

THIRD DIVISION

[A.C. NO. 5687, February 03, 2005]

**FELIX E. EDQUIBAL, COMPLAINANT, VS. ATTY. ROBERTO
FERRER, JR., RESPONDENT.**

R E S O L U T I O N

SANDOVAL-GUTIERREZ, J.:

In a letter-complaint^[1] under oath dated January 8, 2002, Felix E. Edquibal, complainant, charged Atty. Roberto Ferrer, Jr., respondent, with professional misconduct and neglect of duty.

Complainant alleged that he engaged the services of respondent to assist his mother Ursula Edquibal in cases she filed against his sister Delia Edquibal-Garcia involving a certain real property in Masinloc, Zambales. His mother obtained favorable judgments in four (4) out of the five (5) cases handled by respondent. However, in Civil Case No. RTC-1495-I (filed with the Regional Trial Court, Branch 70, Iba, Zambales), the trial judge rendered a decision adverse to his mother. Respondent then advised complainant to appeal to the Court of Appeals and that the cost involved is P4,000.00. When complainant informed respondent that he does not have enough money, the latter said P2,000.00 would be sufficient for the moment. After receiving the money from complainant, respondent told him just to wait for the result. The appeal was docketed as CA-G.R. CV No. 65019.

When complainant failed to hear from respondent in January 2001, he went to the Court of Appeals to follow-up the appealed case. He then learned that the appeal was dismissed for failure of the appellant to file the required appellant's brief.

In his comment^[2] dated June 2, 2003, respondent denied that he filed an appeal, on behalf of complainant's mother, with the Court of Appeals or received P2,000.00. What happened was that complainant told him that there is someone in the Court of Appeals who can help him regarding his appeal. Respondent claimed that he "did his best" for complainant's mother and did not even ask for attorney's fees.

On July 30, 2003, we referred the complaint to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

In his Report and Recommendation dated March 19, 2004, Atty. Leland R. Villadolid, IBP Commissioner, made the following findings:

"It is clear from the records of this case that per the records of CA G-R. CV No. 65019, Respondent is the counsel of record of defendants-appellants therein (including Complainant's mother). In the Resolution dated 31 August 000, it was explicitly noted that '*(N)otice sent to counsel for defendants-appellants requiring him to file appellant's brief within*

forty-five (45) days from receipt thereof was received by him on March 16, 2000. If it is true that Respondent never agreed to handle the appeal, upon receipt of said notice, Respondent should have immediately manifested to the Court of Appeals that he is not handling the appeal on behalf of said defendants-appellants. Thus, Section 2, Rule 44 of the Rules of Civil Procedure clearly states that '[T]he counsel and guardians *ad litem* of the parties in the court of origin shall be respectively considered as their counsel and guardians *ad litem* in the Court of Appeals.' By failing to do so, the Court of Appeals had every reason to assume that he was likewise representing defendants-appellants in the appeal. Accordingly, his failure to timely file the required appellants' brief resulted in the dismissal of the appeal.

The facts of this case clearly show that Respondent violated Canon 17 and 18 of the Code of Professional Responsibility ('CPR').

Undoubtedly, Respondent's failure to exercise due diligence in protecting and attending to the interest of Complainant (Complainant's mother) caused the latter material prejudice. It should be remembered that the moment a lawyer takes a client's cause, he covenants that he will exert all effort for its prosecution until its final conclusion. A lawyer who fails to exercise due diligence or abandons his client's cause makes him unworthy of the trust reposed in him by the latter. x x x"

Atty. Villadolid recommended to the IBP Board of Governors that respondent be reprimanded "for failure to act with reasonable diligence in representing the cause of complainant;" and that respondent be directed to "return the amount of P2,000.00 as and by way of restitution to complainant."

In its Resolution No. XVI-2004-383 dated July 30, 2004, the IBP Board of Governors adopted and approved the Report and Recommendation of Atty. Villadolid, thus:

"RESOLVED TO ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of the Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering the respondent's failure to act with reasonable diligence in representing the cause of complainant, Atty. Roberto Ferrer, Jr., is hereby REPRIMANDED and Ordered to Return the amount of P2,000,00 by way of Restitution to complainant."^[3]

We sustain the Resolution of the IBP Board of Governors except as to the penalty recommended.

Records show that respondent was the **counsel of record** for the appellants, complainant's mother and other relatives in CA-G.R. CV No. 65019. The Resolution of the Court of Appeals dated August 31, 2000 clearly states that the **"notice sent to counsel for defendants-appellants requiring him to file appellant's brief within forty-five (45) days from receipt thereof, was received by him on March 16, 2000."**^[4] However, respondent failed to file the appellants' brief despite receipt of such notice.