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

OCA CIRCULAR NO. 133-2004

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 ATTORNEY'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES**

SUBJECT: **SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS OF ATTY. DANIEL T. ROMANA**

For the information and guidance of all concerned, quoted hereunder is the Decision of the First Division dated March 17, 2004 in Administrative Case No. 6196, entitled "Rosario H. Mejares vs. Atty. Daniel T. Romana", to wit:

"The Case

This is a complaint for disbarment filed by complainant Rosario H. Mejares ("complainant") against respondent Atty. Daniel T. Romana ("respondent") for gross negligence and gross misconduct.

The Facts

In her complaint filed before the Integrated Bar of the Philippines ("IBP"), complainant alleged that she was a member of a labor union[1] ("Union") in M. Greenfield Corporation Inc. ("Greenfield"). Some 300 former employees of Greenfield comprise the Union. In 1990, the Union members sued Greenfield for illegal termination. The Union retained respondent as counsel in prosecuting the case against Greenfield. The Union and respondent agreed that respondent would be paid attorney's fees equivalent to 10% of whatever monetary benefits the Union members might recover from Greenfield.

[1] Samahan ng Api at Mahihirap na Manggagawang Tinanggal ng M. Greenfield, Inc. [affiliated with Rizal Foundation, Inc.] (SAMAT-MGI-RFI).

In 1994, respondent required each member of the Union to contribute ₱500. Complainant claimed that although not all Union members contributed, respondent collected "not more that ₱100,000." Complainant alleges that respondent spent "a big portion of [this] amount" for his own benefit.

On 18 August 1997, respondent required the then Union president Elena Tolin ("Tolin") to sign a document, entitled "Verification and Certification of Service" ("Verification") of a petition for filing with this Court.[2] The Verification, among others, authorized respondent "to deduct automatically x x x his contingent thirty (30) per cent attorney's fees from the individuals awards that the [union members] shall win in this case." Complainant claims that it was only later that the Union members learned of the increase of respondent's attorney's fees from 10% to 30%. Complainant claims that respondent did not explain to Tolin the Verification's contents.

Complainant claims that the Union members objected to the increase in respondent's fees. In retaliation, respondent allegedly abandoned the Union's case then pending in the Court of Appeals.[3] Thus, despite his receipt of the Court of Appeals' Decision dated 4 December 2000 ("4 December 2000 CA Decision") dismissing the Union's petition, respondent neither sought reconsideration of the ruling nor immediately informed the Union members of its issuance. It was only on 28 December 2000, when complainant and Tolin went to visit respondent in his house, that they learned of the adverse ruling of the Court of Appeals. The Union, through another counsel, filed a motion for reconsideration of the 4 December 2000 CA Decision. However, the Court of Appeals, in its Resolution dated 16 February 2001 ("16 February 2001 CA Resolution"), denied the motion for being filed late. Respondent subsequently withdrew as the Union's counsel on 23 March 2001.[4]

In its Order of 27 May 2002, the IBP required respondent to file his Answer to the complaint. Instead of complying, respondent sought the dismissal of the complaint. Respondent claimed that complainant is not a real party-in-interest because (1) the Union did not authorize complainant to initiate disbarment proceedings against him; (2) the allegations in the complaint were "false, fabricated, illegal x x x and libelous;" and (3) respondent's withdrawal as the Union's counsel was with the conformity of Tolin. Respondent attached to his motion a *Sinumpaang Salaysay-Affidavit* of Tolin dated 19 June 2002 ("19 June 2002 *Salaysay*") attesting that (1) Tolin voluntarily signed the Verification increasing respondent's fees from 10% to 30% as the Union had so far paid respondent only ₱10,000 for the services he had rendered since 1990; (2) it was the Union which decided to terminate the services of respondent as he had become busy with his other cases; and (3) al the other

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[2] It appears that when the union members' case was elevated to the National Labor Relations Commission ("NLRC"), the NLRC ruled against them. The union members, through respondent, filed a petition for certiorari to this Court (G.R. NO. 122304). However, in the Resolution of 20 January 2000, the Court referred the petition to the Court of Appeals under the ruling in *St. Martin Funeral Homes v. NLRC*, G.R. No. 130866, 16 September 1998, 295 SCRA 498.

[3] Docketed as CA-G.R. SP No. 57066.

