

AVELINA A. MAGNO AND FOSTER C. HOWELL, PETITIONERS, VS. LEON P. GELLADA, RESPONDENT.

Adm. Case No. 767. December 20, 1971

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

The present administrative case is for the disbarment of respondent, Leon P. Gellada, a member of the Philippine Bar, upon a verified petition filed with this Court by petitioners Avelina A. Magno and Foster C. Howell on May 3, 1967. The charges are as follows:

- "1. Representation of respondent in one and the same case despite conflicting and antagonistic claims, without the consent of any and all of the parties affected in said case, thus creating dissension and conflicts between the two estates, namely: the Estate of the late Charles Newton Hodges in Special Proceedings No. 1672 and the Estate of the late Linnie Jane Hodges in Special Proceedings No. 1307, both pending before the Court of First Instance of Iloilo.
2. Unauthorized representation in a case despite his relief as counsel and unethically persisting on appearing in said case by himself and through his newly appointed assistants who replaced his former assistants and who were previously relieved together with him.
3. The unethical solicitation of cases from the heirs of the late Charles Newton Hodges after his relief as counsel for the administrator of said estate, writing several maudlin letters, some bordering in libel, slandering his brother counsel, especially those who are already in the case and who replaced him in the case."

Respondent filed his answer to the petition, denying the averments therein and putting up a number of affirmative defenses. In a resolution dated August 16, 1967 this Court referred the case to the Solicitor General for investigation, report and recommendation. Under date of October 27, 1971 the Solicitor General submitted his report wherein, after discussing the evidence presented by the parties, both oral and documentary, and making an extensive statement of facts found by him to have been established by such evidence, he presents a resume thereof together with his own conclusions.

"In a nutshell, the grounds for respondent's disbarment as prayed for can be classified into three main categories:

- (1) Representation of conflicting interests, (2) unauthorized representation in a case, and (3) unethical solicitation of cases.

Anent the first ground the following facts appear to be incontrovertible:

The spouses Charles N. Hodges and Linnie Jane Hodges, American citizens, died on December 25, 1962 and May 25, 1957, respectively. Inasmuch as respondent had been their retained counsel before the last war and until their death, respondent filed a petition before the Court of First Instance of Iloilo (Special Proceedings No. 1307) for the probate of the will of Linnie Jane Hodges. The will was admitted to probate and Charles N. Hodges was appointed administrator and later executor of the estate of his deceased spouse. Similarly, upon

the death of Charles N. Hodges, respondent instituted Special Proceedings 1672 before the same Court for the probate of his will. Petitioner Avelina Magno was appointed special administratrix of the estate of Charles N. Hodges with Harold Davies as co-administrator. Upon the relief of petitioner Magno as administratrix of the estate of C. Hodges, Atty. Mirasol was appointed co-administrator, and subsequently the latter was replaced by Joe Hodges, who in turn was replaced by the PCI Bank. Both wills were prepared, acknowledged and notarized by Respondent.

With respect to the estate of Linnie Jane Hodges, petitioner Magno was appointed administratrix upon the death of Charles N. Hodges.

Respondent was counsel for petitioner Magno in her capacity as Administratrix of Linnie Jane Hodges and was also counsel for Charles N. Hodges as administrator of the estate of his deceased wife, and later of Atty. Mirasol as co-administrator of Harold Davies. On June 10, 1964, Attys. Rizal R. Quimpo and Raul Manglapus entered their appearance (Exhibit 42) as counsel for petitioner Avelina Magno in her capacity as Administratrix of the estate of Linnie Jane Hodges. At that time, respondent was no longer counsel for Atty. Mirasol, co-administrator of the estate of C. N. Hodges, as he filed a notice of withdrawal of his appearance on July 24, 1963 (Exh. 3).

On January 24, 1964, a Motion (Exh. D & 4) was filed in both Special Proceedings for the purpose of effecting a settlement of part of the controversies existing in the administration of both estates, which provided among others:

"3. x x x x x x x x x x

"(c) Leon P. Gellada shall receive the sum of P29,200.00 for his services heretofore rendered to both the estates of Linnie Jane Hodges and C. N. Hodges and as attorney and notary public for C. N. Hodges and Linnie Jane Hodges and said sum shall be charged to both estates. In addition he shall receive a retainer of P700.00 per month from February 1, 1964 and 10% of all collections effected on account of court cases which he may handle and may be assigned to him by the administrators, which monthly retainer and collection fees shall be charged to both the estates of C. N. Hodges and Linnie Jane Hodges.

