

EN BANC

[A.C. No. 10681, February 03, 2015]

SPOUSES HENRY A. CONCEPCION AND BLESILDA S. CONCEPCION, COMPLAINANTS, VS. ATTY. ELMER A. DELA ROSA, RESPONDENT.

D E C I S I O N**PERLAS-BERNABE, J.:**

This is an administrative case that stemmed from a Verified Complaint^[1] 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 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 1997^[2] 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 P2,500,000.00, 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 checks^[5] in respondent's name:^[6]

<u>Check No.</u>	<u>Date</u>	<u>Amount</u>	<u>Payee</u>
0000561925	03-23-06	P750,000.00	Elmer dela Rosa
0000561926	03-23-06	P850,000.00	Elmer dela Rosa
0000561927	03-23-06	P900,000.00	Elmer dela Rosa
Total:		P2,500,000.00	

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 P2,500,000.00, 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 letter^[9] to respondent, which the latter did not heed.^[10] On August 4, 2008, complainants, through their new counsel, Atty. Kathryn Jessica dela Serna, sent another demand letter^[11] 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-complaint^[15] 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 P2,500,000.00 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 P2,500,000.00 to a person they do not even know. Complainants also submitted a copy of the Answer to Third Party Complaint^[21] 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 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 Report^[28] 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 P2,500,000.00, 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 acknowledgment [33] 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-CBD. [36] Accordingly, the Investigating Commissioner recommended that respondent be disbarred and that he be ordered to return the P2,500,000.00 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 P2,500,000.00 to the complainants with legal interest, instead of stipulated interest.

Respondent sought a reconsideration [39] of Resolution No. XX-2013-617 which was, however, denied in Resolution No. XXI-2014-294 [40] 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 P2,500,000.00, with legal interest, to complainants.

I.

Respondent's receipt of the P2,500,000.00 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 P2,500,000.00, 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 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 P2,500,000.00 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 P2,500,000.00 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 P2,500,000.00 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. 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: