

MARIA LUZ ATIENZA, COMPLAINANT, VS. VICENTE EVANGELISTA, RESPONDENT.*A.C. No. 1517. November 29, 1977*

Ponente: FERNANDO, J.

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Membership in the bar is an exacting responsibility. It is, to quote from Justice Cardozo, "a privilege burdened with conditions." [1] It imposes, at the very least, the obligation of attending with due zeal and diligence to a client's cause. In a complaint filed with this Court by Maria Luz Atienza, respondent Vicente Evangelista, a member of the Philippine Bar, was charged with unprofessional conduct unbecoming a member of the bar. It was alleged that he was remiss in attending to her case with the Manila City Fiscal's Office notwithstanding his having been retained and paid for his services. He was required to answer. That he did. There was an admission on his part of his having been retained, but he denied any imputation of lack of due diligence in performing the legal services required of him. He asserted that he had always conducted himself in a manner expected of a lawyer. This notwithstanding, there was a recommendation by the investigating fiscal, that the case be dropped for insufficiency of evidence. Then and there, complainant dispensed with his services and shortly thereafter took from him all the papers connected with such a case. It was his assumption therefore that he "was no longer under obligation to participate in any proceeding in connection with said case. That duty had been shifted to the new lawyer of Mrs. Atienza in the case involving her husband." [2]

Thereafter, this Court, on December 5, 1975, resolved to refer the administrative complaint to the Solicitor General for investigation, report, and recommendation. There was such an investigation, with the report being submitted to this Court on March 17, 1977. The recommendation was for the dismissal of the complaint against respondent.

In such report and recommendation submitted by Solicitor General Estelito P. Mendoza, [3] it was stated that respondent was retained to assist complainant in the prosecution of the persons allegedly responsible for her husband's death. It was agreed that she should pay him the sum of P8,000.00 as attorney's fees with P3,000.00 as down payment and P100.00 to be paid per appearance. A complaint was duly filed by respondent with the City Fiscal's Office in Manila. It was assigned to Assistant Fiscal Fernando Agdamag for preliminary investigation. Respondent presented the complainant and her witnesses. Two of them refused to submit themselves to cross-examination. That prompted the fiscal to recommend that the case be dismissed for insufficiency of evidence. Such recommendation was concurred in by another fiscal, Roberto D. Cabrera, and the then City Fiscal, Jose Gamboa.

The report then proceeded in this wise: "The primary issue in this case is whether the respondent was wilfully negligent in the performance of his duties as counsel to the complainant to the damage and prejudice of the latter. As a rule, an attorney enjoys the legal presumption that he is innocent of the charges until the contrary is proved, and, as an officer of the court, he has performed his duty in accordance with his oath. (In re Tiongko, 43 Phil. 191). Thus, in every case of disbarment the burden of proof lies with the complainant to show that the respondent

is guilty of the acts charged. In the present case, there is no sufficient evidence showing that the respondent lawyer violated his oath or was negligent in handling the complainant's case. The respondent personally prepared the complaint of Mrs. Atienza and filed this with the Fiscal's Office. When the case was set for preliminary investigation, he was present in no less than 15 scheduled hearings. He presented as witnesses the complainant and four other persons. These, facts are borne by the case record and admitted by the complainant. (pp. 73-400, t.s.n., March 10, 1976). The complainant's case was dismissed apparently because of the failure of the complainant's witnesses to submit to cross-examination. This is clear from a reading of Fiscal Agdamag's memorandum * * *. The said memorandum reads: that the hearing of the case has been continuously postponed several times because of the failure of the prosecution witnesses to appear; that on October 10, 1972, the counsel for the complainant, together with his client, manifested into the record that should they be unable to produce the witnesses at the next hearing they would submit their case on the basis of the evidence already on record;' that on October 25, 1972, 'only the counsel for the complainant appeared. His client and their witnesses did not arrive. * * *' Atty. Evangelista was, thus, constrained to submit the case on the basis of the evidence already on record. These facts do not indicate negligence on the part of the respondent. The complainant who was present during the hearing of October 10, 1972 was fully aware that she still had to present two of her witnesses for cross-examination on the next scheduled hearing."[4]

As to the allegation by complainant that respondent did not inform her that the case had been dismissed and that he did nothing to remedy the same, there is this relevant excerpt from such report: "The record does not support this claim. The respondent met the complainant in the house of Sgt. Bo sometime in December, 1972, immediately after he learned that the case was dismissed. He informed the complainant then that her case had been dismissed. He also informed her that he could appeal or ask for a reconsideration of the same but the complainant took the case record from him and said that she has hired another lawyer to handle her case. The complainant admits the said incident. She also confirms that she terminated the respondent's services on the same day. (pp. 31-33, t.s.n., March 10, 1976)."[5]

The concluding paragraph of the report follows: "The complaint against the respondent Atty. Vicente Evangelista has not been established by competent evidence. The dismissal of Mrs. Atienza's case is not imputable to respondent. A member of the bar can not be subjected to the peril of disbarment simply because of decision adverse to his client. The serious consequence of disbarment or suspension should follow only where there is a clear preponderance of evidence showing the basis thereof."[6] Accordingly, the recommendation was for the dismissal of the complaint.

This Court is in agreement.[7] It would be to place an intolerable burden on a member of the bar if just because a client failed to obtain what is sought by her after due exertion of the required effort on his part, he would be held accountable. Success in a litigation is certainly not the test of whether or not a lawyer had lived up to his duties to a client. It is enough that with the thorough preparation of the case handled by him, he had taken all the steps to prosecute his suit. If thereafter the result would be the frustration of his client's hopes, that is a cause for disappointment, no doubt for him no less than for his client, but not for disciplinary action. He is more to be sympathized with than condemned - on the assumption of course that he did what was expected of him.

WHEREFORE, the complaint against Attorney Vicente Evangelista is dismissed. Let a copy of this resolution be spread on his record.

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

[1] New York ex rel Karlin v. Culklin, 162 NE 489 (1928), cited in Albano v. Coloma, Adm. Case No. 528,

October 11, 1967, 21 SCRA 411.

[2] Report and Recommendation, 5.

[3] He was assisted by Assistant Solicitor General Nathanael P. de Pano, Jr. and Trial Attorney Blesila O. Quintillan.

[4] Report and Recommendation, 16-17.

[5] Ibid, 17-18.

[6] Ibid, 18.

[7] The report made mention of *In re Tionko*, 43 Phil. 191 (1922). The *Tionko* opinion of Justice Malcolm was cited with approval in the following cases: *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; *Argana v. Cruz*, Adm. Case No. 1236, July 31, 1975, 65 SCRA 550; *Misamin v. San Juan*, Adm. Case No. 1418, Aug. 31, 1976, 72 SCRA 491; *Acosta v. Serrano*, Adm. Case No. 1246, Feb. 28, 1977, 75 SCRA 253; *Obrero v. Tagala*, Adm. Case No. 984, April 22, 1977, 76 SCRA 316; *Santiago v. Bustamante*, Adm. Case No. 827, April 29, 1977, 76 SCRA 527.

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