

CESARIO ADARNE, COMPLAINANT, VS. ATTY. DAMIAN V. ALDABA, RESPONDENT.*A.C. No. 801. June 27, 1978*

Ponente: CONCEPCION, JR., J.

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Administrative action against the respondent attorney for gross negligence and misconduct, for failure to give his entire devotion to the interest of his client, warm zeal in the maintenance and defense of his rights, and exertion of his utmost learning and ability in the prosecution and defense of his client, and for not taking steps to protect the interests of his client in the face of an adverse decision.

The record shows that sometime in 1958, Raymunda Cumpio and her husband, Rufo Cumpio, filed an action for forcible entry against herein complainant Cesario Adarne, Aning Arante, and Miguel Inokando with the Justice of the Peace of Alang-alang, Leyte. The case was docketed in the said court as Civil Case No. 96. Atty. Isaura Marmita represented the defendants who raised the issue of ownership of the land in question. After hearing the parties, the Justice of the Peace dismissed the complaint for lack of jurisdiction. Consequently, the plaintiffs therein appealed to the Court of First Instance of Leyte and the case was assigned to Branch VI at Carigara, where it was docketed as Civil Case No. 556. Resolving the issue interposed by the appellants, the Judge of the Court of First Instance found that the Justice of the Peace Court has jurisdiction over the case and returned the same to the lower court for trial on the merits. After trial on the merits, the Justice of the Peace again dismissed the case and the plaintiffs again appealed to the Court of First Instance of Leyte where the case was docketed anew as Civil Case No. 632. Attys. Arturo Mirales and Generoso Casimpan filed the answer for the defendants.[1]

At the hearing of the case on August 7, 1961, the herein complainant Cesario Adarne, one of the defendants in the aforementioned Civil Case No. 632, noting that his attorneys had not yet arrived, prevailed upon the respondent Atty. Damian Aldaba, who was then present in court to attend the trial of an electoral case, to appear as counsel for them and ask for the postponement of the trial. The respondent, who is a third-degree cousin of the complainant, agreed, and entered a special appearance. Upon noticing that the plaintiffs and their counsel were not also present in court, the respondent, instead of asking for a postponement, moved for the dismissal of the case. His motion was granted and the case was again dismissed. Thereafter, the plaintiffs filed a motion for the reconsideration of the order,[2] to which the respondent filed an opposition in behalf of the defendants,[3] and the motion was denied.[4] Whereupon, the plaintiffs appealed to the Court of Appeals. After appropriate proceedings, the appellate court set aside the order of dismissal and remanded the case to the lower court for further proceedings.

At the hearing of the case on October 23, 1964 before the Court of First Instance of Leyte, the respondent was again prevailed upon by the complainant to appear in his behalf. The respondent entered a "special appearance" for the complainant and thereafter argued that the interest of justice would best be served if the defendants were allowed to file an action for quieting of title and the case heard jointly with the pending action for forcible entry. Finding merit in the argument, the court ordered the defendant Cesario Adarne to file an action for quieting of title

within one (1) week and the plaintiffs to answer the same within the reglementary period, after which both cases would be tried jointly. The hearing was deferred until after the filing of the action for quieting of title.[5]

On June 17, 1965, the court declared the defendants in default for their failure to appear at the hearing set for that day and directed the plaintiffs to present evidence to support their claim.[6] On September 17, 1965, the court rendered a decision and a writ of execution was issued thereafter.[7]

Because of this, Cesario Adarne filed the present complaint against the respondent Atty. Damian V. Aldaba on August 3, 1967, praying:

"Dahil dito, isinusumbong ko po ang aking Abogado ng 'Mal Practice' pabaya at pahamak sa kliente at sinisingil ko po siya ng pinsala katumbas sa sinisingil sa kin ng akin kalaban. O kaya lakarin niya na mapigil ang decision ng Hukom sa C.F.I. at ulitin ang hearing sa Forcible Entry. Kung hindi niya magagawa ito, ipinaubaya kona po sa kataas taasan Hukoman ang paglapat ng parusa. Sapagkat kung hindi po susugpu-in ang masamang gawa naito ng mga ibang abogado na nabibili, - lala'la' ang sakit na ito sa profession ng mga abogado, at lilikha ng maraming api, at habang naghahari ang pang aapi, lalaganap ang kriminalidad ng walang tigil, at walang katahimikan ang ating Demukrasya, at kung magkakagayon ang mga mamamayan at - sapilitan sa kumunista sasamba."

