



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

OCA CIRCULAR NO. 36-2004

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 DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT : SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS OF ATTY. MARCELO G. FLORES

For the information and guidance of all concerned, quoted hereunder is the resolution of the First Division dated December 8, 2003 in Administrative Case No. 4219, to wit:

"Only recently, we stressed that membership in the bar is a privilege burdened with conditions. A high sense of morality, honesty and fair dealing is expected and required of a member of the bar. Rule 1.01 of the Code of Professional Responsibility provides that 'a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.' The nature of the office of a lawyer requires that he shall be of good moral character. This qualification is not only a condition precedent to the admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession.¹ Furthermore, implicit in a vocation characterized by professionalism is a certain level of competence and dedication.² Far from measuring up to the norms of conduct set in the Code, the respondent charged in this case, in fact, breached his avowed duty as a lawyer and the ethical standards he was strictly bound to observe.

On March 22, 1994, Lothar Schulz, a German national filed a verified complaint for disbarment against Atty. Marcelo G. Flores of Dumaguete City, Negros Oriental.³ He alleged that sometime in December 1992, he engaged the services of respondent for the purposes of filing a complaint against Wilson Ong for revocation of contract and damages for the latter's failure to deliver the jeep he

¹ Eustaquio v. Rimorin, A.C. No. 5081, 24 March 2003, citing Cakub v. Suller, A.C. No. 1474, 28 January 2000, 323 SCRA 556, 560; Tapucar v. Tapucar, 355 Phil. 66, 74 [1998]; Rayos-Ombac v. Rayos, 349 Phil. 7, 15 [1998].

² Jardin v. Villar, A.C. No. 5474, 28 August 2003.

³ Rollo, Vol. I, p. 1.

sold to complainant within the stipulated period. Respondent advised him that there was no need to refer the complaint for barangay conciliation. Three months later, respondent instructed him to file his complaint with the *Lupon Tagapayapa* of Tabuc-tubig, Dumaguete City. Wilson Ong refused to appear at the conciliation hearings, arguing that the *Lupon* of Tabuc-tubig had no jurisdiction over his person because he was a resident of Barangay Banilad. Complainant thus brought the complaint before the Barangay Captain of Banilad. By that time, however, complainant learned that Wilson Ong had already filed a case for Specific Performance against him before the Regional Trial Court of Negros Oriental, Branch 31, entitled "*Rachel Lisa B. Ong, et al. v. Lothar Schulz*," docketed as Civil Case No. 10527. Complainant argued that respondent's inordinate delay in acting on his case resulted in his being defendant rather than a complainant against Wilson Ong.

Complainant also charged respondent with collecting excessive and unreasonable fees and of unjustifiably refusing to return his files. He undertook to pay respondent attorney's fees of P5,000.00 if the case does not reach the court, and P10,000.00 attorney's fees and P500.00 appearance fees if it reaches the court. This notwithstanding, respondent alleged in the Answer with Counterclaim which he prepared on behalf of complainant in Civil Case No. 10527 that his attorney's fees was P50,000.00 and appearance fee was P1,000.00 per hearing. When complainant questioned him about this, respondent explained that it was Wilson Ong who will be made to pay for the said fees. This, complainant claimed, showed respondent's deceit and lack of candor in his dealings with the parties in court.

Further, complainant alleged that since he suspected respondent of not protecting his interest in Civil Case No. 10527, he instructed respondent to withdraw his appearance as his counsel after the filing of the answer. Thereafter, he asked respondent to return the amount of P12,000.00 out of the total of P17,000.00 that he has paid to the latter, inasmuch as the amount of P5,000.00 should be sufficient compensation for the minimal services rendered by him. Respondent, however, refused to return the amount to complainant and, instead, demanded additional fees. Complainant's new counsel wrote a formal demand letter to respondent which, however, was ignored. This prompted complainant to file a complaint with the *Lupon Tagapayapa* of Barangay Bantayan where respondent resided. After the parties failed to reach a settlement, complainant instituted an action for sum of money against respondent, docketed as Civil Case No. 10645.

Complainant alleged that respondent offered to return his files provided that he signs a statement acknowledging that respondent does not owe him anything. Complainant refused, for fear that it would prejudice the collection suit he filed against respondent. Thus, respondent continued to unreasonably retain his files.

