



Republic of the Philippines
Supreme Court
Manila

EN BANC

SPOUSES HENRY A. CONCEPCION and
BLESILDA S. CONCEPCION,
Complainants, **A.C. No. 10681**
Present:

- versus -

ATTY. ELMER A. DELA ROSA,
Respondent.

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,*
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA, JJ.

Promulgated:

February 3, 2015

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DECISION

PERLAS-BERNABE, J.:

This is an administrative case that stemmed from a Verified Complaint¹ filed by complainants Spouses Henry A. Concepcion (Henry) and Blesilda S. Concepcion (Blesilda; collectively complainants) against respondent Atty. Elmer A. dela Rosa (respondent), charging him with gross

* On leave.

¹ Rollo, pp. 78-93. See also complainants' letter-complaint to the Integrated Bar of the Philippines (IBP)-Misamis Oriental Chapter filed on January 11, 2010; id. at 3-5.

misconduct for violating, among others, Rule 16.04 of the Code of Professional Responsibility (CPR).

The Facts

In their Verified Complaint, complainants alleged that from 1997² until August 2008,³ respondent served as their retained lawyer and counsel. In this capacity, respondent handled many of their cases and was consulted on various legal matters, among others, the prospect of opening a pawnshop business towards the end of 2005. Said business, however, failed to materialize.⁴

Aware of the fact that complainants had money intact from their failed business venture, respondent, on March 23, 2006, called Henry to borrow the amount of ₱2,500,000.00, which he promised to return, with interest, five (5) days thereafter. Henry consulted his wife, Blesilda, who, believing that respondent would be soon returning the money, agreed to lend the aforesaid sum to respondent. She thereby issued three (3) EastWest Bank checks⁵ in respondent’s name:⁶

<u>Check No.</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>
0000561925	03-23-06	₱750,000.00	Elmer dela Rosa
0000561926	03-23-06	₱850,000.00	Elmer dela Rosa
0000561927	03-23-06	₱900,000.00	Elmer dela Rosa
Total:		₱2,500,000.00	

Upon receiving the checks, respondent signed a piece of paper containing: (a) photocopies of the checks; and (b) an acknowledgment that he received the originals of the checks and that he agreed to return the ₱2,500,000.00, plus monthly interest of five percent (5%), within five (5) days.⁷ In the afternoon of March 23, 2006, the foregoing checks were personally encashed by respondent.⁸

On March 28, 2006, or the day respondent promised to return the money, he failed to pay complainants. Thus, in April 2006, complainants began demanding payment but respondent merely made repeated promises to pay soon. On July 7, 2008, Blesilda sent a demand letter⁹ to respondent, which the latter did not heed.¹⁰ On August 4, 2008, complainants, through

² See Retainer Contract dated October 9, 1997; id. at 84-87.
³ See letter of termination of legal service dated August 20, 2008; id. at 93.
⁴ Id. at 3 and 78-79.
⁵ See id. at 88.
⁶ Id. at 3 and 79.
⁷ Id. at 89.
⁸ Id. at 88.
⁹ Id. at 90.
¹⁰ Id. at 80.

their new counsel, Atty. Kathryn Jessica dela Serna, sent another demand letter¹¹ to respondent.¹² In his Reply,¹³ the latter denied borrowing any money from the complainants. Instead, respondent claimed that a certain Jean Charles Nault (Nault), one of his other clients, was the real debtor. Complainants brought the matter to the Office of the Lupong Tagapamayapa in Barangay Balulang, Cagayan de Oro City. The parties, however, failed to reach a settlement.¹⁴

On January 11, 2010, the IBP-Misamis Oriental Chapter received complainants' letter-complaint¹⁵ charging respondent with violation of Rule 16.04 of the CPR. The rule prohibits lawyers from borrowing money from clients unless the latter's interests are fully protected by the nature of the case or by independent advice.¹⁶

In his Comment,¹⁷ respondent denied borrowing ₱2,500,000.00 from complainants, insisting that Nault was the real debtor.¹⁸ He also claimed that complainants had been attempting to collect from Nault and that he was engaged for that specific purpose.¹⁹

