

SPOUSES FRANKLIN AND LOURDES OLBES, COMPLAINANTS, VS. ATTY. VICTOR V. DECIEMBRE, RESPONDENT.

A.C. No. 5365. April 27, 2005

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Constituting a serious transgression of the Code of Professional Responsibility was the malevolent act of respondent, who filled up the blank checks entrusted to him as security for a loan by writing on those checks amounts that had not been agreed upon at all, despite his full knowledge that the loan they were meant to secure had already been paid.

The Case

Before us is a verified Petition[1] for the disbarment of Atty. Victor V. Deciembre, filed by Spouses Franklin and Lourdes Olbes with the Office of the Bar Confidant of this Court. Petitioners charged respondent with willful and deliberate acts of dishonesty, falsification and conduct unbecoming a member of the Bar. After he had filed his Comment[2] on the Petition, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

The IBP's Commission on Bar Discipline (CBD), through Commissioner Caesar R. Dulay, held several hearings. During those hearings, the last of which was held on May 12, 2003,[3] the parties were able to present their respective witnesses and documentary evidence. After the filing of the parties' respective formal offers of evidence, as well as petitioners' Memorandum,[4] the case was considered submitted for resolution. Subsequently, the commissioner rendered his Report and Recommendation dated January 30, 2004, which was later adopted and approved by the IBP Board of Governors in its Resolution No. XV-2003-177 dated July 30, 2004.

The Facts

In their Petition, Spouses Olbes allege that they were government employees working at the Central Post Office, Manila; and that Franklin was a letter carrier receiving a monthly salary of P6,700, and Lourdes, a mail sorter, P6,000.[5]

Through respondent, Lourdes renewed on July 1, 1999 her application for a loan from Rodela Loans, Inc., in the amount of P10,000. As security for the loan, she issued and delivered to respondent five Philippine National Bank (PNB) blank checks (Nos. 0046241-45), which served as collateral for the approved loan as well as any other loans that might be obtained in the future.[6]

On August 31, 1999, Lourdes paid respondent the amount of P14,874.37 corresponding to the loan plus surcharges, penalties and interests, for which the latter issued a receipt,[7] herein quoted as follows:

“August 31, 1999Received the amount of P14,874.37 as payment of the loan of P10,000.00 taken earlier by Lourdes Olbes.

(Sgd.) Atty. Victor V. Diciembre
8-31-99
P10,000.00

PNB Check No. 46241 –8/15/99”[8]

Notwithstanding the full payment of the loan, respondent filled up four (of the five) blank PNB Checks (Nos. 0046241, 0046242, 0046243 and 0046244) for the amount of P50,000 each, with different dates of maturity -- August 15, 1999, August 20, 1999, October 15, 1999 and November 15, 1999, respectively.[9]

On October 19, 1999, respondent filed before the Provincial Prosecution Office of Rizal an Affidavit-Complaint against petitioners for estafa and violation of Batas Pambansa (BP) 22. He alleged therein that on July 15, 1999, around one-thirty in the afternoon at Cainta, Rizal, they personally approached him and requested that he immediately exchange with cash their postdated PNB Check Nos. 0046241 and 0046242 totaling P100,000.[10]

Several months after, or on January 20, 2000, respondent filed against petitioners another Affidavit-Complaint for estafa and violation of BP 22. He stated, among others, that on the same day, July 15, 1999, around two o'clock in the afternoon at Quezon City, they again approached him and requested that he exchange with cash PNB Check Nos. 0046243 and 0046244 totaling P100,000.[11]

Petitioners insisted that on the afternoon of July 15, 1999, they never went either to Cainta, Rizal, or to Quezon City to transact business with respondent. Allegedly, they were in their office at the time, as shown by their Daily Time Records; so it would have been physically impossible for them to transact business in Cainta, Rizal, and, after an interval of only thirty minutes, in Quezon City, especially considering the heavy traffic conditions in those places.[12]

Petitioners averred that many of their office mates -- among them, Juanita Manaois, Honorata Acosta and Eugenia Mendoza -- had suffered the same fate in their dealings with respondent.[13]

In his Comment,[14] respondent denied petitioners' claims, which he called baseless and devoid of any truth and merit. Allegedly, petitioners were the ones who had deceived him by not honoring their commitment regarding their July 15, 1999 transactions. Those transactions, totaling P200,000, had allegedly been covered by their four PNB checks that were, however, subsequently dishonored due to "ACCOUNT CLOSED." Thus, he filed criminal cases against them. He claimed that the checks had already been fully filled up when petitioners signed them in his presence. He further claimed that he had given them the amounts of money indicated in the checks, because his previous satisfactory transactions with them convinced him that they had the capacity to pay.

