

CONCEPCION DIA-AÑONUEVO, COMPLAINANT, VS. MUN. JUDGE BONIFACIO B. BERCACIO OF TABACO, ALBAY, RESPONDENT.

A.M. No. 177-MJ. November 27, 1975

Ponente: MUÑOZ PALMA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-m-no-177/>

MUÑOZ PALMA, J.:

Respondent, incumbent Municipal Judge of Tabaco, Albay, faces this administrative complaint for conduct unbecoming a judge on two counts: (1) engaging in the practice of law, and (2) failure to return promptly to complainant, Concepcion Dia-Añonuevo, the money deposited with him.

The following are the undisputed facts:

Mrs. Concepcion Dia-Añonuevo, to whom We shall refer henceforth as complainant, claims to be a co-owner of an undivided interest of a certain parcel of irrigated riceland situated in Cabilogan, Sto. Niño, Sto. Domingo, Albay. This property was the object of a deed of sale executed by Maximo Balibado, Justo Balibado and Petrona Balibado de Barrios in favor of Alfredo Ong and acknowledged before Municipal Judge Bonifacio Bercacio, respondent herein, as ex-officio notary public, on January 25, 1972. Having been apprised of the execution of this deed of sale, complainant went to the office of Judge Bercacio to verify the matter. Upon being shown a copy of the deed of sale, complainant informed respondent judge that the vendors owned only one-third undivided portion of the property and that she and other cousins of hers owned two-thirds thereof. Judge Bercacio advised the complainant to redeem or repurchase the property from the vendee, Alfredo Ong. Complainant then requested the judge to intercede in their behalf with the vendee to allow them to redeem the property and for that purpose she gave respondent the amount of P3,500.00 to be used to pay Alfredo Ong. Respondent agreed and received the amount of P3,500.00 for which he issued the corresponding receipt which reads:

"This is to certify that MRS. CONCEPCION DIA-AÑONUEVO of Sto. Domingo, Albay, has deposited with the undersigned, the sums of THREE THOUSAND FIVE HUNDRED (P3,500.00) PESOS Philippine Currency, for the purpose of exercising her right to the legal redemption of the property sold to MR. ALFREDO ONG by Messrs. Maximo Balibado, Justo Balibado and Mrs. Petrona B. de Barrios as per Doc. No. 7, Page 3, Book No. I, Series of 1972, of the Notarial Register of the undersigned, dated Jan. 25, 1972.

"Tabaco, Albay, February 23, 1972.

"(Sgd.) BONIFACIO B. BERCACIO" (Exhibit C)
Judge

Respondent sent the corresponding letter to Alfredo Ong but the latter did not answer. Forthwith a complaint was filed on March 8, 1972 with the Court of First Instance of Albay (Civil Case No. 4591) entitled:

"Concepcion Dia-Añonuevo, et al., plaintiffs, versus Maximo Balibado, et al., defendants" for "annulment of sale of real property and redemption with damages." This complaint was prepared on February 26, 1972 by "Eligio R. Berango & B.B. Bercacio & Ass." as counsel for the plaintiffs, with Eligio R. Berango signing the complaint.

(Exhibit B)

During the pendency of the civil case, complainant asked respondent judge to allow her to withdraw P1,500.00 from the P3,500.00 she had deposited with him as she was then in need of money, but no action was taken by respondent. The verbal request was followed by a registered letter dated January 24, 1973 advising Judge Bercacio that complainant herein was withdrawing the amount of P3,500.00 deposited with him and requesting him to remit the said amount within ten days from receipt of the letter. (Exhibit D) There was still no response from respondent Judge, hence, another letter was sent dated February 21, 1973, which We quote:

"San Roque,
Sto. Domingo,
Albay
February 21, 1973

"Hon. Bonifacio Bercacio
Municipal Judge of Tabaco
Tabaco, Albay

S i r:

"This is a tracer of my letter to you dated January 28, 1973, demanding from you the return of the amount of Three Thousand Five Hundred Pesos (P3,500.00), which I entrusted to you for the redemption of my land which is involved in Civil Case No. 4591 entitled 'Concepcion Dia-Añonuevo, et al., vs. Maximo Balibado, et al.,' which is now pending in the Court of First Instance of Albay, Branch III. Inasmuch as you failed to deposit that amount to the Clerk of Court, Court of First Instance of Albay, I am demanding from your good self the return of said amount to me because I need it very badly.

"I have spent a lot of money in going back and forth from Sto. Domingo to your residence to demand from you the amount but of no avail for almost one year. Failure on your part to comply with the same, I will be constrained to take the necessary action on the matter against you.

"Thank you.

