



Republic of the Philippines
Supreme Court
 Manila

SUPREME COURT OF THE PHILIPPINES
 PUBLIC INFORMATION OFFICE

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SECOND DIVISION

MOISES ANACAY,
Complainant,

A.C. No. 6766

Present:

- versus -

PERLAS-BERNABE, S.A.J.,
 Chairperson,
 HERNANDO,
 INTING,
 GAERLAN, and
 ROSARIO,* JJ.

**ATTY. GERARDO WILFREDO L.
 ALBERTO,**
Respondent.

Promulgated:
AUG 04 2021

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DECISION

GAERLAN, J.:

For the Court's resolution is the verified complaint for disbarment¹ dated June 22, 2005, filed by complainant Moises O. Anacay (complainant) against respondent Atty. Gerardo Wilfredo L. Alberto (respondent) for having employed deceitful conduct against complainant in violation of Rule 1.01 and Rule 16.04 of the Code of Professional Responsibility.

Facts

Complainant alleged that on June 24, 2002, he retained the legal services of respondent for the filing of a criminal complaint for *estafa* thru falsification of public documents against Josephine Marmo-Esguerra and Exzur² Marmo at the Office of the Provincial Prosecutor of Trece Martires, Cavite, in consideration of ₱30,000.00 acceptance fee and ₱2,000.00 daily court appearance fee. On the same date, complainant made a partial payment of ₱15,000.00, and fully settled the balance on July 8, 2002. Complainant informed respondent that he intended to go to the U.S.A., so respondent

* Designated additional Member per Special Order No. 2835 dated July 15, 2021.

¹ *Rollo*, pp. 1-11.

² Also spelled as Edzur in some parts of the *rollo*.

asked for ₱30,000.00 as advance appearance fees. Hence, complainant issued a check for the said amount. However, complainant was not able to travel abroad because his wife became seriously ill. He asked respondent to return the check, considering that there was no hearing held yet, but the latter informed him that he had already encashed it.³

On October 20, 2002, respondent borrowed ₱25,000.00 from complainant. On November 16, 2002, respondent billed complainant for his legal services in the amount of ₱7,000.00. This amount was deducted from the money respondent borrowed, leaving a balance of ₱18,000.00. Thereafter, respondent again borrowed cash from complainant in the amount of ₱2,000.00, but the latter did not anymore ask for a receipt. On May 5, 2003, respondent asked from complainant a total amount of ₱42,000.00 supposedly for payment of the following expenses: filing/docket fee - ₱30,000.00; complaint for *estafa* - ₱10,000.00; and cancellation of contract - ₱2,000.00. Complainant proposed that this amount be deducted from the ₱50,000.00 that respondent had previously borrowed from him. Respondent replied "*saka na*" so complainant gave respondent the amount of ₱42,000.00.⁴

On May 15, 2003, respondent tried to borrow the amount of ₱100,000.00 from complainant, but the latter only gave him ₱50,000.00. As collateral for this loan, respondent offered his lot located at Grand Park Place Village. He promised to deliver the title of the lot to complainant, but he never did. On June 18, 2003, respondent again tried to borrow the amount of ₱50,000.00, but he was only given ₱30,000.00 by complainant. On September 24, 2003, complainant decided to relieve respondent as his counsel. For several times, complainant demanded from respondent the payment of the total amount of ₱202,000.00, but the demands were unheeded. Due to respondent's continuous refusal to pay, complainant referred the matter to a lawyer for collection.⁵ Nonetheless, respondent merely disregarded the demand letter sent by the lawyer.⁶ Hence, this complaint.

On July 27, 2005, the Court required respondent to file his comment on the complaint.⁷ Despite receipt of a copy of the Court's Resolution, respondent ignored the same.⁸ On September 26, 2007, the Court issued another Resolution requiring respondent to show cause why he should not be held in contempt of court for failure to file the required comment, and to comply with the previous Resolution.⁹ Respondent again failed to comply

³ *Rollo*, pp. 2-3.

⁴ *Id.* at 3-4.

⁵ *Id.* at 24.

