

OCA CIRCULAR NO. 59-2003, May 19, 2003

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TO:

THE COURT OF 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 DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT :

SUSPENSION FROM THE PRACTICE OF LAW OF ATTY. ILUMINADO M. MANUEL

For the information and guidance of all concerned, quoted hereimder is the decision of the Court's First Division in Administrative Case No. 5811 entitled "Maritess Garcia vs. Atty. Iluminado M. Manuel" dated January 20, 2003, to wit:

"For our resolution is the .administrative complaint for disbarment filed by complainant Maritess Garcia against respondent Atty. Iluminado M. Manuel for gross misconduct for ineffectively handling her case and failing to return to her the money she gave ton.

x x x x

Sometime in February 1999, Maritess Garcia, divorced from husband Oscar Fauni, approached respondent- for legal advice concerning child support and her condominium unit in San Juan, Metro Manila, which-her erstwhile husband refused, to vacate. Respondent agreed to handle her case at a fee of P70,000. Finding respondent's fees reasonable, complainant entrusted to respondent all pertinent papers for Ms study. An advance fee of P10,000 was then asked by respondent from complainant.

On 17 February 1999, a retainer agreement was entered by complainant with respondent, calling for the payment of (1) P35,000 payable in weekly installments of preferably P5,000 but not less than P2,000; (2) P35,000 to come from the proceeds of the sale of her condominium unit or from any amount that miaht be recovered from Mr. Fauni, except that pertaining to child support; (3) a contingent fee of 5% of any amount that, might be recovered from Mr. Faum except, that for child support. Incidental expenses, such as iilmg fees and postage fees, were also made chargeable to the account, of the complainant.[1] On the same occasion, complainant gave respondent the advance fee of P10,000.[2] Thereafter, respondent informed complainant that, he needed P10,000 for the filing fees.

On 4 March 1999, complainant gave respondent P10,000 for the filing fees in the ejectment, case.[3] She, however, asked respondent as to why the fees cost so much. Respondent, replied thai filing fees are based on a certain percentage of the price of the property and the amount of child support, prayed for. A demand letter to vacate, the premises of the condominium dated 4 March 1999 was then prepared by respondent and mailed to

Mr. Faiini on 8 March 1999.[4]

In the interim, complainant made several follow-ups with respondent inquiring particularly as to whether the ejectment case had already been filed. Through a telephone conversation with respondent on 7 April 1999, complainant found out that the ejectment case had not been filed yet by respondent. Agitated by the information, complainant immediately went to respondent's residence. An altercation between respondent and complainant took place. After serious exchange of words, respondent returned to complainant all of her documents. No amount of money was, however, retained by respondent to complainant despite the latter's demand for its return.

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A lawyer may be disciplined for any conduct, in, his professional or private capacity, that renders him unfit to continue to be an officer of the court. Canon 1 of the Code of Professional Responsibility commands all lawyers to uphold at all time the dignity and integrity of the legal profession. Specifically, Rule 1.01 thereof provides:

Rule 1.01—A lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct.

There is no need to stretch one's imagination to arrive at an inevitable conclusion that respondent committed dishonesty and abused the confidence reposed in him by the complainant. Respondent Manuel fully knew that the jurisdictional requirement of demand to vacate had to be complied with before an ejectment case could be filed,[8] and yet he asked complainant to raise the filing fee of P10,000 as early as 17 February 1999.[9] He likewise cannot take refuge behind his claim, that he did not file the ejectment case because he had not yet received the registry return card. The records reveal that despite Atty. Manuel's receipt of the registry return card on 24 March 1999[10] he still did not file an ejectment case.

Finally, if indeed respondent was in good faith in dealing with complainant, he should have informed or advised the complainant of the status of her case or, at the least, responded to her inquiries. Canon 18, Rule 18.04 provides:

Rule 18.04 - A lawyer shall keep the client informed of the status of his case and shall respond within reasonable time to the client's request for information.

The relationship of lawyer-client being one of confidence, there is ever present the need for the client to be adequately and fully informed of the development of the case and should not be left, in the dark as to the mode and manner in which his interests are being defended. It is only thus that the trust and faith in the counsel may remain unimpaired.[11]

Respondent also failed to comply with the norms embodied, in Canon 16 of the Code of Professional Responsibility, to wit:

Canon 16. A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Rule 16.01 — A lawyer shall account for all money and property collected or received for or from the client.

