



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

OCA CIRCULAR NO. 67-2003

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 DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT: SUSPENSION FROM THE PRACTICE OF LAW OF
ATTY. ARSENIO A. MERRERA

For the information and guidance of all concerned, quoted hereunder is the decision of the Court's Third Division in Administrative Case No. 5024 entitled "Arsenia T. Bergonia vs. Atty. Arsenio A. Merrera" dated February 20, 2003; to wit:

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'Rule 12.03, Canon 12 of the Code of Professional Responsibility, requires all the members of the bar to observe the following:

'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.'

Expressly stated is the requirement to show good and sufficient cause for requests of extension of time to file appellate briefs, Section 12 of Rule 44 of the Rules of Court provides that an extension of time for the filing of a brief shall not be allowed, except when there is good and sufficient cause, and only when the motion is filed before the expiration of the extension sought.

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A lawyer who requests an extension must do so in good faith and with a genuine intent to file the required pleading within the extended period. In granting the request, the court acts on the presumption that the applicant has a justifiable reason for failing to comply with the period allowed. Without this implied trust, the motion for extension will be deemed to be a mere ruse to delay or thwart the appealed decision. The motion will thus be regarded as a means of preventing the judgment from attaining finality and execution and of enabling the movant to trifle with procedure and mock the administration of justice.

In this case, respondent twice moved for an extension of time to file the required appellant's brief. In his first Motion, he alleged that he had a hectic daily schedule of hearings and other pressures from work. In his next Motion, he claimed he had acute arthritis and asthmatic attacks. The granting of his two Motions implied that he had been given ample time either to finish researching his case or to withdraw his appeal. Yet, he still failed to file the required brief. In its June 25, 1998 Resolution, the CA noted that the appellee's Motion to Dismiss the appeal was filed only after forty (40) days from the expiration of the last extension.

Respondent claims that he never planted false hopes in the mind of complainant. Upon receiving the Decision in Civil Case No. U-6061, he purportedly advised her that her chances of winning in the appellate court was slim, because the ownership of the disputed land had already been adjudicated to the other party in Civil Case No. U-4601. He avers that he tried to persuade her to accept her defeat "like a good soldier."

We are not persuaded. If, indeed, respondent failed to convince complainant to drop her appeal, he should have just withdrawn his appearance. Based on his arguments in his Opposition to the Motion for Execution and Demolition, however, we do not believe that he even tried to convince her to withdraw the appeal. We are inclined to believe that this excuse was merely an afterthought to justify his negligence.

Moreover, respondent claims that after filing the Motions for Extension, he surmised that the appeal would be useless, because he could not show sufficient cause to reverse the Decision.

This justification is even more inexcusable. Respondent should have checked first if there was a good ground to support

the appeal. If there was none, he should have been forthright in his evaluation of the case.

Lawyers should fully familiarize themselves with the causes of their clients before advising the latter on the soundness of litigating. If they find that the intended suite is devoid of merit or that the pending action is defenseless,²² they should promptly inform and dissuade their clients accordingly.

Assuming that respondent indeed tried to persuade complainant to abandon the appeal, he should have manifested to the CA that he had decided not to file the appellant's brief anymore, instead of just letting the period lapse. His contention that he could not find the appropriate jurisprudence to support her case is too flimsy to be credible. A competent and ethical lawyer would have at least tried to persuade the CA with reason and logic.

Respondent alleges that complainant knew of the dismissal of the appeal. That she had referred the Motion for Execution and Demolition to him for comment allegedly showed that she had already given up her desire to pursue her appeal. He pointed out that if she had indeed blamed his inexcusable negligence for its dismissal, then she would not have referred that Motion to him.

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Candor in all their dealings is the very essence of a practitioner's honorable membership in the legal profession.²³ Lawyers are required to act with the highest standard of truthfulness, fair play and nobility in the conduct of litigation and in their relations with their clients, the opposing parties, the other counsels and the courts. They are bound for their oath to speak the truth and to conduct themselves according to the best of their knowledge and discretion, and with fidelity to the courts and their clients. Canon 18.03 of the Code requires that 'a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith renders him liable.'

²² Rule 15.05, Canon 15 of the Code of Professional Responsibility requires that 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."

²³ The Code of Professional Responsibility requires in Canon 10 that "a lawyer owes candor, fairness and good faith to the court"; Canon 8, "a lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues x x x", and Canon 15, "a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client."

WHEREFORE, Atty. Arsenio A. Merrera is hereby found guilty of violating Canons 12 and 18 of the Canons of Professional Responsibility and is SUSPENDED from the practice of law for a period of six (6) months from receipt of this Decision. This Decision is immediately executory.

May 29, 2003.

PRESBITERO J. VELASCO, JR.
Court Administrator

TCB/civil
8-233/ atty. merrera susp (susp)