

EN BANC

[A.C. No. 7446, December 09, 2020]

MICHELLE A. BUENAVENTURA, COMPLAINANT, VS. ATTY. DANY B. GILLE, RESPONDENT.

D E C I S I O N

PER CURIAM:

This is a Petition for Suspension and Disbarment^[1] filed by complainant Michelle A. Buenaventura (Michelle) against Atty. Dany B. Gille (Atty. Gille) for Gross Misconduct.

The Factual Antecedents:

Sometime in 2006, Michelle consulted Atty. Gille about a property mortgaged to her. Upon hearing her predicament, Atty. Gille offered his legal services to Michelle for P25,000.00 to which the latter agreed. Respondent then prepared an adverse claim for her, among others.

Subsequently, Atty. Gille borrowed P300,000.00 from Michelle. As a collateral, Atty. Gille gave Michelle a copy of Transfer Certificate of Title (TCT) No. N-272977 which allegedly covered a 1,000-square meter land situated in Quezon City worth P20 Million and a check postdated August 10, 2006 as payment for the principal obligation.

When Michelle and her father Adolfo went to the Register of Deeds (RD) of Quezon City, they were surprised upon being informed by Atty. Elbert T. Quilala (Atty. Quilala) of the RD Quezon City that the TCT was a forgery issued by a syndicate.

Michelle and Adolfo then demanded from Atty. Gille the return of the borrowed amount. During their meeting that same day, respondent promised to pay on July 18, 2006. However, he failed to pay on said date. Instead, he executed a promissory note acknowledging having issued a check postdated August 10, 2006, and promising to pay Michelle the outstanding amount on September 10, 2006. Atty. Gille then had the promissory note notarized and furnished Michelle a copy thereof.

On its due date, Michelle deposited the check but it was dishonored due to "Account Closed". As a result, she filed a criminal complaint for Estafa against Atty. Gille before the Office of the City Prosecutor of Quezon City. Michelle likewise filed the instant Petition for suspension or disbarment against respondent for allegedly committing deceit, and gross immoral conduct in violation of his Lawyer's Oath and the Code of Professional Responsibility (CPR).

After several resetting of the mandatory conference with the Integrated Bar of the Philippines (IBP), Atty. Gille was given a non-extendible period of 10 days to submit

his answer. Thereafter, the parties were directed to submit their verified position papers. Unfortunately, Atty. Gille failed to submit his answer and verified position paper.

Report and Recommendation of the IBP:

The Investigating Commissioner^[2] found Atty. Gille liable for Gross Misconduct for issuing a postdated check that was subsequently dishonored and for presenting a fraudulent certificate of title to obtain money from Michelle. He recommended that Atty. Gille be suspended from the practice of law for a period of two (2) years and ordered to return the loaned amount of P300,000.00 to Michelle.^[3]

In its December 14, 2012 Resolution No. XX-2012-494,^[4] the IBP Board of Governors (BOG) adopted the findings of the Investigating Commissioner with the modification that Atty. Gille should also pay legal interest on the P300,000.00 reckoned from the time the demand was made.

Issue

Whether or not Atty. Gille is guilty of Gross Misconduct.

Our Ruling

The Court adopts the findings of the IBP with modification as to the recommended penalty.

Possession of good moral character is not only required of those who aspire to be admitted in the practice of law. It is a continuing requirement in order for a lawyer to maintain his or her membership in the bar in good standing. This was elucidated in *In re: Sotto*^[5] in this wise:

One of the qualifications required of a candidate for admission to the bar is the possession of good moral character, and, when one who has already been admitted to the bar clearly shows, by a series of acts, that he does not follow such moral principles as should govern the conduct of an upright person, and that, in his dealings with his clients and with the courts, he disregards the rules of professional ethics required to be observed by every attorney, it is the duty of the court, as guardian of the interests of society, as well as of the preservation of the ideal standard of professional conduct, to make use of its powers to deprive him of his professional attributes which he so unworthily abused.^[6]

Thus, a lawyer must "remain a competent, honorable, and reliable individual in whom the public reposes confidence. Any gross misconduct that puts his moral character in serious doubt renders him unfit to continue in the practice of law."^[7]

"Gross misconduct is defined as 'improper or wrong conduct, the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies a wrongful intent and not a mere error in judgment.'"^[8]

For the Court to exercise its disciplinary power, the burden of proof in a disbarment proceeding rests upon the complainant who must establish with substantial evidence that the lawyer committed acts or omissions which reflect his or her unfitness to be a member of the Bar. Substantial evidence is defined as "that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion."^[9]

A thorough review of the evidence in the case shows that the required degree of proof has been established by the complainant.

Atty. Gille violated Rule 16.04, Canon 16 of the CPR, which prohibits a lawyer from borrowing money from his client unless the client's interests are fully protected, to wit:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONIES 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.

