

## EN BANC

[ A.C. No. 4838, July 29, 2003 ]

**EMILIO GRANDE, COMPLAINANT, VS. ATTY. EVANGELINE DE SILVA, RESPONDENT.**

### DECISION

**YNARES-SANTIAGO, J.:**

Complainant Emilio Grande was the private offended party in Criminal Cases Nos. 96-1346 to 96-1353, filed with the Regional Trial Court of Marikina City, Branch 273, for Estafa and Violation of *Batas Pambansa Bilang 22*, entitled "*People of the Philippines, Plaintiff versus Sergio Natividad, Accused.*" During the proceedings, respondent Atty. Evangeline de Silva, counsel for the accused, tendered to complainant Check No. 0023638 in the amount of P144,768.00, drawn against her account with the Philippine National Bank, as settlement of the civil aspect of the case against her client. Complainant refused to accept the check, but respondent assured him that the same will be paid upon its presentment to her drawee bank. She manifested that as a lawyer, she would not issue a check which is not sufficiently funded. Thus, respondent was prevailed upon by complainant to accept the check. Consequently, he desisted from participating as a complaining witness in the criminal case, which led to the dismissal of the same and the release of the accused, Sergio Natividad.

When complainant deposited the check, the same was returned unpaid by the drawee bank for the reason: "Account Closed." On June 19, 1997, complainant wrote a letter to respondent demanding that she pay the face value of the check.<sup>[1]</sup> However, his demand was ignored by respondent; hence, he instituted a criminal complaint against her for Estafa and Violation of *Batas Pambansa Bilang 22* with the Office of the City Prosecutor of Marikina, which was docketed as I.S. No. 97-1036. On September 22, 1997, the Marikina City Prosecutor filed the necessary information for violation of *Batas Pambansa Bilang 22* against respondent Atty. Evangeline de Silva.<sup>[2]</sup>

On November 10, 1997, complainant filed the instant administrative complaint for disbarment of respondent for deceit and violation of the Lawyer's Oath.<sup>[3]</sup>

In a Resolution dated February 2, 1998 sent to respondent's given address at Carmelo Compound, Newton Avenue, Mayamot, Antipolo City, she was required to comment on the complaint within ten (10) days from notice.<sup>[4]</sup> However, it was returned unserved with the notation "Moved".<sup>[5]</sup> The Assistant National Secretary of the IBP submitted the latest address of respondent as 274 M.H. Del Pilar Street, Pasig City.<sup>[6]</sup>

On June 20, 2001, another resolution requiring respondent to comment on the

administrative complaint filed against her was served at the aforesaid address. This was again returned unserved with the notation: "Refused". Thus, the case was referred to the IBP Commission on Bar Discipline (IBP-CBD) for investigation, report and recommendation.<sup>[7]</sup>

In a Report dated December 6, 2001, Investigating Commissioner Florimond C. Rous found respondent guilty of deceit, gross misconduct and violation of the Lawyer's Oath. Thus, he recommended that respondent be suspended from the practice of law for two (2) years.

On October 19, 2002, the IBP Board of Governors passed Resolution No. XV-2002-554 which adopted the recommendation of the Investigating Commissioner that respondent be suspended from the practice of law for two (2) years.

We fully agree with the findings and recommendation of the IBP Board of Governors.

The record shows that respondent prevailed upon complainant to accept her personal check by way of settlement for the civil liability of her client, Sergio Natividad, with the assurance that the check will have sufficient funds when presented for payment. In doing so, she deceived complainant into withdrawing his complaint against her client in exchange for a check which she drew against a closed account.

It is clear that the breach of trust committed by respondent in issuing a bouncing check amounted to deceit and constituted a violation of her oath, for which she should be accordingly penalized.<sup>[8]</sup> Such an act constitutes gross misconduct and the penalties for such malfeasance is prescribed by Rule 138, Section 27 of the Rules of Court, to wit:

*SEC. 27. Disbarment and suspension of attorneys by Supreme Court, grounds therefore.* - A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a willful disobedience appearing as attorney for a party without authority to do so.

The nature of the office of an attorney requires that a lawyer shall be a person of good moral character. Since this qualification is a condition precedent to a license to enter upon the practice of law, the maintenance thereof is equally essential during the continuance of the practice and the exercise of the privilege. Gross misconduct which puts the lawyer's moral character in serious doubt may render her unfit to continue in the practice of law.<sup>[9]</sup>

The loss of moral character of a lawyer for any reason whatsoever shall warrant her suspension or disbarment,<sup>[10]</sup> because it is important that members of the legal brotherhood must conform to the highest standards of morality.<sup>[11]</sup> Any wrongdoing which indicates moral unfitness for the profession, whether it be professional or non-professional, justifies disciplinary action. Thus, a lawyer may be disciplined for evading payment of a debt validly incurred. Such conduct is unbecoming and does