

EN BANC

[A.C. No. 5739, September 12, 2007]

**PANGASINAN ELECTRIC COOPERATIVE I (PANELCO I)
REPRESENTED BY ITS GM, ROLANDO O. REINOSO, PETITIONER,
VS. ATTY. JUAN AYAR MONTEMAYOR, RESPONDENT.**

DECISION

PER CURIAM:

Before us is an administrative complaint filed by Pangasinan Electric Cooperative I (PANELCO I) charging Atty. Juan Ayar Montemayor with negligence in handling the cases assigned to him which caused unwarranted financial losses to the complainant, approximately in the total amount of sixteen million pesos (PhP 16,000,000).

Records show that for several years, PANELCO I, a rural electric cooperative with principal office address at Brgy. San Jose, Bani, Pangasinan, retained the services of Atty. Juan Ayar Montemayor as its counsel.

In its July 22, 2002 Complaint, PANELCO I stated that while acting as counsel for the cooperative, respondent was negligent in handling its cases, alleging the following:

4. One of the cases assigned to Atty. Montemayor was Civil Case No. 17315 filed with the Regional Trial Court of Lingayen, Pangasinan, Branch 68, entitled "Rural Power Corporation vs. PANELCO I." After the trial court rendered a Decision adverse to PANELCO I, it was decided that the case be appealed to the Court of Appeals;

5. However, the Court of Appeals ordered the Dismissal of the appeal for the failure of Atty. Montemayor to serve and file the required number of copies within the time provided by the Rules of Court. (copy of the Writ of Execution in Civil Case No. 1715 attached as Annex "A");

6. In view of the dismissal of the appeal, the Decision of the trial court became final and executory, and the judgment award in the amount of Two Million One Hundred Seventy Nine Thousand Two Hundred Nine and 18/100 Pesos (P2,179,209.18) was paid by the complainant;

7. Another case assigned to Atty. Montemayor was the case of "Engineering and Construction Corporation of Asia (ECCO-ASIA) vs. PANELCO I," filed with the Regional Trial Court of Quezon City, Branch 83 as Civil Case No. Q-89-4242. Again, the decision was appealed by PANELCO I to the Court of Appeals, through Atty. Montemayor;

8. In a Resolution dated May 31, 2001, the Court of Appeals considered

the appeal Abandoned due to the failure of Atty. Montemayor to serve and file the required Appellant's Brief despite the lapse of the two extensions of time granted. A copy of the said Resolution in C.A.-G.R. CV67614 is attached as Annex "B," as well as the Notice of Garnishment (Annex "B-1") and Writ of Execution (Annex "B-2");

9. Thus, the funds of PANELCO I deposited in banks were garnished until the judgment award was paid to the Plaintiff ECCO-ASIA, in the amount of Thirteen Million Eight Hundred Thirty Six Thousand Six Hundred Seventy Six and 25/100 Pesos (P13,836,676.25);

10. Sometime last year, Atty. Montemayor informed the undersigned (complainant) of the judgment of the Regional Trial Court of Quezon City, and that he had filed his appeal;

11. Upon receipt of the Notice of Garnishments on March 11, 2002, I (complainant) confronted Atty. Montemayor on the matter, and he uttered "napabayaan ko itong kaso...ano ang gagawin natin";

12. As a consequence of the negligence of Atty. Montemayor, the complainant was forced to settle with the Plaintiffs without the benefit of an approved time-table, and is presently in a dire financial situation, which has caused difficulty in meeting its monthly power bills with the National Power Corporation (NAPOCOR).^[1]

In a Resolution dated September 4, 2002, the respondent was required to file his Comment on the administrative charges within ten (10) days from notice. He subsequently filed with this Court a Motion for Extension of Time to File his Comment; however, despite an extension of fifteen (15) days from the expiration of the original period given by the Court, respondent failed to file his Comment.

Thus, the Court, in its April 12, 2004 Resolution, declared respondent to have WAIVED the filing of Comment on the Complaint. The Court also referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation or decision.^[2]

At the mandatory conference held before the IBP Commission on Bar Discipline, respondent admitted all the allegations in the Complaint, particularly the fact that he failed to attend to the appeal of complainant's cases.^[3]

On November 11, 2004, Commissioner Milagros V. San Juan submitted her Report and Recommendation finding respondent guilty of Violation of the Code of Professional Responsibility, and recommending his disbarment from law practice. The salient portion of the Report reads:

The records also show that respondent Atty. Juan Ayar Montemayor did not even bother to answer the complaint nor present his defense, we are now constrained to impose sanctions on his gross negligence as counsel for complainant which resulted [in] the damage of PANELCO I. Considering further that the charges remain uncontroverted, it is recommended that Atty. Juan Ayar Montemayor be DISBARRED from the practice of law for Violation of the Code of Professional Responsibility.

On March 12, 2005, the IBP Board of Governors passed CBD Resolution No. XVI-2005-68 adopting with modification the aforementioned Investigating Commissioner's Report and Recommendation, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-titled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's gross negligence, as counsel for complainant which resulted [in] the damage of PANELCO I, Atty. Juan Ayar Montemayor is hereby **SUSPENDED INDEFINITELY** from the practice of law.^[4]

The only issue to be resolved in the instant case is whether or not respondent committed gross negligence or misconduct in mishandling complainant's cases on appeal, which eventually led to their dismissal, to the prejudice of the complainant.

After a careful consideration of the records of the instant case, the Court agrees with the IBP in its findings and conclusion that respondent has been remiss in his responsibilities.

The pertinent Canons of the Code of Professional Responsibility provide:

CANON 12 - A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

x x x x

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.

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.

x x x x

CANON 19 - A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

Manifestly, respondent has fallen short of the competence and diligence required of every member of the Bar in relation to his client. As counsel for complainant,