

MARIO S. AMAYA, COMPLAINANT, VS. ATTY. DELANO A. TECSON, RESPONDENT.

A.C. NO. 5996. February 07, 2005

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

In a Complaint dated March 20, 2003, Mario S. Amaya sought the disbarment of Atty. Delano A. Tecson for “highly irregular actuations and/or grave negligence in handling an appeal with the Court of Appeals.”

The complainant alleged that he retained the services of the respondent to handle the said appeal when his former counsel suffered a stroke due to acute hypertension. The respondent demanded P20,000.00[1] for the filing of the notice of appeal, which the complainant immediately paid. The respondent assured him that the appeal was going to be filed on time, and demanded an additional sum of P20,000.00 for the preparation and filing of the appellant’s brief. The complainant paid the said amount on March 24, 2001.[2] The complainant further alleged as follows:

... I periodically visited Atty. Tecson in his office to follow up the progress of the appeal with the Honorable Court of Appeals. During my earlier visits, I was assured by Atty. Tecson that our appeal will be given due course. ... However, sometime in the first week of December 2001, I was informed by Atty. Tecson that the appeal was dismissed ... due to the fact that [he] failed to file it one day late.... I was shocked because I was so diligent in paying Atty. Tecson and also in following up with him the progress of the appeal. When I asked Atty. Tecson why he was not able to file on time the Notice of Appeal, [he] merely replied that the Honorable Court of Appeals committed a mistake in dismissing the appeal because it failed to consider the inability to file the appeal due to the fact that the post office was closed on Saturday and Sundays. Atty. Tecson assured me that the appeal would be resurrected once a Motion for Reconsideration would be filed by him. Thus, Atty. Tecson told me that he would file a motion for reconsideration and would go to Manila to personally follow it up. Atty. Tecson demanded from me the sum of TEN THOUSAND (P10,000.00) PESOS for the said motion for reconsideration. I readily paid Atty. Tecson, but unfortunately, I did not anymore demand for a receipt.[3]

The complainant narrated that he was no longer able to personally talk to the respondent after this, and that the latter was always “out of town,” attending to several court hearings in different cities and municipalities and could not even be reached through his cellular phone.

On May 10, 2002, the complainant learned of the denial of the motion for reconsideration through a friend. He tried contacting the respondent, to no avail, and was constrained to hire another lawyer, Atty. Arsenio C. Tan. Atty. Tan then filed a Notice of Appearance and Second Motion for Reconsideration which was denied by the appellate court in a Resolution dated October 16, 2002.

In his Comment dated June 23, 2003, the respondent admitted that he was the complainant’s counsel and that the appeal was dismissed because he failed to file the docket fees on time. He then filed a motion for reconsideration of the said denial, which the appellate court, likewise, denied.

According to the respondent, the complainant's case was initially handled by a different lawyer and was adversely decided by the trial court. The complainant, who was "cocksure" of winning his appeal before the Court of Appeals, approached the respondent regarding the said case. According to the respondent:

... I told him that I would do my best to help him in his appeal but considering that the records of his case with the RTC, Cebu, was so voluminous, I had to study them well, because he might be filing an appeal which would just entail a big expense on his part, without any chance of having the adverse decision reversed by the appellate court;

... There were very few more days left before the notice of appeal could be filed within the 15-day reglementary period when he approached me.[4]

The respondent further narrated that the last day for paying the docket fee was a Friday, and that he decided to pay the same through money order. He then went to the customs area at the waterfront in Cebu City, planning to send the docket fees through mail, addressed to the Clerk of Court of the Regional Trial Court where the case had been tried. However, the teller refused to accept the respondent's letter with offer to buy the money order for the docket fees in question. The respondent was told that his transaction could no longer be accepted because of the new policy that the postal office would no longer transact any business after 4:30 p.m. The respondent then had a heated argument with the postal employee, but no one wanted to accept his transaction. He then went to the other postal offices in the neighboring cities of Talisay and Mandaue to try his luck, which was an exercise in futility. He was able to purchase the money order and send the same only the following Monday.

The respondent, likewise, claimed that there was no agreement as to the amount of attorney's fees that he would charge, and considered the complainant's case as pro bono. After he told the complainant that it was customary for the client to spend the expenses in appealing a case and that it was usually considered as an acceptance fee, the complainant voluntarily gave him P20,000.00, and added another P20,000.00 three days later. Contrary to the complainant's claim, the respondent did not receive an additional amount of P10,000.00. He also averred that he promised to return the money to the complainant in case the appeal would not be successful. He was true to his word and returned the P40,000.00 to the complainant, as evidenced by a receipt.[5] The respondent also stressed that he made a candid and honest opinion of the probable outcome of the case to the complainant, and informed the latter that it was going to be very hard to win in the appellate court.

