



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 14-2004

TO : THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT : IMPOSING A FINE TO ATTY. JERRY D. BAÑARES

For the information and guidance of all concerned, quoted hereunder is the Decision of the Court En Banc dated 3 March 2003 in Administrative Case No. 5922, to wit:

¹ The instant administrative case arose from a complaint filed on August 8, 2001 with the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines by Capt. Keith C. Hummel against Atty. Jerry D. Bañares seeking his disbarment or suspension from the practice of law.

The complaint¹ alleges that: sometime in July 2000, complainant Hummel engaged the services of respondent Bañares for the purpose of representing him in an action which he intends to file against his lessor for the injury he sustained as a result of electrocution inside his rented apartment unit; on August 1, 2000, complainant paid respondent P20,000.00 as the latter's acceptance fee; on August 12, 2000 complainant acceded to respondent's request for the payment of P60,000.00 for alleged filing and docket fees; despite receipt of the total amount of P80,000.00, respondent filed as action for damages only on December 29, 2000 with the Regional Trial Court of Parañaque, entitled "Capt. Keith C. Hummel, Plaintiff, vs. Ms. Eloisa M. Mercado, Defendant." and docketed as Civil Case No. CV-00-0516; the actual filing and docket fees amounted only to P5,392.75; on January 9, 2001, the complaint was dismissed by the trial court due to defects in the complaint consisting in the date of the jurat preceding the date of the complaint and the absence of the affiant's Community Tax Certificate Number as well as the place and date of issue of said Certificate which should

¹ Docketed as CBD Case No. 01-866.

appear in the jurat; complainant, through respondent, sought a reconsideration of the dismissal; on March 6, 2001, the trial court granted complainant's Ex-Parte Motion for Reconsideration to Reinstate Case and To Correct And/Or Amend Date of Complaint; as of the filing of the instant complaint on August 8, 2001, respondent has not yet filed an Amended Complaint in Civil Case No. CV-00-0516; despite respondent's receipt of the sum of P80,000.00, he failed to advise or inform complainant of the status of his case; complainant exerted efforts to find out the progress of his case from respondent but the latter refused to communicate with him.

In an Order, dated August 8, 2001,² the Commission required the respondent to submit his Answer to the complaint. On August 30, 2001, respondent filed a Very Urgent Motion for Extension of Time To Respond.³ On April 18, 2002, the Commission issued an Order setting the instant case for hearing on May 9, 2002, noting that as of even date no Answer has yet been submitted by the respondent.⁴

Despite due notice, both parties failed to appear on the date set for the hearing of the case. The case was reset for hearing on June 6, 2002 but the parties still failed to appear on said date.

In an Order dated June 6, 2002, the Commission required the parties to file their respective memoranda within 20 days from receipt of the said Order.⁵ The parties did not file their memoranda.

Subsequently, the Investigating Commissioner submitted her Report and Recommendation to the Board of Governors of the IBP, dated September 5, 2002, recommending that respondent Atty. Bañares be suspended from the practice of law for six months.

On October 19, 2002, the Board of Governors passed Resolution No. XV-2002-587 adopting and approving the Report and Recommendation of the Investigating Commissioner.

On December 5, 2002, the Office of the Bar Confidant, Supreme Court received the records of the instant case together with a Notice of the above-cited resolution and a copy of the Report and Recommendation of the Investigating Commissioner.

We find no basis to hold respondent administratively liable for not having filed another complaint for damages even after the lapse of five months from the issuance of the Order of the Regional Trial Court of Parañaque (Branch 274), dated March 6, 2001. Said Order reads as follows:

² *Id.*, p. 12.

³ *Id.*, p. 13.

⁴ *Id.*, p. 15.

⁵ *Id.*, p. 17.

“Acting on the Ex-Parte Motion for Reconsideration To Reinstate Case, And To Correct And/Or Amend Date Of Complaint filed by the plaintiff, through his counsel, the same is RECONSIDERED in the sense that the dismissal is WITHOUT PREJUDICE.

“SO ORDERED.”

It is clear from the above-quoted Order that the complaint for damages filed by Hummel was not reinstated but the trial court dismissed it without prejudice. Since the dismissal is “without prejudice”, the complaint may be filed anew, provided that the filing is made within the prescriptive period provided under the Civil Code. Article 1146 of the said Code provides that an action upon an injury to the rights of the plaintiff or upon a quasi-delict must be instituted within four years from the time the right of action accrues. Based on the complaint filed by Hummel with the RTC of Parañaque, his right of action accrued when he sustained injuries on April 2, 2000. Hence, an action for damages based on the said injuries shall prescribe on April 2, 2004.