The respondent denied that he ever had any agreement with the complainant with respect to the handling of the latter's case in the Court of First Instance of Leyte, Carigara Branch, except for the "special appearance" that he entered for the complainant on August 7, 1961 and October 23, 1964, in view of the non-availability of the complainant's lawyers on said dates.

The case was referred to the Solicitor General for investigation, report and recommendation,[8] after which a complaint for the disbarment of the respondent attorney was filed.[9]

The judgment by default rendered against the complainant cannot be attributed to the respondent attorney. The blame lies with the complainant for having engaged the services of several lawyers to handle his case without formally withdrawing the authority he had given to them to appear in his behalf as to place the responsibility upon the respondent. To add to the confusion, the complainant had also requested the clerk of court of the Court of First Instance of Leyte that he (complainant) be furnished with summons and subpoena accorded to him.[10] He also filed a motion by himself,[11] thus implying that he was handling his case personally.

It appears that there have been three changes made of the attorneys for the complainant in the forcible entry case. The complainant was originally represented by Atty. Isauro Marmita who, upon his appointment to the Department of Labor, engaged Atty. de Veyra to take his place.[12] Then came Atty. Arturo Mirales and later, Atty. Generoso Casimpan. However, no formalities whatever were observed in those changes such that the respondent entered a "special appearance" for the complainant in order that he could ask for the dismissal of the case for the failure of the adverse party to prosecute. The rule followed on matters of substitution of attorneys as laid down by this Court is that no substitution of attorneys will be allowed unless there be filed: (1) a written application for such substitution; (2) the written consent of the client; (3) the written consent of the attorney substituted; and (4) in case such written consent can not be secured, there must be filed with the application proof of service of notice of such motion upon the attorney to be substituted, in the manner prescribed by the rules. Unless the foregoing formalities are complied with, substitution will not be permitted, and the attorney who properly appeared last in the cause, before such application for substitution, will be regarded as the attorney of record and will be held responsible for the proper conduct of the cause.[13]

Besides, the respondent honestly believed that he had appeared for the complainant only for a special purpose and

that the complainant had agreed to contact his attorney of record to handle his case after the hearing of October 23, 1964, so that he did nothing more about it.[14] It was neither gross negligence nor omission to have entertained such belief. An attorney is not bound to exercise extraordinary diligence, but only a reasonable degree of care and skill, having reference to the character of the business he undertakes to do. Prone to err like any other human being, he is not answerable for every error or mistake, and will be protected as long as he acts honestly and in good faith to the best of his skill and knowledge.

It is well settled that 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 attorney must be established by convincing proof. In the instant case, there is no sufficient proof to warrant the disbarment of the respondent attorney. Neither is there culpable malpractice to justify his suspension.

WHEREFORE, the present administrative complaint is hereby DISMISSED.

SO ORDERED.

Santos and Guerrero, JJ., concur.

Fernando, (Chairman), and Aquino, JJ., no part.

Antonio, J., in the result.

Barredo, J., concur in the result since respondent made only a special appearance on Oct. 23, 1964, when he made a creditably showing for complainant, the counsel of record of complainant should have been the one to take the corresponding subsequent steps.

[1] Exhibit "G".

[2] Exhibit "B".

[3] Exhibit "C".

[4] See pp. 2, 4, tsn. of Dec. 28, 1973.

[5] Exhibit 3.

[6] Exhibit "H".

[7] Exhibit "I".

[8] Rollo, p. 51.

[9] Id., p. 53.

[10] Exhibit 5.

[11] Exhibit 6.

[12] p. 4, tsn., March 5, 1974; p. 2, tsn., March 26, 1974.

[13] U.S. vs. Borromeo, 20 Phil. 189.

[14] p. 6, tsn., December 28, 1973.

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