

LOURDES R. BUSIÑOS, COMPLAINANT, VS. ATTY. FRANCISCO RICAFORT, RESPONDENT.*A.C. No. 4349. December 22, 1997*Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-4349/>**PER CURIAM:**

In a sworn complaint for disbarment dated 31 October 1994 but received by us on 21 November 1994, complainant Lourdes R. Busiños charged respondent Atty. Francisco Ricafort, a practicing lawyer in Oas, Albay, with having committed the crime of estafa under Article 315 (1) (b) of the Revised Penal Code by misappropriating the sum of P32,000.00. Of this amount, P30,000.00 was entrusted to respondent for deposit in the bank account of complainant's husband, while P2,000.00 represented the amount respondent demanded from complainant supposedly for a bond in Civil Case No. 5814, when no such bond was required.

In the resolution of 18 January 1995, we required respondent to comment on the complaint. Despite his receipt of a copy of the resolution, respondent did not comply, compelling us in the resolution of 17 July 1995 to require him to show cause why he should not be disciplinarily dealt with or held in contempt for such failure.

Again respondent failed to comply. Hence in the resolution of 25 September 1996, we ordered him once more to file his comment within ten (10) days from notice, and within the same period, to pay a fine of P1,000.00 or suffer imprisonment of ten (10) days should he fail to so pay. In a Compliance and Motion dated 24 October 1996, respondent transmitted the fine of P1,000.00 by way of postal money order, but asked for five (5) days from date to file his comment. As respondent still failed to so file, we then declared, in the resolution of 2 December 1996, that respondent was deemed to have waived his right to file his comment, and referred the complaint to the Office of the Bar Confidant for reception of complainant's evidence and submission of a report and recommendation thereon.

On 16 October 1997, the Bar Confidant, Atty. Erlinda C. Verzosa, submitted her Report and Recommendation, material portions of which read as follows:

Respondent Atty. Francisco Ricafort stands charged with having misappropriated the sum of P30,000.00 intended for his clients as well as having deceived his clients into giving him the sum of P2,000.00 purportedly to be deposited as a bond in the case he was handling.

Complainant Lourdes R. Busiños is one of the heirs of Pedro Rodrigo who are the defendants in Civil Case No. 1584, apparently a case involving the properties of the late Pedro Rodrigo, father of herein complainant. Respondent was the counsel of record for the defendants in the said case. On July 10, 1994, complainant representing her co-heirs, executed a special power of attorney, appointing and constituting respondent and/or Pedro Rodrigo, Jr. to be her true and lawful attorney-in-fact with the following powers:

"1. To attend to and represent me, testify, or otherwise enter into compromise during the pre-trial stage or other proceedings in Civil Case No. 1584, entitled "Heirs of Rosario Rodrigo-Reantaso, vs. Heirs of Pedro Rodrigo Sr., et al." now pending before the Regional Trial Court, Branch 12, Ligao, Albay;

"2 To demand, collect and receipt for any and all sums of money that may now be deposited in said court by the

defendant Oas Standard High School or hereafter be deposited by said defendant, due and owing to me or said Heirs of Pedro Rodrigo Sr., representing the rentals of said defendants for the lease of the property involved in said case; and

“3 To sign, authenticate, issue and deliver any and all deeds, instruments, papers and other records necessary and pertinent to the above stated transactions.”

On August 10, 1994, the Regional Trial Court of Ligao, Albay, Br. 12 issued an order, directing the Clerk of Court “to release any and all deposits of rentals made in connection with this case (Civil Case No. 1584) to the defendants Heirs of Pedro Rodrigo through Lourdes Rodrigo Businos who were receiving the rentals from Oas Standard High School prior to the institution of this case.”

