

EN BANC

[A.C. No. 4724, April 30, 2003]

**GORETTI ONG, COMPLAINANT, VS. ATTY. JOEL M. GRIJALDO,
RESPONDENT.**

DECISION

PER CURIAM:

The fiduciary duty of a lawyer and advocate is what places the law profession in a unique position of trust and confidence, and distinguishes it from any other calling. Once this trust and confidence is betrayed, the faith of the people not only in the individual lawyer but also in the legal profession as a whole is eroded. To this end, all members of the bar are strictly required to at all times maintain the highest degree of public confidence in the fidelity, honesty, and integrity of their profession.

[1] In this administrative case for disbarment, respondent Atty. Joel M. Grijaldo failed to perform his sworn duty to preserve the dignity of the legal profession.

Complainant Goretti Ong is a widow residing in Talayan Village, Quezon City. Sometime in the early part of 1996, she engaged the services of respondent, a practicing lawyer in Bacolod City, as private prosecutor in Criminal Case No. 52843 before the Metropolitan Trial Court in Cities of Bacolod City, Branch 5, against Lemuel Sembrano and Arlene Villamil for violation of *Batas Pambansa Bilang 22*. [2] During one of the hearings of the case, the accused offered to amicably settle their civil obligation to complainant by paying the amount of P180,000.00. Complainant accepted the offer on the condition that payment shall be made in cash.

At the hearing held on July 17, 1996, respondent advised complainant to wait outside the courtroom. When he came out, he handed to complainant cash in the amount of P100,000.00 and Metrobank Check No. 0701263862 for P80,000.00, postdated August 16, 1996, drawn by Atty. Roger Reyes, counsel for the accused. Complainant objected to the check payment and refused to settle the case, but he assured her that the check was drawn by a reputable lawyer. Complainant was prevailed upon by respondent into signing an affidavit of desistance, but she instructed him not to file it in court until the check is cleared.

Upon presentment on its maturity date, the check was dishonored due to a stop-payment order from the drawer. Complainant immediately informed respondent of the dishonor, and the latter told her that he will talk to Atty. Reyes about it. Later, when complainant met with respondent in Manila, he relayed to her Atty. Reyes' offer to replace the check with cash. Several weeks passed without any payment of the proceeds of the check, despite complainant's repeated telephone calls to respondent. Sometime in December 1996, she suggested that respondent move for a hearing of the case, but he told her that courts are not inclined to set hearings near the Christmas season.

On December 17, 1996, complainant personally went to Bacolod City to inquire about her case. She was surprised to learn that the same was dismissed as early as September 26, 1996.^[3] Apparently, respondent submitted her Affidavit of Desistance^[4] and, on the basis thereof, the public prosecutor moved for the dismissal of the case which was granted by the court. When complainant confronted respondent, he admitted to her that he had already received the amount of P80,000.00 from Atty. Reyes but he used the same to pay for his financial obligations.

Thus, on April 2, 1997, complainant filed an Administrative Complaint against respondent for disbarment.^[5]

Complainant further alleged in her complaint that respondent represented her in another case, entitled "*People of the Philippines versus Norma Mondia*," also for violation of B.P. 22, where she was the offended party. Respondent approached the accused, Norma Mondia, and offered to delay the hearing of the case in consideration of the amount of P10,000.00. However, Mondia did not have that amount of money. Attached to the complaint is the affidavit of Norma Mondia attesting to this fact.^[6]

Furthermore, Henry Tiu, a former client of respondent, executed an affidavit, which is attached to the complaint, alleging that he gave respondent the amount of P3,000.00 for the purpose of posting his bail bond, but respondent did not post his bail which resulted in Tiu's arrest.^[7]

Likewise, a certain Luz Dimailig, whose affidavit is also attached to the complaint, averred that respondent represented her as counsel for plaintiff in a civil case before the Regional Trial Court of Bacolod City, Branch 52; that the case was dismissed by the trial court; that the appeal filed by respondent to the Court of Appeals was dismissed due to his failure to file the appellant's brief; and that the petition for review before the Supreme Court was denied for lack of proof of service on the Court of Appeals, late filing and late payment of docket fees. Moreover, Dimailig alleged that she gave respondent the amount of P10,000.00 for settling the said civil case, but she later learned that he did not remit the money to the defendants or their counsel.^[8]

On June 25, 1997, respondent was required to file his comment within ten days from notice.^[9] Respondent filed a Motion for Extension of Time, alleging that he has not received a copy of the complaint.^[10] On February 5, 1998,^[11] complainant furnished respondent a copy of the complaint. However, despite receipt of a copy of the complaint, respondent still failed to file his comment.

