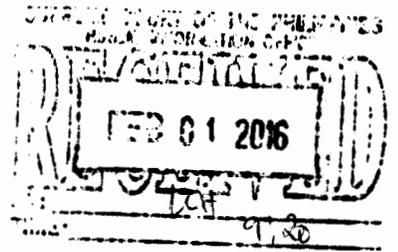




Republic of the Philippines
Supreme Court
Manila

EN BANC



PAULINA T. YU

Complainant,

A.C. No. 10912

Present:

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

- versus -

ATTY. BERLIN R.
DELA CRUZ,

Respondent.

Promulgated:

January 19, 2016

[Handwritten signature]

x -----x

DECISION

PER CURIAM:

Subject of this disposition is the September 28, 2014 Resolution¹ of the Integrated Bar of the Philippines Board of Governors (*IBP-BOG*) which adopted and approved the findings and the recommendation of the Investigating Commissioner for the disbarment of Atty. Berlin Dela Cruz (*respondent lawyer*).

* On leave.

¹ *Rollo*, pp. 35-36.

[Handwritten signature]

It appears from the records that respondent lawyer agreed to represent Paulina T. Yu (*complainant*) in several cases after having received various amounts as acceptance fees, to wit:

Case Title	Acceptance Fees
<i>People v. Tortona</i> for attempted homicide (Case No. 06-359) filed with the Metropolitan Trial Court, Bacoor, Cavite	₱ 20,000.00
<i>Paulina T. Yu v. Pablo and Rodel Gamboa</i> for qualified theft/estafa (I.S. No. XV-07-INV-116-05339) filed with the City Prosecutor of Manila	₱ 8,000.00
<i>Paulino T. Yu v. Roberto Tuazon et al.</i> (Civil Case No. LP-00-0087) filed before the Regional Trial Court of Las Piñas ²	₱ 15,000.00

On November 29, 2011, while the lawyer-client relationship was subsisting, respondent lawyer borrowed pieces of jewelry from complainant and pledged the same with the Citystate Savings Bank, Inc. for the amount of ₱29,945.50, as shown in the Promissory Note with Deed of Pledge.³ Respondent lawyer appropriated the proceeds of the pledge to his personal use. In order to facilitate the redemption of the said jewelry, respondent lawyer issued to complainant, Citystate Savings Bank Check No. 0088551, dated August 31, 2011, in the amount of ₱34,500.00. Upon presentment, however, complainant was shocked to learn that the check was dishonored for the reason, "Account Closed."⁴ Complainant immediately notified respondent lawyer of the dishonor of the check.

In a letter,⁵ dated March 23, 2012, complainant demanded for the refund of the acceptance fees received by respondent lawyer prior to the "abandonment" of the cases and the payment of the value of the jewelry, but to no avail.

² Id. at 10-13, as shown in an Employment Contract between the parties, dated September 6, 2011.

³ Id. at 12.

⁴ Id. at 13.

⁵ Id. at 9.

Juan P. Pagan-Pherno

In another letter,⁶ dated April 18, 2012, this time represented by another lawyer, Atty. Francisco C. Miralles, complainant yet again demanded the redemption of the check in cash within five days from notice; the refund of the paid acceptance fees, in exchange for which no service was rendered; the payment of the value of the pledged jewelry in the amount of ₱100,000.00 in order to avoid the interests due and the possible foreclosure of the pledge; and moral damages of ₱ 300,000.00.

For his failure to heed the repeated demands, a criminal case for violation of Batas Pambansa Blg. 22 was filed with the Office of the City Prosecutor, Las Piñas City, against him.⁷

On June 7, 2012, a verified complaint was filed with the IBP-Commission on Bar Discipline (IBP-CBD),⁸ where complainant prayed for the disbarment of respondent lawyer on account of grave misconduct, conduct unbecoming of a lawyer and commission of acts in violation of the lawyer's oath. The IBP-CBD required respondent lawyer to submit his answer to the complaint.⁹ Despite having been duly served with a copy of the complaint and the order to file his answer, as shown in a certification¹⁰ issued by the Post Master of the Las Piñas Central Post Office, respondent still failed to file an answer.

