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[A.C. No. 6484. June 16, 2015]

ADELITA B. LLUNAR, *complainant, vs.* **ATTY. ROMULO RICAFORT**, *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RULE 18.03 THEREOF; A LAWYER'S FAILURE TO EXERT DUE DILIGENCE IN HANDLING HIS CLIENT'S CASE CONSTITUTES A VIOLATION THEREOF.—** The respondent in this case committed several infractions making him liable for grave misconduct. *First*, the respondent did not exert due diligence in handling the complainant's case. He failed to act promptly in redeeming the complainant's property within the period of redemption. What is worse is the delay of three years before a complaint to recover the property was actually filed in court. The respondent clearly dilly-dallied on the complainant's case and wasted precious time and opportunity that were then readily available to recover the complainant's property. Under these facts, the respondent violated Rule 18.03 of the Code of Professional Responsibility (*CPR*), which states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

2. **ID.; ID.; ID.; CANON 16 THEREOF; FAILURE OF THE LAWYER TO RETURN, UPON DEMAND, THE AMOUNTS GIVEN TO HIM BY THE CLIENT FOR HANDLING THE LATTER'S CASE CONSTITUTES A VIOLATION THEREOF; A LAWYER'S FAILURE TO RETURN UPON DEMAND THE FUNDS OR PROPERTY HE HOLDS FOR HIS CLIENT GIVES RISE TO THE PRESUMPTION THAT HE HAS APPROPRIATED THESE FUNDS OR PROPERTY FOR HIS OWN USE TO THE PREJUDICE OF, AND IN VIOLATION OF THE TRUST REPOSED IN HIM BY HIS CLIENT.—** [T]he respondent failed to return, upon demand, the amounts given to him by the complainant for handling the latter's case. On three separate occasions, the respondent received from the complainant the amounts of ₱19,000.00, ₱70,000.00, and ₱6,500.00 for purposes

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of redeeming the mortgaged property from the bank and filing the necessary civil case/s against Ard Cervantes. The complainant approached the respondent several times thereafter to follow up on the case/s to be filed supposedly by the respondent who, in turn, reassured her that actions on her case had been taken. After the complainant discovered three years later that the respondent had not filed any case in court, she demanded that the respondent return the amount of ₱95,000.00, but her demand was left unheeded. The respondent later promised to pay her, but until now, no payment of any amount has been made. These facts confirm that the respondent violated Canon 16 of the CPR, which mandates every lawyer to "hold in trust all moneys and properties of his client that may come into his possession" and to "account for all money or property collected or received for or from the client." In addition, a lawyer's failure to return upon demand the funds or property he holds for his client gives rise to the presumption that he has appropriated these funds or property for his own use to the prejudice of, and in violation of the trust reposed in him by his client.

3. **ID.; ID.; ID.; CANON 15 THEREOF; A LAWYER'S FAILURE TO DISCLOSE THAT HE WAS UNDER INDEFINITE SUSPENSION FROM THE PRACTICE OF LAW AT THE TIME HE WAS APPROACHED BY THE CLIENT FOR HIS SERVICES CONSTITUTES DISHONESTY.—** [T]he respondent committed dishonesty by not being forthright with the complainant that he was under indefinite suspension from the practice of law. The respondent should have disclosed this fact at the time he was approached by the complainant for his services. Canon 15 of the CPR states that "a lawyer shall observe *candor*, fairness and loyalty in all his dealings and transactions with his clients." The respondent lacked the candor expected of him as a member of the Bar when he accepted the complainant's case despite knowing that he could not and should not practice law.

4. **ID.; ID.; PENALTY OF DISBARMENT IMPOSED UPON A LAWYER FOR HIS REPEATED VIOLATION OF THE PROFESSION'S ETHICAL RULES AND FOR ENGAGING IN THE PRACTICE OF LAW WHILE UNDER INDEFINITE SUSPENSION.—** [T]he respondent was effectively in the practice of law despite the indefinite suspension imposed on him. This

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infraction infinitely aggravates the offenses he committed. Based on the above facts alone, the penalty of suspension for five (5) years from the practice of law would have been justified, but the respondent is not an ordinary violator of the profession's ethical rules; he is a repeat violator of these rules. In *Nuñez v. Atty. Ricafort*, we had adjudged the respondent liable for grave misconduct in failing to turn over the proceeds of the sale of a property owned by his client and in issuing bounced checks to satisfy the alias writ of execution issued by the court in the case for violation of Batas Pambansa Blg. 22 filed against him by his client. We then suspended him indefinitely from the practice of law – a penalty short of disbarment. Under his current liability — which is no different in character from his previous offense — we have no other way but to proceed to decree his disbarment. He has become completely unworthy of membership in our honorable profession.

