



Republic of the Philippines  
Supreme Court  
Office of the Court Administrator  
Manila

OCA CIRCULAR NO. 50-2004

**TO : THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC ATTORNEYS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES**

**SUBJECT : SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS OF ATTY. RAUL T. MONTESINO**

For the information and guidance of all concerned, quoted hereunder is the decision of the First Division dated December 4, 2003 in Administrative Case No. 5718, to wit:

"The failure to file an appellate court brief without any justifiable reason deserves sanction. Lawyers who disagree with the pursuit of an appeal should properly withdraw their appearance and allow their client to retain another counsel.

**The Case and the Facts**

In a Complaint<sup>1</sup> dated June 21, 2002, Eduardo T. Abay charges Atty. Raul T. Montesino with gross negligence, gross incompetence and evident bad faith, in violation of his oath as a member of the Philippine bar.

Complainant avers that the Negros Institute of Technology (NIT), of which he is a stockholder, hired respondent as counsel in an action for "Cancellation of Title of Ownership, Recovery of Ownership and Possession and Damages with Preliminary Injunction" against the estate of Vicente T. Galo. The matter was docketed as Civil Case No. 1329 at the Regional Trial Court (RTC) of Bacolod City (Branch 45).

On April 27, 1995, the RTC rendered a Decision dismissing the civil case. Respondent's Motion for Reconsideration of the judgment of dismissal was denied by the trial court in its Order dated November 3, 1995. Although respondent filed a Notice of Appeal

<sup>1</sup> Rollo, pp. 1-8.

with the Court of Appeals (CA), he thereafter failed to submit an appellant's brief. Consequently, in a Resolution dated March 19, 1999, the CA dismissed the appeal with the following admonition:

'We made a warning in our Resolution dated as early as October 20, 1998 that no further extension will be entertained. Precisely because of non-submission of the Brief, we directed, on January 8, 1998, the dismissal of the appeal. This is not to mention the fact that a total of 120 days extension, over and above the 45-day reglementary period, has already been granted. This brings us to the February 9, 1999 ruling by the Supreme Court (A.M. No. 99-2-03-SC) giving the Solicitor General a limited time of 60 days and 90 days within which to submit his comment or appellee's brief, with a warning that no further extension will be granted. This precisely applies to a First Motion for Extension. The period can even be shortened, in cases of extreme urgency.

'We cannot see any reason why the court's admonishing for a limited time to do compliance does not apply to this case now before Us.'<sup>2</sup>

Complainant attributes the failure of respondent to submit the brief to the latter's gross negligence and evident bad faith. Respondent allegedly abandoned the appeal without the knowledge and consent of the NIT. Worse, he supposedly never told the Institute that its appeal had already been dismissed. Complainant thus prayed that respondent be duly sanctioned with disbarment.<sup>3</sup>

In his Comment<sup>4</sup> dated October 29, 2002, respondent denied that he was negligent in his duty as counsel of NIT. According to him, while Civil Case No. 1329 was pending appeal, he discovered that the property that it was seeking to recover had been the subject of another case, Civil Case No. 6017, which was for "Annulment of Sale, Deed of Donation, Cancellation of Titles and Damages." The latter case was a result of the overlapping transfers of rights effected by the heirs of Vicente Galo through (1) a Contract of Sale executed on April 12, 1985<sup>5</sup> in favor of Floserfina Grandea<sup>6</sup> and (2) Contract of Mortgage executed on September 3, 1985 in favor of Ludovico Hilado.<sup>7</sup>

Believing that the heirs of Vicente Galo had already validly transferred to another party the ownership of the property that the NIT was seeking to recover, respondent felt that to pursue the appeal would be 'dilatatory, expensive, frivolous and taxing [to] the precious time of the [CA].'<sup>8</sup> Thus, he deemed it wise to advise the stockholders of the NIT to abandon the appeal and instead 'file appropriate Complaint(s) against x x x Floserfina Grandea of

<sup>2</sup> Id., p. 13.

<sup>3</sup> Complaint, p. 5; rollo, p. 5.

<sup>4</sup> Rollo, pp. 33-47.

<sup>5</sup> See Annex "4" of respondent's Comment; rollo, p. 67.

<sup>6</sup> Comment, p. 8; id., p. 40

<sup>7</sup> Ibid.

<sup>8</sup> Id., pp. 9 & 41.

Bacolod City and x x x Ludovico Hilado x x x of Silay City x x x to recover the ownership and possession of the NIT's claimed properties.<sup>9</sup>

Respondent avers that complainant was 'unjustly adamant in his demand to continue with [the] appeal despite x x x said legal [advice].' However, because he sincerely felt that the 'best way to protect the rights of NIT was to file appropriate complaint(s) against [Grande] and [Hilado], x x x [he] x x x allowed the period to submit NIT's Appellant's Brief to [lapse].'<sup>10</sup>

Furthermore, respondent maintains that despite the fact that the NIT did not pay his legal fees or reimburse him for his expenses, he still faithfully performed his duty during the entire time he served as its counsel.

In a Resolution<sup>11</sup> dated January 20, 2003, the Court referred this case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

#### Report of the Investigating Commissioner

In her April 24, 2003 Report,<sup>12</sup> Investigating IBP Commissioner Milagros V. San Juan found respondent guilty of violating the Code of Professional Responsibility.

According to Commissioner San Juan, respondent was not able to justify his failure to file the brief. She explained that 'if respondent actually believed [that] it was futile to pursue [the appeal], why did he request from the Court of Appeals numerous extensions of time to file x x x the same within the given extension periods? Also, it should be noted that respondent admits that after he advised NIT and herein complainant [about] the futility of pursuing the appeal, the latter expressed the wish to continue with [the appeal]. At the very least, respondent should have given due importance to the decision of his client to avail of a legal remedy available to it under the legal system.'<sup>13</sup>

She recommended that respondent be suspended from the practice of law for a period of six months, with a warning that a harsher penalty would be meted out for a similar infraction in the future.<sup>14</sup>

<sup>9</sup> Id., pp. 8 & 40.

