

TEODULO F. ENRIQUEZ, COMPLAINANT, V. ATTY. EDILBERTO B. LAVADIA, JR., RESPONDENT.*A.C. No. 5686. June 16, 2015*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-5686/>**PER CURIAM:**

Before us is a letter-complaint[1] for disbarment filed before the Office of the Bar Confidant (OBC) by Teodulo[2] Enriquez against Atty. Edilberto B. Lavadia, Jr. for gross negligence and inefficiency in the performance of his duties as a lawyer.

On January 7, 1997, Mr. Ernesto Ouano, Sr. filed a complaint[3] for forcible entry against complainant Teodulo Enriquez before the Municipal Circuit Trial Court (MCTC) of Talibon, Bohol. To defend his interests, Enriquez engaged[4] the services of the law office of Attys. Joselito M. Alo, R. L. C. Agapay, and Edilberto B. Lavadia, Jr. with Atty. Lavadia as the assigned attorney.[5]

On March 18, 2000, in open court, Atty. Lavadia agreed to submit their position papers and affidavits within 30 days from the receipt of the pre-trial order after which, the case would be submitted for decision. However, Atty. Lavadia failed to file the position paper resulting in the defendants being declared in default. The MCTC rendered a decision[6] in favor of the plaintiffs.[7] Atty. Lavadia filed a notice of appeal[8] with sufficient bond.

In its April 26, 2001 Order,[9] the Regional Trial Court (RTC) of Talibon, Bohol dismissed the appeal based on Section 7(b),[10] Rule 40 of the Rules of Court. The RTC stated that Atty. Lavadia failed to file the appeal memorandum after more than 71 days. Atty. Lavadia moved for reconsideration but the same was denied by the RTC in its June 26, 2001 Order[11] pointing out that it had granted four motions for extension and still no appeal memorandum was filed.

On January 16, 2002, this disbarment complaint was received by the OBC. Enriquez alleged that in failing to file the necessary pleadings before the court, Atty. Lavadia caused them great damage and prejudice. This constituted gross negligence and inefficiency in the performance of his professional duties as a lawyer.[12] Enriquez thus prayed that Atty. Lavadia be disbarred.

On July 3, 2002, this Court required Atty. Lavadia to submit his comment.[13]

On August 29, 2002, the Court received an ex parte manifestation from Atty. Lavadia stating that he cannot file a comment because he did not receive a copy of the complaint.[14] The Court, thus, required Enriquez to furnish Atty. Lavadia a copy of the complaint within 10 days and required the latter to file his comment within 10 days from receipt thereof.[15]

On December 10, 2002, Enriquez informed[16] the Court that he sent a copy of the complaint and its annexes to Atty. Lavadia on December 6, 2002 as evinced by a receipt.[17]

Atty. Lavadia filed two motions for extension[18] citing his heavy case load and family problems as reasons in both instances for not filing the comment. Said motions were granted by the Court giving Atty. Lavadia another 60 days within which to file his comment.[19]

On February 18, 2003, Atty. Lavadia again filed a motion to extend to file his comment due to his wife's continued illness.[20] The Court granted another 30-day period, stating that it would be the last extension it would grant.[21]

Failing to submit his comment within the period granted, this Court required Atty. Lavadia to show cause why he should not be held in contempt and to submit his comment within 10 days from notice.[22] Still, Atty. Lavadia failed to comply. The Court thus imposed on him a P1,000.00 fine or imprisonment of five days if he failed to pay the fine and ordered him to comply with its previous resolutions.[23]

Atty. Lavadia paid the fine on June 2, 2005,[24] and asked for additional time to file his comment this time stating that he had moved from Tagbilaran to Cebu because of his wife's illness which was caused by "dark-beings." He claimed that a series of unfortunate events plagued them, i.e., their house was razed by a fire, the hard drive of his computer crashing, and his family members falling ill due to a "dark being." [25] The Court thus granted a 30-day extension.[26]

Failing once again to file his comment, the Court in its September 19, 2007 Resolution imposed a fine of P2,000.00 and required Atty. Lavadia to submit his comment within five days from notice.[27] There is no record to show that he complied with the September 19, 2007 Resolution.

