EUGENIA MENDOZA, COMPLAINANT, VS. ATTY. VICTOR V. DECIEMBRE, RESPONDENT.

A.C. No. 5338. February 23, 2009

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PER CURIAM:

> Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority for there is perhaps no profession after that of the sacred ministry in which a high-toned morality is more imperative than that of law.[1]

Before the Court is the Petition filed by Eugenia Mendoza (complainant) dated September 19, 2000, seeking the disbarment of Atty. Victor V. Deciembre (respondent) for his acts of fraudulently filling up blank postdated checks without her authority and using the same for filing unfounded criminal suits against her.

Complainant, a mail sorter at the Central Post Office Manila, averred that: On October 13, 1998, she borrowed from Rodela Loans, Inc., through respondent, the amount of P20,000.00 payable in six months at 20% interest, secured by 12 blank checks, with numbers 47253, 47256 to 47266, drawn against the Postal Bank. Although she was unable to faithfully pay her obligations on their due dates, she made remittances, however, to respondent's Metrobank account from November 11, 1998 to March 15, 1999 in the total sum of P12,910.00.[2] Claiming that the amounts remitted were not enough to cover the penalties, interests and other charges, respondent warned complainant that he would deposit Postal Check No. 47253 filled up by him on March 30, 1999 in the amount of P16,000.00. Afraid that respondent might sue her in court, complainant made good said check and respondent was able to encash the same on March 30, 1999. Thereafter, complainant made subsequent payments to the Metrobank account of respondent from April 13, 1999 to October 15, 1999,[3] thereby paying respondent the total sum of P35,690.00.[4]

Complainant further claimed that, later, respondent filled up two of the postal checks she issued in blank, Check Nos. 47261 and 47262 with the amount of P50,000.00 each and with the dates January 15, 2000 and January 20, 2000 respectively, which respondent claims was in exchange for the P100,000.00 cash that complainant received on November 15, 1999. Complainant insisted however that she never borrowed P100,000.00 from respondent and that it was unlikely that respondent would lend her, a mail sorter with a basic monthly salary of less than P6,000.00, such amount. Complainant also claimed that respondent victimized other employees of the Postal Office by filling up, without authorization, blank checks issued to him as condition for loans.[5]

In his Comment dated January 18, 2000, respondent averred that his dealings with complainant were done in his private capacity and not as a lawyer, and that when he filed a complaint for violation of Batas Pambansa Blg. (B.P. Blg.) 22 against complainant, he was only vindicating his rights as a private citizen. He alleged further that: it was complainant who deliberately deceived him by not honoring her commitment to their November 15, 1999 transaction involving P100,000.00 and covered by two checks which bounced for the reason "account closed"; the October 13, 1999 transaction was a separate and distinct transaction; complainant filed the disbarment case against him to get even with him for filing the estafa and B.P. Blg. 22 case against the former; complainant's claim that respondent filled up the blank checks issued by complainant is a complete lie; the truth was that the

checks referred to were already filled up when complainant affixed her signature thereto; it was unbelievable that complainant would issue blank checks, and that she was a mere low-salaried employee, since she was able to maintain several checking accounts; and if he really intended to defraud complainant, he would have written a higher amount on the checks instead of only P50,000.00.[6]

The case was referred to the Integrated Bar of the Philippines[7] (IBP), and the parties were required to file their position papers.[8]

In her Position Paper, complainant, apart from reiterating her earlier claims, alleged that respondent, after the hearing on the disbarment case before the IBP on September 5, 2001, again filled up three of her blank checks, Check Nos. 47263, 47264 and 47265, totaling P100,000.00, to serve as basis for another criminal complaint, since the earlier estafa and B.P. Blg. 22 case filed by respondent against her before the Office of the Prosecutor of Pasig City was dismissed on August 14, 2000.[9]

Respondent insisted in his Position Paper, however, that complainant borrowed P100,000.00 in exchange for two postdated checks, and that since he had known complainant for quite some time, he accepted said checks on complainant's assurance that they were good as cash.[10]