⁶ *Id.* at 4-6.

⁷ *Id.* at 25.

⁸ *Id.* at 35-37.

⁹ *Id.* at 39.

with the Resolution. Hence, on April 23, 2008, the Court imposed a fine of ₱1,000.00 upon respondent and required him to file his comment.¹⁰ Still, respondent did not pay the fine.¹¹ Thus, in a Resolution dated July 8, 2009, the Court directed the Director of the National Bureau of Investigation (NBI) to arrest and detain respondent for five (5) days and until the latter shall have complied with the Court's previous Resolutions.¹² On September 9, 2009, respondent was arrested and detained at the NBI-Tagaytay, Cavite District Office.¹³ On September 10, 2009, he submitted his Manifestation of Compliance with Motion to Lift Warrant of Arrest and/or Motion for Release Upon Own Recognizance or of Counsel.¹⁴

In his Comment,¹⁵ respondent averred that pursuant to a Retainer's Agreement dated May 13, 2002, complainant secured his legal services in connection with the reconveyance of a piece of land and for the annulment of Transfer Certificate of Title (TCT) No. 843942. On September 2, 2002, he filed a complaint for *estafa* thru falsification of public document with the Prosecutor's Office of the Province of Cavite, Trece Martires. He also prepared another criminal complaint for *estafa* thru falsification of public document against Josephine Marmo-Esguerra relative to a parcel of land covered by TCT No. 815995. Respondent claimed that he prepared several criminal complaints for complainant that were not covered by the Retainer's Agreement, as well as a complaint for cancellation or rescission of the contract against Josephine Marmo-Esguerra and Exzur Marmo. Respondent further asserted that complainant did not inform him of his termination as counsel. He likewise denied being remiss in his duties as counsel for complainant. Finally, respondent asserted that he had proposed to complainant to have a separate retainer's fee for every case. Since complainant refused his proposal, they just agreed that whatever advances respondent made would be deducted from his attorney's fees.

On September 28, 2009, the Court referred this administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.¹⁶

¹⁰ Id. at 40.

¹¹ Id. at 43; Certification signed by Araceli C. Bayuga, SC Chief Judicial Staff Officer, Cash Collection and Disbursement Division – FMBO.

¹² Id. at 45-46.

¹³ Id. at 88.

¹⁴ Id. at 53-55.

¹⁵ Id. at 56-59.

¹⁶ Id. at 84-85.

The IBP Report and Recommendation¹⁷

The IBP Investigating Commissioner found that respondent indeed received the amounts of ₱50,000.00 and ₱30,000.00 from complainant as personal loans allegedly to be deducted from his attorney's fees. He emphasized that respondent's acts of continuously borrowing money from his client is a clear violation of Rule 16.04 of the Code of Professional Responsibility. The Investigating Commissioner found that on several occasions, respondent extracted large amounts of money from complainant by way of guile, trickery or otherwise, such as purportedly to be used for payment of filing fee of a criminal complaint and/or personal loan. Worse, respondent failed to return the amounts despite numerous demands from complainant. He stressed that when an attorney unjustly retains in his hands money of his client after it has been demanded, he may be punished as an officer of the Court.¹⁸

Furthermore, the Investigating Commissioner also found respondent guilty of violating the lawyer's oath, as follows:

Respondent's culpability is further highlighted by his utter lack of regard for the seriousness of the charges against him. His defenses raised in his Comment consist mainly in bare denials. He failed to meet the issue and overcome the evidence against him. In his Comment, he referred to several documents allegedly prepared by him in connection with several complaints and cases he handled for complainant. These documents were merely printed copies, unsigned and wanting of proof of execution and filing. Respondent conveniently explained the absence of signatures on these pleadings and statements as having been reprinted and culled from memory, considering that complainant allegedly borrowed the files from him and did not return the same. Respondent undertook to submit the duplicate original of these documents as soon as he had obtained a copy of them, together with his Supplemental Comment. He never did so, however, nor did he file his verified position paper. Thus, the Supreme Court, in the case of *Heck vs. Santos*, 423 SCRA 329, held that: "when the integrity of a member of the bar is challenged, he must meet issue and overcome the evidence against him." This he failed to do, thus he lost his opportunity to show proof that he still maintains that degree of morality and integrity which at all times is expected of him.¹⁹

Finding sufficient legal basis for disciplinary action against respondent for his violation, not only of the Code of Professional Responsibility but also of the lawyer's oath, the Investigating Commissioner

¹⁷ Id. at 183-189; Report and Recommendation of Investigating Commissioner Edmund T. Espina dated September 15, 2011.

