

## **SECOND DIVISION**

**[ A.C. No. 5854 [Formerly CBD Case No. 02-951],  
September 30, 2003 ]**

**NORA E. MIWA COMPLAINANT, VS. ATTY. RENE O. MEDINA,  
RESPONDENT.**

### **RESOLUTION**

**QUISUMBING, J.:**

In a verified complaint<sup>[1]</sup> dated March 20, 2002, filed before the Committee on Bar Discipline of the Integrated Bar of the Philippines (IBP), complainant Nora E. Miwa seeks the disbarment or suspension from law practice of respondent, Atty. Rene O. Medina, for gross negligence in the handling of her case. Complainant alleges that Atty. Medina's negligent and deceitful conduct effectively deprived her of a day in court, as a result of which she lost her case and her property taken by order of the court. More specifically, Atty. Medina stands charged in CBD Case No. 02-951 with violating the Attorney's Oath as well as Canons 2,<sup>[2]</sup> 10,<sup>[3]</sup> 12,<sup>[4]</sup> and 18<sup>[5]</sup> of the Code of Professional Responsibility.

The facts, as gleaned from the record, are as follows:

On April 2, 1998, Nora E. Miwa was named as defendant in Civil Case No. 5147 for quieting of title, recovery of possession, and damages before the Regional Trial Court of Surigao City, Branch 29.

On August 24, 1998, Miwa secured respondent's services as her counsel in Civil Case No. 5147.

On September 14, 1998, respondent herein filed Miwa's answer to the complaint in Civil Case No. 5147.

In its order dated December 18, 1998, the RTC set the pre-trial conference for February 8, 1999. The scheduled pre-trial conference, however, did not push through as herein respondent failed to receive notice therefor. Hence, the RTC reset the pre-trial to March 26, 1999.

On February 26, 1999, respondent filed his pre-trial brief.

However, no pre-trial conference was actually held at all. As explained by the trial court:

Pre-trial was scheduled several times and the records would show that at no single instance did the defendant, herself appeared (sic) despite the fact that she was sent notices for all and every scheduled hearing at her address thru registered mail. Due to the fact that pre-trial conference

could not be conducted on several occasions, pre-trial was terminated on October 22, 1999 by then Acting Presiding Judge Diomedes M. Eviota.<sup>[6]</sup>

Trial on the merits then proceeded until the plaintiffs in Civil Case No. 5147 rested their case. During the trial, the RTC made the following observations:

When it was the defendant's turn to present her evidence, several postponements were asked for that this Court on November 22, 2000 ordered the defendant to reimburse the plaintiffs P10,000.00 for the transportation expenses and appearance fee of plaintiff's counsel. (That order is until now ignored despite efforts by this Court to effect the same as per Sheriff's return dated March 23, 2001.) In an Order of this Court dated April 2, 2001, the defendant was deemed to have waived her right to present her evidence and her counsel was fined P500.00.<sup>[7]</sup>

Miwa, through counsel, moved for reconsideration of the trial court's order of April 2, 2001. Respondent also moved to withdraw as counsel for Miwa. The trial court denied both motions in its order of June 21, 2001. The trial court noted that:

If as alleged, counsel has not received the Order of this Court directing waiver on the part of the defendant to present evidence, why file the instant motion to reconsider said Order? The Order was dated April 2, 2001 and was received by defendant's counsel, according to the records, on April 20, 2001. Yet he filed this Motion after the lapse of 40 days.

Besides, the Order of this Court dated April 2, 2001 sought to be reconsidered is a mere consequence (of) the non-appearance of defendant and her counsel, without explanation nor excuse on the scheduled hearing on even date. The notice of hearing on said date was received by the movant on February 19, 2001. Yet he did not bother to move for postponement. Her counsel could not have been very busy in his role as campaign manager of LAKAS-NUCD for the election period commenced on March 31, 2001. Unless, of course, counsel admits that he had been busy campaigning prior to the campaign period allowed by law. He had sufficient time from February 19 to March 31, 2001 to inform this Court. Yet he did not bother to do so. He just ignored the lawful orders of this Court when as a lawyer and an officer of this Court, his first priority is his duties before the courts of law.

Furthermore, the instant case had been, on motion of the defendant, postponed twice. As a matter of fact, in the Order of this Court dated November 22, 2000, then Acting Presiding Judge Diomedes M. Eviota had ordered defendant to pay reimbursement of P10,000.00 for the transportation expenses and appearance fee of Atty. Durante, plaintiffs' counsel, for filing a Motion for Postponement only a day prior to the hearing and was admonished to make timely motion for postponement. The records would indubitably show that he received the Order setting the hearing for November 22, 2000 on October 9, 2000. With due diligence, counsel could have filed his motion for postponement several days prior to the scheduled hearing so as not to cause inconvenience to the other party and as a matter of professional courtesy to the opposing counsel of record. Yet, he did not bother to do so.<sup>[8]</sup>

In denying respondent's motion to withdraw as counsel, the trial court ratiocinated:

Defendant's counsel further alleged that the defendant had already severed their client-lawyer relationship. Again this is a denial pregnant with admission indicating falsity. If it were true, then counsel (has) no personality whatsoever to file the instant Motion for and in behalf of the defendant. In effect, this Motion is a mere scrap of paper if the same were true.

On the other hand, only on May 30, 2001 has this Court been informed of such termination of client-lawyer relationship. Prior to that, Atty. Medina is still counsel on record of the defendant and has the duty to inform his client of lawful orders of this Court. For notice to counsel is notice to party.

Moreover, it is alleged in his Motion that the defendant "has retained the services of another lawyer to appear for her in another case before the Municipal Trial Court of Surigao City." That was another case before the MTC, not necessarily in this case before (the) RTC. When such client-lawyer relationship was terminated is not all too clear. The date is important for notice to counsel on record is notice to the party.<sup>[9]</sup>

On August 6, 2001, the RTC rendered judgment in Civil Case No. 5147 declaring the plaintiff the absolute owner of the property, ordered Miwa to vacate and deliver possession of the lot, demolish and remove all structures built therein, and pay the plaintiff exemplary damages, attorney's fees, and the costs of suit.

Hence, the filing of the instant complaint before the IBP Committee on Bar Discipline, with complainant Miwa alleging that respondent:

- (a) failed to give importance to his office as a lawyer and officer of the court by failing to appear three (3) times on scheduled hearings, thus resulting in the trial court's ruling that she had waived her right to present her evidence;
- (b) showed grave disrespect to the court and utter ignorance of the Rules of Court by filing a motion for postponement only one (1) day before a scheduled hearing;
- (c) exhibited gross negligence and brazen omission of his duties, by filing a motion for reconsideration and motion to withdraw as counsel forty (40) days too late, despite knowing that the reglementary period for filing a motion to reconsider is fifteen (15) days from receipt of the order.

In his answer to the complaint, respondent stated that whatever lapses and negligence he might have committed were never intentional but were due to the heavy burden he shouldered as a campaign manager of LAKAS-NUCD. Respondent likewise signified his willingness to face sanctions for the lapses and negligence on his part.

On August 3, 2002, the Board of Governors of the IBP passed Resolution No. XV-2002-459 disposing of CBD Case No. 02-951 as follows: