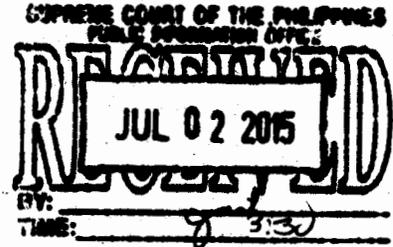




REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE



Sirs/Mesdames:

Please take notice that the Court, Second Division, issued a Resolution dated 17 June 2015 which reads as follows:

A.C. No. 7285: MILAGROS F. BALASOLLA, complainant, v. **ATTY. ANSELMO S. ALVANIZ IV**, respondent.

X-----X

This disbarment complaint¹ charges respondent with gross negligence.

Sometime in February 1999, complainant engaged the services of respondent to defend her in a civil case entitled “Declaration of Nullity of Instrument, Quieting of Title and Recovery of Possession of Real Property.”

On 9 October 2000, the trial court ruled in favor of plaintiff. On 12 October 2000, complainant and respondent received a copy of the decision. On 27 October 2000, respondent filed a motion for reconsideration, which was denied. On 4 January 2001, respondent received a copy of the denial order. On the same day, respondent filed a notice of appeal.

Apparently, the appeal fee was not paid; thus, the Court of Appeals dismissed the appeal. Upon learning of the non-payment of the appeal fee, complainant personally filed “Appellant’s Manifestation Re: Late Payment of the Required Docket Fees for the Appeal.”² On 13 July 2001, the Court of Appeals accepted the late payment of the fees.

On 6 August 2001, the Court of Appeals issued a Notice to File Appellant’s Brief, which was sent to respondent through registered mail. On 20 February 2002, the Court of Appeals dismissed the appeal for “failure of the defendant-appellants to file brief within the reglementary period.”³ On 11 March 2002, complainant and respondent received the Resolution.

On 26 March 2002, respondent filed a motion for reconsideration denying he received a notice or order requiring appellant to file the brief.⁴ On 27 May 2002, the Court of Appeals denied the motion for reconsideration on the ground that the registry return card showed respondent’s receipt of the dismissal order.⁵ On 10 June 2002, respondent received the order denying reconsideration. On 26 June 2002, the dismissal of the appeal became final.⁶

¹ *Rollo*, pp. 2-8.

² *Id.* at 11-12.

³ *Id.* at 16.

⁴ *Id.* at 17-19.

⁵ *Id.* at 20-21.

⁶ *Id.* at 48.

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Consequently, a writ of execution was issued on 11 August 2003 against complainant. Complainant claimed that as a result of respondent's gross negligence, she stood to lose ownership of an 11,742 sq. m. land.⁷

Respondent maintains that he did not receive the notice to file appellant's brief and claims that it was his former employee, Jose Dolo, who received the same.⁸ Respondent presented the postman's Registry Delivery Book to show that the signature therein was not his. However, the postman's affidavit or testimony to support such claim was not offered. Additionally, respondent argues that the action against him has prescribed since the alleged misconduct arose in 2001 and 2002 while the administrative complaint was filed more than two years thereafter or in 2005 only.⁹

In a Resolution dated 26 May 2006,¹⁰ the Integrated Bar of the Philippines (IBP) Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner, finding respondent guilty of gross negligence for "his failure to ensure that his law office promptly receives all legal notices and communications and for his failure to file the Appellant's Brief."¹¹ Accordingly, the IBP imposed a one-year suspension on respondent.

The Court adopts the factual findings of the IBP and affirms the penalty imposed on respondent.

Indeed, respondent was remiss in his duties as complainant's counsel. First, respondent did not bother to personally inform complainant about the payment of the required appeal fee. While he filed the notice of appeal before the trial court, he requested the trial court's stenographer to tell complainant to pay the appeal fee. Apparently, the appeal fee was not paid. As a consequence, the Court of Appeals dismissed the appeal. Complainant had to pay the appeal fee herself and plead for its acceptance by the appellate court. It was only then that the appeal was revived.

Second, respondent did not have the initiative to follow-up the status of the appeal with the Court of Appeals and to know whether any order to file brief had already been issued after the lapse of an unusual length of time. Respondent merely waited, until the Court of Appeals dismissed the appeal for non-filing of the appellant's brief.

Respondent denied receiving any order to file brief. However, the registry return receipt shows a signature indicating receipt of the order.

⁷ Id.

⁸ Id. at 28.

⁹ Id. at 31.

¹⁰ Id. at 115.

¹¹ Id. at 125.

Respondent's lame excuse was that a former employee received it. Yet, no affidavit or testimony of such employee to that effect was presented. Neither did respondent present the affidavit or testimony of the postman to substantiate his claim that the signature in the Registry Delivery Book belongs to his former employee. That a former employee received the order to file brief does not exculpate respondent from liability. On the contrary, it proves respondent's unreasonably lax procedure in his office on receiving court documents, and highlights his negligence in handling complainant's case.