In a letter dated August 10, 1994, the Clerk of Court of RTC, Ligao informed herein complainant that respondent had already received the rental deposit of P25,000.00 on eve date (see Annex “C” to the complaint). Respondent also received from Oas Standard High School on August 17, 1994 the sum of P5,000.00 as payment for rental of school site for the month of July 1994 (See Annex “D” to the complaint). The said sum was entrusted to respondent with an obligation on his part to deposit the same in the account of complainant’s husband at PNB, Ligao Branch. Instead, however, of depositing the money, respondent converted the money to his own personal use, and despite several demands, he failed to return the same to complainant. She was thus constrained to file a criminal case for estafa and an administrative case for disbarment against him. Thus, on November 21, 1994, complainant filed the instant administrative case against respondent.

Complainant further accuses respondent for demanding and receiving P2,000.00 from her which he said will be used for the bond in Civil Case No. 1584, but said amount was never used as intended since no bond was required in the said case. Thus, respondent merely pocketed the said amount.

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Complainant, upon questioning by the undersigned, testified that: She authorized respondent to withdraw the money amounting to P35,000.00 representing the rental fee paid by Oas Standard High School from the Clerk of Court, with the instruction to deposit the same in her savings account at the PNB. After she was informed by the court that respondent had already withdrawn the money, she expected in vain to receive the money a week later in Tarlac as respondent failed to effect the deposit of the said sum in her account. She demanded from him to give her the money, but he informed her that he had already spent the same. He promised, though to pay her the said amount. (pp. 7-8, TSN, Reception of Evidence, April 18, 1997). She clarified that respondent withdrew only the sum of P30,000.00 from the Clerk of Court, while the P5,000.00 was withdrawn by respondent from Oas Standard High School (TSN, p. 8). Despite several demands, both from her and her lawyer, respondent failed to make good his promise to give her the money he withdrew from the Clerk of Court and Oas Standard High School (TSN, pp. 11-13). She was then constrained to file a criminal case for estafa and an administrative case against respondent sometime in November of 1994 to recover the money in question (TSN, pp. 14-16). On their third hearing of the estafa case sometime in 1995, respondent came with the money and paid complainant inside the courtroom (TSN, pp. 15, 19-20). Because of this development, she did not anymore pursue the estafa case against respondent (TSN, p. 17). She has no intention, however, of withdrawing the instant complaint (TSN, p. 18).

She further testified that respondent demanded from her the sum of P2,000.00 for the bond required in the civil case. (TSN, p. 18). Respondent did not give her a receipt for the said amount. (TSN, p. 19). Respondent gave back the P2,000.00 to complainant. He paid complainant a total of P60,000.00 representing the money he withdrew from the Clerk of Court and Oas Standard High School, the P2,000.00 he got from complainant and attorney’s fees, which he undertook to foot as a way of settlement. (TSN, p. 19).

Although complainant failed to submit the original or certified true copies of the documents in support of her

complaint against respondent, respondent's repeated failure to comply with several resolutions of the Court requiring him to comment on the complaint lends credence to the allegations of the complainant. It manifests his tacit admission thereto. We have no other alternative, therefore, but to accept the said documents at their [sic] face value.

There is no doubt that respondent is guilty of having used the money of his clients without their consent. As the evidentiary value of the documents should be given more weight than the oral testimony of complainant, we place the amount illegally used by respondent at P30,000.00 and not P35,000.00 as claimed by complainant. Respondent's illegal use of his client's money is made more manifest [by] his letters to complainant, all promising the latter to make good his promise to pay the money he withdrew from the Clerk of Court and Oas Standard High School (See Annex "E" to the complaint).

It bears emphasis that a lawyer, under his oath, pledges himself not to delay any man for money or malice and is bound to conduct himself with all good fidelity to his clients. He is obligated to report promptly the money of his client that has come into his possession. He should not commingle it with his private property or use it for his personal purposes without his client's [sic] consent. He should maintain a reputation for honesty and fidelity to private trust (*Daroy vs. Legaspi*, 65 SCRA 304).

Money collected by a lawyer in pursuance of a judgment in favor of his clients is held in trust and must be immediately turned over to them (*Aya vs. Bigornia*, 57 Phil. 8).

