



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

OCA CIRCULAR NO. 52-2005

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 : SUSPENSION FROM THE PRACTICE OF LAW FOR
ONE (1) YEAR OF ATTY. DANILO G. MACALINO

For the information and guidance of all concerned, quoted hereunder is the Resolution of the Third Division dated December 10, 2004 in Administrative Case No. 4566, entitled "Unity Fishing Development Corporation vs. Atty. Danilo G. Macalino", to wit:

"Under consideration is this petition by way of a **complaint for disbarment** filed by Unity Fishing Development Corporation against **Atty. Danilo Macalino** for having violated Canon 16 of the Code of Professional Responsibility.

In its resolution of June 26, 1996, the Court required respondent to comment on the complaint within ten (10) days from notice.¹

On July 26, 1996, respondent filed a motion for extension of thirty (30) days within which to file comment,² which motion was granted by the Court in its resolution of August 21, 1996.³

On August 26, 1996, respondent filed another motion for extension, this time for an additional period of fifteen (15) days.⁴ The motion was similarly granted by the Court in its resolution of October 7, 1996.⁵

¹ Rollo, p. 27.

² *Id.*, at pp. 28-29.

³ *Id.*, at p. 32.

⁴ *Id.*, at pp. 33-34.

⁵ *Id.*, at p. 37.

Still, on September 19, 1996, respondent filed a third and "last extension of time to file comment".⁶ Again, this was granted by the Court *via* its resolution of November 27, 1996.⁷

Unfortunately, no comment was ever filed by respondent.

Hence, and taking note of complainant's "Motion to Conduct Further Proceedings", filed on March 23, 1998,⁸ the Court, in its resolution of April 27, 1998,⁹ referred the case to the Integrated Bar of the Philippines (IBP), for investigation, report and recommendation.

Acting on the referral, the IBP Commission on Bar Discipline designated Atty. Cesar R. Dulay as investigating commissioner.

It appears, however, that even while the case was already under formal investigation, respondent displayed the same attitude of lack of concern. As reported by Atty. Dulay:

The Commission issued a notice setting the case for hearing on October 8, 1998, at which hearing complainant represented by its legal counsel and respondent appeared. Again, respondent asked for fifteen days from October 8, 1998 to file his Answer. Complainant also asked the same period within which to file his reply.

On November 5, 1998, respondent filed an urgent motion for extension of time to file answer.

On November 9, 1998, respondent again filed an urgent motion for last extension of time or a period of fifteen (15) days from November 15, 1998 to file answer, which was granted by the Commission.

Since the respondent has not filed his answer as required by the Honorable Supreme Court and the Commission, the case was again set for hearing on November 9, 1999.

On said date, only the counsel for complainant appeared. Respondent was absent. However, records show the notice sent to him was returned unserved with the annotation "Moved." Records also show that respondent has not filed his answer and again he was given a last chance to file his answer within ten (10) days from receipt of the Order dated November 9, 1999 and the hearing of the case was reset to December 9, 1999.

On December 9, 1999, only counsel for complainant appeared and moved that respondent's right to file answer be deemed waived and that complainant be allowed to file Memorandum after which, the case shall be deemed submitted for resolution.

⁶ *Id.*, at pp. 38-39.

⁷ *Id.*, at p. 43.

⁸ *Id.*, at pp. 44-45.

⁹ *Id.*, at p. 47.

On December 14, 1999, respondent again filed an Urgent Motion for Extension of fifteen (15) days from December 4, 1999 within which to file his answer.

On January 7, 2000, the complainant filed a Memorandum, a copy of which was furnished to respondent and which was not controverted by respondent.