"Very truly yours,

"(Sgd.) Mrs. CONCEPCION DIA-AÑONUEVO"
(Exhibit E)

As the foregoing letter elicited no reaction from the Judge, complainant Mrs. Añonuevo sought the assistance of a lawyer in the person of Atty. Rodolfo A. Madrid who accordingly wrote to respondent on March 16, 1973, giving the latter a final period of grace within which to return the sum of P3,500.00, otherwise proper measures would be taken to protect the interests of his client. (Exhibit F)

Respondent finally broke his silence and answered with a letter given hereunder:

"Tabaco , Albay
March 21, 1973

"Atty. Rodolfo A. Madrid
El Casino Bldg.
Legazpi City

Dear Dolfo:

"I am in receipt today of yours dated the 16th inst.

"Frankly, I am indeed surprised at the tenor of your letter, particularly the threat it contains despite the explanation I verbally gave you when you dropped at my office.

"If you would re-examine the receipt I issued to Mrs. Concepcion D. Añonuevo, dated February 23, 1972, you will note that the amount was entrusted to me to make it available anytime 'for the purpose of exercising her right to the legal redemption of the property sold to Mr. Alfredo Ong.' The case instituted by the plaintiffs, among whom is Mrs. Añonuevo for the determination of their right is still pending in Court due to the illness of Judge Zurbano and the prolonged vacation of the Presiding Judge.

"When the money was entrusted to me, I was made to understand that the amount was not exclusively hers alone. I regret that legal ethics forbid me from revealing to you what was imparted to me in confidence which I have the moral obligation to keep inviolate.

"Your insinuation of inaction on my part is false because I summoned Mrs. Anonuevo to my office after I received her letters; she apologized and did not insist that the money be returned pending the termination of the civil case. From reliable sources I have learned that she is being made a conveyance tool for sinister motives and there is ample ground to suspect that this matter is being used as a vehicle for revenge.

"The case now pending in the CFI is being handled by another lawyer who should have some say on this matter.

"Very truly yours,

(Sgd.) BONIFACIO B. BERCACIO" (Exhibit G)

Due to the non-remittance of the aforementioned amount, Atty. Madrid filed with the Court of First Instance an urgent motion dated August 20, 1973, praying that Judge Bercacio be directed to consign in court the amount deposited with him by the plaintiff, Mrs. Añonuevo. (Exhibit H)

Upon receipt of the foregoing motion, respondent manifested to the trial judge that he would be ready to deliver the money as soon as the plaintiffs won the case. On September 13, 1973, the trial court rendered judgment in favor of the plaintiffs, and on the same date, issued an order directing Judge Bercacio to deposit with the Clerk of Court the amount of P3,500.00 within five (5) days from receipt of the order (t.s.n. February 1, 1974, p. 19). On September 17, Judge Bercacio received a copy of the order and on September 26, 1973, he turned over the amount to Atty. Rodolfo Madrid (t.s.n. *ibid.* pp. 22-24)

1. Respondent violated Section 77 of the Judiciary Act of 1948, as amended, which provides in part:

"All provisions relative to the observance of office hours and the holding of sessions applicable to courts of first instance shall likewise apply to municipal judges, but the latter may, after office hours, and with the permission of the district judge concerned, engage in teaching or other vocation not involving the practice of law . . ." (Italics supplied)

and which was implemented by Circular No. 37 of the Secretary of Justice dated June 22, 1971 to the effect that

". . . no Municipal Judge shall . . . engage in private practice as a member of the bar or give professional advice to clients . . ." (Italics supplied)

Respondent submits that it was Atty. Berango and not he who assisted the complainant, Mrs. Añonuevo, and her co-plaintiffs as counsel in the civil case; that when he saw his name in the complaint as one of the lawyers, he called Atty. Berango's attention to the mistake and this was immediately corrected in the subsequent pleadings by deleting his name.

Respondent's claim is belied, however, by the active interest he took in the case of Mrs. Añonuevo manifested as follows: (a) He gave Mrs. Añonuevo legal advice on the remedy available to her and her co-owners with regards to the property sold to Alfredo Ong. (b) He accepted from Mrs. Añonuevo the sum of P3,500.00 for purposes of redeeming the property from the vendee, plus P100.00 for incidental expenses (t.s.n. January 28, 1974, p. 9). (c) He wrote to Alfredo Ong for and in behalf of Mrs. Añonuevo and her co-owners offering to redeem the land in question (t.s.n. February 19, 1974, p. 89). (d) When his attempts at an out-of-court settlement failed, he caused the filing of the complaint in Civil Case No. 4591 (t.s.n. February 1, 1974, p. 24), for which he was issued a receipt for docket and legal research fees (t.s.n. February 19, 1974, p. 119). (e) He was present together with Atty. Berango at the pre-trial of July 5, 1972, and although, as he claims, it was Atty. Berango who made an appearance for that pre-trial, the trial Judge nonetheless took note of respondent's presence so that the Order dictated on that occasion reads: "Attys. Berango and Bercacio are notified of the date of the trial." (t.s.n. February 19, 1974, p. 67)

Moreover it has not escaped Our attention that as claimed by complainant herein it was respondent Judge who dealt with her all along in connection with the conduct of her case. This is borne out by the letter of Atty. Berango asking respondent to collect from Mrs. Añonuevo the amount of P500.00 as his attorney's fees (Annex 3 of respondent's comment, p. 11, rollo), and the fact that respondent invited Mrs. Añonuevo to a conference in his office to discuss the matter with Atty. Berango. (see Annex A, *ibid.*, p. 12, rollo) If Atty. Berango indeed was the lawyer of Mrs. Añonuevo, why did he have to seek the intervention of respondent to collect his attorney's fees and why did respondent have to call Mrs. Añonuevo to his office for that purpose?

