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become final and executory as if no appeal was filed at all. The right of appeal is merely a statutory privilege and may be exercised only in the manner prescribed by, and in accordance with, the provisions of the law.[19] Further, by virtue of Section 9 (d), Rule 22 of the COMELEC Rules of Procedure which provides that "an appeal may be dismissed upon motion of either party or at the instance of the Commission for failure to file a notice of appeal within the prescribed period," the COMELEC is precisely given the discretion, in a case where the appeal is not filed on time to dismiss the action or proceeding.

The COMELEC, therefore, did not commit an abuse of discretion in dismissing the appeal.

WHEREFORE, the instant petition for *certiorari* is hereby *DISMISSED* for lack of merit. The assailed orders of the Commission on Elections dated August 3, 1998 and October 14, 1998 are hereby AFFIRMED.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Buena, and *Ynares-Santiago, JJ.,* concur.

Pardo, J., no part.

FIRST DIVISION

[A.C. No. 1571. September 23, 1999]

PARALUMAN B. AFURONG, *complainant, vs.* **ATTY. ANGEL G. AQUINO,** *respondent.*

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[19] *Laza vs. Court of Appeals*, 269 SCRA 654.

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SYNOPSIS

For filing frivolous harassment cases to delay the execution of a final decision, committing falsehood in an Urgent Motion for Postponement, and misrepresenting himself as an attorney for the Citizens' Legal Assistance Office, Paraluman B. Afurong filed a case for disbarment against respondent Angel G. Aquino on December 22, 1975.

The IBP Commission on Bar Discipline, after conducting an investigation, found that respondent failed to perform his duties as an attorney. In accordance with said finding, the Commission recommended a six months suspension. The IBP Board of Governors approved the recommendation.

The Court agreed with the recommendation. It is the duty of an attorney to counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law.

Moreover, respondent violated his duty to employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; DUTY TO MAINTAIN ACTION OR PROCEEDINGS ONLY AS APPEAR TO HIM TO BE JUST; NOT COMPLIED WITH WHERE PETITION WAS FILED MERELY TO DELAY EXECUTION OF JUDGMENT.**— The Revised Rules of Court provides that it is the duty of an attorney to counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law. The decision in Civil Case No. 231552 had reached finality and execution of such decision was being effected. Respondent Atty. Aquino should not have filed a petition for *certiorari* considering that there was no apparent purpose for it than to delay the execution of a valid judgment. In this case, Atty. Aquino stated false allegations in his motion for postponement which delayed the execution of a valid decision. It is worthy

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to note that the lower court correctly declared respondent in contempt of court for conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice, in violation of Section 3 (d), Rule 71 of the Revised Rules of Court.

2. **ID.; ID.; MANDATED NOT TO MISLEAD COURT; COMMISSION OF FALSEHOOD APPARENT IN URGENT MOTION FOR POSTPONEMENT IN CASE AT BAR.**— Respondent committed falsehood when he stated in his Urgent Motion for Postponement that he had to attend the hearing of a special proceedings case the same day as the pre-trial of Civil Case No. 97976. Respondent himself admitted that he only included such statement "in order to give more 'force'" to the *Urgent Motion for Postponement. Such act violates the Canons* of Professional Ethics which obliges an attorney to avoid the concealment of the truth from the court. A lawyer is mandated not to mislead the court in any manner.

3. **ID.; ID.; ID.; ID.; PURPOSELY ALLOWED COURT TO BELIEVE THAT HE WAS STILL EMPLOYED WITH CITIZENS LEGAL ASSISTANCE OFFICE.**— Moreover, Atty. Aquino purposely allowed the court to believe that he was still employed with the Citizens Legal Assistance Office when in fact he had been purged from said office. That he was awaiting reinstatement to the same position at the time does not remove the fact that he was misrepresenting himself to the court. By doing so, he has violated his duty to employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law. He could have delegated the case to another lawyer in the same office. Wherefore, the Court hereby finds respondent Atty. Angel G. Aquino guilty of malpractice and *SUSPENDS* him from the practice of law for six (6) months commencing upon receipt of notice hereof.

RESOLUTION

PARDO, *J.*:

The case before the Court is a verified letter-complaint for disbarment, filed on December 22, 1975, by Paraluman B.

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Afurong against Atty. Angel G. Aquino, for filing frivolous harassment cases to delay the execution of a final decision, committing falsehood in an Urgent Motion for Postponement, and misrepresenting himself as an attorney for the Citizens Legal Assistance Office.

