

EN BANC

[A.C. No. 12660, January 28, 2020]

**JOANN G. MINAS COMPLAINANT, VS. ATTY. DOMINGO A. DOCTOR,
JR., RESPONDENT.**

R E S O L U T I O N

PER CURIAM:

For the Court's consideration is the disbarment complaint^[1] filed by Joann G. Minas (complainant) against Atty. Domingo A. Doctor, Jr. (Atty. Doctor) for violation of Canon 16, Rule 16.01 and Rule 16.03, and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility.^[2]

Antecedents

Complainant alleged that on May 21, 2011, one of her fishing vessels, FV/JVPFIL 5, with Filipino and Taiwanese crew members, including Hsu Hung-Tse and Chen Fu Nan, was apprehended by the members of the Philippine Coast Guard (PCG) and the Bureau of Fisheries and Aquatic Resources (BFAR). Criminal cases were filed against the crew members before the Regional Trial Court (RTC) of Ilagan, Isabela, and administrative cases were filed before the Maritime Industry Authority (MARINA) and BFAR. Aside from said cases, two other cases involving the vessel were filed against complainant before the Prosecutor's Office of the Province of Zambales and the City of Olongapo. Complainant engaged the services of Atty. Doctor to handle these cases, for which the latter asked for an acceptance fee of P100,000.00, which complainant paid. Two days later, Atty. Doctor informed complainant that his law partners find the acceptance fee dismal and asked that the same be increased to P200,000.00. Complainant agreed and paid in cash.^[3]

Sometime in the last week of May 2011, Atty. Doctor informed complainant that the two Taiwanese crew members cannot leave the country because of the pending cases before the Bureau of Immigration and Deportation (BID), and corresponding administrative penalty and miscellaneous fees in the amount of P400,000.00 have to be settled. Thus, on June 8, 2011, complainant, together with Evangeline Conge (Evangeline) and Kevin Arias (Kevin), met Atty. Doctor at the canteen of the BID Office in Intramuros, Manila and she personally handed the amount of P400,000.00 placed in a brown envelope. After receiving the amount, Atty. Doctor told complainant and her companions to leave him behind as he will take care to settle the penalty and fees so that the two Taiwanese national would be cleared by the BID. Atty. Doctor also told complainant that he will just forward the corresponding official receipts.^[4]

A few days later, Atty. Doctor informed complainant that she has to post a "replevin bond" (as Atty. Doctor has termed it) in the amount of P400,000.00 in order for BFAR to immediately release the vessel. Also, she has to pay US\$50,000.00 as administrative fine to convince the BFAR to put an end to the administrative case so that her license will not be cancelled. Thus, complainant, accompanied by Evangeline and Kevin, met Atty. Doctor on June 21, 2011 at KFC, Timog St., Quezon City and gave him the amount of P400,000.00 and US\$50,000.00. After receiving the money, Atty. Doctor assured complainant that the fishing vessel will be released in two days and that the BFAR case will be terminated in three days. Complainant did not receive any receipt or bond and the BFAR case was not terminated. Complainant found out that no replevin bond was posted by Atty. Doctor and worse, the prosecution had already presented its evidence *ex-parte*, since complainant was declared in default for failure of Atty. Doctor to file the required answer on her behalf.^[5]

Complainant immediately called Atty. Doctor to return the P800,000.00, representing the P400,000.00 given on June 8, 2011 and P400,000.00 given on June 21, 2011, and the US\$50,000.00 given on June 21, 2011. Out of the amount, Atty. Doctor only returned to complainant US\$40,000.00 on June 27, 2011. A week after, Atty. Doctor returned the amount of US\$2,000.00, and he was able to account for the US\$1,500.00. Complainant repeatedly called and sent text messages to Atty. Doctor relative to the status of the cases. However, Atty. Doctor did not answer complainant's call nor her text messages. Complainant even went to his residence and office just to get an update of the cases being handled by him.^[6]

In view of Atty. Doctor's refusal to return and/or account for the money given by complainant, the latter was constrained to send formal demand letters and eventually terminated Atty. Doctor's services. After receiving the letters, Atty. Doctor appeared in one of the hearings before the BFAR and returned to complainant the amount of US\$1,900.00, thus, leaving in his trust and possession the amount of P800,000.00 and US\$4,600.00, which he refuses and continues to refuse to account and/or return. Hence, complainant filed this administrative complaint for disbarment against Atty. Doctor for violation of Canon 16, Rule 16.01 and Rule 16.03 and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility. Complainant, likewise, asks that Atty. Doctor be made to return to her the amount of P800,000.00 and US\$4,600.00.^[7]