In its August 18, 2010 Resolution, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[28]

The IBP Commission on Bar Discipline (CBD) scheduled a mandatory conference[29] on January 14, 2011 but both parties failed to appear.[30] Parties were then ordered to submit their position papers within ten days from receipt of the Order.

On April 20, 2011, Atty. Lavadia requested that he be furnished a copy of the complaint having lost his copy in a fire that razed his home.[31] The IBP CBD resolved to furnish Atty. Lavadia a copy of the complaint. It also directed the parties to file their position papers within 15 days from August 1, 2011.[32]

In its Report and Recommendation,[33] the IBP CBD recommended that Atty. Lavadia be disbarred and his name be withdrawn from the Roll of Attorneys. The IBP CBD found that not only did Atty. Lavadia cause material prejudice to his clients by neglecting his duties as counsel in failing to file the necessary pleadings to defend his client's interest, he also displayed a willful, defiant and cavalier attitude by repeatedly defying the resolutions of the Court. By his actions the IBP CBD considered Atty. Lavadia unfit to dispense his duties and responsibilities as an attorney.

On September 28, 2013, the IBP Board of Governors (BOG) resolved to adopt the report and recommendation of the IBP CBD.[34]

Atty. Lavadia moved for reconsideration[35] but it was denied.[36]

After careful review and deliberation, we agree with the report of the IBP that Atty. Lavadia is administratively liable.

We cannot stress enough that being a lawyer is a privilege with attached duties and obligations.[37] Lawyers bear the responsibility to meet the profession's exacting standards.[38] A lawyer is expected to live by the lawyer's oath, the rules of the profession and the Code of Professional Responsibility (CPR). The duties of a lawyer may be classified into four general categories namely duties he owes to the court, to the public, to the bar and to his client.[39] A lawyer who transgresses any of his duties is administratively liable and subject to the Court's disciplinary authority.[40]

In the present case, the duties transgressed by Atty. Lavadia fall under those duties to his client and to the court. This Court notes Atty. Lavadia's propensity for filing motions for extension of time to file pleadings but failing to file the same, in violation of Rule 12.03 of the CPR which states:

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. (Emphasis supplied)

In fact, such proclivity on the part of Atty. Lavadia to file such motions precisely led to the filing of this complaint. In the course of this administrative proceeding, he continued to flaunt to this Court his willful defiance and disregard for court orders.

LAWYER AND CLIENT: RULE 12.03 AND CANON 18 AND RULE 18.03

A lawyer is expected to serve his client with competence and diligence.[41] Lawyers are reminded to note Rules 12.03 and 18.03 of the CPR:

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

In *Solidon v. Macalalad*,[42] we stated that receiving money as acceptance fee for legal services and failing to render the services is a violation of Canon 18 of the CPR. In that case, we also stated that a lawyer's failure to file the position paper is a per se violation of Rule 18.03 of the CPR.[43] We pointed to the fiduciary nature of a lawyer's duty to his client. We stated:

x x x A lawyer so engaged to represent a client bears the responsibility of protecting the latter's interest with utmost diligence. The lawyer bears the duty to serve his client with competence and diligence, and to exert his best efforts to protect, within the bounds of the law, the interest of his or her client. Accordingly, competence, not only in the knowledge of law, but also in the management of the cases by giving these cases appropriate attention and due preparation, is expected from a lawyer.[44] (Citations omitted)

In *Mariveles v. Mallari*,[45] we disbarred Atty. Mallari for violating Rules 12.03 and 18.03 of the CPR. There, Atty. Mallari, after being granted a total of 245 days to file his client's appellant's brief failed to file the same, resulting in the dismissal of the appeal. The Court considered Atty. Mallari's act a shameless disregard of his duties as a lawyer and found him to be unfit for membership in the noble profession.[46] In the recent case of *Figueras v. Jimenez*,[47] Atty. Jimenez was found administratively liable for failing to file the appellant's brief on behalf of his client.

Here, Enriquez paid a total of P29,750.00 as acceptance fee and other fees relating to the preparation of pleadings for the case including the appeal. Atty. Lavadia however failed to discharge his duties. He failed to file his client's position paper rendering his client in default. While he filed a notice of appeal and several motions for extension of time to file the appeal memorandum, all of which were granted by the lower court, he ultimately neglected to file the appeal memorandum. Thus, following our pronouncement in *Solidon*, Atty. Lavadia has clearly transgressed Canon 18 and Rule 18.03 of the CPR thereby making him administratively liable.

