

FIRST DIVISION

[A.C. No. 9197, February 12, 2020]

DAMASO STA. MARIA, JUANITO TAPANG AND LIBERATO OMANIA, COMPLAINANTS, VS. ATTY. RICARDO ATAYDE, JR. RESPONDENT.

DECISION

LAZARO-JAVIER, J.:

Antecedents

By *Sinumpaang Salaysay sa Paghahain ng Reklamo*^[1] 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 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.^[2]

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 (P2,000.00) 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.^[3]

In his Comment^[4] 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 P2,000.00 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.^[5]

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

In his Report^[6] 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.

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.^[7]

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.^[8]

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.

x x x x

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 to the best of their ability without need to be reminded by either the client or the court.^[9]

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.^[10]

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.^[11]

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.

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.