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WHEREFORE, IN VIEW OF THE FOREGOING, the petition is hereby DISMISSED.

SO ORDERED.

Davide, Jr., C.J., Melo, Puno, Vitug, Kapunan, Quisumbing, Purisima, Gonzaga-Reyes, Ynares-Santiago, De Leon, Jr., JJ., concur.

Panganiban, J., concurs in the result — the issue on incomplete canvass was filed out of time.

Bellosillo ,Mendoza,Pardo, JJ., took no part because of close personal relationship to party.

SECOND DIVISION

[Adm. Case No. 675. December 17, 1999]

ROSARIO MARQUEZ, *complainant, vs.* **ATTY. DIONISIO MENESES, JR.,** *respondent.*

SYNOPSIS

In 1965 Rosario Marquez, now deceased, filed a complaint for misconduct and collection of unconscionable fee against his lawyer Atty. Dionisio G. Meneses, Jr. The Court referred the case to the Office of the Solicitor General, which in turn indorsed the matter to the Office of the Provincial Fiscal of Albay. The Solicitor General sustained the findings of the Provincial Fiscal. Since then nothing more appeared to have been done in this case. In 1998, respondent moved for the dismissal of the case, citing the lapse of considerable time since the complaint was filed and its supposed lack of merit. The case reached the Supreme Court. According to the findings of the Provincial Fiscal, which is the only available record of the case, respondent represented the complainant in a civil case in 1963 in which the latter was able to procure a favorable decision. The court granted attorney's fee of 75 pesos.

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Respondent was able to collect 75 pesos from the defendant in the said case but refused to remit the same to his client claiming that the amount was supposed to be the additional contingent fee due him. The Solicitor General recommended that respondent be ordered to pay to the complainant the sum of 50 pesos and to retain only 25 pesos of the attorney's fees, which was the balance still owed to him by his client. In addition, he was recommended to be suspended from the practice of law for his breach of professional ethics.

According to the Supreme Court, it was improbable that complainant would agree to pay respondent the award of attorney's fees on top of the 100-peso retainer fees agreed upon, considering that the civil case involved only 210 pesos. An attorney's fee of 175 pesos was unconscionable. The lawyer had no right to appropriate for himself the entire 75 pesos, which served as partial satisfaction of the judgment. The Court found respondent guilty of breach of professional trust, and imposed upon him a penalty of one-month suspension from the practice of law, and to pay complainant's estate the amount of pesos.

SYLLABUS

LEGAL AND JUDICIAL ETHICS; ATTORNEYS; MONEY COLLECTED IN PURSUANCE OF JUDGMENT IN FAVOR OF CLIENT SHOULD BE HELD IN TRUST AND MUST BE IMMEDIATELY TURNED OVER; NOT PRESENT IN CASE AT BAR. — It is well-settled that money collected by a lawyer in pursuance of a judgment in favor of his client is money held in trust and must be immediately turned over to the latter. Canon 11 of the Canons of Professional Ethics, in force at the time material to this case, provides: 11. *Dealing with trust property* The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client. Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be commingled with his own or be used by him. In this case, respondent should have made an accounting with his client of the amount he received, deducted the balance of the attorney's fees due him, and turned over the rest of the amount to his client. As the Solicitor General observed, "if respondent was mindful of his ethics, he should at least have waited until the

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judgment debtor in Civil Case No. 82 had made further payments on the amount adjudged against them. x x x" By placing his personal interest above his client's cause, respondent clearly breached the trust reposed upon him.

APPEARANCES OF COUNSEL

Dionisio G. Meneses, Jr. for and in his own behalf.

D E C I S I O N

MENDOZA, *J.*:

This is a complaint[1] for misconduct and collection of unconscionable fees filed against Atty. Dionisio G. Meneses, Jr. by his client, Rosario Marquez, now deceased. The case was filed on July 6, 1965. After respondent filed his Answer2 on October 20, 1965, the Court referred the case to the Office of the Solicitor General, which in turn indorsed the matter to the Office of the Provincial Fiscal of Albay for investigation, report and recommendation.

