



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 25-2005

TO: THE COURT OF APPEALS,
SANDIGANBAYAN, COURT OF TAX
APPEALS, REGIONAL TRIAL COURTS,
SHARI'A DISTRICT COURTS,
METROPOLITAN TRIAL COURTS,
MUNICIPAL TRIAL COURTS IN CITIES,
MUNICIPAL TRIAL COURTS, MUNICIPAL
CIRCUIT TRIAL COURTS, SHARI'A
CIRCUIT COURTS, THE OFFICE OF THE
STATE PROSECUTOR, PUBLIC
ATTORNEY'S OFFICE AND THE
INTEGRATED BAR OF THE PHILIPPINES

SUBJECT: DISBARMENT OF ATTY. AMADEO E.
BALON, JR.

For the information and guidance of all concerned, quoted hereunder is the Decision of the Court En Banc October 28, 2003 in Administrative Case No. 5829, entitled "Daniel Lemoine vs. Atty. Amadeo E. Balon, Jr.", to wit:

"On December 17, 1999, complainant Daniel Lemoine, a French national, filed a verified complaint¹ against respondent Atty. Amadeo E. Balon, Jr., for estafa and misconduct before the Integrated Bar of the Philippines. The case, docketed as CBD Case No. 99-679, was referred by the Commission on Bar Discipline to an Investigator for investigation, report and recommendation.

The facts that spawned the filing of the complaint are as follows:

In early 1998, complainant filed a car insurance claim with the Metropolitan Insurance Company (Metropolitan Insurance), the insurer of his vehicle which was lost. As complainant encountered problems in pursuing his claim which was initially rejected,² his friend, a certain Jesus, "Jess" Garcia (Garcia), arranged for the engagement of respondent's services.

¹ Rollo at 1-4.

² Rollo at 46.

By letter³ of October 21, 1998 addressed to Elde Managementt, Inc., "ATTN: Mr. Daniel Lemoine," under whose care complainant could be reached, respondent advised complainant, whom he had not before met, that for his legal services he was charging "25% of the actual amount being recovered...payable upon successful recovery;" an advance payment of ₱50,000.00 "to be charged [to complainant] to be deducted from whatever amount [would] be successfully collected;" P1,000.00 "as appearance and conference fee for each and every court hearings, conferences outside our law office and meetings before the Office of the Insurance Commission which will be also charged to our 25% recovery fee;" and legal expenses "such as but not limited to filing fee, messengerial and postage expenses...and other miscellaneous but related expenses," to be charged to complainant's account which would be reimbursed upon presentation of statement of account.

The letter-proposal of respondent regarding attorney's fees does not bear complainants conformity, he not having agreed therewith.

It appears that Metropolitan Insurance finally offered to settle complainant's claim, for by letter⁴ of December 9, 1998 addressed to it, respondent confirmed his acceptance of its offer to settle the claim of complainant "in an *ex-gratia* basis of 75% of his policy coverage which is therefore FIVE HUNDRED TWENTY FIVE THOUSAND (₱525,000.00) PESOS."

A day or a few days before December 23, 1998 when complainant left for France,⁵ he, on the advice of respondent, signed an already prepared undated Special Power of Attorney⁶ authorizing respondent and/or Garcia to bring any action against Metropolitan Insurance for the satisfaction of complainant's claim as well as to "negotiate, sign, compromise[,] encash and receive payment" from it. The Special Power of Attorney was later dated December 23, 1998 on which same date Metropolitan Insurance issued a Chinabank Check No. 841172 **payable to complainant** in the amount of ₱525,000.00 as full settlement of the claim.⁷ The check was received by respondent.

In the meantime, complainant returned to the Philippines in early January 1999 but left again on the 24th of the same month.⁸ On inquiry about the status of his claim, Garcia echoed to complainant what respondent had written him (Garcia) in

³ *Id.* at 49-50.

⁴ *Id.* at 19.

⁵ TSN, May 9, 2000, pp. 4-6.

⁶ *Rollo* at 7-8.

⁷ *Id.* at 10.

⁸ TSN, May 9, 2000, p.7.

respondent's letter⁹ of March 26, 1999 that the claim was still pending with Metropolitan Insurance and that it was still subject of negotiations in which Metropolitan Insurance offered to settle it for ₱350,000.00 representing fifty percent thereof. In the same letter to Garcia, respondent suggested the acceptance of the offer of settlement to avoid a protracted litigation.