All told, respondent filed six (6) motions for extension of time to file Answer and up to this time, which is almost seven (7) years from the time the Honorable Supreme Court required respondent to file his answer to the complaint, respondent has not filed any answer,¹⁰

on account of which the investigating commissioner considered the case as "now ready for resolution".¹¹

Thereafter, the investigating commissioner submitted his Report. Dated January 20, 2003,¹² the Report recites the factual background of the case and the commissioner's discussion and findings thereon, thus:

"Frabal Fishing and Ice Plant Corporation (hereinafter, Frabal) was the owner of a parcel of land located along Ramon Magsaysay Boulevard, Sta. Mesa, Manila which was leased to Wheels Distributors, Inc. (hereinafter, Wheels), an authorized dealer of cars and motor vehicles of various make;

A dispute arose between Frabal and Wheels regarding the terms and conditions of the lease contract. The dispute eventually led to a lawsuit. Frabal hired the services of respondent Atty. Danilo G. Macalino as counsel for the purpose of representing its interest in the said lawsuit;

Frabal merged and was absorbed by Petitioner corporation on February 12, 1991, with the former conveying, assigning and transferring all its business assets and liabilities to the latter, including all judicial and extra-judicial claims. Hence, Petitioner was substituted in lieu of Frabal in the former's lawsuit with Wheels;

As Petitioner's legal counsel, Respondent advised Petitioner to sever all contractual relationship with Wheels as a step towards eventually evicting the latter from the property they were occupying;

Hence, upon advice of Respondent, the contract of lease between Frabal and Wheels was terminated. Respondent likewise advised Petitioner to return the guarantee deposit equivalent to two (2) months rental or the amount of ₱50,000.00 to Wheels;

¹⁰ *Id.*, at pp. 45-47.

¹¹ *Id.*, at p. 47.

¹² *Id.*, at pp. 42, et seq.

On March 2, 1988, Petitioner prepared Metrobank Check No. MB350288 dated March 8, 1988 for the amount of ₱50,000.00. The check was crossed and made payable to the Wheels Distributors, Inc. (Annex "A").

Respondent volunteered to bring the check to the office of Wheels himself and to make them accept it. Hence, on March 3, 1988, Respondent sent his representative to Petitioner's office to get the said check;

Respondent's representative duly received the said check from Petitioner, as proof of which he signed Check Voucher No. 3-012 (Annex "B");

Thereafter, Respondent represented to Petitioner that he was able to deliver the check to Wheels Distributors, Inc.;

The suit between Petitioner and Wheels continued for several years. In the meantime, Petitioner changed counsels, replacing Respondent with someone else;

Finally, sometime in May 1994, the suit ended in amicable settlement. In the process of negotiating the terms and conditions of the settlement, Wheels informed Petitioner that it never received therefund (sic) guarantee deposit in the amount of ₱50,000.00;

Petitioner was shocked to learn this piece of information from Wheels Distributors as all along Respondent had represented to Petitioner that Wheels has already received the guarantee deposit of ₱50,000.00;

Petitioner searched its files for the subject check. After locating the check, Petitioner noted that at the back of the check was a rubber stamp marking indicating that it was deposited with the United Savings Bank Head Office on May 13, 1988 to Account No. CA-483-3. United Savings Bank has since been acquired by the United Coconut Planters Bank (UCPB) and is now known as UCPB Savings Bank;

Petitioner checked with Wheels Distributors from whom it later learned that the latter never maintained an account with the United Savings Bank, now the UCPB Savings Bank;

Petitioner wrote to Respondent on May 19, 1994 to explain why the check in issue never reached Wheels Distributors and how it was endorsed and encashed despite the fact that it was a crossed check (Copy of said letter is Annex "C");

Despite receipt of said letter, however, Respondent never responded nor attempted to explain his side to what strongly appears to be a gross misappropriation of the money for his own personal use;

Hence, Petitioner was constrained to institute an action for damages against Respondent Danilo G. Macalino as well as UCPB Savings Bank with the Regional

Trial Court of Malabon, Branch 72 where the same is now docketed as Civil Case No. 2382-MN;

That Respondent misappropriated the amount of ₱50,000.00 for his own personal use cannot be denied. An employee of UCPB in the person of Eduardo Estremadura testified in the aforestated case for damages that Respondent Atty. Danilo G. Macalino was the one maintaining Account No. CA-483-37 at UCPB, to which the crossed check payable to Wheels was deposited (TSN, p. 8, Aug. 24, 1995, copy of the TSN is Annex "D");

The Metrobank Check No. MB350288 dated March 8, 1988 for the amount of ₱50,000.00 was deposited to Respondent's account is further shown in United Savings Bank Current Account Deposit Slip accomplished by Respondent when he deposited said check with United Savings Bank on May 13, 1988 (Copy of said deposit slip is Annex "E").

