

FIRST DIVISION

[G.R. NO. 169517, March 14, 2006]

**ROGELIO A. TAN, NORMA TAN AND MALIYAWAO PAGAYOKAN,
PETITIONERS, VS. BENEDICTO M. BALAJADIA, RESPONDENT.**

D E C I S I O N

YNARES-SANTIAGO, J.:

Before us is an original petition^[1] for contempt filed by petitioners Rogelio Tan, Norma Tan and Maliyawao Pagayokan against respondent Benedicto Balajadia.

Petitioners allege that on May 8, 2005, respondent filed a criminal case against them with the Office of the City of Prosecutor of Baguio City for usurpation of authority, grave coercion and violation of city tax ordinance due to the alleged illegal collection of parking fees by petitioners from respondent. In paragraph 5 of the complaint-affidavit, respondent asserted that he is a "practicing lawyer based in Baguio City with office address at Room B-207, 2/F Lopez Building, Session Road, Baguio City."^[2] However, certifications issued by the Office of the Bar Confidant^[3] and the Integrated Bar of the Philippines^[4] showed that respondent has never been admitted to the Philippine Bar. Hence, petitioners claim that respondent is liable for indirect contempt for misrepresenting himself as a lawyer.

In his Comment,^[5] respondent avers that the allegation in paragraph 5 of the complaint-affidavit that he is a practicing lawyer was an honest mistake. He claims that the secretary of Atty. Paterno Aquino prepared the subject complaint-affidavit which was patterned after Atty. Aquino's complaint-affidavit.^[6] It appears that Atty. Aquino had previously filed a complaint-affidavit against petitioners involving the same subject matter.

Respondent claims that two complaint-affidavits were drafted by the same secretary; one for the May 5, 2005 parking incident at 10:00 o'clock in the morning and another for the parking incident on the same date but which occurred at 1:00 o'clock in the afternoon. Respondent insists that the complaint-affidavit regarding the 1:00 o'clock parking incident correctly alleged that he is "a businessman with office address at Room B-204, 2/F Lopez Building, Session Road, Baguio City."^[7] However, the complaint-affidavit regarding the 10:00 o'clock parking incident, which is the subject of the instant petition, erroneously referred to him as a practicing lawyer because Atty. Aquino's secretary copied verbatim paragraph 5 of Atty. Aquino's complaint-affidavit. Hence, it was inadvertently alleged that respondent is a "practicing lawyer based in Baguio City with office address at Room B-207, 2/F Lopez Building, Session Road, Baguio City," which statement referred to the person of Atty. Aquino and his law office address.

Liza Laconsay, Atty. Aquino's secretary, executed an affidavit^[8] admitting the

mistake in the preparation of the complaint-affidavit. Respondent alleged that he did not read the complaint-affidavit because he assumed that the two complaint-affidavits contained the same allegations with respect to his occupation and office address. Respondent claims that he had no intention of misrepresenting himself as a practicing lawyer.

In their Reply,^[9] petitioners reiterate that respondent should be made liable for indirect contempt for having made untruthful statements in the complaint-affidavit and that he cannot shift the blame to Atty. Aquino's secretary.

The sole issue for resolution is whether respondent is liable for indirect contempt.

Section 3(e), Rule 71 of the Rules of Court provides:

Section 3. *Indirect contempt to be punished after charge and hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

x x x x

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

x x x x.

In several cases,^[10] we have ruled that the unauthorized practice of law by assuming to be an attorney and acting as such without authority constitutes indirect contempt which is punishable by fine or imprisonment or both. The liability for the unauthorized practice of law under Section 3(e), Rule 71 of the Rules of Court is in the nature of criminal contempt and the acts are punished because they are an affront to the dignity and authority of the court, and obstruct the orderly administration of justice. In determining liability for criminal contempt, well-settled is the rule that intent is a necessary element, and no one can be punished unless the evidence makes it clear that he intended to commit it.^[11]

In the case at bar, a review of the records supports respondent's claim that he never intended to project himself as a lawyer to the public. It was a clear inadvertence on the part of the secretary of Atty Aquino. The affidavit of Liza Laconsay attesting to the circumstances that gave rise to the mistake in the drafting of the complaint-affidavit conforms to the documentary evidence on record. Taken together, these circumstances show that the allegation in paragraph 5 of respondent's complaint-affidavit was, indeed, the result of inadvertence.

Respondent has satisfactorily shown that the allegation that he is a practicing lawyer was the result of inadvertence and cannot, by itself, establish intent as to make him liable for indirect contempt. In the cases where we found a party liable for the unauthorized practice of law, the party was guilty of some overt act like signing court pleadings on behalf of his client;^[12] appearing before court hearings as an attorney;^[13] manifesting before the court that he will practice law despite being