

ALFREDO C. TAJAN, PETITIONER, VS. HON. VICENTE N. CUSI, JR., JUDGE, COURT OF FIRST INSTANCE OF DAVAO, RESPONDENT.

G.R. NO. L-28899. May 30, 1974

Ponente: ANTONIO, J.

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ANTONIO, J.:

In this original action of prohibition petitioner Alfredo C. Tajan challenges the authority of respondent Judge of the Court of First Instance of Davao to hear Administrative Case No. 59 of said court involving a disciplinary action initiated against petitioner as a member of the Philippine Bar.

In a letter dated December 5, 1967 addressed to petitioner Alfredo C. Tajan, he was required by respondent Judge to explain within 72 hours why he should not be removed or suspended from the practice of law for preparing, or causing to be prepared, a petition in court containing factual averments which petitioner knew were false, to wit:

"The records and the transcript of stenographic notes of Misc. Case No. 2968 of this Court show that you prepared and/or caused to be prepared a verified petition for issuance of a new owner's duplicate copy of Transfer Certificate of Title No. T-7312 in favor of Vicente Calongo, alleging therein as grounds therefor, 'That the aforesaid Transfer Certificate was lost by the herein petitioner in his house in Mati, Davao; That in spite of the diligent search of the aforesaid title, the same could not be found and is therefore now presumed to be lost,' and had the petition signed by Atty. Justo Cinco, when you know very well that the owner's duplicate copy has always been in the custody of Municipal judge Bernardo P. Saldares of the Municipality of Kapalong to whom the same was entrusted by Vicente Calongo, and that as a result of the petition, this Court, through the Hon. Vicente P. Bullecer, Presiding Judge of Branch IV, issued an Order on June 28, 1967, directing the Register of Deeds of the City of Davao to issue a new owner's duplicate of Transfer Certificate of Title No. T-7312.

"In view thereof, you are hereby given seventy-two (72) hours from the receipt hereof to explain why you shall not be removed or suspended from the practice of law."

Petitioner, in answer thereto, wrote a letter to respondent Judge on December 7, 1967 denying the material averments of respondent Judge's letter and explaining the circumstances under which he prepared the aforementioned petition.

Apparently not satisfied with petitioner's answer, respondent Judge had his letter filed and docketed as Adm. Case No. 59 against petitioner, and, together with Adm. Case No. 58 against Atty. Justo Cinco, gave due course thereto and set the same for hearing on January 24 and 25, 1968. At the hearing on January 24, 1968, petitioner questioned, among others, the propriety of the proceedings, contending that since the case was one for disbarment, respondent Judge had no jurisdiction over the person of petitioner as well as the subject matter thereof. Petitioner orally moved that respondent Judge inhibit himself from hearing the administrative case in view of the latter's conflicting positions as prosecutor and judge at the same time. The oral motion was denied.

On February 1, 1968, respondent Judge proceeded to hear the evidence against petitioner. At the said hearing

Municipal Judge Saldares testified by more or less reiterating the testimony he previously gave at the hearing of the petition for relief from the order in Misc. Case No. 2968 allowing the issuance of an owner's duplicate of title. The continuation of the hearing was set for April 26, 1968.

On April 15, 1968, petitioner filed the present petition, and on April 17, 1968, this Court gave due course thereto and ordered the issuance of a writ of preliminary injunction upon petitioner's posting of a bond.

Petitioner's thesis is that respondent Judge has no authority on his own motion to hear and determine proceedings for disbarment or suspension of attorneys because jurisdiction thereon is vested, exclusively and originally in the Supreme Court and not in courts of first instance. Petitioner also contends that assuming arguendo that courts of first instance have such authority, the procedure outlined in Rule 139 of the Revised Rules of Court should govern the filing and investigation of the complaint.

We find petitioner's contentions without merit.

