

## THIRD DIVISION

**[ A.C. No. 6903, April 16, 2012 ]**

**SUZETTE DEL MUNDO, COMPLAINANT, VS. ATTY. ARNEL C. CAPISTRANO, RESPONDENT.**

### D E C I S I O N

**PERLAS-BERNABE, J.:**

Before the Court is an administrative complaint<sup>[1]</sup> for disbarment filed by complainant Suzette Del Mundo (Suzette) charging respondent Atty. Arnel C. Capistrano (Atty. Capistrano) of violating the Code of Professional Responsibility.

#### **The Facts**

On January 8, 2005, Suzette and her friend Ricky S. Tuparan (Tuparan) engaged the legal services of Atty. Capistrano to handle the judicial declaration of nullity of their respective marriages allegedly for a fee of PhP140,000.00 each. On the same date, a Special Retainer Agreement<sup>[2]</sup> was entered into by and between Suzette and Atty. Capistrano which required an acceptance fee of PhP30,000.00, appearance fee of PhP2,500.00 per hearing and another PhP2,500.00 per pleading. In addition, Atty. Capistrano allegedly advised her to prepare amounts for the following expenses:

PhP11,000.00	Filing fee
PhP5,000.00	Summons
PhP15,000.00	Fiscal
PhP30,000.00	Psychiatrist
PhP15,000.00	Commissioner

In accordance with their agreement, Suzette gave Atty. Capistrano the total amount of PhP78,500.00, to wit:

January 8, 2005	PhP30,000.00	Acceptance fee
January 15, 2005	PhP11,000.00	Filing fee
February 3, 2005	PhP5,000.00	Filing fee
May 4, 2005	PhP2,500.00	Filing fee
June 8, 2005	PhP30,000.00	Filing fee

For every payment that Suzette made, she would inquire from Atty. Capistrano on the status of her case. In response, the latter made her believe that the two cases were already filed before the Regional Trial Court of Malabon City and awaiting notice of hearing. Sometime in July 2005, when she could hardly reach Atty.

Capistrano, she verified her case from the Clerk of Court of Malabon and discovered that while the case of Tuparan had been filed on January 27, 2005, no petition has yet been filed for her.

Hence, Suzette called for a conference, which was set on July 28, 2005, where she demanded the refund of the total amount of Php78,500.00, but Atty. Capistrano instead offered to return the amount of Php63,000.00 on staggered basis claiming to have incurred expenses in the filing of Tuparan's case, to which she agreed. On the same occasion, Atty. Capistrano handed to her copies of her unfiled petition,<sup>[3]</sup> Tuparan's petition<sup>[4]</sup> and his Withdrawal of Appearance<sup>[5]</sup> in Tuparan's case with instructions to file them in court, as well as a list<sup>[6]</sup> containing the expenses he incurred and the schedule of payment of the amount of Php63,000.00, as follows:

Php20,000.00	August 15, 2005
Php20,000.00	August 29, 2005
Php23,000.00	September 15, 2005

However, Atty. Capistrano only returned the amount of Php5,000.00 on August 15, 2005 and thereafter, refused to communicate with her, prompting the institution of this administrative complaint on September 7, 2005.

In his Comment/Answer<sup>[7]</sup> dated November 14, 2005, Atty. Capistrano acknowledged receipt of the amount of Php78,500.00 from Suzette and his undertaking to return the agreed sum of Php63,000.00. He also admitted responsibility for his failure to file Suzette's petition and cited as justification his heavy workload and busy schedule as then City Legal Officer of Manila and lack of available funds to immediately refund the money received.

In the Resolution<sup>[8]</sup> dated January 18, 2006, the Court resolved to refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

### **The Action and Recommendation of the IBP**

For failure of respondent Atty. Capistrano to appear at the mandatory conference set by Commissioner Lolita A. Quisumbing of the IBP Commission on Bar Discipline (IBP-CBD), the conference was terminated without any admissions and stipulations of facts and the parties were ordered to file their respective position papers to which only Atty. Capistrano complied.

In the Report and Recommendation<sup>[9]</sup> dated April 11, 2007, the IBP-CBD, through Commissioner Quisumbing, found that Atty. Capistrano had neglected his client's interest by his failure to inform Suzette of the status of her case and to file the agreed petition for declaration of nullity of marriage. It also concluded that his inability to refund the amount he had promised Suzette showed deficiency in his moral character, honesty, probity and good demeanor. Hence, he was held guilty of violating Rule 18.03, and Rule 18.04, Canon 18 of the Code of Professional Responsibility and recommended the penalty of suspension for two years from the practice of law.

On September 19, 2007, the IBP Board of Governors adopted and approved the report and recommendation of Commissioner Quisumbing through Resolution No. XVIII-2007-98<sup>[10]</sup> with modification ordering the return of the sum of PhP140,000.00 attorney's fees to Suzette.

However, upon Atty. Capistrano's timely motion for reconsideration, the IBP Board of Governors passed Resolution No. XIX-2011-263<sup>[11]</sup> on May 14, 2011 reducing the penalty of suspension from two years to one year, to wit:

*RESOLVED to PARTIALLY GRANT Respondent's Motion for Reconsideration, and unanimously MODIFY as it is hereby MODIFIED Resolution No. XVIII-2007-98 dated 19 September 2007 and REDUCED the penalty against Atty. Arnel C. Capistrano to **SUSPENSION** from the practice of law for one (1) year and Ordered to Return the amount of One Hundred Forty Thousand Pesos (P140,000.00) to complainant with thirty (30) days from receipt of notice.*

### **The Issue**

The sole issue before the Court is whether Atty. Arnel C. Capistrano violated the Code of Professional Responsibility.

### **The Ruling of the Court**

After a careful perusal of the records, the Court concurs with the findings and recommendation of the IBP-CBD but takes exception to the amount of PhP140,000.00 recommended to be returned to Suzette.

Indisputably, Atty. Capistrano committed acts in violation of his sworn duty as a member of the bar. In his Manifestation and Petition for Review,<sup>[12]</sup> he himself admitted liability for his failure to act on Suzette's case as well as to account and return the funds she entrusted to him. He only pleaded for the mitigation of his penalty citing the lack of intention to breach his lawyer's oath; that this is his first offense; and that his profession is the only means of his and his family's livelihood. He also prayed that the adjudged amount of PhP140,000.00 be reduced to PhP73,500.00 representing the amount of PhP78,500.00 he received less his payment of the sum of PhP5,000.00. Consequently, Commissioner Quisumbing and the IBP-CBD Board of Governors correctly recommended the appropriate penalty of one year suspension from the practice of law for violating the pertinent provisions of the Canons of Professional Responsibility, thus:

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