

CESAR TALENTO AND MODESTA HERRERA TALENTO, PETITIONERS, VS. ATTY. AGUSTIN F. PANEDA, RESPONDENT.

A.C. No. 7433 [Formerly CBD Case No. 05-1554]. December 23, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before us is the administrative complaint filed by mother and son Modesta Herrera Talento and Cesar Talento charging Atty. Agustin F. Paneda of violation of his oath as a lawyer and neglect of duty.

This case was initiated by petitioners with the filing of a Complaint[1] before the Integrated Bar of the Philippines (IBP) on August 29, 2005. In the said Complaint, petitioners alleged the following:

"a. Sometime in October 17, 2000, a civil complaint was filed by Leticia Herrera. The same complaint was raffled to Regional Trial Court Branch 31, Agoo, La Union presided by Hon. Clifton U. Ganay;

b. This case was entitled: LETICIA HERERRA, Plaintiff vs. MODESTA H. TALENTO and CESAR TALENTO as Defendants for Quieting of Title, docketed as Civil Case No. A-2043;

c. [Petitioners] secured the services of Atty. Agustin Paneda to help and defend [them] in the aforementioned case. [Petitioners] paid the attorneys' fees he required from [them] in order that [they] could avail of his services as counsel;

d. Atty. Paneda filed [petitioners'] answer to the complaint on November 14, 2000 and the case was set for pre-trial. The Honorable Court in an order required both parties' counsels to submit their respective pre-trial briefs and appear during the scheduled pre-trial hearing on December 18, 2000;

e. Despite the order and notice to [their] counsel, he did not file or submit a pre-trial brief for [petitioners'] behalf. Much more to [their] surprise and predicament, although [petitioners] attended the pre-trial hearing, he did not appear;

f. As a result of his non-appearance, the counsel for the other party spoke of things beyond our knowledge which the Honorable Court granted being expressly stated and provided in the Rules of Court. [Petitioners] were declared in default because of the failure of [their] counsel to file and submit [petitioners'] pre-trial brief. The Honorable Court allowed the case to be heard ex parte much to our damage and prejudice;

g. The Honorable Court issued a decision against [petitioners] simply for failure of [their] counsel Atty. Paneda to submit [petitioners'] pre-trial brief and for his failure to attend the pre-trial of the case. It was simply because of technicality and not based on the merits of the allegations of both parties that [petitioners] lost the case;

h. Atty. Paneda filed a Motion for Reconsideration dated December 27, 2000, but the same was dismissed by the Honorable Court;

i. Atty. Paneda told [petitioners] that he will appeal the case to the Court of Appeals and [they] agreed because [they were] confident of [petitioners'] claim over the parcel of land subject of this case. He filed a notice of appeal on February 8, 2001. [Petitioners] paid the required fees and he even required [petitioners] to shell out

more money for the preparation of the Appeal brief;

j. [Petitioners] waited for so long for the decision of the Honorable Court of Appeals and [petitioners] found out later that [petitioners'] appeal was dismissed due to lack of an appeal brief only when [petitioners] went to Atty. Paneda."^[2]

In the Order^[3] dated August 30, 2005 issued by the IBP Commission on Bar Discipline (Commission), respondent was required to submit his Answer to the Complaint within fifteen (15) days from receipt of the notice. Respondent filed his Answer^[4] on October 24, 2005.

In his Answer, respondent states that he honestly believed that he had not violated his oath as a lawyer nor did he commit negligence in handling the case of the petitioners. He likewise avers that there were other considerations and incidents which had intervened in the case that produced adverse reactions. He cites as reason for the non-filing of the Pre-trial Brief the fact that, before the date set for pre-trial hearing, respondent was informed by petitioners that they had already entered into an Amicable Settlement with the plaintiff. Respondent advised petitioners to submit the said agreement to the Regional Trial Court (RTC) in lieu of the Pre-trial Brief. Respondent did not appear during the pre-trial conference scheduled in the morning of December 19, 2000 because he chose instead to attend the pre-trial conference of the replevin case involving his personal vehicle in Dagupan City which was also set on that same morning.^[5] With regard to his failure to file the required Appellants' Brief before the Court of Appeals (CA), he points to his secretary's oversight in promptly informing him of the latter's receipt of the Notice of Submission of Appellants' Brief.^[6] Respondent insists that he was not negligent in his practice but there were circumstances beyond his control and were unavoidable. He contends that petitioners should not altogether blame him but they should also accept that the debacle was due to their inaction.^[7]

Petitioners refute the foregoing assertions of the respondent.^[8] They vehemently deny respondent's claim that they allegedly informed him of the Amicable Settlement prior to the date of pre-trial hearing. In fact, they intended to show the document to him for the very first time at the pre-trial conference in which he did not appear. They likewise belie respondent's claim that he gave instructions to petitioners on what to do during the pre-trial conference in his absence. They further deny respondent's claim that he had informed them beforehand of his inability to attend due to a conflict of schedule. Granting that there was indeed a conflict of schedule, petitioners maintain that respondent is required by Rule 18, Sec. 6 of the Rules of Court^[9] to file the Pre-trial Brief at least three (3) days before the date of pre-trial conference. Finally, petitioners insist that, contrary to respondent's assertion in his Answer, respondent did not exert his best efforts for his clients because, after negligently abandoning them at the RTC, respondent likewise failed to fulfill his duty of safeguarding their interests in the CA when respondent failed to perform a basic legal requirement of filing an Appeal Brief in order for the said court to take cognizance of their Appeal.

