

**ADELINO H. LEDESMA, PETITIONER, VS. HON. RAFAEL C. CLIMACO,
PRESIDING JUDGE OF THE COURT OF FIRST INSTANCE OF NEGROS
OCCIDENTAL, BRANCH I, SILAY CITY, RESPONDENT.***G.R. No. L-23815. June 28, 1974*

Ponente: FERNANDO, J.

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What is assailed in this certiorari proceeding is an order of respondent Judge denying a motion filed by petitioner to be allowed to withdraw as counsel de oficio.[1] One of the grounds for such a motion was his allegation that with his appointment as Election Registrar by the Commission on Elections, he was not in a position to devote full time to the defense of the two accused. The denial by respondent Judge of such a plea, notwithstanding the conformity of the defendants, was due to "its principal effect [being] to delay this case." [2] It was likewise noted that the prosecution had already rested and that petitioner was previously counsel de parte, his designation in the former category being precisely to protect him in his new position without prejudicing the accused. It cannot be plausibly asserted that such failure to allow withdrawal of de oficio counsel could ordinarily be characterized as a grave abuse of discretion correctible by certiorari. There is, however, the overriding concern for the right to counsel of the accused that must be taken seriously into consideration. In appropriate cases, it should tilt the balance. This is not one of them. What is easily discernible was the obvious reluctance of petitioner to comply with the responsibilities incumbent on counsel de oficio. Then, too, even on the assumption that he continues in his position, his volume of work is likely to be very much less at present. There is not now the slightest pretext for him to shirk an obligation a member of the bar, who expects to remain in good standing, should fulfill. The petition is clearly without merit.

According to the undisputed facts, petitioner, on October 13, 1964, was appointed Election Registrar for the Municipality of Cadiz, Province of Negros Occidental. Then and there, he commenced to discharge its duties. As he was counsel de parte for one of the accused in a case pending in the sala of respondent Judge, he filed a motion to withdraw as such. Not only did respondent Judge deny such motion, but he also appointed him counsel de oficio for the two defendants. Subsequently, on November 3, 1964, petitioner filed an urgent motion to be allowed to withdraw as counsel de oficio, premised on the policy of the Commission on Elections to require full time service, as well as on the volume or pressure of work of petitioner, which could prevent him from handling adequately the defense. Respondent Judge, in the challenged order of November 6, 1964, denied said motion. A motion for reconsideration having proved futile, he instituted this certiorari proceeding.[3]

As noted at the outset, the petition must fail.

1. The assailed order of November 6, 1964 denying the urgent motion of petitioner to withdraw as counsel de oficio speaks for itself. It began with a reminder that a crime was allegedly committed on February 17, 1962, with the proceedings having started in the municipal court of Cadiz on July 11, 1962. Then respondent Judge spoke of his order of October 16, 1964 which reads thus: "In view of the objection of the prosecution to the motion for

postponement of October 15, 1964 (alleging that counsel for the accused cannot continue appearing in this case without the express authority of the Commission on Elections); and since according to the prosecution there are two witnesses who are ready to take the stand, after which the government would rest, the motion for postponement is denied. When counsel for the accused assumed office as Election Registrar on October 13, 1964, he knew since October 2, 1964 that the trial would be resumed today. Nevertheless, in order not to prejudice the civil service status of counsel for the accused, he is hereby designated counsel de oficio for the accused. The defense obtained postponements on May 17, 1963, June 13, 1963, June 14, 1963, October 28, 1963, November 27, 1963, February 11, 1964, March 9, 1964, June 8, 1964, July 26, 1964, and September 7, 1964."[4] Reference was then made to another order of February 11, 1964: "Upon petition of Atty. Adelino H. Ledesma, alleging indisposition, the continuation of the trial of this case is thereby transferred to March 9, 1964 at 8:30 in the morning. The defense is reminded that at its instance, this case has been postponed at least eight (8) times, and that the government witnesses have to come all the way from Manapala"[5] After which, it was noted in such order that there was no incompatibility between the duty of petitioner to the accused and to the court and the performance of his task as an election registrar of the Commission on Elections and that the ends of justice "would be served by allowing and requiring Mr. Ledesma to continue as counsel de oficio, since the prosecution has already rested its case."[6]

