Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

AUGUSTO P. BALDADO,
Complainant,

- *versus* -

ATTY. AQUILINO A. MEJICA,
Respondent.

A.C. No. 9120
[Formerly CBD Case No. 06-1783]

Present:

VELASCO, JR., *J.*, *Chairperson*,
PERALTA, *J.*,
ABAD,
MENDOZA, and
LEONEN, *JJ.*

Promulgated:

March 11, 2013

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D E C I S I O N

PERALTA, *J.*:

On July 17, 2006, complainant Augusto P. Baldado filed a Complaint with the Integrated Bar of the Philippines (IBP) Committee on Bar Discipline, charging respondent Atty. Aquilino A. Mejica with gross incompetence, gross negligence and gross ignorance of the law for his failure to render legal service to the complainant as mandated by Canon 17 and Canon 18, Rules 18.01, 18.02 and 18.03 of the Code of Professional Responsibility.

The facts are as follows:

Complainant Augusto P. Baldado was a former member of the *Sangguniang Bayan* of the Municipality of Sulat, Eastern Samar. He ran and won in the 2004 National and Local Elections.

Florentino C. Nival, a losing candidate during the said elections, filed a Petition for *Quo Warranto* with the Regional Trial Court (RTC) of Borongan, Eastern Samar against complainant, questioning his qualifications as a candidate, as he was allegedly an American citizen. The case was docketed as Civil Case No. 3900 and assigned to the RTC of Borongan, Eastern Samar, Branch 2 (*trial court*).

Complainant hired the legal services of respondent for the said case.

Respondent filed an Answer, and later filed a motion to dismiss on the ground of lack of jurisdiction of the trial court over the case due to the failure of Florentino C. Nival to pay the appropriate filing or docket fee.

The trial court denied the motion to dismiss on the ground that the motion is proscribed after the filing of an Answer, as provided in Section 1, Rule 16 of the 1997 Rules of Civil Procedure.

Respondent filed a motion for reconsideration from the denial of the motion to dismiss. In a Resolution[1] dated January 14, 2005, the trial court denied the motion on the ground that there was no notice of hearing pursuant to Sections 4, 5 and 6, Rule 15 of the 1997 Rules of Civil Procedure.

Respondent filed a second motion for reconsideration, which was denied by the trial court in a Resolution dated April 29, 2005, for being a prohibited pleading under Section 2, Rule 52 of the 1997 Rules of Civil Procedure.

On May 6, 2005, the trial court rendered a Decision,[2] directing the issuance of a Writ of *Quo Warranto* ousting complainant Augusto P. Baldado from the Office of the *Sangguniang Bayan* of the Municipality of Sulat, Eastern Samar, and declaring vacant the position of complainant as *Sangguniang Bayan* member.[3] The trial court stated that when complainant, formerly an American citizen, reacquired his Philippine citizenship on September 29, 2003, he also reacquired his residency in the Philippines on September 29, 2003, short of the required one-year period immediately preceding the election. Hence, the trial court held that complainant was not eligible to register as a candidate for the Office of the *Sangguniang Bayan* of Sulat, Eastern Samar during the May 2004 elections.

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1 Resolution dated January 14, 2004, *rollo*, pp. 51-52.
2 *Rollo*, pp. 6-15.
3 *Id*. at 15.

On May 19, 2005, respondent received a copy of the Decision of the trial court, and he had a period of five days within which to appeal the trial court's Decision to the Commission on Elections (COMELEC).

On May 21, 2005, complainant and his wife, having obtained their own copy of the trial court's Decision, proceeded hurriedly to respondent and urged him to immediately file a notice of appeal from the said decision.

Respondent did not heed the prodding of complainant to file a Notice of Appeal, because according to respondent, the notice of the decision could not be deemed to have been officially received by him as the said decision had not yet been promulgated in open court; hence, the prescriptive period to appeal would not toll yet.

On May 26, 2005,[4] respondent filed with the COMELEC a Petition for *Certiorari* and Prohibition with prayer for restraining order and/or injunction to annul or set aside the trial court's Resolutions dated January 14, 2005 and April 9, 2005, denying the motions for reconsideration of the trial court's Resolution dated November 10, 2004, denying the motion to dismiss the *quo warranto* case. Respondent did not appeal from the trial court's Decision dated May 6, 2005.

