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**THIRD DIVISION**

[A.C. No. 4083. March 27, 2000]

**LEONITO GONATO and PRIMROSE GONATO** *complainants, vs.* **ATTY. CESILO A. ADAZA,** *respondent.*

## SYNOPSIS

In an administrative complaint for disbarment filed by herein complainants against their former counsel, Atty. Cesilo A. Adaza, they charged him with malpractice and violation of trust for demanding from them the sum of ₱15,980.00 as payment for docket fee and other court fees in connection with Civil Case No. 92-263 entitled "Goking *vs.* Yacapin, *et al.*" filed before the Regional Trial Court of Misamis Oriental, but the truth is, respondent did not really pay said amount for docket fee and other court fees. In its resolution dated January 28, 1999 the IBP Board of Governors adopted and approved the Investigating Commissioner's report and recommendation that respondent be suspended from the practice of law for three years having found sufficient evidence to sustain complainants' claim that respondent charged the complainants the amount of ₱15,980.00 for filing fees when in fact no such fees were due.

The Supreme Court adopted the findings and recommendation of the IBP that respondent lawyer has sufficiently demonstrated conduct showing his unfitness for the confidence and trust which characterized the attorney-client relationship. His act of requiring complainants to pay an exorbitant amount on the pretext that it was needed for the payment of court fees constitutes malpractice which is a serious breach of professional duty toward complainants whose trust respondent disregarded and violated. Moreover, the fact that herein respondent persistently refused to return the money was clearly indicative of lack of integrity and moral soundness, as he was clinging to something which was not his and to which he absolutely had no right. Accordingly, the respondent was suspended from the practice of law for a period of six months

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from notice, with the warning that a repetition of the same or similar acts will be dealt with more severely.

**SYLLABUS**

1. **LEGAL AND JUDICIAL ETHICS; LAWYERS; CODE OF PROFESSIONAL RESPONSIBILITY; CONVERSION BY A LAWYER OF FUNDS ENTRUSTED TO HIM IS A GROSS VIOLATION OF PROFESSIONAL ETHICS AND BETRAYAL OF PUBLIC CONFIDENCE IN THE LEGAL PROFESSION.** — This Court is in full accord with the findings and recommendation of the IBP that respondent lawyer has sufficiently demonstrated conduct showing his unfitness for the confidence and trust which characterize the attorney-client relationship. His act of requiring complainants to pay an exorbitant amount on the pretext that it was needed for the payment of court fees which were not even substantiated by proper official receipts, constitutes malpractice which is a serious breach of professional duty toward complainants whose trust respondent disregarded and violated. Respondent expressly admitted having received the money, but he persistently refused to return the same despite repeated demands by the complainants. This conduct of the respondent is clearly indicative of lack of integrity and moral soundness, as he was clinging to something which was not his and to which he absolutely had no right. Respondent's shallow excuse that he applied said money to his attorney's fees is merely an afterthought and cannot justify his refusal to return the same, as this was made without the acquiescence of the complainants. It is settled that the conversion by a lawyer of funds entrusted to him is a gross violation of professional ethics and a betrayal of public confidence in the legal profession (*Obia vs. Catimbang,* 196 SCRA 23 [1991]). Likewise, respondent offered no solid proof to support his denial that he delivered the two falsified receipts to complainants.

2. **ID.; ID.; ID.; ID.; FOR FAILURE TO LIVE UP TO HIS DUTIES AS A LAWYER, RESPONDENT IS SUSPENDED FROM THE PRACTICE OF LAW FOR A PERIOD OF SIX (6) MONTHS.** — The facts and evidence obtaining in this case glaringly reveal respondent's failure to live up to his duties as