¹⁸ *Rollo*, p. 183.

¹⁹ Id. at 187-188.

recommended that respondent be suspended for six (6) months from the practice of law, to wit:

In view of the foregoing, it is respectfully recommended that respondent be meted the penalty of suspension for six (6) months.²⁰

In Resolution No. XX-2013-716²¹ dated June 21 2013, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner, thus:

RESOLUTION NO. XX-2013-716
Adm. Case No. 6766
Moises O. Anacay vs.
Atty. Gerardo Wilfredo L. Alberto

*RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules considering Respondent's violation of Canons Rule 1.01 and Rule 16.04 of the Code of Professional Responsibility, Atty. Gerardo Wilfredo L. Alberto is hereby SUSPENDED from practice of law for six (6) months.*²²

In a Resolution²³ dated October 17, 2016, the Court referred the administrative case to the Office of the Bar Confidant (OBC) for evaluation, report and recommendation.

In its Report and Recommendation²⁴ dated July 10, 2019, the OBC found respondent guilty of abusing the trust and confidence of his client in obtaining loans from the latter in violation of the Code of Professional Responsibility. It concurred with the findings of the IBP but recommended a higher penalty, as follows:

WHEREFORE, *premises considered*, it is respectfully recommended that, respondent ATTY. GERARDO WILFREDO L. ALBERTO, for being found guilty of violating Canons 1, Rule 1.01 and Canon 16, Rule 16.04 of the Code of Professional Responsibility, be SUSPENDED from the practice of law for THREE (3) YEARS from receipt of notice, with a stern notice that a commission of the same or similar acts will be dealt with more severely.²⁵

²⁰ Id. at 189.

²¹ Id. at 182.

²² Id.

²³ Id. at 191.

²⁴ Id. at 193-195.

²⁵ Id. at 195.

Our Ruling

The Court affirms the findings but modifies the recommendations of the OBC.

At the outset, it must be stressed that “[a] lawyer, by taking the lawyer’s oath, becomes a guardian of the law and an indispensable instrument for the orderly administration of justice.” He can be disciplined for any conduct, in his professional or private capacity, which renders him unfit to continue to be an officer of the court. For of all classes and professions, it is the lawyer who is most sacredly bound to uphold the laws, for he is their sworn servant.²⁶

Rule 16.04, Canon 16 of the Code of Professional Responsibility prohibits a lawyer from borrowing money from his client unless the client’s interests are fully protected, thus:

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

Rule 16.04 – A lawyer should not borrow money from his client unless the client’s interest are fully protected by the nature of the case or by independent advice. x x x

In the present case, there is no dispute that respondent borrowed money several times from complainant without securing the latter’s interest, in violation of Rule 16.04 of the Code of Professional Responsibility. Although respondent claims he offered his real property as collateral for his loan, he never actually delivered the title thereto. Clearly, the interests of complainant, as respondent’s client, were not fully protected for lack of security on the loan. Moreover, respondent’s explanation that they had a verbal agreement that whatever cash advances he made would be deducted from his attorney’s fees deserves scant consideration. It must be pointed out that complainant was able to produce documents proving respondent’s receipt of the money he loaned. On the other hand, respondent was not able to show any document to prove that they indeed had such an agreement. The Court also believes that if there was truly an agreement on applying respondent’s cash advances to his legal services, there would be no need to offer his real property as collateral.²⁷

Likewise, Rule 1.01 of the Code of Professional Responsibility states that lawyers shall not engage in unlawful, dishonest, immoral, or deceitful

²⁶ *Foronda v. Atty. Alvarez, Jr.*, 737 Phil. 1, 10 (2014).