<sup>10</sup> Id., pp. 9 & 41.

<sup>11</sup> Rollo, p. 84.

<sup>12</sup> Id., 119-131.

<sup>13</sup> Report and Recommendation dated April 24, 2003, pp. 12-13; rollo, pp. 130-131.

<sup>14</sup> Id., pp. 13 & 131.

### Recommendation of the IBP Board of Governors

On June 21, 2003, the Board of Governors of the IBP passed Resolution No. XV-2003-339<sup>15</sup> adopting the Report and Recommendation of the investigating commissioner.<sup>16</sup>

### The Court's Ruling

We agree with the findings and recommendation of the IBP.

### Administrative Liability of Respondent

The legal profession is invested with public trust.<sup>17</sup> Its goal is to render public service and secure justice for those who seek its aid.<sup>18</sup> Thus, the practice of law is considered a privilege, not a right, bestowed by the State on those who show that they possess and continue to possess the legal qualifications required for the conferment of such privilege.<sup>19</sup>

Verily, lawyers are expected to maintain at all times a high standard of legal proficiency and of morality – which includes honesty, integrity and fair dealing.<sup>20</sup> They must perform their four-fold duty to society, the legal profession, the courts and their clients in accordance with the values and norms of the legal profession, as embodied in the Code of Professional Responsibility. Any conduct found wanting in these considerations, whether in their professional or private capacity, shall subject them to disciplinary action. In the present case, the failure of respondent to file the appellant's brief was a clear violation of his professional duty to his client.

The Code of Professional Responsibility mandates lawyers to serve their clients with competence and diligence.<sup>21</sup> Rules 18.03 and 18.04 specifically provide:

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

'Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.'

<sup>15</sup> Rollo, p. 118.

<sup>16</sup> Ibid.

<sup>17</sup> *People v. Santocildes Jr.*, 378 Phil. 943, December 21, 1999; *In the Matter of the Petition for Authority to Continue Use of the Firm Name "Ozaeta, Romulo, etc."*, 92 SCRA 1, July 30, 1979.

<sup>18</sup> *Docena v. Limon*, 356 Phil. 570, September 10, 1998.

<sup>19</sup> *Eustaquio v. Atty. Rimorin*, AC No. 5081, March 24, 2003; *Sebastian v. Atty. Calis*, 372 Phil. 673, September 9, 1999; *Arrieta v. Llosa*, 346 Phil. 932, November 28, 1997.

<sup>20</sup> *Tapucar v. Atty. Tapucar*, 355 Phil. 66, July 30, 1998; *Maligsa v. Atty. Cabanling*, 338 Phil. 912, May 14, 1997.

<sup>21</sup> Canon 18.

It must be noted that respondent and complainant disagreed on the legal course to be taken regarding the appealed case. The former strongly advised the latter to abandon the appeal and to consider the other available remedies. Complainant, on the other hand, wanted to pursue it. Feeling that he was 'unjustly adamant' in wanting to do so, respondent – contrary to the desire of the former – deemed it wise to abandon the appeal without informing his client.

Not filing an appellant's brief is prejudicial because, as happened in this case, such failure could result in the dismissal of the appeal.<sup>22</sup> The conduct of respondent shows that he failed to exercise due diligence, and that he had a cavalier attitude towards the cause of his client. The abandonment by the former of the latter's cause made him unworthy of the trust that his client reposed in him. Even if respondent was 'honestly and sincerely' protecting the interests of complainant, the former still had no right to waive the appeal without the latter's knowledge and consent. If indeed respondent felt unable or unwilling to continue his retainership, he should have properly withdrawn his appearance and allowed the client to appoint another lawyer.

Moreover, the appellate court noted that respondent failed to file the appellant's brief despite being granted several extensions of time to file it. He therefore violated Rule 12.03 of the Code of Professional Responsibility, which mandates that '[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.'

We emphasize that all lawyers owe fidelity to their client's cause.<sup>23</sup> Regardless of their personal views, they must present every remedy or defense within the authority of the law in support of that cause.<sup>24</sup> We have said in *Ong v. Atty. Grijaldo*.<sup>25</sup>

'Once [a lawyer] agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. [Other]wise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the extension of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land and he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice

<sup>22</sup> *Torres v. Atty. Orden*, 386 Phil. 216, April 6, 2000

<sup>23</sup> Canon 17 of the Code of Professional Responsibility.

<sup>24</sup> *Reontoy v. Atty. Ibadlit*, 285 SCRA 88, January 28, 1998.

<sup>25</sup> AC No. 4724, April 30, 2003; citing *Ramos v. Atty. Jacoba*, 418 Phil. 346, September 27, 2001.

law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.<sup>26</sup>


WHEREFORE, Atty. Raul T. Montesino is found guilty of negligence and is hereby *SUSPENDED* from the practice of law for six months, effective upon receipt of this Decision. He is *WARNED* that a repetition of the same or a similar act will be dealt with more severely.

A copy of this Decision shall be entered in the record of respondent as attorney. Further, let copies of this Decision be served on the IBP as well as on the court administrator, who is directed to circulate these to all the courts in the country for their information and guidance.

**SO ORDERED.**"

Copy of the decision was received by respondent on January 12, 2004, as shown by Registry Receipt No. 270.

31 March 2004.

  
**PRESBITERO J. VELASCO, JR.**  
Court Administrator

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<sup>26</sup> Id., p. 8, per curiam, *J.*; id., p. 351, per Mendoza, *J.*