[4] Rollo, pp. 1-3.

allegations raised in the complaint are false. Tolin joined respondent in his prayer for the dismissal of the complaint.[5]

Complainant opposed respondent's motion to dismiss the complaint. Complainant asserted that contrary to respondent's allegations, complainant is the attorney-in-fact of the Union as shown by the special power of attorney the Union members signed authorizing complainant to represent them before the Court of Appeals. Complainant also submitted an Affidavit of Retraction of Tolin dated 4 September 2002 ("4 September 2002 Retraction"), disclaiming the contents of her 19 June 2002 *Salaysay*. Tolin claimed that she was unaware of the contents of the 19 June 2002 *Salaysay* because respondent did not give Tolin a chance to go over the document before Tolin signed it. Tolin confirmed complainant's allegations regarding (1) respondent's failure to update Union members of the 4 December 2000 CA Decision; (2) his misappropriation of the funds contributed by the Union members; and (3) his failure to account for the same. In addition, complainant also submitted the affidavits of three other individuals,[6] all dated 4 September 2002, confirming Tolin's claim that respondent did not giver her any chance to read the contents of the 19 June 2002 *Salaysay*.

The IBP's Findings

The IBP Investigating Commissioner ("IBP Commissioner") conducted hearings on the case but respondent failed to appear despite notice. After the parties filed their memoranda, the IBP issued Resolution No. XVI-2003-68 ("IBP Resolution") dated 30 August 2003 adopting the Investigating Commissioner's Report and Recommendation ("Report") finding respondent liable for violation of the lawyer's oath, gross misconduct, and gross negligence. The IBP imposed on respondent the penalty of six months suspension from the practice of law. The Report reads:

> The Commission finds that respondent violated his lawyer's oath and committed gross misconduct and gross negligence. Complainant was able to prove by clear and convincing evidence her charges against respondent.
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> x x x x
>
> Respondent filed a motion to dismiss on technical grounds, i.e., complainant's lack of legal personality and the purported notice of dismissal of Elena Tolin. He did not attend any of the Commission's hearings, which would have afforded him opportunity to explain his side. Even in his memorandum and other pleadings (where he made general and unsubstantiated attacks on complainant's character), he did not meet the charges against him head on. He merely reiterated his technical objections to the complaint. The Supreme Court has pronounced in the case of Radjaie vs. Alovera (337 SCRA 244) that when "the integrity of a member of the bar is challenged, it is not enough that he denies the charges against him; he must meet the issue and overcome the evidence against him" and that "he must

[5] *Ibid.*, pp. 14-17.
[6] Carmelita Valeriano, Salvacion P. Cruz, and Adelaida Sy.

show proof that he still maintains that degree of morality and integrity which at all times is expected of him." Respondent having failed to discharge this burden, the charges against him are deemed admitted.

Respondent's technical objections have no merit. Being one of the employees and a member of SAMAT-MGI wh[ich] retained respondent, complainant was directly and adversely affected by respondent's unethical conduct. The special power of attorney executed by h[er] co-employees in CA-G.R. SP No. 57066 (Annex "A", Opposition To Motion to Dismiss) shows that she is the authorized representative of [her] co-complainants in the labor case, not Elena Tolin. Ms. Tolin's notice of dismissal does not have any effect on the complaint. Furthermore, Ms. Tolin herself retracted her *Sinumpaang Salaysay*, saying she was tricked by respondent into signing the same. The Commission gives credit to the allegations in her Retraction of Affidavit, which was supported by affidavits of other witnesses. This retraction compounds respondent's misconduct and unprofessionalism. It further proves his propensity to commit fraud, chicanery and other unethical practices.

The rules on professional conduct cited by complainant are well-placed. Respondent violated his attorney's oath to do no falsehood, to delay no man for money or malice, and to conduct himself will all good fidelity to the courts and his clients. His actions fall short of the required ethical standard of his profession. And it is palpable that his shortcomings, culminating in his abrupt withdrawal from the case, were precipitated by his clients' refusal to agree to pay more fees than that originally agreed upon (from 10% to 30% of the monetary award).

x x x x

The Commission cannot say whether SAMAT-MGI would have won the labor case in the Court of Appeals (not Supreme Court as stated in the complaint) if it had a more competent representation. It is clear from the records and undisputed facts of this case, however, that respondent lacked the zeal, diligence, honesty, and loyalty required in protecting the interests of complainant and her co-complainants.

Respondent is liable under Section 72, Rule 138 of the Rules of Court, which penalizes a member of the bar who commits deceit and gross misconduct in office, and violates his attorney's oath.[7]

Complainant sought reconsideration of the IBP Resolution. Complainant contended that considering the nature of respondent's culpability, the penalty of six months suspension from the practice of law is too light. Instead, complainant prayed that the heavier penalty of disbarment be imposed on respondent.

The IBP forwarded the instant case to this Court as provided under Rule 139-B, Section 12(b)[8] of the Rules of Court.

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[7] Report, pp. 5-9.

[8] *Review and Decision by the Board of Governors.* – x x x x (b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which,

The Ruling of the Court

The Court finds respondent liable for violation of Rule 16.01 and Rule 18.04 of the Code of Professional Responsibility ("Code").

