

ARSENIA T. BERGONIA, COMPLAINANT, VS. ATTY. ARSENIO A. MERRERA, RESPONDENT.*A.C. No. 5024. February 20, 2003*

Ponente: PANGANIBAN, J.

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A motion for extension to file an appellant's brief carries with it the presumption that the applicant-lawyer will file the pleading within the period granted. Failure to so file the brief without any reasonable excuse is a violation of the Canons of Professional Responsibility. For such violation, a lawyer may be administratively sanctioned, especially if it results in damage to the client.

The Case

This administrative case stems from an Affidavit-Complaint[1] filed by Arsenia T. Bergonia on March 2, 1999, seeking the disbarment of Atty. Arsenio A. Merrera for violating Canons 12 and 18 of the Code of Professional Responsibility. Complainant alleged that his inexcusable negligence, while acting as her counsel, caused the unceremonious dismissal of her appeal. Specifically, despite obtaining two extensions, he still failed to file the required appellant's brief in the Court of Appeals. After a careful consideration of the Complaint and respondent's Comment[2] thereon dated November 22, 1999, the Court referred the matter to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

IBP Commissioner Rebecca Villanueva-Maala's November 15, 2001 Report[3] recommending the six-month suspension of respondent from the practice of law was adopted and approved by the IBP Board of Governors in its June 29, 2002 Resolution No. XV-2002-236. On August 15, 2002, the Notice of the IBP Resolution[4] and that of the Commissioner's Report were forwarded to the Office of the Bar Confidant by Atty. Victor C. Fernandez, director for bar discipline of the IBP.[5]

The Facts

Complainant, together with her relatives, filed a case for the quieting of title (docketed as Civil Case No. U-4601) against her niece Josephine Bergonia, as well as Spouses Rodolfo and Remedios Parayno and their minor daughter Gretchen.[6] After due trial, the Regional Trial Court (RTC) of Urdaneta, Pangasinan, Branch 49,[7] promulgated its Decision in favor of the Parayno spouses and their daughter.[8] On appeal, the CA affirmed the ruling of the trial court[9] and the Decision became final and executory.[10]

Since the disputed land was still in the possession of complainant, the Paraynos instituted Civil Case No. U-6061 to recover possession.[11] After the Answer was filed, respondent became her counsel of record. After due trial, Branch 48[12] of the same RTC rendered its Decision[13] ordering her to vacate the premises and to surrender possession thereof to the Parayno spouses.

Thereafter, complainant appealed the RTC judgment to the CA. Respondent, as counsel, received a Notice to File Brief[14] on December 17, 1997. Acting on his Motion for extension to file the appellant's brief,[15] the CA in

its February 18, 1998 minute Resolution[16] granted him until March 17, 1998 to do so. Even before the first extension had lapsed, however, he again filed an Urgent Second Motion for extension to file brief,[17] praying that he be given until April 16, 1998 to submit the required pleading. The CA again granted his Second Motion.[18] Eventually, the deadline, which had already been extended twice, lapsed without his filing the appellant's brief. Hence, the CA, upon motion of the appellees, dismissed the appeal in its June 25, 1998 Resolution.[19]

Report and Recommendation of the IBP

Commissioner Maala found respondent guilty of inexcusable negligence. She rejected his explanation that he had already advised complainant not to pursue the appeal even before the filing of the Notice of Appeal. In fact, after the appellee filed a Motion to Dismiss the appeal, he even filed an Opposition, thus raising complainant's hopes of eventual victory.

If respondent thought it was best to dispense with the appellant's brief, he should have filed a manifestation or motion to that effect. Instead, he opposed the Motion to Dismiss and asked for further extensions of time. His actions clearly showed how negligent and irresponsible he had been in filing the brief.

The board of directors of the IBP concurred with Commissioner Maala that respondent should be suspended from the practice of law for six (6) months.

The Court's Ruling

We agree with the IBP.

Respondent's Administrative Liability

Rule 12.03, Canon 12 of the Code of Professional Responsibility, requires all the members of the bar to observe the following:

"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."

Expressly stated is the requirement to show good and sufficient cause for requests of extension of time to file appellate briefs. Section 12 of Rule 44 of the Rules of Court provides that an extension of time for the filing of a brief shall not be allowed, except when there is good and sufficient cause, and only when the motion is filed before the expiration of the extension sought.

From time to time, a request for extension becomes necessary when an advocate needs more time to study the client's position. Generally, such request is addressed to the sound discretion of the court. Lawyers who, for one reason or another, decide to dispense with the filing of the required pleading, should promptly manifest this intent to the court. It is necessary for them to do so in order to prevent delay in the disposition of the case. Those who file motions for extension in bad faith misuse the legal process, obstruct justice,[20] and thus become liable to disciplinary action.[21]

A lawyer who requests an extension must do so in good faith and with a genuine intent to file the required pleading within the extended period. In granting the request, the court acts on the presumption that the applicant has a justifiable reason for failing to comply with the period allowed. Without this implied trust, the motion for extension will be deemed to be a mere ruse to delay or thwart the appealed decision. The motion will thus be regarded as a means of preventing the judgment from attaining finality and execution and of enabling the movant to trifle with procedure and mock the administration of justice.

In this case, respondent twice moved for an extension of time to file the required appellant's brief. In his first Motion, he alleged that he had a hectic daily schedule of hearings and other pressures from work. In his next Motion, he claimed he had acute arthritis and asthmatic attacks. The granting of his two Motions implied that he had been given ample time either to finish researching his case or to withdraw his appeal. Yet, he still failed to file the required brief. In its June 25, 1998 Resolution, the CA noted that the appellee's Motion to Dismiss the appeal was filed only after forty (40) days from the expiration of the last extension.