On December 6, 1999, on complainant's personal visit to the office of Metropolitan Insurance, he was informed that his claim had long been settled via a December 23, 1998 check given to respondent the year before.¹⁰ Complainant lost no time in going to the law office of respondent who was not around, however, but whom he was able to talk by telephone during which he demanded that he turn over the proceeds of his claim.¹¹

Respondent thereupon faxed to complainant a December 7, 1999 letter¹² wherein he acknowledged having in his possession the proceeds of the encashed check which he retained, however, as attorney's lien pending complainant's payment of his attorney's fee, equivalent to fifty percent (50%) of the entire amount collected. In the same letter, respondent protested what he branded as the "uncivilized and unprofessional behavior" complainant "reportedly demonstrated" at respondent's office. Respondent wined up his letter as follows, quoted *verbatim*:

We would like to clear that we cannot give the aforesaid amount until and unless our attorney's fees will be forthwith agreed and settled. In the same manner, should you be barbaric and uncivilized with your approached, we will not hesitate to make a proper representation with the Bureau of Immigration and Deportation for the authenticity of your visa, Department of Labor and Employment for your working status, Bureau of Internal Revenue for your taxation compliance and the National Bureau of Investigation [with] which we have a good network...

While it [is your] prerogative to file a legal action against us, it is also our prerogative to file a case against you. We will rather suggest if you could request your lawyer to just confer with us for the peaceful settlement of this matter. (Underscoring and emphasis supplied)

As despite written demands,¹³ respondent refused to turn over the proceeds of the insurance claim and to acknowledge the unreasonableness of the attorney's fees he was demanding, complainant instituted the administrative action at bar on December 17, 1999.

⁹ Rollo at 67-68.

¹⁰ Rollo at 1.

¹¹ Rollo at 1 and 3.

¹² Id. at 11-13.

¹³ Id. at 20, 21, and 23.

Finally, respondent declared that he, in connection with his follow-up of the insurance claim, incurred representation expenses of ₱35,000.00, entertainment and other representation expenses on various occasions of ₱10,000.00, and transportation and gasoline expenses and parking fees of ₱5,000.00;³¹ and that his retention of complainant's money was justified in light of his apprehension that complainant, being an alien without a valid working permit in the Philippines, might leave the country anytime without settling his professional fees.³²

The Investigating Commissioner, by Report and Recommendation³³ of October 26, 2001, found respondent guilty of misconduct and recommended that he be disbarred and directed to immediately turn over to complainant the sum of ₱475,000.00 representing the amount of the ₱525,000.00 insurance claim less respondent's professional fees of ₱50,000.00, as proposed by complainant.

The Board of Governors of the Integrated Bar of the Philippines, acting on the Investigator's Report, issued Resolution No. XV-2002-401³⁴ on August 3, 2002, reading:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution/Decision as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, **with modification**, and considering respondent's dishonesty which amounted to grave misconduct and grossly unethical behavior which caused dishonor, not merely to respondent but the noble profession to which he belongs, Respondent is hereby **SUSPENDED** from the practice of law for six (6) months with the directive to turn over the amount of Five Hundred Twenty Five Thousand (P525,000.00) Pesos to the complainant without prejudice to respondent's right to claim attorney's fees which he may collect in the proper forum. (Underscoring supplied)

The records of the case are before this Court for final action.

Respondent, by a Motion for Reconsideration³⁵ filed with this Court, assails the Investigating Commissioner's Report and

³¹ *Id.* at 91.

³² *Id.* at 90.

³³ *Rollo* at 111-135.

³⁴ *Id.* at 109-110.

³⁵ *Rollo* at 137-159.

Recommendation as not supported by clear, convincing and satisfactory proof. He prays for the reopening of the case and its remand to the Investigator so that Garcia can personally appear for his (respondent's) confrontation.

There is no need for a reopening of the case. The facts material to its resolution are either admitted or documented.

This Court is in full accord with the findings of the IBP Investigator that respondent violated the following provisions of the Code of Professional Responsibility, to wit:

RULE 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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CANON 15 – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

RULE 15.06 – A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

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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.

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professional misconduct.³⁸ Such misconduct is reprehensible at a greater degree, for it was obviously done on purpose through the employment of deceit to the prejudice of complainant who was kept in the dark about the release of the check, until he himself discovered the same, and has to date been deprived of the use of the proceeds thereof.

A lawyer who practices or utilizes deceit in his dealings with his client not only violates his duty of fidelity, loyalty and devotion to the client's cause but also degrades himself and besmirches the fair name of an honorable profession.³⁹

That respondent had a lien on complainant's funds for his attorney's fees did not relieve him of his duty to account for it.⁴⁰ The lawyer's continuing exercise of his retaining lien presupposes that the client agrees with the amount of attorney's fees to be charged. In case of disagreement or when the client contests that amount for being unconscionable, however, the lawyer must not arbitrarily apply the funds in his possession to the payment of his fees.⁴¹ He can file, if he still deems it desirable, the necessary action or proper motion with the proper court to fix the amount of such fees.⁴²

In respondent's case, he never had the slightest attempt to bring the matter of his compensation for judicial determination so that his and complainant's sharp disagreement thereon could have end put to an end. Instead, respondent stubbornly and in bad faith held on to complainant's fund with the obvious aim of forcing complainant to agree to the amount of attorney's fee sought. This is an appalling abuse by respondent of the exercise of an attorney's retaining lien which by no means is an absolute right and cannot at all justify inordinate delay in the delivery of money and property to his client when due or upon demand.

