

THIRD DIVISION

[A.C. NO. 4285, May 02, 2006]

FLORENCIA M. SOMOSOT, COMPLAINANT, VS. ATTY. ELIAS A. PONTEVEDRA, RESPONDENT.

RESOLUTION

QUISUMBING, J.:

On July 28, 1994, complainant Florencia M. Somosot (now deceased) filed a verified complaint^[1] against respondent Atty. Elias A. Pontevedra for neglect of duty and for professional misconduct for unlawfully keeping money belonging to her.

It appears that complainant was one of the plaintiffs in Civil Case No. X-98, for reconveyance and recovery of possession, pending before the Regional Trial Court of Negros Occidental, Branch 59, San Carlos City. Respondent was complainant's counsel of record.

On January 15, 1991, the trial court ordered the parties to submit their respective memoranda since the case that had been pending for already twenty-three years.^[2] Although the trial court apprised the parties of the importance of their memoranda to the resolution of the complex case, both of the parties' counsels did not comply with the order. Thus, on November 12, 1991, the trial court reiterated the order, giving the parties a fresh period of 15 days within which to comply.^[3]

Complainant repeatedly reminded respondent about the deadline, but respondent still failed to file a memorandum. Instead, respondent allegedly entered into an oral agreement with the opposing counsel that they would both forego with the filing of the memorandum.^[4]

After almost two years, complainant's daughter, Wilma S. Pones, sent respondent a money order for P1,000 as payment for the preparation of the memorandum.^[5] Since the period for filing had already lapsed, respondent took no action on complainant's request. Neither did he present the money order to the post office for payment.^[6] Complainant later learned that the case had been submitted for decision without any memoranda. She asked for a certification to this effect from the trial court, then sent a letter to respondent through Wilma Pones asking respondent to return the money and explain the certification.^[7] Respondent ignored her request. Thus, complainant filed the instant case.

On August 22, 1994, we required respondent to file his comment. Respondent manifested that he had earlier filed his comment and submitted additional copies of said comment.^[8]

On November 28, 1994, we noted respondent's comment and required complainant

to submit a reply. Upon the filing of complainant's reply, respondent filed a rejoinder.
[9]

Respondent, in the main, argued that his failure to prepare the memorandum was justified. He explained that complainant's family lawyer, Atty. Raymundo Ponteras, handled the prosecution of the case and the presentation of witnesses. Unfortunately, Atty. Ponteras died after the presentation of the last defense witness and his notes were lost. Complainant could not produce copies of the transcripts of stenographic notes while respondent's case folder were also lost by Atty. Ponteras who borrowed but failed to return it. Consequently, with nothing to aid him in the preparation of the memorandum, respondent was allegedly left with no recourse but simply to enter into an agreement with the opposing counsel to submit the case without memorandum.

On March 1, 1995, the Court referred the case to the Commission on Bar Discipline of the Integrated Bar of the Philippines for investigation, report and recommendation. Before the case could be heard, however, complainant died. Thus, the case was submitted for decision based on the records.

The core issue for our resolution is whether respondent violated the Canons of Professional Responsibility in failing to file the required memorandum in Civil Case No. X-98 and for keeping the money order despite complainant's request for its return.

In its Report and Recommendation dated January 5, 2004, the Commission found respondent liable for breach of his professional duties and recommended that respondent be reprimanded and warned. The Commission held that there was no sufficient justification for respondent's failure to file the memorandum. Regarding the money order, however, the Commission held that complainant's remedy was not to proceed administratively against respondent, who did not present the money order for payment, but to ask for a refund from the post office concerned.

On February 27, 2004, the Board of Governors of the Integrated Bar of the Philippines adopted the Report and Recommendation as follows:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's negligence in the performance of his professional duties towards his client, Atty. Elias Pontevedra is hereby **REPRIMANDED** and **Warned** that any similar or other complaint in the future for breach of his professional duties will be dealt with more severely.^[10]

We agree with the IBP that respondent should be appropriately sanctioned.

Canon 17 of the Code of Professional Responsibility provides that lawyers owe fidelity to the cause of their clients and must therefore be always mindful of the trust and confidence reposed in them. Under Canon 18, they are mandated to serve their clients with competence and diligence.^[11] Specifically, they are not to "neglect