1. The power to exclude unfit and unworthy members of the legal profession stems from the inherent power of the Supreme Court to regulate the practice of law and the admission of persons to engage in that practice. It is a necessary incident to the proper administration of justice. An attorney-at-law is an officer of the court in the administration of justice and as such he is continually accountable to the Court for the manner in which he exercises the privilege which has been granted to him. His admission to the practice of law is upon the implied condition that his continued enjoyment of the right conferred, is dependent upon his remaining a fit and safe person to exercise it. When it appears by acts of misconduct that he has become unfit to continue with the trust reposed upon him, his right to continue in the enjoyment of that trust and for the enjoyment of the professional privilege accorded to him may and ought to be forfeited. The law accords to the Court of Appeals and the Court of First Instance the power to investigate and suspend members of the bar.

The following provisions of Rule 138 of the Revised Rules of Court are applicable:

"SEC. 28. Suspension of attorney by the Court of Appeals or a Court of First Instance. – The Court of Appeals or a Court of First Instance may suspend an attorney from practice for any of the causes named in the last preceding section, and after such suspension such attorney shall not practice his profession until further action of the Supreme Court in the premises.

"SEC. 29. Upon suspension by Court of Appeals or Court of First Instance, further proceedings in Supreme Court. Upon such suspension, the Court of Appeals or the Court of First Instance shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement, of the facts upon which the same was based. Upon receipt of such certified copy and statement, the Supreme Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the attorney from his office as such as the facts warrant.

"SEC. 30 Attorney to be heard before removal or suspension. ----- No attorney shall be removed or suspended, from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel. But if upon reasonable notice he fails to appear and answer the accusation, the court may proceed to determine the matter ex parte."

These provisions were taken from Sections 22, 23 and 25, respectively, of the Code of Civil Procedure, which read:

'SEC. 22. Suspension of lawyers. – Courts of First Instance may suspend a lawyer from the further practice of his profession for any of the causes named in the last preceding section, and after such suspension such lawyer will not be privileged to practice his profession in any of the courts of the Islands until further action of the

Supreme Court in the premises.

"SEC. 23. Proceedings upon suspension. – Upon such suspension the judge of the Court of First Instance ordering the suspension shall forthwith transmit to the Supreme Court a certified copy of the order of suspension and a full statement of the facts upon which the same was based. Upon the receipt of such certified copy and statement, the Supreme Court shall make full investigation of the facts involved and make such order revoking or extending the suspension, or removing the lawyer permanently from the roll as it shall find the facts to warrant.

"SEC. 25. Hearing of charges. – No lawyer shall be removed from the roll or be suspended from the performance of his profession until he has had full opportunity to answer the charges against him, and to produce witnesses in his own behalf and to be heard by himself and counsel, if he so desires, upon reasonable notice. But if upon reasonable notice the accused fails to appear and answer the accusation, the court may proceed to determine the matter ex parte."

2. It should be observed that proceedings for the disbarment of members of the bar are not in any sense a civil action where there is a plaintiff and the respondent is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministrations of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. The court may therefore act upon its own motion and thus be the initiator of the proceedings, because, obviously the court may investigate into the conduct of its own officers.[1] Indeed it is not only the right but the duty of the Court to institute upon its own motion, proper proceedings for the suspension or the disbarment of an attorney, when from information submitted to it or of its own knowledge it appears that any attorney has so conducted himself in a case pending before said court as to show that he is wanting in the proper measure of respect for the court of which he is an officer, or is lacking in the good character essential to his continuance as an attorney. This is for the protection of the general public and to promote the purity of the administration of justice.

3. Procedural due process requires that no attorney may be "removed or suspended from the practice of his profession, until he has had full opportunity upon reasonable notice to answer the charges against him, to produce witnesses in his own behalf, and to be heard by himself or counsel" (Sec. 30, Rule 138, Revised Rules of Court).[2]

While the aforecited Sec. 30 of Rule 138 does not state what is a reasonable notice, Sec. 9 of Rule 139, of the Revised Rules, provides that as far as applicable, the procedure outlined by the preceding sections of Rule 139 "shall govern the filing and investigation of complaints against attorneys in the Court of Appeals or in Courts of First Instance." Section 2 of Rule 139, provides that the respondent lawyer in disciplinary proceedings is granted 10 days from service of a copy of the complaint within which to file his answer. It is desirable, therefore, that a similar period should be granted by the Court of First Instance to attorneys charged before it, for the purpose of uniformity in procedure. We find, however, that in the case at bar, petitioner not only failed to question as unreasonable, the period granted to him by the court within which to answer the complaint, but actually was not substantially prejudiced thereby as he filed his answer to the complaint within the period of 72 hours from receipt thereof.

