

GERVACIO DAUZ, COMPLAINANT VS. NAPOLEON O. FONTANOSA, RESPONDENT.*Adm. Case No. 408. September 30, 1963*

Ponente: PADILLA, J.

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This is a disbarment proceedings against Atty. Napoleon O. Fontanosa of Kidapawan, Cotabato, for malpractice.

It appears that on 18 April 1958, the respondent on behalf of the complainant filed in the Justice of the Peace Court of Kidapawan, Cotabato, three separate complaints against Sergio Orfrecio (Case No. 151, Annex A), Mariano Abellera and Demetria Abellera (Case No. 152, Annex B) and Hadji Saed (Case No. 153, Annex C) to collect from them P190.00, P280.00 and P150.00, respectively, the unpaid balance of the purchase price of sewing machines, interest thereon, attorney's fees and costs; that on 20 April, the complainant and the respondent entered into written contracts whereby for and in consideration of P100 for each collection case, the latter undertook to represent the former in court in the three collection cases, and the complainant bound himself to pay the stipulated attorney's fees even if the cases be settled amicably before trial (Annexes A-I, B-I and C-I) ; that on 22 August, the complainant terminated the services of the respondent, engaged the services of another attorney and requested the respondent to return the documents and papers entrusted to him upon which the complaints in the collection cases are based; that the respondent refused to return the documents on which he claimed to have a lien unless his stipulated attorney's fees be paid; that in view of the respondent's refusal to return the documents, on 29 September, the complainant asked the Justice of the Peace Court of Kidapawan, Cotabato, to issue a subpoena duces tecum requiring the respondent to appear and produce in court the documents referred to; that the Justice of the Peace denied the motion for the issuance of a subpoena duces tecum on the ground that the documents are privileged and the respondent as attorney has a lien on them; that on 3 October, the complainant filed a motion for reconsideration of the order denying his motion for the issuance of a sub-poena duces tecum; that on 16 October, in Civil Cases Nos. 151 and 152, the Justice of the Peace Court entered an order requiring the respondent to appear and show cause why a sub-poena duces tecum should not be issued to compel him to bring to court the documents in his possession; that on 21 October, the respondent objected to the motion for reconsideration filed by the complainant on 3 October in Civil Cases Nos. 151 and 152; that on 29 October, finding the objection well taken, the Justice of the Peace Court denied the motion for reconsideration; that as the then plaintiff, now complainant, could not proceed with the trial of the cases because of the respondent's retention of the documents and papers which were his evidence in said Civil Cases Nos. 151, 152 and 153, the cases were dismissed without prejudice (Annexes I, J, K).

On 28 May 1959, the complainant Gervacio Dauz, filed in this Court a petition, dated and verified on the 12th day of December 1958, charging the respondent with malpractice and praying for his disbarment or suspension.

The charges are (1) respondent's refusal, without cause, to return or surrender the documents above referred to unless his attorney's fees be paid first; (2) laxity in the performance of his duties by asking for and agreeing to numerous postponements of the trial of the cases entrusted to him, to the damage and prejudice of his client; (3)

an attempt by the respondent to induce the complainant's common-law wife to execute an affidavit and state therein that the complainant intended to kill the respondent if the latter would not return the documents; and failing in this attempt, the respondent succeeded in inducing for a consideration the complainant's common-law wife to run away with the trunk belonging to the complainant "containing valuables relative to his business" (Annex G); and (4) conspiring with the Municipal Treasurer of Kidapawan, Cotabato, to prosecute him (complainant) criminally, for his failure to pay his municipal license for the 2nd to the 4th quarters of 1958 (Annex H).

On 28 October 1959, the respondent filed his answer denying the charges. On 30 October, this Court referred the case to the Solicitor General for investigation, report and recommendation. The Solicitor General in turn referred the case to the Provincial Fiscal of Cotabato for investigation.

On 17 December 1959, the day set for the investigation, both parties appeared; but the complainant moved for continuance on the ground that his witnesses were indisposed and his attorney was in Manila attending to some cases.

On 18 January 1960, the complainant wrote to the Solicitor General asking that the Provincial Fiscal of Davao be assigned to conduct the investigation because his life was being threatened by the respondent. In support of his petition, the complainant attached a copy of an anonymous letter where he was warned that his life would be in danger should he appear in Kidapawan for the investigation. On 3 February, counsel for the complainant wrote to the investigator asking for another continuance of the investigation set for 4 February, for the reason that he was to appear at the hearing of a civil case in the Court of First Instance of Davao. He also alleged that the petition for assignment of the Provincial Fiscal of Davao to conduct the investigation had not yet been acted upon by the Solicitor General.

Acting upon the petition of the complainant for assignment of the Provincial Fiscal of Davao to conduct the investigation, the investigator ruled that a mere anonymous letter informing the complainant that his life would be in danger should he appear at the investigation was not sufficient to justify his petition, the place of the investigation being Cotabato City, and not Kidapawan where the complainant's life was allegedly in danger.

After failure of the complainant or his counsel to appear on the 4th of February 1960, the day set for the resumption of the investigation, the investigator heard the testimony of Atty. Juan Sibag, Datu Hadji Bagundang, Mario Palmones, Sr., and Justice of the Peace Felipe Eleosida of Kidapawan, Cotabato, presented by the respondent.

Upon the admissions made by the respondent in his answer and the evidence presented during the investigation, the investigator recommended the dismissal of the complaint. The Solicitor General is, however, of the opinion that the respondent violated his lawyer's oath by refusing without cause to return the documents entrusted to him in connection with the cases in which his service as attorney had been engaged unless his attorney's fees be paid first; and was lax or remiss in the performance of his duties by asking for and agreeing to numerous postponements of the hearing of the cases entrusted to him to the prejudice of his client's interest, and recommends that the respondent be reprimanded with a warning that a repetition of the acts or conduct complained of will be dealt with more severely. As to the other charges, the Solicitor General believes that there is no sufficient evidence to prove or support them.

The fact that the hearing of the cases had been postponed several times not all upon the petition of the respondent because it was also continued upon petition of the adverse party and in several instances upon joint motion of the parties is not enough to support the charge of laxity in the performance by the respondent of his duties as attorney.

Likewise, the refusal of the respondent to return the documents or receipts that had come into his possession as attorney, whose professional service had been engaged by the complainant to bring the action against the latter's debtors, may not be the proper conduct, but is not devoid of justification because the respondent believed he was entitled to retain them unless his fees agreed upon in writing be paid first. After requiring upon motion the respondent "to show cause why a sub-poena duces tecum should not be issued for his appearance in court relative to the documents in his possession" the Justice of the Peace, in whose court the collection cases had been filed, denied the motion for reconsideration of the order filed by the complainant. So that if the Justice of the Peace was of the opinion that the respondent could not retain possession or withhold production or presentation of the documents, he could have issued such sub-poena duces tecum, and if disobeyed by the respondent, could have punished him for contempt. Nothing appears to have been done further in the premises. According to the complaint (par. 9) the Justice of the Peace refused to issue the subpoena duces tecum. If such refusal by the Justice of the Peace was an error, the complainant should have appealed from the order of dismissal without prejudice of the complaints, and as such order of dismissal is vacated after the appeal had been perfected and the cases would be tried de novo in and by the Court of First Instance, the complainant could have renewed, repeated or reiterated his motion for the issuance of a sub-poena duces tecum. This the complainant or his attorney failed to do.

In view of the foregoing, the charges preferred against Attorney Napoleon O. Fontanosa by Gervacio Daus are dismissed.

Bengzon, C.J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ., concur.

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