Moreover, respondent said that the loans were his private and personal transactions, which were not in any way connected with his profession as a lawyer. The criminal cases against petitioners were allegedly private actions intended to vindicate his rights against their deception and violation of their obligations. He maintained that his right to litigate should not be curtailed by this administrative action.

Report of the Investigating Commissioner

In his Report and Recommendation, Commissioner Dulay recommended that respondent be suspended from the practice of law for two years for violating Rule 1.01 of the Code of Professional Responsibility.

The commissioner said that respondent's version of the facts was not credible. Commissioner Dulay rendered the following analysis and evaluation of the evidence presented:

“In his affidavit-complaint x x x executed to support his complaint filed before the Provincial Prosecution Office of Rizal respondent stated that:2. That last July 15, 1999, in the jurisdiction of Cainta, Rizal, both

LOURDES E. OLBES and FRANKLIN A. OLBES x x x, personally met and requested me to immediately exchange with cash, right there and then, their postdated checks totaling P100,000.00 then, to be immediately used by them in their business venture.

“Again in his affidavit-complaint executed to support his complaint filed with the Office of the City Prosecutor of Quezon City respondent stated that:

2. That last July 15, 1999, at around 2PM, in the jurisdiction of Quezon City, M.M., both LOURDES E. OLBES and FRANKLIN A. OLBES x x x, personally met and requested me to immediately exchange with cash, right there and then, their postdated checks totaling P100,000.00 then, to be immediately used by them in their business venture.

“The above statements executed by respondent under oath are in direct contrast to his testimony before this Commission on cross-examination during the May 12, 2003 hearing, thus:

ATTY PUNZALAN: (continuing)

Q. Based on these four (4) checks which you claimed the complainant issued to you, you filed two separate criminal cases against them, one, in Pasig City and the other in Quezon City, is that correct?

A. Yes, Your Honor, because the checks were deposited at different banks.

Q. These four checks were accordingly issued to you by the complainants on July 15, 1999, is that correct?

A. I will consult my records, Your Honor, because it's quite a long time. Yes, Your Honor, the first two checks is in the morning and the next two checks is in the afternoon (sic).

COMM. DULAY:

Which are the first two checks?

ATTY. DECIEMBRE:

The first two checks covering check Nos. 46241 and 46242 in the morning. And Check No. 46243 and 46244 in the afternoon, Your Honor.

ATTY. PUNZALAN:

Q. Could you recall what particular time in the morning that these two checks with number 0046241 and 0046242 xxx have been issued to you?

A. I could not remember exactly but in the middle part of the morning around 9:30 to 10:00.

Q. This was issued to you in what particular place?

A. Here in my office at Garnet Road, Ortigas Center, Pasig City.

Q. Is that your house?

A. No, it's not my house?

Q. What is that, is that your law office?

A. That is my retainer client.

Q. What is the name of that retainer client of yours?

ATTY. DECIEMBRE:

Your Honor, may I object because what is the materiality of the question?

ATTY. PUNZALAN:

That is very material. I am trying to test your credibility because according to you these checks have been issued in Pasig in the place of your client on a retainer. That's why I am asking your client...

COMM. DULAY:

The name of the client is not material I think. It is enough that he said it was issued here in Pasig. What building?

ATTY. DECIEMBRE:

AIC Corporate Center, Your Honor.

COMM. DULAY:

What is the materiality of knowing the name of his client's office?

ATTY. PUNZALAN:

Because, Your Honor, the materiality is to find out whether he is telling the truth. The place, Your Honor, according to the respondent is his client. Now I am asking who is that client?

COMM. DULAY:

Your answer.

