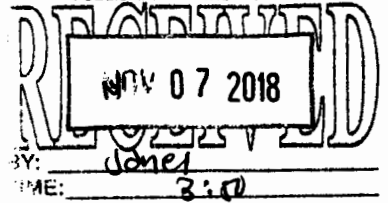


Div



Republic of the Philippines  
Supreme Court  
Manila

SUPREME COURT OF THE PHILIPPINES  
PUBLIC INFORMATION OFFICE



FIRST DIVISION

**FERNANDO A. FLORA III,**  
*Complainant,*

**A.C. No. 11486**  
*(Formerly CBD No. 13-3899)*

Present:

- versus -

**BERSAMIN, Acting Chairperson,\***  
**DEL CASTILLO,**  
**JARDELEZA,**  
**TIJAM, and**  
**GESMUNDO,\*\* JJ.**

**ATTY. GIOVANNI A. LUNA,**  
*Respondent.*

Promulgated:  
**OCT 17 2018**

X

X

**DECISION**

**DEL CASTILLO, J.:**

The complainant Fernando A. Flora III (complainant) filed this administrative complaint against Atty. Giovanni A. Luna (respondent) for unethical conduct.

***Factual Antecedents***

On July 22, 2013, the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) received the Complaint-Affidavit<sup>1</sup> executed by herein complainant alleging that he engaged the legal services of respondent relative to certain criminal cases for grave threats, grave coercion, grave oral defamation and unjust vexation which he intended to file against an Indian national; that in connection therewith, respondent charged complainant ₱40,000.00 as acceptance fee and ₱3,500.00 as appearance fee; that complainant paid respondent a total of ₱43,500.00;<sup>2</sup> that

\* Per Special Order No. 2606 dated October 10, 2018.

\*\* Per Special Order No. 2607 dated October 10, 2018.

<sup>1</sup> *Rollo*, pp. 3-4.

<sup>2</sup> See Acknowledgement Receipt dated August 13, 2012; *id.* at 6.

the criminal cases did not materialize because these were amicably settled at the *barangay* level;<sup>3</sup> that, for this reason, he demanded that respondent return the amount of ₱43,500.00 because the cases were settled without the latter's participation, and no complaint was actually filed in court; but that, instead of heeding his demand, respondent replied in anger and shouted at him (complainant), saying that the ₱43,500.00 complainant gave him was not enough for his services.

### ***IBP-CBD Proceedings***

Acting on the complaint, the IBP-CBD ordered<sup>4</sup> respondent to file his Answer within 15 days from receipt. However, respondent did not file any Answer, nor did he appear in any of the mandatory conference and hearings.<sup>5</sup>

### ***IBP-CBD Report and Recommendation***<sup>6</sup>

The IBP-CBD, through Commissioner Christian D. Villagonzalo (Commissioner Villagonzalo), found respondent liable for violation of the Code of Professional Responsibility (CPR) *viz.*:

In this case, respondent not only employed trickery by luring the complainant into parting with his money, but also unjustly enriched himself at complainant's expense for refusing to return the sum without any justification.

It was improper for respondent to have obtained the payment of legal fees simply because there was no need for his services at the *barangay* level where the appearance of lawyers is not required. That respondent insisted on collecting the fees was not only absurd, but also unjust.

X X X X

Respondent disrespected the complainant as a client. When asked to return the money, respondent even had the temerity to shout and raise his voice saying, "the payment was not even enough for [my] services".

Respondent had every opportunity to redeem himself but simply did not act like a well-meaning lawyer should. Certainly, we cannot

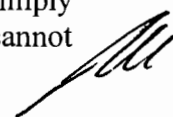
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<sup>3</sup> See *Barangay Certification* dated March 26, 2013; *id.* at 7.

<sup>4</sup> *Id.* at 10.

<sup>5</sup> See *Minutes of Hearings and Orders*; *id.* at 12-16.

<sup>6</sup> *Id.* at 40-47.



ascribe good faith to those who have not shown any willingness to make good their obligation.

In view thereof, Commissioner Villagonzalo recommended that respondent be suspended from the practice of law for one year.

### ***IBP Board of Governors***

The IBP Board of Governors resolved to adopt the said recommendation.<sup>7</sup>

### **Issue**

Whether the allegations in the complaint-affidavit established enough ground to hold respondent administratively liable.

### **Our Ruling**

At the outset, the Court notes that, because of respondent's failure to file an answer and to attend the mandatory hearings set by the IBP-CBD, the allegations of herein complainant against him must be deemed to have remained uncontroverted.

The Court has not been remiss in reminding members of the Bar to refrain from any act or omission which tends to degrade the trust and confidence reposed by the public in the legal profession. It is imperative that lawyers, at all times, maintain a high standard of legal proficiency, and devote their undivided attention, skill, and competence to every case they accept.<sup>8</sup> The lawyer-client relationship is one imbued with utmost trust and confidence.<sup>9</sup> Clients could thus understandably expect that their attorney would accordingly exercise the required degree of diligence in handling their legal dilemmas.