The antecedent facts show that on April 2, 1974, Paraluman Afurong filed a complaint for ejectment with the City Court of Manila for non-payment of rentals against Victorino Flores.[1] The court rendered judgment on May 27, 1974 in favor of petitioner Paraluman Afurong. The court then issued a writ of execution on February 17, 1975, which was served on Victorino Flores in March 1975.

Facing eviction from the land he was occupying, Victorino Flores sought the assistance of the Citizens Legal Assistance Office. His case was assigned to Atty. Angel G. Aquino, an employee of said office at the time.

On April 3, 1975, Atty. Angel G. Aquino filed with the City Court of Manila a Petition for Relief from Judgment with prayer for the issuance of a restraining order.[2] On May 9, 1975, the petition, after due hearing, was dismissed for having been filed out of time.

Atty. Aquino subsequently filed on May 29, 1975, with the Court of First Instance of Manila a Petition for *Certiorari* and Prohibition.[3] The court set the pre-trial conference on December 12, 1975.

Notwithstanding the fact that he was separated from the Citizens Legal Assistance Office on October 1, 1975, Atty. Angel G. Aquino filed on December 11, 1975, an Urgent Motion for Postponement, signing his name as counsel for Victorino Flores and indicating the address of the Citizens Legal Assistance Office at 715 Gastambide, Sampaloc, Manila, as his office address.

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[1] Docketed as Civil Case No. 231552.

[2] Docketed as Civil Case No. 97265.

[3] Docketed as Civil Case No. 97976.

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In the aforesaid Urgent Motion for Postponement, Atty. Aquino stated that he would be unable to attend the pre-trial conference scheduled on December 12, 1975, at 9:00 a.m., of Civil Case No. 97976 because he needed to attend the hearing of a *Habeas Corpus* Case[4] before the Juvenile and Domestic Relations Court that same day and hour.

However, a certification from the Clerk of Court of the Juvenile and Domestic Relations Court stated that a decision had been rendered on the aforementioned special proceedings case, and that there was no hearing in connection with the case on December 12, 1975, for there was nothing more to be done in the proceedings and the same was declared closed and terminated.[5]

Thus, on December 22, 1975, Paraluman Afurong filed a complaint[6] with this Court for disbarment against Atty. Angel G. Aquino.

According to complainant, appropriate punitive sanction should be meted to Atty. Angel G. Aquino for filing frivolous harassment cases in the form of Civil Case Nos. 97265 and 97976, and for giving false allegations in his Urgent Motion for Postponement.

Complainant emphasized that when Civil Case No. 97976 was set for pre-trial on December 12, 1975, at 9:00 a.m., respondent falsely represented that on the same date and hour, he would attend the hearing also on said date and time of Special Proceedings No. D-00326, entitled "In the Matter of the Petition for the Issuance of a Writ of *Habeas Corpus* of Lordeliza V. Sohnrey."

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[4] Special Proceedings No. D-00326 entitled "In the Matter of the Petition for the issuance of a Writ of *Habeas Corpus* of Lordeliza Sohnrey, Federico Teves, Petitioner."

[5] Decision in Contempt Proceeding of the Court of First Instance of Manila in Civil Case No. 97976 dated February 26, 1976, Records, pp. 62-64.

[6] Records, pp. 1-2.

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Complainant further contended that Atty. Angel G. Aquino misrepresented himself as an attorney of the Citizens Legal Assistance Office, using the name and address of said Office to postpone the pre-trial hearing of Civil Case No. 97976, on December 12, 1975, despite the fact that he had been separated from office at the time.

On February 13, 1976, respondent filed with this Court his Answer[7] to the complaint denying the charges against him, contending that such acts had been done without malice.

He admitted, however, that at the time of the pre-trial of Civil Case No. 97976 set on December 12, 1975, he was no longer connected with the Citizens Legal Assistance Office, for he was "included as one of the employees purged by the President in a list published in the newspapers last October 1, 1975."[8] Yet, he reasoned, "Not wanting to remove the case from the Citizens Legal Assistance Office by appearing as private counsel for the petitioner and still unable to wait for my reinstatement which I was informed was forthcoming, I decided to file a motion to postpone the pre-trial conference of the case."

He also conceded that, "In order to give more 'force' to my motion for postponement, I indicated therein that I had to attend the hearing of another case before the Juvenile and Domestic Relations Court."[9]

He further admitted that the filing of the motion with the facts so stated "might have caused some delay," but justifies such act by stating that "such filing was prompted by some circumstances which we can consider as inevitable and unavoidable at the moment." He adds, "If I shall be given another chance to continue handling the case, I promise that this mistake shall never be repeated."[10]

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[7] Records, pp. 5-9.

