



Republic of the Philippines  
Supreme Court  
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames

*Please take notice that the Court, Third Division, issued a Resolution dated **January 11, 2023**, which reads as follows:*

**“A.C. No. 13418 [Formerly CBD Case No. 18-5561] (Augusto Banusing, Sr., Complainant v. Atty. Eduardo S. Fortaleza, Respondent).** – Before the Court is a Letter-Complaint<sup>1</sup> for disbarment filed before the Integrated Bar of the Philippines (IBP) by Augusto M. Banusing, Sr. (complainant) against Atty. Eduardo S. Fortaleza (respondent) for gross negligence in failing to file an appellant’s brief which resulted in the dismissal of complainant’s appeal.<sup>2</sup>

*The Antecedents*

Complainant, the President/Chairman of M.B. Lending Corporation, is the plaintiff-appellant in an appealed case filed before the Court of Appeals (CA), docketed as CA-G.R. CEB-CV No. 05520 and entitled, *“M.B. Lending Corporation rep. hereto by its President/Chairman, Augusto M. Banusing, Sr. v. Remegio Hurtada and Gualberto Sante (subject case).”*<sup>3</sup>

On the other hand, respondent is complainant’s counsel in the subject case. He filed his entry of appearance on November 9, 2015<sup>4</sup> which the CA noted in its Resolution<sup>5</sup> dated March 7, 2017. The CA likewise directed respondent to file an appellant’s brief for his client within 45 days from notice. Respondent received the Resolution on March 28, 2017.<sup>6</sup>

Respondent filed a Motion for Extension of Time to File Appellant’s Brief.<sup>7</sup> The CA granted it and gave him an extension of

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<sup>1</sup> *Rollo*, pp. 1–2.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 37.

<sup>5</sup> *Id.* at 49.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 50–53.

15 days from May 12, 2017, or until May 27, 2017, within which to file the appellant's brief.<sup>8</sup>

Despite the extension, respondent failed to file the required appellant's brief.<sup>9</sup> Instead, on May 29, 2017, or two days after the extended deadline, respondent filed a second motion for an extension of time to file the appellant's brief<sup>10</sup> praying for an additional 10 days, or until June 8, 2017, within which to file the appellant's brief.<sup>11</sup> However, on June 8, 2017, respondent still did not file any appellant's brief before the CA.<sup>12</sup>

In a Resolution<sup>13</sup> dated November 8, 2017, the CA dismissed the subject case for complainant's failure to file the required appellant's brief:<sup>14</sup>

The Court notes that, to date, more than four (4) months from the last requested extension, i.e., 08 June 2017, no appellant's brief has been filed by or for plaintiff-appellant which could serve as basis for the Court to review the Trial Court's judgment and resolve the appeal. That circumstance, by itself, is a sufficient ground to dismiss the appeal in accordance with Section 1(e), Rule 50 of the Rules of Court.

WHEREFORE, the appeal is DISMISSED for plaintiff-appellant's failure to file its appellant's brief.

SO ORDERED.<sup>15</sup>

Complainant alleged that respondent violated the Code of Professional Responsibility (CPR) when he neglected to file the required appellant's brief, which led to the dismissal of the subject case.<sup>16</sup>

In his Answer,<sup>17</sup> respondent admitted that he was not able to file the appellant's brief before the CA but passed the blame to complainant. He alleged that he received the records of the case only on June 1, 2017,<sup>18</sup> that the records forwarded to him were incomplete,<sup>19</sup> and that the instant case is a mere harassment suit designed to justify the filing of complainant's motion for reconsideration before the CA.<sup>20</sup>

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<sup>8</sup> Id. at 59.

<sup>9</sup> Id. at 1.

<sup>10</sup> Id. at 60-63.

<sup>11</sup> Id. at 62.

<sup>12</sup> Id. at 1.

<sup>13</sup> Id. at 5-7. Penned by Associate Justice Gabriel T. Robeniol and concurred in by Associate Justices Edgardo L. Delos Santos (retired Member of the Court) and Edward B. Contreras.

<sup>14</sup> Id. at 6.

<sup>15</sup> Id.

<sup>16</sup> Id. at 2.

<sup>17</sup> Id. at 37-44.

<sup>18</sup> Id. at 38.

<sup>19</sup> Id.

<sup>20</sup> Id. at 42.

