

NAPOLEON ALARCON, COMPLAINANT, VS. ATTY. SIXTO DEMAISIP, RESPONDENT.*Adm. Case No. 1068. November 29, 1973*

Ponente: MAKASIAR, J.

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Complainant Napoleon Alarcon charges respondent Atty. Sixto Demaisip with malpractice, alleging that respondent was his defense counsel in a murder charge before the Court of First Instance of Iloilo wherein he was convicted and sentenced to suffer an indeterminate penalty of from ten (10) years and one (1) day of prison mayor as minimum to seventeen (17) years, four (4) months and one (1) day of reclusion temporal as maximum with the accessory penalties of the law, to pay the costs and to indemnify jointly and severally the heirs of the deceased in the sum of P12,000.00 without subsidiary imprisonment in case of insolvency, from which he appealed; that re-spondent assured him that he would file the appellant's brief, for which he gave him some money to cover the expenses therefor, promising to give some more; that he was surprised to receive a notice from the Court of Appeals that his appeal was dismissed and that his lawyer has withdrawn as counsel; aid that respondent's failure to prepare appellant's brief and to notify him of his withdrawal from the case which resulted in the dismissal of his appeal, is a grave violation of his lawyer's oath.

In his answer, respondent states that complainant and his wife are relatives; that it was a certain Mr. Escobar and his son-in-law, Efrain Gil, who originally employed him as counsel for the accused; that complainant's father was Mr. Escobar's encargado; that Mr. Escobar was the one who paid nominally for his services, the total amount of which did not exceed P300.00; that after learning that complainant and his wife are relatives, they became friends and his fees were almost forgotten, although complainant and his father gave him now and then some shells, fish and crabs worth not more than P5.00 at a time; that complainant and his father thereafter began to eat and sleep in his house; that knowing that the family of the complainant is poor, he even defended complainant's brother without pay; that he persuaded complainant and his father to side with former Board Member Jesus Colmenares who ran for mayor in 1967, because said Jesus Colmenares acted as one of their bondsmen upon his request; that because of the professional services he rendered to them, complainant and his father worked hard for respondent when he ran for the Constitutional Convention of 1971, with his professional fees already totally forgotten; that Nestor Colmenares, son of Jesus Colmenares, befriended the complainant and beguiled him into believing that he (Nestor) would spend for the appellant's brief and will take care of everything while making representations with respondent for extension of time to file appellant's brief; that because no money was forthcoming and the complainant and his father did not go to him, respondent advised the Court of Appeals by registered mail of his withdrawal from the case; that complainant came to him only after the appeal was already dismissed; that without informing him, Atty. Anastacio Lobaton of Manila was employed as counsel of complainant; that when he told Nestor Colmenares that he should not deceive the complainant because he cannot do anything as he (Nestor) is himself totally dependent upon his parents, Nestor resented his language and a hot exchange of words followed, resulting in his ordering Nestor out of his office to the utter embarrassment of Nestor, who also resented his neutral or indifferent attitude as member and legal counsel of the LP Provincial Executive Committee about

Nestor's candidacy for board member and his having campaigned against Nestor; that when he was suspended by the Supreme Court in *People vs. Daban* (G.R. No. L-31429) in mid-February, Nestor telephoned his friends that respondent's suspension is not the only trouble for respondent because he will cause the filing of disbarment proceedings against respondent; that thereafter, Nestor wine and "womaned" the complainant in nightclubs; and that he did not ask nor was he paid a single centavo for the preparation of appellant's brief.

In the scheduled hearing before the Solicitor Investigator on July 10, 1972, none of the parties appeared. But on July 11, 1972, the Solicitor Investigator received a telegram from respondent dated July 10, 1972 requesting for the postponement of the hearing due to uncertainty of plane flight from Iloilo. No explanation was received from complainant regarding his absence on July 10, 1972. On September 4, 1972, the Solicitor General, presuming that complainant's failure to appear was due to financial difficulties on account of the distance to be travelled, transmitted the records of this case to the provincial fiscal of Iloilo for investigation of the case to avoid unnecessary financial burdens on the parties. The provincial fiscal of Iloilo set the hearing on October 3, 1972 at which respondent and his lawyer appeared while the complainant failed to appear, as per return of the subpoena, complainant could not be found in his given address in Balasan, Iloilo. However, Nestor Colmenares, acting on behalf of the complainant requested for the postponement of the hearing to October 10, 1972 with the assurance that on said date, the complainant will surely be present. Again, on October 10, 1972, complainant failed to appear for which reason Nestor Colmenares once more requested for a last postponement, which was granted by the provincial fiscal despite objection from the respondent's counsel, and the case was postponed to October 11, 1972, the date requested by Colmenares. On said date, neither complainant nor Colmenares appeared. On October 31, 1972, Colmenares sent a telegram stating that complainant will be definitely available on November 10, 1972. Respondent requested that the case be considered closed as it has been causing him so much prejudice. As a consequence, on November 30, 1972, the records of the case were returned to the Solicitor General, who waited in vain for word from the complainant for several months. Thinking that the complainant might have been finally convicted and is now serving sentence, the Solicitor General in a letter dated March 14, 1973 inquired from the Director of the New Bilibid Prisons about the complainant, to which no reply has been received by the Solicitor General despite the tracer letter dated June 5, 1973 sent to the Director of Prisons. Accordingly, the Solicitor General recommends the dismissal of this case.

Under the circumstances above recited, We have no reason to disagree with the recommendation of the Solicitor General.

HENCE, THIS COMPLAINT FOR DISBARMENT AGAINST ATTY. SIXTO DEMAISIP IS HEREBY DISMISSED.

Makalintal, C.J., Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Antonio, Esguerra, Fernandez, Muñoz Palma, and Aquino, JJ., concur.

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