An overriding prohibition against any form of misconduct is enshrined in Rule 1.01, Canon 1 of the CPR which provides that:



<sup>7</sup> See Notice of Resolution dated February 25, 2016; id. at p. 38

<sup>8</sup> *Balingit v. Atty. Cervantes*, 799 Phil. 1, 8 (2016).

<sup>9</sup> *Ramirez v. Atty. Buhayang-Margallo*, 752 Phil. 473, 480 (2015).

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES.

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Accordingly, any specie of refractory behavior by a lawyer in fulfilling his duties must necessarily subject him to disciplinary action. “While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer’s mere failure to perform the obligations due his client is *per se* a violation.”<sup>10</sup>

Here, it is beyond cavil that respondent received from complainant the amount of ₱43,500.00 as payment for his supposed legal services. But, as it turned out, no actual case was filed in court, for they were settled at the *barangay* level. Therefore, and as the IBP-CBD had correctly pointed out, there was no reason at all for respondent to retain the money, or even ask for it in the first place, because during the mediation proceedings at the *barangay*, the parties need not be represented by lawyers. Worse, when asked to return the money, herein respondent reportedly shouted at complainant that the amount of ₱43,500.00 was not even enough for his services. In *Spouses Nuezca v. Atty. Villagarcia*,<sup>11</sup> the Court held that:

Though a lawyer’s language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, and illuminating but not offensive. In this regard, all lawyers should take heed that they are licensed officers of the courts who are mandated to maintain the dignity of the legal profession, hence, they must conduct themselves honorably and fairly. x x x

In other words, respondent not only unjustifiably refused to return the money but also verbally abused complainant in the process. Respondent’s unseemly behavior is a blot on the legal profession.

Sadly enough, respondent’s recalcitrant behavior did not stop there. In the proceedings before the IBP-CBD, respondent did not even deign to file an answer. Respondent’s failure or refusal to answer the complaint against him plus his failure or refusal to appear at the mandatory hearings

<sup>10</sup> *Caranza v. Atty. Cabanes, Jr.*, 713 Phil. 530, 538 (2013).

<sup>11</sup> 792 Phil. 535, 540 (2016).

are evidence of his contumacious attitude toward lawful orders of the court and illustrate his meagre regard for his oath of office, both of which are offensive to Section 3, Rule 138, Rules of Court.<sup>12</sup>

In disbarment proceedings, such as this one, the real question for determination is whether the erring attorney is still fit to continue enjoying the privilege of being a member of the bar. The Court finds that in this particular case, considering the above-mentioned circumstances, the penalty of disbarment is too excessive, however. The Court has held<sup>13</sup> that suspension for a period of two years is appropriate for lawyers who did not render any legal service yet retained the amount they received in connection therewith. However, given the fact that it is herein respondent's first offense, the Court believes that a suspension for three months<sup>14</sup> from the practice of law is in order.

In regard to the restitution of the amount paid to respondent by complainant, the Court has allowed the return of acceptance fees when a lawyer completely fails to render legal service.<sup>15</sup> While an acceptance fee is generally non-refundable, this presupposes that the lawyer has rendered legal service to his client.<sup>16</sup> Here, not having rendered any legal service, respondent had no right to retain complainant's payment.

**WHEREFORE**, respondent Atty. Giovanni A. Luna is **SUSPENDED** from the practice of law for three (3) months effective from finality of this Decision for violating the Code of Professional Responsibility. He is also ordered to **RETURN** to complainant the amount of ₱43,500.00 with 6% legal interest from the date of finality of this judgment until full payment.<sup>17</sup> He is further **DIRECTED** to submit to this Court proof of payment of the amount within ten (10) days from payment. Respondent is also **STERNLY WARNED** that repetition of the same or similar act shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator.



<sup>12</sup> Id. citing *Ngayan v. Atty. Tugade*, 271 Phil. 654, 659 (1991).

<sup>13</sup> *Jinon v. Atty. Jiz*, 705 Phil. 321 (2013) and *Agot v. Atty. Rivera*, 740 Phil. 393 (2014).

<sup>14</sup> *Spouses San Pedro v. Atty. Mendoza*, 749 Phil. 540 (2014).

<sup>15</sup> *Martin v. Atty. Dela Cruz*, A.C. No. 9832, September 4, 2017.

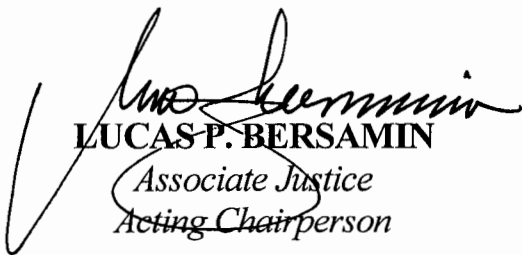
<sup>16</sup> Id.

<sup>17</sup> *Spouses San Pedro v. Atty. Mendoza*, supra at 550.

**SO ORDERED.**

  
**MARIANO C. DEL CASTILLO**  
*Associate Justice*

WE CONCUR:

  
**LUCAS P. BERSAMIN**  
*Associate Justice*  
*Acting Chairperson*

(On official leave)  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

(On leave)  
**ALEXANDER G. GESMUNDO**  
*Associate Justice*