Respondent was, before receiving the check, proposing a 25% attorney's fee. After he received the check and after complainant had discovered its release to him, he was already asking for 50%, objection to which complainant communicated to him. Why respondent had to doubly increase his fees after the lapse of about one year when all the while he has been in custody of the proceeds of the check defies comprehension. At any rate, it smacks of opportunism, to say the least.

As for respondent's claim in his June 2001 Supplement to his Counter-Affidavit that he had on several occasions from May

³⁸ *Daroy v. Legaspi*, 65 SCRA 304, 312 [1975].

³⁹ Agpalo, *Comments on the Code of Professional Responsibility and the Code of Judicial Conduct*, p. 410 [2001].

⁴⁰ *Tanhueco v. De Dumo*, 172 SCRA 760 [1989]

⁴¹ *J.K. Mercado and Sons Agriculatural Enterprises, Inc. v. De Vera*, 317 SCRA 339 [1999].

⁴² *Ibid.*

1999 to October 1999 already delivered a total of ₱233,000.00 out of the insurance proceeds to Garcia in trust for complainant, this does not persuade, for it is bereft of any written memorandum thereof. It is difficult to believe that a lawyer like respondent could have entrusted such total amount of money to Garcia without documenting it, especially at a time when, as respondent alleged, he and Garcia were not in good terms.⁴³ Not only that. As stated earlier, respondent's Counter-Affidavit of February 18, 2000 and his December 7, 1999 letter to complainant unequivocally contained his express admission that the total amount of ₱525,000.00 was in his custody. Such illogical, futile attempt to exculpate himself only aggravates his misconduct. Respondent's claim discredited, the affidavits of Leonardo and Roxas who, acting allegedly for him, purportedly gave Garcia some amounts forming part of the ₱233,000.00 are thus highly suspect and merit no consideration.

The proven ancillary charges against respondent reinforce the gravity of his professional misconduct.

The intercalation of respondent's name to the Chinabank check that was issued payable solely in favor of complainant as **twice certified** by Metropolitan Insurance⁴⁴ is clearly a brazen act of falsification of a commercial document which respondent resorted to in order to encash the check.

Respondent's threat in his December 7, 1999 letter to expose complainant to possible sanctions from certain government agencies with which he bragged to have a "good network" reflects lack of character, self-respect, and justness.

It bears noting that for close to five long years respondent has been in possession of complainant's funds in the amount of over half a million pesos. The deceptions and lies that he peddled to conceal, until its discovery by complainant after about a year, his receipt of the funds and his tenacious custody thereof in a grossly oppressive manner point to his lack of good moral character. Worse, by respondent's turnaround in his Supplement to his Counter-Affidavit that he already delivered to complainant's friend Garcia the amount of ₱233,000.00 which, so respondent claims, is all that complainant is entitled to, he in effect has declared that he has nothing more to turn over to complainant. Such incredible position is tantamount to a refusal to remit complainant's funds, and gives rise to the conclusion that he has misappropriated them.⁴⁵

⁴³ Rollo at 43.

⁴⁴ Rollo at 18 and 102.

⁴⁵ *Castillo v. Taguines*, 254 SCRA 554 [1996].

In fine, by respondent's questioned acts, he has shown that he is no longer fit to remain a member of the noble profession that is the law.

WHEREFORE, respondent Atty. Amadeo E. Balon, Jr., is found **GUILTY** of malpractice, deceit and gross misconduct in the practice of his profession as a lawyer and he is hereby **DISBARRED**. The Office of the Clerk of Court is directed to strike out his name from the Roll of Attorneys and to inform all courts and the Integrated Bar of the Philippines of this Decision.

Respondent is ordered to turn over complainant, Daniel Lemoine, the amount of ₱525,000.00 within (30) days from notice, without prejudice to whatever judicial action he may take to recover his attorney's fees and purported expenses incurred in securing the release thereof from Metropolitan Insurance.

SO ORDERED."

Copy of the decision was received by respondent on 6 November 2003 and respondent's motion for reconsideration of the said decision was denied with finality in the resolution dated 23 November 2004 which respondent received on 3 January 2005.

18 March 2005.



PRESBITERO J. VELASCO, JR.
Court Administrator