

## THIRD DIVISION

[ A.C. No. 4955, September 12, 2011 ]

**ANTONIO CONLU, COMPLAINANT, VS. ATTY. IRENEO AREDONIA, JR., RESPONDENT.**

### R E S O L U T I O N

**VELASCO JR., J.:**

Before the Court is a complaint<sup>[1]</sup> for disbarment with a prayer for damages instituted by Antonio Conlu (Antonio) against Atty. Ireneo Aredonia, Jr. (Atty. Ireneo) on grounds of gross negligence and dereliction of sworn duty.

Antonio was the defendant in Civil Case No. 1048, a suit for *Quieting of Title and Recovery of a Parcel of Land* commenced before the Regional Trial Court (RTC) in Silay City, Negros Occidental.<sup>[2]</sup> He engaged the services of Atty. Ireneo to represent him in the case. On March 16, 1995, the RTC rendered judgment<sup>[3]</sup> adverse to Antonio. Therefrom, Atty. Ireneo, for Antonio, appealed to the Court of Appeals (CA) whereat the recourse was docketed as CA-G.R. CV No. 50075.

The CA, per its Resolution of February 10, 1997, eventually dismissed the appeal for non-filing of the appellant's brief within the reglementary period. Antonio got wind of the dismissal from his wife who verified the status of the case when she happened to be in Manila. When confronted about the dismissal action, Atty. Ireneo promised to seek reconsideration, which he did, but which the appellate court later denied for belated filing of the motion.

In that motion<sup>[4]</sup> he prepared and filed, Atty. Ireneo averred receiving the adverted February 10, 1997 CA Resolution<sup>[5]</sup> only on April 25, 1997, adding in this regard that the person in the law office who initially received a copy of said resolution was not so authorized. However, the CA denied the motion for having been filed out of time. As the CA would declare in a subsequent resolution dated December 3, 1997, there was a valid receipt by Atty. Ireneo, as shown by the registry return card with his signature, of a copy of the CA's February 10, 1997 Resolution. Accordingly, as the CA wrote, the motion for reconsideration of the February resolution which bore the mailing date May 8, 1997 cannot but be considered as filed way out of time.

In light of these successive setbacks, a disgusted Antonio got the case records back from Atty. Ireneo and personally filed on October 13, 1997 another motion for reconsideration. By Resolution of December 3, 1997, the CA again denied<sup>[6]</sup> this motion for the reason that the prejudicial impact of the belated filing by his former counsel of the first motion for reconsideration binds Antonio.

Forthwith, Antonio elevated his case to the Court on a petition for certiorari but the Court would later dismiss the petition and his subsequent motion to reconsider the

denial.

Such was the state of things when Antonio lodged this instant administrative case for disbarment with a prayer for damages. To support his claim for damages, Antonio asserts having suffered sleepless nights, mental torture and anguish as a result of Atty. Ireneo's erring ways, besides which Antonio also lost a valuable real property subject of Civil Case No. 1048.

Following Atty. Ireneo's repeated failure to submit, as ordered, his comment, a number of extensions of time given notwithstanding,<sup>[7]</sup> the Court referred the instant case, docketed as Administrative Case No. 4955, to its Office of the Bar Confidant (OBC) for evaluation, report and recommendation.

Acting on OBC's Report and Recommendation<sup>[8]</sup> dated November 23, 2000, the Court, by Resolution of January 31, 2001, directed Atty. Ireneo to show cause within ten (10) days from notice--later successively extended via Resolutions dated July 16 and 29, 2002--why he should not be disciplinarily dealt with or held in contempt for failing to file his comment and to comply with the filing of it.

In separate resolutions, the Court (a) imposed on Atty. Ireneo a fine of PhP 2,000; <sup>[9]</sup> (b) ordered his arrest but which the National Bureau of Investigation (NBI) cannot effect for the reason: "whereabouts unknown";<sup>[10]</sup> (c) considered him as having waived his right to file comment; and (d) referred the administrative case to the Integrated Bar of the Philippines (IBP) for report, investigation and recommendation.<sup>[11]</sup>

At the IBP, Atty. Ireneo desisted from addressing his administrative case, his desistance expressed by not attending the mandatory conference or filing the required position paper. On the basis of the pleadings, the IBP-Commission on Bar Discipline (CBD) found Ireneo liable for violating Canon 1, Rules 1.01 and 1.03 and Canon 18, Rule 18.03 of the Code of Professional Responsibility and recommended his suspension from the practice of law for a period of six (6) months, with warning. The salient portions of the investigating commissioner's *Report and Recommendation*<sup>[12]</sup> read as follows:

Uncontroverted and uncontested are respondent's inability to file appellant's Brief, his futile attempts to mislead the Court of Appeals that he did not personally received [sic] the resolution of dismissal. His filing of the Motion for Reconsideration five (5) months late. [sic]

Aggravated by his failure to file his comment in the instant administrative complaint despite his numerous motions for extension to file the same. [sic]

He is even adamant to comply with the show cause order of the bar confidant. The series of snobbish actuations in several resolution of the Supreme Court enjoining him to make the necessary pleading. [sic]

By Resolution No. XVIII-2008-523, the IBP Board of Governors adopted and

approved said report and recommendation of the CBD.<sup>[13]</sup>

We agree with the inculpatory findings of the IBP but not as to the level of the penalty it recommended.

*Res ipsa loquitur.* Atty. Ireneo had doubtless been languid in the performance of his duty as Antonio's counsel. He neglected, without reason, to file the appellant's brief before the CA. He failed, in short, to exert his utmost ability and to give his full commitment to maintain and defend Antonio's right. Antonio, by choosing Atty. Ireneo to represent him, relied upon and reposed his trust and confidence on the latter, as his counsel, to do whatsoever was legally necessary to protect Antonio's interest, if not to secure a favorable judgment. Once they agree to take up the cause of a client, lawyers, regardless of the importance of the subject matter litigated or financial arrangements agreed upon, owe fidelity to such cause and should always be mindful of the trust and confidence reposed on them.<sup>[14]</sup> And to add insult to injury, Atty. Ireneo appeared not to have taken any effort to personally apprise Antonio of the dismissal of the appeal, however personally embarrassing the cause for the dismissal might have been. As mentioned earlier, Antonio came to know about the outcome of his appeal only after his wife took the trouble of verifying the case status when she came to Manila. By then, all remedies had been lost.

It must be remembered that a retained counsel **is expected to serve the client with competence and diligence**. This duty includes not merely reviewing the cases entrusted to the counsel's care and giving the client sound legal advice, but also properly representing the client in court, attending scheduled hearings, **preparing and filing required pleadings**, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so. The lawyer should not be sitting idly by and leave the rights of the client in a state of uncertainty.<sup>[15]</sup>

The failure to file a brief resulting in the dismissal of an appeal constitutes inexcusable negligence.<sup>[16]</sup> This default translates to a violation of the injunction of Canon 18, Rules 18.03 and 18.04 of the Code of Professional Responsibility, respectively providing:

CANON 18 -- A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.

x x x x

Rule 18.03 -- A lawyer shall not neglect a 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.

As if his lack of candor in his professional relationship with Antonio was not abhorrent enough, Atty. Ireneo tried to mislead the appellate court about the receipt