In support of his charges against respondent, complainant pointed out that respondent was formerly a Municipal Judge of Siaton, Negros Oriental who was dismissed from the service after the end of the Marcos regime. He submitted a copy of an Order⁴ of the Regional Trial Court of Negros Oriental, Branch 34, in Civil Case No. 9412 entitled "*Bishop of Dumaguete v. Pajunar, et al.*" In that case, respondent sought the inhibition of the Presiding Judge, Rosendo Bandal, Jr. The latter inhibited himself but cited in the said Order nine instances of anomalous, illegal and unethical practices committed by respondent.

In his Comment,⁵ respondent alleged that upon accepting the case of complainant, he immediately sent a letter to Wilson Ong demanding that he deliver the jeep to complainant for road test.⁶ Ong complied with the demand and allowed complainant to road-test the vehicle, during which he discovered that the jeep was defective.⁷ Respondent thereafter requested Ong to cause the repairs on the jeep. It was only after the negotiations with Ong failed that he advised complainant to proceed with the filing of his complaint before the Barangay Captain of Tabuc-tubig. At the time, he believed Tabuc-tubig was the proper venue considering that the South Pacific Metal Works owned by Wilson Ong was located there.

Respondent claims that complainant was to blame for the fact that Wilson Ong filed his complaint in court first. He alleged that complainant failed to follow up his case because he was involved in a traffic accident. Complainant's inability to attend to his complaint with the Barangay Lupon in Tabuc-tubig caused the delay thereof.

Anent the attorney's fees, respondent alleges that complainant agreed to pay him P50,000 as attorney's fees, one-half of which is payable upon the filing of the Answer with Counterclaim⁸ in Civil Case No. 10527 less the amount of P17,000.00 given as payment for past services. Complainant also agreed to pay him P1,000.00 per appearance. Hence, respondent avers that complainant still owed him P8,000.00 to complete the required one-half of the P50,000.00 attorney's fees, and P1,000.00 appearance fee for the hearing on April 15, 1993. Respondent further explained that he was willing to return complainant's files provided that he sign a receipt acknowledging the turn-over, but complainant refused to sign.

Respondent admitted that he was once a Municipal Judge of Siaton, Negros Oriental but he decided to go on optional retirement. During his 17-year stint in the judiciary, he was held in high esteem by his colleagues and was elected President of the Municipal Judges League of Negros Oriental for 14 consecutive terms. Out of the 15 RTC Judges in Negros Oriental, it is only Judge Bandal who had shown animosity, hostility and hatred towards him. However, he

⁴ *Id.*, pp. 26-31.

⁵ *Id.*, pp. 38-45.

⁶ Annex 1-T, Comment.

⁷ Rollo, Vol. I, p. 62; Annex 1-U, Comment.

⁸ *Id.*, pp. 55-61.

added that he and Judge Bandal have reconciled and are now on good terms.

On August 29, 1994, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.⁹

On August 9, 2002, respondent filed a Manifestation and Motion alleging that complainant had long left the country, for which reason the case may be resolved on the basis of the pleadings.¹⁰

The IBP Commission on Bar Discipline submitted a Report dated June 28, 2003 recommending that: (1) respondent be suspended from the practice of law for six months with a warning that a repetition of the same or similar acts will merit a more severe penalty; (2) he be ordered to return to complainant the amount of Twelve Thousand Pesos (P12,000.00) with legal interest; and (3) he return the papers of complainant which came under his custody during the period of his engagement as counsel.

In justifying the recommended penalty, the IBP-CBD made the following observations:

[Respondent] was presumed to be knowledgeable on the laws, but in this case, it turned out that Atty. Flores knew too little of the provisions and application of PD No. 1508 which mandates that all disputes, except those specifically cited (the dispute between Lothar Schulz and Wilson Ong not included), between and among residents of the same city or municipality should be brought first under the system of barangay conciliation before recourse to the court can be allowed.

He was not all certain if the complaint of Lothar Schulz falls under PD No. 1508 or not. As Lothar Schulz narrated, Atty. Flores told him at first that there was no need for his complaint to be coursed through the barangay authorities.

Not realizing the need and urgency to avail of PD No. 1508, Atty. Flores found it more important to spend more than two months to dialogue and confer with Wilson and hope that he could get the parties to come to an amicable settlement of their differences, an undertaking that only involves a waste of time and effort as he later realized it because it turned out that Wilson Ong did not appear to have any genuine intent to make good his obligation to put the jeep in good running condition and free from defects because Lothar Schulz and his mechanics found out from the result of the last road test on the jeep that aside from several defects discovered during previous road tests and which had remained

⁹ *Id.*, p. 70.

¹⁰ Rollo, Vol. III, p. 3.

uncorrected/unrepaired, there are twenty-six more new defects.

