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that accused-appellant is found guilty of simple rape and sentenced to suffer the penalty of *reclusion perpetua* and ordered to pay complainant, Vanessa Rochelle Musa, the amounts of ₱50,000.00 as civil indemnity and ₱25,000.00 as exemplary damages, in addition to the amount of ₱50,000.00 awarded as moral damages by the trial court, and the costs.

SO ORDERED.

Davide, Jr., C.J., Bellosillo, Melo, Puno, Vitug, Kapunan, Panganiban, Quisumbing, Pardo, Ynares-Santiago, De Leon, Jr., Sandoval-Gutierrez, and *Carpio, JJ.,* concur.

Buena, J., abroad on official business.

THIRD DIVISION

[A.C. No. 3066. December 3, 2001]

J.K. MERCADO AND SONS AGRICULTURAL ENTERPRISES, INC., and SPOUSES JESUS and ROSARIO K. MERCADO, *complainants, vs.* **ATTY. EDUARDO C. DE VERA and JOSE RONGKALES BANDALAN,** *respondents.*

SYNOPSIS

Previously, Atty. Eduardo De Vera represented Rosario Mercado in an action where the latter received a favorable decision. Thereafter, Rosario terminated the services of Atty. De Vera and tendered him ₱350,000 for attorney's fees. She demanded an accounting and turn-over of the money still with Atty. De Vera, but the latter refused. Rosario then filed a complaint for disbarment against respondent and respondent was suspended from the practice of law for six months. He was also ordered to return to Rosario the amount still owing to the latter and his suspension will stand until compliance with the order.

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Allegedly, respondent continued with his court appearances and signing of pleadings while still suspended from the practice of law. The Court noted, however, that respondent's last reported unauthorized practice of law was June 1, 2000. Therefore, he had started refraining from the practice of law. Thus, the Court directed respondent to return the amount of ₱381,859.61 still due from him to Rosario and his suspension shall then be lifted.

SYLLABUS

LEGAL ETHICS; PRACTICE OF LAW; CONSTRUED.— Practice of law embraces any activity, in or out of court, which requires the application of law, as well as legal principles, practice or procedure and calls for legal knowledge, training and experience. One is entitled to practice law if he has been duly admitted to the bar and there maintains a good standing.

APPEARANCES OF COUNSEL

Alcantara and Alcantara and *Ricafrente Sanvicente & Cacho Law Firm* for complainants.

Mervyn Encanto and *Romulo Mabanta Buenaventura Sayoc & De Los Angeles* for respondents.

RESOLUTION

VITUG, *J.*:

A complaint for disbarment against Atty. Eduardo C. de Vera was filed by J.K. Mercado and Sons Agricultural Enterprises, Inc., and the spouses Jesus Mercado and Rosario Mercado. The complaint was an offshoot of an action, entitled "*Rosario P. Mercado ('R. Mercado') vs. Jesus R. Mercado ('J. Mercado'), Mercado and Sons and Standard Fruits Corporation ('Stanfilco')*," docketed Civil Case No. 17215, for dissolution and liquidation of conjugal partnership, accounting, support with support *pendente lite*, annulment of contract, reconveyance or recovery of possession of conjugal share, partition, damages and attorney's fees. The case was assigned to Branch 14 of the Regional Trial Court of Davao

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City presided over by Judge Jose Bandalan. Rosario Mercado was represented by respondent Atty. Eduardo C. de Vera.

On 15 December 1986, the case was decided in favor of Rosario Mercado who was awarded the sum of a little over ₱9 million. A writ of execution was issued and notices of garnishment were served on Rizal Commercial Banking Corporation ("RCBC") at Claveria, Davao City; RCBC at Tagum, Davao del Norte; and Traders Royal Bank at R. Magsaysay Avenue, Davao City, where the total amount of ₱1,270,734.66 was garnished.

On 26 February 1987, Rosario Mercado terminated the services of respondent and tendered the amount of ₱350,000.00 by way of attorney's fees. She demanded an accounting and the turn-over of the money still in the custody of respondent but the latter refused, claiming that he was entitled to ₱2,254,217.00 attorney's fees. Failing to recover the amount, Rosario Mercado filed a complaint for disbarment against respondent.

The matter was referred to the Integrated Bar of the Philippines ("IBP") for investigation, report and recommendation.

The IBP Board of Governors, on 23 March 1993, adopted Resolution No. X-93-41, recommending the suspension for one (1) year of Atty. Eduardo C. de Vera from the practice of law.

