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

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

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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;
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> 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");
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> 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;
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> 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;
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> 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");
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> 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);
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> 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";
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> 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 aforequoted 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.
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> x x x x
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> Rule 12.03 - A lawyer shall not, after obtaining extensions of time to file pleadings, memorandaor briefs, let

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> the periodlapse 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.
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> x x x x
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> 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
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> 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, respondent had the duty to present every remedy or defense authorized by law to protect his client. When he undertook his client's cause, he made a covenant that he will exert all efforts for its prosecution until its final conclusion. He should undertake the task with dedication and care, and if he should do no less, then he is not true to his lawyer's oath.[5]

The records of this case clearly show that respondent failed to live up to his duties and responsibilities as a member of the legal profession. The appeals of his client, the petitioner, were dismissed due to his improper way of filing the appeal in Civil Case No. 17315 and his non-filing of the appellant's brief in Civil Case No. Q-89-4242. Respondent did not offer a plausible explanation for not doing his level best in representing his client's cause on appeal; thus, making complainant suffer serious losses.

There is no doubt that it was part of respondent's obligation to complainant, as the latter's counsel of record in the civil cases, to prosecute with assiduousness said cases on appeal in order to safeguard complainant's rights, but it was respondent's negligence or omission which has caused damage to such interests.

As held in Aromin v. Atty. Boncavil:

> Once he agrees to take up the cause of a client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He must serve the client with competence and diligence, and champion the latter's cause with wholehearted fidelity, care, and devotion. Elsewise stated, he owes entire devotion to the interest of the client, warm zeal in the maintenance and defense of his client's rights, and the exertion of his utmost learning and ability to the end that nothing be taken or withheld from his client, save by the rules of law, legally applied. This simply means that his client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land he may expect his lawyer to assert every such remedy or defense. If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it the correlative duties not only to the client but also to the court, to the bar, and to the public. A lawyer who performs his duty with diligence and candor not only protects the interest of his client; he also serves the ends of justice, does honor to the bar, and helps maintain the respect of the community to the legal profession.[6]

In Redentor S. Jardin v. Atty. Deogracias Villar, Jr.,[7] the Court also held that:

> [T]he trust and confidence necessarily reposed by clients requires in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. Every case a lawyer accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or free. Certainly, a member of the Bar who is worth his title cannot afford to practice the profession

> in a lackadaisical fashion. A lawyer's lethargy from the perspective of the Canons is both unprofessional and unethical.

Thus, for inexcusable neglect of his professional obligations to the prejudice of his client's interests, the IBP Investigating Commissioner recommended the disbarment of respondent from the practice of law. The IBP Board of Governors, however, recommended that Atty. Juan Ayar Montemayor be suspended indefinitely from the practice of law.

It is settled that the power to disbar must be exercised with great caution. Only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and as a member of the bar will disbarment be imposed as a penalty.[8]

In the case of Jardin v. Villar, Jr.,[9] the Court cited several cases where lawyers were suspended for a period of six (6) months from the practice of law for their failure to file briefs or other pleadings for their respective clients.[10]

The case of Atty. Montemayor is however different. He is guilty not only of his unjustified failure to file the appellant's brief of his client not only once but twice. Moreover the Court notes with dismay the huge losses suffered by complainant PANELCO I in the total amount of sixteen million pesos (PhP 16,000,000). Lastly, Atty. Montemayor demonstrated an utter lack of regard for the very serious charges against him and a gross disrespect for the Court when he failed to file his comment after being required to file his response to the said charges. Respondent could have presented sufficient justification for his inability to file the appellant's briefs but failed to do so.

In view of the forgoing circumstances, we find that Atty. Montemayor does not deserve anymore to remain as an active member of the legal profession. The breaches of the Code of Professional Responsibility and the palpable sloth and irresponsibility he has demonstrated in handling the cases of his client undeniably reveal that he has become more of a liability than an asset to the legal profession. He cannot be entrusted anymore with the sacred duty and responsibility to protect the interests of any prospective client. If he is then allowed to resume his law practice after suspension, this will surely subvert the ends of justice, dishonor the bar, and lose the respect of society for the profession of law. The Court will not allow this affront to pass.

WHEREFORE, Atty. Juan Ayar Montemayor is DISBARRED from the practice of law.

This Decision is immediately executory.

SO ORDERED.

Puno, C.J., Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., Nachura, and Reyes, JJ., concur.

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[1] Rollo, pp. 2-3.

[2] Id. at 19.

[3] TSN, July 22, 2004, pp. 11-12.

[4] Notice of Resolution, p. 1.

[5] Tahaw v. Vitan, A.C. No. 6441, October 21, 2004.

[6] A.C. No. 5135, September 22, 1999.

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[7] A.C. No. 5474,August 28, 2003.

[8] Jimenez v. Jimenez, A.C. No. 6712, February 6, 2006; Dominador Burbe v. Atty. Alberto C. Magulta, A.C. No. 99-634, June 10, 2002.

[9] Supra.

[10] Sps. Rabanal v. Rabanal, A.C. No. 1372, June 27, 2002; Aromin v. Boncavil, supra.; Sps. Galen v. Paguinigan , A.C. No. 5558, March 7, 2002;

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