

DOMINADOR P. BURBE, COMPLAINANT, VS. ATTY. ALBERTO C. MAGULTA, RESPONDENT.

A.C. No. 5713. June 10, 2002

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

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.

The Case

Before us is a Complaint for the disbarment or suspension or any other disciplinary action against Atty. Alberto C. Magulta. Filed by Dominador P. Burbe with the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) on June 14, 1999, the Complaint is accompanied by a Sworn Statement alleging the following:

“x x x x x x x x

“That in connection with my business, I was introduced to Atty. Alberto C. Magulta, sometime in September, 1998, in his office at the Respicio, Magulta and Adan Law Offices at 21-B Otero Building, Juan de la Cruz St., Davao City, who agreed to legally represent me in a money claim and possible civil case against certain parties for breach of contract;

“That consequent to such agreement, Atty. Alberto C. Magulta prepared for me the demand letter and some other legal papers, for which services I have accordingly paid; inasmuch, however, that I failed to secure a settlement of the dispute, Atty. Magulta suggested that I file the necessary complaint, which he subsequently drafted, copy of which is attached as Annex A, the filing fee whereof will require the amount of Twenty Five Thousand Pesos (P25,000.00);

“That having the need to legally recover from the parties to be sued I, on January 4, 1999, deposited the amount of P25,000.00 to Atty. Alberto C. Magulta, copy of the Receipt attached as Annex B, upon the instruction that I needed the case filed immediately;

“That a week later, I was informed by Atty. Alberto C. Magulta that the complaint had already been filed in court, and that I should receive notice of its progress;

“That in the months that followed, I waited for such notice from the court or from Atty. Magulta but there seemed to be no progress in my case, such that I frequented his office to inquire, and he would repeatedly tell me just to wait;

“That I had grown impatient on the case, considering that I am told to wait [every time] I asked; and in my last visit to Atty. Magulta last May 25, 1999, he said that the court personnel had not yet acted on my case and, for my satisfaction, he even brought me to the Hall of Justice Building at Ecoland, Davao City, at about 4:00 p.m., where he left me at the Office of the City Prosecutor at the ground floor of the building and told to wait while

he personally follows up the processes with the Clerk of Court; whereupon, within the hour, he came back and told me that the Clerk of Court was absent on that day;

“That sensing I was being given the run-around by Atty. Magulta, I decided to go to the Office of the Clerk of Court with my draft of Atty. Magulta’s complaint to personally verify the progress of my case, and there told that there was no record at all of a case filed by Atty. Alberto C. Magulta on my behalf, copy of the Certification dated May 27, 1999, attached as Annex C;

“That feeling disgusted by the way I was lied to and treated, I confronted Atty. Alberto C. Magulta at his office the following day, May 28, 1999, where he continued to lie to with the excuse that the delay was being caused by the court personnel, and only when shown the certification did he admit that he has not at all filed the complaint because he had spent the money for the filing fee for his own purpose; and to appease my feelings, he offered to reimburse me by issuing two (2) checks, postdated June 1 and June 5, 1999, in the amounts of P12,000.00 and P8,000.00, respectively, copies of which are attached as Annexes D and E;

“That for the inconvenience, treatment and deception I was made to suffer, I wish to complain Atty. Alberto C. Magulta for misrepresentation, dishonesty and oppressive conduct;”

x x x x x x x x.[1]

On August 6, 1999, pursuant to the July 22, 1999 Order of the IBP Commission on Bar Discipline,[2] respondent filed his Answer[3] vehemently denying the allegations of complainant “for being totally outrageous and baseless.” The latter had allegedly been introduced as a kumpadre of one of the former’s law partners. After their meeting, complainant requested him to draft a demand letter against Regwill Industries, Inc. -- a service for which the former never paid. After Mr. Said Sayre, one of the business partners of complainant, replied to this letter, the latter requested that another demand letter -- this time addressed to the former -- be drafted by respondent, who reluctantly agreed to do so. Without informing the lawyer, complainant asked the process server of the former’s law office to deliver the letter to the addressee.

