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never be filled up if the 2% threshold is maintained. In the same vein, the maximum representation will not be achieved if those party-list groups obtaining less than one percentage are disqualified from even one additional seat in the second round.

In sum, we hold that COMELEC did not commit grave abuse of discretion in allocating the party-list seats in the 2013 elections and proclaiming the winners after distributing the guaranteed and additional seats in accordance with our ruling in *BANAT*.

WHEREFORE, the petition and petition-in-intervention are both **DISMISSED** for lack of merit.

No pronouncement as to costs.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Perez, Mendoza, Reyes, and *Perlas-Bernabe, JJ.,* concur.

Jardeleza, J., no part.

Peralta and *Leonen, JJ.,* on official leave.

SECOND DIVISION

[A.C. No. 720. June 17, 2015]

FRANCISCO CAOILE, *complainant, vs.* **ATTY. MARCELINO MACARAEG,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A LAWYER SHALL NOT NEGLECT A LEGAL MATTER ENTRUSTED TO HIM, AND HIS NEGLIGENCE IN CONNECTION THEREWITH SHALL

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RENDER HIM LIABLE.— 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. A considerable length of time had elapsed from the time Atty. Macaraeg filed the notice of appeal on August 30, 1962 up to the time he filed the third motion for extension of time to file brief on October 5, 1963. Despite the passage of such time, however, Atty. Macaraeg still failed to file the brief, which resulted in the dismissal of his clients' appeal. Suffice it to state that a motion for extension to file an appellant's brief carries with it the presumption that the applicant-lawyer will file the pleading within the requested extended period. Failure to do so without any reasonable excuse violates the Code of Professional Responsibility.

2. ID.; ID.; WHILE THE ACTUATION OF RESPONDENT WARRANTS THE IMPOSITION OF A PENALTY, HIS DEATH DURING THE PENDENCY OF THE CASE CALLS FOR THE DISMISSAL OF THE ADMINISTRATIVE COMPLAINT.— [W]hile the actuation of Atty. Macaraeg warrants the imposition of a penalty, supervening circumstances call for the dismissal of this administrative case. The Supreme Court Law List shows that Atty. Macaraeg was admitted to the Bar on November 6, 1933. Records reveal that he was already 60 years old when the hearings in this disbarment case were held in 1967. Hence, he would have been 108 years old by this time. It is also noteworthy that the subpoena issued by the Solicitor General in 1972 contains a handwritten note that Atty. Macaraeg had already died. Thereafter, nothing more was heard from either party despite notice. Under these circumstances, it is safe to assume that the complainant had already lost interest in pursuing this disbarment case against Atty. Macaraeg and that there is truth in the handwritten notation in the return of the subpoena that Atty. Macaraeg had already passed away. In *Apiag v. Cantero,* the Court dismissed the administrative case against therein respondent and no longer imposed any sanction against him in view of his death during the pendency of said case.

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R E S O L U T I O N

DEL CASTILLO, *J.*:

Alleging that his lawyer's neglect and dereliction of duty caused the dismissal of his appeal, complainant Francisco Caoile (Francisco) filed on August 16, 1966 a Complaint[1] for disbarment against Atty. Marcelino Macaraeg (Atty. Macaraeg).

Factual Antecedents

Francisco, and four others, engaged the services of Atty. Macaraeg to represent them in Civil Case No. 11119, an action for recovery of ownership filed before the Court of First Instance (CFI) of Lingayen, Pangasinan. After the CFI rendered judgment against them, Francisco and his co-defendants decided to appeal their case before the Court of Appeals (CA).

Accordingly, Atty. Macaraeg filed a notice of appeal. Thrice he moved for extension of time to file appellants' brief. In his last motion for extension,[2] he alleged that he was already in the process of doing the finishing touches on the brief and just needed to have it printed. Yet, the extended period expired without Atty. Macaraeg filing any brief. Hence, upon motion of the opposing party, the CA dismissed the appeal.[3] The dismissal became final and executory on December 13, 1963.[4]

Francisco averred that they were unaware of the dismissal of their appeal until they were served with the CFI's writ of execution[5] and a notice of sale at public auction[6] of their property in 1965. After confirming with the CA that they indeed lost the

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[1] *Rollo*, pp. 1-8.

[2] *Id.* at 458.

