

EN BANC

[**A.C. No. 10541 (Formerly CBD Case No. 11-3046), July 12, 2016**]

**AURORA AGUILAR-DYQUIANGCO, COMPLAINANT, VS. ATTY.
DIANA LYNN M. ARELLANO, RESPONDENT.**

DECISION

CAGUIOA, J:

A lawyer, once he takes up the cause of his client, has the duty to serve such client with competence, and to attend to his client's cause with diligence, care and devotion, whether he accepts the engagement for free or for a fee.^[1] Moreover, lawyers should refrain from obtaining loans from their clients, in order to avoid the perils of abusing the trust and confidence reposed upon him by such client.^[2]

The facts established in the proceedings before the Integrated Bar of the Philippines ("**IBP**"), which we adopt in turn, are as follows:

Complainant Aurora Aguilar-Dyquiango ("**Complainant**") and Respondent Atty. Diana Lynn M. Arellano ("**Respondent**") first met in 2004 at the Don Mariano Marcos Memorial State University, College of Law when the latter became Complainant's professor.^[3]

Sometime in 2006, Complainant engaged Respondent's services for the purpose of filing a case for collection of sum of money against a certain Delia Antigua ("**Antigua**"), advancing P10,000.00 for filing fees and P2,000.00 as part of the attorney's fees out of the agreed amount of P20,000.00.^[4] Three years later, Complainant, upon inquiry with the Regional Trial Court ("**RTC**") of San Fernando, La Union, discovered that Respondent failed to file her case against Antigua.^[5] Consequently, Complainant sent a letter to Respondent terminating Respondent's services and demanding the return of the said money and documents she entrusted to Respondent,^[6] who, in turn, refused to return Complainant's documents alleging that she was enforcing her retainer's lien.^[7]

During the existence of a lawyer-client relationship between them, Respondent frequently borrowed money from Complainant and her husband, Antonio Dyquiango ("**Antonio**"),^[8] for which Respondent issued postdated checks in July 2008 ("**checks issued in July 2008**") as security.^[9] Complainant and Antonio later stopped lending money to Respondent when they discovered that she was engaged in "kiting", that is, using the newer loans to pay off the previous loans she had obtained.^[10]

These accumulated loans totaled P360,818.20 as of September 2008, covered by

ten (10) checks.^[11] Upon presentment by Complainant, all of the said checks were dishonored due to insufficiency of funds and closure of accounts. Hence, Complainant filed complaints for violation of Batas Pambansa Blg. 22 ("**BP Blg. 22**") against Respondent.^[12] These cases are currently pending with the Municipal Trial Court in Cities of San Fernando, La Union, Branch 2.^[13]

Sometime in June 2008, in a separate transaction from the previous loans, Respondent purchased magnetic bracelets in the amount of P282,110.00 from Complainant's Good Faith Network Marketing business in order to resell the same.^[14] In addition, since Complainant's business uses "networking" as a marketing scheme, Respondent also bought an "up-line"^[15] slot in the amount of P126,160.00 to maximize her earnings.^[16]

Respondent then borrowed P360,000.00 from Complainant.^[17] A part of the loan proceeds were used by Respondent to pay for the magnetic bracelets by issuing postdated checks for the purpose. Respondent purchased seventy five (75) bracelets, which were kept at Complainant's business center, and withdrawn by Respondent whenever she had buyers.^[18] However, Respondent's total withdrawals exceeded the number of bracelets actually purchased from Complainant.^[19] Moreover, Respondent failed to pay the price for the magnetic bracelets.^[20]

Respondent similarly acquired from Complainant other products (i.e., soaps, slimming products, coffee, etc.) for reselling in the amount of P15,770.00 which Respondent failed to pay up to this day.^[21]

On June 24, 2008, Complainant and Respondent opened a joint checking account with East West Bank in connection with their Good Faith Magnetic Bracelets business transactions, with an initial balance of P130,000.00.^[22] Respondent issued a check from this joint account in the amount of P126,160.00 to pay for the "up-line" slot she purchased from Complainant.^[23] Subsequent deposits by Complainant were used by Respondent when the latter issued checks in the amounts of P136,000.00 and P75,000.00.^[24]

On June 17, 2009, Respondent obtained another loan from Complainant in the amount of P30,000.00, which the Respondent used to pay off her obligation to Complainant's husband.^[25]

Complainant and her husband sent a demand letter dated August 26, 2009^[26] to Respondent for the payment of the dishonored checks issued in July 2008. The Respondent's failure to pay despite demand resulted in letter exchanges between the parties dated September 28, 2009^[27] and October 7, 2009.^[28] The October 7, 2009 demand letter by Complainant was also sent to Respondent's mother, Florescita M. Arellano.^[29] This exchange of letters, which the Respondent believed to be libelous, led to the filing of two (2) complaints for Libel against Complainant with the Office of the City Prosecutor of Manila and the Office of the Provincial Prosecutor of La Union, both of which were eventually dismissed for lack of probable cause.^[30]

On May 27, 2011, based on the foregoing transactions and incidents between the parties, the Complainant filed against the Respondent the instant administrative case for suspension and disbarment with the Integrated Bar of the Philippines ("IBP"),^[31] listing seven causes of action based on the Respondent's acts of:

1. Failing to file a collection case on behalf of the Complainant, for which the Respondent received P10,000.00 for filing fees ("**First Cause of Action**");
2. Obtaining several loans from the Complainant, which remain unpaid ("**Second Cause of Action**");
3. Taking out merchandise (i.e. magnetic bracelets) in excess of what she purchased from the Complainant ("**Third Cause of Action**");
4. Acquiring other merchandise from the Complainant without paying for the same ("**Fourth Cause of Action**");
5. Inducing the Complainant to open joint bank accounts, out of which the Respondent made several withdrawals ("**Fifth Cause of Action**");
6. Obtaining a P30,000.00 loan that remains unpaid ("**Sixth Cause of Action**");
7. Filing libel cases against the Complainant based on incidents related the transactions that gave rise to the second, third, fourth, fifth and sixth causes of action ("**Seventh Cause of Action**").