The Court, in its resolution of 26 October 1999, affirmed the IBP recommendation with modification that respondent Atty. Eduardo C. de Vera be suspended from the practice of law for only six (6) months. Respondent was likewise ordered to return to Rosario Mercado the amount in excess of ₱350,000.00 still in his possession, without prejudice to whatever judicial action he might wish to take to recover his unsatisfied attorney's fees, if any, the resolution directing at the same time that his suspension would stand until he would have satisfactorily shown to the Court his compliance therewith.

Respondent filed a motion for reconsideration. The motion was denied with finality in the resolution of the Court, dated 02 February 2000, a copy of which was received by respondent on 22 February 2000.

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The following pleadings were thereafter filed before the Court:

a) An urgent motion, dated 13 March 2000, filed by respondent praying that the remaining period of his suspension be lifted;

b) A motion for leave to file and admit a manifestation and motion for the issuance of a writ of execution, dated 15 March 2000, filed by Rosario Mercado;

c) A manifestation and motion, dated 15 March 2000, filed by Rosario Mercado, praying that a writ of execution be issued compelling respondent to pay or return to her the sum of ₱396,692.20;

d) A motion for leave to file and admit a manifestation, dated 27 March 2000, filed by Rosario Mercado, praying for the imposition of appropriate sanction against respondent;

e) A letter, dated 11 February 2000, of Mr. Jose Elises, and another letter of 08 March 2000 of Capt. Edward Ranada from Davao City, inquiring whether or not respondent could practice law pending the resolution of his motion for reconsideration; and

f) A comment and opposition, dated 31 March 2000, filed by respondent relative to the manifestation and motion for the issuance of a writ of execution filed by Rosario Mercado.

On 24 May 2000, respondent informed the Court that in compliance with its resolution of 26 October 1999, he had voluntarily returned to Rosario Mercado the amount of ₱114,042.28 or the excess of ₱350,000.00 still in his possession.

On 12 July 2000, the Court issued a resolution to the effect that the effectivity of suspension of respondent should be reckoned from his receipt on 22 February 2000 of the resolution, dated 2 February 2000, of the Court (denying with finality the motion for reconsideration). The Court took note of the court appearances of, and pleadings signed by, respondent during his period of suspension from the practice of law. Respondent was required to explain his infractions. Meanwhile, the Court resolved to remand to the IBP the issue regarding the determination of the exact amount given by complainant to respondent and the amount to be returned

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by respondent.

On 25 October 2000, the Court issued another resolution referring to the IBP, for investigation, report and recommendation, the matter of respondent's alleged unauthorized practice of law.

The IBP, in its report of 08 October 2001, made the following findings:

As to the issue of how much money is still in respondent's possession --

"To *summarize*, respondent was able to disburse and/or account to complainant the following, to wit:

Amount deposited to complainant's TRB and Metrobank account	₱300,000.00
Additional amount received by complainant, as admitted	10,000.00
Amount received by complainant from CBC garnished funds	5,000.00
Amount received by complainant by way of BPI drafts & plane fare	52,000.00
Respondent's expenses in connection with Civil Case No. 17,215 and three CA cases	57,832.67
	₱424,832.67

"Deducting said amount from the amount received by respondent by way of garnished funds from several banks in Davao City would leave a balance of ₱845,901.89 (₱1,270,734.56 minus ₱424,832.67).

"Since respondent was allowed to retain for himself the amount of ₱350,000.00 by way of attorney's fees and respondent voluntarily paid and/or returned to complainant the amount ₱114,042.28 per BPI Manager's Check 497289 in compliance with the Supreme Court directive, such amounts should be deducted or applied against respondent's accountability of ₱845,901.89. Therefore, respondent still has in his possession the amount of *₱381,859.61,* after deducting the attorney's fees and the voluntary payment by respondent. Thus,

Amount received by respondent by way of garnished funds	₱1,270,734.56

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Less: Disbursements/Deductions as discussed above		424,832.67
Amount to be accounted for by respondent		₱845,901.89
Less: (1) Respondent's attorney's fees	₱350,000.00	
(2) Amount voluntarily returned by respondent	114,042.28	464,042.28
Amount still in respondent's possession		*₱381,859.61*

"Respondent is obliged to deliver to complainant the amount of ₱381,859.61 pursuant to Rule 16.03 of the Code of Professional Responsibility which provides that a lawyer shall deliver the funds and property of his client when due or upon demand."

