

EN BANC

[A.C. No. 10138 (Formerly CBD Case No. 06-1876), June 16, 2015]

ROBERTO P. NONATO, COMPLAINANT, VS. ATTY. EUTQUIO M. FUDOLIN, JR., RESPONDENT.

DECISION

PER CURIAM:

We resolve the administrative complaint^[1] filed by Roberto P. Nonato (*complainant*) charging Atty. Eutiquio M. Fudolin, Jr. (*respondent*) with gross neglect of duty.

Factual Background

In a verified complaint dated October 18, 2006, the complainant alleged that his father, the late Restituto Nonato (*Restituto*), was the duly registered owner of a 479-sq.m. real property (*property*) at Hinigaran, Negros Occidental. The property became the subject of ejectment proceedings filed by Restituto against Anselmo Tubongbanua (*Anselmo*), before the Municipal Trial Court (*MTC*) of Hinigaran, Province of Negros Occidental, docketed as Civil Case No. MTC-282. When the complaint was filed, Restituto was represented by Atty. Felino Garcia (*Atty. Garcia*). However, at the pre-trial stage, Atty. Garcia was replaced by Atty. Fudolin, the respondent in the present case.

The complainant alleged that although his father Restituto paid the respondent his acceptance fees, no formal retainer agreement was executed. The respondent also did not issue any receipts for the acceptance fees paid.

The respondent, on the other hand, averred that Restituto, and not the complainant, engaged his services on Restituto's representation that they were relatives. For this reason, he accepted the case on a minimal acceptance fee of P20,000.00 and appearance fee of P1,000.00, and did not execute any formal retainer agreement.

The complainant asserted that during the pendency of the ejectment proceedings before the MTC, the respondent failed to fully inform his father Restituto of the status and developments in the case. Restituto could not contact the respondent despite his continued efforts. The respondent also failed to furnish Restituto copies of the pleadings, motions and other documents filed with the court. Thus, Restituto and the complainant were completely left in the dark regarding the status of their case.

After an exchange of initial pleadings in the ejectment proceedings, the MTC ordered the parties to submit their respective position papers. Since neither party complied with the court's directive, the MTC dismissed the complaint as well as the counterclaim on May 26, 2005.

The respondent filed a motion for reconsideration from the order of dismissal. He justified his failure to file the position paper by arguing that he misplaced the case records, adding that he was also burdened with numerous other cases. The MTC denied the motion.

The respondent filed a second motion for reconsideration, this time alleging that the ejectment case was a meritorious one such that its dismissal would cause injustice to Restituto (the plaintiff). He also filed a supplemental motion, but the court denied both motions.

On September 15, 2005, Restituto died and all his properties passed on to his heirs, the complainant among them.

The complainant alleges that he and his father Restituto did not know of the ejectment suit's dismissal as the respondent had failed to furnish them a copy of the MTC's dismissal order. The complainant also asserts that the respondent did not inform them about the filing of the motion for reconsideration or of its denial by the MTC. The complainant claims that he only found out that the case had been dismissed when he personally went to the Office of the MTC Clerk of Court and was informed of the dismissal.

Because of the patent negligence, the complainant informed the respondent that his failure to file the position paper could be a ground for his disbarment. Furthermore, the complainant, without the respondent's intervention, entered into an oral extrajudicial compromise with the daughter of defendant Anselmo.

On August 17, 2007, the respondent wrote the complainant and apologized for his repeated failure to communicate with him. He reasoned out that he failed to file the position paper due to his poor health. He also claimed that he had suffered a stroke and had become partially blind, which caused the delay in the preparation of the pleadings in the ejectment case.^[2]

In his Answer^[3] dated December 22, 2006, the respondent asserted that at the time he received the MTC's directive to submit a position paper, he was already suffering from "Hypertensive Cardiovascular Disease, Atrial Fibrillation, Intermittent, and Diabetes Mellitus Type II." The respondent also alleged that further consultations confirmed that he had an undetected stroke and arterial obstruction during the previous months. His health condition led to his loss of concentration in his cases and the loss of some of the case folders, among them the records of the ejectment case. The respondent also claimed that he focused on his health for self-preservation, and underwent vascular laboratory examinations; thus, he failed to communicate with the late Restituto and the complainant.

The respondent further averred that his failure to file the position paper in the ejectment proceedings was not due to willful negligence but to his undetected stroke. He never revealed the gravity of his illness to his clients or to the court out of fear that his disclosure would affect his private practice.

Lastly, the respondent alleged that after the ejectment suit's dismissal, he exerted all efforts, to the point of risking his poor health, by filing successive pleadings to

convince the court to reconsider its dismissal order. Because the dismissal was purely based on a technical ground, he maintained that his failure to file the position paper did not amount to the abandonment of his client's case.

The IBP's Report and Recommendation

IBP Investigating Commissioner Acerey C. Pacheco issued his Report and Recommendation, finding the respondent guilty of both negligence and betrayal of his client's confidence. The Investigating Commissioner found that the respondent's failure to file the position paper in the ejectment proceedings and to apprise the client of the status of the case demonstrated his negligence and lack of prudence in dealing with his clients.

The Investigating Commissioner likewise held that the respondent's failure to promptly inform his clients, including the complainant, of his medical condition deprived them of the opportunity to seek the services of other lawyers. Had he notified the complainant's father of his illness before the case was dismissed, the latter could have engaged the services of another lawyer, and the case would not have been dismissed on a mere technical ground.

The Investigating Commissioner recommended the respondent's suspension for one (1) month from the practice of law.

In a Resolution^[4] dated May 14, 2011, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation after finding it to be fully supported by the evidence on record and by the applicable laws and rules.

The complainant moved to reconsider the resolution but the IBP Board of Governors denied his motion in a resolution^[5] dated June 21, 2013.

The Issue

The issue in this case is whether or not the respondent could be held administratively liable for negligence in the performance of duty.

The Court's Ruling

Except for the recommended penalty, we adopt the findings of the IBP.

A lawyer is bound to protect his client's interests to the best of his ability and with utmost diligence.^[6] He should serve his client in a conscientious, diligent, and efficient manner; and provide the quality of service at least equal to that which he, himself, would expect from a competent lawyer in a similar situation. By consenting to be his client's counsel, a lawyer impliedly represents that he will exercise ordinary diligence or that reasonable degree of care and skill demanded by his profession, and his client may reasonably expect him to perform his obligations diligently.^[7] The failure to meet these standards warrants the imposition of disciplinary action.

In this case, the record clearly shows that the respondent has been remiss in the performance of his duties as Restituto's counsel. His inaction on the matters