



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

SUPREME COURT OF THE PHILIPPINES
PUBLIC INFORMATION OFFICE

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JAN 14 2021
BY: HENRY
TIME: 3:25 PM

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated September 9, 2020, which reads as follows:

“A.C. No. 10934 – (REX FERRER, *complainant* v. ATTY. ROMEO R. DERES,¹ *respondent*). – For resolution by the Court is the Complaint-Affidavit² dated October 11, 2015 filed by complainant Rex Ferrer (Rex) against respondent Atty. Romeo R. Deres (Atty. Deres). In the said Complaint-Affidavit, Rex alleged that he engaged the services of Atty. Deres to represent him in an appeal from a decision in an ejectment suit before the Regional Trial Court (RTC) of Antipolo City.³ Rex’s appeal was dismissed⁴ and Atty. Deres filed a motion for reconsideration on his behalf. However, the RTC refused to act on the motion because it did not contain a notice of hearing.⁵ Atty. Deres thus filed a petition for review with the Court of Appeals (CA),⁶ which dismissed the same for being filed out of time, since the appeal period was not tolled by the defective motion for reconsideration filed by Atty. Deres.⁷ Rex further alleged Atty. Deres’ failure to prosecute the appeal caused him and his wife moral distress and sleepless nights, as they faced ejection from their home where they have lived since 1990.⁸ Consequently, Rex asks this Court to disbar Atty. Deres for “gross, palpable, pervasive and reckless”⁹ negligence which deprived him of his day in court.

In his Answer,¹⁰ Atty. Deres admitted to handling Rex’s appeal before the RTC and the CA. He explained that shortly after he received the RTC Decision dismissing the appeal on September 27, 2012, he conferred with Rex to plan their next course of action. They considered filing a motion for reconsideration but decided against it, “due to [Atty. Deres’] experience that

¹ Also referred to as “Atty. Romeo R. Derez” in the records.
² *Rollo*, pp. 1-6.
³ *Id.* at 2.
⁴ *Id.* at 12.
⁵ *Id.*
⁶ *Id.*
⁷ *Id.* at 17.
⁸ *Id.* at 4.
⁹ *Id.*
¹⁰ *Id.* at 34-37.

never had there been in the course of his practice that a decision was reversed through the filing of such a motion"¹¹; ultimately settling for a petition for review with the Court of Appeals. He also told Rex that he might find it difficult to continue prosecuting the case, as he had just suffered a heart attack on August 17, 2012 and was still on medication, but Rex opted to retain him as counsel.¹²

Atty. Deres further alleged that he failed to include a notice of hearing in the motion for reconsideration because he prepared the motion only on the afternoon of October 11, 2012, one day before the RTC Decision attained finality, because Rex repeatedly refused to meet with him beforehand. When they eventually met, Rex suggested that they file a motion for reconsideration instead of seeking recourse with the CA, allegedly because Rex lacked funds to pay the docket fees.¹³ Given the circumstances, Atty. Deres agreed to prepare the motion for reconsideration, despite his medical condition. Only after the RTC denied the motion for lack of notice of hearing did Atty. Deres realize that he had failed to include the notice of hearing; hence, he immediately apologized to Rex for the oversight and explained the implication thereof. Nevertheless, Rex opted to continue with Atty. Deres and to file the petition for review with the CA anyway.¹⁴ Atty. Deres was adamant that he repeatedly asked Rex to engage the services of another counsel, but the latter refused to do so.¹⁵

In a resolution dated August 3, 2016, this Court referred the matter to the Integrated Bar of the Philippines (IBP) for further proceedings.¹⁶ On February 15, 2017, a Mandatory Conference was held wherein only Atty. Deres appeared. IBP Investigating Commissioner Patrick M. Velez (Investigating Commissioner) thus resolved to proceed with the disposition of the case without submissions from Rex; while Atty. Deres was directed to file a verified position paper.¹⁷ After the submission of Atty. Deres' position paper, the Investigating Commissioner issued a Recommendation and Report dated August 9, 2017, the dispositive portion of which states:

WHEREFORE, under the premises considered, it is Respectfully RECOMMENDED that this [Complaint] filed by Spouses Rex and Gemma Ferrer against Atty. Romeo R. Deres for violation of [Canon] 1 and 2 of the Code of Professional Responsibility should be dismissed, as the complaint is not supported by evidence presented. Besides as it appears on record, the supposed damage caused to Complainant cannot solely be attributed to the inaction/action of the Respondent Lawyer.

¹¹ Id. at 35.

¹² Id.

¹³ Id.

¹⁴ Id. at 35-36.

¹⁵ Id.

¹⁶ Id. at 38.

¹⁷ Id. at 43.