In a Resolution[6] dated August 11, 2003, the case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

In his Position Paper dated May 21, 2004, the complainant reiterated the allegations in his complaint. He stressed that his appeal before the Court of Appeals was lost due to the negligence of the respondent, and, as such, the latter was liable for damages to the complainant.

In his Report dated June 30, 2004, Investigating Commissioner Demaree J.B. Raval found that the complainant's appeal before the Court of Appeals had, indeed, been lost through the respondent's negligence. Thus:

As a lawyer, Atty. Tecson should have been aware of the Rules. His negligence put to naught the remedies available to his client, that is, the appeal and the Motion for Reconsideration of the Resolution dated November 7, 2001.

Atty. Tecson failed to file the corresponding docket fees, which he ought to know as a pre-requisite for the docketing of the appeal in the Court of Appeals. He also failed to file on time a motion for reconsideration on the adverse resolution of the Court of Appeals.

Atty. Tecson even demanded from Complainant an additional amount of Php10,000.00 and the latter was made

to believe that Atty. Tecson would personally go to Manila to file the said motion for reconsideration which was already prepared as of December 7, 2001. Yet, Atty. Tecson did not even see it fit to mail the Motion for Reconsideration immediately after it was prepared on December 7, 2001. The Motion for Reconsideration reached the Court of Appeals in Manila only on January 1, 2002, which was already three (3) weeks after the Motion for Reconsideration was prepared. Clearly, the Motion for Reconsideration was filed late, and Atty. Tecson had no plausible explanation for his negligence.

Atty. Tecson had an obligation to the Complainant as regards the appeal. His gross negligence, committed twice over, was the root cause for the dismissal of the appeal.[7]

It was recommended that the respondent be reprimanded, having fallen short of the diligence required of him under the circumstances. The IBP Commission on Bar Discipline, thereafter, resolved to adopt and approve the recommendation of the Investigating Commissioner in Resolution No. XVI-2004-389 dated July 30, 2004.

The findings of the Investigating Commissioner are well taken.

It is settled that acceptance of money from a client establishes an attorney-client relationship and gives rise to the similar duty of fidelity to the client's cause.[8] As we ruled in *Perea v. Almadro*: [9]

... [W]hile a lawyer may decline a person to become a client for valid reasons, once he agrees to take up the cause of a client, he begins to owe fidelity to such cause and must always be mindful of the trust and confidence reposed in him. As a lawyer, he must serve the client with competence and diligence, and champion the latter's cause with whole-hearted fidelity, care and devotion. Indeed, he owes entire devotion to the interest of his client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law legally applied. His client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense.[10]

Indeed, Rule 18.03 enjoins a lawyer not to neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. A lawyer engaged to represent a client in a case bears the responsibility of protecting the latter's interest with utmost diligence.[11] Thus, it is the duty of a lawyer to serve his client with competence and diligence and he should exert his best efforts to protect within the bounds of the law the interest of his client.[12] It is not enough that a practitioner is qualified to handle a legal matter; he is also required to prepare adequately and give the appropriate attention to his legal work.[13]

The Court rules that in failing to zealously attend to a legal matter entrusted to him, the respondent failed to live up to the duties and responsibilities of a member of the legal profession.

It must be stressed that disbarment is the most severe form of disciplinary sanction, and, as such, the power to disbar must always be exercised with great caution for only the most imperative reasons and in clear cases of misconduct affecting the standing and moral character of the lawyer as an officer of the court and a member of the bar. Accordingly, disbarment should not be decreed where any punishment less severe – such as a reprimand, suspension, or fine – would accomplish the end desired.[14] Considering that the respondent in this case returned the money for litigation expenses to the complainant after the denial of the motion for reconsideration, the Court sees fit to reprimand the respondent for his actuations.

WHEREFORE, respondent Atty. Delano E. Tecson is adjudged GUILTY of violating Rule 18.03 of the Code of Professional Responsibility, and is hereby REPRIMANDED. He is STERNLY WARNED that similar conduct in the future shall be dealt with more severely.

Let a copy of this Decision be included in the respondent's files which are with the Office of the Bar Confidant, and circularized to all courts and to the Integrated Bar of the Philippines.

SO ORDERED.

Puno, (Chairman), Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

[1] Annex “A.”

[2] Annex “B.”

[3] Rollo, pp. 1-2.

[4] Id. at 20.

[5] Annex “1.”

[6] Rollo, p. 26.

[7] Investigation Report, p. 4.

[8] Fernandez v. Cabrera II, 418 SCRA 1 (2003).

[9] 399 SCRA 322 (2003).

[10] Id. at 328.

[11] Ford v. Daitol, 250 SCRA 7 (1995).

[12] Galen v. Paguirigan, 378 SCRA 527 (2002), citing In Re: Atty. David Briones, 363 SCRA 1 (2001).

[13] Miwa v. Medina, 412 SCRA 275 (2003).

[14] Susana de Guzman Buado and Nena Lising v. Atty. Eufracio T. Layag, A.C. No. 5182, August 12, 2004.

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