

EN BANC

[**A.C. No. 10753 (Formerly CBD Case No. 10-2703), January 26, 2016**]

ATTY. PABLO B. FRANCISCO, COMPLAINANT, VS. ATTY. ROMEO M. FLORES, RESPONDENT.

RESOLUTION

LEONEN, J.:

Failure of counsel to act upon a client's case resulting in the prescription of available remedies is negligence in violation of Canon 18 of the Code of Professional Responsibility. The general rule is that notice to counsel is notice to client. This rule remains until counsel notifies the court that he or she is withdrawing his or her appearance, or client informs the court of change of counsel. Untruthful statements made in pleadings filed before courts, to make it appear that the pleadings are filed on time, are contrary to a lawyer's duty of committing no falsehood.

Atty. Pablo B. Francisco (Atty. Francisco) filed an administrative Complaint^[1] for violation of Canons 10 and 18 of the Code of Professional Responsibility against Atty. Romeo M. Flores (Atty. Flores) before the Integrated Bar of the Philippines, alleging dishonesty and negligence on the part of Atty. Flores.

Atty. Francisco alleged that he filed a Complaint for forcible entry against Rainier Fineza and his mother, Teodora Fineza, (Finezas) before the Municipal Trial Court of Binangonan, Rizal.^[2] The Finezas were represented by Atty. Flores.^[3]

The Municipal Trial Court ruled in favor of the Finezas.^[4] Atty. Francisco filed an appeal before the Regional Trial Court of Binangonan, Rizal.^[5] However, the appeal was denied.^[6]

Atty. Francisco filed a Motion for Reconsideration,^[7] which was granted by the Regional Trial Court in an Order dated January 23, 2009. The Finezas were then ordered to vacate the property and to pay rentals.^[9]

Atty. Flores filed a Motion for Reconsideration^[10] of the trial court's Order granting Atty. Francisco's Motion for Reconsideration. Atty. Francisco filed an Opposition to the Motion for Reconsideration.^[11] In an Order^[12] dated March 26, 2009, Judge Dennis Patrick Z. Perez denied the Motion for Reconsideration filed by Atty. Flores.

The registry return receipt shows that Atty. Flores received a copy of the Regional Trial Court's Order denying the Motion for Reconsideration on April 3, 2009, while the Finezas received their copy of the Order on April 7, 2009.^[13]

On April 7, 2009, Atty. Francisco filed an Ex-Parte Motion to Remand Records of the case to the Municipal Trial Court for Execution of Judgment. He alleges that a copy of the Ex-Parte Motion was served on Atty. Flores through registered mail.^[14]

On May 20, 2009, Analiza P. Santos, Officer-in-Charge of Branch 67, Regional Trial Court of Binangonan, Rizal, issued a Certification^[15] stating that:

This is to certify that the Order of this Court dated January 23, 2009 relative to the above-entitled case [referring to Pablo B. Francisco v. Rainier Fineza and Teddy Fineza] has never been amended, appealed or modified; hence, this Order is now considered final and executory.^[16]

Atty. Francisco filed a Motion for Issuance of Writ of Execution^[17] on June 3, 2009. Atty. Francisco alleges that a copy of the Motion was personally served on Atty. Flores on the same day.^[18]

Atty. Francisco also alleges that hearings on the Motion for Issuance of Writ of Execution were scheduled on June 17 and 24, 2009, which were attended by Atty. Flores and the Finezas. Atty. Francisco's Motion was granted on June 30, 2009, and a writ of execution was issued.^[19]

On July 8, 2009, the Finezas filed a Petition^[20] for Relief from Judgment with application for temporary restraining order and injunction. They also attached a Joint Affidavit of Merit^[21] to the Petition. The Petition was signed by the Finezas and not by Atty. Flores.^[22] Atty. Francisco claims that the Petition, while not signed by counsel, "was ostensibly prepared by respondent Atty. Romeo M. Flores[.]"^[23] The Petition for Relief from Judgment was docketed as SCA 09-015.^[24]

The allegations in the Petition for Relief from Judgment stated:

3. *Defendants did not receive a copy or have no knowledge of the Order dated 26 March 2009 denying their motion for reconsideration, hence, was not able to hire the services of other lawyer to seek relief from the adverse consequences of the said Order;*

