

## FIRST DIVISION

[ A.C. No. 7771, April 06, 2011 ]

**PATRICIO GONE, COMPLAINANT, VS. ATTY. MACARIO GA,  
RESPONDENT.**

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

**PEREZ, J.:**

This case stemmed from the complaint for disciplinary action dated 23 October 1989 filed by Patricio Gone against Atty. Macario Ga before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP). The complaint was due to Atty. Ga's failure to reconstitute or turn over the records of the case in his possession. Complainant Gone reported that Atty. Ga is his counsel in NLRC Case No. RB-IV-2Q281-78 entitled "*Patricio Gone v. Solid Mills, Inc.*" The case was dismissed by the Labor Arbiter and was elevated to the National Labor Relations Commission (NLRC).

Complainant alleged that on 13 December 1983, the NLRC building in Intramuros, Manila was burned and among the records destroyed was his appealed case.

Complainant Gone further reported that as early as 8 March 1984, Atty. Ga had obtained a certification from the NLRC that the records of NLRC Case No. RB-IV-2Q281-78 were burned. Despite knowledge of the destruction of the records, Atty. Ga allegedly did not do anything to reconstitute the records of the appealed case.

On 9 September 1989, complainant allegedly sent a letter to Atty. Ga requesting him to return the records of the case in his possession. As of date of complaint, Atty. Ga has yet to turn over the records. Complainant submits that his counsel's continued refusal has caused great injustice to him and his family.<sup>[1]</sup>

On 16 February 1999, Commissioner Gonzales-delos Reyes, IBP Commission on Bar Discipline, issued an Order directing respondent Ga to file his answer on the complaint.<sup>[2]</sup>

In a letter dated 22 November 1999, Atty. Ga explained that as far as he could recall, during the pendency of their motion for reconsideration, the NLRC Office in Manila caught fire. Although worried of the records of their case, he was relieved when he received summons from the NLRC setting the case for hearing. It was unfortunate, however, that in the two scheduled hearings set by the NLRC herein complainant failed to appear. For such absence, the NLRC allegedly shelved their case.<sup>[3]</sup>

Atty. Ga averred that had it not been for the instant complaint, he would not have, as he never, heard from complainant Gone since 1984. What he was aware of was the latter's abandonment of his family way back in 1978. Complainant's wife is the

relative of Atty. Ga, being the daughter of his first cousin.<sup>[4]</sup>

The instant case was set for presentation of evidence on 17 January 2000. On said date, complainant appeared without counsel while respondent failed to appear.<sup>[5]</sup> Several hearings were set for the case but these were reset for failure of one or both of the parties to appear.<sup>[6]</sup>

In the hearing held on 19 June 2000, complainant appeared with counsel but respondent failed to appear despite notice. During that hearing, the Commissioner asked complainant if there was a possibility for the case to be settled amicably considering that respondent is a relative of his wife. The complainant answered in the affirmative and the case was reset to 24 July 2000. The two succeeding hearings scheduled by the Commissioner were again reset. On 10 November 2000, a hearing was conducted wherein respondent Ga appeared while complainant was absent despite notice. In view of the latter's absence, respondent Ga prayed for time to file a Motion to Dismiss.<sup>[7]</sup>

In his Motion to Dismiss dated 8 December 2000,<sup>[8]</sup> respondent Ga alleged that he had a heart to heart talk with complainant about his labor case and the latter may have already understood that it was not respondent's fault that the case was shelved by the NLRC. He averred that complainant may have already been dissuaded from pursuing the case, thus his absence in the hearing held on 10 November 2000. Nevertheless, if there is still hope for the case, he commits to help complainant by whatever means he can.

On 14 February 2007, Commissioner Marilyn S. Guzman, IBP Commission on Bar Discipline, submitted her report recommending that respondent Atty. Ga be censured for violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility.<sup>[9]</sup>

On 19 September 2007, the Board of Governors of the IBP adopted and approved with modification, the report and recommendation of the Investigating Commissioner.<sup>[10]</sup> Respondent Atty. Ga was censured for violation of Rule 18.03, Canon 18 of the Code of Professional Responsibility and was directed to reconstitute and turn over the records of the case to complainant, with stern warning that failure to do so would merit a stiffer penalty.

In a resolution dated 2 June 2008, the Office of the Bar Confidant and the IBP were directed to inform the Court if any motion for reconsideration was filed in the case. The IBP was further directed to confirm if respondent has complied with Resolution No. XVIII-2007-94 dated 19 September 2007 directing him to reconstitute and turn over the records of the case to complainant.<sup>[11]</sup>

In compliance with the resolution, the Office of the Bar Confidant reported that no motion for reconsideration or petition for review was filed by either party.<sup>[12]</sup>

The IBP Commission on Bar Discipline, for its part, reported that no motion for reconsideration was filed by either party and that respondent failed to comply with IBP Resolution No. XVIII-2007-94 dated 19 September 2007.<sup>[13]</sup>

Thus, on 2 September 2009, the Court issued a resolution requiring Atty. Ga to explain his failure to comply with IBP Resolution No. XVIII-2007-94.<sup>[14]</sup> Record of the instant case reveals that the resolution dated 2 September 2009 was received by Atty. Ga on 15 October 2009. To date, Atty. Ga has yet to comply with the resolution.

We agree with the findings and recommendation of the IBP. The Code of Professional Responsibility mandates lawyers to serve their clients with competence and diligence. Rule 18.03 and Rule 18.04 state:

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

Rule 18.04. A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Respondent Atty. Ga breached these duties when he failed to reconstitute or turn over the records of the case to his client, herein complainant Gone. His negligence manifests lack of competence and diligence required of every lawyer. His failure to comply with the request of his client was a gross betrayal of his fiduciary duty and a breach of the trust reposed upon him by his client. In the case of *Navarro v. Meneses*,<sup>[15]</sup> the Court held:

It is settled that a lawyer is not obliged to act as counsel for every person who may wish to become his client. He has the right to decline employment subject however, to the provision of Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of a client, he owes fidelity to such cause and must always be mindful of the trust and confidence reposed to him. Respondent Meneses, as counsel, had the obligation to inform his client of the status of the case and to respond within a reasonable time to his client's request for information. Respondent's failure to communicate with his client deliberately disregarding its request for an audience or conference is an unjustifiable denial of its right to be fully informed of the developments in and the status of its case.

Respondent's sentiments against complainant Gone is not a valid reason for him to renege on his obligation as a lawyer. The moment he agreed to handle the case, he was bound to give it his utmost attention, skill and competence. Public interest requires that he exerts his best efforts and all his learning and ability in defense of his client's cause. Those who perform that duty with diligence and candor not only safeguard the interests of the client, but also serve the ends of justice.<sup>[16]</sup> They do honor to the bar and help maintain the community's respect for the legal profession.<sup>[17]</sup>

If respondent believed that he will not be able to represent complainant effectively because of what the latter has done to his family, then he should have withdrawn