Investigating Commissioner Wilfredo E.J.E. Reyes submitted his Report dated September 6, 2002, finding respondent guilty of dishonesty and recommended respondent's suspension from the practice of law for one year.[11] The Report was adopted and approved by the IBP Board of Governors in its Resolution dated October 19, 2002.[12] Respondent filed a Motion for Reconsideration which was denied, however, by the IBP Board of Governors on January 25, 2003 on the ground that it no longer had jurisdiction on the matter, as the same was already endorsed to the Supreme Court.[13]

On June 9, 2003 this Court's Second Division issued a Resolution remanding the case to the IBP for the conduct of formal investigation, as the Report of Commissioner Reyes was based merely on the pleadings submitted.[14]

After hearings were conducted,[15] Investigating Commissioner Dennis A. B. Funa submitted his Report dated December 5, 2006 finding respondent guilty of gross misconduct and violation of the Code of Professional Responsibility, and recommended respondent's suspension for three years.[16]

Commissioner Funa held that while it was difficult at first to determine who between complainant and respondent was telling the truth, in the end, respondent himself, with his own contradicting allegations, showed that complainant's version should be given more credence.[17]

Commissioner Funa noted that although complainant's total obligation to respondent was only P24,000.00, since the loan obtained by complainant on October 13, 1998 was P20,000.00 at 20% interest payable in six months, by April 13, 1999, however, complainant had actually paid respondent the total amount of P30,240.00. Thus, even though the payment was irregularly given, respondent actually earned more than the agreed upon 20% interest. Moreover, the amounts of P50,000.00 as well as the name of the payee in the subject checks were all typewritten[18]

Commissioner Funa also gave credence to complainant's claim that it was respondent's modus operandi to demand a certain amount as "settlement" for the dropping of estafa complaints against his borrowers. As Commissioner Funa explains:

> [A] complaint for estafa/violation of BP 22 was filed against [complainant] before the Prosecutor's Office in Pasig City on June 21, 2000. On August 14, 2000, the Prosecutor's Office dismissed the complaint. On October 2, 2000, Complainant filed this disbarment case. About one year later, or on September 5, 2001, Complainant was surprised to receive a demand letter demanding payment once again for another P100,000.00

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corresponding to another three checks, Check Nos. 0047263, 0047264 and 0047265.

Furthermore, Respondent filed another criminal complaint for estafa/violation of BP 22 dated October 17, 2001, this time before the QC Prosecutor's Office. The prosecutor's office recommended the filing of the criminal case for one of the checks.

x x x x

Respondent's version, on the other hand, is that Check Nos. 0047261 and 0047262 were given to him for loans (rediscounting) contacted on November 15, 1999 and not for a loan contracted on October 13, 1998. x x x He claims that the October 13, 1998 transaction is an earlier and different transaction. x x x On the very next day, or on November 16, 1999, Complainant again allegedly contracted another loan for another P100,000.00 for which Complainant allegedly issued the following Postal Bank checks [Check No. 0047263 dated May 16, 2001 for P20,000.00; Check No. 0047264 dated May 30, 2001 for P30,000.00 and Check No. 0047265 dated June 15, 2001 for P50,000.00].

x x x x

Oddly though, Respondent never narrated that Complainant obtained a second loan on November 16, 1999 in his Answer [dated January 18, 2000] and in his Position Paper [dated October 8, 2001]. He did not even discuss it in his Motion for Reconsideration dated December 20, 2002, although he attached the Resolution of the QC Prosecutor's Office. Clearly, the November 16, 1999 transaction was a mere concoction that did not actually occur. It was a mere afterthought. Respondent once again filled-up three of the other checks in his possession (checks dated May 16, 2001, May 30, 2001 and June 15, 2001) so that he can again file another estafa/BP 22 case against Complainant (October 17, 2001) AFTER the earlier complaint he had filed before the Pasig City Prosecutor's Office had been dismissed (August 14, 2000) and AFTER herein Complainant had filed this disbarment case (October 2, 2000).

