

## SECOND DIVISION

[ A.C. No. 10117, July 25, 2016 ]

**IN RE: RESOLUTION DATED AUGUST 14, 2013 OF THE COURT OF APPEALS IN C.A. - GR.CV NO. 94656, VS. ATTY. GIDEON D.V. MORTEL, RESPONDENT.**

### R E S O L U T I O N

**LEONEN, J.:**

This resolves an administrative complaint charging respondent Atty. Gideon D.V. Mortel (Atty. Mortel) with disobedience or defiance of lawful court orders, amounting to gross misconduct and insubordination or disrespect.<sup>[1]</sup> The complaint arose from the proceedings before the Court of Appeals in *Bank of the Philippine Islands v. Angelita De Jesus, through her Attorney-in-Fact Jim Dulay*,<sup>[2]</sup> which Atty. Mortel handles.<sup>[3]</sup>

On July 20, 2010, the Court of Appeals issued a Notice<sup>[4]</sup> for Atty. Mortel to file an appellant's brief on behalf of his client, Angelita De Jesus,<sup>[5]</sup> within the reglementary period of 45 days from notice.<sup>[6]</sup>

Atty. Mortel recently moved out of his office at Herrera Tower, Makati City due to the high cost of maintenance.<sup>[7]</sup> Looking for a new office,<sup>[8]</sup> he requested to use the address of his friend's law firm as his address on record for *Bank of the Philippine Islands*.<sup>[9]</sup> Atty. Marcelino Ferdinand V. Jose (Atty. Jose), Managing Partner of MFV Jose Law Office, granted this request sometime in August 2010.<sup>[10]</sup> Atty. Mortel's address on record was then listed at Unit 2106, Philippine AXA Life Center, 1286 Sen. Gil Puyat Ave., Makati City,<sup>[11]</sup> the same address as MFV Jose Law Office.<sup>[12]</sup>

All communication, court orders, resolutions, notices, or other court processes addressed to MFV Jose Law Office were received by the law firm's staff.<sup>[13]</sup> The staff would pass these to the desk of Atty. Jose for monitoring and checking. Atty. Jose would then forward these to the handling lawyer in the office.<sup>[14]</sup> The law firm's messenger, Randy G. Lucero (Lucero), was tasked with informing Atty. Mortel whenever there was a resolution or order pertinent to *Bank of Philippine Islands*.<sup>[15]</sup>

*Bank of Philippine Islands* was not included in MFV Jose Law Office's list or inventory of cases.<sup>[16]</sup> Thus, Atty. Jose "simply attached a piece of paper with notation and instructions on the same, advising [Lucero] ... to forward it to Atty. Mortel."<sup>[17]</sup>

Initially, Randy De Leon (De Leon), Atty. Mortel's messenger, went to MFV Law Office to inquire if it had received notices for Atty. Mortel.<sup>[18]</sup> None came at that time.<sup>[19]</sup> Thus, De Leon left his number with Lucero, and the two messengers agreed that

Lucero would text De Leon should any court notice or order for Atty. Mortel arrive.  
[20]

On August 16, 2010, instead of heeding the Court of Appeals Notice to file the appellant's brief, Atty. Mortel moved to withdraw Angelita De Jesus' appeal<sup>[21]</sup> in light of an amicable settlement on the disputed property.<sup>[22]</sup> After the Motion to Withdraw Appeal was filed, he stopped communicating with MFV Law Office and instructed De Leon to do the same.<sup>[23]</sup>

In the Resolution dated September 20, 2010, the Court of Appeals directed Atty. Mortel to secure and submit Angelita De Jesus' written conformity to the Motion to Withdraw Appeal within five (5) days from notice.<sup>[24]</sup> Atty. Mortel did not comply.  
[25]

In the Resolution dated November 11, 2010, the Court of Appeals again directed Atty. Mortel to comply with the September 20, 2010 Resolution and warned him of disciplinary action should he fail to secure and submit Angelita De Jesus' written conformity to the Motion within the reglementary period.<sup>[26]</sup> Atty. Mortel did not comply.<sup>[27]</sup>

Thus, on February 23, 2011, the Court of Appeals resolved to "den[y] the motion to withdraw appeal; . . . reiterat[e] the notice dated July 20, 2010, directing [Angelita De Jesus] to file appellant's brief within . . . [45] days from notice; and . . . direc[t] Atty. Mortel to show cause why he should not be cited in contempt for non-compliance with [the Court of Appeals] order."<sup>[28]</sup>

The February 23, 2011 Resolution was sent to Angelita De Jesus' address on record, but it was returned with the notation "moved out" on the envelope.<sup>[29]</sup>