The parties were then required by the Commission to appear at a mandatory conference held on November 30, 2005. Petitioner Cesar Talento appeared together with his counsel, Atty. Matthew L. Dati. Co-petitioner Modesta Herrera Talento executed a Special Power of Attorney in favor of Cesar Talento and Atty. Dati. Respondent appeared on his behalf.

After the termination of the hearing, the parties were directed to file their respective verified position papers within ten (10) days from receipt of the Order^[10] and were informed that with or without said position papers, the case shall be deemed submitted for report and recommendation. Only petitioners submitted a Position Paper^[11] which was received by the Commission on January 4, 2009.

On April 28, 2006, Commissioner Rebecca Villanueva-Maala submitted her Report and Recommendation finding

respondent guilty of gross violation of his duties as a lawyer and of inexcusable negligence with the recommendation that respondent be suspended from the practice of law for a period of one (1) year. The salient portion of the Report reads:

"Respondent's failure to file complainants' Pre-trial Brief, his failure to appear during the Pre-trial Conference because he has to attend to another case, his failure to file complainants' Appeal Brief and his failure to inform complainants of the dismissal of the case at the Court of Appeals are in gross violation of his duties as a lawyer and show inexcusable negligence on his part.

His contention that he told complainants to present the Amicable Settlement agreed upon by the parties for the court's appreciation does not excuse him of his obligation to his clients, much more his allegation that he advised complainants of the futility of the case. It should be noted that the Amicable Settlement was forged by the parties after the case was already filed in court, therefore the same has no legal effect.

The lawyer owes a duty to his client to be competent to perform the legal services which the lawyer undertakes on his behalf. The lawyer should serve his client in a conscientious, diligent and efficient manner and he should provide a quality of service at least equal to that which lawyers generally would expect of a competent lawyer in a like situation (citation omitted).

WHEREFORE, premises considered, we hereby recommend that respondent ATTY. AGUSTIN F. PANEDA be SUSPENDED for a period of ONE YEAR from receipt hereof from the practice of his profession as a lawyer and as a member of the Bar."[12]

On November 18, 2006, the IBP Board of Governors passed Resolution No. XVII-2006-495 adopting the aforementioned Investigating Commissioner's Report and Recommendation, thus:

"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 as Annex "A"; and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's inexcusable negligence, Atty. Agustin F. Paneda is hereby SUSPENDED from the practice of law for one (1) year."[13]

The only issue to be resolved in this case is whether or not respondent committed gross negligence or misconduct in handling petitioners' case both on trial in the RTC and on appeal in the CA which led to its dismissal without affording petitioners the opportunity to present their evidence.

After a careful consideration of the records of the instant case, this Court agrees with the IBP in its findings and conclusion that respondent's documented acts fall extremely short of the standard of professional duty that all lawyers are required to faithfully adhere to.

The pertinent Canons of the Code of Professional Responsibility provide:

CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x x

Rule 18.02 - A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.

There is no doubt that respondent was woefully remiss in his duty to display utmost diligence and competence in

protecting the interests of his clients. The records of this case clearly detailed dire instances of professional neglect which undoubtedly showed respondent's failure to live up to his duties and responsibilities as a member of the legal profession. Petitioners lost Civil Case No. A-2043 in the RTC mainly because they were barred from presenting their evidence in court. This was a result of their being declared in default in the said case as a consequence of respondent's failure to appear at the pre-trial conference. Respondent defended his non-appearance by stating that he had informed petitioners beforehand of a conflict of schedule and that he had instructed them on what to do in his absence, but petitioners vehemently denied this claim.

Even if we are to give credence to respondent's justification, this does not excuse him from the fact that he was unable to file a Pre-trial Brief at least three (3) days prior to the scheduled pre-trial conference, as required by the Rules. Respondent alleges that he already prepared the Pre-trial Brief but did not push through with filing it because he was allegedly furnished by petitioner Modesta Herrera Talento with an Amicable Settlement that was forged between the parties before the Barangay Lupon of San Pedro, Agoo, La Union. He claims that he instructed his clients to present said document during the pre-trial conference as he had another hearing to attend.[14] However, respondent's excuse is untenable as any lawyer worth his salt would readily know that once a case has been filed in court, any amicable settlement between the parties must be approved by the court in order for it to be legally binding in accordance with Section 416[15] of the Local Government Code of 1991 in relation to the last paragraph of Section 408[16] of the same Code. Thus, he cannot assume that the case will be deemed closed by virtue of the supposed amicable settlement so as to excuse him from filing the Pre-trial Brief and from appearing at the pre-trial set by the court.

