

## THIRD DIVISION

[ A.C. NO. 6651, February 27, 2006 ]

**EDUARDO P. MENESES, COMPLAINANT, VS. ATTY. RODOLFO P. MACALINO, RESPONDENT.**

### D E C I S I O N

**CARPIO, J.:**

#### The Case

This is a complaint for disbarment filed by Eduardo P. Meneses ("complainant") against Atty. Rodolfo P. Macalino ("respondent") for violation of the lawyer's oath.

#### The Facts

Complainant alleged that sometime in March 1993, respondent offered his legal services to complainant to help secure the release of complainant's car from the Bureau of Customs. Respondent proposed to handle the case for a "package deal" of P60,000. Complainant agreed and initially gave respondent P10,000 for processing of the papers. In June 1993, respondent asked for P30,000 to expedite the release of the car. In both instances, respondent did not issue a receipt but promised to furnish complainant with a receipt from the Bureau of Customs. Since then, respondent failed to give complainant an update on the matter.

Complainant repeatedly went to respondent's house to inquire on the status of the release of the car. Complainant was always told that respondent was not around and to just return another day. This went on for more than a year.

In April 1994, complainant went to the National Bureau of Investigation ("NBI") to file a complaint for estafa against respondent.<sup>[1]</sup> The NBI set the complaint for investigation on 27 April 1994.

Respondent wrote a letter<sup>[2]</sup> to the NBI dated 26 April 1994, requesting for postponement of the investigation to 12 May 1994. Respondent stated in his letter that he would settle the matter amicably with complainant and return the P40,000. Respondent failed to appear for the investigation scheduled on 12 May 1994.

Respondent sent another letter<sup>[3]</sup> to the NBI dated 23 May 1994, requesting for the suspension of the proceedings because he had partially settled the case. Respondent attached the acknowledgment receipt<sup>[4]</sup> signed by complainant representing the partial refund of P20,000. Respondent promised to pay the balance on or before 8 June 1994. However, respondent did not pay the balance. The NBI set the complaint for investigation twice and subpoenaed respondent but he failed to appear.

On 22 January 1996, the NBI, through Director Mariano M. Mison, found insufficient evidence to prosecute respondent for estafa. Nevertheless, the NBI advised complainant to file a complaint for disbarment against respondent.<sup>[5]</sup>

On 30 April 1996, complainant filed a verified complaint<sup>[6]</sup> for disbarment against respondent with the Commission on Bar Discipline ("Commission") of the Integrated Bar of the Philippines ("IBP"). Complainant charged respondent with failure to render legal services, failure to refund balance of legal fees, and failure to apprise the complainant of the status of the case – all in violation of the lawyer's oath of office.

In an Order<sup>[7]</sup> dated 23 July 1998, Investigating Commissioner Ma. Carmina M. Alejandro-Abbas ("Commissioner Abbas") ordered respondent to submit his answer to the complaint. Respondent was also warned that if he failed to file an answer, the Commission would consider him in default and the case would be heard *ex-parte*. Although he received the Order, respondent failed to file an answer.

The case was set for initial hearing on 7 May 2002. Despite receipt of the notice of hearing, respondent failed to appear. Complainant was present and he informed Commissioner Abbas that he had previously filed a complaint for estafa against respondent with the NBI. Commissioner Abbas then issued a *subpoena duces tecum* to Mr. Waldo Palattao, or his duly authorized representative, of the Anti-Fraud Action Division of the NBI for the case folder and all the documents pertaining to the complaint.<sup>[8]</sup> Mr. Emil Rejano, a confidential agent of the NBI, submitted all the documents during the hearing on 29 July 2002.<sup>[9]</sup>

Further hearings were scheduled for 27 June 2002, 29 July 2002, 9 September 2002, 8 October 2002 and 5 November 2002. Despite due notice, respondent failed to appear on these dates.

On 18 August 2004, Investigating Commissioner Dennis A. B. Funa ("Commissioner Funa"), who took over the investigation, issued an order submitting the case for decision based on the evidence on record. Respondent's failure to file an answer and to attend the hearings were deemed a waiver of his right to participate in the proceedings and present evidence.<sup>[10]</sup>

### **The IBP's Report and Recommendation**

The IBP Board of Governors issued CBD Resolution No. XVI-2004-414 ("IBP Resolution") dated 7 October 2004 adopting with modification<sup>[11]</sup> Commissioner Funa's Report and Recommendation ("Report") finding respondent guilty of violating the Code of Professional Responsibility. The IBP Board of Governors recommended the imposition on respondent of a penalty of one year suspension from the practice of law. The Report reads:

From the records of the case, **there is clearly a breach of lawyer-client relations**. Moreover, [r]espondent has continuously exhibited his adamant refusal to comply with his legal obligations to his client, despite many opportunities to settle the matter amicably. Aggravating this is [r]espondent's utter disregard of the legal process before the NBI, choosing to ignore notices from the NBI in the middle of an

investigation. In addition, [r]espondent has continuously disregarded the jurisdiction of this Commission. It is clear from the records of the case that [r]espondent has duly received the orders and notices from this Commission as evidenced by the [r]egistry [r]eturn [r]eceipts.

In the absence of any counter-allegations from [r]espondent, which is by his own doing, the allegations of the [c]omplainant shall stand and be given its due credence.<sup>[12]</sup>(Emphasis supplied)

The IBP Board of Governors forwarded the instant case to the Court as provided under Section 12(b), Rule 139-B<sup>[13]</sup> of the Rules of Court.

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

The Court finds respondent liable for violation of Canon 16,<sup>[14]</sup> Rule 16.01,<sup>[15]</sup> Rule 16.03,<sup>[16]</sup> and Rule 18.04<sup>[17]</sup> of the Code of Professional Responsibility ("Code").

#### ***Respondent Failed to Inform and to Respond to Inquiries of the Complainant Regarding the Status of the Case***

The relationship of lawyer-client being one of confidence, it is the lawyer's duty to keep the client regularly and fully updated on the developments of the client's case.<sup>[18]</sup> The Code provides that "[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."<sup>[19]</sup>

The records show that after receiving P40,000, respondent was never heard of again. Respondent kept complainant in the dark about the status of the release of the car. Only after complainant filed a complaint with the NBI did respondent communicate with complainant. Moreover, it appears that respondent failed to render any legal service to facilitate the car's release. In fact, respondent failed to secure the release of the car. Respondent's failure to communicate with complainant was an unjustified denial of complainant's right to be fully informed of the status of the case.<sup>[20]</sup>

#### ***Respondent Failed to Account and Return the Money He Received from Complainant***

The Code mandates that every "lawyer shall hold in trust all moneys and properties of his client that may come into his possession."<sup>[21]</sup> The Code further states that "[a] lawyer shall account for all money or property collected or received for or from the client."<sup>[22]</sup> Furthermore, "[a] lawyer shall deliver the funds and property of his client when due and upon demand."<sup>[23]</sup>

When a lawyer receives money from the client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose.<sup>[24]</sup> Consequently, if the lawyer does not use the money for the intended purpose, the lawyer must immediately return the money to the client.