ROGELIO F. ESTAVILLO, COMPLAINANT, VS. ATTYS. GEMMO G. GUILLERMO AND ERME S. LABAYOG, RESPONDENTS.

A.C. No. 6899. November 16, 2011

Ponente: BRION, J.

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BRION, J.:

We review Resolution No. XIX-2011-503,[1] passed on June 26, 2011 by the Board of Governors of the Integrated Bar of the Philippines (IBP), granting the motion for reconsideration of Attys. Gemmo G. Guillermo and Erme S. Labayog (respondents), thereby lowering the penalty of suspension from the practice of law for three (3) months against the two lawyers (imposed in Resolution No. XVIII-2009-07[2]) to REPRIMAND. The respondents were penalized for violation of Rule 18.03 of the Code of Professional Responsibility.

The Case

On September 6, 2005, Rogelio F. Estavillo (complainant) filed an affidavit-complaint[3] with the Office of the Bar Confidant, charging the respondents with gross negligence. The complainant and his son, Dexter, engaged the services of the respondents in Civil Case No. 3183[4] for Forcible Entry and Damages, filed against them by Teresita A. Guerrero with the Municipal Trial Court in Cities (MTCC), Laoag City.

In particular, the complainant charged the respondents for their failure to file an answer in the civil case within the period fixed by the Rules of Court, as required by the summons dated March 18, 2005[5] which commanded:

> You are hereby required to enter your appearance in the above-entitled case within ten (10) days after the service of the summons upon you, exclusive of the day of such service, and to answer the complaint served upon you within the period fixed by the Rules of Court. If you fail to appear within the aforesaid period, the plaintiff will take judgment against you by default and demand from this Court the relief prayed for in said complaint.

The MTCC noted that the summons was served on the Estavillos on March 18, 2005, leaving them until March 28, 2005 within which to file their answer to the complaint. The respondents filed the answer only on April 4, 2005, or seven (7) days beyond the ten (10)-day period under the Rules. For this reason, the court, upon Guerrero's motion, issued an order striking the answer from the records.[6]

The complainant further claimed that the respondents did not inform him or his son of scheduled hearings and incidents related to the civil case, notably the following:

1) the April 15, 2005 hearing on Guerrero's motion to strike out the pleading (answer) filed by the respondents, as well as the motion to cite them for indirect contempt;

2) the Order dated March 28, 2005[7] with a writ of preliminary prohibitory and mandatory injunction, ordering them; to demolish the fence they built on the disputed property; to refrain from demolishing or continuing with the demolition of Guerrero's house; and to refrain from continuing with the construction of the fence on the property in dispute;

3) the Motion to Allow Plaintiff to Adduce Evidence in Support of her Prayer for Damages, with notice of hearing on May 20, 2005;[8] the hearing was held without the appearance of either of the respondents; and

4) the Order dated May 31, 2005,[9] directing the complainant and his son to solidarily pay Guerrero P20,000.00 as actual damages, P50,000.00 as moral damages, P20,000.00 as exemplary damages, P30,000.00 as attorney's fee, and P3,060.00 as cost of suit.

Still further, the complainant bewailed that at 5:00 p.m. on June 24, 2005, as he and his son were waiting at the respondents' law office, Atty. Guillermo finally arrived; they told the lawyer about their discovery of the May 31, 2005 order; when they asked him why they were not advised of the judgment, Atty. Guillermo just answered, "We have plenty of work."[10] Taken aback by Atty. Guillermo's response and attitude, they left the law office enraged and confused. The same indifferent treatment was shown to them by Atty. Labayog who undertook to show them the draft of the notice of appeal of the May 31, 2005 order. Instead of Atty. Labayog, a new member of the law firm, a certain Atty. Janapin, came and could only say that she was sorry for what had happened.

As required by the Court,[11] the respondents submitted their Comment to the complaint[12] where they vehemently denied the complainant's allegations that they had been grossly negligent. They alleged that the complainant conferred with Atty. Guillermo regarding the civil case. They learned that Guerrero, the plaintiff, is the former owner of the property in dispute and is residing at a house built on the property. The Estavillos acquired the property and they wanted to get rid of Guerrero. One way of doing it, they thought, was to build a fence on the lot, thereby substantially reducing Guerrero's passageway and destroying Guerrero's house. Thus, Guerrero prayed for a temporary restraining order and a writ of preliminary and/or prohibitory injunction.

To the respondents' mind, Guerrero's case was actually for possession despite its title — for Forcible Entry — based on the allegations of the complainant. They, therefore, waited for the order of the court, before they filed the answer to the complaint. They relied on Section 4, par. 2 of the 1991 Revised Rule on Summary Procedure which provides that if no ground for dismissal is found by the court, it shall forthwith issue summons stating that the summary procedure under the Rule shall apply. Unfortunately, the court did not issue any order so they presumed that the regular rules apply and that the time to file an answer is fifteen (15) days. This notwithstanding, they vehemently opposed Guerrero's motion to strike out the answer, but the court ruled in Guerrero's favor and struck out the answer they filed in behalf of the Estavillos.