Proceedings with the IBP

The instant case was initially set for mandatory conference on March 23, 2012,^[32] but the same was reset to June 29, 2012 upon motion of Respondent.^[33] After due proceedings, the mandatory conference was terminated and both parties were required by the investigating commissioner, Commissioner Oliver A. Cachapero, to file their respective position papers.^[34] Both parties filed their respective position papers on July 26, 2012^[35] and September 7, 2012.^[36]

The Findings of the IBP

On September 28, 2012, Commissioner Cachapero rendered a Report and Recommendation^[37] finding Respondent guilty of violation of Rules 16.04, 16.02, and 18.03 of the Code of Professional Responsibility ("**CPR**"). The dispositive portion reads:

Foregoing premises considered, the undersigned believes and so hold that the instant complaint is with merit. Accordingly, he recommends that the Respondent be meted with the penalty of SUSPENSION for a period of one (1) year.^[38]

In a Resolution dated March 21, 2013, the IBP Board of Governors resolved to adopt and approve with modification the Report and Recommendation of the Investigating Commissioner dated September 28, 2012 which states:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, 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, and considering that Respondent violated Canon 16, Rule 16.02 and Canon 18, Rule 18.03 of the Code of Professional Responsibility, Atty. Diana Lynn M. Arellano is hereby **SUSPENDED from the practice of law for five (5) years.**^[39]

Respondent filed a Motion for Reconsideration dated July 16, 2013,^[40] which was subsequently denied through a Resolution dated March 21, 2014.^[41] In view of the penalty recommended by the IBP Board of Governors, the case was referred to this Court *En Banc*.

The Court's Ruling

After a judicious examination of the records and submission of the parties, we find no cogent reason not to adopt the factual findings of the Investigating Commissioner as approved by the IBP Board of Governors. However, we reduce the penalty for the reasons to be discussed below.

First Cause of Action

Respondent violated Canon 18 when she failed to file the collection case in court. In this regard, Canon 18 of the CPR mandates, thus:

A lawyer shall serve his client with competence and diligence.

Rule 18.03 thereof emphasizes that:

A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

In *Reyes v. Vitan*,^[42] this Court held that the failure of a lawyer to file a complaint with the court in behalf of his client, despite receiving the necessary fees from the latter, is a violation of the said canon and rule:

The act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the *Code of Professional Responsibility* which provides that a lawyer shall serve his client with competence and diligence. More specifically, Rule 18.03 states:

"Rule 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable."

A member of the legal profession owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights. An attorney is expected to exert his best efforts and ability to preserve his client's cause, for the unwavering loyalty displayed to his client likewise serves the ends of justice. Verily, the entrusted privilege to

practice law carries with it the corresponding duties, not only to the client, but also to the court, to the bar and to the public.^[43]

Further, as this Court ruled in *Pariñas v. Paguinto*,^[44] it is of no moment that there is only partial payment of the acceptance fee, to wit:

Rule 16.01 of the Code of Professional Responsibility ("the Code") provides that a lawyer shall account for all money or property collected for or from the client. Acceptance of money from a client establishes an attorney-client relationship and gives rise to the duty of fidelity to the client's cause. **Money entrusted to a lawyer for a specific purpose, such as for filing fee, but not used for failure to file the case must immediately be returned to the client on demand.** Paguinto returned the money only after Pariñas filed this administrative case for disbarment.^[45]

In the case before us, it is undisputed that after Complainant paid the filing fees and also part of the acceptance fees, Respondent did not bother to file any complaint before the court. Worse, Respondent knew for a long time that she required additional documents from Complainant before filing the complaint, yet Respondent did not appear to exert any effort to contact Complainant in order to obtain the said documents and finally file the said case.^[46] In fact, in the occasions Respondent met with Complainant in order to obtain a loan or discuss the magnetic bracelet business, Respondent never brought up the needed documents for the case to Complainant. As correctly held by Commissioner Cachapero, Respondent displayed a lack of zeal in handling the case of Complainant in neglecting to remind the latter of the needed documents in order to file the complaint in court.^[47]

Second, Third, Fourth, Fifth and Sixth Causes of Action

Respondent violated Canon 16 when she obtained loans from a client. Pertinently, Canon 16 of the CPR states:

A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Moreover, Rule 16.02 provides that:

A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Finally, Rule 16.04 thereof commands that:

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.

In the instant case, there is no dispute that Respondent obtained several loans from Complainant beginning in 2008 or two (2) years after they established a lawyer-client relationship in 2006, and before they terminated the same in 2009, in violation of Rule 16.04 of the CPR.^[48]