"(e) The ten (10%) per cent collection fees hereinabove stipulated payable to Attys. Gellada, Mirasol and Mediodia shall be paid only after receipt of the sums collected by the administrators it being understood that Gellada and Associates, by majority vote, if need be, will agree on the distribution of the collection fees if, as is contemplated, they all appear in and work on the different cases which are understood to be their joint responsibilities regardless of assignment by the Administrator.

"(f) Gellada & Associates shall handle all pending collection cases for both the estates of Linnie Jane Hodges and C. N. Hodges and they shall defend all pending suits for money claims filed against said estates. No new cases are to be filed by them in court in the future unless assigned to them by both administrators of the estates of Linnie Jane Hodges and C. N. Hodges without prejudice to their continuing to re-present the administratrix of the estate of Linnie Jane Hodges, Avelina A. Magno, and the Higdon family. The firm of Ozaeta, Gibbs and Ozaeta acting as counsel for and on behalf of the PCIB acting as administrator of the C. N. Hodges estate in Special Proceedings No. 1672 shall have the right to exercise general supervision over said attorneys Gellada, Mirasol and Mediodia but said firm shall have no right to exercise supervision over said attorneys insofar as the estates of Linnie Jane Hodges is concerned. In the event collection cases are appealed to the Court of Appeals or the Supreme Court the firm of Ozaeta, Gibbs and Ozaeta may handle if it so decides such appeals and any fees collected on such appeals shall be shared by said firm and the Gellada & Associate in a fair and equitable manner.

"(g) The retainers and collection fees of the Gellada and Associates hereinabove stipulated are subject to amendment or termination at the end of one year. If terminated no further retainers or collection fees shall be due

or payable to them."

Petitioners contend that in acting as counsel for C. N. Hodges, Atty. Mirasol and Petitioner Avelina Magno, he represented conflicting interests in the estates of both spouses. This contention is premised on the argument that respondent entertained the theory that upon the death of Linnie Jane Hodges, her husband, Charles, succeeded to her entire estate to the exclusion of the brothers and sisters of Linnie Jane Hodges, so much so that the latter were prejudiced in their rights.

Respondent on the other hand, has vehemently denied such allegation and alleges that the said theory only came about when Attys. Ozaeta, Gibbs and Ozaeta entered their appearance for some of the heirs of Charles Hodges, who claimed the entire estate of Linnie Jane Hodges on account of which respondent withdrew as counsel for Atty. Mirasol.

The records show that as early as July 24, 1963, respondent filed a notice of withdrawal as counsel for Atty. Mirasol (Exh. 3) whereas Attys. Ozaeta, Gibbs and Ozaeta first appeared as counsel for PCIB, administrator of the estate of C. N. Hodges in 1964. Consequently, it could not be possible that the withdrawal of respondent as counsel for Atty. Mirasol was allegedly due to the theory of Attys. Ozaeta, Gibbs and Ozaeta that the heirs of C. N. Hodges succeeded to the whole estate of Linnie Jane Hodges. It is to be noted that both wills provided that upon the death of either spouse, the surviving spouse shall succeed to the entirety of the estate of the deceased.* Obviously this provision gave rise to various interpretations on the part of petitioners, the heirs to both estates, their respective counsel, and re-spondent herein. However, such interpretation is a matter of opinion, the validity of which is presently under litigation in the special proceedings adverted to. Moreover, the evidence is bereft of any finding that the heirs of Linnie Jane Hodges and Charles Hodges were unduly prejudiced by the appearance of respondent as counsel for petitioner Magno, and Atty. Mirasol. On the contrary, Joe Hodges, an heir of Charles N. Hodges and his counsel, J. A. Hodges, Louise Hodges, and the Higdon family, all of whom are heirs of Linnie Jane Hodges, through their respective counsel, signed the Motion dated January 24, 1964 (Exh. D & 4), showing their conformity to the fees for services rendered by respondent and the cases in which respondent shall continue as counsel. Furthermore, in a pleading dated December 17, 1964 (Exh. 28) petitioner Magno agreed to respondent's claim for additional compensation considering the value of the estate and "considering further, the amount of compensation already paid to Atty. Allison J. Gibbs, who is comparatively new in this case." In this connection it is well-settled that the duties of an administrator of an es-tate is to assemble the properties of the es-tate, pay the debts, and distribute the resi-due among the heirs entitled thereto in accor-dance with the orders of a competent court. These, precisely were the duties of petitioner Magno as administratrix of Linnie Jane Hodges' estate and Atty. Mirasol as administrator of C. N. Hodges' estate. As such they did not assume any interest adverse to that of the heirs of Linnie Jane Hodges and Charles N. Hodges. The same can be said of respondent, as counsel for both administratrix and co-administrator.