The respondents further maintained that contrary to the complainant's allegations, they represented the complainant and his son in all stages of the proceedings, except at one hearing when Guillermo had an emergency meeting in connection with a different case. They also denied that they were not providing updates on the case; the complainant's son, Dexter, had been regularly going to the law office to get feedbacks on the progress of the case.

The respondents took exception to the complainant's claim that Atty. Guillermo said "We have plenty of work"[13] in justifying the loss of the civil case, for what he told the complainant on one occasion was "not all cases are won, and our only remedy left is appeal."[14] They indeed filed the appeal which adequately and exhaustively discussed the complainant's position in the case. It just so happened that the court decided in Guerrero's favor.

The IBP Proceedings

On February 22, 2006,[15] the Court referred the complaint to the IBP for investigation, report and recommendation.

In a Report and Recommendation dated November 11, 2008,[16] Commissioner Pedro A. Magpayo, Jr. of the IBP

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Commission on Bar Discipline recommended that the respondents be suspended from the practice of law for three (3) months for violation of Rule 18.03 of the Code of Professional Responsibility.

The relevant portions of Commissioner Magpayo's report state:

> After a judicious study of the records, it appears to the undersigned that the respondents composing the law office of Guillermo & Labayog did not meet the standard of diligence required by the situation relative to the civil complaint and the summons received by their client. When they accepted the complainant's case, the clients presented to them the copy of the summons issued by the Clerk of Court.
>
> The summons dated 18 March 2005 specifically states: "You are hereby required to enter your appearance in the above-entitled case within ten (10) days after the service of the summons upon you, exclusive of the day of such service, and to answer the complaint served upon you within the period fixed by the Rules of Court." (Exh. "3")
>
> The complaint docketed as Civil Case No. 3183 is for: Forcible Entry and damages with prayer of the issuance of a temporary restraining order and writ of preliminary mandatory and/or prohibitory injunction."
>
> It behooves or is incumbent upon respondent[s] to be knowledgeable of the periods within which to file a pleading. In this particular [instance], Rule 70, governing forcible entry and unlawful detainer cases which is incorporated in the 1997 Rules of Civil Procedure[,] has been in effect for almost eight (8) years when this complaint was instituted by plaintiff Guerrero against respondents' clients. It is the bounden duty of counsel in the active practice to keep abreast of decisions of the Supreme Court and changes in the law (De Roy v. Court of Appeals, 157 SCRA 757).
>
> It was the finding of the MTCC that "as appearing in the record, the defendants filed their Answer only on April 4, 2005 or 7 days beyond the ten (10) day period given (order dated April 28, 2005)."
>
> Thus, it is plain that respondents who argued that the reglementary period is fifteen days, and not ten days, were still late in submitting the defendants' answer within fifteen days.[17]

Commissioner Magpayo, however, found no solid evidence to support the complainant's other accusations. He cited as a case in point the hearing of May 20, 2005 permitting Guerrero, the plaintiff, to present ex-parte evidence. As the term of the court's directive implies, the hearing was supposed to be attended by the plaintiff alone, without the defendant's presence, for the purpose of adducing evidence to prove damages. The absence of an answer (the Estavillos' answer having been stricken off the record) facilitated the allowance of the ex-parte evidence of Guerrero.

Commissioner Magpayo opined that to the credit of the respondents, they put up a fight, however futile, in defense of the complainant's case, as shown in the TSN of the hearings of March 22,[18] April 15[19] and May 6, 2005.[20] Unfortunately, it was really a losing case because the answer to the complaint was filed late or beyond the reglementary period of 10 days prescribed under the Rules of Court.[21]

The IBP Board of Governors' Ruling and Related Incidents

On February 19, 2009, the IBP Board of Governors passed a Resolution[22] adopting and approving Commissioner Magpayo's recommendation.

On July 9, 2009, the respondents moved for reconsideration of the IBP resolution, insisting that they were not liable for gross negligence. They argued that they filed all the required pleadings for the Estavillos — the answer, oppositions, appeals and memoranda. Except for one oral argument where Atty. Guillermo had a previous commitment elsewhere (which happened to be the time of the plaintiff's ex-parte presentation of evidence), they religiously attended to all the hearings. They maintained that if there had been negligence at all, it was not gross

as it was brought about by the difficult appreciation of the Rules. They further argued that the penalty of suspension for their negligence, if any, is not in accord with jurisprudence.

On August 26, 2009, Guerrero filed a comment on the motion for reconsideration, asking for its denial, contending that "[t]he hackneyed reasoning of respondents that the trial court should have issued an order fixing the period to file an answer is a subterfuge, if not a lame excuse, for their gross negligence and lack of fidelity in handling their client's case."[23]

On June 26, 2011, the IBP Board of Governors passed the Resolution under review, Resolution No. XIX-2011-503.[24] To reiterate, it modified its Resolution No. XVIII-2009-07 dated February 19, 2009, lowering the recommended penalty of suspension for three (3) months against the respondents to REPRIMAND.

The Court's Ruling

The original sanction recommended by Commissioner Magpayo against the respondents, principally for their failure to file an answer for the Estavillos in the civil case, was a three-month suspension from the practice of law. The recommendation already took into account the presence of mitigating circumstances, although Commissioner Magpayo failed to elaborate on what these mitigating circumstances were.