[3] *Id*. at 459.

[4] *Id*. at 460.

[5] *Id*. at 454-455.

[6] *Id*. at 456-457.

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case, Francisco confronted Atty. Macaraeg who informed him that they lost the case because they failed to pay him in full.[7]

Hence, this administrative complaint against Atty. Macaraeg for neglect and dereliction of duty.

In his Answer,[8] Atty. Macaraeg averred that Francisco and his co-defendants did not pay in full for his services in filing the appeal. Anent the *pacto de retro* sale which Francisco and his wife executed in his favor supposedly to cover the balance of his professional fees, Atty. Macaraeg claimed that it was Francisco who insisted on its execution, and that, contrary to Francisco's claim, it was intended as payment for his services while representing Francisco before the CFI, and not as payment for his services in filing the appeal. Atty. Macaraeg also claimed that, in any case, Francisco did not honor the said *pacto de retro* sale as the possession of the lot was never turned over to him.[9]

Atty. Macaraeg denied Francisco's accusation that he neglected their case. He pointed out that to push through with the appeal he even advanced some of the appeal expenses. While he admitted that he failed to submit an appellants' brief, he averred that the same was actually the fault of his clients who failed to provide the necessary funds to file said brief. According to him, he constantly reminded Francisco to give him the amount necessary to cover the costs of the transcript and printing of the appeal brief. He even filed three motions for extension of time to file brief to give Francisco more time to come up with the said payment. Still, Francisco was unable to pay. Moreover, Atty. Macaraeg was not reimbursed for the amount he advanced for appeal expenses.

On September 22, 1966, this Court referred the Complaint to the Solicitor General for investigation, report and recommendation.[10]

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[7] TSN-Francisco Caoile, March 14, 1967, *id*. at 51-54.

[8] *Id*. at 22-28.

[9] *Id*. at 438; TSN-Atty. Macaraeg, July 12, 1967, *id*. at 134-136.

[10] *Id.* at 29.

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Proceedings before the Solicitor General

From March to November 1967, the Solicitor General conducted several hearings.[11] Thereafter, the parties were required to submit their respective memoranda.[12] Atty. Macaraeg submitted his Memorandum on January 18, 1968,[13] while Francisco submitted his Memorandum on March 25, 1968.[14]

In November 1972, the Office of the Solicitor General again summoned the parties to appear before it.[15] Notably, the return of the subpoena served upon Atty. Macaraeg contained a notation, *viz.*:

> Atty. Marcelino Macaraeg is now deceased.
>
> (illegible)
> Signature
> wife[16]

Subsequently, this case was transferred to the Integrated Bar of the Philippines (IBP).

Report and Recommendation of the Integrated Bar of the Philippines

In an Order[17] dated May 8, 1990, the IBP notified the parties to manifest whether they are still interested in prosecuting the case, or whether supervening events have transpired rendering the case moot and academic. The IBP received no response. On November 17, 1997, the IBP again sent notices to the parties to appear,[18] but the notices were unclaimed. Subsequently, the

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[11] See TSN, *id*. at 32-387.

[12] TSN dated November 29, 1967, *id*. at 386.

[13] *Id.* at 474-488.

[14] *Id*. at 464-473.

[15] *Id*. at 390.

[16] *Id*.

[17] *Id.* at 491.

[18] *Id*. at 492.

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IBP, through an Order[19] dated November 27, 2001, directed the heirs of Atty. Macaraeg to submit a certified true copy of his death certificate to no avail as the copy thereof sent to the said heirs was returned to sender.

Finally on October 19, 2011, Commissioner Oliver A. Cachapero (Commissioner Cachapero) of the Commission on Bar Discipline of the IBP came up with a Report and Recommendation.[20] Noting the long period of time that the Complaint has been pending, he stated:

> For unknown reasons, this case x x x lingered [quite some time] in the Commission. It was filed on August 16, 1966 in the Supreme Court and x x x subsequently found its way [to] the Commission where it was initially assigned to a Commissioner. In the first week of October 2011, the undersigned, who was tasked to prepare the resolution, received the folder and the records of the case.
>
> Records show that on May 8, 1990, then Commissioner Ernesto L. Pineda wrote the parties asking them to manifest within x x x (10) days from notice whether x x x they are still interested in prosecuting this case, and whether supervening events have transpired which rendered the resolution moot or academic. The Commission received no response from either litigant, hence this resolution.[21]

Anent the merits of the Complaint, Commissioner Cachapero ruled that Atty. Macaraeg neglected the cause of his clients when he thrice moved for extension of time within which to file his brief. However, he did not file any, reasoning out that the non-filing was due to his clients' failure to give him the necessary funds. Commissioner Cachapero opined that the said excuse cannot stand. He thus found Atty. Macaraeg to have violated Rule 12.03 of Canon 12 of the Code of Professional Responsibility, *viz*.:

> 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.

