

PETRA M. SEVILLA, COMPLAINANT, VS. JUDGE ISMAEL L. SALUBRE, RESPONDENT.*A.M. No. MTJ-00-1336 (Formerly Adm. No. OCA IPI No. 99-800-MTJ). December 19, 2000*

Ponente: DE LEON, JR., J.

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Before us is a verified complaint for disbarment dated June 24, 1998, earlier docketed as A.C. No. 4970, against Atty. Ismael L. Salubre, presently a Municipal Trial Court Judge of Tagum, Davao del Norte, charging the respondent with violations of Cannons 16 and 17 of the Code of Professional Responsibility.[1]

In the verified complaint, complainant alleges that respondent, prior to his appointment as a Judge, was her legal counsel in Civil Case No. 91-01 entitled "Sps. Petra Sevilla and Sancho Sevilla vs. Sps. Shem J. Alfarero, et al.", for Repurchase and Damages with Prayer for the Issuance of Preliminary Injunction. On December 26, 1990, upon the advice of respondent, complainant turned-over to the former the amount of P45,000.00 to be consigned with the trial court as repurchase money. Moreover, instead of consigning said amount, the respondent deposited the money in his name with the Family Savings Bank, Panabo, Davao Province. And without the consent of the complainant, the said amount was withdrawn from the said bank, misappropriated and used by respondent for his own purposes and benefit.

This was followed by a series of promises and pleas for extension to pay. On April 14, 1994, respondent issued a promissory note promising to pay the amount of P45,000.00 in June 1994 or immediately thereafter.[2] On July 8, 1994, respondent asked for an extension of one month.[3] On October 17, 1994, respondent issued another promissory note promising to pay on or before January 31, 1995.[4] However, on January 30, 1995, respondent asked for a fifteen-day extension or up to February 15, 1995 within which to pay.[5] This was followed by a telegram from respondent addressed to complainant and received on February 28, 1995 asking for another extension to pay because his loan with the PNB, Tagum Branch was still being processed.[6] Thereafter, on May 9, 1995, respondent executed yet another promissory note promising to pay the total amount of P63,000.00 (P45,000.00 as principal plus P18,000.00 as interest four (4) years and five (5) months at 10% per annum) on or before June 30, 1995 without necessity of demand.[7] But on June 28, 1995, respondent through a telegram, asked for an extension on the ground that his loan with PNB, Tagum Branch was still being processed.[8] On August 1, 1995, respondent once again asked for an extension based on the same ground and promised to pay before he assumes his post as judge of the Municipal Trial Court.[9] The 201 file of respondent shows that he assumed his post on August 1, 1995. On August 15, 1995, respondent promised to turn over to complainant the amount necessary to cover his obligation as soon as his loan with PNB was approved.[10] On May 23, 1996, respondent asked Sancho, the husband of complainant, to come back on July 3, 1996 by which time the loan not with PNB but this time with Land Bank would allegedly be ready.[11] On August 21, 1996, the daughter of complainant, Leonor M. Sevilla, sent a demand letter asking respondent to pay the amount of P77,787.59 (P45,000.00 as principal plus P32,787.59 as 10% interest per annum for five (5) years and eight (8) months) on or before August 25, 1996, otherwise they will resort to court action.[12] Subsequently, respondent issued two (2) checks, the first

is dated April 30, 1997 for P45,000.00 and the second is dated May 15, 1997 for P31,000.00.[13] However, on November 4, 1997 both checks were dishonored on the ground "account closed".[14] Finally, complainant, now through her counsel, sent a demand letter dated November 15, 1997 asking respondent to make good the value of his two (2) checks within five (5) days from receipt of the letter.[15]

On November 25, 1998, this case was referred to the Office of the Court Administrator (OCA) for evaluation, report and recommendation.[16] On November 25, 1998, the OCA through Deputy Court Administrator Reynaldo Suarez, recommended that respondent be allowed to file his Comment. The OCA opined that although the complaint focuses on acts of respondent prior to his appointment as judge of the Municipal Trial Court, the charges falls as one of the serious charges in Rule 140, Section 6 of the Rules of Court, to wit, willful failure to pay a debt. The obligation was not extinguished by his appointment as a Judge.