2. What is readily apparent therefore, is that petitioner was less than duly mindful of his obligation as counsel de oficio. He ought to have known that membership in the bar is a privilege burdened with conditions. It could be that for some lawyers, especially the neophytes in the profession, being appointed counsel de oficio is an irksome chore. For those holding such belief, it may come as a surprise that counsel of repute and of eminence welcome such an opportunity. It makes even more manifest that law is indeed a profession dedicated to the ideal of service and not a mere trade. It is understandable then why a high degree of fidelity to duty is required of one so designated. A recent statement of the doctrine is found in *People v. Daban*: [7] "There is need anew in this disciplinary proceeding to lay stress on the fundamental postulate that membership in the bar carries with it a responsibility to live up to its exacting standard. The law is a profession, not a trade or a craft. Those enrolled in its ranks are called upon to aid in the performance of one of the basic purposes of the State, the administration of justice. To avoid any frustration thereof, especially in the case of an indigent defendant, a lawyer may be required to act as counsel de oficio. The fact that his services are rendered without remuneration should not occasion a diminution in his zeal. Rather the contrary. This is not, of course, to ignore that other pressing matters do compete for his attention. After all, he has his practice to attend to. That circumstance possesses a high degree of relevance since a lawyer has to live; certainly he cannot afford either to neglect his paying cases. Nonetheless, what is incumbent upon him as counsel de oficio must be fulfilled." [8]

So it has been from the 1905 decision of *In re Robles Lahesa*, [9] where respondent was de oficio counsel, the opinion penned by Justice Carson making clear: "This Court should exact from its officers and subordinates the most scrupulous performance of their official duties, especially when negligence in the performance of those duties necessarily results in delays in the prosecution of criminal cases * * *." [10] Justice Sanchez in *People v. Estebia* [11] reiterated such a view in these words: "It is true that he is a court-appointed counsel. But we do say that as such counsel de oficio, he has as high a duty to the accused as one employed and paid by defendant himself. Because, as in the case of the latter, he must exercise his best efforts and professional ability in behalf of the person assigned to his care. He is to render effective assistance. The accused-defendant expects of him due diligence, not mere perfunctory representation. * * * For, indeed a lawyer who is a vanguard in the bastion of justice is expected to have a bigger dose of social conscience and a little less of self-interest." [12]

The weakness of the petition is thus quite evident.

3. If respondent Judge were required to answer the petition, it was only due to the apprehension that considering the frame of mind of a counsel loath and reluctant to fulfill his obligation, the welfare of the accused could be prejudiced. His right to counsel could in effect be rendered nugatory. Its importance was rightfully stressed by Chief Justice Moran in *People v. Holgado* in these words: "In criminal cases there can be no fair hearing unless the accused be given an opportunity to be heard by counsel. The right to be heard would be of little avail if it does not include the right to be heard by counsel. Even the most intelligent or educated man may have no skill in the science of the law, particularly in the rules of procedure, and, without counsel, he may be convicted not because he is guilty but because he does not know how to establish his innocence. And this can happen more easily to persons who are ignorant or uneducated. It is for this reason that the right to be assisted by counsel is deemed so important that it has become a constitutional right and it is so implemented that under our rules of procedure it is not enough for the Court to apprise an accused of his right to have an attorney, it is not enough to ask him whether he desires the aid of an attorney, but it is essential that the court should assign one *de oficio* for him if he so desires and he is poor or grant him a reasonable time to procure an attorney of his own."^[13] So it was under the previous Organic Acts.^[14] The present Constitution is even more emphatic. For, in addition to reiterating that the accused "shall enjoy the right to be heard by himself and counsel,"^[15] there is this new provision: "Any person under investigation for the commission of an offense shall have the right to remain silent and to counsel, and to be informed of such right. No force, violence, threat, intimidation, or any other means which vitiates the free will shall be used against him. Any confession obtained in violation of this section shall be inadmissible in evidence."^[16]

Thus is made manifest the indispensable role of a member of the bar in the defense of an accused. Such a consideration could have sufficed for petitioner not being allowed to withdraw as counsel *de oficio*. For he did betray by his moves his lack of enthusiasm for the task entrusted to him, to put matters mildly. He did point though to his responsibility as an election registrar. Assuming his good faith, no such excuse could be availed of now. There is not likely at present, and in the immediate future, an exorbitant demand on his time. It may likewise be assumed, considering what has been set forth above, that petitioner would exert himself sufficiently to perform his task as defense counsel with competence, if not with zeal, if only to erase doubts as to his fitness to remain a member of the profession in good standing. The admonition is ever timely for those enrolled in the ranks of legal practitioners that there are times, and this is one of them, when duty to court and to client takes precedence over the promptings of self-interest.