Anent the alleged unauthorized practice of law by respondent during the period of his suspension —

a) *Re: His appearance before Home Insurance and Guaranty Corporation ("HIGC") and the filing of the Manifestation on Amicable Settlement.—*

"There is no doubt that respondent's appearance before the HIGC and his subsequent filing of the Manifestation on Amicable Settlement constitute practice of law in violation of his suspension order. A cursory reading of the transcript of stenographic notes taken during the proceedings before the HIGC on 24 February 2000 (*Exhibit 'D' to 'D-14,' Complainant's Formal Offer of Documentary Evidence*) reveal that respondent's purpose in appearing before the HIGC is to attend the scheduled preliminary conference. During the preliminary conference, the parties — Atty. De Vera, the Hearing Officer, and the opposing counsel — discussed the facts and circumstances of the case. They also discussed the possibility of an amicable settlement. These are acts which require legal expertise, training and experience.

"Respondent explained in his affidavit that he was at HIGC precisely to inform the hearing officer of his suspension. Considering the delicate nature of his situation, respondent should have, at the start of the preliminary conference, explicitly manifested in open court regarding his suspension. Assuming that respondent did not really intend to appear as counsel in said preliminary conference, his appearance as counsel was clearly evident when he subsequently filed the Manifestation on

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Offer of Amicable Settlement. Practice of law includes signing and filing of pleadings."

b) *Re: His appearance in People vs. Jailen Paul.* —

"Respondent's *ex-parte* direct examination of Mrs. Eva Antipuesto was a *flagrant* and *blatant* violation of his suspension order. Having been suspended effective 22 February 2000, respondent should have refrained from performing acts constituting practice of law — which include conducting a direct examination of a witness. Respondent's explanation that he was constrained to conduct a direct examination because of constant pleas by complainant, Ms. Eva Antipuesto, to speed up the case cannot justify respondent's violation of his suspension order. Besides, considering that he was under the control and supervision of the public prosecutor, respondent should have allowed the public prosecutor Danilo Bello, who was present on 29 February 2000 hearing, to conduct the direct examination. No amount of explanation can change the fact [that] respondent conducted the direct examination knowing fully well that he was suspended by Supreme Court from the practice of law. As to the Motion to Reset filed by respondent in the said case, the same constitutes practice of law."

c) *Re: His appearance in "People vs. Nilda Cuison Go and People vs. Neolito Egot" on 07 March 2001.*—

"As regards to the alleged appearance by respondent in the 'Nilda Cuison Go' case, complainant Mercado was not able to show convincing proof that respondent actively practiced law by appearing as private prosecutor in said case. The Certification issued by the Clerk of Court III cannot be considered a proof that respondent actively practiced law. Respondent was able to explain fully that his appearance was only to verify the case status of the case. However, respondent's appearance in the 'Neolito Egot' [case] is considered practice of law because he appeared before the court and represented himself as private prosecutor. Respondent's subsequent desistance is of no moment because there was intent on his part to appear as private prosecutor."

d) *Re: His appearance in "People of the Phils. vs. Edgardo Estareja."* —

"After a careful study of the parties' claims and defenses, respondent's appearance on 1 June 2000 for the promulgation of Decision and the filing of the Motion for Reconsideration constitute practice of law in

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defiance of the Supreme Court Resolution. It appears that respondent did not 'merely attend' the promulgation of the judgment, respondent acted and appeared as counsel for the accused and actively participated in the proceedings. As a matter of fact, after the promulgation of the decision, respondent manifested in *open court* their intention to appeal and respondent even gave his comments on the Decision of the trial court. These are acts that can be performed only by a lawyer who is authorized to practice law. Needless to say, he was also acting as counsel for the accused when he filed the Motion for Reconsideration."

e) *Re: His appearance as legal counsel of the LAKAS-NUCD before the Board of Canvasser on 17 May 2000.* —

"Respondent admitted having appeared at the canvassing in question but claims that his participation therein was 'merely like that of a non-lawyer acting as representative of Governor Del Rosario and Representative Floreindo.' When LAKAS-NUCD hired the services of respondent, he was hired not as a mere representative of its candidates. Respondent was hired to protect the interest of its candidates in accordance with the election laws. Reading from the transcript of stenographic notes taken during the canvassing, there was an active and actual exercise of his legal knowledge and expertise. Thus, his appearance constitutes practice of law."

