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[CBD Adm. Case No. 313. January 30, 1998]

ATTY. AUGUSTO G. NAVARRO, for and in behalf of PAN-ASIA INTERNATIONAL COMMODITIES, INC., *complainant, vs.* **ATTY. ROSENDO MENESES III,** *respondent.*

SYNOPSIS

Frankwell Management and Consultant, Inc., a group of companies which includes Pan-Asia International Commodities, Inc., engaged the legal services of respondent Atty. Meneses. While serving as such counsel, one of the litigations handled by him was the case of *"People vs. Lai Chan Kow, a.k.a. Wilson Lai and Arthur Bretaña,"* pending before Branch 134, Regional Trial Court of Makati. On December 24, 1993, respondent received the sum of P50,000.00 from Arthur Bretaña to be given to therein offended party, a certain Gleason, as consideration for an out-of-court settlement and with the understanding that a motion to dismiss the case would be filed by the respondent. But the respondent failed to do so. Despite repeated demands, respondent Meneses deliberately ignored the pleas of herein complainant.

By reason thereof, Atty. Augusto G. Navarro for and in behalf of Pan-Asia International Commodities filed an administrative case against Atty. Meneses to the Commission on Bar Discipline of the Integrated Bar of the Philippines. After trial, the Investigating Commissioner recommended that Atty. Meneses be suspended from the practice of law for three (3) years and directed to return the P50,000.00 he received from the petitioner within (15) days from receipt of the resolution.

The Court agreed with the findings and conclusion of the Integrated Bar of the Philippines that respondent Meneses misappropriated the money entrusted to him and which he has failed and/or refused to account for to his client despite repeated demands therefor. Such conduct on the part of respondent indicating his unfitness for the confidence and trust reposed on him, or showing such lack of personal honesty or of good moral character as to render him unworthy of public confidence,

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constitutes a ground for disciplinary action extending to disbarment.

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; MISAPPROPRIATION OF MONEY ENTRUSTED CONSTITUTES GROSS VIOLATION OF OATH.—** The Court agrees with the findings and conclusion of the Integrated Bar of the Philippines that respondent Meneses misappropriated the money entrusted to him and which he has failed and/or refused to account for to his client despite repeated demands therefor. Such conduct on the part of respondent indicating his unfitness for the confidence and trust reposed on him, or showing such lack of personal honesty or of good moral character as to render him worthy of public confidence, constitutes a ground for disciplinary action extending to disbarment. Respondent Meneses' misconduct constitutes a gross violation of his oath as a lawyer which, *inter alia*, imposes upon every lawyer the duty to delay no man for money or malice. He blatantly disregarded Rule 16.01 of Canon 16 of the Code of Professional Responsibility which provides that a lawyer shall account for all money or property collected or received for or from his client. Respondent was merely holding in trust the money he received from his client to be used as consideration for the amicable settlement of a case he was handling. Since the amicable settlement did not materialize, he was necessarily under obligation to immediately return the money, as there is no showing that he has a lien over it. As a lawyer, he should be scrupulously careful in handling money entrusted to him in his professional capacity, because a high degree of fidelity and good faith on his part is exacted. On January 7, 1998, the Bar Confidant submitted to the Court a copy of the letter of Atty. Augusto G. Navarro, dated December 18, 1997, to the effect that although a copy of the aforestated Resolution No. XII-97-133 was personally delivered to respondent's address and received by his wife on October 9, 1997, he has failed to restitute the amount of P50,000.00 to complainant within the 15-day period provided therein. Neither has he filed with this Court any pleading or written indication of his having returned said amount to complainant. In line with the resolution in this case, his disbarment is consequently warranted and exigent. *WHEREFORE*, Atty. Rosendo Meneses

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III is hereby *DISBARRED*. Let a copy of this decision be attached to respondent's personal records in this Court and furnished the Integrated Bar of the Philippines, together with all courts in the country.

2. **REMEDIAL LAW; EVIDENCE; DISBARMENT, SUSPENSION OR DISCIPLINE OF ATTORNEYS; MAY BE TAKEN BY THE SUPREME COURT *MOTU PROPRIO* OR BY THE INTEGRATED BAR OF THE PHILIPPINES UPON VERIFIED COMPLAINT OF ANY PERSON.—** The argument of respondent that complainant has no legal personality to sue him is 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 complaint 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 Bar Discipline sufficed to sustain its resolution and recommended sanctions.

