

**RUBEN P. MORALES, RUDY GUSI, ENRIQUETA GUSI, PEDRITO GUSI, REMEGIAS ORTEGA, LADISLAO ORTEGA, MARGARITA ORTEGA, JULITO VISCA, FLORENCIO VILLARESES, MANUEL PANAGSAGAN, PEDRO GERON...**

*G.R. No. 73576. April 29, 1987*

Ponente: CORTES, J.

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**CORTES, J.:**

This special civil action for certiorari and prohibition was filed on February 10, 1986 to review and nullify the Resolution dated January 13, 1986 rendered by the respondent Judge Job F. Fabello in Criminal Case No. SF-547 entitled "People of the Philippines vs. Ruben Morales, et al." for Qualified Theft.

On September 24, 1986 the Second Division of this Court issued a Resolution, the substantive part of which is quoted below:

Reference was made in the petition filed in this case that an administrative complaint was presented by petitioners herein against Judge Job F. Fabello, Acting Municipal Circuit Trial Court Judge of the 3<sup>rd</sup> Municipal Circuit Trial Court of Looc, Romblon. Said administrative complaint was docketed in this Court as Administrative Matter No. R-409-MTJ, and entitled "Ruben P. Morales, et al. versus Judge Job F. Fabello."

From our perusal of the record of said administrative case, We find that on July 9, 1986, there was issued by the Regional Trial Court of Romblon, Branch LXXXII, in Criminal Case No. OD-179, entitled "The People of the Philippines versus Ruben P. Morales, et al." for qualified theft, an order indicating therein that the said criminal case against the accused therein, Ruben P. Morales, et al., had been ordered provisionally dismissed upon motion of the Acting Provincial Fiscal who found, after reinvestigation, that the prima facie case for qualified theft against the accused therein had been overcome and rebutted.

In view of the circumstances, petitioners' counsel is required to inform within ten (10) days from notice, why the present petition for certiorari and prohibition should not be deemed now moot and academic considering that the criminal action which is the subject of the petition filed in the instant case had apparently been already dismissed.

SO ORDERED.

Notice of the Resolution was received by an employee in the Office of the petitioners' counsel of record on September 30, 1986. For failure to comply with the above Resolution the Court resolved on January 21, 1987 to require Atty. Arturo M. de Castro, the petitioners' counsel of record, to SHOW CAUSE why disciplinary action should not be taken against him for such failure and to FILE the required information within ten (10) days from notice. On February 9, 1987 Atty. de Castro complied with the Resolution requiring him to SHOW CAUSE stating that the case was a pro bono case for which he rendered services absolutely free of charge; that because of the distance of the lower court from his office, he advised the petitioners, his clients, to avail themselves of the Citizens Legal Assistance Office (CLAO) which they did, and the proceedings in the lower court leading to the

dismissal of the charges were handled by the CLAO; that the records of the case were brought by the respondents (sic) to Romblon for use of their local counsel.

Atty. de Castro explains his failure to comply with the Resolution of September 24, 1986, thus:

4. The Resolution dated September 24, 1986 was received by Mr. Antonio Labrador who did not turn it over to Atty. Arturo M. De Castro, but sent it to the petitioners on instruction of Mr. Severino Francisco, Asst. Office Manager of De Castro & Cagampang Law Offices. Mr. Antonio Labrador failed to follow up the matter because of some serious personal problems and eventually he resigned from his temporary employment with Atty. De Castro on December 15, 1986. (p, 21 Rollo)

Two issues are involved:

1. Whether the present petition for certiorari and prohibition should not be deemed moot and academic considering that the criminal action which is the subject of the petition filed in the instant case has apparently been dismissed.

In the EXPLANATION filed on February 9, 1987 Atty. De Castro informed the Court "that indeed the petition has been rendered moot and academic by the dismissal of the criminal cases and eventual release of petitioners from detention."

2. Whether disciplinary action should be taken against Atty. De. Castro for failure to comply with the September 24, 1986 Resolution requiring him to furnish this Court the information required.

Atty. De Castro gave an explanation of his failure to comply with the requirements of the Resolution within the period given. Considering the circumstances, the failure merits no disciplinary action. However, admonition[1] is in order for Atty. De Castro's failure to observe the prescribed procedure and requisites for substitution of counsel and to supervise adequately the handling of notices to his office. Whatever arrangement Atty. De Castro had made with his pro bono clients, the fact remains that he remained counsel of record in the present petition before this Court. The requirements for substitution of counsel had not been observed.[2]

As to the failure of an employee to refer the Resolution to him, this Court has ruled that "(I)it is the duty of counsel adopt and strictly maintain a system that efficiently takes into account all court notices sent to him. And for want of diligent supervision, the inexcusable negligence of (his employee) is imputable to the counsel." (Baring v. Cabahug, L-233229, July 20, 1967, 20 SCRA 696, 699)

Considering the dismissal of the criminal action which is the subject of this petition for certiorari and prohibition and the petitioners's eventual release, this petition has become moot and academic. The Court resolved to DISMISS the petition. The explanation of Atty. Arturo M. De Castro on why disciplinary action should not be taken against him is NOTED with the admonition to observe the procedure for substitution as counsel of record, and to adopt and strictly maintain a system that will efficiently take into account all court notices sent to him.

### **SO ORDERED.**

Fernan, (Chairman), Gutierrez, Jr., Paras, Padilla, and Bidin, JJ., concur.

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[1] Tobias v. Veloso, No. L-40224, September 23, 1980, 100 SCRA 177, 184 where admonition is distinguished from warning and from reprimand.

[2] As enumerated in Yu v. Court of Appeals, G.R. No. 56766, February 28, 1985, 135 SCRA 186, the requirements are as follows: (1) filing of a written application for substitution; (2) written consent of the client; (3)

written consent of the lawyer to be substituted, if such consent can be obtained, and (4) in case such written consent cannot be procured, then application for substitution must be accompanied with proof of service of notice of such motion in the manner required by the rules, on the attorney to be substituted. These requisites were laid down in the case of *U.S. v. Borromeo*, 20 Phil. 189 decided in 1911 and reiterated in *Aban v. Enage*, L-30666, February 25, 1986, 120 SCRA 773 and *Philippine Apparel Workers Union v. National Labor Relations Commission*, L-50320, October 27, 1983, 125 SCRA 391.

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