

VIRGILIO L. KATINDIG, COMPLAINANT, VS. ATTY. JOSE BRILLANTES, RESPONDENT.

Adm Case No. 442. October 30, 1964

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

In a complaint dated July 5, 1960, filed with this Court through the Director of Prisons, Virgilio L. Katindig charged Atty. Jose B. Brillantes with having "maliciously, feloniously and intentionally" abandoned the preparation and filing of the brief in his behalf as appellant in Criminal Case No. 49325 of the Court of First Instance of Manila for qualified theft, which was then on appeal in the Court of Appeals, notwithstanding the fact that complainant had paid to respondent the attorney's fees corresponding to his services.

Respondent in his answer denied the charge. He alleged that while he is the counsel retained by complainant in several criminal cases he was invoked as an accused, he could not have possibly abandoned the preparation and filing of the brief of appellant in the criminal case mentioned in the complaint because he received the notice to file the brief only on June 30, 1960, and so he had thirty days from notice within which to file the aforesaid brief. Furthermore, complainant could not have paid any money for his fees because he did not even have money to pay the premium of the bail for his provisional liberty.

After complainant had filed his reply to the answer, the case was submitted to the Solicitor General for investigation, report and recommendation. This official set the case for hearing on several dates, at which the complainant submitted his evidence, but respondent failed to submit his notwithstanding the opportunities given him to do so. Hence, the case was submitted solely on the basis of complainant's evidence.

The evidence shows that complainant is a detained prisoner in Muntinlupa because he is involved in several criminal cases then pending in the Court of First Instance of Manila. These cases are: (1) Criminal Case No. 49325 for qualified theft before Judge Jesus Perez; (2) Criminal Case No. 49214 for grave coercion before Judge Ediiberto Soriano; (3) Criminal Case No. 48249 for robbery before Judge Gustavo Victoriano and (4) Criminal Case No. 49290 for qualified theft before Judge Antonio Lucero. Complainant hired respondent as lawyer in said cases and for his services paid him several amounts totalling P500.00, and with regard to Case No. 49325 he agreed with respondent that after his conviction, the case would be appealed to the Court of Appeals and for respondent's services complainant would pay him an additional amount of P400.00.

Respondent filed the corresponding notice of appeal in case No. 49325 for which complainant made an advance payment of P200.00 to respondent somewhere at the lobby of the Manila City Hall. But, notwithstanding this payment, respondent told complainant later that he failed to file the brief in his behalf within the reglementary period with the result that, feeling cheated, complainant filed on July 5, 1960 against respondent a complaint for malpractice and a motion for the appointment of a counsel de oficio in order that such failure may be remedied. The attorney de oficio appointed is Mariano Castelo who had the case reconsidered and the brief filed in his behalf.

It then appears that complainant hired respondent as his lawyer in Criminal case No. 49325 for qualified theft then pending before the Court of First Instance of Manila and that when he was convicted he agreed with respondent that the latter would appeal the case and would continue to act as his counsel before the Court of Appeals, for whose services complainant would pay the sum of P400.00. And after respondent had filed the requisite notice of appeal, complainant made him an advance payment of P200.00. But about seven months thereafter, respondent informed complainant that he failed to file the brief on time for which reason complainant sought the appointment of an attorney de oficio who in due time filed a motion for reconsideration. And on the strength of these facts the Solicitor General now recommends that respondent be suspended as lawyer for one month and be ordered to return to complainant the amount of P200.00 paid to him for his services with the admonition that if he fails to do so his suspension would be extended until he has actually refunded said amount to the complainant.

It appears, however, that the claim of the complainant that respondent has failed to file the brief in his behalf within the reglementary period is not correct, for the truth is, as allied by respondent, that when complainant filed the instant complaint before this Court on July 5, 1960 the 30-day period within which respondent was required by the Court of Appeals to file the brief had not yet expired, as shown by the notice given him by the Court of Appeals dated June 28, 1960 which respondent received on June 30, 1960 (Exhibit 1). And there is no doubt that complainant had gathered this impression because of the information given him by respondent, erroneous as it is, that he had failed to file the brief within the reglementary period which disturbed him greatly and prompted him to file the instant complaint for malpractice. Why respondent gave complainant that erroneous information we can only surmise, but certainly such behavior is unwarranted so much so that it has been the root cause of this unpleasant relation between him and complainant. But such act does not in itself constitute a misbehavior as may warrant the disciplinary action recommended by the Solicitor General. The most that can be said is that, not having rendered the service for which he was engaged, respondent should return the amount of P200.00 he had been paid as partial payment of his attorney's fees.

Wherefore, the complaint filed against herein respondent is hereby dismissed. He is, however, ordered to return to complainant the sum of P200.00 within a period of 60 days from receipt of this decision.

Bengzon, C. J., Concepcion, Reyes, J. B. L., Paredes, Dizon, Regala, Makalintal, Bengzon, J. P., and Zaldivar, JJ., concur.

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