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A responsible lawyer, who accepts an appealed case, can easily tell whether he will be able to file appellant's brief within the ninety-day period. If he cannot do so, then he should give up the case at once so that the client can look for a more conscientious and competent lawyer. He should heed the caveat in the resolution granting the ninety-day extension that no further extension would be granted and that the appeal would be dismissed for his failure to file appellant's brief.

I believe that, save in exceptionally meritorious cases, like the instant case, the resolution of the Court of Appeals should be enforced; otherwise, it would become meaningless or inutile. Its enforcement by the Court of Appeals should be upheld by this Court if no palpable injustice would be perpetrated against the appellant.

It is only in those cases where to make the appellant suffer for the negligence or skullduggery of his lawyer would result in a manifest injustice that the rule against extending the ninety-day extension, should be relaxed. A line has to be drawn somewhere. Practising lawyers should toe that line or the line would be obliterated.

SECOND DIVISION

[A.C. No. 1213. July 29, 1976]

JOSE V. DE LA RAMA, *complainant, vs.* **ATTY. WILFRIDO E. DIZON,** *respondent.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS-AT-LAW; DISBARMENT; DISMISSAL OF CHARGE FOR FAILURE TO PROSECUTE. — Where the hearings of a disbarment case scheduled on four

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dates were postponed at the instance of the complaint over the objection of the respondent who insisted that the case should be dismissed and, at the hearing set on a latter date, the complainant did not appear and did not, thereafter, bother to ask that his complaint be again set of hearing, the complaint for disbarment should be dismissed for failure to prosecute. Complaint's apathy to the prosecution of this charge is strongly indicative of its lack of merit. If it were true that he had a legitimate grievance against the respondent, he would have acted with vigor and dispatch in presenting his evidence.

RESOLUTION

AQUINO, *J.*:

Jose V. de la Rama, in his verified complaint dated June 21, 1973, charged Atty. Wilfrido E. Dizon with malpractice and unethical conduct for having supplanted him (De la Rama) as the lawyer of Lourdes G. Fernandez and DI'Mark's Inc., an entity headed by Arthur Fernandez, the husband of Lourdes.

Respondent Dizon denied the charge. He branded it as an act of harassment. In his comment he reproduced the letters of De la Rama to the Fernandez spouses and to Father Robert Bomeisil, S.J. of Ateneo de Manila, chairman of the board of directors of DI'Mark's Inc. In those three letters Atty. De la Rama admitted that about the middle of July, 1971 he was no longer in good terms with the Fernandez spouses, that his position as counsel had become untenable, and that he was billing them ₱63,600 for unpaid attorney's fees.

In the same comment, Atty. Dizon revealed that Mrs. Fernandez asked Atty. De la Rama to account for the sum of ₱210,000 which he had received from DI'Mark's Inc. She accused him of having given her a Xerox copy of a fake resolution of this Court in the fictitious case of *Ramon Roces vs. Lourdes G. Fernandez,* L-32819.

Respondent Dizon annexed to his answer (a) the affidavits of Mrs. Fernandez and Father Bomeisil regarding the alleged questionable actions of Atty. De la Rama, (b) copies of the

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latter's withdrawal of appearance in certain cases, and (c) a copy of Dizon's appearance in L-32709, *DI'Mark's Inc. vs. Hon. G.A. Buendia, etc., et al.* Dizon prayed that the disbarment complaint be dismissed outright for lack of merit.

After the complainant had filed his reply, the case was referred to the Solicitor General for investigation report and recommendation.

The hearings in the Solicitor General's Office scheduled on February 4 and 20, March 25 and April 26, 1974 were postponed at the instance of Atty. De la Rama and over the objection of the respondent who insisted that the case should be dismissed. At the hearing set on July 11, 1974 Atty. De la Rama did not appear. The respondent moved for the dismissal of the case. Thereafter, the case was not set for hearing anymore. The Acting Solicitor General in his report of July 6, 1976 recommended that the complaint be dismissed.

Complainant De la Rama's apathy to the prosecution of his charge is strongly indicative of its lack of merit. If it were true that he had a legitimate grievance against respondent Dizon, he would have acted with vigor and dispatch in presenting his evidence. But after July 11, 1974 he did not bother to ask that his complaint be again set for hearing. As already noted, the prior scheduled hearings were not held due to his motions for postponement and nonappearance.

Parenthetically, it may be mentioned that on November 26, 1971, or long before De la Rama filed his complaint against Dizon, Mrs. Fernandez filed against De la Rama a complaint for disbarment, charging him with deceit, malpractice and other gross misconduct. That case, which is Administrative Case No. 1051, is pending in the Solicitor General's Office.

WHEREFORE, Atty. De la Rama's complaint for disbarment against respondent Dizon is dismissed for failure to prosecute. (See *Worthington vs. Fernandez*, Adm. Case No. 1085, June 10, 1976).

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SO ORDERED.

Fernando (Chairman), Barredo, Antonio and *Martin, JJ.*, concur.

Concepcion, Jr., J., is on leave.

Martin, J., was designated to sit in the Second Division.

FIRST DIVISION

[G.R. No. L-23634. July 29, 1976]

GAMBOA'S INCORPORATED, *petitioner, vs.* **THE HONORABLE COURT OF APPEALS, THE HONORABLE NICASIO YATCO, THE HONORABLE DAMIAN JIMENEZ, THE PROGRESSIVE DEVELOPMENT CORPORATION, MR. FRANCISCO M. VILLANUEVA AND THE CITY SHERIFF OF QUEZON CITY, PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT; EXECUTION; WRIT OF EXECUTION MUST CONFORM WITH JUDGMENT.** — A writ of execution must conform with the judgment and if it is different from or exceeds the terms of the judgment. it is a nullity (*Villoria vs. Piccio*, 95 Phil. 802). It may not vary the terms of the judgment it seeks to enforce. Nor may it go beyond the terms of the judgment sought to be executed. Where the execution is not in harmony with the judgment which gives it life and exceeds it, it has *pro tanto* no validity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.