

## THIRD DIVISION

[ A.C. No. CBD-174, March 07, 1996 ]

**GIOVANI M. IGUAL, COMPLAINANT, VS. ATTY. ROLANDO S. JAVIER, RESPONDENT.**

### DECISION

**PANGANIBAN, J.:**

In the instant case, this Court has found occasion to again remind members of the Bar to observe honesty in their dealings with clients and the public alike, and fidelity to the cause entrusted to them.

This case stemmed from a Complaint-Affidavit filed by complainant with the Integrated Bar of the Philippines (IBP) on September 23, 1991 to initiate disbarment proceedings against the respondent, "for malpractice, deceit, dishonesty, (and) gross misconduct in his office as attorney and/or for violation of his lawyer's oath x x x."<sup>[1]</sup> Respondent was accused of having unlawfully withheld and misappropriated complainant's money in the amount of P7,000.00, allegedly paid by way of acceptance fee for a matter which respondent never performed any work on.

The IBP's Committee on Bar Discipline, through its investigating Commissioner Vicente Q. Roxas, required respondent to answer the charges and thereafter held several hearings, during which the parties were able to present their respective witnesses and documentary evidence. After the parties had filed their respective formal offer of evidence as well as memoranda, the case was considered submitted for resolution. Subsequently, the commissioner rendered his Commissioner's Report dated January 30, 1995, which became the basis for the Resolution passed by the IBP Board of Governors on February 18, 1995, which reads as follows:

"RESOLUTION NO. XI-95-288  
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Atty. Rolando S. Javier

"RESOLVED to RECOMMEND to the Supreme Court that the respondent be SUSPENDED from the practice of law for ONE (1) month and restitution of the SEVEN THOUSAND PESOS (P7,000.00) acceptance fee."

#### **The Antecedent Facts**

Inasmuch as the findings of fact made by Commissioner Roxas in his report are substantiated by the evidence on record, the same are herein adopted, to wit:

"The complaint dated September 23, 1991 alleges that complainant met respondent attorney thru complainant's tennis partner, one Sergio Dorado, sometime April 1, 1991. Complainant asked Sergio Dorado to make it possible for complainant to meet respondent at the latter's house regarding the possibility of hiring respondent to handle Civil Case No. 2 188-LRC No. 215, pending with the Regional Trial Court of Aklan. A decision favorable to complainant's mother had just been rendered but this decision was appealed by the adverse party to the Court of Appeals, consolidated and docketed as CA-G.R. No. 32592 [1(a) Complaint-Affidavit]. Complainant said respondent is being hired because complainant's mother wanted the appeal expedited.

That very night, 'when Atty. Javier offered to collaborate in the appealed case' [1(c) Complaint-Affidavit] because 'Atty. Javier through sweet talk and pretense of influence to several justices of the Court of Appeals x x x that he could be of great help in expediting the speedy disposition of the case' [1(b) Complaint-Affidavit] complainant gave respondent P10,000.00 which money he intended to buy a refrigerator with. Complainant alleged that he gave the money with the understanding that the money is for 'safekeeping and as proof, according to him, x x x promising to return my money should my mother and her lawyer Atty. Ibadlit disagree in his collaborating in the case' [1(c) Complaint-Affidavit] - covered by receipt which provides: 'Received the amount of Ten Thousand (P 10,000.00) Pesos from Mr. Giovanni M. Igual as Legal Fees and Filing Fees (Civil Case No. 2188). April 1, 1991 signed by respondent Atty. Rolando S. Javier. [Exhibit A and Annex A to Complaint-Affidavit].

Respondent thus entered his formal appearance 'as collaborating counsel' dated April 3, 1991 [Annex B to Complaint-Affidavit]. Then complainant wrote respondent on June 27, 1991 stating that he is demanding P7,000.00 balance since P3,000.00 had already been refunded by respondent. [Exhibit B and Annex C, Complaint-Affidavit].

Instead of filing an Answer, respondent filed an 'Affidavit' dated April 20, 1992, alleging that: he 'gave back the P3,000.00 not as a settlement' because complainant said 'his child was hospitalized and gravely ill' [par. 22, Affidavit-Javier] and that the reason why complainant wanted a refund of the remaining P7,000.00 is because 'it is not the fault of the affiant if Giovanni M. Igual had quarreled with his mother or his brother or his sister as to the reimbursement or sharing of the Legal Fees - because the truth was that Igual wanted to secure double or bigger reimbursement.' [par. 30, Affidavit-Javier]. Complainant denied the allegation of respondent in a Reply-Affidavit dated May 21, 1992.

Respondent presented Exhibit 4 which is certified xerox copy of the Decision dated March 19, 1991 in Civil Case No. 2188 and LRC 215, Regional Trial Court of Aklan, Province.

Respondent's declared purpose in the Formal Offer of Evidence was 'to show that Atty. Rolando S. Javier had accepted the appealed cases and had obtained pertinent records or pleadings to work on it' [page 2 number (4) exhibit, Formal Offer dated February 6, 1993].

From the evidence, however, the decision is dated February 25, 1991 and the March 19, 1991 is the date of the RTC's Order stating that the appeal had been perfected.

Complainant testified that he went back on April 3, 1991, to claim back the P 10,000.00 given last April 1, 1991. [TSN, page 15, July 8, 1992, Giovanni Igual]. Respondent also reimbursed the P3,000.00 two (2) months after. [TSN, page 19, July 8, 1992].

Respondent testified that he entered as collaborating counsel only and was promised P20,000.00 if he wins the case and:

'A: x x x as collaborating counsel I am going to to (sic) prepare the appeal brief and that I required Mr. Giovanni Igual to get the consent of his brothers, sisters and mother.' [TSN, pages 12-13, September 16, 1992, Atty. Javier]. .

Respondent further testified that:

'A: Now as to the agreement as to the fees, about few days after our agreement he returned and gave me the money. The agreement is that that is my legal fee. That is an acceptance fee. I do not know where he got that but that is what he paid me. [TSN, page 15, Sept. 16, 1992, Atty. Javier].

The Commission confronted respondent with the question:

'Q: How about the copy of the appeal? (sic)' [TSN, page 27, September 16, 1992, Atty. Javier]

'A: It was not finished, Your Honor, because we quarreled. When I am preparing the brief we quarreled already.' [TSN, page 27, September 16, 1992, Atty. Javier].

Then again:

'A: This is what I promised him. I told him that upon the arrival of all pertinent records in the Court of Appeals, I am going to prepare the brief but on the basis of the paper that I have in my possession(.) I can merely be guided by the decision.' [TSN, page 34, September 16, 1992, Atty. Javier]

'Question: Did you not ascertain from them when did they receive the appellant's brief because for purposes of prescription there is the reglementary period within which to file appellee's brief?

'Answer: I did not ascertain anymore because at that time my thinking was that I have to study first the case.

'Question: Considering that this is the filing of appellee's brief, is there a need to pay filing fee for appellee's brief?