

SECOND DIVISION

[A.C. NO. 5996, February 07, 2005]

**MARIO S. AMAYA, COMPLAINANT, VS. ATTY. DELANO A. TECSON,
RESPONDENT.**

D E C I S I O N

CALLEJO, SR., J.:

In a Complaint dated March 20, 2003, Mario S. Amaya sought the disbarment of Atty. Delano A. Tecson for "highly irregular actuations and/or grave negligence in handling an appeal with the Court of Appeals."

The complainant alleged that he retained the services of the respondent to handle the said appeal when his former counsel suffered a stroke due to acute hypertension. The respondent demanded P20,000.00^[1] for the filing of the notice of appeal, which the complainant immediately paid. The respondent assured him that the appeal was going to be filed on time, and demanded an additional sum of P20,000.00 for the preparation and filing of the appellant's brief. The complainant paid the said amount on March 24, 2001.^[2] The complainant further alleged as follows:

... I periodically visited Atty. Tecson in his office to follow up the progress of the appeal with the Honorable Court of Appeals. During my earlier visits, I was assured by Atty. Tecson that our appeal will be given due course. ... However, sometime in the first week of December 2001, I was informed by Atty. Tecson that the appeal was dismissed ... due to the fact that [he] failed to file it one day late.... I was shocked because I was so diligent in paying Atty. Tecson and also in following up with him the progress of the appeal. When I asked Atty. Tecson why he was not able to file on time the Notice of Appeal, [he] merely replied that the Honorable Court of Appeals committed a mistake in dismissing the appeal because it failed to consider the inability to file the appeal due to the fact that the post office was closed on Saturday and Sundays. Atty. Tecson assured me that the appeal would be resurrected once a Motion for Reconsideration would be filed by him. Thus, Atty. Tecson told me that he would file a motion for reconsideration and would go to Manila to personally follow it up. Atty. Tecson demanded from me the sum of TEN THOUSAND (P10,000.00) PESOS for the said motion for reconsideration. I readily paid Atty. Tecson, but unfortunately, I did not anymore demand for a receipt.^[3]

The complainant narrated that he was no longer able to personally talk to the respondent after this, and that the latter was always "out of town," attending to several court hearings in different cities and municipalities and could not even be reached through his cellular phone.

On May 10, 2002, the complainant learned of the denial of the motion for reconsideration through a friend. He tried contacting the respondent, to no avail, and was constrained to hire another lawyer, Atty. Arsenio C. Tan. Atty. Tan then filed a Notice of Appearance and Second Motion for Reconsideration which was denied by the appellate court in a Resolution dated October 16, 2002.

In his Comment dated June 23, 2003, the respondent admitted that he was the complainant's counsel and that the appeal was dismissed because he failed to file the docket fees on time. He then filed a motion for reconsideration of the said denial, which the appellate court, likewise, denied.

According to the respondent, the complainant's case was initially handled by a different lawyer and was adversely decided by the trial court. The complainant, who was "cocksure" of winning his appeal before the Court of Appeals, approached the respondent regarding the said case. According to the respondent:

... I told him that I would do my best to help him in his appeal but considering that the records of his case with the RTC, Cebu, was so voluminous, I had to study them well, because he might be filing an appeal which would just entail a big expense on his part, without any chance of having the adverse decision reversed by the appellate court;

... There were very few more days left before the notice of appeal could be filed within the 15-day reglementary period when he approached me.

[4]

The respondent further narrated that the last day for paying the docket fee was a Friday, and that he decided to pay the same through money order. He then went to the customs area at the waterfront in Cebu City, planning to send the docket fees through mail, addressed to the Clerk of Court of the Regional Trial Court where the case had been tried. However, the teller refused to accept the respondent's letter with offer to buy the money order for the docket fees in question. The respondent was told that his transaction could no longer be accepted because of the new policy that the postal office would no longer transact any business after 4:30 p.m. The respondent then had a heated argument with the postal employee, but no one wanted to accept his transaction. He then went to the other postal offices in the neighboring cities of Talisay and Mandaue to try his luck, which was an exercise in futility. He was able to purchase the money order and send the same only the following Monday.

The respondent, likewise, claimed that there was no agreement as to the amount of attorney's fees that he would charge, and considered the complainant's case as *pro bono*. After he told the complainant that it was customary for the client to spend the expenses in appealing a case and that it was usually considered as an acceptance fee, the complainant voluntarily gave him P20,000.00, and added another P20,000.00 three days later. Contrary to the complainant's claim, the respondent did not receive an additional amount of P10,000.00. He also averred that he promised to return the money to the complainant in case the appeal would not be successful. He was true to his word and returned the P40,000.00 to the complainant, as evidenced by a receipt.^[5] The respondent also stressed that he made a candid and honest opinion of the probable outcome of the case to the complainant, and