ATTY. DECIEMBRE:

A. It is AIC Realty Corporation at AIC Building.

Q. And the same date likewise, the complainants in the afternoon issued PNB Check Nos. 0046243 and 0046244, is that correct?

A. Yes.

Q. So would you want to tell this Honorable office that there were four checks issued in the place of your client in Pasig City, two in the morning and two in the afternoon?

A. That is correct, sir.

"Respondent was clearly not being truthful in his narration of the transaction with the complainants. As between his version as to when the four checks were given, we find the story of complainant[s] more credible. Respondent has blatantly distorted the truth, insofar as the place where the transaction involving the four checks took place. Such distortion on a very material fact would seriously cast doubt on his version of the transaction with complainants.

"Furthermore respondent's statements as to the time when the transactions took place are also obviously and glaringly inconsistent and contradicts the written statements made before the public prosecutors. Thus further adding to the lack of credibility of respondent's version of the transaction.

"Complainants' version that they issued blank checks to respondent as security for the payment of a loan of P10,000.00 plus interest, and that respondent filled up the checks in amounts not agreed upon appears to be more credible. Complainants herein are mere employees of the Central Post Office in Manila who had a previous loan

of P10,000.00 from respondent and which has since been paid x x x. Respondent does not deny the said transaction. This appears to be the only previous transaction between the parties. In fact, complainants were even late in paying the loan when it fell due such that they had to pay interest. That respondent would trust them once more by giving them another P200,000.00 allegedly to be used for a business and immediately release the amounts under the circumstances described by respondent does not appear credible given the background of the previous transaction and personal circumstances of complainants. That respondent who is a lawyer would not even bother to ask from complainants a receipt for the money he has given, nor bother to verify and ask them what businesses they would use the money for contributes further to the lack of credibility of respondent's version. These circumstances really cast doubt as to the version of respondent with regard to the transaction. The resolution of the public prosecutors notwithstanding we believe respondent is clearly lacking in honesty in dealing with the complainants. Complainant Franklin Olbes had to be jailed as a result of respondent's filing of the criminal cases. Parenthetically, we note that respondent has also filed similar cases against the co-employees of complainants in the Central Post Office and respondent is facing similar complaints in the IBP for his actions." [15]

The Court's Ruling

We agree with the findings and conclusions of Commissioner Dulay, as approved and adopted by the IBP Board of Governors. However, the penalty should be more severe than what the IBP recommended.

Respondent's Administrative Liability

Membership in the legal profession is a special privilege burdened with conditions.[16] It is bestowed upon individuals who are not only learned in the law, but also known to possess good moral character.[17] "A lawyer is an oath-bound servant of society whose conduct is clearly circumscribed by inflexible norms of law and ethics, and whose primary duty is the advancement of the quest for truth and justice, for which he [or she] has sworn to be a fearless crusader." [18]

By taking the lawyer's oath, an attorney becomes a guardian of truth and the rule of law, and an indispensable instrument in the fair and impartial administration of justice.[19] Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession.[20]

The Code of Professional Responsibility specifically mandates the following:

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

x x x x x x x x

"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.

x x x x 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."

A high standard of excellence and ethics is expected and required of members of the bar.[21] Such conduct of nobility and uprightness should remain with them, whether in their public or in their private lives. As officers of the courts and keepers of the public's faith, they are burdened with the highest degree of social responsibility and

are thus mandated to behave at all times in a manner consistent with truth and honor.[22]

The oath that lawyers swear to likewise impresses upon them the duty of exhibiting the highest degree of good faith, fairness and candor in their relationships with others. The oath is a sacred trust that must be upheld and kept inviolable at all times. Thus, lawyers may be disciplined for any conduct, whether in their professional or in their private capacity, if such conduct renders them unfit to continue to be officers of the court.[23]

In the present case, the IBP commissioner gave credence to the story of petitioners, who said that they had given five blank personal checks to respondent at the Central Post Office in Manila as security for the P10,000 loan they had contracted. Found untrue and unbelievable was respondent's assertion that they had filled up the checks and exchanged these with his cash at Quezon City and Cainta, Rizal. After a careful review of the records, we find no reason to deviate from these findings.