3. **LEGAL ETHICS; ATTORNEYS; ONCE HE TAKES UP A CAUSE OF A CLIENT, HE OWES FIDELITY TO SUCH CAUSE; CASE AT BAR.—** It is settled that a lawyer is not obliged to act as counsel for every person who may wish to become his client. He has the right to decline employment subject, however, to the provisions of Canon 14 of the Code of Professional Responsibility. Once he agrees to take up the cause of a client, he owes fidelity to such cause and must always be mindful of the trust and confidence reposed on him. Respondent Meneses, as counsel, had the obligation to inform his client of the status of the case and to respond within a reasonable time to his client's request for information. Respondent's failure to communicate with his client by deliberately disregarding its requests for an audience or conference is an unjustifiable denial of its right to be fully informed of the developments in and the status of its case.

4. **ID.; ID.; ADMINISTRATIVE DISCIPLINARY ACTIONS; JUDGMENT CANNOT BE IN THE ALTERNATIVE.—** In the imposition of penalties in criminal cases, it has long been

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the rule that the penalty imposed in a judgment cannot be in the alternative, even if the law provides for alternative penalties, nor can such penalty be subject to a condition. There is no reason why such legal principles in penal law should not apply in administrative disciplinary actions which, as in this case, also involve punitive sanctions.

DECISION

PER CURIAM:

This administrative case against respondent Atty. Rosendo Meneses III was initiated by a complaint-affidavit[1] filed by Atty. Augusto G. Navarro on June 7, 1994 before the Commission on Bar Discipline of the Integrated Bar of the Philippines (hereinafter, the Commission), for and in behalf of Pan-Asia International Commodities, Inc. Herein complainant charges respondent Meneses with the following offenses, *viz.*: (1) malpractice and gross misconduct unbecoming a public defender; (2) dereliction of duty, by violating his oath to do everything within his power to protect his client's interest; (3) willful abandonment; and (4) loss of trust and confidence, due to his continued failure to account for the amount of ₱50,000.00 entrusted to him to be paid to a certain complainant for the amicable settlement of a pending case.[2]

The complaint-affidavit alleged that Frankwell Management and Consultant, Inc., a group of companies which includes Pan-Asia International Commodities, Inc., through its Administrative Manager Estrellita Valdez, engaged the legal services of respondent Atty. Meneses. While serving as such counsel, Atty. Meneses handled various cases and was properly compensated by his client in accordance with their retainer agreement.[3] One of the litigations handled by him was the case of *"People vs. Lai Chan Kow, a.k.a. Wilson Lai,* and *Arthur Bretaña,"* pending before Branch 134, Regional Trial Court

[1] *Rollo*, 1-5.

[2] *Ibid.*, 4.

[3] *Ibid.*, 6-8.

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of Makati. On December 24, 1993, respondent received the sum of ₱50,000.00 from Arthur Bretaña, the accused in said case, to be given to therein offended party, a certain Gleason, as consideration for an out-of-court settlement and with the understanding that a motion to dismiss the case would be filed by respondent Meneses.

Despite subsequent repeated requests, respondent failed to present to his client the receipt acknowledging that Gleason received said amount. A verification made with the Regional Trial Court of Makati revealed that no motion to dismiss or any pleading in connection therewith had been filed, and the supposed amicable settlement was not finalized and concluded. Despite repeated demands in writing or by telephone for an explanation, as well as the turnover of all documents pertaining to the aforementioned case, respondent Meneses deliberately ignored the pleas of herein complainant.

The case was assigned by the Commission to Commissioner Victor C. Fernandez for investigation. Respondent was thereafter ordered to submit his answer to the complaint pursuant to Section 5, Rule 139-B of the Rules of Court.[4] Two successive *ex parte* motions for extension of time to file an answer were filed by respondent and granted by the Commission.[5] On November 14, 1994, respondent filed a motion to dismiss,[6] instead of an answer.

In said motion, respondent argued that Atty. Navarro had no legal personality to sue him for and in behalf of Pan-Asia International Commodities, Inc. because his legal services were retained by Frankwell Management and Consultant, Inc.; that Navarro had not represented Pan-Asia International Commodities, Inc. in any case nor had he been authorized by its board of directors to file this disbarment case against respondent; that the retainer agreement between him and Frankwell Management and Consultant, Inc. had been terminated

[4] *Ibid.*, 15.

[5] *Ibid.*, 18-21.

[6] *Ibid.*, 23-25.

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as of December 31, 1993 according to the verbal advice of its Administrative Officer Estrellita Valdez; that the case of Arthur Bretaña was not part of their retainer agreement, and Bretaña was not an employee of Frankwell Management and Consultant, Inc. which retained him as its legal counsel; and that the settlement of said case cannot be concluded because the same was archived and accused Bretaña is presently out of the country.