As in *Mariveles*, Atty. Lavadia requested and was granted extensions of time to file the appeal memorandum after he filed the notice of appeal with sufficient bond. The lower court granted him four extensions totaling 71 days after which time he still failed to file the appeal memorandum. His failure adversely affected the cause of Enriquez, his client. In repeatedly asking for extensions of time without actually filing the appeal memorandum, Atty. Lavadia is liable under Rule 12.03 of the CPR.

LAWYER AND THE COURTS: RULE 12.03 IN RELATION TO CANON 11

Under Canon 11[48] of the CPR a lawyer is required to observe and maintain due respect to the court and its judicial officers. We read this provision in relation to Rules 10.03[49] and 12.03 of the CPR for this rule does not merely affect the client but the judicial process.

In *Vaflor-Fabroa v. Paguinto*,[50] this Court reiterated its previous ruling in *Sebastian v. Bajar*[51] where we stated that:

xxx Respondent's cavalier attitude in repeatedly ignoring the orders of the Supreme Court constitutes utter disrespect to the judicial institution. Respondent's conduct indicates a high degree of irresponsibility. A Court's Resolution is "not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively". Respondent's obstinate refusal to comply with the Court's orders "not only betrays a recalcitrant flaw in her character; it also underscores her disrespect of the Court's lawful orders which is only too deserving of reproof."

Lawyers are called upon to obey court orders and processes and respondent's deference is underscored by the fact that willful disregard thereof will subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. In fact, graver responsibility is imposed upon a lawyer than any other to uphold the integrity of the courts and to show respect to their processes. (Citations omitted).

The present complaint was filed January 2002. We granted Atty. Lavadia every opportunity to file his comment to the complaint. We issued no less than eight resolutions ordering Atty. Lavadia to comment: two of which ordered him to pay fines of P1,000.00 and P2,000.00 and requiring him to show cause for his failure to file and to comply with the Court's resolutions. In fine, we have granted him a total of 155 days extension to file his comment, in response to his repeated pleas contained in his numerous ex parte motions. After a lapse of eight years, this Court referred the case to the IBP where Atty. Lavadia once again filed a motion for extension to file his position paper but nevertheless failed to file the same.

While this Court is not unsympathetic to the plight of Atty. Lavadia, we cannot countenance his act of repeatedly pleading for extensions of time and yet not submitting anything to the Court. This reflects his willful disregard for Court orders putting in question his suitability to discharge his duties and functions as a lawyer. As we stated in *Vaflor-Fabroa*[52] the Court's Resolution is not a mere request. A lawyer's blatant disregard or refusal to comply with the Court's orders underscores her disrespect of the Court's lawful orders which is only too deserving of reproof. Here, this disbarment case has dragged on for years while we gave Atty. Lavadia every opportunity to file his comment. Despite the extended time granted him, he continued to fail to do so. Such obstinate disobedience to the Court's orders merits disciplinary action.

We said in *Figueras v. Atty. Jimenez*[53] that the determination of whether an attorney should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion. This Court has imposed the penalties ranging from reprimand, warning with fine, suspension and, in grave cases, disbarment for a lawyer's failure to file a brief or other pleading.

In the present case, we note that this is Atty. Lavadia's first infraction. However, given his proven propensity for filing motions for extension of time and not filing the required pleading, this Court finds that it should impose the severe sanction lest some other unknowing clients engage his services only to lose their case due to Atty. Lavadia's nonchalant attitude. Considering the gravity of Atty. Lavadia's cavalier actions both to his client and his impertinent attitude towards the Court, we find the penalty of DISBARMENT as recommended by the IBP appropriate.

WHEREFORE, respondent Atty. Edilberto B. Lavadia, Jr. is hereby DISBARRED for violating Canons 11 and 18

and Rules 10.03, 12.03 and 18.03 of the Code of Professional Responsibility and his name is ORDERED STRICKEN OFF from the Roll of Attorneys.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal record as a member of the Bar, the Integrated Bar of the Philippines, the Office of the Court Administrator, the Department of Justice and all courts in the country for their information and guidance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-De Castro, Brion, Bersamin, Del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and Jardeleza, JJ., concur.