In his Comment,[17] respondent denied all the allegations of complainant regarding how he handled the repurchase money. He averred that the allegations of the complainant in her complaint were merely the result of a minor misunderstanding and that he and complainant had already resolved the matter. In fact, he said, the complainant had executed an Affidavit of Desistance[18] dated August 9, 1999, wherein complainant alleged, among others, that the filing of the case was a result of a misunderstanding and could not be blamed for any criminal intent on the part of the respondent. Furthermore, in view of the settlement of the civil aspect of the case, she is no longer willing to pursue her complaint against the respondent.

Relying in the case of *Imbing vs. Tiongson*,[19] the OCA recommended that respondent be informed that the mere desistance of the complainant is not a ground for dismissal of the complaint and is not an excuse for delaying the filing of his comment. Accordingly, he should be required to comment anew on the complaint, addressing the facts and issues raised therein.

In his subsequent Comment[20] (with attachments) dated March 31, 2000, respondent explains that he was then the legal counsel of herein complainant in several cases before the RTC, Branch 4, Panabo, Davao, namely:

- Civil Case No. 91-01, entitled "Sps. Petra and Sancho Sevilla vs. Sps. Shem Alfarero, et al.," for Repurchase of the Land in the amount of P200,000.00;
- Another Civil Case entitled "Sps. Petra and Sancho Sevilla vs. Milky Amatong" for Repurchase also;
- A case for support filed by Petra Sevilla against her husband Sancho Sevilla.

Respondent narrates that the aforementioned cases were filed in 1990 and 1991. The case against Shem Alfarero is still pending before the Court of Appeals while the case against Milky Amatong is still pending before the RTC, Panabo, Davao. Sometime in the middle part of 1990, complainant paid him the amount of P45,000.00 for litigation expenses and appearance fee in the above-mentioned cases which he (respondent) deposited in his name with the Family Savings Bank, Panabo, Davao. However, complainant caused him to sign a receipt which stated that the purpose thereof is for the repurchase of the property subject of the case she filed against Shem Alfarero. Respondent claims that this amount is not for the repurchase of the said property considering that the value of the property subject in the said case is P200,000.00.

When respondent assumed office as Judge of the Municipal Trial Court in Tagum, Davao on August 1, 1995, complainant demanded for the return of the amount of P45,000.00 plus interest thereon which has reached a total amount of P77,787.50. Respondent then paid the amount of P35,000.00 with a balance of P10,000.00 on the principal but complainant insisted for the payment also of the interest. When respondent failed to pay the full amount and interest, as demanded, complainant filed a criminal case for *Estafa* against the respondent before the Regional Trial Court of Panabo, Davao, Branch 4. To avoid embarrassment, respondent paid the amount

demanding and eventually complainant executed an Affidavit of Desistance on August 9, 1999 with the assistance of her counsel, Atty. Jacinto T. Rubillar. Later, the trial court ordered the dismissal of the said criminal case in its Order dated August 27, 1999.[21]

On the basis of its evaluation, report and recommendation, the OCA found the contention of respondent to be without merit. It opined that the contention of respondent that the amount he received from complainant was in payment of his appearance fee and other litigation expenses is belied by the receipt respondent signed on February 15, 1994. And still, in another receipt which respondent had signed, respondent acknowledged having deposited said amount of P45,000.00 with the Family Savings Bank, Panabo Branch. The OCA also found that respondent's deliberate refusal to return the said amount despite repeated demands from his client (complainant herein) was a violation of Canon 16 particularly Rule 16.03, Code of Professional Responsibility and that it was of no moment that respondent had eventually settled his obligation. The respondent paid his obligation only after complainant had filed a case for the purpose. From the foregoing, the OCA recommended that respondent Judge Ismael L. Salubre be fined in the amount of P10,000.00 with a stern warning that a repetition of the same and similar acts shall be dealt with more severely. The OCA likewise recommended that the instant complaint be re-docketed as an administrative matter.

