



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

DAMASO STA. MARIA,  
JUANITO TAPANG and  
LIBERATO OMANIA,  
*Complainants,*

- versus -

ATTY. RICARDO ATAYDE, JR.  
*Respondent.*

A.C. No. 9197

Present:

PERALTA, C.J., Chairperson  
CAGUIOA,  
REYES, J., JR.,\*  
LAZARO-JAVIER,  
LOPEZ, JJ.

Promulgated:

FEB 12 2020

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DECISION

LAZARO-JAVIER, J.:

**Antecedents**

By *Sinumpaang Salaysay sa Paghahain ng Reklamo*<sup>1</sup> dated July 1, 2011, complainants Damaso Sta. Maria, Juanito Tapang and Liberato Omania charged respondent Atty. Ricardo Atayde, Jr. with violation of Canon 18 of the Code of Professional Responsibility (CPR). Complainants essentially averred:

Respondent acted as their counsel in the consolidated Civil Case Nos. 5208 and 5391, then pending before Regional Trial Court (RTC) Branch 30, Cabanatuan City. Civil Case No. 5208 was a petition for cancellation of TCT Nos. T-34410, T-1124747, T-112781, and 112782 with prayer for issuance of Temporary Restraining Order or Injunction entitled "*Damaso Sta. Maria et*

\* On leave.

<sup>1</sup> *Rollo*, pp. 2-5.

*al. v. Sps. Eufrocena Antonio and Gregorio Antonio, Register of Deed of Cabanatuan City.*” Civil Case No. 5391 on the other hand was an *accion publiciana* entitled “*Eufrocena Antonio joined by her husband Gregorio Antonio v. Damaso Sta. Maria et al.*”. After due proceedings, the trial court ruled against them.<sup>2</sup>

On appeal, the Court of Appeals under Notice dated May 24, 2010, directed them to file the appeal brief in accordance with Section 7, Rule 44 of the Rules of Court. Upon receipt thereof, they informed respondent of the directive and gave him the amount of Two Thousand Pesos (₱2,000.00) for the filing of the appeal brief. Respondent assured them that the same will be filed on or before the July 15, 2010 deadline.

Respondent, however, failed to file the appeal brief. Through Resolution dated October 26, 2010, the Court of Appeals dismissed the appeal for failure to file the appeal brief. Respondent did not move for reconsideration, thus, causing the trial court’s decision final and executory.<sup>3</sup>

In his Comment<sup>4</sup> dated December 29, 2011, respondent riposted in the main:

He intentionally did not file the appeal brief because he was informed by one of the complainants, Severino Pascual that the parties had already settled their differences and that complainant Damaso Sta. Maria also peacefully vacated the property. From the time he filed a notice of appeal until the Court of Appeals dismissed the appeal, he was trying to contact complainants regarding the status of the case but failed to reach them. Neither did they follow up with him. Thus, he assumed complainants had indeed amicably settled the case with the prevailing party. He did not accept the amount of ₱2,000.00 from complainants. On the contrary, it was complainant Damaso who tried to extort money from him as consideration for not filing an administrative case against him.<sup>5</sup>

#### **Report and Recommendation of the Integrated Bar of the Philippines (IBP) Investigating Commissioner**

In his Report<sup>6</sup> dated May 7, 2016, Investigating Commissioner Romualdo A. Din, Jr. found respondent guilty of violating Canon 18 and Rule 18.03 of the Code of Professional Responsibility (CPR) and recommended that his suspension from the practice of law for three (3) months, *viz*:

In this regard, it behooves this Commission to find that respondent ATTY. RICARDO ATAYDE, JR. should be suspended from the practice of law for a period of three (3) months.

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<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Id.* at 3-4.

<sup>4</sup> *Id.* at 64-71.

<sup>5</sup> *Id.* at 64-69.

<sup>6</sup> IBP Records, pp. 2-13.

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WHEREFORE, in view of the foregoing, it is respectfully recommended respondent ATTY. RICARDO ATAYDE, JR. be suspended from the practice of law for a period of three (3) months.