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a lawyer in consonance with the strictures of his oath and the Code of Professional Responsibility particularly Canon 16 which provides that "a lawyer shall hold in trust all moneys and properties of his client that may come into his possession." As a member of the Bar, respondent was and is expected to always live up to the standards embodied in said Code particularly Canons 15, 16, 17 and 20, for the relationship between an attorney and his client is highly fiduciary in nature and demands utmost fidelity and good faith (*Igual vs. Javier,* 254 SCRA 416 [1996]). The Court believes that a longer period of suspension than that recommended by the IBP is called for under the circumstances. WHEREFORE, respondent Atty. Cesilo A. Adaza is hereby suspended from the practice of law for a period of six (6) months from notice, with the warning that a repetition of the same or similar acts will be dealt with more severely. Respondent is further ordered to restitute to complainants the amount of P15,980.00 within 30 days from notice, without prejudice to whatever judicial action he may take to recover his unsatisfied attorney's fees, if any. Let copies of this resolution be furnished all courts in the land, the Integrated Bar of the Philippines, the Office of the Bar Confidant, and let it be spread in respondent's personal record.

**APPEARANCES OF COUNSEL**

*Sabate Law Office* for complainants.
*Cesilo A. Adaza* for respondent.

**RESOLUTION**

**MELO, *J.*:**

At bar is an administrative complaint for disbarment filed by the complainant spouses Leonito and Primrose Gonato against their former counsel, Atty. Cesilo A. Adaza, charging him with malpractice and violation of trust. Pursuant to Rule 139-B of the Rules of Court and the Resolution of the Court dated December 1, 1993, the present administrative case was referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.

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It appears that sometime in February, 1993, complainants engaged the services of respondent as their counsel in Civil Case No. 92-263 entitled *Goking vs. Yacapin, et al.*" filed with the Regional Trial Court of Misamis Oriental, wherein complainants were among the defendants in said case. Complainants alleged that respondent demanded from them the sum of ₱15,980.00 to be used in paying the docket fee and other court fees in connection with the aforementioned case. Said amount was loaned to complainants by a friend, Vic Manzano, who delivered the same to respondent, as evidenced by an acknowledgment receipt dated February 10, 1993 and signed by respondent's secretary, Mayette Salceda. Thereafter, complainants asked for the official receipts evidencing the amount of court fees purportedly paid by respondent. Vic Manzano told complainants that respondent only gave him photocopies of two Republic of the Philippines receipts with numbers 9627143 (Exhibit "C") dated February 11, 1993, in the amount of ₱15,830.00; and 7447868 (Exhibit "D") also dated February 11, 1993, in the amount of ₱150.00. Dissatisfied, complainant Primrose Gonato personally went to respondent's law office at least three times, and asked for the original copies of the receipts, but to no avail. Primrose's suspicion grew stronger, and this prompted her to verify the authenticity of said receipts with the office of the Clerk of Court of the Regional Trial Court of Cagayan de Oro City. There, it was discovered that the triplicate original copies of the receipts did not reflect the same amount contained on the photocopies of the receipts given by respondent. Receipt No. 9627143 in the Clerk of Court's Office showed only the amount of ₱2,470.00 and was dated May 15, 1992, while that given by respondent bore the amount of ₱15,830.00. On the other hand, Receipt No. 7447868 per Office of Clerk of Court records revealed the sum of ₱4,000.00, while that provided by respondent disclosed the sum of ₱150.00, presumably to conform to the amount paid by complainant which was ₱15,980.00. Complainants demanded the return of ₱15,980.00 but respondent refused to do so. Thus, in April, 1993, complainants urged respondent to withdraw as counsel due to loss of trust and confidence.

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For his part, respondent lawyer admits that he received from Vic Manzano the amount of ₱15,980.00 which was initially intended to cover the filing fees, sheriff fees, and U.P. Law Center fees in the filing of counterclaim on behalf of herein complainants. But according to him, after careful study, he realized that the counterclaim is compulsory and not permissive, and so he applied instead the aforesaid sum of ₱15,980.00 to his acceptance and appearance fees, which fact was even communicated to Vic Manzano, who was complainants' contact or liason person with respondent. Respondent also specifically denied that he caused the delivery of the falsified photocopies of O.R. Nos. 9627143 and 7447868 to complainant spouses.

In its Resolution dated January 28, 1999, the Board of Governors of the Integrated Bar of the Philippines adopted and approved the Investigating Commissioner's report and recommendation with an amendment that respondent be suspended from the practice of law for three (3) months.

