



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ENGR. GILBERT TUMBOKON,
Complainant,

A.C. No. 6116

Present:

- versus -

ATTY. MARIANO R.
PEFIANCO,
Respondent.

VELASCO, JR., *J., Chairperson,*
PERALTA,
BERSAMIN,*
ABAD, and
PERLAS-BERNABE, *JJ.*

Promulgated:

01 August 2012

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J. Velasco

RESOLUTION

PERLAS-BERNABE, *J.:*

Before the Court is an administrative complaint for disbarment filed by complainant Engr. Gilbert Tumbokon against respondent Atty. Mariano R. Pefianco for grave dishonesty, gross misconduct constituting deceit and grossly immoral conduct.

* Designated member in lieu of Justice Jose C. Mendoza, per Special Order No. 1282 dated August 1, 2012.

In his Complaint,¹ complainant narrated that respondent undertook to give him 20% commission, later reduced to 10%, of the attorney's fees the latter would receive in representing Spouses Amable and Rosalinda Yap (Sps. Yap), whom he referred, in an action for partition of the estate of the late Benjamin Yap (Civil Case No. 4986 before the Regional Trial Court of Aklan). Their agreement was reflected in a letter² dated August 11, 1995. However, respondent failed to pay him the agreed commission notwithstanding receipt of attorney's fees amounting to 17% of the total estate or about ₱40 million. Instead, he was informed through a letter³ dated July 16, 1997 that Sps. Yap assumed to pay the same after respondent had agreed to reduce his attorney's fees from 25% to 17%. He then demanded the payment of his commission⁴ which respondent ignored.

Complainant further alleged that respondent has not lived up to the high moral standards required of his profession for having abandoned his legal wife, Milagros Hilado, with whom he has two children, and cohabited with Mae FlorGalido, with whom he has four children. He also accused respondent of engaging in money-lending business⁵ without the required authorization from the BangkoSentralngPilipinas.

In his defense, respondent explained that he accepted Sps. Yap's case on a 25% contingent fee basis, and advanced all the expenses. He disputed the August 11, 1995 letter for being a forgery and claimed that Sps. Yap assumed to pay complainant's commission which he clarified in his July 16, 1997 letter. He, thus, prayed for the dismissal of the complaint and for the

¹ *Rollo*, pp. 23-27.

² *Id.* at 8.

³ *Id.* at 14.

⁴ Letter dated October 25, 2002, *id.* at 38.

⁵ Evidenced by the Affidavit of Jose E. Autajay dated April 19, 2003, *id.* at 41.

corresponding sanction against complainant's counsel, Atty. Florencio B. Gonzales, for filing a baseless complaint.⁶

In the Resolution⁷ dated February 16, 2004, the Court resolved to refer this administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation. In his Report and Recommendation⁸ dated October 10, 2008, the Investigating IBP Commissioner recommended that respondent be suspended for one (1) year from the active practice of law, for violation of the Lawyer's Oath, Rule 1.01, Canon 1; Rule 7.03, Canon 7 and Rule 9.02, Canon 9 of the Code of Professional Responsibility (Code). The IBP Board of Governors adopted and approved the same in its Resolution No. XIX-2010-453⁹ dated August 28, 2010. Respondent moved for reconsideration¹⁰ which was denied in Resolution No. XIX-2011-141 dated October 28, 2011.

After due consideration, We adopt the findings and recommendation of the IBP Board of Governors.

The practice of law is considered a privilege bestowed by the State on those who show that they possess and continue to possess the legal qualifications for the profession. As such, lawyers are expected to maintain at all times a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal

⁶ Comment, *id.* at 44-51.

⁷ *Id.* at 90.

⁸ IBP *rollo*, vol. IV, pp. 2-10.

⁹ *Id.* at 1.

¹⁰ *Id.* at 11-12.

profession, the courts and their clients, in accordance with the values and norms embodied in the Code.¹¹ Lawyers may, thus, be disciplined for any conduct that is wanting of the above standards whether in their professional or in their private capacity.

