

RICARDO ACOSTA, COMPLAINANT, VS. ATTY. NICANOR SERRANO, RESPONDENT.*A.C. No. 1246. February 28, 1977*

Ponente: FERNANDO, J.

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In this administrative complaint for malpractice against respondent Nicanor Serrano, a member of the Philippine Bar, negligence is imputed to him. It was alleged in the Affidavit Complaint of May 10, 1973 filed by complainant Ricardo Acosta that the failure of respondent to be present at the hearing of the agrarian case against him resulted in an order of default. Thus he lost the case. To be more specific, complainant would rely on the reference in an order of the Court of Agrarian Relations, presided by Judge Agustin C. Bagasao, to the effect that respondent as counsel for complainant ought to have instructed a trial attorney of the Office of the Agrarian Counsel at Cuyapo, Nueva Ecija to handle the case for complainant in view of respondent having to confer with the Secretary of Agrarian Reform that day, he being the Chief of that office. Complainant pointed to this statement in such order: "The truth is Atty. Serrano neglected to instruct Atty. Cariazo to appear for the defendant." [1]

This Court, on October 15, 1973, issued the following resolution: "Considering the complaint for disbarment filed against Atty. Nicanor Serrano on the ground of malpractice, the Court Resolved to require the respondent to Comment thereon, within ten (10) days from receipt hereof." [2]

It was on November 29, 1973 that respondent filed his comment. He denied the allegations of complainant. The matter was then referred to the Office of the Solicitor General for investigation, report and recommendation. Thereafter, on April 26, 1974, there was received in such office an affidavit executed on April 11 of that year from complainant Acosta, in effect seeking the withdrawal of his administrative charge against respondent. That was the cue for the latter to file his motion to dismiss on April 24, 1974. The case was set for hearing. According to the Report of Acting Solicitor General Hugo Gutierrez, Jr., [3] dated November 24, 1976, the case was set for hearing on seven different occasions, the last date being February 9, 1976. At no time did complainant appear.

Nonetheless, there was in such Report a detailed discussion of the matter: "In his sworn administrative complaint * * * complainant Ricardo Acosta alleges that Atty. Nicanor Serrano's non-appearance at the hearing of his case had resulted in default of his legal rights to the landholdings under litigation in CAR Case No. 441-C, CAR Branch II-A, Cuyapo, Nueva Ecija. The complainant requests and demands the immediate disbarment of Atty. Nicanor Serrano. He is duty bound to prove his allegation by convincing evidence. On the last setting of this case on March 16, 1976 respondent strongly manifested that he was reiterating the prayer for the dismissal of this administrative case against him based on complainant's Affidavit dated April 11, 1974 and the repeated failure of the complainant to appear at the investigation despite due notice. Furthermore, respondent justifiably explained in his Comment dated November 20, 1973 the circumstances of the omission allegedly committed by him. Respondent explained that he was the Regional Chief of the Branch Office of the Agrarian Counsel at Cuyapo, Nueva Ecija; that complainant was absent at the pre-trial conference in which he was declared in default by the

Court * * *; that Atty. Virgilio Cariazo who was the original counsel of the complainant was transferred to another place and he was replaced by Atty. Bornon Bauson; that the presence of Atty. Cariazo to take respondent's place at the pre-trial conference was sufficient for purposes of his representation at the said hearing; that due to the oversight of the new assigned counsel, Atty. Bornon Bauson, he failed to file the notice of appeal within the reglementary period; that as head of the office in Nueva Ecija, respondent has tremendous activities to attend; and that they filed a motion for reconsideration of the order of dismissal of the appeal but was denied. In justification of the above explanation respondent states: '9. Undersigned had never been recreant to his duties in the government service. He had been Clerk of Court of the Court of Agrarian Relations in 1962, then Trial Attorney of the defunct Tenancy Mediation Commission, to Special Attorney, Supervising Special Attorney and Regional Chief of the defunct Office of the Agrarian Counsel and presently Acting Regional Director of the Citizens Legal Assistance Office in Region I. In all of these stints in the government service, he had never given cause to lower his prestige as a government official. In 1969, after serving as Regional Chief of the Office of the Agrarian Counsel in Region II (Cagayan Valley) for almost four years, he was recipient of a letter of commendation for exemplary record as such Regional Chief from then Governor of Land Authority and Chairman of the National Land Reform Council, now Secretary of the Department of Agrarian Reform, the Hon. Conrado Estrella * * *. Earlier, he was recipient of a Special Commendation by resolution of the National Land Reform Council, then the highest Council on Land Reform, for accomplishments as such Regional Chief. In 1970 he was also a recipient of a resolution of commendation by the Municipal Council of Anao, Tarlac, for services rendered to farmers in the area.'"[4]

The recommendation, in view of the above circumstances and the settled doctrine that it is incumbent on complainant to prove his charge, was for the dismissal of the complaint. Thus: "In the instant case, it is respectfully submitted that complainant had completely lost his interest in prosecuting the charge against the respondent. Absent any persuasive indicia of the alleged misconduct of respondent, the presumption of innocence must prevail."[5]

Such recommendation merits the approval of the Court. No case against respondent has been proved. The complaint must be dismissed. That is to defer to a settled doctrine first announced by Justice Malcolm in the 1922 decision of *In re Tionko*. [6] Thus: "The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence against the respondent. The presumption is that the Attorney is innocent of the charges preferred and has performed his duty as an officer of the court in accordance with his oath." [7] There has been, since then, a reiteration of the above principle. [8]

WHEREFORE, the complaint against respondent Attorney Nicanor Serrano is hereby dismissed. Let a copy of this resolution be entered on his record.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] Order dated June 14, 1972, Annex C to Sworn Affidavit Complaint, 2.

[2] Resolution of this Court dated October 15, 1973.

[3] He was assisted by Assistant Solicitor General Guillermo C. Nakar, Jr. and Solicitor Rizalino Cusi.

[4] Report and Recommendation, 5-7.

[5] *Ibid*, 8.

[6] 43. Phil. 191.

[7] Ibid, 194.

[8] Cf. *Javier v. Cornejo*, 63 Phil. 293 (1936); *De Guzman v. Tadeo*, 68 Phil. 554 (1939); *In re Attorney C. T. Oliva*, 103 Phil. 312 (1958); *Blanza v. Arcangel*, Adm. Case No. 492, Sept. 5, 1967, 21 SCRA 1; *Magno v. Gellada*, Adm. Case No. 767, Dec. 20, 1971, 42 SCRA 549.

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