More telling, and this is where Respondent gets caught, are the circumstances attending this second loan of November 16, 1999. In addition to not mentioning it at all in his Answer, his Position Paper, and his Motion for Reconsideration, which makes it very strange, is that fact that he alleges that the loan was contracted on November 16, 1999 for which Complainant supposedly issued checks dated May 16, 2001, May 30, 2001 and June 15, 2001. Note that May 16, 2001 is eighteen (18 months), or 1 year and 6 months, from November 16, 1999. This is strangely a long period for loans of this nature. This loan was supposedly not made in writing, only verbally. With no collaterals and no guarantors. Clearly, this is a non-existent transaction. It was merely concocted by Respondent.

More importantly, and this is where Respondent commits his fatal blunder thus exposing his illegal machinations, Complainant allegedly received P100,000.00 in cash on November 16, 1999 for which Complainant gave Respondent, in return, checks also amounting to P100,000.00. The checks were supposedly dated May 16, 2001, May 30, 2001 and June 15, 2001 x x x.

Now then, would not Respondent suffer a financial loss if he gave away P100,000.00 on November 16, 1999 and then also receive P100,000.00 on May 16, 2001 or 1 year and 6 months later? A person engaged in lending business would want to earn interest. The same also with a person re-discounting checks. In this instance, in his haste to concoct a story, Respondent forgot to factor in the interest. At 20% interest, assuming that it is per annum, for 1½ years, Respondent should have collected from Complainant at least P130,000.00. And yet the checks he filled up totaled only P100,000.00. The same is true in re-discounting a check. If Complainant gave Respondent P100,000.00 in checks, Respondent should be giving Complainant an amount less than P100,000.00. This exposes his story as a fabrication.

The same observations can be made of the first loan of P100,000.00 secured by Check Nos. 0047261 and 0047262.

> More strangely, during the course of the entire investigation, Respondent never touched on what transpired on the dates of November 15 and 16, 1999. Consider that Complainant's position is that no such transaction took place on November 15 and 16. And yet, Respondent never made any effort to establish that Complainant borrowed P100,000.00 on November 15 and then another P100,000.00 again on November 16. Respondent merely focused on establishing that Complainant's checks bounced --- a fact already admitted several times by the Complainant --- and the reasons for which were already explained by Complainant. This only shows the lack of candor of Respondent.[19]
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> x x x x
>
> We take note further that Complainant is a mere mail sorter earning less than P6,000.00 per month. Who would lend P200,000.00 to an employee earning such a salary, nowadays, and not even secure such a loan with a written document or a collateral? It defies realities of finance, economy and business. It even defies common sense.[20]

Commissioner Funa also took note that the instant case had practically the same set of facts as in Olbes v. Deciembre[21] and Acosta v. Deciembre.[22] In Olbes, complainants therein, who were also postal employees, averred that respondent without authority filled up a total of four checks to represent a total of P200,000.00. In Acosta, the complainant therein, another postal employee, averred that respondent filled up two blank checks for a total of P100,000.00. Acosta, however, was dismissed by Commissioner Lydia Navarro on the ground that it did not involve any lawyer-client relationship, which ground, Commissioner Funa believes, is erroneous.[23]

On May 31, 2007, the IBP Board of Governors issued a resolution adopting and approving Commissoner Funa's Report, but modifying the penalty, as follows:

> RESOLUTION NO. XVII-2007-219
> Adm. Case No. 5338
> Eugenia Mendoza vs.
> Atty. Victor V. Deciembre
>
> RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner of 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 Respondent's gross misconduct and for practically found guilty of committing the same set of facts alleged in AC 5365, Atty. Victor V. Deciembre is hereby SUSPENDED INDEFINITELY from the practice of law to be served successively after the lifting of Respondent's Indefinite Suspension.[24]

Although no motion for reconsideration was filed before the IBP Board of Governors, nor a petition for review before this Court as reported by IBP and Office of the Bar Confidant, the Court considers the IBP Resolution merely recommendatory and therefore would not attain finality, pursuant to par. (b), Section 12, Rule 139-B of the Rules of Court. The IBP elevated to this Court the entire records of the case for appropriate action.

