

EN BANC

**[A.C. No. 6387 [Formerly CBD Case No. 11-3001],
July 19, 2016]**

**GABINO V. TOLENTINO AND FLORDELIZA C. TOLENTINO,
COMPLAINANTS, VS. ATTY. HENRY B. SO AND ATTY. FERDINAND
L. ANCHETA, RESPONDENTS.**

RESOLUTION

PER CURIAM:

This resolves a disbarment case against respondent Atty. Henry B. So for neglect in handling a case, and respondent Atty. Ferdinand L. Ancheta for extorting P200,000.00 from a client.

Complainant Flordeliza C. Tolentino was the defendant in Civil Case No. SC-2267 entitled "*Benjamin Caballes v. Flordeliza Caballes*" a case involving recovery of possession of a parcel of land.^[1] On June 24, 1991, Branch 26 of the Regional Trial Court of Sta. Cruz, Laguna, rendered the Decision^[2] against complainant Flordeliza ordering her to vacate the land.

The case was appealed^[3] to the Court of Appeals through complainant Flordeliza's counsel, Atty. Edilberto U. Coronado (Atty. Coronado). While the appeal was pending, Atty. Coronado was replaced by Atty. Henry B. So (Atty. So), a lawyer of the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform.^[4]

Complainants Flordeliza and Gabino V. Tolentino, her husband, afterwards learned that the Court of Appeals affirmed^[5] the Regional Trial Court Decision against complainant Flordeliza. Complainants contend that Atty. So did not inform them nor take the necessary action to elevate the case to this Court.^[6] Thus, they were compelled to secure the legal services of Atty. Ferdinand L. Ancheta (Atty. Ancheta), whom they paid P30,000.00 as acceptance fee.^[7]

Atty. Ancheta allegedly promised them that there was still a remedy against the adverse Court of Appeals Decision, and that he would file a "motion to reopen appeal case."^[8] Atty. Ancheta also inveigled them to part with the amount of P200,000.00 purportedly to be used for making arrangements with the Justices of the Court of Appeals before whom their case was pending.^[9]

Initially, complainants did not agree to Atty. Ancheta's proposal because they did not have the money and it was against the law.^[10] However, they eventually acceded when Atty. Ancheta told them that it was the only recourse they had to obtain a favorable judgment.^[11]

Hence, in January 2003, they deposited P200,000.00 to Atty. Ancheta's Bank Account No. 1221275656 with the United Coconut Planters Bank.^[12]

Complainants were surprised to learn that no "motion to reopen case" had been filed,^[13] and the Court of Appeals Decision had become final and executory.^[14]

Hence, complainants sought to recover the amount of P200,000.00 from Atty. Ancheta. Through a letter dated September 10, 2003^[15] by their new counsel, complainants demanded for the return of the P200,000.00. However, Atty. Ancheta did not heed their demand despite receipt of the letter.

On May 17, 2004, complainants filed their *Sinumpaang Sakdal*^[16] praying for the disbarment of Atty. So for neglect in handling complainant Flordeliza's case, and Atty. Ancheta for defrauding them of the amount of P200,000.00.

Atty. So counters that he was no longer connected with the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform when the Court of Appeals Decision was promulgated on July 16, 2001.^[17] He alleges that he worked at the Bureau from 1989 to 1997, and that he resigned to prepare for the elections in his hometown in Western Samar.^[18] It was a procedure in the Bureau that once a handling lawyer resigns or retires, his or her cases are reassigned to other lawyers of the Bureau.^[19]

Atty. Ancheta did not file a comment despite due notice. Hence, in this Court's Resolution dated February 23, 2011,^[20] he was deemed to have waived his right to file a comment. This Court referred the case to the Integrated Bar of the Philippines for investigation, report, and recommendation.^[21]

On June 8, 2011, the Commission on Bar Discipline of the Integrated Bar of the Philippines directed the parties to appear for mandatory conference at 10:00 a.m. on July 6, 2011.^[22] However, on July 6, 2011, only Atty. So appeared.^[23] Since there was no showing on record that complainants and Atty. Ancheta were notified, the mandatory conference was reset to August 10, 2011 at 10:00 a.m.^[24]

In the August 10, 2011 mandatory conference, complainant Flordeliza was represented by her daughter, Arlyn Tolentino, together with counsel, Atty. Restituto Mendoza.^[25] Arlyn Tolentino informed the Commission that complainant Gabino V. Tolentino had already died.^[26] Respondents did not appear despite due notice.^[27]

Hence, the mandatory conference was terminated, and the parties were directed to submit their respective verified position papers within a non-extendible period of 10 days from notice. After, the case would be submitted for report and recommendation.^[28]

On September 19, 2011, complainant Flordeliza filed as her position paper, a Motion for Adoption of the Pleadings and their Annexes in this Case,^[29] including the relevant documents^[30] in Criminal Case No. SC-1191 (for estafa) against Atty. Ancheta, which she filed.

Atty. So filed his Position Paper^[31] on September 15, 2011. Atty. Ancheta did not file any position paper.^[32]

The Commission on Bar Discipline recommended^[33] that Atty. So be absolved of the charge against him for insufficiency of evidence.^[34] As to Atty. Ancheta, the Commission found him guilty of serious misconduct and deceit and recommended his disbarment.^[35]

In the Resolution^[36] dated December 14, 2014, the Integrated Bar of the Philippines Board of Governors adopted and approved the findings and recommendations of the Investigating Commissioner.

