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SECOND DIVISION

[A.C. No. 1582. February 28, 1979]

ENEDENA AGAWA VDA. DE ORIBIANA, *complainant*, *vs.* **ATTY. FIDENCIO H. GERIO**, *respondent*.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; FAILURE OF COUNSEL TO FILE BRIEF ENTAILS DISCIPLINARY ACTION.** — The failure of counsel to file the brief within the reglementary period is an offense that entails disciplinary action. The inability of the client to defray expenses for the printing of brief is not sufficient to justify counsel's failure to file the brief. Counsel could have sought the permission of the court to file a mimeographed or typewritten brief, or, at the very least, he could have informed the court of his difficulties in the preparation of the printed brief. For failing to do so, he should be subject to administrative sanctions.

2. **ID.; ID.; DUTY OF COUNSEL TO DISCHARGE RESPONSIBILITY TO CLIENT AND TO THE COURT.** — The rulings in previous cases which made reference to the filing of appellant's brief in criminal cases, apply with equal force to civil cases, whether the brief be for appellant or appellee, the reason behind said rulings being the same in both cases, that is, that counsel should discharge fully his responsibility to the client as well as to the court. Where there is no pretense, and the record shows none, that complainant had evinced any intention to abandon his appeal as to justify respondent's omission or neglect in filing the appellee's brief but on the contrary, complainant had time and again urged respondent to file the brief, and in fact he had resorted to seeking the assistance of another lawyer to file said brief, but to no avail, respondent counsel may be reprimanded for his failure to file appellee's brief within the reglementary period.

3. **ID.; ID.; COUNSEL'S NEGLIGENCE; WHEN DEEMED CONDONED.** — Where it appears that despite counsel's negligence in not filing his client's brief the Court of Appeals

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affirmed the trial court's judgment in favor of his client and it also appears that counsel, with the apparent consent of his client, filed a motion for execution of the judgment, such continued lawyer-client relationship may be considered as an extenuating factor because if indeed counsel's negligence or omission had seriously prejudices his client, the latter would have terminated that relationship immediately.

RESOLUTION

ANTONIO, *J.*:

On February 6, 1976, Enedena Agawa *Vda.* de Oribiana filed the instant complaint for the disbarment of respondent Fidencio H. Gerio, a member of the Philippine Bar, alleging that respondent, who was her counsel in CA-G.R. No. 54297-R, entitled *"Enedena Agawa Vda. de Oribiana, Plaintiff-Appellee, versus Ricardo Villaflores, Sr., et al., Defendants-Appellants,"* then pending in the Court of Appeals, failed to file her brief as appellee in said case without any justifiable reason, despite repeated demands made by complainant, thereby committing malpractice and gross misconduct in office; and that sometime in June, 1975, complainant sought the assistance of another counsel so that the required brief might be prepared, but despite a letter of demand, respondent refused to turn over to complainant the records of the case. Concluding, complainant prayed that respondent be disbarred and his name be stricken off the Roll of Attorneys. She likewise prayed for such other reliefs as might be just and equitable under the premises.

In compliance with a resolution of this Court, respondent answered the complaint, contending that he had attended to the case of complainant with utmost care and prudence, citing specific instances; that for all the legal services of respondent, complainant promised to pay him the sum of ₱1,500.00 upon the termination of the case in the Court of First Instance, but up to the time of the filing of the answer, the former had paid him only the amount of ₱340.00; that the transcript of stenographic notes could not be secured because complainant could not afford

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to pay for the same; that upon receipt of the defendant's notice of appeal, respondent instructed complainant to prepare the amount of ₱400.00 to cover the costs of printing her brief as appellee and other incidental expenses; that complainant assured him that the amount would be ready when needed, fully understanding the necessity of said expenses in cases of appeal; that when respondent received the notice from the Clerk of Court of the Court of Appeals requiring the submission of the brief, he sent a messenger to complainant at her residence for the purpose of getting the required amount, but complainant merely told the messenger that she would just see the respondent; that three days thereafter, complainant did confer with respondent but did not bring the money as instructed; that neither was she able to furnish respondent with the transcript of stenographic notes which were needed for the preparation of the brief; that these notwithstanding, respondent studied the arguments presented by the opposing counsel; that the period for filing the brief expired without complainant giving a single centavo for the expenses therefor; that respondent, not being a rich man and having nine children to support, could not spend for the needs of complainant; and that, at any rate, it is not the obligation of counsel to spend for his client, absent a contrary argument.

Anent the alleged letter from complainant's new counsel requesting for the turnover of the records of the case, respondent averred that he told complainant to inform her new counsel that the records were in the possession of the Clerk of Court of the Court of Appeals and could be examined there at any time; that he further informed complainant that the turnover of the records would be useless because he had already received a notice from said Clerk of Court, informing him that the appeal had been considered submitted for decision; that respondent could not release the records in his possession because complainant's new counsel had not entered his appearance before the Court of Appeals, and communications respecting the case were still being addressed to respondent by said Court; that inasmuch as he had not been fully paid for his services, respondent

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had a lien on all the papers that lawfully came into his possession in the course of the prosecution of the case of complainant; and that up to the time of the answer, no decision had been rendered by the Court of Appeals.

On April 8, 1976, complainant filed a reply to the answer of respondent, denying the averments made in said answer and contending, in brief, that she had paid respondent an amount more than sufficient to cover the printing of her brief. Considering the reply, this Court, on May 7, 1976, resolved to refer the case to the Solicitor General for investigation, report and recommendation.