Peralta, and Leonen, JJ., on official leave.

NOTICE OF JUDGMENT

Sirs/Mesdames:

Please take notice that on June 16, 2015 a Decision/Resolution, copy attached herewith, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on July 02, 2015 at 1:25 p.m.

Very truly yours,

(SGD.)

ENRIQUETA ESGUERRA-VIDAL

Clerk of Court

[1] Received by the OBC on January 16, 2002 and docketed as A.C. No. 5686. Rollo, pp. 5-8.

[2] Also referred to as "Teodolo" in some parts of the pleadings.

[3] Docketed as Civil Case No. 446. Id. at 12-20.

[4] Enriquez paid P20,000.00 as acceptance fee in four equal instalments. Id. at 52-55.

[5] Answer submitted to the lower court was signed by Attys. Alo and Lavadia. Id. at 37-49.

[6] Signed by Acting MCTC Judge Avelino N. Puracan. Id. at 64-69.

[7] Id. at 67-69.

[8] Dated September 12, 2000. Id. at 70-71.

[9] Signed by Presiding Judge Irma Zita V. Masamayor. Id. at 73-74.

[10] 1997 REVISED RULES OF COURT, Rule 40, Section 7(b) provides:

SEC. 7. Procedure in the Regional Trial Court. —

x x x x x x x x

(b) Within fifteen (15) days from such notice, it shall be the duty of the appellant to submit a memorandum which shall briefly discuss the errors imputed to the lower court, a copy of which shall be furnished by him to the

adverse party. Within fifteen (15) days from receipt of the appellant's memorandum, the appellee may file his memorandum. Failure of the appellant to file a memorandum shall be a ground for dismissal of the appeal. (Emphasis supplied)

[11] Signed by Presiding Judge Irma Zita V. Masamayor. Id. at 75.

[12] Id. at 7.

[13] Id. at 76.

[14] Id. at 77-78.

[15] Resolution dated November 11, 2002. Id. at 80.

[16] Id. at 81.

[17] Id. at 82.

[18] Dated December 18, 2002 and January 17, 2003. Id. at 85-86 and 89-90.

[19] Resolution dated April 9, 2003. Id. at 92.

[20] Id. at 94-95.

[21] Resolution dated June 18, 2003. Id. at 97.

[22] Resolution dated May 24, 2004. Id. at 98.

[23] Resolution dated March 7, 2005. Id. at 99.

[24] Id. at 100-101.

[25] Id. at 104-110.

[26] Resolution dated July 11, 2005. Id. at 112.

[27] Id. at 113.

[28] Id. at 114.

[29] Id. at 116.

[30] Id. at 117.

[31] Id. at 118-119.

[32] Id. at 123.

[33] Signed by Commissioner Oliver A. Cachapero. Id. at 127-132.

[34] IBP Resolution No. XX-2013-111. Id. at 126.

[35] Id. at 133-146.

[36] IBP Resolution No. XXI-2014-335. Id. at 179-180.

[37] See *Molina v. Magat*, A.C. No. 1900, June 13, 2012, 672 SCRA 1, 6.

[38] See *Reddi v. Sebrio, Jr.*, 597 Phil. 168, 180 (2009); *Dumadag v. Atty. Lumaya*, 390 Phil. 1, 10 (2000).

[39] *Molina v. Magat*, supra note 37.

[40] See RULES OF COURT, Rule 138, Section 27.

[41] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18 provides:

Canon 18 - A lawyer shall serve his client with competence and diligence.

[42] 627 Phil. 284 (2010).

[43] *Id.* at 289-290.

[44] *Id.* at 290-291.

[45] Adm. Case No. 3294, February 17, 1993, 219 SCRA 44.

[46] *Id.* at 45 and 46.

[47] A.C. No. 9116, March 12, 2014.

[48] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 11 provides:

Canon 11 — A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

[49] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 10.03 provides:

Rule 10.03 - A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

[50] 629 Phil. 230, 236-237 (2010).

[51] 559 Phil. 211, 224 (2007).

[52] *Supra* note 50.

[53] *Supra* note 47, at 5.

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