ROSARIO MARQUEZ, COMPLAINANT, VS. ATTY. DIONISIO MENESES, JR., RESPONDENT.

A.C. No. 675. December 17, 1999

Ponente: MENDOZA, J.

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MENDOZA, J.:

This is a complaint[1] for misconduct and collection of unconscionable fees filed against Atty. Dionisio G. Meneses, Jr. by his client, Rosario Marquez, now deceased. The case was filed on July 6, 1965. After respondent filed his Answer[2] on October 20, 1965, the Court referred the case to the Office of the Solicitor General, which in turn indorsed the matter to the Office of the Provincial Fiscal of Albay for investigation, report and recommendation.

It appears that then Solicitor General Antonio P. Barredo filed his Report[3] on September 27, 1966 sustaining the findings of the Provincial Fiscal. Nothing more appears to have been done in this case except for the issuance of a resolution by the Court, dated November 21, 1966, noting the memorandum filed by respondent. Then, on November 4, 1998, respondent moved for the dismissal of the case, citing the lapse of considerable time since the complaint was filed and its supposed lack of merit. The case was then raffled and first reported to this Division of the Court on November 28, 1998. On December 14, 1998, the Second Division required the Office of the Solicitor General and the Office of the Provincial Fiscal of Albay to forward the records of this case to the Court within 30 days from receipt of notice. On February 2, 1999, the Provincial Prosecutor of Albay reported that there were no records pertaining to this case in his office.[4]

Meanwhile, copies of this Court's resolutions sent to complainant were returned with notation "unclaimed." In a letter dated June 9, 1999, respondent informed the Court that complainant died on December 31, 1985, as shown by the certificate of death issued by the Office of the Municipal Civil Registrar of Camalig, Albay.

With this explanation, we proceed to resolve this case. As already stated, the Solicitor General filed a report which upheld the following findings of the then Provincial Fiscal of Albay:

> In May of 1963, complainant Rosario Marquez was introduced by Atty. Vicente Peralta to respondent Atty. Dionisio Meneses of Legaspi City, as a prospective client. Complainant retained the professional service of respondent to prosecute a claim of P210 against Ruth Igdanes and Delfin Igdanes in the Justice of the Peace Court of Camalig, Albay. The agreement was that complainant would pay a fee of P100.00 to respondent, whether the case was won or lost. The agreement, however, was merely oral. Thereafter, complainant advanced from time to time to respondent various sums as fees, which totalled P75.00.
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> The complaint in Civil Case No. 82 for collection of a sum of money (P210.00) against the defendants Ruth Igdanes and Delfin Igdanes was filed on June 25, 1963 in the Justice of the Peace Court of Camalig, Albay (Exh. 1 - Respondent). The answer filed by defendants contained a counterclaim, and a reply and answer thereto was filed by respondent in behalf of his client, plaintiff Rosario Marquez (complainant herein), wherein the relief demanded, among other things, was that defendants "be ordered to pay plaintiff the amount of P100.00 as attorney's fees. . ." etc. (Exh 2 - Respondent). Decision was rendered by the court on December 27,

> 1963 in favor of the plaintiff and against defendants ordering the latter to pay the plaintiff P210.00 with legal interest from the filing of the complaint until fully paid, and P75.00 as attorney's fees (Exh. 3 - Respondent).
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> Sometime afterward, complainant, who was in Manila, received a letter from her brother in Camalig, Albay, saying that Ruth Igdanes, one of the defendants in Civil Case No. 82, had paid P75.00 to the sheriff as partial satisfaction of the judgment. She wrote to her brother asking him to collect the amount for her, but to give P25.00 to Atty. Meneses in payment of the balance of the latter's fee of P100.00. Her brother wrote back saying that the sheriff informed him that respondent had gotten all of the P75.00 as his fees. Complainant wrote to respondent twice asking him to send her P50.00 and to keep P25.00 for himself, but got no answer from him. When she returned to Albay she went to see respondent personally about the matter, but he refused to give her the P50.00 she was asking and contended that "that was their agreement."
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> Complainant's contention, in brief, is that she had been overcharged by respondent for as the agreed fee was P100.00, win or lose, and she had already paid P75.00 to respondent, the latter simply had the right, at most, to keep P25.00 out of the P75.00 he had gotten from the sheriff.
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> Complainant presented in evidence a letter dated April 22, 1963 she had written to Justice of the Peace Calixto Ajero of Camalig, Albay explaining how respondent had charged her an excess fee P50.00 and asking that he intercede in her behalf so that respondent may return the same to her (Exh. A).