In their letter-reply,²⁰ complainants maintained that they extended the loan to respondent alone, as evidenced by the checks issued in the latter's name. They categorically denied knowing Nault and pointed out that it defies common sense for them to extend an unsecured loan in the amount of ₱2,500,000.00 to a person they do not even know. Complainants also submitted a copy of the Answer to Third Party Complaint²¹ which Nault filed as third-party defendant in a related collection case instituted by the complainants against respondent.²² In said pleading, Nault explicitly denied knowing complainants and alleged that it was respondent who incurred the subject loan from them.²³

On November 23, 2010, the IBP-Misamis Oriental Chapter endorsed the letter-complaint to the IBP-Commission on Bar Discipline (CBD),²⁴ which was later docketed as CBD Case No. 11-2883.²⁵ In the course of the proceedings, respondent failed to appear during the scheduled mandatory

¹¹ Id. at 91.

¹² Id. at 80.

¹³ Dated August 7, 2008. Id. at 36-39.

¹⁴ Id. at 92.

¹⁵ Id. at 3-5.

¹⁶ Id. at 5.

¹⁷ Dated March 10, 2010. Id. at 17-68.

¹⁸ As evidenced by the Acknowledgment dated March 23, 2006. See id. at 40.

¹⁹ Id. at 19.

²⁰ Id. at 69-70.

²¹ Dated February 26, 2010. Id. at 71-75.

²² Id. at 70.

²³ Id. at 73.

²⁴ See 1st Endorsement dated November 23, 2010; id. at 2.

²⁵ See id. at 95.

conferences.²⁶ Hence, the same were terminated and the parties were directed to submit their respective position papers.²⁷ Respondent, however, did not submit any.

The IBP Report and Recommendation

On April 19, 2013, the IBP Investigating Commissioner, Jose I. de La Rama, Jr. (Investigating Commissioner), issued his Report²⁸ finding respondent guilty of violating: (a) Rule 16.04 of the CPR which provides that a lawyer shall not borrow money from his clients unless the client's interests are fully protected by the nature of the case or by independent advice; (b) Canon 7 which states that a lawyer shall uphold the integrity and dignity of the legal profession and support the activities of the IBP; and (c) Canon 16 which provides that a lawyer shall hold in trust all monies and properties of his client that may come into his possession.²⁹

The Investigating Commissioner observed that the checks were issued in respondent's name and that he personally received and encashed them. Annex "E"³⁰ of the Verified Complaint shows that respondent acknowledged receipt of the three (3) EastWest Bank checks and agreed to return the ₱2,500,000.00, plus a pro-rated monthly interest of five percent (5%), within five (5) days.³¹

On the other hand, respondent's claim that Nault was the real debtor was found to be implausible. The Investigating Commissioner remarked that if it is true that respondent was not the one who obtained the loan, he would have responded to complainants' demand letter; however, he did not.³² He also observed that the acknowledgment³³ Nault allegedly signed appeared to have been prepared by respondent himself.³⁴ Finally, the Investigating Commissioner cited Nault's Answer to the Third Party Complaint which categorically states that he does not even know the complainants and that it was respondent alone who obtained the loan from them.³⁵

In fine, the Investigating Commissioner concluded that respondent's actions degraded the integrity of the legal profession and clearly violated Rule 16.04 and Canons 7 and 16 of the CPR. Respondent's failure to appear during the mandatory conferences further showed his disrespect to the IBP-

²⁶ Id. at 214.

²⁷ See Order dated December 12, 2011 issued by Commissioner Jose I. De La Rama, Jr.; id. at 125.

²⁸ Id. at 209-221.

²⁹ Id. at 219-220.

³⁰ Id. at 89.

³¹ Id. at 215.

³² Id.

³³ Id. at 35.

³⁴ Id. at 216.

³⁵ Id. at 219.