f) *Re: Complaint of Atty. Honesto Cabarroguis.* —

"After a careful study of complainant's allegation, complainant Atty. Cabarroguis failed to provide this Office convincing evidence that respondent actually passed on 'notes' to his son to guide the latter in his direct examination. The act of passing a 'piece of paper' inside the courtroom during the trial does not involve legal expertise or the application of legal knowledge and therefore does not constitute practice of law."

g) *Re: Complaint of Mr. Jailen Paul.* —

"Exhibit 'EE' is a Manifestation dated 21 May 2001 signed by respondent requesting for a resetting of the case. Exhibit 'FF' is the transcript of stenographic notes taken during the hearing on 10 October 2000 of the case '*People of the Philippines vs. Jailen Paul*' before the Regional Trial Court of Davao City. Exhibit 'GG' is an Urgent Motion to Reset dated 3 October 2000 signed by Francis Arnold De Vera (for Eduardo De Vera).

"The pleadings filed clearly show that respondent De Vera practiced

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law during his suspension. The practice of law includes filing of pleadings before the courts.

h) *Re: Pleadings filed by respondent during his suspension.*—

"In the following cases, respondent violated his suspension order and practiced law when he signed the following pleadings which were filed before the regular courts.

"Urgent Manifestation with motion to defer Issuance of Writ of Execution (*Exhibit 'T,' Complainant's Formal Offer of Exhibit*) dated 07 June 2000 in the case '*Socorro Tiongko et al., vs. Loreto Rosca*,' Civil Case No. 3241-B-96;

"Urgent *Ex-Parte* Request Reiterating Urgent Prayer for 20-Day TRO (*Exhibit 'U'*) dated 7 June 2000 in the case '*Republic of the Philippines vs. Estate of Vicenta Tongko*,' Civil Case No. 27-544-99;

"Defendant's Pre-Trial Brief (*Exhibit 'V'*) dated 30 May 2000 in the case '*Alcrej Corporation vs. Raquel Camisura and Cesar Camisura,*' Civil Case No. 2815-F-96;

"Defendant's Pre-Trial Brief (*Exhibit 'W'*) dated 30 May 2000 in the case '*Ricardo Gahol et al., versus Eliseo Gatapia*' Civil Case No. 2817-F-96;

"Defendant's Pre-Trial Brief (Exhibit 'X') dated 30 May 2000 in the case '*Ricardo Gahol, et al. vs. Eliseo Gatapia*' Civil Case No. 2818-F-96; and

"*Ex-Parte* Urgent Request to Set Continuation of Hearing Contempt Incident (*Exhibit 'Z'*) dated 23 June 2000 in the case '*Panabo Public Market Vendors Estension Association, Inc. vs. Municipality of Panabo*,' Civil Case No. 89-23."

The IBP concluded that, in numerous occasions during the period of his suspension, respondent engaged in the practice of law despite the absence of an order from the Supreme Court lifting his suspension and that, on the basis of the evidence presented by the parties, respondent still had in his possession the excess amount of ₱381,859.61 due and owing in favor of Rosario Mercado.

Practice of law embraces any activity, in or out of court, which requires the application of law, as well as legal principles, practice or procedure and calls for legal knowledge, training and

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experience.[1] One is entitled to practice law if he has been duly admitted to the bar and there maintains a good standing.

The findings of the IBP would disclose that respondent indeed actively engaged in the practice of law during the period of his suspension. Respondent was suspended from the practice of law by this Court for six months, which took effect on 22 February 2000 (date of receipt by respondent of the Court's resolution of 2 February 2000). A review of the records would indicate that respondent was last reported to have engaged in the unauthorized practice of law on 1 June 2000 (when he appeared in the promulgation of decision in the case of *People of the Philippines vs. Eduardo Estareja*). Thereforth, it would appear that he started to refrain from the practice of law. The Investigating Commissioner reported that the exact sum still due from respondent to the complainant would amount to ₱381,859.61, a finding amply supported by the records.

WHEREFORE, respondent Atty. Eduardo C. de Vera is hereby DIRECTED to return to Rosario Mercado the amount of ₱381,859.61, and his suspension from the practice of law shall be lifted once he would have shown to the satisfaction of the Court his compliance therewith.

Melo (Chairman), Panganiban, Sandoval-Gutierrez, and *Carpio, JJ.,* concur.

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[1] *Legal Ethics* by Ruben Agpalo, p. 28, 1997 edition.