WHEREFORE, the petition for certiorari is dismissed. Costs against petitioner.

Zaldivar, (Chairman), Antonio, Fernandez, and Aquino, JJ., concur.

Barredo, J., did not take part.

[1] Petition, Annex B.

[2] *Ibid*, Annex C.

[3] Petition, pars. 3-9.

[4] Petition, Annex C.

[5] *Ibid*.

[6] *Ibid*.

[7] L-31429, January 31, 1972, 43 SCRA 185.

[8] Ibid, 186. Cf. *People v. Apduhan*, L-19491, Aug. 30, 1968, 24 SCRA 798; *People v. Solacito*, L-29209, Aug. 25, 1969, 29 SCRA 61; *People v. Serafica*, L-29092-93, Aug. 28, 1969, 29 SCRA 123; *People v. Englatera*, L-30820, July 31, 1970, 34 SCRA 245; *People v. Aguilar*, L-30932, Jan. 29, 1971, 37 SCRA 115; *People v. Estebia*, L-26868, July 29, 1971, 40 SCRA 90; *People v. Flores*, L-32692, July 30, 1971, 40 SCRA 230; *People v. Alincastre*, L-29891, Aug. 30, 1971, 40 SCRA 391; *People v. Valera*, L-30039, Feb. 8, 1972, 43 SCRA 207; *People v. Francisco*, L-30763, June 29, 1972, 45 SCRA 451; *People v. Espiña*, L-33028, June 30, 1972, 45 SCRA 614; *People v. Esteves*, L-34811, Aug. 18, 1972, 46 SCRA 680; *People v. Simeon*, L-33730, Sept. 28, 1972, 47 SCRA 129; *People v. Daeng*, L-34091, Jan. 30, 1973, 49 SCRA 221; *People v. Ricalde*, L-34673, Jan. 30, 1973, 49 SCRA 228; *People v. Martinez*, L-35353, April 30, 1973, 50 SCRA 509; *People v. Silvestre*, L-33821, June 22, 1973, 51 SCRA 286; *People v. Busa*, L-32047, June 25, 1973, 51 SCRA 317; *People v. Alamada*, L-34594, July 13, 1973, 52 SCRA 103; *People v. Andaya*, L-29644, July 25, 1973, 52 SCRA 137; *People v. Duque*, L-33267, Sept. 27, 1973, 53 SCRA 132; *People v. Saligan*, L-35792, Nov. 29, 1973, 54 SCRA 190; *People v. Bacong*, L-36161, Dec. 19, 1973, 54 SCRA 288.

[9] 4 Phil. 298.

[10] Ibid, 300.

[11] L-26868, February 27, 1969, 27 SCRA 106.

[12] Ibid, 109-110. Cf. *Javellana v. Lutero*, L-23956, July 21, 1967, 20 SCRA 717; *Blanza v. Arcangel*, Adm. Case No. 492, Sept. 5, 1967, 21 SCRA 1.

[13] 85 Phil. 752, 756-757 (1950).

[14] Cf. *United States v. Gimeno*, 1 Phil. 236 (1902); *United States v. Palisoc*, 4 Phil. 207 (1905); *United States v. Go-Leng*, 21 Phil. 426 (1912); *United States v. Laranja*, 21 Phil. 500 (1912); *United States v. Ramirez*, 26 Phil. 616 (1914); *United States v. Labial*, 27 Phil. 82 (1914); *United States v. Custan*, 28 Phil. 19 (1914); *United States v. Kilayco*, 31 Phil. 371 (1915); *United States v. Escalante*, 36 Phil. 743 (1917); *People v. Abuyen*, 52 Phil. 722 (1929).

[15] Cf. Article IV, Section 19.

[16] Section 20.

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