In his Verified Answer,^[8] Atty. Doctor stated that the fishing boat, which was apprehended and impounded by the PCG and the BFAR, is actually owned by Hsu Hung Tse @ Cheng Hung Ta, a Taiwanese national, and herein complainant was a mere dummy who submitted perjured and spurious documents for foreigners to evade extant maritime regulations and fishing prohibitions in the Philippines;^[9] and that complainant was criminally charged before the Prosecutor of Olangapo City and the Province of Zambales for falsification of public documents and for qualified theft is not correct and the same is misleading. Complainant was charged in connection with the falsification of the deeds of sale covering other fishing boats (*i.e.*, FV/JVNPHIL 7, FV/NPHIL 6 and FV/JVPHIL 11). He was also hired as counsel of complainant in the case pending before the MARINA. The three fishing boats (*i.e.*, FV/JVPHIL 7, FV/JVPHIL 6

and FV/JVPHIL 11) were apprehended and impounded by the PCG in Bolinao, Pangasinan and he worked and exerted extra efforts for their successful release from PCG custody. ^[10] Also, Atty. Doctor rendered legal services in the cases pending before the Department of Labor and Employment (DOLE) for violation of labor laws and alleged illegal recruitment. He was requested by complainant to be her counsel in the administrative case before the BFAR. ^[11]

Although, in the first four cases, which Atty. Doctor handled for complainant, the subject matters involved were extremely important, which required so much labor, time, and trouble, not only in litigation but close coordination and appearance before concerned agencies of the government, he only charged complainant a reasonable acceptance fee of P10,000.00 to P20,000.00 for each case and an appearance fee of P3,000.00 to P7,000.00, depending on the distance of his residence to the place of court appearance/litigation. Atty. Doctor was not able to collect his acceptance fee and attorney's fee in the other cases for which he was hired by complainant, *i.e.*, cases before the DOLE in San Fernando City, Pampanga and Olongapo City, Zambales, the Ombudsman, BFAR and MARINA. ^[12]

Atty. Doctor averred that he acted as counsel for complainant from April 2011 to July 23, 2011, when he suffered a stroke which affected his mobility and speech. Even then, he forced himself to attend the scheduled hearing of complainant on a wheelchair and with the aid of a walking cane. Complainant went to his residence and was able to see for herself his actual medical condition. He was able to attend the BFAR hearing scheduled on August 5, 2011. Atty. Doctor believes that herein complainant is not a proper party with respect to matters and issues which are personal and exclusive between him and his Taiwanese clients in the cases pending before the RTC and the administrative case before the BFAR. He further argued that the recitals of complainant, particularly paragraphs 4, 5, 6 and 8 of the complaint (*i.e.*, pertaining to the delivery of the cited amount from complainant to Atty. Doctor), constitute privileged communication covered under the attorney client relationship. Without the consent or waiver of his Taiwanese clients, he cannot be at liberty to discuss and answer the allegations of complainant. ^[13]

IBP Report and Recommendation

The Report and Recommendation ^[14] of the Integrated Bar of the Philippines (IBP)-Commission on Bar Discipline (IBP-CBD) dated April 25, 2016 recommended the imposition of disciplinary action against Atty. Doctor for committing acts contrary to and violative of Canon 16 and Canon 18, respectively, of the Code of Professional Responsibility and imposed the penalty of **suspension** from the practice of law **for six months** with a stern warning that his commission of a similar offense will be dealt with more severely. ^[15]

The IBP-CBD found Atty. Doctor's defense of denial and his assertion of privileged communication between a lawyer and his client, particularly as to his answer to paragraphs 4, 5, 6 and 8 of the complaint (*i.e.*, pertaining to the delivery of the cited amount from complainant to Atty. Doctor), are without merit. Atty. Doctor did not

adduce any evidence to prove or counter the allegations relative to the receipt of money from complainant.^[16] On the other hand, complainant was able to show that a lawyer-client relationship existed between her and Atty. Doctor, and that the latter received money in relation to the cases that he handled for complainant. Atty. Doctor's apparent failure to account for the said amounts constitute a violation of Canon 16, in relation to Canon 18, of the Code of Professional Responsibility.^[17]

IBP Board of Governors

In a Resolution^[18] dated February 22, 2018, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner, with modification, by increasing the recommended penalty of **suspension** from the practice of law from six months to **two years**.^[19]

Atty. Doctor moved for reconsideration, but the same was denied per Resolution^[20] dated December 6, 2018.