CBD.³⁶ Accordingly, the Investigating Commissioner recommended that respondent be disbarred and that he be ordered to return the ₱2,500,000.00 to complainants, with stipulated interest.³⁷

Finding the recommendation to be fully supported by the evidence on record and by the applicable laws and rule, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report in Resolution No. XX-2013-617 dated May 11, 2013,³⁸ but reduced the penalty against the respondent to indefinite suspension from the practice of law and ordered the return of the ₱2,500,000.00 to the complainants with legal interest, instead of stipulated interest.

Respondent sought a reconsideration³⁹ of Resolution No. XX-2013-617 which was, however, denied in Resolution No. XXI-2014-294⁴⁰ dated May 3, 2014.

The Issue Before the Court

The central issue in this case is whether or not respondent should be held administratively liable for violating the CPR.

The Court's Ruling

The Court concurs with the IBP's findings except as to its recommended penalty and its directive to return the amount of ₱2,500,000.00, with legal interest, to complainants.

I.

Respondent's receipt of the ₱2,500,000.00 loan from complainants is amply supported by substantial evidence. As the records bear out, Blesilda, on March 23, 2006, issued three (3) EastWest Bank Checks, in amounts totalling to ₱2,500,000.00, with respondent as the payee.⁴¹ Also, Annex "E"⁴² of the Verified Complaint shows that respondent acknowledged receipt of the checks and agreed to pay the complainants the loan plus the pro-rated interest of five percent (5%) per month within five (5) days.⁴³ The dorsal sides of the checks likewise show that respondent personally

³⁶ Id. at 220.

³⁷ Id. at 220-221.

³⁸ Signed by National Secretary Nasser A. Marohomsalic. Id. at 208.

³⁹ See Motion for Reconsideration with Prayer to Re-Open Investigation and/or Admit Evidence dated September 6, 2013; id. at 224-234.

⁴⁰ Id. at 283-284

⁴¹ Id. at 88.

⁴² Id. at 89.

⁴³ Id.

encashed the checks on the day they were issued.⁴⁴ With respondent's direct transactional involvement and the actual benefit he derived therefrom, absent too any credible indication to the contrary, the Court is thus convinced that respondent was indeed the one who borrowed the amount of ₱2,500,000.00 from complainants, which amount he had failed to return, despite their insistent pleas.

Respondent's theory that Nault is the real debtor hardly inspires belief. While respondent submitted a document purporting to be Nault's acknowledgment of his debt to the complainants, Nault, in his Answer to Third Party Complaint, categorically denied knowing the complainants and incurring the same obligation.

Moreover, as correctly pointed out by complainants, it would be illogical for them to extend a ₱2,500,000.00 loan without any collateral or security to a person they do not even know. On the other hand, complainants were able to submit documents showing respondent's receipt of the checks and their encashment, as well as his agreement to return the ₱2,500,000.00 plus interest. This is bolstered by the fact that the loan transaction was entered into during the existence of a lawyer-client relationship between him and complainants,⁴⁵ allowing the former to wield a greater influence over the latter in view of the trust and confidence inherently imbued in such relationship.

Under Rule 16.04, Canon 16 of the CPR, a lawyer is prohibited from borrowing money from his client unless the client's interests are fully protected:

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 shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.”

The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And 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.⁴⁶ The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation.⁴⁷ In *Frias v. Atty.*

⁴⁴ Id. at 88, see dorsal portion.

⁴⁵ Id. at 22.

⁴⁶ *Junio v. Atty. Grupo*, 423 Phil. 808, 816 (2001).

⁴⁷ *Frias v. Atty. Lozada*, 513 Phil. 512, 521-522 (2005).

*Lozada*⁴⁸ (*Frias*) the Court categorically declared that a lawyer's act of asking a client for a loan, as what herein respondent did, is unethical, to wit:

Likewise, her act of borrowing money from a client was a violation of [Rule] 16.04 of the Code of Professional Responsibility:

A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case and by independent advice.

