

OCA CIRCULARS NO. 58-2002, October 07, 2002

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TO:

THE COURT OF TAX APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI' A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI' A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC DEFENDER'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT:

SUSPENSION OF ATTY. ALBERTO C. MAGULTA FOR ONE (1) YEAR

For the information and guidance of all concerned, quoted hereunder is the decision of the Third Division of the Supreme Court in Administrative Case No. 5713 entitled "Dominador P. Burbe vs. Arty. Alberto C. Magulta" dated 10 June 2002, to wit:

"After agreeing to take up the cause of a client, a lawyer owes fidelity to both cause and client, even if the client never paid any fee for the attorney-client relationship. Lawyering is not a business; it is a profession in which duty to public service, not money, is the primary consideration.

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xxx. A lawyer-client relationship was established was established from the first moment complainant asked respondent for legal advice regarding the former's business. To constitute professional employment, it is not essential that the client employed the attorney professionally on any previous occasion. It is not necessary that any retainer be paid, promised, or charged; neither is it material that the attorney consulted did not afterward handle the case for which his service had been sought.

If a person, in respect to business affairs or troubles of any kind, consults a lawyer with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces with the consultation, then the professional employment is established.[7]

Likewise, a lawyer-client relationship exists notwithstanding the close personal relationship between the lawyer and the complainant or the nonpayment of the former's fees.[8]Hence, despite the fact that complaint was kumpadre of a law partner of respondent, and that respondent dispensed legal advice to complainant as a personal favor to the kumpadre, the lawyer was duty-bound to file the complaint had agreed to prepare — and had actually prepared — at soonest possible time, in order to protect the clients interest. Rule 18.03 of the Code of Professional Responsibility provides that lawyers should not neglect legal matters entrusted to them.

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In failing to apply to the filing fee the amount given by complainant — as evidenced by the receipt issued by the law office of respondent — the latter also violated the rule that lawyers must be scrupulously careful in handling

money entrusted to them in their professional capacity.[15] Rule 16.01 of the Code of Professional Responsibility states that lawyers shall hold in trust all moneys of their clients and properties that may come into their possession.

Lawyers who convert funds entrusted to them are in gross violation of professional ethics and are guilty of betrayal of public confidence in the legal profession.[16] It may be true that they have a lien upon the client's funds, documents and other papers that have lawfully come into their possession; that they may retain them until their lawful fees and disbursements have been paid; and that they may apply such funds to satisfaction of such fees and disbursements. However, these considerations do not relieve them of their duty to promptly account for the moneys they received. Their failure to do so constitutes professional misconduct.[17] In any event, they must still exert all effort to protect their client's interest within the bounds of law.

If much is demanded from an attorney, it is because the entrusted privilege to practice law carries with it correlative duties not only to the client but also to the court, to the bar, and to the public.[18] Respondent fell short of this standard when he converted into his legal fees the filing fee entrusted to him by his client and thus failed to file the complaint promptly. The fact that the former returned the amount does not exculpate him from his breach of duty.

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WHEREFORE, Atty. Alberto C. Magulta is found guilty of violating Rules 16.01 and 18.03 of the Code of Professional Responsibility and is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon receipt of this Decision, xxx"

Respondent received a copy of the decision on 26 June 2002.

7 October 2002

PRESBITERO J. VELASCO, JR.

Court Administrator

[7] Hilado v. David, 84 Phil. 569, September 21, 1949

[8] Junio v. Grupo, AC No. 5020, December 18, 2001

[15] Medina v. Bautista, 12 SCRA 1, September 26, 1964

[16] Lipin-Nabor v. Bateria, supra; Gonato v. Adaza, 328 mbang, 196 SCRA 23, April 1991.

[17] Tancheco v. De Dumo, 172 SCRA 760, April 25, 1989.

[18] Aromin v. Boncavil, supra.

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