Still, Atty. Romeo Deres is ADVISED and REPRIMANDED not to submit any Motion for the consideration of the Courts unless the same includes the appropriately required "Notice of Hearing". In this light, we are recommending that Respondent lawyer be made to undertake additional twelve (12) units of remedial law courses in addition to that required by the MCLE before he is allowed to practice law.¹⁸

The Investigating Commissioner noted that Rex did not participate in the IBP investigation in any way whatsoever.¹⁹ Nevertheless, as Atty. Deres admitted his failure to include a notice of hearing to the motion for reconsideration he filed on Rex' behalf, he was found guilty of simple negligence, as there was no proof that he was motivated by malice or bad faith.²⁰ The Investigating Commissioner also gave credence to Atty. Deres' apology and explanation for the omission, holding that Atty. Deres did not "attempt x x x to escape responsibility, [but] instead [virtually admitted] x x x his negligence".²¹ Finally, the Investigating Commissioner found that the damage supposedly suffered by Rex was not attributable solely to Atty. Deres. A perusal of the MTC, RTC, and CA decisions shows that the dismissal of Rex's appeal in the ejection case was grounded mostly upon his failure to present evidence in his defense.²² Likewise, Atty. Deres was forthright in communicating his health predicament and its effects on his ability to effectively counsel Rex. Given the totality of evidence presented, the Investigating Commissioner found no justifiable ground to disbar Atty. Deres.

On May 19, 2018, the IBP Board of Governors passed a Resolution adopting the Recommendation and Report of the Investigating Commissioner,²³ which this Court adopts and approves with modification.

Fundamental is the doctrine that a motion for reconsideration without a notice of hearing is fatally defective.²⁴ Such a motion does not toll the period to file an appeal and is treated as a mere scrap of paper.²⁵ All lawyers are expected to be aware of this basic procedural tenet; and Atty. Deres has satisfactorily shown that he is aware thereof. This Court has reviewed the records of the case and is satisfied with the explanation given by Atty. Deres as to why he failed to include a notice of hearing in the motion for reconsideration he prepared for Rex's case. The Court likewise gives credence to Atty. Deres' admission of his mistake and his candor in explaining the consequences thereof to Rex. Given the totality of the evidence presented, the Court agrees with the Investigating Commissioner

¹⁸ Id. at 70.

¹⁹ Id. at 64.

²⁰ Id. at 65.

²¹ Id.

²² Id. at 66-67.

²³ Id. at 59.

²⁴ *National Commercial Bank of Saudi Arabia v. Court of Appeals*, 444 Phil. 615, 625 (2003).

²⁵ *De la Peña v. De la Peña*, 327 Philo. 936, 943 (1996).

that Atty. Deres is only guilty of simple negligence. Given the particular factual circumstances of his health, the time pressure, and his client's sudden turnaround in strategy, this Court is convinced that Atty. Deres' mistake is not of such a nature that would merit his disbarment. As the Investigating Commissioner pointed out, the trial courts and the appellate court all found Rex's case sorely lacking in merit. It was more likely that he would have lost the appeal even if Atty. Deres had been able to prepare a valid motion for reconsideration.

However, this Court is of the considered opinion that Atty. Deres need not be required to take additional continuing legal education units. In recommending the imposition of such requirement on Atty. Deres, the Investigating Commissioner ratiocinated that Atty. Deres is "obligated to insure his pleadings do not contain any [procedural] infirmity";²⁶ and as such, he "must be [made] ever mindful of the [r]ules of procedure"²⁷ by being made to "keep himself abreast with the developments in legal education and practice".²⁸ The record shows that Atty. Deres is fully aware of the importance of a notice of hearing;²⁹ and that his failure to include such in Rex's motion for reconsideration was due to the combined effects of his physical and mental health condition, coupled with the time pressure brought about by his client's sudden strategic turnaround. Given the circumstances of the case, especially considering Atty. Deres' advanced age,³⁰ this Court deems it more appropriate to sternly warn Atty. Deres to always attach a notice of hearing to any appropriate motion he might file in the future.

WHEREFORE, the instant complaint is **DISMISSED**. In lieu of requiring him to take additional Mandatory Continuing Legal Education units, Atty. Romeo R. Deres is hereby **STERNLY WARNED** not to submit any Motion for the consideration of the courts unless the same includes a Notice of Hearing, whenever required.

SO ORDERED."

By authority of the Court:

Misael D.C. Battung III
MISAEAL DOMINGO C. BATTUNG III
Division Clerk of Court
GER 11/26/20

Mr. Rex Ferrer
Complainant
Purok 1, Zone 8, Brgy. Cupang
1870 Antipolo City

²⁶ Id. at 66.

²⁷ Id. at 69.

²⁸ Id.

²⁹ Id. at 35-38.

³⁰ According to the Answer he filed in 2016, Atty. Deres was 71 years old at that time, id. at 36.

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