Herein complainant, in his opposition to the motion to dismiss,[7] stresses that respondent Meneses is resorting to technicalities to evade the issue of his failure to account for the amount of ₱50,000.00 entrusted to him; that respondent's arguments in his motion to dismiss were all designed to mislead the Commission; and that he was fully aware of the interrelationship of the two corporations and always coordinated his legal work with Estrellita Valdez.

On November 28, 1994, Investigating Commissioner Victor C. Fernandez resolved to deny said motion to dismiss for lack of merit and directed respondent to file his answer.[8] On January 2, 1995, respondent filed a manifestation that he was adopting the allegations in his motion to dismiss as his answer.[9] When the case was set for hearing on February 9, 1995, respondent failed to attend despite due notice. He thereafter moved to postpone and reset the hearing of the case several times allegedly due to problems with his health.

On the scheduled hearing on June 15, 1995, respondent again failed to attend. The commissioner accordingly received *ex parte* the testimony of complainant's sole witness, Estrellita Valdez, and other documentary evidence.[10] Thereafter, complainant rested its case. Respondent filed a so-called "Urgent *Ex-parte* Motion for Reconsideration with Motion to Recall Complainant's Witness for Cross-Examination"[11] which was

[7] *Ibid.*, 27.

[8] *Ibid.*, 29.

[9] *Ibid.*, 30.

[10] *Ibid.*, 41-64.

[11] *Ibid.*, 65-67.

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granted by the Commission.[12] Estrellita Valdez was directed by the Commission to appear on the scheduled hearing for cross-examination.

Several postponements and resetting of hearings were later requested and granted by the Commission. When the case was set for hearing for the last time on May 31, 1996, respondent failed to attend despite due notice and repeated warnings. Consequently, the Commission considered him to have waived his right to present evidence in his defense and declared the case submitted for resolution.[13]

On February 4, 1997, the Commission on Bar Discipline, through its Investigating Commissioner Victor C. Fernandez, submitted its Report and Recommendation[14] to the Board of Governors of the Integrated Bar of the Philippines. The Commission ruled that the refusal and/or failure of respondent to account for the sum of ₱50,000.00 he received from complainant for the settlement of the aforestated case of Lai Chan Kow and Arthur Bretaña proves beyond any shadow of a doubt that he misappropriated the same, hence he deserved to be penalized.

The Commission recommended that respondent Meneses be suspended from the practice of the legal profession for a period of three (3) years and directed to return the ₱50,000.00 he received from the petitioner within fifteen (15) days from notice of the resolution. It further provided that failure on his part to comply with such requirement would result in his disbarment.[15] The Board of Governors adopted and approved the report and recommendation of the Investigating Commissioner in its Resolution No. XII-97-133, dated July 26, 1997.[16]

On August 15, 1997, the Court received the Notice of Resolution, the Report and Recommendation of the Investigating

[12] *Ibid.*, 69.

[13] *Ibid.*, 96.

[14] *Ibid.*, 102-105.

[15] *Ibid.*, 104-105.

[16] *Ibid.*, 99.

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Commissioner, and the records of this case through the Office of the Bar Confidant for final action pursuant to Section 12 (b) of Rule 139-B.[17] It appears therefrom that respondent was duly furnished a copy of said resolution, with the investigating commissioner's report and recommendation annexed thereto.

The Court agrees with the findings and conclusion of the Integrated Bar of the Philippines that respondent Meneses misappropriated the money entrusted to him and which he has failed and/or refused to account for to his client despite repeated demands therefor. Such conduct on the part of respondent indicating his unfitness for the confidence and trust reposed on him, or showing such lack of personal honesty or of good moral character as to render him unworthy of public confidence, constitutes a ground for disciplinary action extending to disbarment.[18]

Respondent Meneses' misconduct constitutes a gross violation of his oath as a lawyer which, *inter alia*, imposes upon every lawyer the duty to delay no man for money or malice. He blatantly disregarded Rule 16.01 of Canon 16 of the Code of Professional Responsibility which provides that a lawyer shall account for all money or property collected or received for or from his client. Respondent was merely holding in trust the money he received from his client to be used as consideration for the amicable settlement of a case he was handling. Since the amicable settlement did not materialize, he was necessarily under obligation to immediately return the money, as there is no showing that he has a lien over it. As a lawyer, he should be scrupulously careful in handling money entrusted to him in his professional capacity, because a high degree of fidelity and good faith on his part is exacted.[19]

The argument of respondent that complainant has no legal personality to sue him is unavailing. Section 1, Rule 139-B of the Rules of Court provides that proceedings for the disbarment,

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[17] *Ibid.*, 98.

