

OCA CIRCULAR NO. 91-2004, August 16, 2004

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TO:

THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC ATTORNEY'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT:

SUSPENSION FROM THE PRACTICE OF LAW FOR THREE (3) MONTHS OF ATTY, BALMES L. OCAMPOS

For the information and guidance of all concerned, quoted hereunder is the Decision of the Third Division of this Court dated January 29, 2004 in Administrative Case No. 4401 entitled "Biomie Sarenas-Ochagabia vs. Atty. Balmes L. Ocampos", to wit:

"On January 25, 1995, complainant Biomie Sarenas-Ochagabia lodged a complaint[1] against her former counsel, respondent Atty. Balmes L. Ocampos, whose legal services she, together with her aunts Toribia Garban de Detalla and Rosenda Garban vda. de Denore as co-plaintiffs, engaged in Civil Case No. 91-39 before Branch 15 of the Regional Trial Court of Ozamis City (for recovery of possession and ownership of a parcel of land).

An adverse decision[2] having been rendered against the plaintiffs in above-mentioned civil case on September 7, 1992, Atty. Ocampos filed a notice of appeal[3] at the behest of the former.[4]

The Court of Appeals gave the plaintiffs-appellants 45 days from notice to file their brief[5] but before the lapse of the period, their counsel Atty. Ocampos, upon motion,[6] was granted a 90-day extension of time to file the brief. The extended period lapsed, without, however, any appellants' brief being filed, prompting the

Despite the grant of respondent's motion for extension of time to submit his position paper,[18] he failed to submit one.[19]

The committee created for the purpose of investigating the case in Ozamis City thereupon recommended that the case be resolved on the basis of the pleadings and records on file.[20]

Investigating Commissioner Victoria G. de los Reyes, in her Report and Recommendation[21] dated August 29, 2003, faulted respondent for violation of the Code of Professional Responsibility, "particularly Rule 18.01[22] and Rule 18.03 x x x," and recommended the imposition of the penalty of suspension for six months, she "observing as follows:

It is worthwhile to mention here that in the case of "in re Santiago F. Marcos, 156 SCRA 844 (1987)", a lawyer's failure to file brief for his client amounts to inexcusable negligence, x x x

In the instant case, the respondent Arty. Ocampos had no justifiable excuse for not preparing and filing the needed appellants' brief. Granting that he was HI during that time, he could have written to the complainant about it so that the latter will be able to hire another lawyer to handle the case for her and to prepare and file the appellants' brief. He also failed to make the necessary Manifestation and Motion with the Court of Appeals. Sad to state, the respondent failed to do all these in blatant violation of his duty towards his client and to the Courts.

We therefore maintain that a lawyer's neglect of duty should not be tolerated and for such inaction he has to be penalized.

The undersigned Commissioner could have recommended for a stiffer penalty. But considering that he is now in the twilight years of his life, and for humanitarian reasons, it is recommended that he just be suspended from the practice of law. (Emphasis in the original)[23]

By Resolution of September 27, 2003 , the IBP Board of Governors adopted the Report and Recommendation of the Investigating Commissioner with the modification that the penalty of suspension should only be for four months.[24]

This Court finds the IBP Board Resolution faulting respondent in order. A lawyer engaged to respondent a client in a case bears the responsibility of protecting the latter's interest without must diligence. By failing to file appellants' brief, respondent was remiss in the discharge of such responsibility. He thus violated the Code of Professional which provides:

Rule 12.03. A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Rule 18.03. A lawyer shall not neglect a legal mater entrusted to him, and his negligence in connection therewith shall render him liable.

That respondent accepted to represent complainant et al. gratis et a move does not justify his failure to exercise due diligence in the performance of his duty to file appellants' brief. Every case a lawyer accepts deserves full attention, diligence, skill, and competence regardless of its importance and whether he accepts it for a fee or for free.[26]

It bears emphasis that a client is entitled to the benefit of any and every remedy and defense that is authorized by the law and expects his lawyer to assert every such remedy or defense.[27]

Respondent's claim that he conferred with complainant to request Atty. Osorio to draft and file the appellants' brief does not persuade, especially given his filing of a motion of extension of time to file brief upon the grounds therein stated, without him mentioning that Atty. Osorio was going to be the one to prepare and file it

Until his final release from the professional relationship with a client, a counsel of record is under obligation to protect the client's interest. That is why if a party has a counsel of record, a court does not recognize any other representation on behalf thereof unless it is in collaboration with such counsel of record or until a formal substitution of counsel is effected. Since respondent had not then withdrawn as counsel as he, it bears repeating, in fact filed a motion for extension of time to file brief, he was under obligation to discharge his professional responsibility.

As for complainant's allegation that respondent denied that the appeal was dismissed by the appellate court, it does not merit consideration, no factual finding thereof being reflected in the IBP Report and Recommendation.

A word on the penalty to be imposed In administrative complaints, this Court has exercised its discretion on what penalty to impose on the basis of the facts thereof. Thus, for a lawyer's failure to file a brief or their pleading, this

Court imposed penalties ranging from reprimand,[28] warning with fine,[29] suspension[30] and, aggravated cases disbarment.[31]

In the present case, owing to respondent's advanced age, this Court imposes upon him the penalty of suspension for three months.

WHEREFORE, for violation of the Code of Professional Responsibility, respondent Atty. Balmes L. Ocampos is SUSPENDED from the practice of law for three (3) months effective upon the finality hereof, with WARNING that a repitition thereof will be dealt with more severely.

SO ORDERED."

In a resolution of the Third Division dated May 19, 2004, the Court Resolved to let the copy of the decision of January 29, 2004 be deemed served on Atty. Ocampos, it appearing that said copy of the decision was returned unserved with postmaster's notation "party out".

__16__ August 2004.

PRESBITERO J. VELASCO, JR.

Court Administrator

[1] Rollo at 4-22.

[2] Id., at 34-36.

[3] Id., at 15.

[4] Id., at 4.

[5] Id., at 18.

[6] Id., at 19-20.

[18] Id., at 139.

[19] Id., at 141.

[20] Id., at 141, 148..

[21] Id., at 145-149.

[22] Rule 18.01. A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

[23] Rollo at 149.

[24] Id. at 144.

[25] Ford v. DaitoL, 250 SCRA7, 12 (1995).

[26] Santiago v. Fojas, 248 SCRA68,75-76, (1995).

[27] Id. at 7 3-74

[28] Vda. de Orbiana v. Gerio, 88 SCRA586 (1979).

[29] Easas v. Icawat, 338 SCRA 648 (2000).

[30] Rabanal v. Tugade, 383 SCRA484 (2002); Galen v. Paguirigan,318 3CRA527 (2002); Foniv. Daitol, supra.

[31] Mariveles v. Mallari, 219 SCRA 44 (1993).

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