

TAN TEK BENG, COMPLAINANT, VS. TIMOTEO A. DAVID, RESPONDENT.

ADMINISTRATIVE CASE NO. 1261. December 29, 1983

Ponente: AQUINO, J.

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AQUINO, J.:

The issue in this case is whether disciplinary action should be taken against lawyer Timoteo A. David (admitted to the bar in 1945) for not giving Tan Tek Beng, a nonlawyer (alleged missionary of the Seventh Day Adventists), one-half of the attorney's fees received by David from the clients supplied by Tan Tek Beng. Their agreement reads:

"December 3, 1970

"Mr. Tan Tek Beng

"M a n i l a

"Dear Mr. Tan:

In compliance with your request, I am now putting into writing our agreement which must be followed in connection with the accounts that you will entrust to me for collection. Our terms and conditions shall be as follows:

"1. On all commission or attorney's fees that we shall receive from our clients by virtue of the collection that we shall be able to effect on their accounts, we shall divide fifty-fifty. Likewise you are entitled to commission, 50/50 from domestic, inheritance and commercial from our said clients or in any criminal cases where they are involved.

"2. I shall not deal directly with our clients without your consent.

"3. You shall take care of collecting our fees as well as advances for expenses for the cases referred to us by our clients and careful in safeguarding our interest.

"4. It is understood that legal expenses that we shall recover from the debtors shall be turned over to our clients. Other clients who directly or indirectly have been approached or related (sic) to you as a result of your labor are your clients.

"I hereby pledge in the name of God, our Heavenly Father, that I will be sincere, honest and fair with you in connection with our transactions with our clients. Likewise you must be sincere, honest and fair with me.

Very truly yours,

(Sgd.) Illegible

TIMOTEO A. DAVID

P.S.

I will be responsible for all documents entrusted me by our clients.

(Sgd.) Initial

"CONFORME to the above and likewise will reciprocate my sincerity to Atty. David as stated in the last paragraph of this letter.

(Sgd.) Tan Tek Beng

MR. TAN TEK BENG"

The foregoing was a reiteration of an agreement dated August 5, 1969. Note that in said agreement lawyer David not only agreed to give one-half of his professional fees to an intermediary or commission agent but he also bound himself not to deal directly with the clients.

The business relationship between David and Tan Tek Beng did not last. There were mutual accusations of doublecross. For allegedly not living up to the agreement, Tan Tek Beng in 1973 denounced David to Presidential Assistant Ronaldo B. Zamora, to the Office of Civil Relations at Camp Crame and to this Court. He did not file any civil action to enforce the agreement.

In his 1974 comment, David clarified that the partnership was composed of himself as manager, Tan Tek Beng as assistant manager and lawyer Pedro Jacinto as president and financier. When Jacinto became ill and the costs of office maintenance mounted, David suggested that Tan Tek Beng should also invest some money or shoulder a part of the business expenses but Tan Tek Beng refused.

This case was referred to the Solicitor General for investigation, report and recommendation. Hearings were scheduled from 1974 to 1981. It was proposed that respondent should submit a stipulation of facts but that did not materialize because the scheduled hearings were not held due to the nonavailability of Tan Tek Beng and his counsel.

On September 16, 1977 Tan Tek Beng died at the Philippine Union Colleges Compound, Baesa, Caloocan City but it was only in the manifestation of his counsel dated August 10, 1981 that the Solicitor General's Office was informed of that fact. A report on this case dated March 21, 1983 was submitted by the Solicitor General to this Court.

We hold that the said agreement is void because it was tantamount to malpractice which is "the practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers" (Sec. 27, Rule 138, Rules of Court). Malpractice ordinarily refers to any malfeasance or dereliction of duty committed by a lawyer. Section 27 gives a special and technical meaning to the term "malpractice" (Act No. 2828, amending sec. 21 of Act No. 190).

That meaning is in consonance with the elementary notion that the practice of law is a profession, not a business. "The lawyer may not seek or obtain employment by himself or through others for to do so would be unprofessional" (2 R. C. L. 1097 cited in *In re Tagorda*, 53 Phil. 37, 42; *Malcolm, J., Jayme vs. Bualan*, 58 Phil. 422; *Arce vs. Philippine National Bank*, 62 Phil. 569). The commercialization of law practice is condemned in certain canons of professional ethics adopted by the American Bar Association:

"34. Division of Fees. - No division of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility."

"35. Intermediaries. - The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. A lawyer's responsibilities and

qualifications are individual. He should avoid all relations which direct the performance of his duties by or in the interest of such intermediary. A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. x x x"

"38. Compensation, Commissions and Rebates. - A lawyer should accept no compensation, commissions, rebates or other advantages from others without the knowledge and consent of his client after full disclosure." (Appendix, Malcolm, Legal Ethics).

We censure lawyer David for having entered and acted upon such void and unethical agreement. We discountenance his conduct, not because of the complaint of Tan Tek Beng (who did not know legal ethics) but because David should have known better.

"Unprofessional conduct in an attorney is that which violates the rules or ethical code of his profession or which is unbecoming a member of that profession" (Note 14, 7 C. J. S. 743).

WHEREFORE, respondent is reprimanded for being guilty of malpractice. A copy of this decision should be attached to his record in the Bar Confidant's office.

SO ORDERED.

Concepcion, Jr., Guerrero, Abad Santos, De Castro, and Escolin, JJ., concur.
Makasiar, (Chairman), J., no part.

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