Respondent claims that he never planted false hopes in the mind of complainant. Upon receiving the Decision in Civil Case No. U-6061, he purportedly advised her that her chances of winning in the appellate court were slim, because the ownership of the disputed land had already been adjudicated to the other party in Civil Case No. U-4601. He avers that he tried to persuade her to accept her defeat "like a good soldier."

We are not persuaded. If, indeed, respondent failed to convince complainant to drop her appeal, he should have just withdrawn his appearance. Based on his arguments in his Opposition to the Motion for Execution and Demolition, however, we do not believe that he even tried to convince her to withdraw the appeal. We are inclined to believe that this excuse was merely an afterthought to justify his negligence.

Moreover, respondent claims that after filing the Motions for Extension, he surmised that the appeal would be useless, because he could not show sufficient cause to reverse the Decision.

This justification is even more inexcusable. Respondent, should have checked first if there was a good ground to support the appeal. If there was none, he should have been forthright in his evaluation of the case.

Lawyers should fully familiarize themselves with the causes of their clients before advising the latter on the soundness of litigating. If they find that the intended suit is devoid of merit or that the pending action is defenseless,[22] they should promptly inform and dissuade their clients accordingly.

Assuming that respondent indeed tried to persuade complainant to abandon the appeal, he should have manifested to the CA that he had decided not to file the appellant's brief anymore, instead of just letting the period lapse. His contention that he could not find the appropriate jurisprudence to support her case is too flimsy to be credible. A competent and ethical lawyer would have at least tried to persuade the CA with reason and logic.

Respondent alleges that complainant knew of the dismissal of the appeal. That she had referred the Motion for Execution and Demolition to him for comment allegedly showed that she had already given up her desire to pursue her appeal. He pointed out that if she had indeed blamed his inexcusable negligence for its dismissal, then she would not have referred that Motion to him.

We are not convinced. Anyone would have done what complainant did, because no one else would know the case better than one's lawyer. Contrary to respondent's allegation, we do not read any intention on her part to withdraw the appeal, which showed that she wanted to oppose the execution of the Decision.

We concur in the IBP's finding that respondent was negligent in the performance of his duties as counsel for complainant, and that his negligence was inexcusable. If indeed it was true that he found her case to be futile, he should have just withdrawn the appeal, instead of filing several Motions for extension to file the appellant's brief.

Candor in all their dealings is the very essence of a practitioner's honorable membership in the legal profession.[23] Lawyers are required to act with the highest standard of truthfulness, fair play and nobility in the conduct of litigation and in their relations with their clients, the opposing parties, the other counsels and the courts. They are bound by their oath to speak the truth and to conduct themselves according to the best of their knowledge and discretion, and with fidelity to the courts and their clients. Canon 18.03 of the Code requires that

“a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith renders him liable.”

WHEREFORE, Atty. Arsenio A. Merrera is hereby found guilty of violating Canons 12 and 18 of the Canons of Professional Responsibility and is **SUSPENDED** from the practice of law for a period of six (6) months from receipt of this Decision. This Decision is immediately executory.

SO ORDERED.

Puno (Chairman), Sandoval-Gutierrez, Corona, and Carpio Morales, JJ., concur.

[1] Rollo, Vol. I, pp. 2-4.

[2] *Id.*, pp. 38-46.

[3] Rollo, Vol. II, pp. 11-14.

[4] Signed by Atty. Jaime M. Vibar, national secretary of the IBP; *id.*, p. 10.

[5] See Letter; *id.*, p. 9. The Notice of Resolution and its accompanying documents were noted at the October 14, 2002 session of the Third Division of this Court.

[6] See Complaint; rollo, Vol. I, p. 48.

[7] Presided by Judge Santiago G. Estrella.

[8] See Decision dated June 8, 1990; rollo, Vol. I, pp. 115-126.

[9] See the January 18, 1995 Decision penned by then Justice Ricardo P. Galvez and concurred in by Justices Alfredo L. Benipayo and Romeo J. Callejo Sr. (now SC justice); *id.*, pp. 129-136.

[10] See Entry of Judgment dated June 7, 1995; *id.*, p. 138.

[11] See Complaint; *id.*, pp. 143-151.

[12] Presided by Judge Alicia B. Gonzalez-Decano.

[13] Dated October 15, 1996; rollo, Vol. I, pp. 153-158.

[14] Docketed as CA GR CV No. 55679; *id.*, p. 5.

[15] See Urgent Motion for Extension of Period Within Which to File Appellant’s Brief; *id.*, pp. 6-7.

[16] *Id.*, p. 8.

[17] Dated March 17, 1998; *id.*, pp. 9-11.

[18] See Minute Resolution dated April 16, 1998; *id.*, p. 12.

[19] *Id.*, pp. 13-14.

[20] Ruben E. Agpalo, *Legal Ethics* (1989), p. 125; Ernesto L. Pineda, *Legal and Judicial Ethics* (1999), p. 159.

[21] *Casals v. Cusi Jr.*, 52 SCRA 58, 65, July 12, 1973; *Achacoso v. Court of Appeals*, 51 SCRA 424, 427, June 28, 1973; *Roxas v. Court of Appeals*, 156 SCRA 252, 256, December 10, 1987; *People v. Compendio Jr.*, 258 SCRA 254, 270, July 5, 1996.

[22] Rule 15.05, Canon 15 of the Code of Professional Responsibility requires that a “lawyer, when advising his client, shall give a candid and honest opinion on the merits and probable results of the client’s case, neither overstating nor understating the prospects of the case.”

[23] The Code of Professional Responsibility requires in Canon 10 that “a lawyer owes candor, fairness and good faith to the court”; Canon 8, “a lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues x x x”; and Canon 15, “a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.”

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