In his Report and Recommendation, the Solicitor General made no factual finding on the issue of whether or not complainant actually gave respondent the money for the preparation of her brief. Nevertheless, it was found that complainant could not produce a receipt to support her claim of payment, allegedly because she did not ask for one. On the premise, however, that failure to file the brief within the reglementary period is an offense which entails disciplinary action,[1] and that the reasons given by respondent do not justify his exculpation, the Solicitor General filed the corresponding complaint with prayer for the suspension of respondent from the practice of law. According to the complaint, the respondent, in failing to file an appellee's brief, had not exercised such care and diligence expected of him as a lawyer consistent with his Oath of Office, and this failure to discharge his duties as a lawyer finds sanction in Rule 138, Section 27 of the Revised Rules Court.

Respondent filed his answer to the complaint, substantially reiterating the allegations contained in his previous answer, and praying for the dismissal of the complaint.

The issue having been joined with the filing of respondent's answer, the case was set for hearing and on February 23, 1978 the case was heard before the Legal Officer-Investigator of this Court for reception of additional evidence. The complainant

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[1] *People v. Cawili*, L-30543, August 31, 1970, 34 SCRA 728.

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through the Office of the Solicitor General, herein represented by Solicitor Luisito P. Escutin, reintroduced the evidence submitted to said office during the investigation of the case thereat. On the other hand, the respondent filed a Manifestation stating, among other things, that the Court of Appeals had already rendered judgment in favor of the complainant; that when the records of the case were remanded to the lower court, he still appeared as counsel for the complainant in the execution of the judgment despite the pendency of this administrative case; that no damage or prejudice has ever been caused the complainant; and that respondent has not yet been paid the fees for his legal services. Subsequently, respondent filled a Memorandum amplifying the discussion of his defenses. Attached to said memorandum are copies of the decisions of the Court of Appeals and the Court of First Instance, among others.

Considering the gravamen of the complaint filed by the Solicitor General, the issue to be resolved here is whether or not the respondent is guilty of negligence and misconduct in failing to file the appellee's brief.

In *People v. Cawili, supra*, where counsel *de oficio* failed to submit the brief for the accused-appellant within the reglementary period, We said:

"It cannot be denied that the failure of counsel to submit the brief within the reglementary period is an offense that entails disciplinary action. The recital of the circumstances in which counsel would seek to reduce its gravity do not call for exculpation. He could have sought the permission to file a mimeographed brief, or, at the very least, he could have informed us of the difficulties attendant on defending his client. For him to blithely assume that a mere reading of the record would suffice to discharge an obligation not only to his client but to this Court is to betray a degree of irresponsibility. It is not in keeping, even, with the minimal standards expected of membership in the bar to be so lacking in elementary courtesy that this Court was not even informed of his inability to comply with what was incumbent of him. His conduct was therefore inexcusable, although the explanation he tendered and the difficulties under which he worked would, to a certain degree, invite less than full punishment."

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Again, in *People v. Rosqueta Jr.*,[2] We said:

" * * *. Respondent should be aware that even in those cases where counsel *de parte* is unable to secure from appellants or from their near relatives the amount necessary to pursue the appeal, that does not necessarily conclude his connection with the case * * *. He should be aware that in the pursuance of the duty owed this Court as well as to a client, he cannot be too casual and unconcerned about the filing of pleadings * * * "

Considering the norm of conduct expected of a lawyer, as explained in the cases of *Cawili* and *Rosqueta*, We cannot accede to respondent's prayer for exculpation from the charge. His principal defense — inability of his client to defray the expenses for printing of brief — is not sufficient to justify his failure to file the appellee's brief. The circumstance that the appellee could not produce the amount to cover the cost of printing the brief was no justification for respondent to renege on his duties. As stated in *Cawili*, *supra* he could have sought the permission of the court (in this case, the Court of Appeals) to file a mimeographed or typewritten brief, or, at the very least, he could have informed the court of his difficulties in the preparation of the printed brief. For failing to do so, he should be subject to administrative sanctions.

The case of *Requio v. Dy-Liaco*,[3] cited by respondent in support of his plea for exculpation, provides him no room for comfort. In that case, We said that We were convinced that no malice or inexcusable neglect could be imputed to the respondent in not filing the appellant's brief because aside from failing to apply respondent's fees and the expenses for printing the brief, complainant therein had *abandoned* his appeal. In the case not bar, there is no pretense, and the record shows none, that complainant had evinced any intention to abandon her appeal as to justify respondent's omission or neglect in filing the appellee's brief. On the contrary, complainant had

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[2] L-36138, January 31, 1974, 66 SCRA 486.

[3] Adm. Case No. 1601, January 31, 1977, 75 SCRA 118.

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time and again urged respondent to file the brief, in fact, she had resorted to seeking the assistance of another lawyer to file said brief, but to no avail.

In this connection, it may be mentioned in passing that although the rulings in the aforecited cases of *Cawili* and *Rosqueta* have reference to the filing of appellant's brief in criminal cases, they apply with equal force to civil cases, whether the brief be for appellant or appellee, the reason behind said rulings being the same in both cases, that is, that counsel should discharge fully his responsibility to the client as well as to the court.

In attenuation of respondent's negligence, We note that on March 7, 1977, the Court of Appeals affirmed the trial court's judgment in favor of complainant. It also appears that respondent, with the apparent consent of the complainant, filed a motion for execution of the judgment. We consider this continued lawyer-client relationship as an extenuating factor because if indeed respondent's neglect or omission had seriously prejudiced her, complainant would have terminated that relationship immediately.

WHEREFORE, respondent Fidencio H. Gerio is hereby REPRIMANDED for his failure to file appellee's brief in the Court of Appeals within the reglementary period, and admonished to be more circumspect in complying with his duty to his client and to the court.

Fernando (Chairman), Barredo, Aquino, Concepcion Jr., and *Santos, JJ.*, concur.