Meanwhile, complainant's counsel, during the preliminary conference before the IBP, manifested that complainant died on December 30, 2018.<sup>21</sup> This prompted respondent to file a motion to dismiss<sup>22</sup> on the grounds that: (1) the case does not survive the death of complainant and (2) complainant's allegations may no longer be proved by competent evidence.<sup>23</sup>

*IBP Report and Recommendation*

In a Report and Recommendation<sup>24</sup> dated June 25, 2020, Investigating Commissioner Erwin L. Aguilera (Investigating Commissioner) found respondent guilty of violating Canon 17, Canon 18, and Rule 18.03 of the CPR for his failure to file the required appellant's brief,<sup>25</sup> and accordingly, recommended that he be suspended from the practice of law for a period of one year with stern warning that repetition of the same offense shall be dealt with more severely.<sup>26</sup>

Subsequently, the IBP Board of Governors passed Resolution No. CBD-2021-03-15<sup>27</sup> dated March 13, 2021 which approved and adopted the Investigating Commissioner's report and recommendation:

RESOLVED to APPROVE and ADOPT, as it is hereby APPROVED and ADOPTED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case SUSPENDING Atty. Eduardo S. Fortaleza from the practice of law for one (1) year with stern warning that repetition of the same offense shall be dealt with more severely, after finding the recommendation to be fully supported by the evidence on record and applicable laws and rules.<sup>28</sup> (Emphases omitted.)

Aggrieved, respondent moved for reconsideration,<sup>29</sup> but the IBP Board of Governors denied it in the Resolution No. CBD-XXV-2021-12-24<sup>30</sup> dated December 3, 2021.

Pursuant to Section 12(c) of Rule 139-B of the Rules of Court, as amended by B.M. No. 1645<sup>31</sup> dated October 13, 2015, the case was transmitted before the Court for final action.

*The Issue*

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<sup>21</sup> Id. at 102. See Certificate of Death; id. at 107.  
<sup>22</sup> Id. at 115–118.  
<sup>23</sup> Id. at 116.  
<sup>24</sup> Id. at 183–195.  
<sup>25</sup> Id. at 193–194.  
<sup>26</sup> Id. at 195.  
<sup>27</sup> Id. at 181.  
<sup>28</sup> Id.  
<sup>29</sup> Id. at 196–212.  
<sup>30</sup> Id. at 238.  
<sup>31</sup> Entitled: “Re: Amendment of Rule 139-B,” dated October 13, 2015.

Should respondent be held administratively liable for his failure to file the appellant's brief before the CA?

*The Court's Ruling*

The Court agrees with the findings of the IBP Board of Governors but modifies the recommended period of suspension to conform with recent jurisprudence.

At the outset, it bears stressing that complainant's untimely death will not warrant the dismissal of the disbarment complaint against respondent nor will it render the case moot and academic.<sup>32</sup>

For one, disbarment proceedings are *sui generis* in nature. Its primary purpose is not to inflict punishment on the erring lawyer but to protect the public from those lawyers alleged and proven to be unworthy of membership in our noble profession.<sup>33</sup> For another, complainants in administrative cases "are, in a real sense, only witnesses." As such, their decision to withdraw the complaint or even their death, as in this case, will not deter the Court from resolving the complaint on the merits in order to preserve the purity of the profession.<sup>34</sup> Besides, complainant during his lifetime had already submitted his verified complaint and mandatory conference brief as required by the IBP to prove his allegations.<sup>35</sup> Therefore, respondent's allegations that the case dies with the death of complainant and his complaint can no longer be proved by competent evidence are bereft of merit.

For emphasis, Rule 12.03, Canon 17, and Rule 18.03, Canon 18 of the CPR provides:

Rule 12.03 - 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.

x x x x

Canon 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

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 legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

<sup>32</sup> *Atty. Aguirre v. Atty. Reyes*, A.C. No. 4355, January 8, 2020.

<sup>33</sup> *Fabugais v. Atty. Faundo*, 833 Phil. 19, 27 (2018).

<sup>34</sup> *Tudtud v. Judge Coliflores*, 458 Phil. 49, 53 (2003). See also *Mercado, et al. v. Judge Salcedo (Ret.)*, 619 Phil. 3, 32 (2009).

<sup>35</sup> *Rollo*, pp. 190-191.

