

JULIO ZETA, COMPLAINANT, VS. FELICISIMO MALINAO, RESPONDENT.

A.M. No. P-220. December 20, 1978

Ponente: BARREDO, J.

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BARREDO, J.:

Administrative complaint against Felicisimo Malinao, court interpreter of the Court of First Instance of Catbalogan, Samar charging as follows:

"1 - ILLEGALLY APPEARING IN COURT. – Mr. Malinao has been appearing in the municipal court of this town for parties like attorney when he is not an attorney. Reliable information also says he has been appearing in the municipal courts of Daram, Zumarraga, Talalora and even Sta. Rita. He is not authorized to do so we believe. He makes it his means of livelihood as he collects fees from his clients. He competes with attorneys but does not pay anything. We believe that his doing so should be stopped for a good government. These facts can be checked with records of those municipal courts.

"2 - GRAVE MISCONDUCT IN OFFICE. - Being employed in the Court of First Instance he would instigate persons, especially in his barrio to grab land rob or coerce. In fact he has cases in the municipal court in this town involving himself and his men. He incite them telling them not to be afraid as he is a court employee and has influence over the judges. Those persons being ignorant would believe him and so would commit crimes. This act of Mr. Malinao is contrary to good order and peace as he is using his supposed influences to urge persons to commit crimes.

"3 - CRIME OF FALSIFICATION. - Information has it that he is unfaithfully filing his time record in the CFI. Even he has been out practicing in the municipal courts sometimes he would fill his time record as present. He receives salary for those absent days. This can be checked with time record he has submitted and if he has any application for leave. He may try to cure it by submitting application for leave but this should not be allowed as he has already committed crime.

"4 - VIOLATION OF EXECUTIVE ORDER AND CIVIL SERVICE LAW. - We have reliable information it is prohibited for a civil service employee to engage in private practice any profession or business without permission from the Department Head. Mr. Malinao we are sure has not secured that permission because he should not be allowed to practice as he is not an attorney. If that were so, he violated that Executive Order and Civil Service Law and we are urgently and earnestly requesting the Commissioner of Civil Service to investigate him on this. If warranted he should be given the corresponding penalty as dismissal because we believe he deserve it." (Page 2, Record.)

After respondent filed the following 3rd indorsement relative to the above complaint:

"Respectfully returned to the Honorable, the Secretary of Justice, Manila, thru the Honorable District Judge, Court of First Instance, Branch I, Catbalogan, Samar, and thru the Honorable Judicial Superintendent, Department of Justice, Manila, the undersigned's reply to the preceding indorsements, to wit: That the alleged letter-complaint of one Julio Zeta is not inclosed in the first indorsement, which absence has also been noticed and noted on the right hand corner of the said first indorsement by the Clerk of Court, of this Court; that despite this absence, and without waiving, however, his right to any pertinent provision of law, but for respect and courtesy to a Superior, he hereby states that he has not violated any rule or law, much less Sec. 12, Rule XVIII of the Civil Service Rules; that his participation for defendants' cause was gratuitous as they could not engage the services of counsel by reason of poverty and the absence of one in the locality, said assistance had also checked the miscarriage of justice by the Presiding Municipal Judge, now resigned; that he is attaching herewith a carbon-original of a pleading submitted by Atty. Simeon Quiachon, the attorney of record for the defendants in Civil Case No. 24, entitled 'Jose Kiskisan versus Fidel Pacate, et al.', for Forcible Entry, in the Municipal Court of Talalora, Samar, which is a 'Motion To Withdraw Exhibits', as Annex 'A', as part of this reply." (Page 5, Rec.)

the Department of Justice that had jurisdiction over the matter then, referred the said complaint and answer to District Judge Segundo Zosa, Court of First Instance, Catbalogan, Western Samar, for investigation, report and recommendation, and after due hearing, Judge Zosa submitted his report, pertinent parts of which read thus:

"Inspite of diligent efforts exerted by the Court to subpoena the complainant, Julio Zeta, who is said to be a resident of Zumarraga, Samar, the same had failed because the said Julio Zeta appears to be a fictitious person.

"Inspite of the failure of the complainant to appear in the investigation in connection with his complaint against Felicisimo Malinao, the Court nevertheless proceeded to investigate the case against him by calling Judge Restituto Duran of Sta. Rita, Samar, Judge Juanito Reyes of Zumarraga, Samar and Judge Miguel Avestruz of Daram, Samar.