No evidence was presented to show that after the dismissal of Civil Case No. 00-0516, there was an agreement between respondent and the complainant for the filing of another complaint based on the same cause of action. Since the period for filing an action for damages has not yet prescribed, we find no reason to hold respondent administratively liable for not filing such complaint.

Nonetheless, under the existing facts and circumstances, we find respondent guilty of negligence for his failure to communicate with his client and give him an update on the status of his case.

Canon 18 of the Code of Professional Responsibility requires that a lawyer should serve his client with competence and diligence. Rule 18.03 of the same Canon states that a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable. Moreover, Rule 18.04 emphasizes the need for a lawyer to keep his client informed of the status of his case and to respond within a reasonable time to the client’s request for information. In the present case, respondent offered no excuse why he failed to update Hummel with respect to any development in his case or, at the least, to respond to his inquiries. This is a manifestation of his lack of devotion to the interest of his client as expected of him under his oath as a lawyer.

He was given numerous opportunities by CBD to refute the accusations hurled against him by the complainant, and thus clear his name, but he chose to remain silent, evasive and even defiant of the orders issued by CBD. The failure of the respondent to file his Answer despite the lapse of considerable length of time, his stubborn refusal to file a Memorandum and his unexplained absences during

the hearings set by CBD despite due notice, is clear evidence of negligence, inattention and carelessness on his part.

THE CBD recommends the suspension of respondent from the practice of law for six months. However, we have previously held that to warrant suspension or disbarment, the negligence or carelessness of a counsel in the performance of his duty should not only be gross in character but should have caused material prejudice to the client's interest as well.⁶ Mere negligence or inattention which produces no pecuniary damage to the client may only justify reprimand or censure.⁷ Since the complainant in the present case did not sustain any pecuniary damage by reason of respondent's failure to communicate to him the status of his case, we find the recommended suspension of respondent from the practice of law for a period of six months to be too harsh a penalty. In *Alcala vs. De Vera*,⁸ we reiterated our ruling in *In Re Macdougall*⁹ that:

“The profession of an attorney is acquired after long and laborious study. It is a lifetime profession. By years of patience, zeal, and ability, the attorney may have acquired a fixed means of support for himself and family, of great pecuniary value, and the deprivation of which would result in irreparable injury.

Nonetheless, our pronouncement in these cases does not mean that we are letting the respondent go scot-free. His disregard of his duty as the counsel of complainant certainly deserves some form of disciplinary measure from us. Accordingly, a fine of P15,000.00 is commensurate and sufficient sanction for the negligence of respondent.

We find no basis to hold the respondent liable with respect to the sums of money allegedly extracted by him from the complainant because the complainant did not present any evidence to prove the same.

WHEREFORE, respondent Atty. Jerry D. Bañares is found guilty of negligence (1) for his failure to inform his client or to respond to his inquiries regarding the status of his case; and (2) for his contumacious disregard of the Orders issued by the Commission on Bar Discipline of the Integrated Bar of the Philippines. He is fined P15,000.00 with a STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely.

Let a copy of this Resolution be attached to the personal records of Atty. Bañares in the Office of the Bar Confidant and

⁶ *Legal Ethics by Agpalo, Fourth Edition (1989)*, citing: *In re Oliva*, 103 Phil 312 (1958); *Alcala vs. De Vera*, 155 Phil 33 (1974); *Bautista vs. Ydia*, G.R. Adm. Case No. 1270, Feb. 27, 1976; *In re Tionko*, 43 Phil 191 (1922).

⁷ *Alcala vs. De Vera*, supra.

⁸ *Id.*

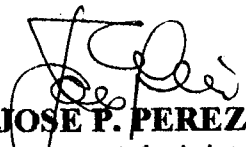
⁹ 3 Phil 70.

copies thereof be furnished the courts and the Integrated Bar of the Philippines.

SO ORDERED.

Pursuant to the resolution dated December 8, 2003, the resolution of 3 March 2003 was deemed served on respondent by substituted service pursuant to Sec. 8, Rule 13 of the 1997 Rules of Civil Procedure, as amended.

30 January 2004.


JOSE P. PEREZ
Acting Court Administrator