It appears that then Solicitor General Antonio P. Barredo filed his Report [3] on September 27, 1966 sustaining the findings of the Provincial Fiscal. Nothing more appears to have been done in this case except for the issuance of a resolution by the Court, dated November 21, 1966, noting the memorandum filed by respondent. Then, on November 4, 1998, respondent moved for the dismissal of the case, citing the lapse of considerable time since the complaint was filed and its supposed lack of merit. The case was then raffled and first reported to this Division of the Court on November 28, 1998. On December 14, 1998, the Second Division required the Office of the Solicitor General and the Office of the Provincial Fiscal of Albay to forward the records of this case to the Court within 30 days from receipt

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[1] *Rollo*, pp. 1-2.

[2] *Id.*, pp. 14-17.

[3] *Id.*, pp. 24-30.

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of notice. On February 2, 1999, the Provincial Prosecutor of Albay reported that there were no records pertaining to this case in his office.[4]

Meanwhile, copies of this Court's resolutions sent to complainant were returned with notation "unclaimed." In a letter dated June 9, 1999, respondent informed the Court that complainant died on December 31, 1985, as shown by the certificate of death issued by the Office of the Municipal Civil Registrar of Camalig, Albay.

With this explanation, we proceed to resolve this case. As already stated, the Solicitor General filed a report which upheld the following findings of the then Provincial Fiscal of Albay:

In May of 1963, complainant Rosario Marquez was introduced by Atty. Vicente Peralta to respondent Atty. Dionisio Meneses of Legaspi City, as a prospective client. Complainant retained the professional service of respondent to prosecute a claim of ₱210 against Ruth Igdanes and Delfin Igdanes in the Justice of the Peace Court of Camalig, Albay. The agreement was that complainant would pay a fee of ₱100.00 to respondent, whether the case was won or lost. The agreement, however, was merely oral. Thereafter, complainant advanced from time to time to respondent various sums as fees, which totalled ₱75.00.

The complaint in Civil Case No. 82 for collection of a sum of money (₱210.00) against the defendants Ruth Igdanes and Delfin Igdanes was filed on June 25, 1963 in the Justice of the Peace Court of Camalig, Albay (Exh. 1 — Respondent). The answer filed by defendants contained a counterclaim, and a reply and answer thereto was filed by respondent in behalf of his client, plaintiff Rosario Marquez (complainant herein), wherein the relief demanded, among other things,

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[4] The records were completed on April 14, 1999, when the Office of the Bar Confidant submitted a folder marked as "Vol. II" which contains file copies of documents attached to the original *rollo* and 35 pages of transcripts of stenographic notes on the investigation conducted in this case, exhibits and report of 1st Asst. Provincial Fiscal Abelardo B. Burce in the order that they are found; said documents supposed to be integral parts of the report of the Office of the Solicitor General dated September 23, 1966 were mistakenly attached to the office file copy instead of the original *rollo*.

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was that defendants "be ordered to pay plaintiff the amount of ₱100.00 as attorney's fees . . . " etc. (Exh. 2 — Respondent). Decision was rendered by the court on December 27, 1963 in favor of the plaintiff and against defendants ordering the latter to pay the plaintiff ₱210.00 with legal interest from the filing of the complaint until fully paid, and ₱75.00 as attorney's fees (Exh. 3 — Respondent).

Sometime afterward, complainant, who was in Manila, received a letter from her brother in Camalig, Albay saying that Ruth Igdanes, one of the defendants in Civil Case No. 82, had paid ₱75.00 to the sheriff as partial satisfaction of the judgment. She wrote to her brother asking him to collect the amount for her, but to give ₱25.00 to Atty. Meneses in payment of the balance of the latter's fee of ₱100.00. Her brother wrote back saying that the sheriff informed him that respondent had gotten all of the ₱75.00 as his fees. Complainant wrote to respondent twice asking him to send her ₱50.00 and to keep ₱25.00 for himself, but got no answer from him. When she returned to Albay she went to see respondent personally about the matter, but he refused to give her the ₱50.00 she was asking and contended that "that was their agreement."