[8] Answer, Records, pp. 7-8.

[9] *Ibid.*, p. 8.

[10] *Ibid.*, p. 8.

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In a Reply filed on April 6, 1976,[11] complainant asserted that Atty. Angel G. Aquino was declared guilty of contempt of court and correspondingly fined by this Court in a Decision[12] dated February 26, 1976, for making false allegations in his Urgent Motion for Postponement.

On May 3, 1976, this Court referred the case to the Solicitor General for investigation, report and recommendation. The parties agreed, however, to hold the case in abeyance until the termination of Civil Case No. 97976.[13]

Effective June 1, 1988, all cases pending investigation by the Office of the Solicitor General were transferred to the Integrated Bar of the Philippines Board of Governors for investigation and disposition as provided in the Revised Rules of Court.[14]

On May 22, 1997, the IBP Commission on Bar Discipline submitted a Report,[15] finding that respondent Atty. Angel G. Aquino failed to perform his duties expected of an attorney as provided under the existing Canons of Professional Ethics and Section 20 of Rule 138 of the Rules of Court in force at the time of the commission of the acts in question. Investigating Commissioner Plaridel C. Jose recommended that respondent be penalized with six (6) months suspension.

On July 26, 1997, the Board of Governors of the IBP resolved to adopt and approve the report and recommendation of the Investigating Commissioner.[16]

We agree.

The Revised Rules of Court provides that it is the duty of an attorney to counsel or maintain such actions or proceedings

[11] Records, pp. 37-52.

[12] Records, pp. 62-64.

[13] Order dated July 8, 1977.

[14] Section 20, Rule 139-B, Rules of Court.

[15] Report, Annex "A", Records, pp. 108-112.

[16] Notice of Resolution, Records, p. 106.

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only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law.[17] The decision in Civil Case No. 231552 had reached finality and execution of such decision was being effected. Respondent Atty. Aquino should not have filed a petition for *certiorari* considering that there was no apparent purpose for it than to delay the execution of a valid judgment.

Furthermore, respondent committed falsehood when he stated in his Urgent Motion for Postponement that he had to attend the hearing of a special proceedings case the same day as the pre-trial of Civil Case No. 97976. Respondent himself admitted that he only included such statement "in order to give more 'force'" to the Urgent Motion for Postponement. Such act violates the Canons of Professional Ethics which obliges an attorney to avoid the concealment of the truth from the court. A lawyer is mandated not to mislead the court in any manner.

In this case, Atty. Aquino stated false allegations in his motion for postponement which delayed the execution of a valid decision. It is worthy to note that the lower court correctly declared respondent in contempt of court for conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice, in violation of Section 3 (d), Rule 71 of the Revised Rules of Court.[18]

Moreover, Atty. Aquino purposely allowed the court to believe that he was still employed with the Citizens Legal Assistance Office when in fact he had been purged from said office. That he was awaiting reinstatement to the same position at the time does not remove the fact that he was misrepresenting himself to the court. By doing so, he has violated his duty to employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice

[17] Section 20(c), Rule 138, Rules of Court.

[18] See Decision in Contempt Proceedings of Civil Case No. 97976 of Court of First Instance, Manila, Branch 40 dated February 26, 1976, Records, pp. 62-64.

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or false statement of fact or law.[19] He could have delegated the case to another lawyer in the same office.

WHEREFORE, the Court hereby finds respondent Atty. Angel G. Aquino guilty of malpractice and SUSPENDS him from the practice of law for six (6) months commencing upon receipt of notice hereof.

Let this decision be spread in the personal record of respondent in this Court and copies thereof furnished the Integrated Bar of the Philippines which shall provide all its chapters with copies thereof, and the Office of the Court Administrator which shall forthwith provide with copies thereof all other courts through their respective presiding Justices and Executive Judges.

SO ORDERED.

Davide, Jr., C.J., (Chairman), Puno, Kapunan, and *Ynares-Santiago, JJ.*, concur.

THIRD DIVISION

[A.M. No. P-99-1340. September 23, 1999]

ZENAIDA MUSNI, *complainant, vs.* **ERNESTO G. MORALES, Process Server, Regional Trial Court of Malolos, Bulacan (Branch 15),** *respondent.*

SYNOPSIS

This is an administrative case for gross neglect of duty against process-server Ernesto Morales of RTC, Malolos, Bulacan, Br. 15. Allegedly, Morales failed to immediately serve summons in the case of *Musni v. Sps. Tanjutco, et al.*, filed by herein complainant in said branch. Morales admitted the delay, but

[19] Section 20(d), Rule 138, Revised Rules of Court.