

SECOND DIVISION

[A.C. NO. 6086, January 26, 2005]

NICANOR B. GATMAYTAN, JR., COMPLAINANT, VS. ATTY. ISIDRO C. ILAO, RESPONDENT.

DECISION

CHICO-NAZARIO, J.:

"The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons."^[1]

Before Us is an appeal of the Resolution^[2] passed by the Board of Governors of the Integrated Bar of the Philippines which adopted and approved the Report and Recommendation^[3] of Investigating Commissioner Milagros V. San Juan dated 04 April 2003, dismissing the complaint^[4] for disbarment filed by Atty. Nicanor B. Gatmaytan, Jr., against Atty. Isidro C. Ilaos for violations of Canons 8, 10, and 15 of the Code of Professional Responsibility.

THE FACTS

Complainant Nicanor B. Gatmaytan, Jr., is a practicing lawyer who represented a certain Teofista Payuran in Civil Case No. 4381-P before the Pasay City Regional Trial Court (RTC), Branch 109, for cancellation of title.^[5] Respondent Atty. Isidro Ilaos, on the other hand, was counsel for the respondents in the said case.

On 17 August 1995, complainant received the Decision^[6] rendered in Civil Case No. 4381-P penned by Judge Lilia C. Lopez, the dispositive portion of which reads:

In view of all the foregoing, this Court hereby orders plaintiff Teofista Payuran to pay the defendants and third-party plaintiff Chiu Chin Siong as follows:

1. P935,750.00 representing the total amount of rentals from January 16, 1976 to December 31, 1985. P485,418.75 representing the interest earned from the time they fell due up to December 31, 1986, and such amount representing the interest earned by the combined principal and interest from January 1, 1987 at the legal rate of 12% per annum until fully paid;
2. The amount of P220,000.00 as attorney's acceptance fee plus P500.00 per appearance and 20% of whatever amount the defendant third-party plaintiff may recover;
3. For plaintiff Teofista Payuran, Atty. Augusto Gatmaytan and Pentel Merchandising Co., Inc., Quintin Lim Eng Seng and Quintin O. Lim

to jointly and solidarily pay the sum of One Million (P1,000,000.00) pesos as moral damages and Two Hundred Thousand (P200,000.00) pesos as exemplary damages plus cost of suit.^[7]

Thereafter, complainant, as counsel for Teofista Payuran, filed on 24 August 1995 a Motion for Reconsideration of the aforesaid decision, the denial of which was received by Atty. Gatmaytan on 24 October 1995. On 07 November 1995, complainant filed a second Motion for Reconsideration^[8] which was subsequently denied, the notice thereof received on 26 December 1995. Consequently, on 08 January 1996, complainant, as counsel, filed a notice of appeal before the court *a quo*. Said notice of appeal was however denied due course on the ground that the appeal was already time-barred. Thereupon, complainant, on behalf of Teofista Payuran, filed a Petition for *Certiorari* and *Mandamus*^[9] before the Court of Appeals.

On 14 February 2002, during the pendency of the Petition for *Certiorari*, Atty. Ilaos, as counsel for Clifton Chiu,^[10] filed before this Court a Complaint for Disbarment^[11] against herein complainant, Atty. Nicanor Gatmaytan, Jr., for violations of Canons 10, 12, 15, and 19 of the Code of Professional Responsibility. On 07 March 2002, Atty. Ilaos, in his personal capacity and as attorney-in-fact of his co-plaintiffs,^[12] filed a complaint for damages in the RTC of Nasugbu, Batangas, Branch 14, against herein complainant, Teofista Payuran and Atty. Augusto Gatmaytan.

On 05 August 2002, herein complainant Atty. Gatmaytan, filed his own Complaint for Disbarment before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) against Atty. Ilaos. Atty. Gatmaytan claims that by filing the complaint for damages before the RTC of Nasugbu, respondent is guilty of making false representations and advice to his clients, as well as committing falsehood, misleading the court and misusing the Rules of Procedure.

It is this disbarment case against Atty. Ilaos which is the subject matter of herein disquisition.

After submission of the necessary pleadings, Commissioner Milagros V. San Juan, on 04 April 2003, issued her Report and Recommendation^[13] recommending the dismissal of Atty. Gatmaytan's complaint for lack of merit. On 26 April 2003, Resolution No. XV-2003-211^[14] was passed by the Board of Governors of the IBP, which adopted and approved the report and recommendation of the Investigating Commissioner, and hence, the dismissal of the disbarment case. On 10 July 2003, complainant filed a Motion for Reconsideration assailing the dismissal of the complaint without the Commissioner conducting an investigation. The Board of Governors of the IBP, having already endorsed the matter to the Supreme Court in accordance with Section 12(c) of Rule 139-B of the Rules of Court, hence, no longer exercising jurisdiction over it, denied said Motion for Reconsideration in a resolution^[15] dated 30 August 2003. Nevertheless, the Court, in a resolution dated 12 January 2004, resolved to treat complainant's Motion for Reconsideration as an appeal to the Supreme Court of the earlier resolution^[16] of the IBP. Hence, the instant appeal.

THE ISSUE

In his appeal, the sole issue complainant raises is the absence of an investigation conducted in connection with the resolution of his complaint for disbarment. He asserts that instead of dismissing outright the complaint for lack of merit, Commissioner San Juan should have conducted an investigation of the charged violations of the Canons of Professional Responsibility by respondent pursuant to Rule 139-B, Section 8 of the Rules of Court.

RULING OF THE COURT

To properly address the issue raised by complainant, we must analyze Section 8 of Rule 139-B in relation to the pertinent section contained in said Rule -- Section 5 of Rule 139-B. They provide, thus:

SEC. 5. Service or dismissal. – If the complaint appears to be meritorious, the Investigator shall direct that a copy thereof be served upon the respondent, requiring him to answer the same within fifteen (15) days from the date of service. ***If the complaint does not merit action, or if the answer shows to the satisfaction of the Investigator that the complaint is not meritorious, the same may be dismissed by the Board of Governors upon his recommendation.*** . . . [Emphasis ours]

SEC. 8. Investigation. – **Upon joinder of issues or upon failure of the 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 behalf, and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed *ex parte*. . . .

Quite clearly, the above provisions plainly show two (2) modes of initiatory actions that the Investigator is empowered to take upon the complaint – either dismiss the same without delay or proceed with the investigation. Perforce:

A) The Investigator shall proceed with the investigation of the case:

- 1 if the complaint appears to be meritorious; or
- 2) upon joinder of the issues (upon submission of the answer by respondent within fifteen ^[15] days from the date of service), when the answer shows that the complaint is indeed meritorious; or
- 3) if respondent fails to answer.

B) On the other hand, the investigator may recommend the dismissal of the same:

- 1) if the complaint lacks merit; or