According to Investigating Commissioner Din, Jr., respondent's failure to file appeal brief constitutes inexcusable negligence. He cannot sustain respondent's theory that since one of his clients in the subject civil cases Severino Pascual informed him that the parties had already amicably settled, he found it no longer necessary to file the appeal brief. Respondent was representing eight (8) individuals in the civil cases, not just Pascual. As such, he was duty bound to safeguard the interest of not only one (1) but all eight (8) individuals. This, he failed to do. He could have exercised due diligence by seeking confirmation from his other clients, complainants here included, if the information given by Pascual was indeed accurate; making sure that the terms of the settlement were fair to his clients; and that the settlement was properly documented for the purpose of apprising the Court of Appeals thereof.<sup>7</sup>

### **IBP Board of Governors' Resolution**

By Resolution No. XXII-2017-1206 dated June 17, 2017, the IBP Board of Governors resolved to adopt the Report and Recommendation of the Investigating Commissioner.<sup>8</sup>

### **Issue**

Is respondent liable for violation of Canon 18 and Rule 18.03 of the Code of Professional Responsibility (CPR)?

### **Ruling**

Canon 18 and Rule 18.03 of the CPR ordain:

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

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

The relationship between a lawyer and a client is "*imbued with utmost trust and confidence.*" Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients

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<sup>7</sup> *Id.* at 4-12.

<sup>8</sup> *Id.* at p. 1.

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to the best of their ability without need to be reminded by either the client or the court.<sup>9</sup>

When a lawyer agrees to act as a counsel, he guarantees that he will exercise that reasonable degree of care and skill demanded by the character of the business he undertakes to do, to protect the clients' interests and take all steps or do all acts necessary therefor.<sup>10</sup>

Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation.<sup>11</sup>

The requirement and repercussions of non-submission of an appellant's brief are provided for under Rules 44 and 50 of the Revised Rules of Court, to wit:

#### **RULE 44**

#### **ORDINARY APPEALED CASES**

##### **Section 7. Appellants brief**

It shall be the duty of the appellant to file with the court, within forty-five (45) days from receipt of the notice of the clerk that all the evidence, oral and documentary, are attached to the record, seven (7) copies of his legibly typewritten, mimeographed or printed brief, with proof of service of two (2) copies thereof upon the appellee.

#### **RULE 50**

#### **DISMISSAL OF APPEAL**

##### **Section 1. Grounds for dismissal of appeal.**

An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules;

As a lawyer, respondent is presumed to know the procedural rules in appellate practice. This includes the rule that when the appellant fails to file the appeal brief within the prescribed period, the appeal shall be dismissed.

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<sup>9</sup> *Ramirez v. Atty. Buhayang-Margallo*, 752 Phil. 473, 480-481 (2015).

<sup>10</sup> *Sps. Gimena v. Atty. Vijiga*, A.C. No. 11828, November 22, 2017.

<sup>11</sup> *Id.*



Here, respondent admitted to have intentionally not filed the appeal brief, albeit he gives two inconsistent reasons *i.e.* one, he was informed that the cases had been amicably settled and two, his supposed effort to contact his clients which proved futile aside from the fact that his clients failed to follow up with him.

Respondent's admission and his inconsistent stories relative to the reason why he totally failed to file the appeal brief speaks for itself. He was grossly negligent in his duty to file the required appeal brief, causing the appeal to be dismissed and his clients' to perpetually lose the chance to have the case reviewed and possibly to reverse the judgment against them.

Besides, respondent's varying stories about the supposed amicable settlement of the case and his failed effort to contact his clients as well as the latter's purported omission to follow up their cases with him all speak of a mind that lacks candor, honesty and moral uprightness.

In *Spouses Aranda v. Atty. Elayda*,<sup>12</sup> the Court emphasized that a counsel owes fealty not only to his clients, but also to the Court, to wit:

It is undisputed that Atty. Elayda did not act upon the RTC order submitting the spouses Aranda's case for decision. Thus, a judgment was rendered against the spouses Aranda for a sum of money. Notice of said judgment was received by Atty. Elayda who again did not file any notice of appeal or motion for reconsideration and thus, the judgment became final and executory. Atty. Elayda did not also inform the spouses Aranda of the outcome of the case. The spouses Aranda came to know of the adverse RTC judgment, which by then had already become final and executory, only when a writ of execution was issued and subsequently implemented by the sheriff.