On the other hand, respondent contended that his agreement with complainant was that he would be paid retainer fees in the amount of P100.00, and contingent fees equivalent to the amount of attorney's fees which may be awarded by the court. Since the court in Civil Case No. 82 awarded P75.00 as attorney's fees, he was entitled to keep the amount as his contingent fees. Complainant still owed him P25.00 since he had been paid only P75.00 for his retainer.

The Solicitor General recommends that, of the amount which he received from the sheriff, respondent be ordered to pay to complainant the sum of P50.00 because respondent's retainer fee is for P100.00 only and he had previously been paid P75.00. In addition, the Solicitor General recommends that respondent be suspended from the practice of law for at least six months for his breach of professional ethics.

We find the Solicitor General's recommendation to be well taken. Indeed, it is improbable that complainant would agree to pay respondent the award of attorney's fees on top of the P100.00 retainer fees, considering that Civil Case No. 82 involved only P210.00. Respondent himself admitted that he accepted the case as an "act of charity" since he knew complainant to be poor.[5] Thus, respondent cannot deny that, under the circumstances, an attorney's fee of P175.00 is unconscionable. He had no right to appropriate for himself the entire P75.00 deposited with the sheriff as partial satisfaction of judgment in Civil Case No. 82.

It is well-settled that money collected by a lawyer in pursuance of a judgment in favor of his client is money held in trust and must be immediately turned over to the latter.[6] Canon 11 of the Canons of Professional Ethics, in force at the time material to this case, provides:

> 11. Dealing with trust property
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> The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
>
> Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be commingled with his own or be used by him.

Tanhueco v. de Dumo[7] involved facts substantially similar to the present case. In Tanhueco, complainant filed,

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on February 24, 1975, a petition for disbarment against Atty. Justiniano G. de Dumo, her former counsel, for the latter's refusal to remit to her money collected by him from judgment debtors. The Office of the Solicitor General, after the case was referred to it by the Court, held hearings on December 3, 1975 and April 18, 1988. In a per curiam resolution, dated April 25, 1989, the Court noted the 12-year interregnum but found nothing in the records to indicate the reason therefor.[8] Nevertheless, the Court found that Atty. de Dumo's refusal to remit the amount to his client amounted to a breach of professional trust, and ordered his suspension from the practice of law for six months and to return to the estate of complainant (who has since died) the excess of the amount he collected after deducting his attorney's fees.

In this case, respondent should have made an accounting with his client of the amount he received, deducted the balance of the attorney's fees due him, and turned over the rest of the amount to his client. As the Solicitor General observed, "if respondent was mindful of his ethics, he should at least have waited until the judgment debtor in Civil Case No. 82 had made further payments on the amount adjudged against them..." By placing his personal interest above his client's cause, respondent clearly breached the trust reposed upon him.

WHEREFORE, the Court finds respondent GUILTY of breach of professional trust, and orders him suspended for one (1) month from the practice of law. In addition, he is ordered to pay to complainant's estate the amount of P50.00, plus legal interest from January 1964.

SO ORDERED.

Bellosillo, (Chairman), Quisumbing, Buena, and De Leon, Jr., JJ., concur.

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[1] Rollo, pp. 1-2.

[2] Id., pp. 14-17.

[3] Id., pp. 24-30.

[4] The records were completed on April 14, 1999, when the Office of the Bar Confidant submitted a folder marked as "Vol. II" which contains file copies of documents attached to the original rollo and 35 pages of transcripts of stenographic notes on the investigation conducted in this case, exhibits and report of 1st Asst. Provincial Fiscal Abelardo B. Burce in the order that they are found; said documents supposed to be integral parts of the report of the Office of the Solicitor General dated September 23, 1966 were mistakenly attached to the office file copy instead of the original rollo.

[5] Rollo, pp. 28-29.

[6] Daroy v. Legaspi, 65 SCRA 304 (1975).

[7] 172 SCRA 760 (1989).

[8] Supra at 762.

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