

FIRST DIVISION

[A.C. No. 6295, April 14, 2004]

JOSEFINA B. FAJARDO, COMPLAINANT, VS. ATTY. DANILO DELA TORRE, RESPONDENT.

RESOLUTION

YNARES-SATIAGO, J.:

Complainant was the defendant in Civil Case No. 581 for Forcible Entry, entitled, "*Felisa Imperial versus Josefina Fajardo*", and the plaintiff in Civil Case No. 582 for Unlawful Detainer, entitled, "*Josefina B. Fajardo versus Felisa Imperial*." The cases were consolidated and tried jointly by the Municipal Trial Court of Ba-ao, Camarines Sur, which rendered judgment in favor of Imperial.^[1] Complainant's counsel, respondent herein, appealed to the Regional Trial Court of Iriga City, which affirmed the appealed decision.

Hence, complainant instructed respondent to file a petition for review with the Court of Appeals. Respondent demanded the amount of P4,300.00^[2] for the preparation and filing of the petition which complainant complied by remitting the amount to respondent.

It appears that the petition for review was later dismissed by the Court of Appeals on the grounds of insufficient payment of docket fees and failure to attach the certified true copy of the assailed decision. Complainant only learned of the resolution dismissing her petition when her opponent, Imperial, filed a motion for new trial attaching a copy thereof in the separate action filed by complainant with the RTC of Iriga City for recovery of possession.

Complainant thus filed a complaint charging respondent of "Gross Ignorance of the Law and Negligence in the Performance of Profession."^[3]

The Integrated Bar of the Philippines Commission on Bar Discipline directed respondent to answer the complaint. Despite receipt of the Order of the IBP-CBD, respondent failed to answer the Complaint.

Subsequently, the IBP Commission on Bar Discipline issued a Notice dated February 13, 2001^[4] setting the case for hearing on March 13, 2001. Again, despite receipt by respondent of the notice, he failed to appear at the scheduled hearing. Complainant was allowed to present her evidence ex parte.

On September 22, 2003, the IBP-CBD submitted its Report finding respondent liable as charged and recommending that he be fined P1,500.00 and suspended from the practice of law for a period ranging from four (4) to six (6) months. The IBP Board of Governors adopted the findings of the Investigating Commissioner but reduced the suspension to one (1) month.

While we agree with the finding that respondent is liable for negligence, we find inadequate the recommended period of suspension. Hence, we impose on respondent the penalty of suspension from the practice of law for a period of one (1) year.

In *Ingles v. Dela Serna*,^[5] it was held:

Complaints against lawyers for misconduct are normally addressed to the Court. If, at the outset, the Court finds the complaint to be clearly wanting in merit, it outrightly dismisses the case. If, however, the Court deems it necessary that further inquiry should be made, such as when the matter could not be resolved by merely evaluating the pleadings submitted, referral is made to the IBP for formal investigation of the case during which the parties are accorded an opportunity to be heard. An *ex parte* investigation may only be conducted **when respondent fails to appear despite reasonable notice**. Hereunder are some of the pertinent provisions of Rule 139-B of the Rules of Court on this matter, *viz*:

X X X X X X X X.

SEC. 8. *Investigation*. – Upon joinder of the issues **or upon failure of respondent to answer**, the Investigator shall, **with deliberate speed, proceed with the investigation of the case**. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witnesses on his behalf and be heard by himself and counsel. **However, if, upon reasonable notice, the respondent fails to appear, the investigation shall proceed *ex parte***.

The Investigator shall terminate the investigation within three (3) months from the date of its commencement, unless extended for good cause by the Board of Governors, upon prior application.

Willful failure or refusal to obey a subpoena or any other order issued by the Investigator shall be dealt with as for indirect contempt of Court. The corresponding charge shall be filed by the Investigator with the before the IBP Board of Governors which shall require the alleged contemnor to show cause within ten (10) days from notice. The IBP Board of Governors may thereafter conduct hearings, if necessary in accordance with the procedure set forth in this Rule for hearings set before the Investigator. Such hearing shall, as far as practicable, be terminated within fifteen (15) days from its commencement. Thereafter, the IBP Board of Governors shall within a like period of fifteen (15) days issue a resolution setting forth its findings and recommendations, which shall forthwith be transmitted to the Supreme Court for final action and if warranted, the imposition of the penalty.

The procedure outlined by the Rules are meant to ensure that the innocents are spared from wrongful condemnation and that only the guilty are meted their just due. **Obviously, these requirements are not to be taken lightly.** (Emphasis and italics supplied)

The records show that from the time respondent was directed to file his answer up to the time the IBP Board of Governors issued a Resolution adopting the recommendation of the Investigating Commissioner, nothing was heard from respondent despite due notice. Hence, he is deemed to have waived the opportunity to present witnesses on his behalf or to be heard by himself and counsel.

The records show that respondent asked for the amount of P4,300.00 for the preparation of the petition for review to be filed with the Court of Appeals, which amount was itemized as follows:

Postage	-	P 350.00
(bulky -21 copies plus annexes)		
Xerox copies (@ 500-		750.00
pages) (clear copy)		
Miscellaneous	-	200.00
Legal fees	-	P 3,000.00

		P4,300.00 ^[6]

However, the Resolution of the Court of Appeals which dismissed the petition reads:

Before Us is a Petition for Review filed on January 27, 2000. From the records, it appears that the said petition *is not sufficient in form*. **For one, the payment of the docketing fees remitted by the petitioner was for only P650.00, which is short by P280.00.** Likewise, the attached copy of the questioned RTC Decision dated December 15, 1999 is merely a plain photocopy, in violation of Sec. 2(d) of Rule 42 of the 1997 Rules of Court.

WHEREFORE, for violation of Sec. 1 and Sec. 2(d) in relation to Sec. 3 of Rule 42 of the 1997 Rules of Court, the instant petition is hereby **DISMISSED**.

SO ORDERED. (Emphasis and italics supplied)^[7]

Respondent was not only remiss in the preparation of the petition, but may have misappropriated a portion of the sum remitted to him by complainant for the purpose of filing the petition because the docketing fees he remitted was short of P280.00. What is worse is that respondent failed to inform complainant of the actual status of the appeal. Such behavior cannot and should not be countenanced because they run afoul with the following provisions of the Code of Professional Responsibility:

CANON 15. – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.