

## THIRD DIVISION

[ A.C. No. 4401, January 29, 2004 ]

**BIOMIE SARENAS-UCHAGABIA, COMPLAINANT, VS. ATTY.  
BALMES L. OCAMPOS, RESPONDENT.**

### D E C I S I O N

**CARPIO MORALES, J.:**

On January 25, 1995, complainant Biomie Sarenas-Ochagabia lodged a complaint<sup>[1]</sup> against her former counsel, respondent Atty. Balmes L. Ocampos, whose legal services she, together with her aunts Toribia Garban de Detalla and Rosenda Garban vda. de Denore as co-plaintiffs, engaged in Civil Case No. 91-39 before Branch 15 of the Regional Trial Court of Ozamis City (for recovery of possession and ownership of a parcel of land).

An adverse decision<sup>[2]</sup> having been rendered against the plaintiffs in above-mentioned civil case on September 7, 1992, Atty. Ocampos filed a notice of appeal<sup>[3]</sup> at the behest of the former.<sup>[4]</sup>

The Court of Appeals gave the plaintiffs-appellants 45 days from notice to file their brief<sup>[5]</sup> but before the lapse of the period, their counsel Atty. Ocampos, upon motion,<sup>[6]</sup> was granted a 90-day extension of time to file the brief. The extended period lapsed, without, however, any appellants' brief being filed, prompting the appellate court to dismiss the appeal.<sup>[7]</sup> The dismissal of the appeal was not challenged.<sup>[8]</sup>

Thus spawned the present complaint against Atty. Ocampos.

In his Comment<sup>[9]</sup> filed on August 29, 1995, the then 73-year old respondent claimed that he merely agreed to handle the case *gratis et amore* upon the request of a friend who is incidentally the son-in-law of herein complainant and Clerk of Court of one of the city courts in Ozamis City. And he explained that he appeared only at the later part of the proceedings when defendants were already presenting their evidence, he adding that when the decision of the trial court was promulgated, the plaintiffs' principal counsel, Atty. Placidtrank Osorio, was out of town, hence, he was requested by the plaintiffs to appeal the decision before the Court of Appeals.<sup>[10]</sup>

Respondent additionally claimed that he was constrained to ask for extension of time within which to file appellants' brief due to pressure of work and gastrointestinal illness, and that he had in fact made arrangements with herein complainant to ask Atty. Osorio to, in his stead, prepare the brief.<sup>[11]</sup>

Finally, Atty. Ocampos claimed that based on the evidence presented before the trial

court, the possibility that the decision of the trial court would be reversed was remote, hence, no serious or irreparable damage could have been caused by the dismissal of the appeal.<sup>[12]</sup>

The complaint was referred by this Court on September 20, 1995 to the Integrated Bar of the Philippines (IBP) for "investigation and [recommendation]."<sup>[13]</sup> Upon motion of complainant, venue of the investigation was transferred to Ozamis City, all the parties being residents thereof.<sup>[14]</sup>

In her Position Paper<sup>[15]</sup> submitted on June 9, 1998,<sup>[16]</sup> complainant reiterated her charge in her complaint, she contending that respondent violated his duty to inform her of his failure to file appellants' brief and of the dismissal of the appeal. Worse, complainant went on, respondent denied such dismissal when she asked him about the status of the appeal.<sup>[17]</sup>

Despite the grant of respondent's motion for extension of time to submit his position paper,<sup>[18]</sup> he failed to submit one.<sup>[19]</sup>

The committee created for the purpose of investigating the case in Ozamis City thereupon recommended that the case be resolved on the basis of the pleadings and records on file.<sup>[20]</sup>

Investigating Commissioner Victoria G. de los Reyes, in her Report and Recommendation<sup>[21]</sup> dated August 29, 2003, faulted respondent for violation of the Code of Professional Responsibility, "particularly Rule 18.01<sup>[22]</sup> and Rule 18.03 x x x," and recommended the imposition of the penalty of suspension for six months, she observing as follows:

It is worthwhile to mention here that in the case of "***In re Santiago F. Marcos***, 156 SCRA 844 (1987)", a lawyer's failure to file brief for his client amounts to inexcusable negligence. x x x

In the instant case, the respondent Atty. Ocampos had no justifiable excuse for not preparing and filing the needed appellants' brief. Granting that he was ill during that time, he could have written to the complainant about it so that the latter will be able to hire another lawyer to handle the case for her and to prepare and file the appellants' brief. He also failed to make the necessary Manifestation and Motion with the Court of Appeals. Sad to state, the respondent failed to do all these in blatant violation of his duty towards his client and to the Courts.

We therefore maintain that a lawyer's neglect of duty should not be tolerated and for such inaction he has to be penalized.

The undersigned Commissioner could have recommended for a stiffer penalty. But considering that he is now in the twilight years of his life, and for humanitarian reasons, it is recommended that he just be suspended from the practice of law. (Emphasis in the original)<sup>[23]</sup>