

VALENTIN AVELINO, PETITIONER, VS. ATTY. PEDRO K. PALAÑA, RESPONDENT.

Adm. Case No. 405. May 31, 1971

Ponente: DIZON, J.

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DIZON, J.:

In a verified complaint filed by Valentin Avelino against Atty. Pedro K. Palaña, the latter was charged with malpractice in connection with his professional conduct as the complainant's counsel in Civil Case No. 2250 of the Court of First Instance of Leyte, such malpractice having given rise to the rendition of judgment against said complainant and his wife ordering them:

"x x x to restore the ownership and possession of the property described under paragraph 2 of the complaint to the plaintiffs herein; to demolish or transfer the house they built in the land within a period of three months counted from the receipt of this decision at the expiration of which, if they shall fail to remove the house from the land in question, the plaintiffs shall be authorized to remove it at the expense of the defendants; to pay the plaintiffs in the amount of (300.00) three hundred pesos for attorneys' fees; for damages, to pay the plaintiffs the amount of P1,800.00 which is the estimated value of the produce of the land in question from 1951 up to the present year which the plaintiffs failed to take advantage of due to their being dispossessed of the aforementioned land; and, to pay the costs. There being no adequate evidence to support the claim for moral damages, no such damages are adjudged."

Answering the complaint, the respondent admitted some of the allegations thereof and denied the others, and, by way of affirmative defenses, alleged the following:

"x x x

2. That the respondent was admitted a member of the Philippine Bar in 1939 which is now a fifth of a century since his taking his oath as attorney and counselor-at-law; he was appointed to the Judiciary as Justice of the Peace Court of Palo, Province of Leyte, in 1949, remaining as such until 1954 - the date when he resigned to continue his practice of law; in 1957, he (respondent) was again appointed as Justice of the Peace Court, this time in his home town at Tolosa, Leyte; remaining as such until he resigned in 1958 to accept the position as Assistant Administrative Officer in the Office of the Speaker of the House of Representatives, Congress of the Philippines. During all the years that he was actively practicing his noble profession, he has never been nor will he in the future, be a renegade to this noble profession. In his actuaciones as a Justice of the Peace Courts: first at Palo, Leyte then at Tolosa, Leyte, his records are his eloquent proof of his being a missionary of justice;

3. That it is true that the respondent was engaged by the petitioner to be their counsel in the case entitled "FERMIN NATIVIDAD, ET AL., versus VALENTIN AVELINO, ET AL.," docketed as Civil Case No. 2250 of the Court of First Instance of Leyte where the petitioner is one of the defendants;

4. That the respondent verbally advised the petitioner of the hearing of the afore-stated case on November 15, 1957, at 8:30 o'clock in the morning at least three days before the scheduled hearing when the petitioners

called on the respondent at the latter's residence which the former were used to do as admitted by him in paragraph 4 of the complaint as that is their understanding to enable them to confer;

5. That when the scheduled hearing of the aforesaid case on November 15, 1957, at 8:30 o'clock in the morning arrived, the respondent failed to be present in court or appear thereat because: "at about 3:00 o'clock in the morning of that day, I had a severe stomach ache followed by constant moving of bowel and vomiting. As a consequence I became very weak and I felt that I was about to die," as shown by a medical certificate which is attached to the "motion for new trial" filed by the respondent, hereto attached as an integral part hereof and marked as Annex "A";

6. That when the respondent received a copy of the decision in the Court of First Instance of Leyte entitled "Fermin Natividad, et al., versus Valentin Avelino, et al., he filed a "motion for new trial" already marked as Annex "A" hereof, wherein the respondent explained his failure to appear on the date of the hearing of said case on November 15, 1957, at 8:30 o'clock in the morning;

7. That on January 18, 1958, the herein respondent filed an "amended motion for new trial" where, in addition to the reasons recited by him in his motion for new trial he stated that:

"x the evidence of the defendants in this case at bar consisting of their adverse, continuous and peaceful possession of the property in question for almost twenty years, payment of land taxes, fraud committed in the part of the plaintiffs herein and estoppel in the part of the plaintiffs are very strong; and that if the defendants are given their day in court to present their evidence, the findings and conclusions of the Honorable Court might be made in favor of the herein defendants and adverse to the plaintiffs;"

or another way of alleging that the defendants have a good and valid defense; said "amended motion for new trial is hereto attached as Annex "B" and made an integral part hereof;

8. That the failure of the defendants to appear in court when their case was set for hearing on November 15, 1957, at 8:30 o'clock in the morning despite the verbal notice to them by the herein respondent is not until the present known to herein respondent;

9. That when the herein respondent was appointed Administrative Officer in the Office of the Speaker of the House of Representatives, Congress of the Philippines, sometime in March 1958, he already advised the petitioner to look for another lawyer to represent him."

The issues having been thus joined, the case was referred to the Office of the Solicitor General for investigation, report and recommendation.