Respondent Failed to Account for the Money he Received from the Union Members

A lawyer should be scrupulously careful in handling money entrusted to him in his professional capacity.[9] Consequently, when a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to his client, showing that he spent the money for the purpose intended.[10] Rule 16.01of the Code provides:

> A lawyer shall account for all money or property collected or received for or from the client.

The Union's Board Resolution dated 17 August 1997 ("Board Resolution"), signed by its officers,[11] declared that the Union members contributed P100 each for "filing fees and *panggastos ng aming abogado*."[12] Considering that respondent handled the Union members' case for more than ten years (from 1990 to 2001), it is highly likely that the Union members made other contributions to respondent, including the one complainant claims Union members made in 1994. Thus, respondent had the obligation to account for all the funds he received, giving a detailed explanation showing that such funds were spent for the purpose intended. Nothing in the records shows that respondent has done so. Indeed, instead of taking advantage of the opportunity to make an accounting in response to the charges raised in this case, respondent merely chose to deny, **in general terms**, complainant's allegations. As the IBP Commissioner correctly noted, such denial will not suffice.

On the other hand, respondent's failure to account for his clients' funds is no proof that he spent them for purposes other than those intended, which were for "filing fees" and other litigation expenses. Complainant's allegation that respondent misappropriated a "a big portion" of the Union members' contributions, without more, does not suffice to hold respondent liable for misappropriation. Without clear proof detailing the complainant's claim on this point, the Court cannot give credence to such serious charge. For a charge to warrant a disciplinary action against a lawyer, the complainant must present

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together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

[9] Medina v. Bautista, 120 Phil. 787 (1964).

[10] Garcia v. Manuel, A.C. No. 5811, 20 January 2003, 395 SCRA 386.

[11] Elena B. Tolin, President; Cynthia D. Rivera, Vice-President; Carmelita Evero, Secretary-Treasurer; Carmelita Valeriano, 1st Assistant Secretary-Treasurer; Denia G. Gulleban, 2nd Assistant Secretary-Treasurer; Teresita D. Basagre, Auditor; and Enriqueta C. Marciano, Public Relations Officer.

[12] Rollo, p. 102.

convincing proof to substantiate the charge.[13] Otherwise, the presumption that the lawyer is innocent of the charge prevails.[14]

Respondent is also Liable for his Failure to Timely and Properly Inform the Union Members of the Status of their Case

The Code provides:

> CANON 18 – A lawyer shall serve his client with competence and diligence.
>
> Rule 18.04 – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

The lawyer's duty to keep his client constantly updated on the developments of his case is crucial in maintaining the client's confidence, thus:

> As an officer of the court, it is the duty of an attorney to inform h[is] client of whatever information [he] may have acquired which it is important that the client should have knowledge of. [He] should notify h[is] client of any adverse decision to enable h[is] client to decide whether to seek an appellate review thereof. Keeping the client informed of the developments of the case will minimize misunderstanding and lost of trust and confidence in the attorney.[15]

Indeed, the relationship of lawyer-client being one of confidence, there is ever present the need for the lawyer to inform timely and adequately the client of important developments affecting the client's case. The lawyer should not leave the client in the dark on how the lawyer is defending the client's interests.[16]

The records do not show when respondent received a copy of the 4 December 2000 CA Decision dismissing his clients' petition. What is certain is that complainant and Tolin came to know of the ruling only on 28 December 2000, when they visited respondent's house. There, respondent left them a note, written on one side of a used envelope, which reads:

> To All Members:
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> "Sayang lang ang pera at panahon dahil nanggaling na ito sa Supreme Court at ang pinagbasihan na question of law ay ang inyong compromise agreement!" Atty. D. Romano.[17]

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[13] Go v. Candoy, 128 Phil. 461 (1967).
[14] In re Tionko, 43 Phil. 191 (1922).
[15] Tolentino v. Mangapit, 209 Phil. 607 (1983).
[16] Alcala vs. De Vera, 155 Phil. 33 (1974) *citing* Oparel, Sr. v. Abaria, 148-B Phil. 109 (1971).
[17] Rollo, p. 7.

Verily, respondent failed to inform timely and adequately his clients of the 4 December 2000 Decision. Instead of simply leaving a note to his clients, respondent should have immediately contacted them, explained the decision to them, and advised them on further steps that could be taken to protect their interest. Had not two of his clients persisted in following-up their case, the Union members would not have known of the 4 December 2000 CA Decision. Without going into the merits of the Union members' petition in the Court of Appeals, it is clear that respondent's nonchalance contributed to the subsequent denial of his clients' motion for reconsideration, filed by another counsel. The Court of Appeals, in its 16 February 2001 Resolution, denied the motion for having been filed late. Furthermore, it would seem that respondent even failed to inform his clients that as early as 20 January 2000, this Court had referred their case to the Court of Appeals. By his lackadaisical handling of his clients' case, respondent all too clearly indicated his "failure to exercise such skill, care, and diligence as men of the legal profession commonly possesses and exercise in such matters of the professional employment."[18]

Respondent claims that he was no longer the Union members' counsel of record when the Court of Appeals issued its 16 February 2001 Resolution. However, the records show that respondent filed in the Court of Appeals his Notice of Withdrawal as the Union's counsel only on 23 March 2001. Thus, while his withdrawal as counsel bore Tolin's conformity,[19] he remained, before that date, the Union's counsel of record.