It is undisputed that Atty. Gille secured a loan from Michelle. The mere act of borrowing money from his client is considered unethical and an abuse of the latter's confidence reposed upon him. In doing so, Atty. Gille took advantage of his influence over his client Michelle.^[10] Further, Michelle was at a disadvantage because of respondent's ability to use all the legal maneuverings to evade his obligation.^[11]

Indeed, the act of borrowing money from a client by a lawyer is highly uncalled for and therefore a ground for disciplinary action. It degrades a client's trust and confidence in his or her lawyer. This trust and confidence must be upheld at all times in accordance with a lawyer's duty to his or her client.^[12] As aptly stated in *Yu v. Dela Cruz*:^[13]

Complainant voluntarily and willingly delivered her jewelry worth P135,000.00 to respondent lawyer who meant to borrow it and pawn it thereafter. This act alone shows respondent lawyer's blatant disregard of Rule 16.04. Complainant's acquiescence to the "pawning" of her jewelry becomes immaterial considering that the CPR is clear in that lawyers are proscribed from borrowing money or property from clients, unless the latter's interests are fully protected by the nature of the case or by independent advice. Here, respondent lawyer's act of borrowing does not constitute an exception. Respondent lawyer used his client's jewelry in order to obtain, and then appropriate for himself, the proceeds from the pledge. In so doing, he had abused the trust and confidence reposed upon him by his client. That he might have intended to subsequently pay his client the value of the jewelry is inconsequential. What deserves detestation was the very act of his exercising influence and persuasion over his client in order to gain undue benefits from the latter's property. **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. 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, the borrowing of money or property from a client outside the limits laid down in the CPR is an unethical act that warrants sanction.^[14]

Worse, Michelle's interests were not fully protected when Atty. Gille obtained the loan. The collective acts of Atty. Gille were in utter violation of Rule 1.01, Canon 1, and Rule 7.03, Canon 7 of the CPR.

Rule 1.01, Canon 1 of the CPR provides that "A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct." The "conduct" under the Rule does not pertain solely to a lawyer's performance of professional duties.^[15] It has long been settled that "[a] lawyer may be disciplined for misconduct committed either in his or her professional or private capacity. The test is whether [a lawyer's conduct manifests his or her wanting] in moral character, honesty, probity, and good demeanor, or [unworthiness] to continue as an officer of the court."^[16]

Corollarily, Rule 7.03, Canon 7 of the CPR 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.

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

In *Agno v. Cagatan*,^[17] the Court underscored that a lawyer must possess a high standard of honesty and fairness whether in his private or personal capacity:

The afore-cited canons emphasize the high standard of honesty and fairness expected of a lawyer not only in the practice of the legal profession but in his personal dealings as well. A lawyer must conduct himself with great propriety, and his behavior should be beyond reproach anywhere and at all times. For, as officers of the courts and keepers of the public's faith, they are burdened with the highest degree of social responsibility and are thus mandated to behave at all times in a manner consistent with truth and honor. Likewise, the oath that lawyers swear to impresses upon them the duty of exhibiting the highest degree of good faith, fairness and candor in their relationships with others. Thus, lawyers may be disciplined for any conduct, whether in their professional or in their private capacity, if such conduct renders them unfit to continue to be officers of the court.^[18]

The acts committed by Atty. Gille showed that he fell far short of the exacting standards expected of him under the CPR.

First, respondent presented a spurious title of a property which was offered as a collateral in order to obtain loan from Michelle. It is a clear act of deception which brought disgrace and dishonor to the legal profession. He took advantage of his knowledge of the law to gain undue benefit for himself at the expense of Michelle. Atty. Gille thus failed to exercise good faith in his dealings with a client.

Second, respondent failed to pay his debt despite repeated demands which likewise constitutes dishonest and deceitful conduct.^[19] Prompt payment of financial obligations is one of the duties of a lawyer.^[20] This is in accord with his mandate to faithfully perform at all times his duties to society, to the bar, to the courts and to his clients.^[21]

Lastly, it is even more appalling that the check issued by respondent was later dishonored for having been drawn against a closed account. In *Cuizon v. Macalino*,^[22] the Court ruled that the issuance of checks which were later dishonored for having been drawn against a closed account shows a lawyer's unfitness for the trust and confidence reposed on him.^[23] It manifests a lawyer's lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action.^[24] Thus, the act of Atty. Gille in issuing the check without sufficient funds reflects his moral unfitness and skewed character.

Interestingly, Atty. Gille remained silent all throughout the administrative proceedings despite the serious charge against him. It is contrary to human nature not to defend one's person when faced with a serious accusation which could possibly end in one's ruination as a professional.^[25]

As it turns out, Atty. Gille's reticence was a deliberate refusal to participate in the administrative proceedings and to file his answer for no valid reason and despite due notices. In *Domingo v. Sacdalan*,^[26] the Court emphasized that a member of the Bar must give due respect to the IBP which is the national organization of all the members of the legal profession, *viz.*:

It must be underscored that respondent owed it to himself and to the entire Legal Profession of the Philippines to exhibit due respect towards the IBP as the national organization of all the members of the Legal Profession. His unexplained disregard of the orders issued to him by the IBP to comment and to appear in the administrative investigation of his misconduct revealed his irresponsibility as well as his disrespect for the IBP and its proceedings. He thereby exposed a character flaw that should not tarnish the nobility of the Legal Profession. He should always bear in mind that his being a lawyer demanded that he conduct himself as a person of the highest moral and professional integrity and probity in his dealings with others. He should never forget that his duty to serve his clients with unwavering loyalty and diligence carried with it the corresponding responsibilities towards the Court, to the Bar, and to the public in general.

Atty. Gille, as a member of the IBP and an officer of the Court, should have known that the orders of the IBP must be complied with promptly and completely as it has been designated by the Court to investigate complaints against erring lawyers like