4. It was only on June 29, 2009 that defendants through their lawyer came to know of the Order dated March 26, 2009[,], denying their "Motion for Reconsideration" of the decision/Order dated January 15, 2009 reversing the Order of Dismissal by the Municipal Trial Court, Branch 2, Binangonan, Rizal;

5. This petition is being filed within sixty days after the petitioners obtained knowledge on June 29, 2009 of the Order/decision dated March 26, 2009 denying the motion for reconsideration and not more than six (6) months after judgment was entered on May 20, 2009[.]^[25] (Emphasis supplied)

Atty. Francisco filed a Motion to Dismiss on July 13, 2009, alleging that the Petition for Relief from Judgment was filed out of time.^[26] He also alleged that:

2. The petition was filed in SCA No. 09-015, not in SCA No. 08-018 of the same Regional Trial Court, in violation of Section 1, Rule 38 of the Rules of Court;

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4. It can not be that petitioners came to know through their lawyer of the Order, dated March 26, 2009 only on June 29, 2009. That allegation is a travesty of facts because on June 3, 2009, respondent [referring to Atty. Francisco] filed his motion for issuance of writ of execution of the RTC decision with the Municipal Trial Court of Binangonan and furnished a copy of said motion to petitioners' counsel [referring to Atty. Flores] on the same day of June 3, 2009. Said motion was heard on June 17, 2009, with Atty. Romeo M. Flores in attendance and manifesting before the court that petitioners have vacated the parcel of land in question[.]^[27]

Atty. Flores entered his appearance in SCA Case No. 09-015 on August 20, 2009. Atty. Francisco claims that Atty. Flores knew about the untruthful allegations and frivolous character of the Petition for Relief from Judgment, yet he sought to pursue the Petition through the filing of a Motion to Admit Supplemental Pleading.^[28]

The Petition for Relief from Judgment was dismissed by the Regional Trial Court in an Order^[29] dated August 28, 2009.

On February 8, 2010, the Finezas were evicted.^[30] Their "personal properties were levied upon, then sold on execution to settle their judgment debt[.]"^[31]

Atty. Francisco alleges that Atty. Flores thereafter "induced Rainier Fineza and Teodora Fineza to file a complaint against [Atty. Francisco] [before] the Supreme Court[.]"^[32] The case was docketed as Administrative Case No. 8563.^[33]

Atty. Francisco contends that Atty. Flores was negligent when he "did not make himself available"^[34] during that period when his clients could still question the trial court's denial of the Motion for Reconsideration by filing a Petition for Review before the Court of Appeals.^[35]

Atty. Francisco prays that Atty. Flores "be found guilty of violation of Canons 10 and 18 of the Code of Professional Responsibility and be meted the corresponding penalty."^[36]

On the other hand, Atty. Flores alleges that he was on vacation from February 9, 2009 until May 2009.^[37] The copy of the trial court's Order sent to the Finezas was received by Glen Fineza on April 7, 2009, but allegedly, Glen Fineza did not inform Teodora Fineza and Rainier Fineza that he received the trial court's Order.^[38] Atty. Flores claims that he only learned about the Order denying the Motion for Reconsideration when he received a copy of Atty. Francisco's Motion for Issuance of

a Writ of Execution.^[39]

Regarding the Finezas' Petition for Relief from Judgment, Atty. Flores alleges that he only assisted in the filing of the Petition.^[40] He could not act as counsel because he had "no personal knowledge as to when the [Finezas] learned . . . of the denial of the Motion for Reconsideration."^[41]

Atty. Flores also argues that he did not violate Canon 18 because in another case, docketed as Civil Case 384-B for Quieting of Title with Prayer for Restraining Order/Injunction,^[42] which also involved Atty. Francisco and the Finezas, he was able to prevent the demolition of the Finezas' family home.^[43]

In the Report and Recommendation^[44] of the Commission on Bar Discipline dated April 15, 2011, the Commission found that the allegations in the Petition for Relief from Judgment were "false and frivolous"^[45] because when the Petition for Relief from Judgment was filed, more than 60 days elapsed from the time that Atty. Flores and the Finezas had received copies of the trial court's Order.^[46] Atty. Flores received a copy of the trial court's Order dated March 26, 2009, on April 3, 2009, while the Finezas received their copy on April 7, 2009.^[47] Glen Fineza, who acknowledged receipt of the trial court's Order, is the son of Teodora Fineza and the brother of Rainier Fineza.^[48] When the Petition for Relief from Judgment was filed on July 8, 2009, it was beyond the 60-day period.^[49]