On May 16, 2006, the First Division of the COMELEC issued a Resolution[5] dismissing the petition for *certiorari* for lack of merit. It held that the correct filing fees had been paid by petitioner Florentino P. Nival, as evidenced by the Legal Fees Form,[6] which barred complainant from assailing the jurisdiction of the trial court. The COMELEC declared that complainant's petition was moot and academic with the rendition of the trial court's Decision in the *quo warranto* case. It stated that as the trial court had acquired jurisdiction over the case, the remedy of complainant should have been to appeal the trial court's Decision under Section 14, Rule 36 of the COMELEC Rules of Procedure, which provides that from any decision rendered by the court, the aggrieved party may appeal to the COMELEC within five days after the promulgation of the decision. On the other hand, *certiorari*, under Section 1, Rule 28 of the COMELEC Rules of Procedure, is allowed only when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. The COMELEC stated that petitioner lost his opportunity to appeal granted by law.

Florentino Nival filed a motion for execution in the *quo warranto* case, which was granted by the trial court. On July 11, 2005, complainant was

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4 Complaint, *id*. at 3.
5 *Rollo*, pp. 28-35.
6 *Id.* at 50.

removed from his office as member of the *Sangguniang Bayan* of the Municipality of Sulat, Eastern Samar.

Complainant hired a new counsel, who filed a motion for reconsideration of the Resolution of the First Division of the COMELEC, dated May 16, 2006. However, the motion for reconsideration was denied for lack of merit by the COMELEC *en banc* in a Resolution[7] dated June 21, 2007.

On July 17, 2006, complainant filed this administrative case against respondent. Complainant contended that in handling his case, respondent committed these serious errors: (1) Respondent improperly filed a Motion to Dismiss after he had filed his Answer, allegedly due to lack of jurisdiction for failure of therein petitioner Florentino C. Nival to pay the correct docket fees, but the trial court denied said motion because a motion to dismiss is proscribed after filing an Answer; (2) Respondent filed a Motion for Reconsideration from the denial of his Motion to Dismiss which was denied for failure to attach the Notice of Hearing; (3) respondent filed a second motion for reconsideration, which was again denied on the ground that it was a prohibited pleading; and (4) Respondent refused to file a Notice of Appeal from the Decision of the trial court on the Petition for *Quo Warranto* without justification despite the advice and insistence of complainant, and instead filed a petition for *certiorari* before the COMELEC, assailing the trial court's Resolutions dated January 14, 2005 and April 29, 2005 denying the motions for reconsideration of the denial of the motion to dismiss the *quo warranto* case.

Complainant contended that respondent's mishandling of his case amounted to gross incompetence and gross negligence in rendering service to his client, as well as gross ignorance of the law, in violation of Canon 17 and Canon 18: Rules 18.01, 18.02 and 18.03 of the Code of Professional Responsibility[8] for which respondent should be disbarred or suspended from legal practice. Complainant stated that respondent's failure to render legal service, in accordance with the Code of Professional Responsibility, caused him (complainant) to lose in the *quo warranto* case, which resulted in his removal from his office, and made him suffer grave and irreparable damage, mental anguish, wounded feelings and social humiliation.

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[7] *Id.* at 81-88.

[8] CANON 17 - A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18 - A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

Rules 18.01 - A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 - A lawyer shall not handle any legal matter without adequate preparation.

Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In his Position Paper,[9] respondent explained that a Motion to Dismiss was filed after the Answer was filed, because he found out days after filing the Answer that Florentino C. Nival failed to pay the filing fee amounting to ₱300.00. Respondent claimed that the trial court failed to understand that Section 1, Rule 16 (Motion to Dismiss) of the Rules of Court is the general rule, while the exceptions are found in Section 1, Rule 9 of the Rules of Court, which provides that lack of jurisdiction over the subject matter, among others, is a defense that is not deemed waived even if it is not pleaded in a motion to dismiss or in the answer.

Respondent stated that he failed to place a notice of hearing in his motion for reconsideration (of the denial of his motion to dismiss) due to inadvertence. However, he contended that since the adverse party submitted an Opposition to the Motion for Reconsideration, it is sufficient proof that petitioner was given the opportunity to be heard; hence, the dismissal of the motion for reconsideration due to the absence of notice of hearing was improper.