Issue

The sole issue for resolution is whether Atty. Doctor should be held administratively liable for his failure to account the money received from complainant and serve his client with competence and diligence, in violation of Canon 16, Rule 16.01 and Rule 16.03 and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility.

The Court's Ruling

The Court concurs with the finding of the IBP-CBD, as adopted by the IBP Board of Governors, that Atty. Doctor violated Canon 16, Rule 16.01 and Rule 16.03 and Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility warranting his suspension from the practice of law for two years.

The Code of Professional Responsibility states:

CANON 16 A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

RULE 16.01. A lawyer shall account for all money or property collected or received for or from the client.

x x x x

RULE 16.03. A lawyer shall deliver the funds and property of his client when due or upon demand. x x x

x x x x

CANON 18 - A lawyer shall serve his client with competence and diligence.

X X X X

RULE 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

RULE 18.04. A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to client's request for information.

The relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return, upon demand, the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use, in violation of the trust reposed in him by his client. This act is a gross violation of general morality, as well as of professional ethics.^[21]

As stressed by this Court in the case of *Del Mundo v. Atty. Capistrano*,^[22] to wit:

Moreover, a lawyer is obliged to hold in trust money of his client that may come to his possession. As trustee of such funds, he is bound to keep them separate and apart from his own. Money entrusted to a lawyer for a specific purpose such as for the filing and processing of a case if not utilized, must be returned immediately upon demand. Failure to return gives rise to a presumption that he has misappropriated it in violation of the trust reposed on him. And the conversion of funds entrusted to him constitutes gross violation of professional ethics and betrayal of public confidence in the legal profession.^[23]

Complainant was able to establish that Atty. Doctor received from him the amounts of P400,000.00 on June 8, 2011, another P400,000.00 on June 21, 2011, and US\$50,000.00 on June 21, 2011. She submitted the Joint Affidavit^[24] of Evangeline and Kevin, who accompanied her during those dates and witnessed the act of receipt of said amounts by Atty. Doctor from complainant. However, Atty. Doctor failed to issue official receipts despite assurances to do so. Moreover, Atty. Doctor failed to use the money for the intended purpose, *i.e.*: (1) as settlement for the Taiwanese crew members to be cleared by the BID; (2) for the immediate release of the vessel from the custody of the BFAR; and (3) for the termination of the B FAR administrative case. Atty. Doctor should have properly accounted for said amounts and immediately returned the money to complainant when he failed to use the same. If he had done so, there would have been no need for complainant to send demand letters to him.^[25]

Another evidence of receipt of money is the fact of partial return on the part of Atty. Doctor. The IBP-CBD found that Atty. Doctor partially returned the amount of US\$45,400.00 and has a remaining balance to be accounted for in favor of complainant in the amount of P800,000.00 and US\$4,600.00.^[26]

The invocation of privileged communication on the part of Atty. Doctor as to the fact of the delivery of the amounts from complainant deserves no consideration. Atty. Doctor claimed that "he cannot in any manner be at liberty to discuss and answer the allegation of complainant in the absence of waiver or authority from his Taiwanese clients since the recitals of complainant, more particularly in paragraphs 4, 5, 6 and 8 of the complaint on ground of the privilege status of communication covered under the attorney client relationship."^[27]

The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend for the communication to be confidential. A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means, which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, as in this case, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.^[28]

We affirm the observation made by the IBP-CBD that Atty. Doctor did not even specify the alleged communication in confidence disclosed by the Taiwanese nationals. All his contentions were couched in general terms and lacked specificity. The burden of proving that the privilege applies is placed upon the party asserting the privilege.^[29] Atty. Doctor failed to discharge this burden.

Atty. Doctor's failure to return the money to complainant despite failure to use the same for the intended purpose is conduct indicative of lack of integrity and propriety and a violation of the trust reposed on him. His unjustified withholding of money belonging to the complainant warrants the imposition of disciplinary action.

