

CRAIG L. FORD, COMPLAINANT, VS. ATTY. ESCOLASTICO DAITOL, RESPONDENT.

Adm. Case No. 3736. November 16, 1995

Ponente: FELICIANO, J.

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FELICIANO, J.:

Respondent Atty. Escolastico Daitol seeks the reconsideration of IBP Resolution No. XI-95-255 dated 18 February 1995 recommending his suspension from the practice of law for a period of one (1) month after he was found to have been remiss in the performance of his duties as counsel of complainant Craig L. Ford.

Some time in 1987, complainant Ford engaged the legal services of respondent Daitol in connection with Civil Case No. CEB-5552 filed by the former against the Philippine Commercial International Bank ("PCIB") in the Regional Trial Court ("RTC"), Branch XV of Cebu City. After trial, the RTC rendered judgment in favor of complainant. PCIB thereupon appealed said judgment to the Court of Appeals ("CA"). After PCIB had filed its appellant's brief, the CA directed complainant to file his appellee's brief. Despite several inquiries by complainant about the status of the brief and reminders from him to file the same, respondent never filed the appellee's brief with the CA.

On 29 April 1991, complainant learned from respondent that the CA had issued a resolution dated 4 March 1991 stating that the case had been submitted for decision without the appellee's brief. Aggrieved by respondent's omission and apprehensive that such failure might prejudice his case, complainant lodged a complaint dated 6 May 1991 against respondent before the Cebu City Chapter of the Integrated Bar of the Philippines ("IBP"). Respondent did not file an answer to the complaint. The IBP-Cebu City Chapter forwarded the case to the IBP office in Manila.

Complainant also filed a letter-complaint in the Court praying that disciplinary action be taken against respondent. In his answer, respondent admitted that he was the counsel of complainant in Civil Case No. CEB-5552 and that he had also entered his appearance as such in the CA. However, before he could finish the draft of the appellee's brief, complainant allegedly terminated his services due to "various difficulties and misunderstanding" between them. Complainant denied this allegation stating that he had already advanced an amount of P600.00 as attorney's fees to respondent who had assured him that he was preparing the appellee's brief.

In a Resolution dated 28 September 1992, the Court referred the case to the IBP for investigation, report and recommendation.

During the hearings conducted by the Commission on Bar Discipline of the IBP, respondent did not show up and did not submit any explanation for his failure to file the appellee's brief. Twice respondent moved to postpone the scheduled hearings claiming, inter alia, lack of money for his trip to Manila. He moved to transfer the venue of the hearings to Cebu City but the Commission denied the motion in its Order dated 22 September 1993 holding that there were no compelling reasons therefor and not all the parties agreed to such transfer. In lieu of his personal appearance before the Commission, respondent was directed to submit by mail his affidavit and to attach

thereto his evidence to rebut the charge of complainant. Respondent did not submit any such evidence. The Commission then considered him to have waived his right to present evidence on his behalf.

The Commission found respondent to have been remiss in the performance of his duties as counsel of complainant. Respondent was particularly faulted for his failure to secure a written discharge from complainant before considering himself relieved of his duty to file the appellee's brief. Accordingly, the Commission recommended to the Board of Governors of the IBP respondent's suspension from the practice of law for a period of one (1) month. In its Resolution No. XI-95-255 dated 18 February 1995, the Board of Governors of the IBP adopted and approved the recommendation of the Commission.

The above resolution of the IBP as well as respondent's motion for reconsideration thereof were forwarded to the Court for its final action pursuant to Section 12(b), Rule 139-B of the Rules of Court, the recommended penalty being suspension from the practice of law.

In his motion for reconsideration, respondent claims that the Report of the Investigating Commissioner, which was made the basis of the IBP Resolution, was rendered ex-parte and that he was not allowed to present evidence on his behalf. Respondent claims that he has evidence to show that complainant had discharged him as counsel.

Respondent has no cause to complain since the Commission had given him ample opportunity to submit his affidavit and supporting documents. The Order of the Commission dated 22 September 1993 denying respondent's motion to change venue stated that:

"x x x It could be in the best interest of justice that IBP main office hold a marathon hearing in Manila for one day for complainant and respondent to present their witnesses and evidence, making it worthwhile for both parties as to one trip. No postponements would be allowed. Any absence would be deemed a waiver of right to present evidence. If any of the parties cannot appear, they are directed to mail their affidavits, evidence and certified true copies which will be included as evidence."

On 23 February 1994, the Commission issued another Order stating that:

"In order to give respondent an opportunity to present evidence, the Commission hereby directs respondent within fifteen (15) days from receipt of this order to mail directly to the Commission any documentary evidence to disprove the complaint with respect to the following matters: a) that respondent, despite the fact that he agreed, failed to file appellee's brief on behalf of Craig Ford with the Court of Appeals; and b) respondent received money in the amount of P600.00 for preparation of said brief.

The last opportunity for respondent to present evidence in his own behalf whether personally, by deposition, or by mailing certified true copies of documentary exhibits, shall be set for April 13, 1994 at 10:00 a.m. Should the respondent fail to appear, the case shall be considered submitted for resolution."

Since respondent still failed to submit his evidence, if any, despite said Orders, the Commission declared that he had waived his right to present evidence on his behalf and regarded the case as submitted for resolution on the basis of evidence already of record.

After careful consideration of the records of the case, the Court finds that the suspension of respondent from the practice of law is proper. The Court agrees with the IBP that respondent had been remiss in the performance of his duties as counsel for complainant. A lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence. In failing to file the appellee's brief on behalf of his client, respondent had fallen far short of his duties as counsel as set forth in Rule 12.04, Canon 12 of the Code of Professional Responsibility which exhorts every member of the Bar not to unduly delay a case and to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice. Rule 18.03, Canon 18

of the same Code also states that:

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

In *In re: Santiago F. Marcos*,^[1] the Court considered a lawyer's failure to file brief for his client as amounting to inexcusable negligence. The Court 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)" (Underscoring supplied)

It has been stressed that the determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion.^[2]

Having in mind the circumstances of this case and the existing case law of the Court, we consider that the recommended penalty of suspension from the practice of law for one (1) month is not commensurate with the respondent's breach of duty and must be adjusted upward.^[3] In previous cases, the Court has imposed for a lawyer's failure to file a brief or other pleading before an appellate court, suspension from the practice of law for three (3) months;^[4] six (6) months;^[5] and even disbarment in aggravated cases.^[6]

WHEREFORE, the Court Resolved to SUSPEND respondent Atty. Escolastico Daitol from the practice of law for a period of three (3) months, with a WARNING that repetition of the same or similar offense will be more severely dealt with. Respondent is also DIRECTED to return to complainant the amount of P600.00 which he had received as attorney's fees.

Let a copy of this Resolution be furnished, upon its finality, to the Integrated Bar of the Philippines and all the courts in the Philippines, and spread on the personal record of respondent lawyer in the Office of the Bar Confidant, Supreme Court of the Philippines.

Romero, Melo, Vitug, and Panganiban, JJ., concur.

[1] 156 SCRA 844 (1987).

[2] *Marcelo vs. Javier, Sr.*, 214 SCRA 1 (1992).

[3] This is not the first time that the Court does so. See, e.g., *Vda. de Alisbo vs. Jalandoon, Sr.*, 199 SCRA 321 (1991).

[4] *In re: Santiago F. Marcos*, 156 SCRA 844 (1987).

[5] *Guiang vs. Antonio*, 218 SCRA 381 (1993).

[6] *Mariveles vs. Mallari*, 219 SCRA 44 (1993).

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