Upon the evidence presented by the parties the Solicitor General submitted his report, the portion of which under the title "ANALYSIS" reads as follows:

"From the foregoing facts, this Office finds the respondent guilty of negligence on the following counts:

1. Atty. Palaña did not duly inform his client of the date of the trial scheduled for November 15, 1957 when the evidence shows that he received notice of such hearing on October 11, 1957.
2. The filing of the motion for new trial on January 7, 1958 was made out of time, exactly 40 days after the decision was received on November 28, 1957. The delay in the filing of the said motion remains unexplained in the record.
3. Atty. Palaña's 2nd motion for new trial, after the Court had afforded him all the opportunity to plead his motion successfully, was denied by the lower court on the ground that he failed to comply with an order of the court dated February 1, 1958. While the said motion was duly filed on time, a previous order of the Court directed the movant (Atty. Palaña) to serve a copy of his amended motion to the other party through counsel,

but compliance therewith does not appear on the said motion (Exh. 4).

The testimony of petitioner is not clear as to whether respondent was responsible in hiring Atty. Aristidis de la Paz to take over the case after the decision had become final. However, we can allow such a doubt to be resolved in favor of the respondent's claim that he suggested to his client that he contract Atty. De la Paz.

This Office believes that although petitioner had verified the petition for relief from judgment dated March 18, 1958 filed by Atty. De la Paz, petitioner here-in did not exactly comprehend, due to his patent illiteracy, what he was signing in alleging excusable negligence on the part of Atty. Palaña for failing to notify him and his co-respondents in Civil Case No. 2250 of the date of the hearing. Further-more, we are fully aware of the practice that practicing attorneys usually prepare such petitions for their clients to sign.

This Office however believes that the non-appearance of Atty. Palaña at the hear-ing of November 15, 1957 has been satisfac-torily explained by the verified medical certificate. But we do not share the same view insofar as his negligence in failing to notify his clients of the date of hear-ing is concerned."

On the basis of the findings contained in the above-quoted portion of his report, the Solicitor General found the respondent "guilty of negligence in the performance of his duties as a member of the Bar" and consequently recommended "that he be suspended from the practice of law for at least six months."

Thereafter, following the procedure provided by the Rules of Court in cases of the same nature, the Office of the Solicitor General filed with this Court the corre-sponding complaint based on the findings of fact contained in his report. In respondent's answer thereto he repro-duced the defenses set forth in his answer to the verified complaint filed by the complainant.

Thereafter, We set the case for hearing but, in-stead of arguing the case orally, the respondent submit-ted a written memorandum, while the Office of the Solic-itor General did not.

Upon consideration of the whole record, We find no sufficient justification to reverse the finding made by the Office of the Solicitor General to the effect that respondent "did not duly inform his client of the date of the trial scheduled for November 15, 1957" in spite of the fact that, according to the evidence, he had re-ceived notice of such hearing four days before.

As regards respondents failure to appear in court on the day set for the trial, We are inclined to accept his claim that it was due to the fact that early in the morning of that date he had "a severe stomach ache, followed by constant moving of bowel and vomitting and that as a consequence he became very weak." But while this might be, to a certain extent, a good excuse for his non-appearance in court, it is obviously not sufficient to explain his failure to notify his clients in due time of the date of the trial. Had he done so, his clients would probably have tried to contact him in due time, and upon discovering that he was sick they would have either gone to court to ask for the postponement of the trial, or they would have looked for another lawyer to represent them in court.

Then again We find no sufficient exculpatory evi-dence for respondent filing a motion for new trial "out of time," exactly forty days after notice of the decision rendered by the court. Moreover, although he was given an opportunity to file a second motion for new trial, it appears that the same was denied by the court "on the ground that he had failed to comply with its previous order dated February 1, 1958. In this connection, We reproduce hereunder the pertinent portion of the report submitted by the Solicitor General:

"x x x

The said decision was received by Atty. Palaña on November 28, 1957. This is admitted by him in his second motion for new trial (Exh. I). Atty. Palaña filed his motion for new trial dated December 26, 1957 on January 7, 1958, 40 days after receipt of judgment (Exh. C). The motion for new trial was op-posed by the attorney for

the plaintiffs on the grounds: (1) that the motion for new trial is not the proper remedy; (2) that the motion was not accompanied by affidavits or affidavits of merits (Exh. E). An amended motion for new trial was subsequently filed dated January 18, 1958, attaching thereto an affidavit executed by Atty. Palaña (Exh. F). On the same date, January 18, 1958, the Court of First Instance of Tacloban City ordered the movant "to serve a copy of his amended motion, if he so desires to amend his motion, to the other party through counsel, Atty. Fernando Suddrio, not later than the 25th of January so that the latter may file a reply if he so desires." On February 1, 1958, another order was issued by the Court giving Atty. Palaña one week's time within which to present another amended motion for new trial (Exh. H). A subsequent amended motion for new trial was filed on February 8, 1958 (Exh. H). The said motion for new trial was however de-nied on the same date for "not having com-plied with the order of this court dated February 1, 1958" (Exh. J)."

IN VIEW OF ALL THE FOREGOING, the respondent is hereby found guilty as charged in the report and complaint filed by the Solicitor General, and considering all the circumstances of the case, he is hereby suspended from the practice of law for a period of three months from notice hereof.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Zaldivar, Fernando, Teehankee, Villamor, and Makasiar, JJ., concur. Ruiz Castro and Barredo, JJ., took no part.

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