Respondent, by converting the money of his clients to his own personal use without their consent, and by deceiving the complainant into giving him the amount of P2,000.00 purportedly to be used as a bond which was not required, is, undoubtedly, guilty of deceit, malpractice and gross misconduct. By so doing, he betrays the confidence reposed in him by his clients. Not only has he degraded himself but as an unfaithful lawyer he has besmirched the fair name of an honorable profession.

His belated payment of the amount he illegally used and fraudulently obtained do not relieve him from any liability if only to impress upon him that the relation between an attorney and his client is highly fiduciary in its nature and of a very delicate, exacting and confidential character, requiring high degree of fidelity and good faith. In view of that special relationship, lawyers are bound to promptly account for money or property received by them on behalf of their clients and failure to do so constitutes professional misconduct (*Daroy vs. Legaspi*, supra).

Moreover, his repeated failure to comply with the resolutions of the Court, requiring him to comment on the complaint indicate the high degree of irresponsibility of respondent.

PREMISES CONSIDERED, it is respectfully recommended that respondent Atty. Francisco Ricafort be SUSPENDED from the practice of law for a period of ONE (1) YEAR.

While the findings are in order, the penalty recommended is not commensurate to respondent's infractions.

Plainly, respondent breached Section 25 of Rule 138 of the Rules of Court, Rule 1.01 of Canon 1 and Rules 16.01, 16.02 and 16.03 of Canon 16 of the Code of Professional Responsibility which read:

SEC. 25 Unlawful retention of client's funds; contempt.--When an attorney unjustly retains in his hands money of his client after it has been demanded he may be punished for contempt as an officer of the Court who has misbehaved in his official transactions; but proceedings under this section shall not be a bar to a criminal prosecution.

CANON 1- A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

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

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 or property collected or received for or from the client.

Rule 16.02-- A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03-- A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

Respondent's transgressions manifested dishonesty and amounted to grave misconduct and grossly unethical behavior which caused dishonor, not merely to respondent, but to the noble profession to which he belongs, for it cannot be denied that the respect of litigants for the profession is inexorably diminished whenever a member of the Bar betrays their trust and confidence.

This Court has been nothing short of exacting in its demand for integrity and good moral character from members of the Bar. In *Marcelo v. Javier* (A.C. No. 3248, 18 September 1992, 214 SCRA 1, 12-13), reiterated in *Fernandez v. Grecia*, (A.C. No. 3694, 17 June 1993, 223 SCRA 425, 434), this Court declared:

A lawyer shall at all times uphold the integrity and dignity of the legal profession. The trust and confidence necessarily reposed by clients require in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts and the public. The bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. Generally speaking, a lawyer can do honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty and integrity of the profession.

Here, respondent chose to forget that by swearing the lawyer's oath, he became a guardian of truth and the rule of law and an indispensable instrument in the fair and impartial administration of justice -- a vital function of democracy a failure of which is disastrous to society.

Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority. This is specially so, as here, where respondent even deliberately defied the lawful orders of the Court for him to file his comment on the complaint, thereby transgressing Canon 11 of the Code of Professional Responsibility which requires a lawyer to observe and maintain the respect due the courts.

WHEREFORE, for dishonesty, grave misconduct, grossly unethical behavior in palpable disregard of Section 25 of Rule 138 of the Rules of Court, Rule 1.01 of Canon 1 and Rules 16.01, 16.02 and 16.03 of Canon 16 of the Code of Professional Responsibility, aggravated by a violation of Canon 11 thereof, and consistent with the urgent need to maintain the esteemed traditions and high standards of the legal profession and to preserve undiminished public faith in the members of the Philippine Bar, the Court Resolves to DISBAR respondent ATTY. FRANCISCO RICAFORT from the practice law. His name is hereby stricken from the Roll of Attorneys.

This resolution shall take effect immediately and copies thereof furnished the Office of the Bar Confidant, to be appended to respondent's personal record; the National Office and the Albay Chapter of the Integrated bar of the Philippines; the Philippines Judges Association; and all courts of the land for their information and guidance.
SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and Martinez, JJ., concur.

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