Aside from attending to the Regwill case which had required a three-hour meeting, respondent drafted a complaint (which was only for the purpose of compelling the owner to settle the case) and prepared a compromise agreement. He was also requested by complainant to do the following:

- Write a demand letter addressed to Mr. Nelson Tan
- Write a demand letter addressed to ALC Corporation
- Draft a complaint against ALC Corporation
- Research on the Mandaue City property claimed by complainant’s wife

All of these respondent did, but he was never paid for his services by complainant.

Respondent likewise said that without telling him why, complainant later on withdrew all the files pertinent to the Regwill case. However, when no settlement was reached, the latter instructed him to draft a complaint for breach of contract. Respondent, whose services had never been paid by complainant until this time, told the latter about his acceptance and legal fees. When told that these fees amounted to P187,742 because the Regwill claim was almost P4 million, complainant promised to pay on installment basis.

On January 4, 1999, complainant gave the amount of P25,000 to respondent’s secretary and told her that it was for the filing fee of the Regwill case. When informed of the payment, the lawyer immediately called the attention of complainant, informing the latter of the need to pay the acceptance and filing fees before the complaint could be filed. Complainant was told that the amount he had paid was a deposit for the acceptance fee, and that he

should give the filing fee later.

Sometime in February 1999, complainant told respondent to suspend for the meantime the filing of the complaint because the former might be paid by another company, the First Oriental Property Ventures, Inc., which had offered to buy a parcel of land owned by Regwill Industries. The negotiations went on for two months, but the parties never arrived at any agreement.

Sometime in May 1999, complainant again relayed to respondent his interest in filing the complaint. Respondent reminded him once more of the acceptance fee. In response, complainant proposed that the complaint be filed first before payment of respondent's acceptance and legal fees. When respondent refused, complainant demanded the return of the P25,000. The lawyer returned the amount using his own personal checks because their law office was undergoing extensive renovation at the time, and their office personnel were not reporting regularly. Respondent's checks were accepted and encashed by complainant.

Respondent averred that he never inconvenienced, mistreated or deceived complainant, and if anyone had been shortchanged by the undesirable events, it was he.

The IBP's Recommendation

In its Report and Recommendation dated March 8, 2000, the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) opined as follows:

“x x x [I]t is evident that the P25,000 deposited by complainant with the Respcio Law Office was for the filing fees of the Regwill complaint. With complainant's deposit of the filing fees for the Regwill complaint, a corresponding obligation on the part of respondent was created and that was to file the Regwill complaint within the time frame contemplated by his client, the complainant. The failure of respondent to fulfill this obligation due to his misuse of the filing fees deposited by complainant, and his attempts to cover up this misuse of funds of the client, which caused complainant additional damage and prejudice, constitutes highly dishonest conduct on his part, unbecoming a member of the law profession. The subsequent reimbursement by the respondent of part of the money deposited by complainant for filing fees, does not exculpate the respondent for his misappropriation of said funds. Thus, to impress upon the respondent the gravity of his offense, it is recommended that respondent be suspended from the practice of law for a period of one (1) year.”[4]

The Court's Ruling

We agree with the Commission's recommendation.

Main Issue:

Misappropriation of Client's Funds

Central to this case are the following alleged acts of respondent lawyer: (a) his non-filing of the Complaint on behalf of his client and (b) his appropriation for himself of the money given for the filing fee.

Respondent claims that complainant did not give him the filing fee for the Regwill complaint; hence, the former's failure to file the complaint in court. Also, respondent alleges that the amount delivered by complainant to his office on January 4, 1999 was for attorney's fees and not for the filing fee.