Rule 18.03 of the Code of Professional Responsibility provides:

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

As we have consistently held, a lawyer's failure to file brief for his client, despite notice, amounts to inexcusable negligence.¹² A lawyer is bound to protect his client's interest to the best of his ability and with utmost diligence.¹³ Once a lawyer agrees to take up the cause of a client, he owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him.¹⁴ A lawyer who discharges his duties with diligence 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.¹⁵

Respondent likewise argues that this disbarment case has prescribed. It is settled that an administrative complaint against a member of the bar does not prescribe.¹⁶ In *Frias v. Bautista-Lozada*,¹⁷ the Court declared void Rule VIII, Section 1 of the Rules of Procedure of the IBP Commission on Bar Discipline,¹⁸ which provided for the two-year reglementary period.

The determination of whether a lawyer should be disbarred or merely suspended for a period involves the exercise of sound judicial discretion.¹⁹ The penalties for a lawyer's failure to file a brief or other pleading range

¹² *Figueras v. Jimenez*, A.C. No. 9116, 12 March 2014; *Dagohoy v. San Juan*, A.C. No. 7944, 3 June 2013, 697 SCRA 1, 6, citing *Dalisay Capili v. Atty. Alfredo L. Bentulan*, A.C. No. 5862; through an extended resolution dated 12 October 2011; *Edquibal v. Ferrer, Jr.*, 491 Phil. 1, 7 (2005), citing *People v. Villar, Jr.*, G.R. No. L-34092, 29 July 1972, 46 SCRA 107; *Ramos v. Jacoba*, 418 Phil. 346, 352 (2001), citing *People v. Villar, Jr.*, supra; *Perla Compania De Seguros, Inc. v. Saquilabon*, 337 Phil. 555, 558 (1997), citing *Ford v. Daitol*, 320 Phil. 53, 58 (1995), further citing *In Re: Atty. Santiago F. Marcos*, 240 Phil. 769 (1987).

¹³ *Abiero v. Juanino*, 492 Phil. 149, 158 (2005), citing *Barbuco v. Beltran*, 479 Phil. 692, 696 (2004).

¹⁴ *Ramos v. Jacoba*, 418 Phil. 346, 351 (2001), citing *Aromin v. Boncavil*, 373 Phil. 612 (1999).

¹⁵ *Id.*

¹⁶ *Calo, Jr. v. Degamo*, 126 Phil. 802, 805-806 (1967); *Heck v. Santos*, 467 Phil. 798, 824 (2004). [Both cases were cited in *Frias v. Bautista-Lozada*, supra.]

¹⁷ 523 Phil. 17 (2006).

¹⁸ SECTION 1. *Prescription*. A complaint for disbarment, suspension or discipline of attorneys prescribes in two (2) years from the date of the professional misconduct.

¹⁹ *Figueras v. Jimenez*, supra.

from reprimand,²⁰ fine with warning,²¹ suspension²² and, in grave cases, disbarment.²³ In this case, we sustain the penalty of suspension for one year for respondent's violation.

WHEREFORE, we find respondent **GUILTY** of gross negligence and accordingly, impose on him a **SUSPENSION** for **ONE YEAR** from the practice of law with a **WARNING** that the commission of the same or similar act or acts shall be dealt with more severely.

Let copies of this Resolution be furnished the Integrated Bar of the Philippines, the Office of the Bar Confidant, and all courts in the Philippines for their information and guidance.

SO ORDERED. (Leonen, *J.*, on official leave; Jardeleza, *J.*, designated acting member per Special Order No. 2056 dated 10 June 2015)

Very truly yours,


MA. LOURDES C. PERFECTO
Division Clerk of Court

²⁰ *Vda. de Oribiana v. Atty. Gerio*, 177 Phil. 543, 549 (1979).

²¹ *Basas v. Atty. Icawat*, 393 Phil. 304 (2000).

²² *Spouses Rabanal v. Atty. Tugade*, 432 Phil. 1064 (2002); *Sps. Galen v. Paguirigan*, 428 Phil. 590 (2002).

²³ *Mariveles v. Mallari*, Adm. Case No. 3294, 17 February 1993, 219 SCRA 44.

MILAGROS F. BALASOLLA (reg)
Complainant
Jacinto Street, Catarman
6400 Northern Samar

CALLANTA & PARTNERS LAW FIRM (reg)
(ATTY. RENATO MA. S. CALLANTA, JR.)
Counsel for Complainant
No. 40, West Avenue
1100 Quezon City

ATTY. HENECITO F. BALASOLLA (reg)
Counsel for Complainant
Unit 9125, Fountain Breeze Condominium
Lombos Avenue, Sucat, Parañaque City

ATTY. ANSELMO S. ALVAÑIZ, IV (reg)
Respondent
51 Justice Street, Airport Village
Catarman, Northern Samar

THE BAR CONFIDANT (x)
Supreme Court, Manila

OFFICE OF THE CHIEF ATTORNEY (x)
OFFICE OF THE REPORTER (x)
Supreme Court, Manila

PUBLIC INFORMATION OFFICE (x)
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Thelma C. Bahia (x)
Office of the Court Administrator
Supreme Court, Manila

COURT MANAGEMENT OFFICE (x)
Office of the Court Administrator
Supreme Court, Manila

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