If ever respondent filed suits against Joe Hodges and Howard Hodges, heirs of Charles Hodges, and Era Bowman and Emma Howell, heirs of Linnie Jane Hodges, they were in pursuance of his claim for attorneys fees for services rendered and damages suffered by him. These suits have no relation whatsoever to the es-tates in question. Furthermore when these cases were filed, respondent was no longer representing any of the administrators or heirs of both estates.

It has been established by the evidence appearing on record that upon the filing by petitioner Magno of the "Manifestation" dated June 15, 1964 (Exh. G) relieving re-spondent and his associates (Mirasol and Mediodia) as counsel for Administratrix Magno of the estate of Linnie Jane Hodges, by Attys. Manglapus and Quimpo, who are also counsels for the heirs of Linnie Jane Hodges, the respondent and said associates never appeared as counsel for Administratrix Magno or the heirs of Linnie Jane Hodges. Consequently, neither he nor his associates could be held liable for unauthorized representation. The acts of respondent pertinent to this charge had only to do with the filing of a Motion to hold in abeyance the Manifestation and Urgent Motion of Attys. Manglapus and Quimpo (Exhibit 5) until the court resolves the motion he filed to fix and approve the attorney's

fees of Gellada and Associates in the estate of Linnie Jane Hodges (Exh. H). Moreover, because respondent continued to receive Notices for hearing, pleadings and orders from the Court, he appeared before the Court not as counsel for any of the parties in both estates, although he believed that he was still responsible for the proper conduct of the case, but to apprise the Court of his improper relief and the substitution of new lawyers who have taken over the case. The appearance of Attys. Norberto de la Cruz and Reynaldo Gellada who took over from Attys. Fernando Mirasol and Romeo Mediodia were in connection with paragraph (f) of the Motion dated January 24, 1964 (Exhibits D and 4) previously mentioned, which were agreed upon by the petitioners, the heirs and counsels of both estates.

Respondent was counsel for Fernando Mirasol, co-administrator of the estate of C. N. Hodges until July 24, 1963, when he filed his notice of withdrawal as counsel (Exh. 3). The alleged letters of respondent to Jose Hodges of Lubbock, Texas (Exh. T) dated March 31, 1963 and to J. A. Hodges, dated March 15, 1963 (Exh. U) are immaterial insofar as the charge for unethical solicitation of cases from the heirs of the late Charles Hodges are concerned, because said letters were written while respondent was still counsel for Mirasol. As to the letter purportedly sent by respondent to Mr. and Mrs. J. A. Hodges, the latter replied that they did not wish respondent to resign as estate lawyer. And as regards the letter by respondent to Atty. Clinton of Texas, counsel of J. A. Hodges, it was established that it was not to solicit cases from some of the heirs, but was in answer to Clinton's letter asking how much fees respondent would charge in representing them, to which respondent answered that he was not particular about his fees. At any rate, there is no showing that respondent's services as counsel for any of the parties were engaged after he wrote the alleged "solicitation letters" and neither did respondent appear as counsel for any of the parties of both estates after he was relieved.

It is to be noted that because of this disbarment proceeding the special proceedings in both estates have been suspended. The same is true with Civil Case No. 6886 (Exhibit 44) entitled Leon P. Gellada vs. Era Bowman, et al. We would like to mention in passing that parts of the testimonial evidence and some pleadings have been marked with unsavory remarks and offensive language engendered by personal ill-feelings of counsel of both parties toward each other, which ought to have been carefully avoided as these have unnecessarily delayed proceedings of the cases filed by their respective clients.

It is a well-settled rule 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 must be established by convincing proof (*Go vs. Candoy*, Adm. Case No. 736, October 23, 1967). Thus, as held in one case, the power to disbar attorneys ought always to be exercised with great caution, and should follow only where there is a clear preponderance of evidence against the respondent. For the presumption is - an attorney is innocent of the charges prepared and has performed his duty as an officer of the court in accordance with his oath (*Re Reily*, 7 ALR 89 cited in *In Re Tionko*, 43 Phil. 191).

We submit that the evidence adduced is insufficient to justify the disbarment or suspension from the practice of law of respondent."

We have gone over the record and are of the opinion that the foregoing findings and conclusions insofar as the actuations of respondent are concerned, have been fully established.

WHEREFORE, pursuant to the Solicitor General's recommendation the instant petition is hereby dismissed and respondent Atty. Leon P. Gellada is exonerated of the charges against him. Let a copy of this decision be filed with respondent's record in the Roll of Attorneys.

Concepcion, C.J., Reyes, Zaldivar, Ruiz Castro, Fernando, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

* This particular statement of the Solicitor General does not give the pertinent provisions of both wills in full, the

litigation concerning which is now pending in this Court in two appealed cases.

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