Respondent lawyer was likewise notified of the scheduled mandatory conference/hearing on November 23, 2012, but only the complainant and her counsel appeared on the said day. The IBP-CBD then ordered the resetting of the mandatory conference for the last time to January 11, 2013 and the personal service of the notice thereof to respondent lawyer's given address.¹¹ Notwithstanding the receipt of the notice by respondent lawyer's mother,¹² he still failed to appear during the conference, prompting complainant to move for the termination of the conference and the submission of the case for report and recommendation.

⁶ Id. at 7-8.

⁷ Id. at 6, docketed as XV-04-INV-12-00435.

⁸ Id. at 2-5.

⁹ Id. at 17.

¹⁰ Id. at 19.

¹¹ Id. at 27.

¹² Id. at 28.

ggy for [unclear] [unclear]

After a judicious review of the records, the Court finds no reason to deviate from the findings of the Investigating Commissioner with respect to respondent lawyer's violation of Canons 1,¹⁷ 16,¹⁸ 17,¹⁹ and Rules 1.01,²⁰ 16.04,²¹ of the CPR.

In the case at bench, the complaint stemmed from the use by respondent lawyer of his client's property. He had, indeed, come into possession of valuable pieces of jewelry which he presented as security in a contract of pledge. Complainant voluntarily and willingly delivered her jewelry worth ₱135,000.00 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.²² 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.²³ The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation.²⁴ 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.

¹⁷ CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

¹⁸ CANON 16 - A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

¹⁹ CANON 17 – A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

²⁰ Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

²¹ 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.

²² *Spouses Concepcion v. Dela Rosa*, A.C. No. 10681, February 3, 2015.

²³ *Junio v. Grupo*, 423 Phil. 808, 816 (2001).

²⁴ *Frias v. Lozada*, 513 Phil. 512, 521-522 (2005).

Spouses Concepcion v. Dela Rosa

Due to complainant's respect for respondent lawyer, she trusted his representation that the subject jewelry would be redeemed upon maturity. She accepted respondent lawyer's check, which was eventually dishonored upon presentment. Despite notice of the dishonor, respondent lawyer did not take steps to remedy the situation and, on the whole, reneged on his obligation, constraining complainant to avail of legal remedies against him.

Given the circumstances, the Court does not harbor any doubt in favor of respondent lawyer. Obviously, his unfulfilled promise to facilitate the redemption of the jewelry and his act of issuing a worthless check constitute grave violations of the CPR and the lawyer's oath. These shortcomings on his part have seriously breached the highly fiduciary relationship between lawyers and clients. Specifically, his act of issuing worthless checks patently violated Rule 1.01 of Canon 1 of the CPR which requires that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." This indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action,²⁵ and thus seriously and irreparably tarnishes the image of the profession.²⁶ Such conduct, while already off-putting when attributed to an ordinary person, is much more abhorrent when exhibited by a member of the Bar.²⁷ In this case, respondent lawyer turned his back from the promise that he once made upon admission to the Bar. As "vanguards of the law and the legal system, lawyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner beyond reproach."²⁸

As to the penalty commensurate to respondent lawyer's actions, the Court takes heed of the guidepost provided by jurisprudence, *viz.*: "Disbarment should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired. This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person."²⁹ Hence, caution is called for amidst the Court's plenary power to discipline erring lawyers. In line with prevailing jurisprudence,³⁰ the Court finds it proper to impose the penalty of three-year suspension against respondent lawyer, with a stern warning that a repetition

²⁵ *Wong v. Moya II*, 590 Phil. 279, 289 (2008).

²⁶ *Dizon v. De Taza*, A.C. No. 7676, June 10, 2014, 726 SCRA 70, 80, citing *Wilkie v. Limos*, 591 Phil. 1, 8 (2008).

²⁷ *Id.*

²⁸ *Resurreccion v. Sayson*, 360 Phil. 313, 322 (1998).

²⁹ *Anacta v. Resurreccion*, 692 Phil. 488, 499 (2012).