DISCUSSION AND FINDINGS

Respondent Atty. Danilo G. Macalino was given all the opportunity to answer and present his defenses to the complaint. Regrettably, the records show that despite the orders of the Supreme Court and this Commission respondent has not taken any step to verify and inquire as to the status of the complaint against him. Almost three years since the submission of the complainant's memorandum, respondent has not reacted nor made any move to protect himself and answer the complaint. Due process consists in being given opportunity to be heard and we believe that in this case respondent has been given all the opportunity to be heard.

On the basis of the above, the investigating commissioner concluded his Report with the following –

RECOMMENDATION

WHEREFORE, it is respectfully recommended that respondent be suspended from the practice of law for two (2) years and be ordered to account to complainant the amount of ₱50,000.00. Respondent should be warned that a similar offense will merit a more severe penalty.¹³

On June 21, 2003, the IBP Board of Governors passed Resolution No. XV-2003-341,¹⁴ adopting and approving the report and recommendation of the investigating commissioner with a modification as to the penalty, to wit:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case,

¹³ *Id.*, at p. 50

¹⁴ *Id.*, at p. 41.

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** as to the penalty to conform to the evidence, and considering respondent's failure to account for the funds received by him in trust from complainant in gross violation of Canon 16 of the Code of Professional Responsibility, as well as for respondent's lax, remiss and untroubled attitude in this case, Atty. Danilo G. Macalino is hereby **SUSPENDED** from the practice of law for one (1) year and Ordered to account to complainant the amount of P50,000.00 with a Warning that a similar offense will merit a more severe penalty.

This resolution is now before us for confirmation.

The relationship between a lawyer and a client is highly fiduciary; it requires a high degree of fidelity and good faith. It is designed "to remove all such temptation and to prevent everything of that kind from being done for the protection of the client".¹⁵ So it is that the Code of Professional Responsibility provides:

CANON 16.01 – 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.

The Canon of Professional Ethics is even more explicit when it states:

The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantages of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him. (par. 11)

¹⁵ *Espiritu vs. Cabredo, IV*, Adm. Case No. 5831, 13 January 2003, 395 SCRA 19.

Here, we are in full accord with the findings, conclusion and recommendation of the IBP Board of Governors that respondent misappropriated the money entrusted to him and which he failed to account for to his client despite demand therefor.

Respondent's failure to rebut complainant's evidence clearly reveals his failure to live up to his duties as a lawyer in consonance with the lawyer's oath and the Code of Professional Responsibility. His repeated failure without any valid reason to comply with the orders of the Court requiring him to comment on the complaint lends credence to the allegations thereof and manifests his tacit admission of the same. As aptly found by Commissioner Dulay, the following uncontroverted facts as supported by the annexes of the complaint had been established:

"1. that Metrobank Check No. MB350288 in the amount of P50,000.00 payable to Wheels Distributors (Annex 'A' of Petition) was prepared by Frabal Fishing & Ice Plant Corporation (Annex 'B' Petition) and released to respondent's representative;

2. that the said Metrobank Check No. [MB350288] was deposited to Account No. 0110004833 under Account Name Danilo G. Macalino at the United Savings Bank (Annex "E" of Petition);

3. that on 19 May 1994 complainant wrote a letter to respondent (Annex 'C' of Petition) advising the latter that the Metrobank Check intended for Wheels Distributors, Inc. was not received by them (Wheels Distributors) yet it was endorsed and encashed. Respondent was therefore requested to explain how the particular check was encashed. Respondent received the letter on May 23, 1994 (Annex 'C-3' of Petition) and the records do not show that respondent replied to the latter requiring him to explain; and