Moreover, respondent asserted that the alleged omission or negligence regarding the failure to file an appeal from the trial court's Decision was neither induced by bad faith nor malice, but founded on good faith and a well-researched legal opinion that the five-day period within which to file a notice of appeal did not commence due to the failure of the trial court to promulgate its decision, as required under Section 12, Rule 36 of the COMELEC Rules of Procedure.

In his Report and Recommendation, the Investigating Commissioner, Atty. Salvador B. Hababag, found respondent liable for gross ignorance of the law, gross incompetence and gross negligence, and recommended that respondent be suspended for six months from legal practice with a warning that the commission of infractions in the future will be dealt with more severely.

On November 10, 2007, the Board of Governors of the IBP passed Resolution No. XVIII-2007-234,[10] adopting and approving the Report and Recommendation of the Investigating Commissioner, finding respondent guilty of gross negligence of the law, gross incompetence and gross negligence, and imposing upon respondent the penalty of suspension from the practice of law for six months with a warning that a future infraction will be dealt with more severely.

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9 *Rollo*, pp. 89-105.
10 *Id.* at 108.

Respondent's motion for reconsideration was denied by the Board of Governors of the IBP in Resolution No. XIX-2011-370[11] dated June 26, 2011.

The Court sustains the findings and conclusions of the Board of Governors of the IBP that respondent is guilty of gross negligence, gross incompetence and gross ignorance of the law for failing to appeal the Decision of the trial court in the *quo warranto* case before the COMELEC within the reglementary period.

It appears that respondent failed to appeal from the Decision of the trial court, because he was waiting for a notice of the promulgation of the said decision, as Sections 12 & 14, Rule 36 of the COMELEC Rules of Procedure state:

> Sec. 12. *Promulgation and Finality of the Decision.* - The decision of the court shall be promulgated on a date set by it of which due notice must be given the parties. It shall become final five (5) days after its promulgation.
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> No motion for reconsideration shall be entertained.
>
> Sec. 14. *Appeal.* - From any decision rendered by the court, the aggrieved party may appeal to the Commission on Elections, without five (5) days after the promulgation of the decision.

In his Position Paper,[12] respondent stated that the furnishing of the trial court's Decision through the post office/mail could not be considered as promulgation under Section 12 above, which requires that the court must set the date when the decision shall be promulgated with due notice to the parties. Respondent contended that, in view of the absence of the promulgation of the trial court's decision, he did not file an appeal because the five-day period within which to file a notice of appeal has not commenced up to the present.

The Court notes that respondent cited *Lindo v. COMELEC,*[13] in his Position Paper. *Lindo v. COMELEC* should have enlightened respondent about his confusion regarding when the trial court's Decision in an election case is promulgated, and when he should have filed an appeal from the trial court's Decision with the COMELEC. As *Lindo v. COMELEC* stated:

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11 *Id.* at 143.
12 *Id.* at 89-105.
13 G.R. No. 95016, February 11, 1991, 194 SCRA 25; 271 Phil. 844 (1991).

> It is the contention of petitioner Lindo that the act of merely furnishing the parties with a copy of the decision, as was done in the trial court, violated COMELEC rules and did not constitute a valid promulgation. Since there was no valid promulgation, the five (5) day period within which the decision should be appealed to the COMELEC did not commence to run.
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> This contention is untenable. **Promulgation is the process by which a decision is published, officially announced, made known to the public or delivered to the clerk of court for filing, coupled with notice to the parties or their counsel**. (Neria v. Commissioner of Immigration, L-24800, May 27, 1968, 23 SCRA 812). It is the delivery of a court decision to the clerk of court for filing and publication (Araneta v. Dinglasan, 84 Phil. 433). It is the filing of the signed decision with the clerk of court (Sumbing v. Davide, G.R. Nos. 86850-51, July 20, 1989, En Banc Minute Resolution). The additional requirement imposed by the COMELEC rules of notice in advance of promulgation is not part of the process of promulgation. Hence, We do not agree with petitioner's contention that there was no promulgation of the trial court's decision. The trial court did not deny that it had officially made the decision public. From the recital of facts of both parties, copies of the decision were sent to petitioner's counsel of record and petitioner himself. Another copy was sent to private respondent.
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> What was wanting and what the petitioner apparently objected to was not the promulgation of the decision but the failure of the trial court to serve notice in advance of the promulgation of its decision as required by the COMELEC rules. The failure to serve such notice in advance of the promulgation may be considered a procedural lapse on the part of the trial court which did not prejudice the rights of the parties and did not vitiate the validity of the decision of the trial court nor of the promulgation of said decision.
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> Petitioner's protestations of denial of due process when his notice of appeal was denied for having been filed out of time must also fail. The records show that petitioner's counsel of record, Atty. Amador Montajo, received a copy of the decision on February 12, 1990. **The five-day period for petitioner to file his appeal from the decision of the trial court commenced to run from such date.** Petitioner's notice of appeal was filed with the trial court only on February 26, 1990, fourteen (14) days after his counsel was served a copy of the decision. Clearly, his notice was filed out of time. x x x[14]