²⁷ *Rollo*, p. 186.

conduct. In this case, respondent engaged in deceitful conduct when, on several occasions, he obtained loans from complainant, who happened to be an elderly blind man. A lawyer's act of asking a client for a loan, as what respondent did, comes within those acts considered as abuse of client's confidence.²⁸

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. As true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. Suffice it to say, borrowing money or property from a client outside the limits laid down in the Code of Professional Responsibility is an unethical act that warrants sanction.²⁹ Evidently, respondent abused complainant's trust and confidence by borrowing money from him and refusing to pay despite demand.

The complainant seeks the disbarment of the respondent. However, "[d]isbarment, jurisprudence teaches, should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired. This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person."³⁰ It has been held that the appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.³¹

In *Frias v. Lozada*,³² the Court categorically declared that a lawyer's act of asking a client for a loan, as what herein respondent did, is unethical and a violation of Rule 16.04 of the Code of Professional Responsibility. In that case, the Court suspended the lawyer from the practice of law for two (2) years,³³ for borrowing ₱900,000.00 from her client, and refusing to pay the same.

In *Wong v. Moya II*,³⁴ Atty. Salvador N. Moya II was ordered suspended from the practice of law for two (2) years because, aside from issuing worthless checks and failing to pay his debts, he also had seriously

²⁸ Id.

²⁹ *Aguilar-Dyquiango v. Atty. Arellano*, 789 Phil. 600, 611 (2016), citing *Yu v. Dela Cruz*, 778 Phil. 557 (2016).

³⁰ *Anacta v. Atty. Resurreccion*, 692 Phil. 488, 499-500 (2012).

³¹ *Sps. Soriano v. Atty. Reyes*, 523 Phil. 1, 16 (2006).

³² 513 Phil. 512 (2005).

³³ Id.

³⁴ 590 Phil. 279 (2008).

breached his client's trust and confidence to his personal advantage and had shown a wanton disregard of the IBP orders in the course of its proceedings.³⁵


In *Go v. Buri*,³⁶ the Court held that a lawyer's failure to return upon demand the funds held by him on behalf of his client 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. Thus, respondent was meted the penalty of suspension from the practice of law for a period of two (2) years.³⁷

Hence, the Court finds it proper to impose the penalty of two-year suspension from the practice of law against respondent, with a stern warning that a repetition of any of the infractions attributed to him in this case, or any similar act, shall merit a heavier penalty.

WHEREFORE, respondent Atty. Gerardo Wilfredo L. Alberto is **SUSPENDED** for a period of **TWO (2) YEARS** from the practice of law with a **STERN WARNING** that a repetition of any of the offenses involved in this case or a commission of similar acts will merit a more severe penalty. Respondent is also **DIRECTED** to inform this Court of the date of his receipt of this Decision to determine the reckoning point of the effectivity of his suspension.

Let a copy of this Decision be made part of respondent's records in the Office of the Bar Confidant, and copies be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.

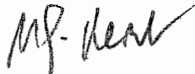

SAMUEL H. GAERLAN
Associate Justice

³⁵ Id.

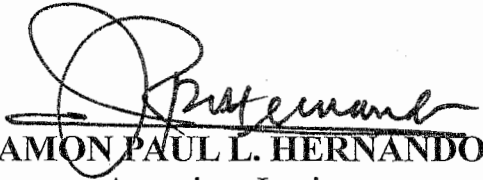
³⁶ 844 Phil. 359 (2018).

³⁷ Id.

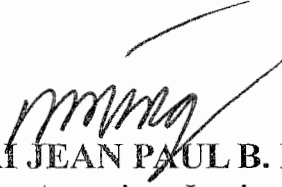
WE CONCUR:



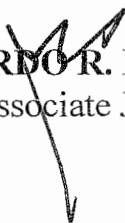
ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson



RAMON PAUL L. HERNANDO
Associate Justice



HENRI JEAN PAUL B. INTING
Associate Justice



RICARDO R. ROSARIO
Associate Justice