It was already March 8, 1992, more than two months after becoming Lothar Schulz's lawyer that Atty. Flores reversed position and suddenly prepared a written complaint for the client which he asked the latter to file with the Barangay Captain of Tabuc-tubig. However, that belated move did not benefit the cause of his client at all. On the contrary, Atty. Flores even made the problem of delay worse. Upon the misconception that the proper venue was Tabuc-tubig which was the place where the assembly/motor shop of Wilson Ong is located, he directed Lothar Schulz to file his complaint there. That was a wrong advice. Section 3 of PD No. 1508 states that the dispute should be lodged for conciliation with the barangay where the respondent actually resides. Because PD No. 1508 applies only to parties who are natural persons, the location of the assembly should of Wilson Ong is of no consequence to the law. The respondent who could be made a party under PD No. 1508 in this case is Wilson Ong and the complaint against him must be filed where he resides which is Barangay Banilad in Dumaguete City. Thus, the complaint of Lothar Schulz was not able to move at all for the entire duration that it was in Barangay Tabuc-tubig which had no authority over it. Such was the situation until that barangay was impelled to dismiss the complaint for lack of jurisdiction. It is true that the complaint was eventually brought to the proper barangay (Banilad), but the *Lupon* in that place was no longer in a position to assert its jurisdiction because at that time there was already a case that Wilson Ong had succeeded to file against Lothar Schulz on the subject of their failed contract.

x x x

x x x

x x x

Between the conflicting versions given by the parties as to the reason why the papers of Lothar Schulz had continued to be possessed by Atty. Flores, the version of the complainant appears more deserving of credence. If the paper which was presented for the signature of Lothar Schulz is really an acknowledgment to evidence the return of the papers of the case to Lothar Schulz, as the respondent would have it appear, there is no reason why Lothar Schulz [should] hesitate or refuse to sign the paper[s] as there is nothing prejudicial to his interest. But certainly if the contents of the paper presented by Atty. Flores to Lothar Schulz for the purpose of signature involve[s] an admission on the part of Lothar Schulz that the lawyer is clear on the matter of money accountability, it is understandable that Lothar Schulz will not sign that paper because his signature will have the effect of a desistance in his pending civil case for the recovery of the P12,000.00 which he alleged to be an overcharge on attorney's fee[s] by Atty. Flores. The continuing possession by Atty. Flores of the papers of Lothar Schulz can only be compatible with the version that Lothar Schulz presented. Atty. Flores would not release the papers for they serve as means to harass and/or pressure Lothar Schulz until the latter is impelled to agree to give up his

efforts to pursue Civil Case No. 10645 which will provide Atty. Flores the assurance that a day may come when he will be made to reimburse the amount of P12,000.00 previously collected from the former client.¹¹

The findings and recommendation of the IBP-CBD were thereafter approved and adopted by the IBP Board of Governors in Resolution No. XVI-2003-109 dated August 30, 2003.

We agree with the findings and conclusions of the Committee on Bar Discipline, as approved by the IBP Board of Governors. The breach of respondent's sworn duty as a lawyer and of the ethical standards he was strictly to honor and observe has been sufficiently established.

Respondent has fallen short of the competence and diligence required of every member of the Bar. The pertinent Canons of the Code of Professional Responsibility state:

CANON 17. – A LAWYER OWES FIDELITY TO THE CAUSE OF HIS CLIENT AND HE SHALL BE MINDFUL OF THE TRUST AND CONFIDENCE REPOSED IN HIM.

CANON 18. – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE

x x x

x x x

x x x

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

It is dismaying to note that respondent patently violated his duty as a lawyer in this case. He committed a serious transgression when he failed to exert his utmost learning and ability to give entire devotion to his client's cause. His client had relied upon him to file the complaint with dispatch so that he would not be preempted by the adverse party. But he failed him. As a consequence of respondent's indolence, his client was haled to court as a party-defendant. It therefore behooves this Court to wield its corrective hand on this inexcusable infraction which caused undeserved and needless prejudice to his client's interest, adversely affected the confidence of the community in the legal profession and eroded the public's trust in the judicial system. As an attorney, respondent is sworn to do his level best and to observe full fidelity to the court and his clients.¹²

¹¹ Report of Investigation and Recommendation, pp. 10-12, 15-16.

¹² *Jardin v. Villar, supra.*

The Court has time and again emphatically stated that the trust and confidence necessarily reposed by clients requires in the lawyer a high standard and an appreciation of his duty to his clients, his profession, the courts and the public.¹³ Every case an attorney accepts deserves his full attention, diligence, skill and competence, regardless of its importance and whether he accepts it for a fee or for free.¹⁴ To be sure, any member of the legal fraternity worth his title cannot afford to practice the profession in a lackadaisical manner.

