130 Phil. 510

[A.C. No. 381. February 10, 1968]

EMILIO CAPULONG AND CIRILA CAPULONG, PETITIONERS, VS. MANUEL G. ALIÑO, RESPONDENT.

D E C I S I O N

CONCEPCION, C.J.:

Respondent Manuel G. Aliño, a member of the bar, is charged by his former clients, the spouses Emilio and Cirila Capulong, with alleged "gross negligence tantamount to malpractice and betrayal of his clients' trust and confidence."

This allegation is based upon the admitted fact that, on August 21, 1957, respondent received from the complainants, as their counsel in Civil Case No. 2248 of the Court of First Instance of Nueva Ecija - the decision in which, adverse to said complainants, had been appealed by them to the Court of Appeals - the sum of P298.00, for the specific purpose of applying the same to the payment of the "appellate" docket fees (P24), appeal bond (P15), (printing of) the record on appeal (P150) and appellants' brief (P100), and that said appeal was dismissed because of respondent's failure to pay the docket fee and to deposit the estimated cost of printing of the record on appeal.

In his answer, respondent alleged that complainants had authorized him to exercise his judgment and discretion in determining whether or not he should prosecute the appeal, and to regard said sum of P298.00 as compensation for his services in connection with said case, should he consider it advisable to desist from said appeal.

After due hearing, the Provincial Fiscal of Nueva Ecija - who having been deputized therefor by the Solicitor General, received the evidence for both parties - considered respondent's uncorroborated testimony, in support of his answer, unworthy of credence and found the charge against him duly proven, and, accordingly, recommended disciplinary action against respondent. Concurring in this finding and recommendation, the Solicitor General filed the corresponding complaint charging respondent with "'deceit, malpractice or gross misconduct in office as a lawyer," in that, owing to his "negligence and gross bad faith x x x in unduly and knowingly failing to remit to the Court of Appeals the docket fee and the estimated cost of printing the record on appeal," said Court dismissed the aforementioned appeal.

In his answer to this charge respondent reiterated substantially his aforementioned defense and expressed "his intention of introducing additional evidence." Accordingly,

this Court referred the matter to its Legal Officer for reception of said evidence, but, eventually respondent introduced none.

The evidence on record fully confirms the finding of guilt made by the Provincial Fiscal of Nueva Ecija and the Solicitor General and their conclusion to the effect that respondent's uncorroborated testimony is unworthy of credence. Indeed, had complainants authorized him to decide whether or not to prosecute their appeal or desist therefrom, and, in the latter alternative, to keep the P298.00 in question as his fees, respondent would have retrieved the receipt issued by him for said sum, stating specifically that it would be used for docket fees, the record on appeal, the appeal bond and the (printing) of their brief. Moreover, if his failure to pay said docket fees and to deposit the estimated cost of printing of the record on appeal was due to his decision - pursuant to the aforementioned authority he had allegedly been given - to desist from prosecuting the appeal and to apply the money to the payment of his professional fees, why is it that he filed a motion for reconsideration of the resolution of the Court of Appeals dismissing the appeal in consequence of said failure, thereby securing, in effect, an extension of over five (5) months, to make said payment and deposit, which, eventually, he did not make?

After all, the foregoing acts and omissions of respondent herein dovetail with his subsequent behaviour. Thus, when, prior to the commencement of this administrative proceedings, complainants' counsel contacted respondent and advised him to settle the matter with them, respondent said he would do so, but actually did nothing about it. Hence, the complaint herein was filed. So too, in view of the allegation in respondent's answer, to the complaint filed by the Solicitor General, to the effect that he (respondent) had "the intention of introducing additional evidence" before this Court, the same designated its Legal Officer for the reception of said evidence. Yet, after securing four (4) postponements of the date set by said Officer for this purpose, respondent did not introduce any additional evidence in his favor. Similarly, when the present case was set for oral argument before this Court, respondent moved for the postponement of the date set therefor. And, having been given ten (10) days to submit a memorandum in lieu of oral argument, respondent filed no memorandum in his favor.

Apart from suggesting a misappropriation of funds held by him in trust for his clients and a breach of such trust, the foregoing acts and omissions indicate the high degree of irresponsibility of respondent herein and his unworthiness to continue as a member of the legal profession.

Respondent Manuel G. Aliño is, accordingly, disbarred. His name is ordered striken from the Roll of Attorneys and his certificate of Membership of the Philippine Bar, which he is directed to surrender to the Clerk of Court, within ten (10) days after this judgment has become final, hereby revoked.

IT IS SO ORDERED.

Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Ruiz Castro, Angeles, and *Fernando, JJ.,* concur.

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