The IBP Commission on Bar Discipline found sufficient evidence to sustain complainants' claim that respondent charged them the amount of ₱15,980.00 for filing fees when in fact no such fees were due. It rejected respondent's claim that the subject amount was applied to his attorney's fees as this is belied by the statement of account he issued to complainants indubitably showing that complainants were charged of said amount for filing fees.

This Court is in full accord with the findings and recommendation of the IBP that respondent lawyer has sufficiently demonstrated conduct showing his unfitness for the confidence and trust which characterize the attorney-client relationship. His act of requiring complainants to pay an exorbitant amount on the pretext that it was needed for the payment of court fees which were not even substantiated by proper official receipts, constitutes malpractice which is a serious breach of professional duty toward complainants whose trust respondent disregarded and violated. Respondent expressly admitted having received the money, but he persistently refused to return the same despite repeated demands by the complainants. This conduct of the

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respondent is clearly indicative of lack of integrity and moral soundness, as he was clinging to something which was not his and to which he absolutely had no right. Respondent's shallow excuse that he applied said money to his attorney's fees is merely an afterthought and cannot justify his refusal to return the same, as this was made without the acquiescence of the complainants. It is settled that the conversion by a lawyer of funds entrusted to him is a gross violation of professional ethics and a betrayal of public confidence in the legal profession (*Obia vs. Catimbang,* 196 SCRA 23 [1991]). Likewise, respondent offered no solid proof to support his denial that he delivered the two falsified receipts to complainants.

Canon 7 of the Code of Professional Responsibility mandates that "a lawyer shall at all times uphold the integrity and dignity of the legal profession." The trust and confidence necessarily reposed by clients require in the lawyer a high standard and appreciation of his duty to them. To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty, and integrity of the profession (*Marcelo vs. Javier, Sr.,* 214 SCRA 1 [1992]).

The facts and evidence obtaining in this case glaringly reveal respondent's failure to live up to his duties as a lawyer in consonance with the strictures of his oath and the Code of Professional Responsibility, particularly Canon 16 which provides that "a lawyer shall hold in trust all moneys and properties of his client that may come into his possession." As a member of the Bar, respondent was and is expected to always live up to the standards embodied in said Code particularly Canons 15, 16, 17 and 20, for the relationship between an attorney and his client is highly fiduciary in nature and demands utmost fidelity and good faith (*Igual vs. Javier,* 254 SCRA 416 [1996]). The Court believes that a longer period of suspension than that recommended by the IBP is called for under the circumstances.

**WHEREFORE,** respondent Atty. Cesilo A. Adaza is hereby suspended from the practice of law for a period of six (6) months from notice, with the warning that a repetition of the same or

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similar acts will be dealt with more severely. Respondent is further ordered to restitute to complainants the amount of ₱15,980.00 within 30 days from notice, without prejudice to whatever judicial action he may take to recover his unsatisfied attorney's fees, if any. Let copies of this resolution be furnished all courts in the land, the Integrated Bar of the Philippines, the Office of the Bar Confidant, and let it be spread in respondent's personal record.

**SO ORDERED.**

*Vitug, Panganiban, Purisima,* and *Gonzaga-Reyes, JJ.,* concur.

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**SECOND DIVISION**

[A.M No. P-96-1204. March 27, 2000]

**MILA MARTINEZ,** *complainant, vs.* **CLERK OF COURT ALEXANDER RIMANDO and SHERIFF ABRAHAM ALMAZAN, both of the Office of the Clerk of Court, MTCC, Olongapo City,** *respondents.*

**SYNOPSIS**

Respondents were charged with grave misconduct for the enforcement of an alias writ of execution in Civil Case no.2748 even when the judgment debt and costs of the writ of execution in the amount of ₱22,000 in said case was already paid by Romeo Idanan. Sheriff Almazan issued a Certificate of Sale in favor of the highest bidder Carmen Cao, who submitted a bid of ₱62,400. Later, the Final Bill of Sale was issued by Almazan, approved by Clerk of Court Rimando.

The Supreme Court ruled that respondents are guilty of gross inefficiency and incompetence. Rimando inadvertently