We are not persuaded. Lawyers must exert their best efforts and ability in the prosecution or the defense of the client's cause. They who perform that duty with diligence and candor not only protect the interests of the client, but also serve the ends of justice. They do honor to the bar and help maintain the respect of the community for the legal profession.[5] Members of the bar must do nothing that may tend to lessen in any degree the confidence of the public in the fidelity, the honesty, and integrity of the profession.[6]

Respondent wants this Court to believe that no lawyer-client relationship existed between him and complainant, because the latter never paid him for services rendered. The former adds that he only drafted the said documents as a personal favor for the kumpadre of one of his partners.

We disagree. A lawyer-client relationship was established from the very 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 complainant 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 he had agreed to prepare -- and had actually prepared -- at the soonest possible time, in order to protect the client's interest. Rule 18.03 of the Code of Professional Responsibility provides that lawyers should not neglect legal matters entrusted to them.

This Court has likewise constantly held that once lawyers agree to take up the cause of a client, they owe fidelity to such cause and must always be mindful of the trust and confidence reposed in them.[9] They owe entire devotion to the interest of the client, warm zeal in the maintenance and the defense of the client's rights, and the exertion of their utmost learning and abilities to the end that nothing be taken or withheld from the client, save by the rules of law legally applied.[10]

Similarly unconvincing is the explanation of respondent that the receipt issued by his office to complainant on January 4, 1999 was erroneous. The IBP Report correctly noted that it was quite incredible for the office personnel of a law firm to be prevailed upon by a client to issue a receipt erroneously indicating payment for something else. Moreover, upon discovering the "mistake" -- if indeed it was one -- respondent should have immediately taken steps to correct the error. He should have lost no time in calling complainant's attention to the matter and should have issued another receipt indicating the correct purpose of the payment.

The Practice of Law -- a Profession, Not a Business

In this day and age, members of the bar often forget that the practice of law is a profession and not a business.[11] Lawyering is not primarily meant to be a money-making venture, and law advocacy is not a capital that necessarily yields profits.[12] The gaining of a livelihood is not a professional but a secondary consideration.[13] Duty to public service and to the administration of justice should be the primary consideration of lawyers, who must subordinate their personal interests or what they owe to themselves. The practice of law is a noble calling in which emolument is a byproduct, and the highest eminence may be attained without making much money.[14]

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 the 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 the 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.

On the other hand, we do not agree with complainant's plea to disbar respondent from the practice of law. The power to disbar must be exercised with great caution. Only in a clear case of misconduct that seriously affects the standing and the character of the bar will disbarment be imposed as a penalty.[19]

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 his receipt of this Decision. Let copies be furnished all courts as well as the Office of the Bar Confidant, which is instructed to include a copy in respondent's file.

SO ORDERED.

Sandoval-Gutierrez, and Carpio, JJ., concur.
Puno, J., (Chairman), abroad, on official leave

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[1] Records, pp. 2-3.

[2] Ibid., p. 15.

[3] Id., at pp. 20-28.

[4] Report and Recommendation, pp. 10-11; records, 261-262.

[5] R. Agpalo, Legal Ethics, 1997 ed., p. 156.

[6] Sipin-Nabor v. Bateria, AC No. 4073, June 28, 2001.

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

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

[9] Aromin v. Boncavil, 315 SCRA 1, September 22, 1999.

[10] Tan v. Lapak, 350 SCRA 74, January 23, 2001.

[11] Cantiller v. Potenciano, 180 SCRA 246, December 18, 1989.

[12] Canlas v. Court of Appeals, 164 SCRA 160, August 8, 1988.

[13] R. Agpalo, *supra*, p.12.

[14] *Ibid.*, p. 13.

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

[16] *Sipin-Nabor v. Bateria*, *supra*; *Gonato v. Adaza*, 328 SCRA 694, March 27, 2000, citing *Obia v. Catimbang*, 196 SCRA 23, April 19, 1991.

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

[18] *Aromin v. Boncavil*, *supra*.

[19] *Montano v. Integrated Bar of the Phils. et al.*, AC No. 4215, May 21, 2001.

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