³⁰ *Junio v. Grupo*, *supra* note 23, *Wong v. Atty. Moya II*, 590 Phil. 279 (2008), *Lao v. Medel*, 453 Phil. 115 (2003), *Barrientos v. Libiran-Meteoro*, 480 Phil. 661 (2004).

gy B. Moya II

of any of the infractions attributed to him in this case, or any similar act, shall merit a heavier penalty.

Anent the monetary demands made by complainant, the Court reiterates the rule 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.³¹ Thus, the Court is not concerned with the erring lawyer's civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. Accordingly, it cannot order respondent lawyer to make the payment for the subject jewelry he pawned, the value of which is yet to be determined in the appropriate proceeding.

As to the return of acceptance fees, a clarification is in order. The Investigating Commissioner erred in referring to them as "attorney's fees"—

As to the charge that respondent abandoned the cases he accepted after payment of attorney's fees, this commission is not fully satisfied that the complainant was able to prove it with substantial or clear evidence. It was not fully explained in the complaint how or in what manner were the cases "abandoned" by the respondent; and what prejudice was caused to the complainant. This Commission noted that not a single document or order coming from the court of prosecutor's office was appended to the Complaint-Affidavit that would at least apprise this body of what the respondent actually did with the cases he represented.³²

There is a distinction between attorney's fee and acceptance fee. It is well-settled that attorney's fee is understood both in its ordinary and extraordinary concept.³³ In its ordinary sense, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. Meanwhile, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.³⁴ On the other hand, acceptance fee refers to the charge imposed by the lawyer for merely accepting the case. This is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. Thus, this incurs an opportunity cost by merely accepting the case of the client which is therefore indemnified by the payment of acceptance fee. Since the acceptance fee only seeks to compensate the lawyer for the lost

³¹ *Roa v. Moreno*, 633 Phil. 1, 8 (2010).

³² *Rollo*, pp. 40-41.

³³ *Traders Royal Bank Employees Union-Independent v. NLRC*, 336 Phil. 705, 712 (1997).

³⁴ *Ortiz v. San Miguel Corporation*, 582 Phil. 627, 640 (2008).

J. B. Reyes

opportunity, it is not measured by the nature and extent of the legal services rendered.³⁵

In the case at bench, the amounts of ₱20,000.00, ₱18,000.00, and ₱15,000.00, respectively, were in the nature of acceptance fees for cases in which respondent lawyer agreed to represent complainant. Despite this oversight of the Investigating Commissioner, the Court affirms the finding that aside from her bare allegations, complainant failed to present any evidence showing that respondent lawyer committed abandonment or neglect of duty in handling of cases. Hence, the Court sees no legal basis for the return of the subject acceptance fees.

WHEREFORE, finding respondent Atty. Berlin R. Dela Cruz **GUILTY** of violating Canons 1, 16, 17, and Rules 1.01 and 16.04 of the Code of Professional Responsibility, the Court hereby **SUSPENDS** him from the practice of law for **THREE YEARS** with a **STERN WARNING** that a repetition of the same or similar act would be dealt with more severely.

Let copies of this decision be furnished the Bar Confidant to be entered in the personal record of the respondent as a member of the Philippine Bar; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for circulation to all courts throughout the country.

SO ORDERED.



MARIA LOURDES P. A. SERENO
Chief Justice

³⁵ *Dalupan v. Gacott*, A.C. No. 5067, June 29, 2015.



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

Dioldado M. Peralta
DIOSDADO M. PERALTA
Associate Justice

Lucas P. Bersamin
LUCAS P. BERSAMIN
Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice

Jose Portugal Perez
JOSE PORTUGAL PEREZ
Associate Justice

Jose Catral Mendoza
JOSE CATRAL MENDOZA
Associate Justice

Bienvenido L. Reyes
BIENVENIDO L. REYES
Associate Justice

Estela M. Perlas-Bernabe
ESTELA M. PERLAS-BERNABE
Associate Justice

Marvic M.V.F. Leonen
MARVIC M.V.F. LEONEN
Associate Justice

Francis H. Jardeleza
FRANCIS H. JARDELEZA
Associate Justice

CERTIFIED XEROX COPY:

Felipa B. Anama
FELIPA B. ANAMA
CLERK OF COURT, EN BANC
SUPREME COURT