From the foregoing, herein respondent should have filed an appeal from the Decision of the trial court within five days from receipt of a copy of the decision on May 19, 2005.[15]

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14 *Id.* at 31-33. (Emphasis supplied.)

15 Complaint, *rollo*, p. 2.

As regards the filing of the motion to dismiss after filing an Answer, *Panganiban v. Pilipinas Shell Petroleum Corporation*[16] held that the requirement that a motion to dismiss should be filed within the time for filing the answer is not absolute. Even after an answer has been filed, a defendant can still file a motion to dismiss on the following grounds: (1) lack of jurisdiction, (2) *litis pendentia* (3) lack of cause of action, and (4) discovery during trial of evidence that would constitute a ground for dismissal.[17] In this case, respondent sought the dismissal of the *quo warranto* case on the ground of lack of jurisdiction. Even if the trial court denied the motion to dismiss, respondent could still have raised the alleged lack of jurisdiction of the trial court in the appeal of the trial court's decision to the COMELEC; however, no such appeal was filed.

Hence, respondent's negligence in protecting the interest of his client was the failure to appeal the trial court's decision in the *quo warranto* case before the COMELEC. The circumstances of this case show violation of Canon 18: Rules 18.01, 18.02 and 18.03 of the Code of Professional Responsibility which state:

> CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE
>
> Rule 18.01 - A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.
>
> Rule 18.02 - A lawyer shall not handle any legal matter without adequate preparation.
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> Rule 18.03 - A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

Once a lawyer agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him.[18] He owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. A lawyer who performs his duty with diligence and candor not only protects the interest of his client, he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.

The Court notes that this is the first case respondent handled after he passed the bar examinations in September 2003, took his oath and signed the roll of attorneys. Respondent prays for compassionate justice as he is the

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16 G.R. No. 131471, January 22, 2003, 395 SCRA 624; 443 Phil. 753 (2003).

17 *Id.* at 633.

18 *Aranda v. Elayda*, A.C. No. 7907, December 15, 2010, 638 SCRA 336, citing *Santiago v. Fojas*, A.C. No. 4103, September 7, 1995, 248 SCRA 68; 318 Phil. 79 (1995).

only breadwinner in the family. In *Tolentino v. Mangapit*,[19] the Court took into consideration the fact that the omission committed by respondent counsel therein to inform her client and the latter's other lawyers of the adverse decision may be traced to her inexperience, as the case and decision was the first she handled after passing the bar, and she acted under an honest mistake in the exercise of her duty as a lawyer. Thus, in *Tolentino*, the Court merely admonished the respondent instead of suspending her from the practice of law for at least a month, as recommended by the Solicitor General. In this case, suspending respondent from the practice of law for three months is proper.

WHEREFORE, the Resolution of the IBP Board of Governors, approving and adopting the Decision of the Investigating Commissioner, is hereby **AFFIRMED with MODIFICATION**. Respondent **ATTY. AQUILINO A. MEJICA** is hereby **SUSPENDED** from the practice of law for a period of **THREE (3) MONTHS**, with a warning that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Decision be attached to Atty. Aquilino A. Mejica's personal record with the Office of the Bar Confidant and be furnished to all chapters of the Integrated Bar of the Philippines and to all the courts in the country for their information and guidance.

SO ORDERED.

DIOSDADO M. PERALTA
Associate Justice

WE CONCUR:

PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson

ROBERTO A. ABAD
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

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19 A.C. No. 2251, September 29, 1983, 124 SCRA 741; 209 Phil. 607 (1983).

MARVIC MARIO VICTOR F. LEONEN
Associate Justice