Complainant's contention, in brief, is that she had been overcharged by respondent for as the agreed fee was ₱100.00, win or lose, and she had already paid ₱75.00 to respondent, the latter simply had the right, at most, to keep ₱25.00 out of the ₱75.00 he had gotten from the sheriff.

Complainant presented in evidence a letter dated April 22, 1963 she had written to Justice of the Peace Calixto Ajero of Camalig, Albay explaining how respondent had charged her an excess fee ₱50.00 and asking that he intercede in her behalf so that respondent may return the same to her (Exh. A).

On the other hand, respondent contended that his agreement with complainant was that he would be paid retainer fees in the amount of ₱100.00, and contingent fees equivalent to the amount of attorney's fees which may be awarded by the court. Since the court in Civil Case No. 82 awarded ₱75.00 as attorney's fees, he was entitled to keep the amount as his contingent fees. Complainant still owed him ₱25.00 since he had been paid only ₱75.00 for his retainer.

The Solicitor General recommends that, of the amount which he received from the sheriff, respondent be ordered to pay to

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complainant the sum of ₱50.00 because respondent's retainer fee is for ₱100.00 only and he had previously been paid ₱75.00. In addition, the Solicitor General recommends that respondent be suspended from the practice of law for at least six months for his breach of professional ethics.

We find the Solicitor General's recommendation to be well taken. Indeed, it is improbable that complainant would agree to pay respondent the award of attorney's fees on top of the ₱100.00 retainer fees, considering that Civil Case No. 82 involved only ₱210.00. Respondent himself admitted that he accepted the case as an "act of charity" since he knew complainant to be poor.[5] Thus, respondent cannot deny that, under the circumstances, an attorney's fee of ₱175.00 is unconscionable. He had no right to appropriate for himself the entire ₱75.00 deposited with the sheriff as partial satisfaction of judgment in Civil Case No. 82.

It is well-settled that money collected by a lawyer in pursuance of a judgment in favor of his client is money held in trust and must be immediately turned over to the latter.[6] Canon 11 of the Canons of Professional Ethics, in force at the time material to this case, provides:

11. *Dealing with trust property*

The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly and should not under any circumstances be commingled with his own or be used by him.

Tanhueco v. de Dumo[7] involved facts substantially similar to the present case. In *Tanhueco*, complainant filed, on February 24, 1975, a petition for disbarment against Atty. Justiniano G.

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[5] *Rollo*, pp. 28-29.

[6] *Daroy v. Legaspi*, 65 SCRA 304 (1975).

[7] 172 SCRA 760 (1989).

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de Dumo, her former counsel, for the latter's refusal to remit to her money collected by him from judgment debtors. The Office of the Solicitor General, after the case was referred to it by the Court, held hearings on December 3, 1975 and April 18, 1988. In a *per curiam* resolution, dated April 25, 1989, the Court noted the 12-year *interregnum* but found nothing in the records to indicate the reason therefor.[8] Nevertheless, the Court found that Atty. de Dumo's refusal to remit the amount to his client amounted to a breach of professional trust, and ordered his suspension from the practice of law for six months and to return to the estate of complainant (who has since died) the excess of the amount he collected after deducting his attorney's fees.

In this case, respondent should have made an accounting with his client of the amount he received, deducted the balance of the attorney's fees due him, and turned over the rest of the amount to his client. As the Solicitor General observed, "if respondent was mindful of his ethics, he should at least have waited until the judgment debtor in Civil Case No. 82 had made further payments on the amount adjudged against them . . .." By placing his personal interest above his client's cause, respondent clearly breached the trust reposed upon him.

WHEREFORE, the Court finds respondent *GUILTY* of breach of professional trust, and orders him suspended for one (1) month from the practice of law. In addition, he is ordered to pay to complainant's estate the amount of ₱50.00, plus legal interest from January 1964.

SO ORDERED.

Bellosillo(Chairman), Quisumbing, Buena, and *de Leon, Jr., JJ.,* concur.

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[8] *Supra* at 762.