

**ATTY. PRUDENCIO S. PENTICOSTES, COMPLAINANT, VS.
PROSECUTOR DIOSDADO S. IBÁÑEZ, RESPONDENT.***AC CBD No. 167. March 09, 1999*

Ponente: ROMERO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/ca803292f283/>**ROMERO, J.:**

Sometime in 1989, Encarnacion Pascual, the sister-in-law of Atty. Prudencio S. Penticostes (herein complainant) was sued for non-remittance of SSS payments. The complaint was docketed as I.S. 89-353 and assigned to Prosecutor Diosdado S. Ibañez (herein respondent) for preliminary investigation. In the course of the investigation, Encarnacion Pascual gave P1,804.00 to respondent as payment of her Social Security System (SSS) contribution in arrears. Respondent, however, did not remit the amount to the system. The fact of non-payment was certified to by the SSS on October 2, 1989.

On November 16, 1990 or over a year later, complainant filed with the Regional Trial Court of Tarlac a complaint for professional misconduct against Ibañez due to the latter's failure to remit the SSS contributions of his sister-in-law. The complaint alleged that respondent's misappropriation of Encarnacion Pascual's SSS contributions amounted to a violation of his oath as a lawyer. Seven days later, or on November 23, 1990, respondent paid P1,804.00 to the SSS on behalf of Encarnacion Pascual.

In the meantime, the case was referred to the Integrated Bar of the Philippines-Tarlac Chapter, the court observing that it had no competence to receive evidence on the matter. Upon receipt of the case, the Tarlac Chapter forwarded the same to IBP's Commission on Bar Discipline.

In his defense, respondent claimed that his act of accommodating Encarnacion Pascual's request to make payment to the SSS did not amount to professional misconduct but was rather an act of Christian charity. Furthermore, he claimed that the action was moot and academic, the amount of P1,804.00 having already been paid by him to the SSS. Lastly, he disclaimed liability on the ground that the acts complained were not done by him in his capacity as a practicing lawyer but on account of his office as a prosecutor.

On September 3, 1998, the Commission recommended that the respondent be reprimanded, with a warning that the commission of the same or similar offense would be dealt with more severely in the future. On November 5, 1998, the Board of Governors of the Integrated Bar of the Philippines adopted and approved its Commission's recommendation.

This Court adopts the recommendation of the IBP and finds respondent guilty of professional misconduct. While there is no doubt that payment of the contested amount had been effected to the SSS on November 23, 1990, it is clear however, that the same was made only after a complaint had been filed against respondent. Furthermore, the duties of a provincial prosecutor do not include receiving money from persons with official transactions with his office.

This Court has repeatedly admonished lawyers that a high sense of morality, honesty and fair dealing is expected

and required of a member of the bar. Rule 1.01 of the Code of Professional Responsibility provides that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

It is glaringly clear that respondent's non-remittance for over one year of the funds coming from Encarnacion Pascual constitutes conduct in gross violation of the above canon. The belated payment of the same to the SSS does not excuse his misconduct. While Pascual may not strictly be considered a client of respondent, the rules relating to a lawyer's handling of funds of a client is applicable. In *Daroy v. Legaspi*,^[1] this court held that "(t)he relation between an attorney and his client is highly fiduciary in nature...[thus] 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." The failure of respondent to immediately remit the amount to the SSS gives rise to the presumption that he has misappropriated it for his own use. This is a gross violation of general morality as well as professional ethics; it impairs public confidence in the legal profession and deserves punishment.^[2]

Respondent's claim that he may not be held liable because he committed such acts, not in his capacity as a private lawyer, but as a prosecutor is unavailing. Canon 6 of the Code of Professional Responsibility provides:

"These canons shall apply to lawyers in government service in the discharge of their official tasks."

As stated by the IBP Committee that drafted the Code, "a lawyer does not shed his professional obligations upon assuming public office. In fact, his public office should make him more sensitive to his professional obligations because a lawyer's disreputable conduct is more likely to be magnified in the public's eye.^[3] Want of moral integrity is to be more severely condemned in a lawyer who holds a responsible public office.^[4]

ACCORDINGLY, this Court REPRIMANDS respondent with a STERN WARNING that a commission of the similar offense will be dealt with more severely in the future.

LET copies of this decision be spread in his records and copies be furnished the Department of Justice and the Office of the Bar Confidant.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

[1] 65 SCRA 304 (1975)

[2]R. AGPALO, *Legal Ethics*, 194 (4th ed., 1989)

[3]Comments of the IBP Committee, p. 30.

[4]*Macoco v. Diaz* 70 Phil. 97

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