Evidently, Atty. Elayda was remiss in his duties and responsibilities as a member of the legal profession. His conduct shows that he not only failed to exercise due diligence in handling his clients' case but in fact abandoned his clients' cause. He proved himself unworthy of the trust reposed on him by his helpless clients. Moreover, Atty. Elayda owes fealty, not only to his clients, but also to the Court of which he is an officer.

By unjustifiably failing to protect his client's cause, respondent is guilty of violation of Canon 18 and Rule 18.02 of the CPR.

### Penalty

Both the IBP Investigating Commissioner and the IBP Board of Governors recommended respondents' suspension from the practice of law for three (3) months. The Court, however, holds that a stiffer penalty should be imposed.

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<sup>12</sup> 653 Phil. 1, 10 (2010).



In *Figueras v. Atty. Jimenez*,<sup>13</sup> the Court suspended respondent from the practice of law for one (1) month for his failure to file the appellant's brief.

In *Layos v. Atty. Villanueva*,<sup>14</sup> the Court suspended the negligent lawyer who also failed to file an appellant's brief for three (3) months.

In *Mendoza vda. de Robosa v. Atty. Mendoza, et al.*,<sup>15</sup> the Court suspended respondent from the practice of law for six (6) months for his failure to file the appeal brief which caused the appeal to be dismissed and his client's properties levied and sold at public auction.

In *Bergonia v. Atty. Merrera*,<sup>16</sup> the Court suspended respondent from the practice of law for six (6) months for his failure to file the appeal brief despite obtaining several extensions of time to submit the same which resulted to his clients to lose possession of a real property.

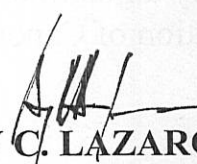
Here, the fact that complainants' claim over the 2,507 square meter land is deemed lost forever due to respondent's failure to forthrightly perform his duty as complainants' counsel and for lack of any showing of empathy or remorse for the unfortunate incident that he, himself, had caused, the Court deems it proper to impose on respondent the penalty of suspension from the practice of law for six (6) months.

**ACCORDINGLY, ATTY. RICARDO ATAYDE, JR.** is found guilty of violation of Canon 18 and Rule 18.03 of the CPR. He is **SUSPENDED FOR SIX (6) MONTHS** from the practice of law with warning that a repetition of the same or similar acts shall be dealt with more severely.

This Decision takes effect immediately. Atty. Atayde, Jr. is ordered to inform the Court and the Office of the Bar Confidant in writing of the date he is notified hereof.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to Atty. Atayde, Jr.'s personal record, and the Integrated Bar of the Philippines. The Office of the Court Administrator is directed to circulate copies of this Decision to all courts concerned.

**SO ORDERED.**

  
**AMY C. LAZARO-JAVIER**  
*Associate Justice*

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<sup>13</sup> 729 Phil. 101, 108 (2014).

<sup>14</sup> 749 Phil. 1, 8-9 (2014).

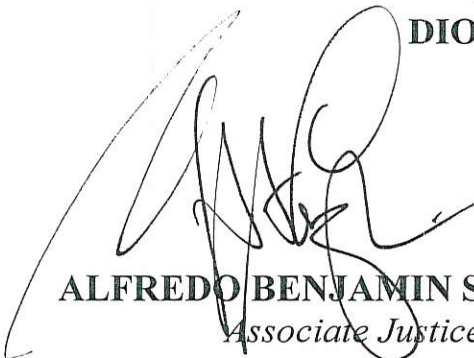
<sup>15</sup> 769 Phil. 359, 377-378 (2015).

<sup>16</sup> 446 Phil. 1, 10 (2003).

**WE CONCUR:**



**DIOSDADO M. PERALTA**  
*Chief Justice*



**ALFREDO BENJAMIN S. CAGUIOA**  
*Associate Justice*

(on leave)  
**JOSE C. REYES, JR.**  
*Associate Justice*



**MARIO V. LOPEZ**  
*Associate Justice*

