

GUADALUPE ADAZA, COMPLAINANT, VS. ROSELLER L. BARINAGA, RESPONDENT.

Adm. Case No. 1604. May 29, 1981

Ponente: AQUINO, J.

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AQUINO, J.:

In *Adaza vs. Heirs of Pedro Carreon*, CA-G.R. No. 38774-R, Roseller L. Barinaga (admitted to the bar in 1964), the counsel for appellants Adaza, had forty-five days from October 30, 1975 or up to December 15 (December 14 was a Sunday) within which to file a motion for the reconsideration of the decision of the Court of Appeals which Was adverse to his clients, plaintiffs Adaza.

Barinaga said that he gave his five-page motion for reconsideration in the morning of Saturday, December 13, to his temporary clerk for the purpose of "arranging" and mailing it. His clerk allegedly placed the motion in a drawer and forgot all about it. He mailed it on Wednesday, December 17. It was two days late.

The Court of Appeals did not entertain the motion. The adverse decision against the Adazas became final-and unappealable. They were advised that it would be useless to appeal to this Court because the decision of the Court of Appeals was already executory.

On April 1, 1976, Guadalupe Adaza (former governor of Zamboanga del Norte), a plain tiff-appellant in the said case, filed in this Court an administrative complaint against Barinaga. She prayed that disciplinary action be taken against him for his gross misconduct in not filing on time the motion for reconsideration. She averred that Barinaga's misconduct was compounded by the fact that he is in a way related to the appellees in the case.

She alleged that under the decision, which became final, she and her co-plaintiffs had to give up the litigated land and pay the defendants a staggering amount as damages.

At the investigation conducted by the Solicitor General's Office, complainant Guadalupe Adaza appeared with her lawyer but she did not present any evidence. She is related to respondent's parents-in-law (he calls her Tia Guading) and is alleged to be a friend of his parents.

Her lawyer manifested that she would "forgive and forget" if the respondent acknowledged that he was negligent in handling the appeal. She did not withdraw her complaint.

The issue is whether credence can be given to respondent's version that his temporary clerk was to blame for the delay in the mailing of the motion for reconsideration.

We find respondent's explanation to be unsatisfactory. His negligence prevented the Adazas from exhausting their legal remedies to secure a reversal of the judgment against them.

Making the law office secretary, clerk or messenger the scapegoat or patsy for the delay in the filing of pleadings, motions and other papers and for the lawyer's dereliction of duty is common alibi of practising lawyers. Like the

alibi of the accused in criminal cases, counsel's shifting of the blame to his office employee is usually a concoction utilized to cover up his own negligence, incompetence, indolence and ineptitude. (See *Philippine Air Lines, Inc. vs. Area*, L-22729, February 9, 1967, 19 SCRA 300, 302; *Baring vs. Cabahug*, L-23229, July 20, 1967, 20 SCRA 696; *Colcol vs. Philippine Bank of Commerce*, L-23117, November 17, 1967, 21 SCRA 890; *Rivera vs. Vda. de Cruz*, L-21545, November 27, 1968, 26 SCRA 58.)

We hold that respondent lawyer was culpably negligent in not seeing to it that the motion for reconsideration was filed on time. (See *Herrera vs. Far Eastern Air Transport, Inc.*, L-2587, September 19, 1950, 88 Phil. 787, unpublished; *Antonio vs. Ramos*, 112 Phil. 625.)

WHEREFORE, respondent is severely censured or reprimanded for his negligence. A copy of this decision should be attached to his personal record in the Bar Confidant's office.

SO ORDERED.

Barredo (Chairman), Guerrero, Abad Santos and De Castro, JJ., concur.

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

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

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