

FULGENCIO A. NGAYAN, TOMASA K. NGAYAN AND BELLA AURORA NGAYAN, COMPLAINANTS, VS. ATTY. FAUSTINO F. TUGADE, RESPONDENT.

A.C. No. 2490. February 07, 1991

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PER CURIAM:

This case refers to disciplinary proceedings initiated by the herein complainants Fulgencio A. Ngayan, Tomasa K. Ngayan and Bella Aurora Ngayan in a letter-complaint dated November 16, 1982 against respondent lawyer for violation of sub-paragraphs (e) and (f) of Section 20, Rule 138 of the Rules of Court of the Philippines.

It appears that respondent lawyer was formerly a counsel for complainants either as defense counsel or private prosecutor in the following cases:

- (a) *People v. Fulgencio A. Ngayan*, City Court of Manila, Branch VII, Criminal Case No. 053773-CR for light threat;
- (b) *People v. Tomasa Ngayan and Bella Aurora Ngayan*, City Court of Manila, Branch VIII, Criminal Case No. 053594-CR, for unjust vexation;
- (c) *People v. Bella Aurora Ngayan*, City Court of Manila, Branch II, Criminal Case No. 053599-CR, for grave threats;
- (d) *People v. Roberto Leonido*, City Court of Manila, Branch XIV, Criminal Case No. 053649-CR, for trespass to dwelling; and *People v. Nestor Campo*, Branch XIV, Criminal Case No. 053650-CR, for threats;
- (e) *Fulgencio A. Ngayan and Tomasa K. Ngayan v. Rowena Soriano and Robert Leonido*, for grave threats and trespass; *Fulgencio A. Ngayan and Tomasa K. Ngayan v. Rowena Soriano*, for grave defamation, Office of the City Fiscal of Manila before Assistant City Fiscal Elmer K. Calledo, I. S. No. 82-8564." (pp. 1-2, Rollo)

The factual antecedents of this case are as follows:

Complainants alleged that they asked respondent to prepare an affidavit to be used as basis for a complaint to be filed against Mrs. Rowena Soriano and Robert Leonido as a consequence of the latter's unauthorized entry into complainants dwelling. Without thoroughly reading the same, Mrs. Tomasa A. Ngayan allegedly signed it because she was rushed to do the same. After signing, Mrs. Ngayan noted a paragraph which did not mention that Robert Leonido was with Rowena Soriano when both suddenly barged into complainants' residence. Mrs. Ngayan allegedly told respondent about his omission and in front of her, respondent crossed out the paragraph she complained about and promised to make another affidavit. In the meantime, complainants filed motions to discharge the respondent as their counsel.

Complainants allegedly made a follow up after discharging respondent and found that the name of Robert Leonido was not included in the charge. Since the omission was remedied by their new counsel and the case was subsequently filed in court, the adverse parties filed a motion for reinvestigation and attached thereto the first affidavit of complainants which was crossed out. Complainants averred that the motion was filed by Atty. Apolo

P. Gaminda, a former classmate of respondent. They further said that respondent was also a lawyer of the brother of Robert Leonido in an insurance company. Complainants further alleged that the motion for reinvestigation was set for hearing before Assistant City Fiscal Milagros F. Garcia - Beza where respondent himself executed and submitted an affidavit as exhibit for Robert Leonido and Rowena Soriano controverting the affidavit of complainants notwithstanding the fact that he prepared the latter's affidavit when he was still their counsel.

They further alleged that before he executed and submitted his affidavit, respondent sent a personal letter to Fiscal Beza denouncing complainants and stating that he is filing criminal and civil cases against them.

Complainants charged respondent for violation of paragraphs (e) and (f) of Section 20, Rule 138, Rules of Court, which provide:

“(e) To maintain inviolate the confidence; and at every peril to himself, to preserve the secrets of his client, and to accept no compensation in connection with his client's business except from him or with his knowledge and approval;

“(f) To abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witnesses, unless required by the justice of the cause with which he is charged;”

Complainants claim that paragraph (e) above was violated by respondent when the affidavit he prepared for complainants but subsequently crossed-out was submitted as evidence against complainants in the motion for reinvestigation. As to paragraph (f), complainants averred that respondent violated it when he sent a letter to the fiscal saving that his name was being adversely affected by the false affidavits of complainants and for that reason, respondent was contemplating to file a criminal and civil action for damages against them.