A lawyer's act of asking a client for a loan, as what respondent did, is very unethical. It comes within those acts considered as abuse of client's confidence. The canon presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on her obligation.⁴⁹ (Emphasis supplied)

As above-discussed, respondent borrowed money from complainants who were his clients and whose interests, by the lack of any security on the loan, were not fully protected. Owing to their trust and confidence in respondent, complainants relied solely on the former's word that he will return the money plus interest within five (5) days. However, respondent abused the same and reneged on his obligation, giving his previous clients the runaround up to this day. Accordingly, there is no quibble that respondent violated Rule 16.04 of the CPR.

In the same vein, the Court finds that respondent also violated Canon 7 of the CPR which reads:

CANON 7 - A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

In unduly borrowing money from the complainants and by blatantly refusing to pay the same, respondent abused the trust and confidence reposed in him by his clients, and, in so doing, failed to uphold the integrity and dignity of the legal profession. Thus, he should be equally held administratively liable on this score.

That being said, the Court turns to the proper penalty to be imposed and the propriety of the IBP's return directive.

II.

The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.⁵⁰

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ *Sps. Soriano v. Atty. Reyes*, 523 Phil. 1, 16 (2006).


In *Frias*, the Court suspended the lawyer from the practice of law for two (2) years after borrowing ₱900,000.00 from her client, refusing to pay the same despite court order, and representing conflicting interests.⁵¹ Considering the greater amount involved in this case and respondent's continuous refusal to pay his debt, the Court deems it apt to suspend him from the practice of law for three (3) years, instead of the IBP's recommendation to suspend him indefinitely.

The Court also deems it appropriate to modify the IBP's Resolution insofar as it orders respondent to return to complainants the amount of ₱2,500,000.00 and the legal interest thereon. It is settled that in disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar.⁵² In such cases, the Court's only concern is the determination of respondent's administrative liability; it should not involve his civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. In this case, respondent received the ₱2,500,000.00 as a loan from complainants and not in consideration of his professional services. Hence, the IBP's recommended return of the aforementioned sum lies beyond the ambit of this administrative case, and thus cannot be sustained.

WHEREFORE, respondent Atty. Elmer A. dela Rosa is found guilty of violating Canon 7 and Rule 16.04, Canon 16 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of three (3) years effective upon finality of this Decision, with a stern warning that a commission of the same or similar acts will be dealt with more severely. This Decision is immediately executory upon receipt.

Let a copy of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and the Office of the Court Administration for circulation to all the courts.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

WE CONCUR:


MARIA LOURDES P. A. SERENO
Chief Justice

⁵¹ Supra note 47, at 522.

⁵² *Roa v. Atty. Moreno*, 633 Phil. 1, 8 (2010). See also *Suzuki v. Atty. Tiamson*, 508 Phil. 130, 142 (2005).



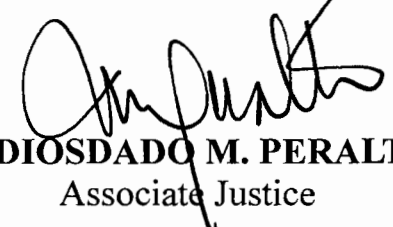
ANTONIO T. CARPIO
Associate Justice



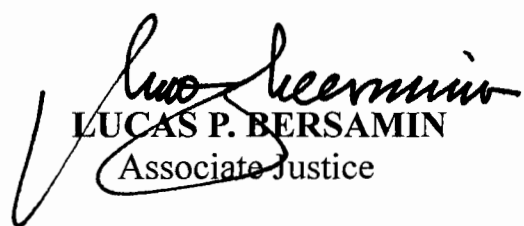
PRESBITERO J. VELASCO, JR.
Associate Justice

Teresita Leonardo de Castro
TERESITA J. LEONARDO-DE CASTRO
Associate Justice

On Leave
ARTURO D. BRION
Associate Justice




DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



MARTIN S. VILLARAMA, JR.
Associate Justice



JOSE PORTUGAL PEREZ
Associate Justice




JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice



MARVIC MARIO VICTOR F. LEONEN
Associate Justice



FRANCIS H. GARDELEZA
Associate Justice