

FIRST DIVISION

[A. C. No. 5811, January 20, 2003]

MARITESS GARCIA, COMPLAINANT, VS. ATTY. ILUMINADO M. MANUEL, RESPONDENT.

RESOLUTION

DAVIDE JR., C.J.:

For our resolution is the administrative complaint for disbarment filed by complainant Maritess Garcia against respondent Atty. Iuminado M. Manuel for gross misconduct for ineffectively handling her case and failing to return to her the money she gave him.

The facts, as culled from the records, are uncomplicated:

Sometime in February 1999, Maritess Garcia, divorced from husband Oscar Fauni, approached respondent for legal advice concerning child support and her condominium unit in San Juan, Metro Manila, which her erstwhile husband refused to vacate. Respondent agreed to handle her case at a fee of P70,000. Finding respondent's fees reasonable, complainant entrusted to respondent all pertinent papers for his study. An advance fee of P10,000 was then asked by respondent from complainant.

On 17 February 1999, a retainer agreement was entered by complainant with respondent, calling for the payment of (1) P35,000 payable in weekly installments of preferably P5,000 but not less than P2,000; (2) P35,000 to come from the proceeds of the sale of her condominium unit or from any amount that might be recovered from Mr. Fauni, except that pertaining to child support; and (3) a contingent fee of 5% of any amount that might be recovered from Mr. Fauni except that for child support. Incidental expenses, such as filing fees and postage fees, were also made chargeable to the account of the complainant.^[1] On the same occasion, complainant gave respondent the advance fee of P10,000.^[2] Thereafter, respondent informed complainant that he needed P10,000 for the filing fees.

On 4 March 1999, complainant gave respondent P10,000 for the filing fees in the ejectment case.^[3] She, however, asked respondent as to why the fees cost so much. Respondent replied that filing fees are based on a certain percentage of the price of the property and the amount of child support prayed for. A demand letter to vacate the premises of the condominium dated 4 March 1999 was then prepared by respondent and mailed to Mr. Fauni on 8 March 1999.^[4]

In the interim, complainant made several follow-ups with respondent inquiring particularly as to whether the ejectment case had already been filed. Through a telephone conversation with respondent on 7 April 1999, complainant found out that the ejectment case had not been filed yet by respondent. Agitated by the

information, complainant immediately went to respondent's residence. An altercation between respondent and complainant took place. After serious exchange of words, respondent returned to complainant all of her documents. No amount of money was, however, returned by respondent to complainant despite the latter's demand for its return.

Aggrieved by respondent's actuations, complainant filed on 30 June 1999 with the Integrated Bar of the Philippines (IBP), Commission on Bar Discipline, the instant complaint for gross misconduct against respondent.^[5]

In his Answer dated 24 September 1999, respondent denied having committed any malicious, dishonest or anomalous acts against complainant. Respondent asserted that he did not file the ejectment case because he had not yet received the registry return card evidencing the receipt by Oscar Fauni of the demand letter he sent on 8 March 1999. It could not be said that he misappropriated the P10,000 for the filing fees because complainant, who was then in arrears with her installment payments for his fee, agreed that said P10,000 could be applied in the meantime to her account. Finally, respondent averred that he never withdrew his services as counsel of complainant; rather it was the complainant who explicitly discharged him when she demanded for the return of the amounts she had paid him.^[6]

In his Report and Recommendation dated 7 May 2001, Investigating Commissioner Atty. Caesar R. Dulay concluded that respondent was less than honest to his client and displayed lack of candor and fidelity to her cause. He cited respondent's act of (1) making it appear to complainant that as early as 17 February 1999, he already needed P10,000 for filing fees; (2) failing to advise his client as to the real amount of the filing fees;^[7] and (3) failing to render an accounting of the monies received and intended as filing fees. Moreover, Commissioner Dulay found respondent guilty of misleading the Commission by his claim of having received the registry return card on 7 April 1999, the truth of the matter being that respondent already received the registry return card on 24 March 1999. He then recommended that respondent be suspended from the practice of law for one month and be ordered to render an accounting of all monies he received from the complainant.

In its Resolution No. XV-2002-239 of 29 June 2002, the Board of Governors of the IBP approved and adopted Atty. Dulay's Report and Recommendation. It, however, increased the recommended penalty of respondent from one month to six months of suspension from the practice of law.

We agree with the findings and conclusions of Commissioner Dulay, as approved and adopted by the Board of Governors of the IBP.

A lawyer may be disciplined for any conduct, in his professional or private capacity, that renders him unfit to continue to be an officer of the court. Canon 1 of the Code of Professional Responsibility commands all lawyers to uphold at all times the dignity and integrity of the legal profession. Specifically, Rule 1.01 thereof provides:

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

There is no need to stretch one's imagination to arrive at an inevitable conclusion that respondent committed dishonesty and abused the confidence reposed in him by

the complainant. Respondent Manuel fully knew that the jurisdictional requirement of demand to vacate had to be complied with before an ejectment case could be filed,^[8] and yet he asked complainant to raise the filing fee of P10,000 as early as 17 February 1999.^[9] He likewise cannot take refuge behind his claim that he did not file the ejectment case because he had not yet received the registry return card. The records reveal that despite Atty. Manuel's receipt of the registry return card on 24 March 1999,^[10] he still did not file an ejectment case.

Finally, if indeed respondent was in good faith in dealing with complainant, he should have informed or advised the complainant of the status of her case or, at the least, responded to her inquiries. Canon 18, Rule 18.04 provides:

Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within reasonable time to the client's request for information.

The relationship of lawyer-client being one of confidence, there is ever present the need for the client to be adequately and fully informed of the developments of the case and should not be left in the dark as to the mode and manner in which his interests are being defended. It is only thus that the trust and faith in the counsel may remain unimpaired.^[11]

Respondent also failed to comply with the norms embodied in Canon 16 of the Code of Professional Responsibility, to wit:

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.

In the instant case, respondent received the amount of P10,000 specifically for filing fees in the ejectment case. Thus, he was under the obligation to render an accounting of the same. The highly fiduciary and confidential relation of attorney and client requires that the lawyer should promptly account for all the funds received from, or held by him for, the client.^[12]

Moreover, a lawyer who obtains possession of the funds and properties of his client in the course of his professional employment shall deliver the same to his client (a) when they become due or (b) upon demand.^[13] In the instant case, respondent failed to account and return the P10,000 for the filing fees despite complainant's repeated demands.

We find untenable respondent's claim that since complainant was already in arrears with his fees, it was proper for him to apply the filing fees to his attorney's fees. It has been held that an attorney's lien is not an excuse for a lawyer's non-rendition of accounting.^[14] And while a lawyer is allowed to apply so much of the client's funds as may be necessary to satisfy his lawful fees and disbursements, the lawyer is however under the obligation to promptly thereafter notify his client.^[15] Nothing on record supports respondent's claim that complainant was adequately notified as to the application of the P10,000 (for the filing fees) to her arrears.