With regard to his subsequent error of failing to file the required Appeal Brief which led to the dismissal of his clients' appeal before the CA, respondent did not give any plausible explanation other than merely placing the blame on the incompetence of his secretary in not promptly informing him about her receipt of the Notice of Submission of Appellants' Brief.[17] This mistake by respondent is exacerbated by the fact that he did not care to inform his clients of the dismissal of their appeal in 2002 and it was only in 2005 that his clients learned about this unfortunate turn of events.

It is beyond dispute that respondent is duty-bound by his oath as a lawyer to diligently prosecute the case of his clients to the best of his ability within the bounds of law. Regrettably, the facts of this case illustrate respondent's dismal performance of that responsibility, which in its totality could amount to a reprehensible abandonment of his clients' cause.

A lawyer, when he undertakes his client's cause, makes a covenant that he will exert all efforts for its prosecution until its final conclusion. He should undertake the task with dedication and care, and he should do no less, otherwise, he is not true to his lawyer's oath.[18]

As held in the case of *Vda. De Enriquez v. San Jose*: [19]

The Code of Professional Responsibility in Rule 18.03 enjoins a lawyer not to neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable. A lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence. It is the duty of a lawyer to serve his client with competence and diligence and he should exert his best efforts to protect, within the bounds of the law, the interest of his client. 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.

In *Balatbat v. Arias*, [20] the Court also held that:

It must be stressed that public interest requires that an attorney exert his best efforts in the prosecution or defense of a client's cause. A lawyer who performs that duty with diligence and candor not only protects the

interests 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. Lawyers are indispensable part of the whole system of administering justice in this jurisdiction. At a time when strong and disturbing criticisms are being hurled at the legal profession, strict compliance with one's oath of office and the canons of professional ethics is an imperative.

Accordingly, for seriously prejudicing his clients' interests due to inexcusable neglect of his professional duties as a lawyer, the IBP Investigating Commissioner recommended the suspension of respondent for one (1) year from the practice of law. The IBP Board of Governors acceded to this recommendation.

WHEREFORE, we find respondent Atty. Agustin F. Paneda GUILTY of violating Canons 17 and 18 as well as Rules 18.02 and 18.03 of the Code of Professional Responsibility. Accordingly, we SUSPEND respondent from the practice of law for ONE (1) YEAR effective upon finality of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Puno, C.J., (Chairperson), Carpio Morales, Bersamin, and Villarama, Jr., JJ., concur.

[1] Rollo, pp. 2-25.

[2] Id. at 2-3.

[3] Id. at 26.

[4] Id. at 30-61.

[5] Id. at 31-35.

[6] Id. at 56-61.

[7] Id. at 36-37.

[8] Id. at 62-67.

[9] Rule 18, Section 6. Pre-trial brief. - The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

- (a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;
- (b) A summary of admitted facts and proposed stipulation of facts;
- (c) The issues to be tried or resolved;
- (d) The documents or exhibits to be presented, stating the purpose thereof;
- (e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and
- (f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

[10] Rollo, p. 77.

[11] Id. at 91-121.

[12] Id. at 128-129.

[13] Id. at 124.

[14] Id. at 80-81.

[15] Section 416. Effect of Amicable Settlement and Arbitration Award. - The amicable settlement and arbitration award shall have the force and effect of a final judgment of a court upon the expiration of ten (10) days from the date thereof, unless repudiation of the settlement has been made or a petition to nullify the award has been made or a petition to nullify the award has been filed before the proper city or municipal court.

However, this provision shall not apply to court cases settled by the lupon under the last paragraph of Section 408 of this Code, in which case the compromise settlement agreed upon by the parties before the lupon chairman or the pangkat chairman shall be submitted to the court and upon approval thereof, have the force and effect of a judgment of said court.

[16] Section 408. Subject Matter for Amicable Settlement; Exception Thereto. - x x x The court in which non-criminal cases not falling within the authority of the lupon under this Code are filed may, at any time before trial, motu proprio refer the case to the lupon concerned for amicable settlement.

[17] Rollo, pp. 56-61.

[18] Pangasinan Electric Cooperative I (PANELCO I) v. Montemayor, A.C. No. 5739, September 12, 2007, 533 SCRA 1, 7-8.

[19] A.C. No. 3569, February 23, 2007, 516 SCRA 486, 489-490.

[20] A.C. No. 1666, April 13, 2007, 521 SCRA 1, 10.

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