The Court agrees with the findings of the IBP, but finds that disbarment and not just indefinite suspension is in order.

The practice of law is not a right but merely a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege.[25] A high sense of morality, honesty and fair dealing is expected and required of members of the bar.[26] They must conduct themselves with great propriety, and their behavior must be beyond reproach anywhere and at all times.[27]

The fact that there is no attorney-client relationship in this case and the transactions entered into by respondent were done in his private capacity cannot shield respondent, as a lawyer, from liability.

A lawyer may be disciplined for acts committed even in his private capacity for acts which tend to bring reproach on the legal profession or to injure it in the favorable opinion of the public.[28] Indeed, there is no distinction as to whether the transgression is committed in a lawyer's private life or in his professional capacity, for a lawyer may not divide his personality as an attorney at one time and a mere citizen at another.[29]

In this case, evidence abounds that respondent has failed to live up to the standards required of members of the legal profession. Specifically, respondent has transgressed provisions of the Code of Professional Responsibility, to wit:

> CANON 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> Rule 1.01. - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> x x x x
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> 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.
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> x x x x
>
> Rule 7.03. A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

As correctly observed by IBP Investigating Commissioner Funa, respondent failed to mention in his Comment dated January 18, 2000, in his Position Paper dated October 8, 2001 and in his Motion for Reconsideration dated December 20, 2002, the P100,000.00 loan which complainant supposedly contracted on November 16, 1999. It is also questionable why the checks dated May 16, 2001, May 30, 2001 and June 15, 2001 which were supposedly issued to secure a loan contracted about 18 months earlier, i.e. November 16, 1999, were made without any interest. The same is true with the checks dated January 15 and 20, 2000 in the total sum of P100,000.00, which were supposed to secure a loan contracted on November 15, 1999, for the same amount. Considering these circumstances and the sequence of dates when respondent filed his criminal cases against complainant, and complainant her disbarment case against respondent, what truly appears more believable is complainant's claim that respondent was merely utilizing the blank checks, filling them up, and using them as bases for criminal cases in order to harass complainant.

The Court also notes that the checks being refuted by complainant, dated January 15 and 20, 2000, May 16, 2001, May 30, 2001 and June 15, 2001[30] had its dates, amounts and payee's name all typewritten, while the blanks on the check for P16,000.00 dated March 30, 1999 which complainant used to pay part of her original loan, were all filled up in her handwriting.[31]

It is also observed that the present case was not the only instance when respondent committed his wrongful acts. In Olbes,[32] complainants therein contracted a loan from respondent in the amount of P10,000.00 on July 1, 1999, for which they issued five blank checks as collateral. Notwithstanding their full payment of the loan, respondent filled up four of the blank checks with the amount of P50,000.00 each with different dates of maturity and used the same in filing estafa and B.P. Blg. 22 cases against complainants. The Court, in imposing the penalty of indefinite suspension on respondent, found his propensity for employing deceit and misrepresentation as

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reprehensible and his misuse of the filled up checks, loathsome.[33]

In Acosta,[34] complainant therein also averred that on August 1, 1998, she borrowed P20,000.00 from respondent with an interest of 20% payable in six months and guaranteed by twelve blank checks. Although she had already paid the total amount of P33,300.00, respondent still demanded payments from her, and for her failure to comply therewith, respondent filed a case against her before the City Prosecutor of Marikina City, using two of her blank checks which respondent filled up with the total amount of P100,000.00. Unfortunately, the complaint was dismissed by IBP Investigating Commissioner Navarro on October 2, 2001 on the ground that the said transaction did not involve any lawyer-client relationship.[35] As correctly observed by Commissioner Funa, such conclusion is erroneous, for a lawyer may be disciplined even for acts not involving any attorney-client relationship.

As manifested by these cases, respondent's offenses are manifold. First, he demands excessive payments from his borrowers; then he fills up his borrowers' blank checks with fictitious amounts, falsifying commercial documents for his material gain; and then he uses said checks as bases for filing unfounded criminal suits against his borrowers in order to harass them. Such acts manifest respondent's perversity of character, meriting his severance from the legal profession.