In the instant case, respondent received the amount of P10,000 specifically for filing fees in the ejectment case. Thus, he was under the obligation to render an accounting of the same. The highly fiduciary and confidential relation of attorney and client requires that the lawyer should promptly account for all the funds received from, or held by him for, the client.[12]

Moreover a lawyer who obtains possession of the funds and properties of his client, in the course of Ms

professional employment shall deliver the same to his client (a) when they become due or (b) upon demand.[13] In the instant case, respondent failed to account the return of P10,000 for the filing, fees despite complainant's repealed demands.

We find untenable respondent's claim that, since complainant was already in arrears with his fees, it was proper for him to apply the filing fees to his attorney's fees/ It has been held that an attorney's lien is not an excuse for a lawyer's non-remittance of accounting.[14] And while a lawyer is allowed to apply so much of the client's funds as may be necessary to satisfy his lawful fees and disbursements, the lawyer is however under the obligation to promptly thereafter notify his client.[15] Nothing on record supports respondent's claim, that complainant was adequately notified as to the application of the P10,000 (for the filing fees) to her arrears.

Besides, the receipt dated 4 March 1999 states that:

In the event that whatever is left of the P10,000 after the filing of the ejectment case is insufficient for the filing fee in the other collection case, the said balance shall be applied to the installment due for the retainer agreement.

A close reading of the receipt reveals that while it authorizes respondent to apply whatever would be left of the P10,000 (intended for the filing fees) to the retainer fee, it clearly presupposes that the filing fee in the ejectment cases must have been paid already.

We find unwarranted respondent's claim that complainant impliedly terminated his services when she asked for the return of all her documents. Complainant was upset by respondent's non-filing of the ejectment case. She honestly believed that respondent would already file the ejectment case after giving him the P10,000 of the filing fees. It was thus a spontaneous and natural reaction for her to confront respondent of his inaction. Her belligerence arose from her zealotry to have her former husband ejected from her condominium unit. Assuming that complainant terminated respondent's services, respondent, would not, nonetheless, be relieved of his duty to render the necessary accounting for all the monies received by him from complainant.

Respondent's action erode the public perception of the legal profession. They constitute misconduct for which he may be suspended, following Section 27, Rule 138 of the Rules of Court, which provides:

Section 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefore.— A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party without authority to do so.

Complainant asks that respondent be disbarred. However, we find that suspension from the practice of law is sufficient to discipline respondent. The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and member of the bar. [17] While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers, where the evidence calls for it, we will also not disbar him where a lesser penalty will suffice to accomplish the desired end.[18] In this case, we find suspension to be sufficient sanction against respondent. Suspension, we may add, is not primarily intended as punishment, but as a means to protect the public and the legal profession.[19]

WHEREFORE, respondent Atty. Iluminado M. Manuel is found GUILTY of gross misconduct and is SUSPENDED from the practice of law for a period of six (6) months, effective immediately, with a warning that a repetition of the same or similar act will be dealt with more severely. Further, respondent is ordered to render, within thirty (30) days from notice of this Resolution, an accounting of all monies received by him from complainant.

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Copy of this Resolution was received by respondent on February 4, 2003. His Motion for Reconsideration of the said resolution was denied with finality on

March 19, 2003

PRESBITERO J. VELASCO, JR.

Court Administrator

- [1]Exhibit "B" rollo, 4.
- [2] Exhibit "C-1," Rollo, 5.
- [3] Exhibit "C", "Rollo, 5.
- [4] Exhibit "1-B", Rollo, 15.
- [5] TSN, 24, April 2000, 12.
- [6] TSN, 28 February 2000, 9.
- [7] TSN, 24 April 2000, 38.
- [8] Tolentino v. Mangapite, 124 SCRa 741, 745 (1983).
- [12] In re Bamobenger, 49 Phil, 952; 964 (1924)
- [13] Rule 16.03. Canon 16, code of Professional Responsibility.
- [14] Daroy v. Legaspi, 65 SCRA 304, 312 (1975)
- [15] Cannon 16, 16.03, Code of Professional Responsibility
- Rule 16.03— A lawyer deliver the funds and property of his client when due or upon demend. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fee and disbursement, giving notice promptly therefore to his client.
- [17] Tapucar v. Tapucar, 293 SCRA 331, 339-340 (1998)
- [18]Saburdino v. Madrono, A. C. No. 4497, September 26, 2001
- [19] Magat v. Santiago 07 SCRA 1,3 (1980)

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