5. ID.; ID.; THE CLIENT SHOULD NOT BE BURDENED WITH THE EXPENSE OF HIRING ANOTHER LAWYER TO PERFORM THE SERVICES THAT HIS LAWYER WAS HIRED TO DO, ESPECIALLY WHERE THERE WAS AN INEXCUSABLE NON-DELIVERY OF SUCH SERVICES.— With respect to the amount to be returned to the complainant, we agree with the IBP that **the respondent should return the whole amount of ₱95,000.00,** without deductions, regardless of whether the engagement of Atty. Abitria as counsel was with the complainant's knowledge and consent. In the first place, the hiring of Atty. Abitria would not have been necessary had the respondent been honest and diligent in handling the complainant's case from the start. The complainant should not be burdened with the expense of hiring another lawyer to perform the services that the respondent was hired to do, especially in this case where there was an inexcusable non-delivery of such services.

D E C I S I O N

***PER CURIAM*:**

The present administrative case stemmed from the complaint-affidavit[1] that Adelita B. Llunar (*complainant*) filed against

[1] *Rollo*, pp. 1-6.

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Atty. Romulo Ricafort (*respondent*) for gross and inexcusable negligence and serious misconduct.

Antecedents

In September 2000, the complainant, as attorney-in-fact of Severina Bañez, hired the respondent to file a case against father and son Ricardo and Ard Cervantes (*Ard*) for the recovery of a parcel of land allegedly owned by the Bañez family but was fraudulently registered under the name of Ricardo and later was transferred to Ard.

The property, which Ard had mortgaged with the Rural Bank of Malilipot, Albay, was the subject of foreclosure proceedings at the time the respondent was hired. The respondent received from the complainant the following amounts: (a) ₱70,000.00 as partial payment of the redemption price of the property; (b) ₱19,000.00 to cover the filing fees; and (c) ₱6,500.00 as attorney's fees.

Three years later, the complainant learned that no case involving the subject property was ever filed by the respondent with the Regional Trial Court (*RTC*) in Legaspi City. Thus, the complainant demanded that the respondent return to her the amount of ₱95,000.00.

The respondent refused to return the whole amount of ₱95,000.00 to the complainant. He argued that a complaint[2] for annulment of title against Ard Cervantes had actually been filed in court, though not by him, but by another lawyer, Atty. Edgar M. Abitria. Thus, he was willing to return only what was left of the ₱95,000.00 after deducting therefrom the ₱50,000.00 that he paid to Atty. Abitria as acceptance fee for handling the case.

The complainant refused to recognize the complaint for annulment of title filed by Atty. Abitria and claimed that she had no knowledge of Atty. Abitria's engagement as counsel. Besides, the complaint was filed three (3) years late and the

[2] Dated October 11, 2003; *id.* at 11-13.

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property could no longer be redeemed from the bank. Also, the complainant discovered that the respondent had been suspended indefinitely from the practice of law since May 29, 2002, pursuant to this Court's decision in Administrative Case No. 5054,[3] which the complainant suspected was the reason another lawyer, and not the respondent, filed the complaint for annulment of title in court.

In a resolution[4] dated February 2, 2005, the Court referred the case to the Integrated Bar of the Philippines (*IBP*) for investigation, report, and recommendation.

In a report[5] dated May 22, 2009, IBP Investigating Commissioner Cecilio C. Villanueva found the respondent to have been grossly negligent in handling the complainant's case and to have gravely abused the trust and confidence reposed in him by the complainant, thereby, violating Canons 15[6] and 17,[7] and Rules 1.01,[8] 16.03,[9] 18.03,[10] and 18.04[11] of the Code of Professional Responsibility (*CPR*).

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[3] *Nuñez v. Ricafort*, 432 Phil. 131 (2002).

[4] *Rollo*, p. 40.

[5] *Id*. at 187-192.

[6] CANON 15 – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

[7] 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.

[8] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[9] 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.

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

[11] 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.

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Also, the Investigating Commissioner found the respondent to have erred in not informing his client that he was under indefinite suspension from the practice of law. Due to these infractions, Commissioner Villanueva recommended that the respondent remain suspended indefinitely from the practice of law.

In Resolution No. XIX-2011-224 dated May 14, 2011, the IBP Board of Governors agreed with the Investigating Commissioner's findings on the respondent's liability but modified the recommended penalty from indefinite suspension to disbarment.[12] It also ordered the respondent to return to the complainant the amount of ₱95,000.00 within thirty (30) days from notice. The respondent moved for reconsideration.