While the power to disbar is exercised with great caution and is withheld whenever a lesser penalty could accomplish the end desired,[36] the seriousness of respondent's offense compels the Court to wield its supreme power of disbarment. Indeed, the Court will not hestitate to remove an erring attorney from the esteemed brotherhood of lawyers where the evidence calls for it.[37] This is because in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court, with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[38]

As respondent's misconduct brings intolerable dishonor to the legal profession, the severance of his privilege to practice law for life is in order.

WHEREFORE, Atty. Victor V. Deciembre is hereby found GUILTY of GROSS MISCONDUCT and VIOLATION of Canon 1, Rule 1.01 and Canon 7, Rule 7.03 of the Code of Professional Responsibility. He is DISBARRED from the practice of law and his name is ordered stricken off the Roll of Attorneys effective immediately.

Let copies of this Resolution be furnished the Office of the Bar Confidant which shall forthwith record it in the personal files of respondent; all the courts of the Philippines; the Integrated Bar of the Philippines, which shall disseminate copies thereof to all its Chapters; and all administrative and quasi-judicial agencies of the Republic of the Philippines.

SO ORDERED.

Puno, C.J., Quisumbing, Carpio, Austria-Martinez, Corona, Carpio Morales, Chico-Nazario, Nachura, Leonardo-De Castro, Brion, and Peralta, JJ., concur.
Ynares-Santiago, Tinga, and Velasco, Jr., JJ, on official leave.

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[1] Radjaie v. Alovera, 392 Phil. 1, 17 (2000).

[2] P1,150.00 on November 11, 1998; P1, 300.00 on December 11, 1998; P2,100.00 on January 12, 1999; P

500.00 on January 13, 1999; P3,930.00 on February 15, 1999; and P3,930.00 on March 15, 1999.

[3] P1,330.00 on April 13, 1999; P1,330.00 on May 12, 1999; P1,330.00 on July 13, 1999; P1,460.00 on September 23, 1999, and P1,330.00 on October 15, 1999.

[4] Rollo, pp. 1-4.

[5] Rollo, p. 6.

[6] Id. at 53-57.

[7] Per Resolution dated February 28, 2001, id. at 60.

[8] Id. at 64.

[9] Rollo, pp. 67-71.

[10] Id. at 227-228.

[11] Id. at 244-246.

[12] Id. at 241.

[13] Id. at 253-258.

[14] Id. at 248-251.

[15] On August 2, 2004, September 9, 2004, September 24, 2004, January 27, 2005, June 28, 2005, January 10, 2006 and November 17, 2006.

[16] Rollo, pp. 1006, 1019.

[17] Rollo, p. 1007.

[18] Id. at 1007-1009.

[19] Rollo, pp. 1010-1014.

[20] Id. at 1017.

[21] A.C. No. 5365, April 27, 2005, 457 SCRA 341.

[22] A.C. No. 5376.

[23] Rollo, pp. 1017-1018.

[24] Rollo, p. 998.

[25] Yap-Paras v. Paras, A.C. No. 4947, February 14, 2005, 451 SCRA 194, 202.

[26] Tejada v. Palaña, A.C. No. 7434, August 23, 2007, 530 SCRA 771, 776.

[27] Sanchez v. Somoso, 459 Phil. 209, 212 (2003).

[28] Paras v. Paras, supra. note 25.

[29] Cojuangco, Jr. v. Palma, 481 Phil. 646, 655 (2004).

[30] Rollo, pp. 92-93, 219-221.

[31] Id. at 14.

[32] Olbes v. Deciembre, supra note 21.

[33] Id.

[34] Acosta v. Deciembre, supra note 22.

[35] Rollo, pp. 262-266.

[36] Dantes v. Dantes, A.C. No. 6486. September 22, 2004, 438 SCRA 582, 590.

[37] Ting-Dumali v. Torres, A.C. No. 5161, April 14, 2004, 427 SCRA 108, 120.

[38] Paras v. Paras, supra note 25, at 201.

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