In asking for a penalty lighter than the three-month suspension imposed, the respondents contend that they did everything required by their clients' defense, except for the answer to the complaint which was filed beyond the reglementary period. Nonetheless, they submit that if there had been any negligence at all, it was not gross as it was due to a difficult appreciation of the Rules. In any event, they submit that their clients really had a losing case and there was nothing they could do about it. They further argue that the recommended penalty is not in accord with jurisprudence.

Under Canon 18 of the Code of Professional Responsibility, "A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE." Pursuant to Rule 18.03 cited by the complainant, "A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

After a review of the facts, we find no reason to reduce the originally recommended penalty of suspension for three months against the respondents for their mishandling of the Estavillos' civil case. Although they filed the answer, it could no longer serve its purpose as it was filed late (i.e., seven days beyond the required ten [10]-day period), as found by the court.[25] As a consequence, the answer was stricken off the record[26] to the detriment of the complainant and his son.

The respondents attempted to justify the late filing of the answer by claiming that, to their mind, the civil case was actually for possession, notwithstanding that its title is for forcible entry. They thus waited for an order from the court pursuant to Section 4 of the 1991 Revised Rule on Summary Procedure which provides that "If no ground for dismissal is found it shall forthwith issue summons which shall state that the summary procedure under this Rule shall apply." They did not receive a court order so they presumed that the regular rules apply, under which, the answer shall be filed within fifteen (15) days.

We do not find the respondents' stance acceptable as it betrays a lack of the necessary competence and diligence required by the Code of Professional Responsibility in responding to the court's summons for the Estavillos to make an appearance in the case and to file an answer to the complaint. The respondents, especially Atty. Guillermo who was supposed to be the lead counsel for the Estavillos, misappreciated the urgency and the importance of the court's summons. They mistakenly assumed that the court would issue an order of dismissal. They waited and when no order issued from the court, they again incorrectly assumed that the regular rules apply without seeking a clarification from the court or ascertaining exactly when the answer should be filed. With this

rationalization, they then shifted the blame for their failure to file the answer on time to the court. We cannot allow this kind of response in the handling of cases as the terms of the Rules of Court are sufficiently clear in their requirements to the average lawyer. The terms of the summons were also clear; as the court aptly stated:

> In the summons issued, specific instruction was given to the defendants that within ten (10) days after service, they are required to enter their appearance and to answer the complaint within the period fixed by the Rules of Court. The period fixed by the Rules of Court is ten (10) days and not fifteen (15) days as averred by the defendants. The defendants, however, failed.[27]

Thus, the respondents had in fact been negligent, or worse, had failed to exercise the required competence and diligence in filing the Estavillo's answer to the complaint.

Under the circumstances of the case, the respondents' penalty cannot be further mitigated without committing an unfairness against the complainant and his son. We remind the respondents and the IBP Board of Governors of what we said in Fil-Garcia, Inc. v. Hernandez:[28]

> Rule 18.03 of the Code of Professional Responsibility enjoins a lawyer not to "neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable." Every case a lawyer accepts deserves his full attention, skill and competence, regardless of its importance and whether he accepts it for a fee or for free. He must constantly keep in mind that his actions or omissions or nonfeasance would be binding upon his client. Thus, he is expected to be acquainted with the rudiments of law and legal procedure, and a client who deals with him has the right to expect not just a good amount of professional learning and competence but also a whole-hearted fealty to the client's cause.

WHEREFORE, premises considered, the Integrated Bar of the Philippines Board of Governors' Resolution No. XIX-2011-503 of June 26, 2011 is SET ASIDE, and its Resolution No. XVIII-2009-07 dated February 19, 2009 is REINSTATED.
SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

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[1] IBP Records, Vol. IV, Addendum.

[2] Id. at 1-2.

[3] Rollo, pp. 2-11.

[4] Id. at 12-17; Complaint, Annex "A."

[5] Id. at 18; Complaint, Annex "B."

[6] Id. at 41-45; Complaint, Annex "J."

[7] Id. at 39-40; Complaint, Annex "I-1."

[8] Id. at 51-52; Complaint, Annex "L."

[9] Id. at 60-66; Complaint, Annex "N."

[10] Supra note 3, par. 14.

[11] Rollo, p. 67; Resolution dated October 10, 2005.

[12] Id. at 68-71.

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[13] Supra note 10.

[14] Supra note 12, par. 15.

[15] Rollo, p. 80.

[16] IBP Records, Vol. IV, pp. 3-7.

[17] Id. at 5-6.

[18] IBP Records, Vol. II, pp. 33-44.

[19] Id. at 50-54.

[20] Id. at 61-65.

[21] Rule 70, Section 6.

[22] Supra note 2.

[23] IBP Records, Vol. IV, p. 20.

[24] Supra note 1.

[25] Supra note 6, at 42.

[26] Id. at 45.

[27] Id. at 44.

[28] A.C. No. 7129, July 16, 2008, 558 SCRA 400, 408-409.

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