On January 11, 2016, the Board of Governors transmitted its Resolution to this Court for final action, pursuant to Rule 139-B of the Rules of Court.^[37]

This Court accepts and adopts the findings of the Integrated Bar of the Philippines Board of Governors.

I

The Integrated Bar of the Philippines correctly absolved Atty. So of the charge of negligence in the performance of his duties as counsel of complainant Flordeliza.

Complainants fault Atty. So for failing to inform them about the Court of Appeals Decision and for not taking the necessary steps to elevate their case to this Court.^[38] However, it is undisputed that Atty. So was no longer employed at the Bureau of Agrarian Legal Assistance when the Court of Appeals Decision was rendered on July 16, 2001. Atty. So had resigned in 1997, four (4) years before the Decision was promulgated.^[39]

Atty. So handled the appeal of complainant Flordeliza in his capacity as a government-employed legal officer of the Bureau of Agrarian Legal Assistance of the Department of Agrarian Reform. In his Notice of Appearance^[40] dated August 11, 1993 and Motion to Admit Additional Evidence^[41] dated November 22, 1993 filed before the Court of Appeals, Atty. So affixed his signature under the representation of the Bureau of Agrarian Legal Assistance.

Atty. So's appearance for complainant Flordeliza may be likened to that of a lawyer assigned to handle a case for a private law firm's client. If the counsel resigns, the firm is simply bound to provide a replacement.^[42] Similarly, upon Atty. So's resignation, the Director of the Bureau merely reassigned his case assignment to other lawyers in the Bureau even without complainants' consent.

It would have been prudent for Atty. So to have informed complainants about his resignation and the eventual reassignment of their case to another lawyer, although this was not required. Still, Atty. So's omission is not of such gravity that would warrant his disbarment or suspension. The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence of the respondent's misconduct affecting his standing and moral character as an officer

of the court and member of the bar.^[43]

On the other hand, complainants were not entirely blameless. Had complainants been indeed vigilant in protecting their rights, they should have followed up on the status of their appeal; thus, they would have been informed of Atty. So's resignation. Atty. So resigned four (4) years before the Court of Appeals Decision was promulgated.^[44] Thus, complainants had ample time to engage the services of a new lawyer to safeguard their interests if they chose to do so. A party cannot blame his or her counsel for negligence when he or she is guilty of neglect.^[45]

II

The same conclusion cannot be made with regards Atty. Ancheta. We agree with the Integrated Bar of the Philippines' recommendation that he should be disbarred.

Atty. Ancheta's repeated failure to comply with several of this Court's Resolutions requiring him to comment on the complaint lends credence to complainants' allegations. It manifests his tacit admission. Hence, we resolve this case on the basis of complainants' *Sinumpaang Sakdal* and its Annexes.

It was established by the evidence on record that (1) Atty. Ancheta received the acceptance fee of P30,000.00 on December 9, 2002;^[46] and (2) complainants deposited on January 17, 2003^[47] the amount of P200,000.00 to Atty. Ancheta's bank account. Atty. Ancheta made false promises to complainants that something could still be done with complainant Flordeliza's case despite the Court of Appeals Decision having already attained finality on September 22, 2001.^[48] Worse, he proposed bribing the Justices of the Court of Appeals in order to solve their legal dilemma.

Atty. Ancheta should have very well known that a decision that has attained finality is no longer open for reversal and should be respected.^[49] A lawyer's duty to assist in the speedy administration of justice^[50] demands recognition that at a definite time, issues must be laid to rest and litigation ended.^[51] As such, Ancheta should have advised complainants to accept the judgment of the Court of Appeals and accord respect to the just claim of the opposite party. He should have tempered his clients' propensity to litigate and save them from additional expense in pursuing their contemplated action. Instead, he gave them confident assurances that the case could still be reopened and even furnished them a copy of his prepared "motion to reopen case." Despite his representation that he would file the motion, however, he did not do so.^[52]

Atty. Ancheta's deceit and evasion of duty is manifest. He accepted the case though he knew the futility of an appeal. Despite receipt of the P30,000.00 acceptance fee, he did not act on his client's case. Moreover, he prevailed upon complainants to give him P200,000.00 purportedly to be used to bribe the Justices of the Court of Appeals in order to secure a favorable ruling, palpably showing that he himself was unconvinced of the merits of the case. "A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause."^[53] Atty. Ancheta's misconduct betrays his lack of appreciation that the practice of law is a

profession, not a money-making trade.^[54]

As a servant of the law, Atty. Ancheta's primary duty was to obey the laws and promote respect for the law and legal processes.^[55] Corollary to this duty is his obligation to abstain from dishonest or deceitful conduct,^[56] as well as from "activities aimed at defiance of the law or at lessening confidence in the legal system."^[57] Atty. Ancheta's advice involving corruption of judicial officers tramps the integrity and dignity of the legal profession and the judicial system and adversely reflects on his fitness to practice law.

Complainants eventually found out about his duplicity and demanded for the return of their money.^[58] Still, Atty. Ancheta did not return the P200,000.00 and the P30,000.00 despite his failure to render any legal service to his clients.^[59]

Atty. Ancheta breached the following duties embodied in the Code of Professional Responsibility:

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

. . . .

CANON 15 - A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS

. . . .

Rule 15.05. - A lawyer, when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case.

Rule 15.06. - A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

Rule 15.07. - A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

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CANON 16 -A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01. - A lawyer shall account for all money or property collected or received for or from the client.

. . . .

Rule 16.03. - A lawyer shall deliver the funds and property of his client when due or upon demand....