The practice of law is not limited to the conduct of cases in court or participation in court proceedings but also includes preparation of pleadings or papers in anticipation of a litigation, giving of legal advice to clients or persons needing the same, etc. (Martin, Comments on Rules of Court, Vol. 6, 1974, Ed., p. 251; Moran, Rules of Court, 1970 Ed., Vol. 6, p. 206) Hence, even if we were to accept respondent's explanation that it was Atty. Berango who represented Mrs. Añonuevo and her co-plaintiffs in court, respondent's actuations as noted above still fall within the prohibition.

The rule disqualifying a municipal judge from engaging in the practice of law seeks to avoid the evil of possible use of the power and influence of his office to affect the outcome of a litigation where he is retained as counsel. Compelling reasons of public policy lie behind this prohibition, and judges are expected to conduct themselves in such a manner as to preclude any suspicion that they are representing the interests of a party litigant.

2. Respondent's failure to return the amount of P3,500.00 to herein complainant upon her demand is highly reproachable, to say the least.

Mrs. Añonuevo gave to respondent the aforesaid amount with the understanding that it would be offered to Alfredo Ong for purposes of redeeming the property sold by Mrs. Añonuevo's co-owners. When Alfredo Ong refused the extra-judicial offer of redemption, respondent should have either returned the money to Mrs. Añonuevo or consigned it in court.

Respondent contends that he kept the money because he wanted it ready for payment to the vendee should the complaint for redemption prosper. In fact, according to respondent, he brought the amount with him during the pre-trial of July 5, 1972, just in case an amicable settlement would be effected between the parties, but when this failed, he gave the P3,500.00 to Atty. Berango for custody. However, on April 9, 1973, Atty. Berango returned to him the money because Mrs. Añonuevo had secured the services of another counsel. Due to this development, he wrote to complainant herein to come to his office for a conference with Atty. Berango on the latter's attorney's fee and also in order that she may get back the money she had deposited. (t.s.n. February 19, 1974, pp. 95-100)

The explanation of respondent fails to convince Us of his good faith. Even if we were to concede that his intention

in keeping the money was to have it ready at any time for payment to Alfredo Ong should the civil case prosper, nevertheless, when complainant herein made demands on him, verbal as well as written, to return the money, he should have immediately turned it over to complainant to forestall or erase any possible suspicion that he had spent it; or he could have deposited it in court, anyway, his purpose, as he said, was to keep the money available at all times.

Respondent's obstinate refusal or failure to accede to complainant's request for almost a year led the latter to secure the services of another counsel who was compelled — what to him must have been an unpleasant task — to ask from no less than a member of the Judiciary the return of the P3,500.00 deposited with the latter otherwise he would have to take the necessary steps to protect the interest of his client. That demand of Atty. Madrid was made in March of 1973, but instead of delivering the amount, respondent still held it putting up the excuse in a letter to Atty. Madrid (see pp. 4-5 of this Decision) that the money did not belong entirely to Mrs. Añonuevo and that the latter had agreed to his keeping the money during the pendency of the case. That of course was untrue, because, first, there was nothing in the record to show that the P3,500.00 belonged to persons other than Mrs. Añonuevo from whom respondent received it, and secondly, it was Mrs. Añonuevo who had personally been asking all along for the return of said amount. It is to the discredit of respondent that it took a court order issued on September 13, 1973, for him to return complainant's money to Atty. Madrid.

While the Court does not make a categorical finding that respondent made use of the money deposited with him, nonetheless. We hold that by his actuations, respondent placed his honesty and integrity under serious doubt.

Although every office in the government service is a public trust, no position exacts a greater demand on moral righteousness and uprightness of an individual than a seat in the Judiciary. A magistrate of the law must comport himself at all times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. To a certain degree, respondent herein failed to meet these exacting standards of judicial conduct.

WHEREFORE, We find respondent Judge Bonifacio B. Bercacio guilty as charged, and hereby suspend him from office for a period of six (6) months effective immediately upon finality of this decision, with the warning that commission of other acts unbecoming of a Judge will warrant a more severe penalty from the Court.

So Ordered.

Makalintal, C.J., Castro, Teehankee, Barredo, Makasiar, Antonio, Esguerra, Aquino, Concepcion Jr., and Martin, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.