Petitioner claims that pursuant to Section 9 of Rule 139, which provides that as far as may be applicable, the procedure for the investigation by the Solicitor General of complaints against lawyers referred to said official by

the Supreme Court shall govern the filing and investigation of complaints against lawyers in the Court of Appeals and in Courts of First Instance, the Solicitor General, and not respondent Judge, should be the one to conduct the present investigation. Sections 3 to 6 of Rule 139 are not applicable to the investigation of complaints against attorneys in the Court of Appeals and in Courts of First Instance. The investigation by the Solicitor General in Section 3 of Rule 139 refers to complaints referred to said office by this Court and not to investigations in suspension proceedings before the Court of Appeals or Courts of First Instance, because Sections 28 to 30 of Rule 138 authorize said courts and confer upon them the power to conduct the investigation themselves, subject to another and final investigation by the Supreme Court in the event of suspension of the lawyer. On the basis of the certified copy of the order of suspension and the statement of the facts upon which the same is based, required by Section 29 of Rule 138, the Supreme Court "shall make full investigation of the facts involved and make such order revoking or extending the suspension or removing the attorney from his office as such, as the facts warrant." In other words, under such circumstances the intervention of the Solicitor General would, therefore, be unnecessary.

WHEREFORE, the present petition is denied, and the writ of preliminary injunction previously issued by this Court is ordered dissolved, with costs against petitioner.

Zaldivar, (Chairman), Fernando, Barredo, Fernandez, and Aquino, JJ., concur.

[1] "The practice regulating disbarment proceedings is not as we have noted regulated by statute, but all courts of general jurisdiction have at all times in the history of the law possessed the inherent power to suspend and disbar attorneys for professional misconduct of such a character as showed them to be unworthy to hold the place of officers of the court; and the books are full of cases in which the court, on its own motion, has instituted proceedings like this. Indeed, we think that it is not only the right, but the duty, of a judge of a circuit court to institute, upon his own motion, proper proceedings for the suspension or disbarment of an attorney, when from information laid before him, or from his personal knowledge, it appears to his satisfaction that the attorney is so demeaning himself as to be unworthy to continue as an officer of the Court.

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"In Rice vs. Com., 18 B. Mon. 472, which was a disbarment proceeding, this court, in answering an objection that the judge of the circuit court did not have authority to institute, on his own motion, the proceeding said:

"This objection is founded on a misconception as well of the power as of the duty of the court. The defendant in the rule was an attorney at law and an officer of the court. All courts have the power to control and regulate, to a certain extent, the conduct of their officers; and to inflict on them for their official misconduct such punishment as the law prescribes. If a court have knowledge of the existence of such official misconduct on the part of any of its officers it not only has the power but it is its duty to institute an appropriate proceeding against the offender and or bring him, if guilty, to condign punishment. And it is much to be regretted that this duty, which the law devolves upon the court of the country is so little regarded and that the obligations which it imposes are so frequently overlooked or neglected.'

"In Walker vs. Com., 8 Bush, 86, it was again said:

'It is a well-established rule of common law that courts may inquire into the conduct of their officers, such as attorney's and counselors who practice in their courts, and punish for offenses.'

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"In Ex parte Wall, 107 U.S. 265, 2 Sup. Ct. 569, 27 L. Ed. 552, the Supreme Court, quoting with approval from an opinion by Chief Justice Sharswood, said:

'We entertain no doubt that a court has jurisdiction without any formal complaint or petition, upon its own motion, to strike the name of an attorney from the roll in a proper case, provided he has had reasonable notice, and been afforded an opportunity to be heard in his defense.' " (Lenihan vs. Commonwealth, 176 S. W. 948. 953.)

[2] In re Macdougall, 3 Phil., 70 (1903); In re Calderon, 5 Phil., 658 (1906); In re Cuenco, 41 Phil., 32 (1920).

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