4. that complainant filed a civil case against UCPB Savings Bank, and Danilo Macalino before the Regional Trial Court of Malabon, Metro Manila docketed as Civil Case No. 2382-MN (Annex 'D' of Petition) and at the hearing of said case on August 24, 1995, witness Eduardo Estremadura, a bookkeeper of UCPB Bank positively testified that Danilo G. Macalino was the maintainer of Account No. CA-483-3 of the UCPB Savings Bank, Legaspi Branch (page 8 & 9 Annex 'D', TSN of hearing of Civil Case No. 2382-MN) and that Check No. 350288 was deposited to the Account of Danilo G. Macalino under CA-483-3 on May 13, 1988 (page 9 of Annex 'D', TSN of hearing); and was credited to the account of Danilo G. Macalino (page 12 of Annex 'D', TSN of hearing of Civil Case No. 2382-MN)¹⁶,

from which established facts, the investigating commissioner made the following conclusions:

¹⁶ Rollo, pp. 47-48.

"1. that Metrobank Check No. 350288 in the amount of P50,000.00 which was intended for Wheels Distributors, Inc. was deposited and the amount credited to Account No. 483-3 of respondent Danilo G. Macalino with the UCPB Savings Bank.

2. that respondent when required by the complainant to explain and account for the amount of P50,000.00 caused by Metrobank Check No. 350288 which was not intended for him failed to reply and give any accounting of such funds to complainant".¹⁷

Respondent's wanton failure to make an accounting and to return to his client the amount entrusted to him upon demand give rise to the presumption that he misappropriated it, in violation of the trust and confidence reposed on him. His act of holding on to complainant's money without its acquiescence is conduct indicative of lack of integrity and propriety.¹⁸ A lawyer, under his oath, pledges himself not to delay any man for money and is bound to conduct himself with all good fidelity to his client.¹⁹

It is clear, therefore, that respondent, by depositing the check in his own account and subsequently deceiving his client into believing that he delivered the same to Wheels is undoubtedly guilty of deceit, malpractice, gross misconduct and unethical behavior. He caused dishonor, not merely to himself but to the noble profession to which he belongs. For, it cannot be denied that the respect of litigants to the profession is inexorably diminished whenever a member of the Bar betrays their trust and confidence.²⁰ Like judges, lawyers must not only be clean; they must also appear clean. This way, the people's faith in the justice system remains undisturbed.²¹

What is more, respondent's repeated failures to comply with the orders of the Court requiring him to comment on the complaint indicate a high degree of irresponsibility on his part.

We have no hesitance, then, in confirming the resolution passed by the IBP Board of Governors suspending respondent from the practice of law for one (1) year. We could have taken a more drastic action against respondent, but considering that he has no prior administrative record, it is our sentiment that the recommended penalty serves the purpose of protecting the interest of the public and the legal profession. After all, in *Espiritu vs. Cabredo*,²² we imposed the same penalty on an attorney who similarly failed to account the money received from his client and to retribute it without any reason.

¹⁷ *Id.*, at pp. 48-49.

¹⁸ *Aldovino, et al. vs. Pujalte, Jr.*, A.C. No. 5082, 17 February 2004.

¹⁹ *Ong vs. Grizaldo*, A.C. No. 4724, 30 April 2003, 402 SCRA 1 [2003].

²⁰ *Busiños vs. Ricafort*, 347 Phils. 687 [1997].

²¹ *Judge Angeles vs. Atty. Uy, Jr.*, 386 Phil. 221 [2000].

²² See note 16, *Supra*.

WHEREFORE, Atty. Danilo G. Macalino is hereby declared guilty of violation of Canon 16 of the Code of Professional Responsibility, for his failure to immediately return and deliver the funds of his former client upon demand, and is hereby **SUSPENDED** from the practice of law for a period of one (1) year effective immediately, with a **STERN WARNING** that a repetition of the same or similar acts shall be dealt with more severely. He is likewise ordered to return the sum of ₱50,000 to complainant within ten (10) hereof.

Let copies of the Resolution be entered into respondent's record as an attorney and be furnished the Integrated Bar of the Philippines (IBP) and all the courts in the country for their information and guidance.

SO ORDERED."

Copy of the resolution was received by respondent on January 14, 2005 as manifested in his Motion for Reconsideration and *Ad Cautelum* dated January 28, 2005.

05 May 2005.

PRESBITERO J. VELASCO, JR.
Court Administrator