In a resolution of the Second Division of this Court dated January 19, 1983, respondent was required to answer the complaint against him but respondent failed. Thus, on May 25, 1983, for failure of the respondent to file an answer, this Court resolved to refer this case to the Solicitor General for investigation, report and recommendation. Thereupon, the Solicitor General set the complaint for hearing on September 26, 1983. October 17 and 18, 1983 and November 24, 1983, all of which dates, respondent was duly notified. However, respondent never appeared on any date. Accordingly, the Solicitor General made findings of facts based on the aforesaid claims of complainants and said:

“Consistent with respondent's failure to file an answer to the complaint herein filed against him, he also did not appear, despite due notice on the four occasions when the hearing of the present complaint was set at the Office of the Solicitor General. Neither has respondent shown concern or interest about the status of the complaint filed against him. The inaction of respondent to the resolutions of this Honorable Court requiring him to file his Answer to the Complaint filed against him and his subsequent failure to attend the hearings on the said complaint indicate that respondent has not obeyed the legal orders of the duly constituted authorities and he has not conducted himself as a lawyer according to the best of his knowledge and discretion with all good fidelity as well to the courts as to his clients (Sec. 3, Rule 138, Rules of Court). Further, lawyers are particularly called upon to obey court orders and processes. They should stand foremost in complying with the court's directives or instructions being themselves officers of the court (p. 75, Legal Ethics, Ruben Agpalo, 2nd Ed.). This lack of concern shown by respondent regarding the matter that involved the very foundation of his right to engage in the practice of law would show how much less he would regard the interest of his clients.”[1]

He thus recommended that the respondent lawyer be disbarred and his name dropped from attorney's roll. In his report, he averred that the conduct of respondent as above-shown constitutes unprofessional conduct and an outright violation of the provisions of Section 3 and paragraphs (e) and (f) of Section 20 of Rule 138 of the Rules of Court.

In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof (*Santos v. Dichoso*, Adm. Case No. 1825, August 22, 1978, 84 SCRA 622).

In the case at bar, complainants claim that respondent furnished the adverse parties in a certain criminal case with a copy of their discarded affidavit, thus enabling them to use it as evidence against complainants. This actuation constitutes betrayal of trust and confidence of his former clients in violation of paragraph (e), Section 20, Rule 138 of the Rules of Court. Inasmuch as respondent failed to answer the complaint filed against him and despite due notice on four occasions, he consistently did not appear on the scheduled hearing set by the Office of the Solicitor General, this claim remained uncontroverted. Besides, We tend to believe the said claim of complainants when it is taken together with their other claim that respondent's actuations from the beginning tend to show that he was partial to the adverse parties as he even tried to dissuade complainants from filing charges against Robert Leonido. This partiality could be explained by the fact that respondent is the former classmate of Atty. Apolo P. Gaminda, the adverse parties' counsel and the fact that respondent is the lawyer of the brother of Robert Leonido in an insurance company.

Respondent's act of executing and submitting an affidavit as exhibit for Robert Leonido and Rowena Soriano advancing facts prejudicial to the case of his former clients such as the fact that the crime charged in complainants' affidavit had prescribed and that he was asked to prepare an affidavit to make the offense more grave so as to prevent the offense from prescribing demonstrates clearly an act of offensive personality against complainants, violative of the first part of paragraph (f), Section 20, Rule 138, Rules of Court. Likewise, respondent's act of joining the adverse parties in celebrating their victory over the dismissal of the case against them shows not only his bias against the complainants but also constitutes a degrading act on the part of a lawyer. It was meant only to titillate the anger of complainants.

Additionally, respondent's failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despicency for his oath of offices in violation of Section 3, Rule 138, Rules of Court.

We have fully scrutinized and evaluated the records of this case and We cannot but find that strong and unassailable reasons exist render it. Our irremissible duty to impose a disciplinary sanction on respondent. But We feel that disbarment is too harsh considering the circumstances of the case. We hold that suspension from the practice of law for a period of one (1) year should be imposed on respondent for the aforestated misconduct.

ACCORDINGLY, respondent Faustino F. Tugade is hereby SUSPENDED from the practice of law for a period of one (1) year, effective from receipt of this resolution.

Let a copy of this resolution be furnished to the Bar Confidant and the Integrated Bar of the Philippines and spread on the personal records of respondent.

SO ORDERED.

Fernan, C.J., Narvasa, Melencio-Herrera, Gutierrez, Jr., Cruz, Paras, Feliciano, Gancayco, Padilla, Bidin, Sarmiento, Griño-Aquino, Medialdea, and Regalado, JJ., concur.

[1] Report and Recommendation, p. 7.

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