

**WENCESLAO SUMAPIG NICKNAMED GOGOY, PONCIANO PANOY,  
FAUSTA BALTES AND MARCIANO SECO, COMPLAINANTS, VS.  
MACARIO ESMAS, JR. NICKNAMED DODONG (ASSISTANT FISCAL OF  
MANILA), RESPONDENT.**

*Adm. Case No. 1519. October 27, 1983*

Ponente: AQUINO, J.

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**AQUINO, J.:**

This is a disbarment case against Macario Esmas, Jr., an incumbent assistant fiscal of Manila since 1972, on the grounds of gross immorality, malpractice, and gross misconduct in office.

Grossly immoral conduct. - In a verified complaint filed on September 2, 1975, supported by his affidavit of August 18, 1975, Wenceslao Sumapig, a former councilor of Villaba, Leyte, charged Esmas (married to Salud Veloso) with gross immorality for having cohabited in Quezon City with his daughter, Violeta, a virgin of good reputation.

As a result of the cohabitation, Violeta gave birth on June 1, 1975 to a boy who was named Rhett Esmas. The cohabitation was admitted by Esmas in his handwritten letter to Sumapig.

Before Fiscal Esmas could answer the charge, complainant Sumapig in a letter to this Court dated October 1, 1975 withdrew the charge. He divulged that the instigator of the charge was lawyer Narciso Marilao, Jr., who allegedly suspected Esmas of having master-minded the disbarment charge against Marilao filed by Ricardo Rubillos, a first cousin of Esmas (Administrative Case No. 1452, dismissed in this Court's resolution of September 8, 1975).

Fiscal Esmas, with office at Room 311, City Hall, Manila, in his answer of October 8, 1975 attached thereto a copy of Sumapig's withdrawal and also Violeta's affidavit of October 2, 1975. Violeta, 24, single, a medical technologist, categorically alleged that she was not consulted before the filing of the immorality charge, that it has no factual basis and that she would not testify against Fiscal Esmas.

In view of complainant's change of mind and the attitude of Violeta, this Court in its resolution of October 17, 1975, dismissed the charge.

Malpractice and gross misconduct charge. - In the same complaint of August 18, 1975, which was partly withdrawn by Sumapig, three other complainants named Ponciano Panoy, Fausta Baltres and Marciano Seco charged Fiscal Esmas with having collected five hundred pesos (P500) from Dominador De la Cruz.

It was alleged that Esmas volunteered to handle De la Cruz's case regarding encroachment on his parcel of land in San Isidro, Leyte although Esmas was a fiscal and was prohibited from practicing law. Esmas allegedly gave complainant Panoy fifty pesos as ten percent commission for having given the case of De la Cruz to Esmas.

Panoy in his affidavit attached to the complaint alleged that De la Cruz even spent around one hundred pesos for

the food and drinks of Esmas and his friends. Esmas filed the case in the San Isidro court but asked lawyer Antonio Villamor to appear in the case.

Fiscal Esmas in his answer alleged that sometime in 1972, when he was in his hometown, Villaba, for a vacation, he was consulted by De la Cruz about an ejectment case which he wanted to file in the municipal court of San Isidro. Esmas referred the case to lawyer Villamor who filed the case and prosecuted it successfully. He said again that lawyer Marilao engineered the disbarment case against him because Marilao suspected Esmas of having instigated the filing by Rubillos of the disbarment case against Marilao.

The charge of malpractice and gross misconduct against Esmas was referred to the Solicitor General for investigation, report and recommendation.

The case was heard on August 3, 1977. Complainants' witnesses, Celestino Velasco and Marciano Seco, testified that they heard Esmas demanding P500 from Domina-dor De la Cruz for handling De la Cruz's case and that in order to raise the initial payment of P250, De la Cruz borrowed money from several persons. Esmas did not present any evidence.

The lawyer who appeared as counsel for the complainants in the hearings at the Solicitor General's office was Marilao, already mentioned as having been suspected by Esmas of having caused the filing of the instant charges against him.

Marilao migrated to the United States even before he could formally rest the case. During the hearing on October 29, 1981, the Investigator, Solicitor Cresentia A. Caparoso-Salva, disclosed that she received a handwritten letter from Panoy dated February 25, 1977 stating that he was no longer interested in the case and that he was withdrawing from the case. He was advised to file a formal motion of withdrawal but he did not do so.

We disagree with the Solicitor General's conclusion that it is highly improbable for an assistant fiscal of Manila to openly engage in private practice, knowing fully well that he is precluded from doing so. The preponderance of evidence sustains the charge of malpractice and gross misconduct.

Although Esmas did not actively practise law and did not appear for De la Cruz and his name never appeared in any pleading, yet he took advantage of the victim's ignorance to extract the amount of P500 from him on the pretext that he would handle the ejectment case. Esmas deserves to be censured for his misconduct.

WHEREFORE, respondent Esmas is severely censured for having collected attorney's fees from De la Cruz while he was serving as assistant fiscal of Manila.

### **SO ORDERED.**

Makasiar, (Chairman), Guerrero, and Escolin, JJ., concur.

Gutierrez, Jr., J., was designated to sit in the Second Division.

Abad Santos, J., no part.

Concepcion, Jr. and De Castro, JJ., on leave.

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