reconsideration[8] in another case, i.e., Civil Case No. 588 for Recovery of Ownership and Possession. In *Garcia v. Manuel*,[9] it was held:

The relationship of lawyer-client being one of confidence, there is ever present the need for the client to be adequately and fully informed of the developments of the case and should not be left in the dark as to mode and manner in which his interests are being defended. It is only thus that the trust and faith in the counsel may remain unimpaired. (Emphasis and italics supplied)

Furthermore, it was held in *Rabanal v. Tugade*[10] that an attorney is bound to protect his client’s interest to the best of his ability and with utmost diligence. Implicit with this directive is the command that all lawyers are duty-bound to keep abreast of the law and legal developments as well as to participate in continuing legal education programs.[11] All law practitioners should be fully conversant of the requirements for the filing of certiorari proceedings under Rule 65 of the Rules of Court.[12] *Ignorantia legis non excusat*. [13] Ignorance encompasses not only substantive but also procedural laws.[14]

Moreover, Rule 18.03 of the Code of Professional Responsibility mandates that a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable. Verily:

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 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.[15]

The records further show that a similar complaint[16] for malpractice and unethical behavior has been filed against respondent by complainant’s son with the IBP for the dismissal of Special Proceedings No. 1471 as a result of respondent’s gross negligence. The foregoing only serves to aggravate and to underscore respondent’s malfeasance.

The misconduct of respondent is not, however, limited to his professional duties towards his clients.

Respondent’s consistent refusal to comply with lawful orders during the proceedings before the Commission on Bar Discipline without any explanation, despite receipt of notice, borders on the willful and is not lost on the Court. In *Grande v. De Silva*,[17] the Court held:

Needless to state, respondent’s persistent refusal to comply with lawful orders directed at her with not even an explanation for doing so is contumacious conduct which merits no compassion. The duty of a lawyer is to uphold the integrity and dignity of the legal profession at all times. She can only do this by faithfully performing her duties to society, to the bar, to the courts and to her clients. We can not tolerate any misconduct that tends to besmirch the fair name of an honorable profession.

All told, respondent has failed to do his duty to his client and has clearly violated the Code of Professional Responsibility. His actions erode the public's perception of the legal profession.

As consistently held by this Court, disbarment shall not be meted out where a lesser penalty could accomplish the end desired.[18] However, the penalty of suspension from the practice of law for one (1) month imposed by the IBP Board of Governors is not proportionate to respondent's violation of several Canons of the Code of Professional Responsibility. Thus, he deserves a graver penalty,

WHEREFORE, in view of all the foregoing, respondent Atty. DANILO DELA TORRE is hereby SUSPENDED from the practice of law for a period of one (1) year.

This resolution shall take effect immediately. Copies hereof shall be furnished the Office of the Bar Confidant, to be appended to respondent's personal record; the Office of the President; the Department of Justice; the Court of Appeals; the Sandiganbayan and the Integrated Bar of the Philippines. The Court Administrator shall also furnish all lower courts with copies of this Resolution.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Panganiban, Carpio, and Azcuna, JJ., concur.

[1] Rollo, pp. 6-15.

[2] Id., p. 28.

[3] Id., pp. 1-4.

[4] Id., p. 58.

[5] A.C. No. 5763, 3 December 2002, 393 SCRA 252.

[6] Rollo, p. 28.

[7] Id., pp. 53-55.

[8] Id., pp. 46-61.

[9] A.C. No. 5811, 20 January 2003.

[10] A.C. No. 1372, 27 June 2002.

[11] Cuevas v. Bais Steel Corporation, G.R. No. 142689, 17 October 2002, 391 SCRA 192, citing Canon 5, Code of Professional Responsibility.

[12] Lapid v. Laurea, G.R. No. 139607, 28 October 2002, 391 SCRA 277.

[13] Intengan v. CA, G.R. No. 128996, 15 February 2002, 377 SCRA 63.

[14] Lapid v. Laurea, supra.

[15] Ramos v. Jacoba, A.M. No. 5505, 27 September 2001.

[16] Rollo, pp. 20-23.

[17] A.C. No. 4838, 29 July 2003.

[18] Zaguirre v. Castillo, A.C. No. 4921, 6 March 2003, 398 SCRA 658, citing Saburnido v. Madronio, A.C. No.

4497, 26 September 2001, 366 SCRA 1; T'boli Agro-Industrial Development, Inc. (TADI) v. Solilapsi, A.C. No. 4766, 27 December 2002, 394 SCRA 269, citing Paras v. Paras, 343 SCRA 414 [2000].

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