On March 28, 2011, the Court of Appeals resolved to direct Atty. Mortel to furnish it with Angelita De Jesus' present and complete address within 10 days from notice. Atty. Mortel did not comply.<sup>[30]</sup>

In the Resolution dated July 5, 2011, the Court of Appeals again ordered Atty. Mortel to inform it of Angelita De Jesus' address within 10 days from notice.<sup>[31]</sup> Atty. Mortel did not comply.<sup>[32]</sup>

In the Resolution dated October 13, 2011, the Court of Appeals directed Atty. Mortel, for the last time, to inform it of Angelita De Jesus' address within 10 days from notice.<sup>[33]</sup> Still, Atty. Mortel did not comply.<sup>[34]</sup>

In the Resolution dated January 10, 2012, the Court of Appeals ordered Atty. Mortel to show cause, within 15 days, why he should not be held in contempt for non-compliance with the Court of Appeals Resolutions.<sup>[35]</sup> Atty. Mortel ignored this.<sup>[36]</sup>

In the Resolution dated May 16, 2012, the Court of Appeals found Atty. Mortel liable for indirect contempt.<sup>[37]</sup> It ordered him to pay P10,000.00 as fine.<sup>[38]</sup> Atty. Mortel did not pay.<sup>[39]</sup>

On August 13, 2012, the Court of Appeals resolved to (1) again order Atty. Mortel to pay, within 10 days from notice, the fine of P10,000.00 imposed upon him under the May 16, 2012 Resolution;<sup>[40]</sup> (2) require Atty. Mortel to follow the July 5, 2011 and October 13, 2011 Resolutions that sought information from him as to his client's present address;<sup>[41]</sup> and (3) warn him that failure to comply with the Resolutions within the reglementary period will constrain the Court of Appeals "to impose a more severe sanction against him."<sup>[42]</sup> Atty. Mortel snubbed the directives.<sup>[43]</sup>

According to the Court of Appeals, the Cashier Division reported that Atty. Mortel still did not pay the fine imposed despite his receipt of the May 16, 2012, August 13, 2012, and October 17/2012 Resolutions.<sup>[44]</sup>

In the Resolution dated April 26, 2013, the Court of Appeals directed Atty. Mortel to show cause why it should not suspend him from legal practice for ignoring its May 16, 2012 Resolution (which fined him for P10,000.00).<sup>[45]</sup> The April 26, 2013 Resolution was sent to his address on record at Unit 2106, Philippine AXA Life Center, 1286 Sen. Gil Puyat Ave., Makati City,<sup>[46]</sup> as shown in the registry return card.<sup>[47]</sup>

Despite having ignored 11 Court of Appeals Resolutions,<sup>[48]</sup> Atty. Mortel did not show cause for him not to be suspended.<sup>[49]</sup> The Court of Appeals found that his "failure or obstinate refusal without justification or valid reason to comply with the [Court of Appeals'] directives constitutes disobedience or defiance of the lawful orders of [the Court of Appeals], amounting to gross misconduct and insubordination or disrespect."<sup>[50]</sup>

In the Resolution dated August 14, 2013, the Court of Appeals suspended Atty. Mortel from legal practice for six (6) months and gave him a stern warning against repeating his actions.<sup>[51]</sup> Atty. Mortel was also directed to comply with the previous Resolutions of the Court of Appeals. The dispositive portion of the Resolution reads:

**WHEREFORE,** Atty. Gideon D.V. Mortel, counsel for respondent-oppositor-appellant, is hereby **SUSPENDED** from the practice of law for a period of six (6) months effective from notice, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Further, Atty. Mortel is **DIRECTED** to comply with the May 16, 2012 *Resolution* and other related *Resolutions* issued by this Court within ten (10) days from notice hereof.

Let copies of this Resolution be furnished the Supreme Court for its information and appropriate action.

SO ORDERED.<sup>[52]</sup> (Emphasis in the original)

On October 2, 2013, pursuant to Rule 138, Section 29<sup>[53]</sup> of the Rules of Court, the Court of Appeals submitted before this Court a certified true copy of the August 14, 2013 Resolution, which suspended Atty. Mortel from legal practice, together with a statement of facts from which the suspension order was based.<sup>[54]</sup>

On October 23, 2013, the Office of the Bar Confidant issued a Report stating that it docketed the Court of Appeals' August 14, 2013 Resolution as a regular administrative case against Atty. Mortel.<sup>[55]</sup>

In the Resolution dated January 20, 2014, this Court noted and approved the administrative case, furnished Atty. Mortel a copy of the August 14, 2013 Resolution, and required him to comment within 10 days from notice.<sup>[56]</sup> This Court forwarded it to his address on record.<sup>[57]</sup>