The Commission on Bar Discipline recommended that Atty. Flores be found guilty of violating Rules 10.01 and 10.03 of Canon 10, and that the penalty of suspension from the practice of law for three (3) months "with stern warning that a repetition of the same offense shall be dealt with more severely"^[50] be imposed.^[51] No pronouncement was made on the issue of whether Atty. Flores violated Canon 18.

The Board of Governors of the Integrated Bar of the Philippines adopted and approved the Report and Recommendation of the Commission on Bar Discipline in a Resolution^[52] dated June 20, 2013. However, the Board of Governors Resolution is also silent on the issue of whether Atty. Flores violated Canon 18 of the Code of Professional Responsibility.

Atty. Flores filed an Ex-Parte Motion to Admit Motion for Reconsideration^[53] and a Motion for Reconsideration,^[54] arguing that he was on vacation from February 11, 2009 up to "June __, 2009[.]"^[55] During that period, his staff received the trial court's Order dated March 26, 2009^[56] on April 3, 2009.^[57] Hence, Atty. Francisco's allegation that he received the trial court's Order on April 31, 2009 is not true.^[58] In addition, Glen Fineza did not give a copy of the trial court's Order to Rainier Fineza or Teodora Fineza.^[59] Further, the charge of perjury against him, Atty. Flores, was dismissed by the prosecutor.^[60] Atty. Flores also argues that he properly observed the rules of procedure in the forcible entry case, thus, he should not be found guilty of violating Canon 10.03 of the Code of Professional Responsibility.^[61]

Atty. Flores reiterated that this administrative Complaint originated from a civil case filed before the Regional Trial Court of Binangonan, Rizal, involving Atty. Francisco

and the Finezas.^[62] While the Finezas lost their property in that case, he, as counsel of the Finezas, was able to prevent Atty. Francisco "from implementing the demolition of the Fineza's family home."^[63]

The Board of Governors, through Dominic CM. Solis, Director for Bar Discipline, required Atty. Francisco to submit a Comment on Atty. Flores' Motion for Reconsideration.^[64]

Atty. Francisco reiterated in his Comment^[65] that the Finezas knew about the trial court's dismissal of their Motion for Reconsideration because they received a copy of the trial court's Order on April 7, 2009.^[66] Also, Atty. Flores received a copy of the same Order on April 3, 2009 and not April 31, 2009.^[67] Further, when Atty. Francisco sought to execute the trial court's Decision, Atty. Flores and the Finezas attended "the hearing on the motion for execution of the final judgment"^[68] on June 17 and 24, 2007.^[69]

Atty. Francisco prayed in his Comment that Atty. Flores "be suspended from the practice of law for at least six (6) months."^[70]

In a Resolution^[71] dated August 9, 2014, the Board of Governors denied Atty. Flores' Motion for Reconsideration but increased the penalty recommended from three (3) months to six (6) months suspension from the practice of law.^[72]

The issue in this case is whether respondent Atty. Romeo M. Flores violated Canons 10 and 18 of the Code of Professional Responsibility.

This court accepts the findings of fact of the Integrated Bar of the Philippines. Based on the records of this administrative Complaint, respondent is guilty of violating Canon 10, Rules 10.01 and 10.03, and Canon 18, Rule 18.03.

Canon 10, Rule 10.01 of the Code of Professional Responsibility provides:

Canon 10 — A lawyer owes candor, fairness and good faith to the court.

Rule 10.01 —A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead or allow the Court to be misled by any artifice.

Respondent was not entirely truthful. He alleged in his Position Paper that:

4. Herein respondent himself only came to blow of the denial of their Motion for Reconsideration in June, 2009 when he received a copy of the motion of complainant for issuance of a writ of execution against the FINEZA[S]. This fact was immediately relayed to the FINEZA[S].

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6. FINEZAS in filing the petition for relief from judgment believe in good faith that they have complied with the requirement of the rule. They learned only of the judgment on June 29, 2009.