

## EN BANC

[ A.C. No. 4349, December 22, 1997 ]

**LOURDES R. BUSIÑOS, COMPLAINANT, VS. ATTY. FRANCISCO  
RICAFORT, RESPONDENT.  
R E S O L U T I O N**

**PER CURIAM:**

In a sworn complaint for disbarment dated 31 October 1994 but received by us on 21 November 1994, complainant Lourdes R. Busiños charged respondent Atty. Francisco Ricafort, a practicing lawyer in Oas, Albay, with having committed the crime of estafa under Article 315 (1) (b) of the Revised Penal Code by misappropriating the sum of P32,000.00. Of this amount, P30,000.00 was entrusted to respondent for deposit in the bank account of complainant's husband, while P2,000.00 represented the amount respondent demanded from complainant supposedly for a bond in Civil Case No. 5814, when no such bond was required.

In the resolution of 18 January 1995, we required respondent to comment on the complaint. Despite his receipt of a copy of the resolution, respondent did not comply, compelling us in the resolution of 17 July 1995 to require him to show cause why he should not be disciplinarily dealt with or held in contempt for such failure.

Again respondent failed to comply. Hence in the resolution of 25 September 1996, we ordered him once more to file his comment within ten (10) days from notice, and within the same period, to pay a fine of P1,000.00 or suffer imprisonment of ten (10) days should he fail to so pay. In a Compliance and Motion dated 24 October 1996, respondent transmitted the fine of P1,000.00 by way of postal money order, but asked for five (5) days from date to file his comment. As respondent still failed to so file, we then declared, in the resolution of 2 December 1996, that respondent was deemed to have waived his right to file his comment, and referred the complaint to the Office of the Bar Confidant for reception of complainant's evidence and submission of a report and recommendation thereon.

On 16 October 1997, the Bar Confidant, Atty. Erlinda C. Verzosa, submitted her Report and Recommendation, material portions of which read as follows:

Respondent Atty. Francisco Ricafort stands charged with having misappropriated the sum of P30,000.00 intended for his clients as well as having deceived his clients into giving him the sum of P2,000.00 purportedly to be deposited as a bond in the case he was handling.

Complainant Lourdes R. Busiños is one of the heirs of Pedro Rodrigo who are the defendants in Civil Case No. 1584, apparently a case involving the properties of the late Pedro Rodrigo, father of herein complainant. Respondent was the counsel of record for the defendants in the said case. On July 10, 1994, complainant representing her co-heirs, executed

a special power of attorney, appointing and constituting respondent and/or Pedro Rodrigo, Jr. to be her true and lawful attorney-in-fact with the following powers:

"1. To attend to and represent me, testify, or otherwise enter into compromise during the pre-trial stage or other proceedings in Civil Case No. 1584, entitled "Heirs of Rosario Rodrigo-Reantaso, vs. Heirs of Pedro Rodrigo Sr., et al." now pending before the Regional Trial Court, Branch 12, Ligao, Albay;

"2 To demand, collect and receipt for any and all sums of money that may now be deposited in said court by the defendant Oas Standard High School or hereafter be deposited by said defendant, due and owing to me or said Heirs of Pedro Rodrigo Sr., representing the rentals of said defendants for the lease of the property involved in said case; and

"3 To sign, authenticate, issue and deliver any and all deeds, instruments, papers and other records necessary and pertinent to the above stated transactions."

On August 10, 1994, the Regional Trial Court of Ligao, Albay, Br. 12 issued an order, directing the Clerk of Court "to release any and all deposits of rentals made in connection with this case (Civil Case No. 1584) to the defendants Heirs of Pedro Rodrigo through Lourdes Rodrigo Businos who were receiving the rentals from Oas Standard High School prior to the institution of this case."

In a letter dated August 10, 1994, the Clerk of Court of RTC, Ligao informed herein complainant that respondent had already received the rental deposit of P25,000.00 on eve date (see Annex "C" to the complaint). Respondent also received from Oas Standard High School on August 17, 1994 the sum of P5,000.00 as payment for rental of school site for the month of July 1994 (See Annex "D" to the complaint). The said sum was entrusted to respondent with an obligation on his part to deposit the same in the account of complainant's husband at PNB, Ligao Branch. Instead, however, of depositing the money, respondent converted the money to his own personal use, and despite several demands, he failed to return the same to complainant. She was thus constrained to file a criminal case for estafa and an administrative case for disbarment against him. Thus, on November 21, 1994, complainant filed the instant administrative case against respondent.

Complainant further accuses respondent for demanding and receiving P2,000.00 from her which he said will be used for the bond in Civil Case No. 1584, but said amount was never used as intended since no bond was required in the said case. Thus, respondent merely pocketed the said amount.

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Complainant, upon questioning by the undersigned, testified that: She authorized respondent to withdraw the money amounting to P35,000.00 representing the rental fee paid by Oas Standard High School from the Clerk of Court, with the instruction to deposit the same in her savings account at the PNB. After she was informed by the court that respondent had already withdrawn the money, she expected in vain to receive the money a week later in Tarlac as respondent failed to effect the deposit of the said sum in her account. She demanded from him to give her the money, but he informed her that he had already spent the same. He promised, though to pay her the said amount. (pp. 7-8, TSN, Reception of Evidence, April 18, 1997). She clarified that respondent withdrew only the sum of P30,000.00 from the Clerk of Court, while the P5,000.00 was withdrawn by respondent from Oas Standard High School (TSN, p. 8). Despite several demands, both from her and her lawyer, respondent failed to make good his promise to give her the money he withdrew from the Clerk of Court and Oas Standard High School (TSN, pp. 11-13). She was then constrained to file a criminal case for estafa and an administrative case against respondent sometime in November of 1994 to recover the money in question (TSN, pp. 14-16). On their third hearing of the estafa case sometime in 1995, respondent came with the money and paid complainant inside the courtroom (TSN, pp. 15, 19-20). Because of this development, she did not anymore pursue the estafa case against respondent (TSN, p. 17). She has no intention, however, of withdrawing the instant complaint (TSN, p. 18).

She further testified that respondent demanded from her the sum of P2,000.00 for the bond required in the civil case. (TSN, p. 18). Respondent did not give her a receipt for the said amount. (TSN, p. 19). Respondent gave back the P2,000.00 to complainant. He paid complainant a total of P60,000.00 representing the money he withdrew from the Clerk of Court and Oas Standard High School, the P2,000.00 he got from complainant and attorney's fees, which he undertook to foot as a way of settlement. (TSN, p. 19).

Although complainant failed to submit the original or certified true copies of the documents in support of her complaint against respondent, respondent's repeated failure to comply with several resolutions of the Court requiring him to comment on the complaint lends credence to the allegations of the complainant. It manifests his tacit admission thereto. We have no other alternative, therefore, but to accept the said documents at their [sic] face value.

There is no doubt that respondent is guilty of having used the money of his clients without their consent. As the evidentiary value of the documents should be given more weight than the oral testimony of complainant, we place the amount illegally used by respondent at P30,000.00 and not P35,000.00 as claimed by complainant. Respondent's illegal use of his client's money is made more manifest [by] his letters to complainant, all promising the latter to make good his promise to pay the money he withdrew from the Clerk of Court and Oas Standard High School (See Annex "E" to the complaint).