

## SECOND DIVISION

[ A.C. NO. 6986, March 06, 2006 ]

**JULIUS V. AGUSTIN, COMPLAINANT, VS. ATTY. ENRIQUE S. EMPLEO, RESPONDENT**

### D E C I S I O N

**GARCIA, J.:**

This is a complaint for disbarment<sup>[1]</sup> filed by complainant **Julius V. Agustin** against respondent **Atty. Enrique S. Empleo** for the latter's failure to comply with a court order while acting as the former's counsel, thereby resulting in the outright dismissal of a case and the complainant's counterclaim therein.

Records reveal that complainant was the defendant in *Civil Case No. B-259* for Forcible Entry with Preliminary Mandatory Injunction and Damages then pending before the 2<sup>nd</sup> Municipal Circuit Trial Court (MCTC), Bindoy, Negros Oriental, in which respondent was his counsel.

In the course of the proceedings in that case, the MCTC issued an Order on September 25, 1998,<sup>[2]</sup> giving the parties to the case a period of fifteen (15) days from receipt thereof within which to submit their compromise agreement or amicable settlement for the approval of the court.

With no compromise agreement having been submitted by the parties within the period thus given or thereafter, the MCTC, some four (4) years later, or on August 5, 2002, issued an Order<sup>[3]</sup> dismissing *Civil Case No. B-259* and the counterclaim therein for failure of the parties to prosecute.

Blaming his counsel for the dismissal of the case and his counterclaim therein, complainant filed on October 18, 2004, an administrative complaint against respondent with the Integrated Bar of the Philippines (IBP), thereat docketed as **CBD Case No. 04-1344**.

Acting on the complaint, the IBP Director for Bar Discipline, Atty. Rogelio A. Vinluan, required respondent to submit his answer thereto, otherwise he will be considered as in default and the case heard *ex-parte*.<sup>[4]</sup>

In his answer,<sup>[5]</sup> respondent admits having been complainant's counsel in *Civil Case No. B-259* and the dismissal of that case by the MCTC for the parties' failure to submit a compromise agreement. He explained, however, that the non-submission of the compromise agreement was due to complainant's own fault in not contacting him for the purpose of providing the details of said agreement, pointing out that counsels merely assist their clients and do not decide for them in a compromise agreement. Respondent likewise averred that complainant was not prejudiced by the

dismissal of *Civil Case No. B-259* for the simple reason that the latter was no less the defendant therein and it was the plaintiff who failed to prosecute the case for a long period of time. In any event, respondent alleged that the instant administrative complaint is simply complainant's reaction to his letter dated June 15, 2004<sup>[6]</sup> relative to his (respondent's) act of having withdrawn as complainant's counsel in a different case pending before another court.

Complainant, in his Reply-Affidavit,<sup>[7]</sup> countered that he contacted respondent several times regarding the submission of the compromise agreement in *Civil Case No. B-259*. The first was on October 20, 1999 at respondent's residence as the latter was not at his office at that time, in compliance with respondent's letter requesting to see him. The second was on April 19, 2000 when complainant went to respondent's office on account of another case, and there reminded the latter as to the compromise agreement but respondent just made the assurance that he will be the one to make the draft and/or prepare the same. The third was on January 12, 2001, again at the respondent's office where, after being reminded as to the compromise agreement, respondent told him not to be in a hurry because the court can wait for the compromise agreement and besides he is quite busy with other court cases. Denying that the administrative complaint is his reaction to respondent's letter dated June 15, 2004, complainant asserted that said letter concerns another case in connection with which he is preparing another administrative case against respondent.

In his Rejoinder,<sup>[8]</sup> respondent denied that complainant contacted and reminded him about the subject compromise agreement, averring that any communication that has happened between him and the complainant pertains to another case. Respondent further averred that complainant is merely attempting to besmirch his unsullied reputation as a legal practitioner since 1975.

After the termination of the mandatory preliminary conference, the parties were required to submit their respective position papers with documentary exhibits and affidavits of witnesses, if any, within twenty (20) days from notice, after which the case shall be submitted for resolution.<sup>[9]</sup>

Eventually, on July 26, 2005, the IBP Investigating Commissioner, Acerey C. Pacheco, submitted his Report and Recommendation.<sup>[10]</sup> Said the Commissioner in his report:

It is a fact as established by the records that no compromise agreement was submitted to the court despite the receipt of the Order dated September 25, 1998. While it is true that as counsel, respondent do not decide for the complainant to enter into such kind of agreement, respondent is however, duty bound to assist the court in the speedy disposition of cases.

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Respondent's asseveration that he waited for the complainant to provide him with details of the compromise agreement but the latter failed to come does not inspire belief in the face of the denials made by the complainant. Not even a piece of paper or letter requesting the