In his motion for reconsideration,[13] the respondent argued that his referral of the complainant's case to Atty. Abitria was actually with the complainant's knowledge and consent; and that he paid Atty. Abitria ₱50,000.00 for accepting the case. These facts were confirmed by Atty. Abitria in an affidavit[14] dated November 17, 2004, but were alleged to have been overlooked by Commissioner Villanueva in his report. The IBP Board of Governors, in Resolution No. XX-2013-710 dated June 21, 2013, denied the respondent's motion for reconsideration.[15]

Our Ruling

We find the respondent guilty of Grave Misconduct in his dealings with his client and in engaging in the practice of law while under indefinite suspension, and thus impose upon him the ultimate penalty of DISBARMENT.

The respondent in this case committed several infractions making him liable for grave misconduct. *First*, the respondent

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[12] *Rollo*, pp. 185-186.

[13] *Id*. at 156-158.

[14] *Id*. at 159.

[15] *Id*. at 183.

did not exert due diligence in handling the complainant's case. He failed to act promptly in redeeming the complainant's property within the period of redemption. What is worse is the delay of three years before a complaint to recover the property was actually filed in court. The respondent clearly dilly-dallied on the complainant's case and wasted precious time and opportunity that were then readily available to recover the complainant's property. Under these facts, the respondent violated Rule 18.03 of the Code of Professional Responsibility (*CPR*), which states that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

Second, the respondent failed to return, upon demand, the amounts given to him by the complainant for handling the latter's case. On three separate occasions, the respondent received from the complainant the amounts of ₱19,000.00, ₱70,000.00, and ₱6,500.00 for purposes of redeeming the mortgaged property from the bank and filing the necessary civil case/s against Ard Cervantes. The complainant approached the respondent several times thereafter to follow up on the case/s to be filed supposedly by the respondent who, in turn, reassured her that actions on her case had been taken.

After the complainant discovered three years later that the respondent had not filed any case in court, she demanded that the respondent return the amount of ₱95,000.00, but her demand was left unheeded. The respondent later promised to pay her, but until now, no payment of any amount has been made. These facts confirm that the respondent violated Canon 16 of the CPR, which mandates every lawyer to "hold in trust all moneys and properties of his client that may come into his possession"[16] and to "account for all money or property collected or received for or from the client."[17] In addition, a lawyer's failure to return upon demand the funds or property he holds for his client gives rise to the presumption that he has appropriated

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[16] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 16.

[17] *Id*. at Rule 16.01.

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these funds or property for his own use to the prejudice of, and in violation of the trust reposed in him by his client.[18]

Third, the respondent committed dishonesty by not being forthright with the complainant that he was under indefinite suspension from the practice of law. The respondent should have disclosed this fact at the time he was approached by the complainant for his services. Canon 15 of the CPR states that "a lawyer shall observe *candor*, fairness and loyalty in all his dealings and transactions with his clients." The respondent lacked the candor expected of him as a member of the Bar when he accepted the complainant's case despite knowing that he could not and should not practice law.

Lastly, the respondent was effectively in the practice of law despite the indefinite suspension imposed on him. This infraction infinitely aggravates the offenses he committed. Based on the above facts alone, the penalty of suspension for five (5) years from the practice of law would have been justified, but the respondent is not an ordinary violator of the profession's ethical rules; he is a repeat violator of these rules. In *Nuñez v. Atty. Ricafort*,[19] we had adjudged the respondent liable for grave misconduct in failing to turn over the proceeds of the sale of a property owned by his client and in issuing bounced checks to satisfy the alias writ of execution issued by the court in the case for violation of Batas Pambansa Blg. 22 filed against him by his client. We then suspended him indefinitely from the practice of law – a penalty short of disbarment. Under his current liability — which is no different in character from his previous offense — we have no other way but to proceed to decree his disbarment. He has become completely unworthy of membership in our honorable profession.

With respect to the amount to be returned to the complainant, we agree with the IBP that **the respondent should return the whole amount of ₱95,000.00,** without deductions,

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[18] *Espiritu v. Ulep,* 497 Phil. 339, 345 (2005).

[19] *Supra* note 3.

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regardless of whether the engagement of Atty. Abitria as counsel was with the complainant's knowledge and consent.

In the first place, the hiring of Atty. Abitria would not have been necessary had the respondent been honest and diligent in handling the complainant's case from the start. The complainant should not be burdened with the expense of hiring another lawyer to perform the services that the respondent was hired to do, especially in this case where there was an inexcusable non-delivery of such services.

WHEREFORE, respondent Atty. Romulo Ricafort is hereby **DISBARRED** from the practice of law and his name **REMOVED** from the Roll of Attorneys, effective immediately upon his receipt of this Decision. Also, he is **ORDERED** to **RETURN** the amount of **₱95,000.00** to complainant Adelita B. Llunar, within thirty (30) days from notice of this Decision.

Let a copy of this Decision be attached to the respondent's personal record and furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administrator for circulation to all courts in the country. This Decision should likewise be posted on the Supreme Court website for the information of the general public.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Jardeleza, JJ.,* concur

Peralta and *Leonen, JJ.,* on official leave.