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[19] *Id.* at 493.

[20] *Id*. at 497-498.

[21] *Id.*, unpaginated, between pp. 497 and 498.

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Accordingly, Commissioner Cachapero recommended that Atty. Macaraeg be suspended from the practice of law for a period of two years.

In Resolution No. XX-2013-174[22] dated February 13, 2013, the IBP Board of Governors adopted and approved the findings of Commissioner Cachapero with the modification that the penalty be reduced to a suspension of one year.

The Court's Ruling

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.

A considerable length of time had elapsed from the time Atty. Macaraeg filed the notice of appeal on August 30, 1962 up to the time he filed the third motion for extension of time to file brief on October 5, 1963. Despite the passage of such time, however, Atty. Macaraeg still failed to file the brief, which resulted in the dismissal of his clients' appeal. Suffice it to state that a motion for extension to file an appellant's brief carries with it the presumption that the applicant-lawyer will file the pleading within the requested extended period. Failure to do so without any reasonable excuse violates the Code of Professional Responsibility.[23]

While Atty. Macaraeg attributed the non-filing of the brief to his clients' failure to give the amount necessary for filing the same, he should have, as aptly stated by Commissioner Cachapero, shown a more mindful and caring attitude towards the cause of his clients by advancing the payment. Besides, the facts of this case show that his clients were making partial payments in their efforts to comply with their obligation to him and were not deliberately refusing to pay him. In fact, as claimed by Atty. Macaraeg himself, Francisco even insisted that they enter into a *pacto de retro* sale in order for them to fully pay him for the services he rendered in connection with their civil case in the CFI. In fact, if Atty. Macaraeg truly believed that the necessary funds from his clients were not forthcoming, he

[22] *Id.* at 496.

[23] *Bergonia v. Atty. Merrera*, 446 Phil. 1, 3 (2003).

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could have excused himself from the case. The Code of Professional Responsibility allows a counsel to withdraw his services for a good cause, including the client's failure to comply with the retainer agreement.[24] Indeed, Atty. Macaraeg violated Rule 12.03.

Nevertheless, while the actuation of Atty. Macaraeg warrants the imposition of a penalty, supervening circumstances call for the dismissal of this administrative case.

The Supreme Court Law List shows that Atty. Macaraeg was admitted to the Bar on November 6, 1933.[25] Records reveal that he was already 60 years old when the hearings in this disbarment case were held in 1967. Hence, he would have been 108 years old by this time. It is also noteworthy that the subpoena issued by the Solicitor General in 1972 contains a handwritten note that Atty. Macaraeg had already died. Thereafter, nothing more was heard from either party despite notice. Under these circumstances, it is safe to assume that the complainant had already lost interest in pursuing this disbarment case against Atty. Macaraeg and that there is truth in the handwritten notation in the return of the subpoena that Atty. Macaraeg had already passed away. In *Apiag v. Cantero,* [26] the Court dismissed the administrative case against therein respondent and no longer imposed any sanction against him in view of his death during the pendency of said case.

WHEREFORE, premises considered, this Complaint for Disbarment against Atty. Marcelino Macaraeg is hereby **DISMISSED.**

SO ORDERED.

Carpio (Chairperson), Brion, Mendoza, and *Jardeleza,*[*] *JJ.,* concur.

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[24] Rule 22.01 — A lawyer may withdraw his services in any of the following cases:

x x x x x x x x x

e) When the client x x x fails to comply with the retainer agreement;

[25] http://sc.judiciary.gov.ph/baradmission/lawlist/m.php, visited on May 20, 2015.

[26] 335 Phil. 511, 526 (1997).

[*] Per Special Order No. 2056 dated June 10, 2015.