On February 25, 2014, Atty. Jose read this Court's January 20, 2014<sup>[58]</sup> Resolution meant for Atty. Mortel,<sup>[59]</sup> and saw that Atty. Mortel had been suspended by the Court of Appeals.<sup>[60]</sup> He "immediately tried looking for Atty. Mortel's mobile number" to inform him of this development.<sup>[61]</sup> On the following day, he was able to reach Atty. Mortel through a mutual friend.<sup>[62]</sup>

Four (4) years passed since the Court of Appeals first sent a Resolution<sup>[63]</sup> to Atty. Mortel, through MFV Jose Law Office, in 2010. Atty. Jose asked Lucero, his messenger, why these Resolutions were not forwarded to Atty. Mortel.<sup>[64]</sup>

Lucero stated that he would usually text De Leon, Atty. Mortel's messenger, whenever there was an order or resolution pertinent to the case.<sup>[65]</sup> However, after a few messages, De Leon no longer texted back.<sup>[66]</sup> Lucero added that he "had no other way of finding [De Leon]" and knew nothing of De Leon's whereabouts.<sup>[67]</sup> He hoped that either Atty. Mortel or De Leon would pick up the mails sent by the Court of Appeals for Atty. Mortel.<sup>[68]</sup> Not knowing how to contact Atty. Mortel's messenger, Lucero simply kept the copies in the office racks or on his table.<sup>[69]</sup>

On March 5, 2014, Atty. Mortel filed before the Court of Appeals an

Omnibus Motion and Manifestation with Profuse Apologies.<sup>[70]</sup> He informed the Court of Appeals of his present address at No. 2806 Tower 2, Pioneer Highlands, Mandaluyong City.<sup>[71]</sup> He also prayed for (1) the reinstatement of the Motion to Withdraw Appeal, (2) the acceptance of his compliance with the September 20, 2010 and November 11, 2010 Resolutions of the Court of Appeals (which sought for his client's conformity to the Motion), (3) the grant of his Motion, and (4) the recall of all previous orders or resolutions of the Court of Appeals.<sup>[72]</sup>

In his Comment<sup>[73]</sup> dated March 7, 2014, Atty. Mortel argues that he honestly believed that the case was already closed and terminated in light of his Motion to Withdraw Appeal.<sup>[74]</sup> Atty. Mortel avers that "[h]e did not expect that a requirement of conformity of the client would be needed in as much as the act of counsel binds the client[.]"<sup>[75]</sup> According to him, the filing of a motion to withdraw appeal is a matter of right, which did not need his client's conformity.<sup>[76]</sup> Thus, he did not bother to visit MFV Jose Law Office again or send his messenger to check with the law firm if there were resolutions or orders for him.<sup>[77]</sup>

According to Atty. Mortel, the Court of Appeals Resolutions never reached him.<sup>[78]</sup> He interposes the defense of "sheer lack of or absence of knowledge ... as all Resolutions of the Court [of Appeals] were received by the messenger of MFV Jose Law Office but not forwarded to him."<sup>[79]</sup> Finally, he claims that he had no reason to refuse to comply, had he known of the orders or resolutions.<sup>[80]</sup>

In the Resolution<sup>[81]</sup> dated February 9, 2015, this Court noted Atty. Mortel's Comment and required the Sixth Division of the Court of Appeals Manila to file a reply "within 10 days from notice.

In the Resolution<sup>[82]</sup> dated May 30, 2016, this Court dispensed with the filing of the reply.

For resolution are the following issues:

First, whether there are grounds for this Court to probe into Atty. Marcelino Ferdinand V. Jose's possible administrative liability; and

Second, whether respondent Atty. Gideon D.V. Mortel should be imposed a disciplinary sanction.

## I

This Court has the authority to discipline an errant member of the bar.<sup>[83]</sup> Rule 139-B, Section 1 of the Rules of Court provides that "[proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*]." <sup>[84]</sup> However, the lawyer must have the "full opportunity upon reasonable notice to answer the charges against him [or her,] among others."<sup>[85]</sup> Thus:

### RULE 138 ATTORNEYS AND ADMISSION TO BAR

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SEC. 30. *Attorney to be heard before removal or suspension.* — No attorney shall be removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter *ex parte*.

Implicit in Atty. Jose and respondent's arrangement is that Atty. Jose would update respondent should there be any communication sent to respondent through his law firm, and that respondent would regularly check with the law firm if any court-delivered mail arrives for him.<sup>[86]</sup>

Yet, Atty. Jose failed to measure up to his part of the deal. He delegated everything to his messenger without adequately supervising him. All communication, court orders, resolutions, notices, or other court processes addressed to MFV Jose Law