

SECOND DIVISION

[A.C. No. 720, June 17, 2015]

FRANCISCO CAOILE, COMPLAINANT, VS. ATTY. MARCELINO MACARAEG, RESPONDENT.

R E S O L U T I O N

DEL CASTILLO, J.:

Alleging that his lawyer's neglect and dereliction of duty caused the dismissal of his appeal, complainant Francisco Caoile (Francisco) filed on August 16, 1966 a Complaint^[1] for disbarment against Atty. Marcelino Macaraeg (Atty. Macaraeg).

Factual Antecedents

Francisco, and four others, engaged the services of Atty. Macaraeg to represent them in Civil Case No. 11119, an action for recovery of ownership filed before the Court of First Instance (CFI) of Lingayen, Pangasinan. After the CFI rendered judgment against them, Francisco and his co-defendants decided to appeal their case before the Court of Appeals (CA).

Accordingly, Atty. Macaraeg filed a notice of appeal. Thrice he moved for extension of time to file appellants' brief. In his last motion for extension,^[2] he alleged that he was already in the process of doing the finishing touches on the brief and just needed to have it printed. Yet, the extended period expired without Atty. Macaraeg filing any brief. Hence, upon motion of the opposing party, the CA dismissed the appeal.^[3] The dismissal became final and executory on December 13, 1963.^[4]

Francisco averred that they were unaware of the dismissal of their appeal until they were served with the CFI's writ of execution^[5] and a notice of sale at public auction^[6] of their property in 1965. After confirming with the CA that they indeed lost the case, Francisco confronted Atty. Macaraeg who informed him that they lost the case because they failed to pay him in full.^[7]

Hence, this administrative complaint against Atty. Macaraeg for neglect and dereliction of duty.

In his Answer,^[8] Atty. Macaraeg averred that Francisco and his co-defendants did not pay in full for his services in filing the appeal. Anent the *pacto de retro* sale which Francisco and his wife executed in his favor supposedly to cover the balance of his professional fees, Atty. Macaraeg claimed that it was Francisco who insisted on its execution, and that, contrary to Francisco's claim, it was intended as payment for his services while representing Francisco before the CFI, and not as payment for his services in filing the appeal. Atty. Macaraeg also claimed that, in any case, Francisco did not honor the said *pacto de retro* sale as the possession of the lot was never

turned over to him.^[9]

Atty. Macaraeg denied Francisco's accusation that he neglected their case. He pointed out that to push through with the appeal he even advanced some of the appeal expenses. While he admitted that he failed to submit an appellants' brief, he averred that the same was actually the fault of his clients who failed to provide the necessary funds to file said brief. According to him, he constantly reminded Francisco to give him the amount necessary to cover the costs of the transcript and printing of the appeal brief. He even filed three motions for extension of time to file brief to give Francisco more time to come up with the said payment. Still, Francisco was unable to pay. Moreover, Atty. Macaraeg was not reimbursed for the amount he advanced for appeal expenses.

On September 22, 1966, this Court referred the Complaint to the Solicitor General for investigation, report and recommendation.^[10]

Proceedings before the Solicitor General

From March to November 1967, the Solicitor General conducted several hearings.^[11] Thereafter, the parties were required to submit their respective memoranda.^[12] Atty. Macaraeg submitted his Memorandum on January 18, 1968,^[13] while Francisco submitted his Memorandum on March 25, 1968.^[14]

In November 1972, the Office of the Solicitor General again summoned the parties to appear before it.^[15] Notably, the return of the subpoena served upon Atty. Macaraeg contained a notation, *viz*:

Atty. Marcelino Macaraeg is now deceased.

(illegible)
Signature
wife^[16]

Subsequently, this case was transferred to the Integrated Bar of the Philippines (IBP).

Report and Recommendation of the Integrated Bar of the Philippines

In an Order^[17] dated May 8, 1990, the IBP notified the parties to manifest whether they are still interested in prosecuting the case, or whether supervening events have transpired rendering the case moot and academic. The IBP received no response. On November 17, 1997, the IBP again sent notices to the parties to appear,^[18] but the notices were unclaimed. Subsequently, the IBP, through an Order^[19] dated November 27, 2001, directed the heirs of Atty. Macaraeg to submit a certified true copy of his death certificate to no avail as the copy thereof sent to the said heirs was returned to sender.

Finally on October 19, 2011, Commissioner Oliver A. Cachapero (Commissioner Cachapero) of the Commission on Bar Discipline of the IBP came up with a Report

and Recommendation.^[20] Noting the long period of time that the Complaint has been pending, he stated:

For unknown reasons, this case x x x lingered [quite some time] in the Commission. It was filed on August 16, 1966 in the Supreme Court and x x x subsequently found its way [to] the Commission where it was initially assigned to a Commissioner. In the first week of October 2011, the undersigned, who was tasked to prepare the resolution, received the folder and the records of the case.

Records show that on May 8, 1990, then Commissioner Ernesto L. Pineda wrote the parties asking them to manifest within x x x (10) days from notice whether x x x they are still interested in prosecuting this case, and whether supervening events have transpired which rendered the resolution moot or academic. The Commission received no response from either litigant, hence this resolution.^[21]

Anent the merits of the Complaint, Commissioner Cachapero ruled that Atty. Macaraeg neglected the cause of his clients when he thrice moved for extension of time within which to file his brief. However, he did not file any, reasoning out that the non-filing was due to his clients' failure to give him the necessary funds. Commissioner Cachapero opined that the said excuse cannot stand. He thus found Atty. Macaraeg to have violated Rule 12.03 of Canon 12 of the Code of Professional Responsibility, *viz.*:

A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Accordingly, Commissioner Cachapero recommended that Atty. Macaraeg be suspended from the practice of law for a period of two years.

In Resolution No. XX-2013-174^[22] dated February 13, 2013, the IBP Board of Governors adopted and approved the findings of Commissioner Cachapero with the modification that the penalty be reduced to a suspension of one year.

The Court's Ruling

Rule 18.03 of the Code of Professional Responsibility provides:

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

A considerable length of time had elapsed from the time Atty. Macaraeg' filed the notice of appeal on August 30, 1962 up to the time he filed the third motion for extension of time to file brief on October 5, 1963. Despite the passage of such time, however, Atty. Macaraeg still failed to file the brief, which resulted in the dismissal of his clients' appeal. Suffice it to state that a motion for extension to file an appellant's brief carries with it the presumption that the applicant-lawyer will file the pleading within the requested extended period. Failure to do so without any reasonable excuse violates the Code of Professional Responsibility.^[23]

While Atty. Macaraeg attributed the non-filing of the brief to his clients' failure to