In the present case, respondent's defense that forgery had attended the execution of the August 11, 1995 letter was belied by his July 16, 1997 letter admitting to have undertaken the payment of complainant's commission but passing on the responsibility to Sps. Yap. Clearly, respondent has violated Rule 9.02,¹² Canon 9 of the Code which prohibits a lawyer from dividing or stipulating to divide a fee for legal services with persons not licensed to practice law, except in certain cases which do not obtain in the case at bar.

Furthermore, respondent did not deny the accusation that he abandoned his legal family to cohabit with his mistress with whom he begot four children notwithstanding that his moral character as well as his moral fitness to be retained in the Roll of Attorneys has been assailed. The settled rule is that betrayal of the marital vow of fidelity or sexual relations outside marriage is considered disgraceful and immoral as it manifests deliberate disregard of the sanctity of marriage and the marital vows protected by the Constitution and affirmed by our laws.¹³ Consequently, We find no reason to

¹¹ *Molina v. Magat*, A.C. No. 1900, June 13, 2012.

¹² Rule 9.02, Canon 9 of the Code of Professional Responsibility reads in full:

“Rule 9.02 - A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:

a) Where there is a pre-existing agreement with a partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to the persons specified in the agreement; or

b) Where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or

c) Where a lawyer or law firm includes non-lawyer employees in a retirement plan, even if the plan is based in whole or in part, on a profit-sharing arrangement.”

¹³ *Guevarra v. Eala*, A.C. No. 7136, August 1, 2007, 529 SCRA 1, 16.

disturb the IBP's finding that respondent violated the Lawyer's Oath¹⁴ and Rule 1.01, Canon 1 of the Code which proscribes a lawyer from engaging in “unlawful, dishonest, immoral or deceitful conduct.”

However, We find the charge of engaging in illegal money lending not to have been sufficiently established. A “business” requires some form of investment and a sufficient number of customers to whom its output can be sold at profit on a consistent basis.¹⁵ The lending of money to a single person without showing that such service is made available to other persons on a consistent basis cannot be construed as *asindicia* that respondent is engaged in the business of lending.

Nonetheless, while We rule that respondent should be sanctioned for his actions, We are minded that the power to disbar should be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and as member of the bar,¹⁶ or the misconduct borders on the criminal, or committed under scandalous circumstance,¹⁷ which do not obtain here. Considering the circumstances of the case, We deem it appropriate that respondent be suspended from the practice of law for a period of one (1) year as recommended.

¹⁴ I _____ having been permitted to continue in the practice of law in the Philippines, do solemnly swear that I recognize the supreme authority of the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well as to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

¹⁵ <http://www.businessdictionary.com/definition/business.html>.

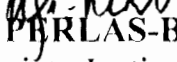
¹⁶ *Tan v. Gumba*, A.C. No. 9000, October 5, 2011; *Conlu v. Aredonia, Jr.*, A.C. No. 4955, September 12, 2011, 657 SCRA 367; *Garrido vs. Garrido*, A.C. No. 6593, February 4, 2010, 611 SCRA 508.

¹⁷ *Nevada v. Casuga*, A.C. No. 7591, March 20, 2012.


WHEREFORE, respondent **ATTY. MARIANO R. PEFIANCO** is found **GUILTY** of violation of the Lawyer's Oath, Rule 1.01, Canon 1 of the Code of Professional Responsibility and Rule 9.02, Canon 9 of the same Code and **SUSPENDED** from the active practice of law for **ONE (1) YEAR** effective upon notice hereof.

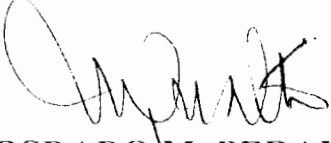
Let copies of this Resolution be entered in the personal record of respondent as a member of the Philippine Bar and furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country.

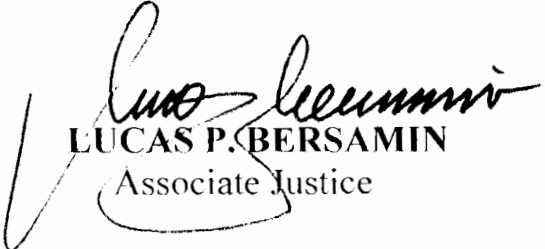
SO ORDERED.



ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


LUCAS P. BERSAMIN
Associate Justice


ROBERTO A. ABAD
Associate Justice