Likewise, respondent erred in not returning complainant's money despite demands after his failure to file the case and his devious act of compelling complainant to sign a document stating that he has no financial obligation to complainant in exchange of the return of complainant's papers. This conduct violated the following Canon:

CANON 15. – A LAWYER SHALL OBSERVE
CANDOR, FAIRNESS, AND LOYALTY IN ALL HIS
DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

Rule 16.03 – A lawyer shall deliver the
funds and property of client when due or upon
demand. x x x.

Where a client gives money to his lawyer for a specific purpose, such as to file an action, appeal an adverse judgment, consummate a settlement, or pay the purchase price of a parcel of land, the lawyer should, upon failure to take such step and spend the money for it, immediately return the money to his client.¹⁵ The fact that a lawyer has a lien for his attorney's fees on the money in his hands collected for his client does not relieve him from the obligation to make a prompt accounting.¹⁶ Neither is a lawyer entitled to unilaterally appropriate his client's money for himself by the mere fact alone that the client owes him attorney's fees.¹⁷

The failure of an attorney to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice and violation of the trust reposed in him by the client.¹⁸ It is not only a gross violation of the general morality as well as of professional ethics; it also impairs confidence in the legal profession and deserves punishment.¹⁹ In short, it is settled that the unjustified withholding of money belonging to his

¹³ *Sipin-Nabor v. Baterina*, 412 Phil. 419 [2001].

¹⁴ *In re: Atty. Davide Briones*, 415 Phil. 203 [2001].

¹⁵ *Agpalo*, R.E. *Legal Ethics*, 1997 ed., p. 189.

¹⁶ *In re: Bamberger*, 49 Phil. 962 [1942]; *Daroy v. Legaspi*, 65 SCRA 304 [1975]; *Domingo v. Domingo*, 42 SCRA 131 [1971]; *Tambueko v. De Dumo*, 172 SCRA 760 [1989].

¹⁷ *Cabigao v. Rodrigo*, 567 Phil. 20 [1932]; *Manaloto v. Reyes*, 113 Phil. 915 [1965].

¹⁸ *In re: David*, 84 Phil. 627 [1949]; *Manaloto v. Reyes*, *supra*.

¹⁹ *Daroy v. Legaspi*, *supra*.

client, as in this case, warrants the imposition of disciplinary action.²⁰

A lawyer must conduct himself, especially in his dealings with his clients, with integrity in a manner that is beyond reproach. His relationship with his clients should be characterized by the highest degree of good faith and fairness.²¹

Therefore, we agree with the evaluation of the IBP-CBD and find that respondent's acts warrant the imposition of disciplinary sanctions against him. The recommended penalty of six months suspension from the practice of law is well-taken.

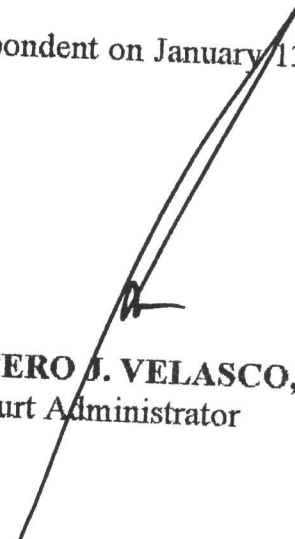
WHEREFORE, in view of all the foregoing, respondent Atty. **MARCELO G. FLORES** is found guilty of negligence and incompetence, and is **SUSPENDED** from the practice of law for a period of six (6) months effective immediately. He is ordered to **RETURN** to complainant Lothar Schulz the amount of Twelve Thousand Pesos (P12,000.00) with legal interest from the date of promulgation of this Resolution, and all papers which came into his custody as a result of having served as counsel for said complainant. Respondent is further **STERNLY WARNED** that a commission of the same or similar act in the future will be dealt with more severely.

Let copies of this Resolution be entered in the record of respondent and served on the IBP, as well as on the Court Administrator who shall circulate it to all courts for their information and guidance.

SO ORDERED.”

Copy of the resolution was received by respondent on January 13, 2004, as shown by Registry Receipt No. 274.

9 March 2004.


PRESBITERO J. VELASCO, JR.
Court Administrator

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²⁰ Sencio v. Atty. Robert Calvadores, A.C. No. 5841, 20 January 2003, citing Reyes v. Maglaya, 243 SCRA 214, 219 [1995].

²¹ Genato v. Atty. Essex L. Silapan, A.C. No. 4078, 14 July 2003.