

SECOND DIVISION

[ADM. CASE NO. 5691, March 13, 2009]

**AVITO YU, COMPLAINANT, VS. ATTY. CESAR R. TAJANLANGIT,
RESPONDENT.**

R E S O L U T I O N

TINGA, J.:

This is an administrative complaint for disbarment filed by complainant Avito Yu against respondent Atty. Cesar R. Tajanlangit for violation of Rules 18.03 and 16.01 of the Code of Professional Responsibility (the Code).^[1]

Complainant alleged that he had engaged the services of respondent as defense counsel in Criminal Case No. 96-150393 that resulted in a judgment of conviction against him and a sentence of thirty (30) years of imprisonment.^[2] After the motion for reconsideration and/or new trial was denied by the trial court, instead of filing an appeal, respondent filed a petition for certiorari^[3] under Rule 65 of the 1997 Rules of Civil Procedure imputing grave abuse of discretion on the trial court's part in denying the motion. This petition was subsequently denied by the Court of Appeals. Due to respondent's alleged error in the choice of remedy, the period to appeal lapsed and complainant was made to suffer imprisonment resulting from his conviction. In depriving complainant of his right to an appeal, respondent allegedly violated Rule 18.03^[4] of the Code. Moreover, complainant averred that respondent had violated Rule 16.01^[5] of the Code for failing to return the bailbond to him in the amount P195,000.00 after having withdrawn the same.^[6] Further, complainant stated that respondent had failed to pay the telephone bill he had incurred during his stay at complainant's house.^[7]

Complainant prayed that respondent be disbarred and be ordered to pay him the amount of P211,106.97 plus interest.^[8]

For his part, respondent clarified that his legal services were engaged only after the denial of the motion for reconsideration and/or new trial and the supplement thereto. His legal services were limited to filing the petition for certiorari. Complainant, at the time, had already been convicted by the trial court. Respondent also explained that he had discussed with complainant the merits of filing a petition for certiorari and that complainant gave his conformity to the filing of the same.^[9]

Moreover, respondent averred that complainant had authorized and instructed him to withdraw the cash bond in order to apply the amount as payment for legal fees and reimbursement for expenses. With regard to the unpaid telephone bill, respondent alleged that he was not presented a copy of the billing statement despite his previous requests. He also contended that he had been allowed to use the telephone to facilitate coordination between him and complainant as he was

then residing in Bacolod City.^[10]

The Court referred the matter to the Integrated Bar of the Philippines (IBP) by Resolution of 16 July 2003.^[11]

In his Report and Recommendation dated 2 December 2004, Atty. Leland R. Villadolid, Jr., IBP Commissioner, made the following findings:

On the charge of violating Rule 18.03

x x x

x x x Considering that Respondent was only hired **after** the denial of the Motion for Reconsideration and/or New Trial, Complainant is silent whether an appeal was still available to him at that time. Complainant failed to state the material dates when his first lawyer, Atty. Lacsamana received the Decision dated 6 February 1998, when she filed the Motion for Reconsideration and/or New Trial, and when his second lawyer, Atty. Espiritu, received the Order dated 23 April 1999.

While all of the lawyers who protected Complainant's cause were of the view that there was a need to present additional evidence and/or hold trial anew, it is obvious that Complainant singled out Respondent and blamed him solely for his conviction.

At any rate, Respondent exhaustively explained his legal basis for elevating the Order dated 23 April 1999 to the Court of Appeals by filing a Petition for Certiorari. Considering that the Order dated 23 April 1999, which denied the Motion for Reconsideration and/or New Trial, Respondent's argument that the said order is not the proper subject of appeal is tenable. This is supported by Section 1(a), Rule 43 and Section 9, Rule 37 of the Rules of Court. For another, a perusal of grounds Respondent raised in the Petition is acceptable grounds that warrant a new trial. At least two of the grounds Respondent raised were: the negligence of former counsel in failing to present evidence and new discovered evidence. It is well-settled that these grounds usually warrant the re-opening of evidence. Thus, it cannot be said that Respondent acted negligently in advocating Complainant's cause.

x x x

On the charge of violating Rule 16.01

x x x In the absence of evidence controverting Respondent's claim that a verbal agreement exists or an amount different from what was agreed upon, it is believable that indeed, Complainant knew of the fee arrangement entered into with the Respondent, through Ms. Javier, who acted in his behalf. It is also indisputable that Complainant executed a Special Power of Attorney dated 23 March 1999 authorizing the Respondent to withdraw the cash bonds in several criminal cases on his behalf. Thus, it was not all improper for Respondent to withdraw the same.