[18] 7 C.J.S., General Considerations, § 66, 954.

[19] *Medina vs. Bautista,* Adm. Case No. 190, September 26, 1964, 12 SCRA 1.

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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 complaint 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 Bar Discipline sufficed to sustain its resolution and recommended sanctions.

It is settled that a lawyer is not obliged to act as counsel for every person who may wish to become his client. He has the right to decline employment[20] subject, however, to the provisions of Canon 14 of the Code of Professional Responsibility.[21] Once he agrees to take up the cause of a client, he owes fidelity to such cause and must always be mindful of the trust and confidence reposed on him.[22] Respondent Meneses, as counsel, had the obligation to inform his client of the status of the case and to respond within a reasonable time to his client's request for information. Respondent's failure to communicate with his client by deliberately disregarding its requests for an audience or conference is an unjustifiable denial of its right to be fully informed of the developments in and the status of its case.

On January 7, 1998, the Bar Confidant submitted to the Court a copy of the letter of Atty. Augusto G. Navarro, dated December 18, 1997, to the effect that although a copy of the aforestated Resolution No. XII-97-133 was personally delivered to respondent's address and received by his wife on October 9, 1997, he has failed to restitute the amount of ₱50,000.00 to complainant within the 15-day period provided therein. Neither has he filed with this Court any pleading or written indication

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[20] Canon 31, Canons of Professional Ethics; *Santiago vs. Fojas,* Adm. Case No. 4103, September 7, 1995, 248 SCRA 68.

[21] " A lawyer shall not refuse his services to the needy."

[22] Canon 17, Code of Professional Responsibility; *Santiago vs. Fojas, ante.*

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of his having returned said amount to complainant. In line with the resolution in this case, his disbarment is consequently warranted and exigent.

A note and advice on the penalty imposed in the resolution is in order. The dispositive portion thereof provides that:

> x x x Respondent Atty. Rosendo Meneses is hereby SUSPENDED from the practice of law for three (3) years and is hereby directed to return the Fifty Thousand Pesos he received from the petitioner within fifteen (15) days from receipt of this resolution. Failure on his part to comply will result (i)n his DISBARMENT.[23]

In other words, it effectively purports to impose either a 3-year suspension or disbarment, depending on whether or not respondent duly returns the amount to complainant. Viewed from another angle, it directs that he shall only be suspended, subject to the condition that he should make restitution as prescribed therein.

Dispositions of this nature should be avoided. In the imposition of penalties in criminal cases, it has long been the rule that the penalty imposed in a judgment cannot be in the alternative, even if the law provides for alternative penalties,[24] not can such penalty be subject to a condition.[25] There is no reason why such legal principles in penal law should not apply in administrative disciplinary actions which, as in this case, also involve punitive sanctions.

Besides, if the purpose was to extenuate the liability of respondent, the only possible and equivalent rule is in malversation cases holding that the restitution of the peculated funds would be analogous to voluntary surrender if it was immediately and voluntarily made before the case was instituted.[26] That evidently is not the situation here. Also the

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[23] *Rollo,* 99.

[24] *U.S. vs. Chong Ti, et al.,* 23 Phil. 120 (1912).

[25] *People vs. Licerio,* 61 Phil. 361 (1935).

[26] See *People vs. Reantillo,* (CA), 38 O.G. 3826; *People vs. Luntao,* (CA), 50 O.G. 1182

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implementation of the penalty provided in the resolution will involve a cumbersome process since, in order to arrive at the final action to be taken by this Court, it will have to wait for a verified report on whether or not respondent complied with the condition subsequent.

WHEREFORE, Atty. Rosendo Meneses III is hereby *DISBARRED*. Let a copy of this decision be attached to respondent's personal records in this Court and furnished the Integrated Bar of the Philippines, together with all courts in the county.

SO ORDERED.

Narvasa, C.J., Regalado, Davide, Jr., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and *Martinez, JJ.*, concur.

FIRST DIVISION

[G.R. Nos. 106210-11. January 30, 1998]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO "RAMBO" LISING, RODOLFO MANALILI, FELIMON GARCIA, ENRICO DIZON, and ROBIN MANGA,** *accused-appellants.*

SYNOPSIS

Two (2) amended informations were filed in court against Roberto Lising, Rodolfo Manalili, Felimon Garcia, Enrico Dizon, Robin Manga and Ligaya Fausto, for carnapping (Violation of Republic Act No. 6539) and for kidnapping with double murder. Upon arraignment, all the accused pleaded not guilty. After trial, all the accused, except Ligaya Fausto who was acquitted, were convicted of double murder qualified with treachery and aggravated by evident premeditation and abuse of public position.