In the case, the record shows that respondent had at least a period of 16 months from the time he filed his Entry of Appearance on November 9, 2015<sup>36</sup> up to the time he received on March 28, 2017 the CA Resolution<sup>37</sup> that directed him to file the required appellant's brief within 45 days from notice. Common sense dictates that when respondent entered his appearance in 2015, he should have already secured all the pertinent documents relative to the subject case. The 16-month period plus the additional 45 days should have been more than enough time for respondent to prepare the required appellant's brief.

The CA even gave respondent another 15 days when it granted the motion for extension of time to file the appellant's brief on or before May 27, 2017.<sup>38</sup> Then, respondent again asked for an additional 10 days, or until June 8, 2017, to file the appellant's brief.<sup>39</sup>

Respondent, despite the extensions given to him, the lapse of more than four months from the last requested period of extension, and without submitting any explanation to the CA, failed to file the required appellant's brief which led to the dismissal of the subject case on November 8, 2017.<sup>40</sup>

Clearly, respondent violated Rules 12.03 and 18.03, as well as Canons 17 and 18 of the CPR.

Clutching at straws, respondent maintained that he was not negligent in the handling of the subject case and blamed complainant for not providing him with the complete records of the case.<sup>41</sup>

As correctly pointed out by the Investigating Commissioner, had it been true that complainant failed to give respondent the documents that he needed, respondent should have sent a written request, either through registered or electronic mail, for the documents and records that he needed in order to prepare the required appellant's brief. However, other than bare allegations, respondent failed to provide any proof of such request.<sup>42</sup>

Even assuming that complainant had his own share of negligence, this alone could not dim respondent's glaring negligence, lack of prudence, and utter disregard of his client's confidence.

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<sup>36</sup> Id. at 37.

<sup>37</sup> Id. at 49.

<sup>38</sup> Id. at 59.

<sup>39</sup> Id. at 60-63.

<sup>40</sup> Id. at 6.

<sup>41</sup> Id. at 38.

<sup>42</sup> Id. at 194.

In *Perla Compania de Seguros, Inc. v. Atty. Saquilabon*,<sup>43</sup> the CA likewise dismissed the appeal for failure to file the required brief. Complainant therein moved for reconsideration of the dismissal of the appeal. The CA reconsidered and gave therein complainant a period of 15 days within which to submit the required brief. However, therein respondent—counsel of therein complainant—again failed to file the required brief, constraining the CA to dismiss the appeal anew.<sup>44</sup> In suspending therein respondent from the practice of law for a period of six months,<sup>45</sup> the Court held that lawyers are bound to protect the interest of their client to the best of their ability and utmost diligence, and that their failure to file the required brief for their clients constitutes inexcusable negligence.<sup>46</sup>

In *Alcantara v. Atty. Salas*,<sup>47</sup> the CA also dismissed the appeal due to therein respondent's non-filing of the appellant's brief. The Court likewise imposed the penalty of six-month suspension after finding therein respondent guilty of inexcusable negligence and of violating Canon 17, Canon 18, and Rule 18.03 of the CPR, as in this case.

**WHEREFORE**, respondent Atty. Eduardo S. Fortaleza is found **GUILTY** of violating Rule 12.03, Canon 12, Canon 17, and Rule 18.03, Canon 18 of the Code of Professional Responsibility. He is **SUSPENDED** from the practice of law for a period of six (6) months, effective upon the receipt of this Resolution. He is **STERNLY WARNED** that a repetition of the same or similar act will be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondent's personal records as member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

The Notice of Resolution No. CBD-2021-03-15 dated March 13, 2021 and the Notice of Resolution No. CBD-XXV-2021-12-24 dated December 3, 2021 of the IBP Board of Governors, transmitted by Letter dated March 25, 2022 of Atty. Avelino V. Sales, Jr., Director for Bar Discipline, together with the records of the case and flash drive file, are **NOTED**.

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<sup>43</sup> 337 Phil. 555 (1997)

<sup>44</sup> Id. at 556–557.

<sup>45</sup> Id. at 559.

<sup>46</sup> Id. at 558.

<sup>47</sup> A.C. No. 3989, December 10, 2019.

**SO ORDERED.”**

By authority of the Court:

**MISAEL DOMINGO C. BATTUNG III**  
*Division Clerk of Court*

By:

  
**RUMAR D. PASION**  
*Deputy Division Clerk of Court*

JB 4/12/23

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**A.C. No. 13418**  
**[Formerly CBD Case No. 18-5561]**

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