

RIZALINO FERNANDEZ, COMPLAINANT, VS. ATTY. REYNALDO NOVERO, JR. RESPONDENT.[]

Adm. Case No. 5394. December 02, 2002

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint for disbarment against Atty. Reynaldo Novero, Jr. for alleged patent and gross neglect in the handling of Civil Case No. 7500 which complainant Rizalino Fernandez and others had filed against the Bacolod City Water District before the Regional Trial Court, Branch 49, Bacolod City.

In his letter,[1] dated October 16, 1996, to the Court Administrator, complainant imputed the following negligent acts to respondent which led to the dismissal of Civil Case No. 7500:

- Respondent did not attend the scheduled hearing on January 11, 1996 nor seek a postponement thereof, for which reason the trial court considered respondent to have waived further presentation of his evidence and directed him to formally offer his exhibits for admission on January 30, 1996;
- Notwithstanding receipt of the order dated January 11, 1996, respondent failed to formally offer his exhibits on January 30, 1996, prompting the trial court to order the dismissal of the case;
- While respondent filed a motion for reconsideration of the order of dismissal, he did not file his motion within the reglementary period, as a result of which the said motion, actually filed on May 7, 1996, was denied by the trial court on May 14, 1996 for having been filed out of time;
- When asked for an explanation regarding the dismissal of the case, respondent informed complainant through a letter, dated July 30, 1996, that he had filed a motion for reconsideration of the order of dismissal, but the motion, which had been filed a long time ago, had not yet been resolved by the trial court;
- Respondent tried to shift the blame on complainant by claiming that the latter insisted on presenting his sister from Manila as their last witness. The truth was that complainant's sister had already testified and there was no more witness to present; and
- Respondent only attended one (1) hearing in the civil case.

In his answer,[2] dated September 3, 1997, respondent averred that the complaint filed against him was baseless and was purely malicious and speculative considering the fact that it was not made under oath. He alleged that complainant engaged his legal services after the first counsel had withdrawn from the case because of a misunderstanding with complainant. He stated that he had no knowledge of what had happened in the case before he handled it because complainant did not furnish him the records and stenographic notes of the previous proceedings despite his repeated requests. Respondent further claimed that he failed to formally offer the exhibits as evidence because complainant could not be reached when he was needed for conference and the latter even tried to take over the handling of the case by insisting on presenting more witnesses who nevertheless failed to

appear during trial despite several postponements.

The case was referred to the Office of the Bar Confidant (OBC), which submitted a report,[3] dated February 3, 2001, finding respondent guilty of violation of the Code of Professional Responsibility and recommending his suspension from the practice of law for one (1) month.

Thereafter, the Court referred the case to the Integrated Bar of the Philippines (IBP), which in its report and recommendation, dated October 15, 2001, found respondent remiss in observing the standard care, diligence and competence prescribed for members of the bar in the performance of their professional duties. The IBP Investigating Commissioner recommended that respondent be suspended from the practice of law for a period of six (6) months with warning that the commission of the same or similar offenses will be dealt with more severely in the future.[4] The report and recommendation of the Investigating Commissioner was approved on June 29, 2002 by the IBP Board of Governors.[5]

Respondent filed a motion for reconsideration, dated September 17, 2002, alleging that the Court should not have taken cognizance of the complaint because it was not verified. According to him, the complaint was a mere political ploy to discredit him because he was aspiring for a congressional seat in the 1998 elections. He denied complainant's claim that he attended only one hearing. He explained that he was not able to terminate his presentation of evidence because complainant insisted on presenting as witness his sister who was residing in Manila, even though the latter repeatedly failed to appear in court despite several postponements. He claimed that complainant had told him that his intention was really to delay the case as he was using the same as his leverage in a criminal case filed or to be filed against him by the Bacolod City Water District for his alleged water tapping. When he refused to go along with the scheme, complainant allegedly threatened to change counsel. Respondent further alleged that complainant's attitude is apparent from the fact that the latter caused to be disseminated several copies of the IBP Resolution recommending his (respondent's) suspension and distributed them to radio stations in Bacolod City. For these reasons, respondent sought the reversal of the IBP Resolution.[6]

After review of the records of this case, the Court finds the report of the Investigating Commissioner of the IBP to be well taken. The records clearly show that respondent has been negligent in the performance of his duties as complainant's counsel. His failure to file his formal offer of exhibits constitutes inexcusable negligence as it proved fatal to the cause of his client since it led to the dismissal of the case. To compound his inefficiency, respondent filed a motion for reconsideration outside the reglementary period, which was thus accordingly denied by the trial court for being filed out of time. Hence, the order issued by the trial court dismissing the case became final. Respondent's acts and omission clearly constitute violation of the Code of Professional Responsibility which provides in pertinent parts:

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.