We agree with the findings and conclusion of the Office of the Court Administrator. However, taking into consideration the attendant circumstances of this case we believe that the amount of the fine recommended should be increased.

The Affidavit of Desistance of herein complainant did not divest this Court of its jurisdiction to impose administrative sanctions upon respondent Judge. In like manner, while it may be true that the complaint for Estafa had been dismissed, the dismissal was on account of the complainant's voluntary desistance and not upon a finding of innocence of the respondent. It neither confirms nor denies the respondent's non-culpability. It must be emphasized, that the primary object of administrative cases against lawyers is not only to punish and discipline the erring individual lawyers but also to safeguard the administration of justice by protecting the courts and the public from the misconduct of lawyers, and to remove from the legal profession persons whose utter disregard of their lawyer's oath have proven them unfit to continue discharging the trust reposed in them as members of the bar. Thus, administrative cases against lawyers can still proceed despite the dismissal of civil and/or criminal cases against them.

In *Fernando Cruz and Amelia Cruz vs. Atty. Ernesto Jacinto*, [22] we held that -

"The practice of law is so intimately affected with public interest that it is both a right and a duty of the State to control and regulate it in order to promote the public welfare. The Constitution vests this power of control and regulation in this Court. Since the practice of law is inseparably connected with the exercise of its judicial power in administration of justice, the Court cannot be divested of its constitutionally ordained prerogative which includes the authority to discipline, suspend or disbar any unfit and unworthy member of the Bar by a mere execution of affidavits of voluntary desistance and quitclaim (par [5], Sec. 5, 1987 Constitution).

A lawyer may be disciplined or suspended for any misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, in probity and good demeanor, thus rendering unworthy to continue as an officer of the court (*Maligsa vs. Cabanting*, 272 SCRA 408 [1997]), and the complainants who called the attention of the Court to the attorney's alleged misconduct are in no sense a party, and have generally no interest in the outcome except as all good citizens may have in the proper administration of justice (*Rayos-Ombac vs. Rayos*, 285 SCRA 93[1998])."

We likewise agree with the Office of the Court Administrator that respondent Judge Ismael L. Salubre is liable for violation of Canon 16 of the Code of Professional Responsibility for his failure to return the funds of his client

(complainant herein) upon demand. As noted earlier, respondent finally returned the funds to his client but only after the latter sued him for estafa.

In Judge Adoracion G. Angeles vs. Atty. Thomas C. Uy, Jr.[23], we stated that -

"The relationship between a lawyer and a client is highly fiduciary; it requires a high degree of fidelity and good faith. It is designed to remove all such temptation and to prevent everything of that kind from being done for the protection of the client."

Thus, Canon 16 of the Code of Professional Responsibility provides that 'a lawyer shall hold in trust all moneys and properties of his client that may come into his possession.' Furthermore, Rule 16.01 of the Code also states that 'a lawyer shall account for all money or property collected or received for or from the client.' The Canons of Professional Ethics is even more explicit:

"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 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."

In the present case, the appointment of the respondent as Judge of the Metropolitan Trial Court is not a valid reason for respondent not to properly address and comply with the demand of complainant, his former client, to pay and settle forthwith the amount he had received in trust from the latter. Respondent's contention that the money he received from complainant was actually the latter's payment for his appearance fee and other litigation expenses should have been made known to complainant at the earliest time when the demand was made. However, instead of properly saying his piece regarding the matter he bombarded complainant with a long line of promises in the hope that complainant would eventually allow the matter to be left unsettled. Nothing in the numerous communications which respondent judge sent to complainant would indicate that he had really exerted efforts to explain the real story as he claimed it to be. Respondent did not even squarely address the veracity of the letters he sent to complainant and offer an explanation why his contention now is different from the contents of those letters. What is evident from the record is the fact that respondent misappropriated the money entrusted to him by his client (complainant herein) while he was still in trial practice. The fact that he was eventually appointed as Judge will not exculpate him from taking responsibility of the consequences of his acts as an officer of the court and, more so, now as Judge.