On October 19, 1998, respondent was required to show cause why he should not be disciplinarily dealt with or held in contempt for failing to file his comment.^[12] Respondent filed a Compliance, stating that the copy of the complaint he received from complainant was not legible. Complainant again furnished respondent with a clearer and more legible copy of the complaint including its annexes; but respondent still did not file his comment.

Consequently, on June 14, 2000, another show cause order was issued against

respondent.^[13] Respondent replied by stating that the quality of the copy furnished him by complainant was worse than the first one he received.

Dissatisfied with respondent's explanation, respondent was ordered to pay a fine of P1,000.00, which he complied with on November 27, 2000.^[14] However, he again failed to file his comment and, instead, moved for additional time to file said comment.

On August 13, 2001, this case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.^[15] The records of the IBP show that respondent has not filed his comment to the complaint. On January 18, 2002, the Investigating Commissioner, Manuel A. Tiuseco, submitted his report recommending the disbarment of respondent.^[16] However, in its Resolution No. XV-2002-553 dated October 19, 2002, the IBP Board of Governors modified the penalty of disbarment and recommended instead respondent's indefinite suspension from the practice of law for grossly immoral conduct and deceit.^[17]

After a careful review of the records of this case, we find the recommendation of Commissioner Manuel A. Tiuseco well-taken.

It is clear that respondent gravely abused the trust and confidence reposed in him by his client, the complainant. Were it not for complainant's vigilance in inquiring into the status of her case, she would not have known that the same had already been dismissed on September 26, 1996. Respondent deliberately withheld this fact from her, notwithstanding that she talked to him sometime in December 1996.

Canon 18 of the Code of Professional Responsibility provides that a lawyer shall serve his client with competence and diligence. More specifically, Rule 18.03 and Rule 18.04 state:

Rule 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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

Respondent breached his duty to his client when he failed to inform complainant of the status of the criminal case. His negligence shows a glaring lack of the competence and diligence required of every lawyer.^[18] His infraction is rendered all the more deplorable by the fact that complainant is a resident of Quezon City and the case was filed in Bacolod City. It was precisely for this reason that complainant engaged the services of respondent, a Bacolod-based lawyer, so that her interests in the case may be amply protected in her absence. Respondent's failure to look after his client's welfare in the case was a gross betrayal of his fiduciary duty and a breach of the trust and confidence which was reposed in him. In a similar case, we held:

It is settled that a lawyer is not obliged to act as counsel for every person who may wish to become his client. He has the right to decline employment subject however, to the provision of Canon 14 of the Code of

Professional Responsibility. Once he agrees to take up the cause of a client, he owes fidelity to such cause and must always be mindful of the trust and confidence reposed to him. Respondent Meneses, as counsel, had the obligation to inform his client of the status of the case and to respond within a reasonable time to his client's request for information. Respondent's failure to communicate with his client by deliberately disregarding its request for an audience or conference is an unjustifiable denial of its right to be fully informed of the developments in and the status of its case.^[19]

Worse, when respondent used the money which he received from Atty. Reyes to pay for his own obligations, he violated Canon 16 of the Code of Professional Responsibility, which states that "[a] lawyer shall hold in trust all moneys and properties of his client that may come into his possession." Furthermore:

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.

Respondent's misappropriation of the money entrusted to him and his refusal to account for it to his client despite repeated demands were competent proof of his unfitness for the confidence and trust reposed on him. His acts showed a lack of personal honesty and good moral character as to render him unworthy of public confidence. He held the money in trust for his client as settlement of the case he was handling. Upon receipt thereof, he was under obligation to immediately turn it over, in the absence of a showing that he had a lien over it. As a lawyer, he should have been scrupulously careful in handling money entrusted to him in his professional capacity, because a high degree of fidelity and good faith on his part is exacted.^[20]

A lawyer, under his oath, pledges himself not to delay any man for money or malice and is bound to conduct himself with all good fidelity to his clients. He is obligated to report promptly the money of his client that has come into his possession. He should not commingle it with his private property or use it for his personal purposes without his client's consent. Respondent, by converting the money of his client to his own personal use without her consent, was guilty of deceit, malpractice and gross misconduct. Not only did he degrade himself but as an unfaithful lawyer he besmirched the fair name of an honorable profession.^[21]

Aside from violating the Code of Professional Responsibility, respondent's failure to promptly turn over the money to his client and his conversion of the same for his