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.

As this Court has held:

A counsel must constantly keep in mind that his actions or omissions, even malfeasance or nonfeasance, would be binding on his client. Verily, a lawyer owes to the client the exercise of utmost prudence and capability in that representation. Lawyers are expected to be acquainted with the rudiments of law and legal procedure, and

anyone who deals with them 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.[7]

Respondent's attempt to evade responsibility by shifting the blame on complainant is apparent. His averment that complainant failed to turn over to him the records and stenographic notes of the case only highlights his incompetence and inadequacy in handling complainant's case. Considering that respondent has been practicing law for almost 15 years, he should have known that he could easily obtain a copy of the records and stenographic notes from the court where the case was docketed.

Respondent likewise refers to the alleged obnoxious attitude of complainant in trying to manipulate the manner in which he was handling the case as the main reason for his failure to formally offer his exhibits in contravention of the order of the court. But respondent should bear in mind that while a lawyer owes utmost zeal and devotion to the interest of his client, he also has the responsibility of employing only fair and honest means to attain the lawful objectives of his client and he should not allow the latter to dictate the procedure in handling the case.[8] As this Court said in another case:

A lawyer owes entire devotion in protecting the interest of his client, warmth and zeal in the defense of his rights. He must use all his learning and ability to the end that nothing can be taken or withheld from his client except in accordance with the law. He must present every remedy or defense within the authority of the law in support of his client's cause, regardless of his own personal views. In the full discharge of his duties to his client, the lawyer should not be afraid of the possibility that he may displease the judge or the general public.[9]

As to the contention of respondent that the Court should not have taken cognizance of the complaint because the letter-complaint was not verified, as required in Rule 139-B, §1 of the Rules of Court on Disbarment and Discipline of Attorneys,[10] suffice it to say that such constitutes only a formal defect and does not affect the jurisdiction of the Court over the subject matter of the complaint. "The verification is merely a formal requirement intended to secure an assurance that matters which are alleged are true and correct — the court may simply order the correction of unverified pleadings or act on it and waive strict compliance with the rules in order that the ends of justice may be served." [11]

However, instead of suspension for six (6) months as recommended by the IBP Investigating Commissioner, we hold that the suspension of respondent Atty. Reynaldo Novero, Jr. for one (1) month, as recommended by the Office of the Bar Confidant, would be commensurate considering that this is the first time Atty. Novero is found guilty of neglect of his client's case.

WHEREFORE, in view of the foregoing, Atty. Reynaldo Novero, Jr. is **SUSPENDED** from the practice of law for one (1) month effective upon finality hereof with **WARNING** that a repetition of the same negligent act charged in this complaint will be dealt with even more severely.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Austria-Martinez, and Callejo, Sr., JJ., concur.

[*] Date of promulgation changed.

[1] Rollo, pp. 3-4.

[2] Id., pp. 8-11.

[3]Id., pp. 29-32.

[4] Report and Recommendation of the Investigating Commissioner, pp. 5-6.

[5] IBP Resolution No. XV-2002-247.

[6] Motion for Reconsideration, pp. 1-6.

[7] Torres v. Orden, 330 SCRA 1, 5 (2000).

[8] Code of Professional Responsibility, Canon 19, Rule 19.01 & 19.03.

[9] Reontoy v. Ibadlit, 285 SCRA 89, 90-91 (1998).

[10]SECTION 1. How instituted. — Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court motu proprio, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. . . .

[11] Hontiveros v. Regional Trial Court, Br. 25, Iloilo City, 309 SCRA 340, 352 (1999).

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