Jurisprudence provides instances where the lawyer commits similar acts against their respective clients and the Court imposed upon them the penalty of suspension from the practice of law for a period of two years.^[30] In the case of *Jinon v. Atty. Jiz*,^[31] the Court suspended the erring lawyer for such period for his failure to return the amount of P67,000.00 to his client for his legal services which he never performed. Also, in *Agot v. Atty. Rivera*,^[32] the lawyer was also suspended for two years when he neglected his obligation to secure his client's visa and failed to return his client's money worth P350,000.00 despite demand. In the case of *Luna v. Atty. Galarrita*,^[33] the lawyer failed to promptly inform his client of his receipt of the proceeds of a settlement for the client, and further refused to turn over the amount received amounting to P100,000.00. The Court suspended him from the practice of law for two years.

Guided by the foregoing, it is only proper that Atty. Doctor be meted the same penalty of suspension from the practice of law for two years, as recommended by the IBP Board of Governors.

In addition, the Court hereby orders Atty. Doctor to return the amount of P800,000.00 and US\$4,600.00 which he received in connection with his professional engagement. It is well to note that while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative liability and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature - for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement. Here, since the aforesaid amounts were given by the complainant and received by Atty. Doctor in connection with the cases he handled for complainant and intrinsically linked to his professional engagement, the Court finds the return of the amounts thereof to be in order.

The Code of Professional Responsibility demands the utmost degree of fidelity and good faith in dealing with the moneys entrusted to lawyers because of their fiduciary relationship. Any lawyer who does not live up to this duty must be prepared to take the consequences of his waywardness.^[34]

WHEREFORE, premises considered, respondent Atty. Domingo A. Doctor, Jr. is found **GUILTY** of violating Canon 16, Rule 16.01 and Rule 16.03, and Canon 18, Rule 18.03 and Rule 18.04, of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of **TWO (2) YEARS**, effective upon receipt of this Resolution, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Atty. Doctor is **ORDERED** to return to complainant Joann G. Minas the remaining balance of P800,000.00 and US\$4,600.00 with legal interest, if it is still unpaid, within ninety (90) days from the finality of this Resolution. Failure to comply with this directive will merit the imposition of the more severe penalty.

Let copies of this Resolution be furnished to the Office of the Bar Confidant to be appended to the personal record of Atty. Doctor as a member of the Bar, to the Integrated Bar of the Philippines, and to the Office of the Court Administrator for circulation to all court in the country for their information and guidance.

SO ORDERED.

Peralta, C.J., Perlas-Bernabe, Caguioa, Gesmundo, Reyes, J., Jr., Carandang, Lazaro-Javier, Inting, Zalmeda, Lopez, Delos Santos, and Gaerlan, JJ., concur.

Leonen, J., see separate opinion.

Hernando, and Reyes, J., Jr., JJ., on official leave.

^[1] *Rollo*, pp. 2-8.

^[2] *Id.* at 5-6.

[3] Id. at 2-3.

[4] Id. at 3.

[5] Id. at 4.

[6] Id.

[7] Id. at 6.

[8] Id. at 29-36.

[9] Id. at 29.

[10] Id. at 30.

[11] Id. at 31.

[12] Id. at 31-32.

[13] Id. at 32-35.

[14] Id. at 110-118.

[15] Id. at 118.

[16] Id. at 115-116.

[17] Id. at 116.

[18] Id. at 142-143.

[19] Id. at 142.

[20] Id. at 140-141.

[21] *Go v. Buri*, A. C. No. 12296, December 4, 2018.

[22] 685 Phil. 687 (2012)

[23] Id. at 693.

[24] *Rollo*, p. 7.

[25] Id. at 8-9.

[26] Id. at 116.

[27] Id. at 112-114.

[28] *Mercado v. Vitriolo*, 498 Phil. 49, 60 (2005).

[29] Id. at 61.

[30] *Go v. Buri*, supra note 21.

[31] 705 Phil. 321 (2013).

[32] 740 Phil. 393 (2014).

[33] 763 Phil. 175 (2015).

[34] *De Borja v. Mendez, Jr.*, A.C. No. 11185, July 4, 2018.



Source: Supreme Court E-Library

This page was dynamically generated by the E-Library Content Management System (E-LibCMS)