Though the acts complained of were prior to his appointment as a Judge, it is trite to emphasize that the Code of Judicial Ethics no less mandates that a judge should avoid the appearance of impropriety.[24] Even his personal behavior in his everyday life should be beyond reproach.[25] By issuing the two checks after he was already discharging his duties as a Judge purportedly to settle the obligation, i.e., the first dated April 30, 1997 for P45,000.00 and the second is dated May 15, 1997 for P31,000.00, which later on were both dishonored on the ground "account closed",[26] respondent failed to keep up with the exacting standards of the Canons of Judicial Ethics. Such act tends to show his apparent intention to further delay payment due the complainant, which delay in fact lasted for five (5) years and eight (8) months. Being the visible representation of law, and more importantly, of justice, the people sees in the respondent the intermediary of justice between two conflicting interests. If while still in active litigation practice lawyers do not know how to uphold this kind of justice to their clients previous to their appointment as Judges, how then could people expect them to render just judgments in the cases before them? This is the price that judges should pay for the honor bestowed upon those who occupy an exalted position in the administration of justice. No position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the judiciary. A magistrate of the law must comport himself at all

times in such a manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice.[27]

With respect to the claim or allegation that the respondent violated Canon 17 of the Code of Professional Responsibility, we find that said allegation was not substantiated in this case.

WHEREFORE, respondent Judge Ismael L. Salubre is hereby found guilty of violation of Canon 16 of the Code of Professional Responsibility for his failure to return and immediately deliver the funds of his former client, Petra M. Sevilla upon demand, and Canon 2 of the Canons of Judicial Ethics for his failure to avoid the appearance of impropriety. The respondent is hereby ordered to pay a fine in the amount of P20,000.00 with a STERN WARNING that a repetition of the same and similar acts shall be dealt with more severely.

Let a copy of this Decision be attached to the personal record of Judge Ismael L. Salubre in the Office of the Bar Confidant and copies thereof be furnished the Office of the Court Administrator.

SO ORDERED.

Bellosillo, (Chairman), Mendoza, Quisumbing, and Buena, JJ., concur.

[1]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.

Rule 16.04 - A Lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.

Canon 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

[2]Annex "A", Complainant's Supplemental Affidavit.

[3]Annex "B", Complainant's Supplemental Affidavit.

[4]Annex "C", Complainant's Supplemental Affidavit.

[5]Annex "D", Complainant's Supplemental Affidavit.

[6]Annex "F", Complainant's Supplemental Affidavit.

[7]Annex "E", Complainant's Supplemental Affidavit.

[8]Annex "G", Complainant's Supplemental Affidavit.

[9]Annex "H", Complainant's Supplemental Affidavit.

- [10]Annex "I", Complainant's Supplemental Affidavit.
- [11]Annex "J", Complainant's Supplemental Affidavit.
- [12]Annex "C", of Complainant; Rollo, p. 6.
- [13]Annex "E", of Complainant; Rollo, p. 7.
- [14]Annexes "F" , "F-1" and "F-2", of Complainant; Rollo, p. 8.
- [15]Annex "D", of Complainant.
- [16]Resolution of the Supreme Courts' 2nd Division, Rollo, p. 26.
- [17]Rollo, pp. 32-33.
- [18]Annex "A", of Comment; Rollo, p. 34.

[19]229 SCRA 690 (1994).

- [20] Rollo, pp. 43-48.
- [21]Rollo, p. 47.
- [22]ADM. Case No. 5235 promulgated March 22, 2000.
- [23]A.C. No. 5019, promulgated on April 6, 2000.
- [24]Canon 2, Canons of Judicial Ethics.
- [25]Canon 3, Canons of Judicial Ethics.
- [26]Rollo, p. 7.
- [27]Cortes vs. Agcaoili, 294 SCRA 423, 452 (1998).

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