"Judge Restituto Duran of Sta. Rita, Samar, declared that according to his docket books the respondent appeared as counsel for Vicente Baculanlan in criminal case No. 1247 in the Municipal Court of Sta. Rita, Samar, for grave threats and in criminal case No. 1249 for the same accused and Romulo Villagracia for illegal possession of firearm on August 5, 1960 and on September 17, 1970.

"Judge Miguel Avestruz of Daram, Samar, declared that the respondent appeared as counsel in civil case No. 39 in the Municipal Court of Daram, Samar, entitled Felix Versoza versus Victor Payao, et al., for forcible entry on December 15, 1962, January 26, 1963, February 18, 1963 and on March 1, 1963.

"Judge Juanito Reyes declared that on March 27, 1969, the respondent appeared as counsel for the defendant in civil case No. 318 of the Municipal Court of Zumarraga entitled Restituto Centino versus Jesus Tizon for forcible entry and again on June 17, 1970 in the same case.

"From the certification of the Clerk of this Court, it appears that the respondent had the following entries in his daily time record:

- Was on leave from office on August 5, 1960 and September 17, 1960;
- Was present in office on December 15, 1962;
- Was present in office on January 26, 1963, and present also on February 18, 1963 but undertime by 1 hour;
- Was on leave from office on March 1, 1963;
- Was on leave from office on March 27, 1969; and
- Was present in office on June 17, 1970 but undertime by 5 hours.

"Comparing the dates when the respondent appeared before the aforementioned Municipal Courts with his daily time records, he made it appear that on December 15, 1962 and February 18, 1963 he was present in his office although according to the testimony of Judge Miguel Avestruz he was before his Court on December 15, 1962 as well as on February 18, 1963. Again according to Judge Juanito Reyes the respondent appeared in his Court on June 17, 1970. The respondent again made it appear in his daily time record that he was present with an undertime of five hours. The respondent did not offer any plausible explanation for this irregularity.

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"With respect to the crime of falsification of his daily time record as shown by the evidence, he had made it appear that he was present in his office on December 15, 1962, February 18, 1963 and June 17, 1970 when as a matter of fact he was in the Municipal Court of Daram attending to a case entitled Felix Versoza versus Victor Payao, et al., for forcible entry as well as in the Municipal Court of Zumarraga attending to Civil Case No. 318 entitled Restituto Centino versus Jesus Tizon for forcible entry. The Inquest Judge respectfully recommends that he be given stern warning and severe reprimand for this irregularity.

"With respect to the fourth charge, for violation of Section 12, Rule XVIII, Republic Act 2260, as amended, again the evidence shows that respondent had been appearing as counsel in the municipal courts of Sta. Rita, Daram and Zumarraga in violation of the rules of the Civil Service Law. " (Pp. 28-31, Record.)

We have carefully reviewed the record, and We find the conclusions of fact of the Investigator to be amply supported by the evidence, particularly the documents consisting of public records and the declarations of the judges before whom respondent had appeared. It is clear to Us that respondent, apart from appearing as counsel in various municipal courts without prior permission of his superiors in violation of civil service rules and regulations, falsified his time record of service by making it appear therein that he was present in his office on occasions when in fact he was in the municipal courts appearing as counsel, without being a member of the bar, which, furthermore, constitutes illegal practice of law. We, therefore, adopt the above findings of fact of the Investigator.

The defense of respondent that "his participation (sic) for defendants' cause was gratuitous as they could not engage the services of counsel by reason of poverty and the absence of one in the locality" cannot, even if true, carry the day for him, considering that in appearing as counsel in court, he did so without permission from his superiors and, worse, he falsified his time record of service to conceal his absence from his office on the dates in question. Indeed, the number of times that respondent acted as counsel under the above circumstances would indicate that he was doing it as a regular practice obviously for considerations other than pure love of justice.

In the premises, it is quite obvious that the offense committed by respondent is grave, hence it warrants a more drastic sanction than that of reprimand recommended by Judge Zosa. We find no alternative than to separate him

from the service, with the admonition that he desist from appearing in any court or investigative body wherein only members of the bar are allowed to practice.

WHEREFORE, respondent Felicisimo Malinao is hereby ordered dismissed from his position as interpreter in the Court of First Instance, CFI, Zumarraga, Western Samar, with prejudice to reemployment in the judicial branch of the government.

Castro, C.J., Fernando, Teehankee, Makasiar, Antonio, Aquino, Concepcion, Jr., Santos, Fernandez, and Guerrero, JJ., concur.

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