On the Issue of the Increase of Respondent's Attorney's Fees

The Court, however, finds no merit in complainant's claim that respondent secured the increase of his attorney's fees from 10% to 30% fraudulently by making Tolin sign a document stating such fact without first explaining the contents of Tolin. The Union approved the increase as shown in the 17 August 1997 Board Resolution of the Union, thus:

Board Resolution

> Kami, mga opisyales at miembro ng SAMAT-MGI-RFI x x x ay kusang loob na unanimous na nagkakasundo at nagaproba ng aming board resolution na bigyan ng thirty (30) percent ccntingent-kung panalo-attorney's fees ang aming retained legal counsel na si Atty. Daniel T. Romana, na babawasin (automatic deduction) sa anumang halaga ng separation pay at any monetary awards, without any further need of individual check-off authorization from all of us, na babayaran sa amin ng private respondents sa kasong ito, with full authority to our president, Elena Tolin, para lumagda para sa aming lahat x x x.[20]

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[18] Alcala vs. De Vera, 155 Phil. 33 (1974).
[19] Rollo, p. 8.
[20] Rollo, p. 102.

Complainant does not deny the authenticity and due execution of this 17 August 1997 Board Resolution. While a contingent attorney's fee of 30% is unusually high, such fact alone does not imply that respondent fraudulently obtained the agreement to pay such amount. Indeed, we have upheld the validity of agreements granting attorney's fees at similar[21] or even higher[22] rates.

The Defense of Lack of Legal Interest not Availing in Disbarment Proceedings

The IBP Investigating Commissioner correctly dismissed, for lack of merit, respondent's claim that complainant is not a real party-in-interest in this case. Complainant, being a member of the Union that retained respondent as its counsel, possesses the requisite interest to file this complaint as she is directly prejudiced by respondent's misconduct. At any rate, the procedural requirement observed in ordinary civil proceedings that only the real party-in-interest must initiate the suit does not apply in disbarment cases, thus:

> The argument x x x that [a] complainant [in disbarment proceedings] has no legal personality to sue in unavailing. Section 1, Rule 139-B of the Rules of Court provides that proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio* or by the Integrated Bar of the Philippines upon the verified complainant of any person. The right to institute a disbarment proceeding is not confined to clients nor is it necessary that the person complaining suffered injury from the alleged wrongdoing. Disbarment proceedings are matters of public interest and the only basis for judgment is the proof or failure of proof of the charges. The evidence submitted by complainant before the Commission on the Bar Discipline sufficed to sustain its resolution and recommended sanctions.[23]

On the Appropriate Penalty to be Imposed on Respondent

The Court finds well-taken the penalty recommended by the IBP to suspend respondent from the practice of law for six months. In **Garcia v. Manuel**,[24] we imposed the same penalty on an attorney who similarly failed to account for his client's funds and to update his client on the status of her case. Considering respondent's lack of prior administrative record, such penalty, and not disbarment as prayed for by complainant, serves the purpose of protecting the interest of the public and the legal profession. This Court will exercise its power to disbar only in clear cases of misconduct that seriously affects the standing and character of the lawyer as an officer of the court and a member of the bar.[25]

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[21] Heirs of Teodolfo Cruz, et al. v. CIR, et al., 141 Phil. 557 (1969).
[22] Manila Lumber v. Oro, 64 Phil. 164 (1937).
[23] Navarro v. Meneses III, 349 Phil. 516 (1998).
[24] *Supra* note 10.
[25] Punia v. Soriano, 209 Phil. 290 (1983).

WHEREFORE, we FIND respondent Atty. Daniel T. Romana GUILTY of violation of Rule 16.01 and Rule 18.04 of the Code of Professional Responsibility. Accordingly, we SUSPEND respondent Atty. Daniel T. Romana from the practice of law for six (6) months and DIRECT him to render an accounting within thirty (30) days from notice of this Decision, of all the money he received from the Samahan ng Api at Mahihirap na Manggagawang Tinanggal ng M. Greenfield, Inc. [affiliated with Rizal Foundation, Inc.] (SAMAT-MGI-RFI).

SO ORDERED."

Copy of the decision was received by respondent on 17 May 2004. The respondent's motion for reconsideration of the said decision was denied on 19 July 2004, notice of which was received by him on 17 August 2004.

8 November 2004.

PRESBITERO J. VELASCO, JR.
Court Administrator

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