Under the circumstances, there is no need to stretch one's imagination to arrive at an inevitable conclusion. Respondent does not deny the P10,000 loan obtained from him by petitioners. According to Franklin Olbes' testimony on cross-examination, they asked respondent for the blank checks after the loan had been paid. On the pretext that he was not able to bring the checks with him,[24] he was not able to return them. He thus committed abominable dishonesty by abusing the confidence reposed in him by petitioners. It was their high regard for him as a member of the bar that made them trust him with their blank checks.[25]

It is also glaringly clear that the Code of Professional Responsibility was seriously transgressed by his malevolent act of filling up the blank checks by indicating amounts that had not been agreed upon at all and despite respondent's full knowledge that the loan supposed to be secured by the checks had already been paid. His was a brazen act of falsification of a commercial document, resorted to for his material gain.

And he did not stop there. Because the checks were dishonored upon presentment, respondent had the temerity to initiate unfounded criminal suits against petitioners, thereby exhibiting his vile intent to have them punished and deprived of liberty for frustrating the criminal duplicity he had wanted to foist on them. As a matter of fact, one of the petitioners (Franklin) was detained for three months[26] because of the Complaints. Respondent is clearly guilty of serious dishonesty and professional misconduct. He committed an act indicative of moral depravity not expected from, and highly unbecoming, a member of the bar.

Good moral character is an essential qualification for the privilege to enter into the practice of law. It is equally essential to observe this norm meticulously during the continuance of the practice and the exercise of the privilege.[27] Good moral character includes at least common honesty.[28] No moral qualification for bar membership is more important than truthfulness and candor.[29] The rigorous ethics of the profession places a premium on honesty and condemns duplicitous behavior.[30] Lawyers must be ministers of truth. Hence, they must not mislead the court or allow it to be misled by any artifice. In all their dealings, they are expected to act in good faith.[31]

Deception and other fraudulent acts are not merely unacceptable practices that are disgraceful and dishonorable;[32] they reveal a basic moral flaw. The standards of the legal profession are not satisfied by conduct that merely enables one to escape the penalties of criminal laws.[33]

Considering the depravity of the offense committed by respondent, we find the penalty recommended by the IBP of suspension for two years from the practice of law to be too mild. His propensity for employing deceit and misrepresentation is reprehensible. His misuse of the filled-up checks that led to the detention of one petitioner is loathsome.

In *Eustaquio v. Rimorin*,[34] the forging of a special power of attorney (SPA) by the respondent to make it appear

that he was authorized to sell another's property, as well as his fraudulent and malicious inducement of Alicia Rubis to sign a Memorandum of Agreement to give a semblance of legality to the SPA, were sanctioned with suspension from the practice of law for five years. Here, the conduct of herein respondent is even worse. He used falsified checks as bases for maliciously indicting petitioners and thereby caused the detention of one of them.

WHEREFORE, Atty. Victor V. Diciembre is found guilty of gross misconduct and violation of Rules 1.01 and 7.03 of the Code of Professional Responsibility. He is hereby indefinitely **SUSPENDED** from the practice of law effective immediately. Let copies of this Decision be furnished all courts as well as the Office of the Bar Confidant, which is directed to append a copy to respondent's personal record. Let another copy be furnished the National Office of the Integrated Bar of the Philippines.

SO ORDERED.

Davide, Jr., C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, Tinga, Chico-Nazario, and Garcia, JJ., concur.

[1] Rollo, pp. 1-10.

[2] *Id.*, pp. 56-61.

[3] Records, Vol. IV.

[4] Petitioners' Memorandum was received by the IBP-CBD on September 16, 2003; Records, Vol. II, pp. 182-192. Respondent did not submit any Memorandum, but filed a Motion to Dismiss on March 4, 2004; Records, Vol. II, pp. 194-198.

[5] Rollo, p. 1.

[6] *Id.*, p. 2.

[7] *Id.*, p. 3.

[8] Annex "A" of Petition; *id.*, p. 11.

[9] Affidavit of Franklin Olbes, p. 3; Records, Vol. II, p. 21.

[10] Rollo, p. 4.

[11] *Id.*, p. 5.

[12] *Id.*, pp., 7-8.

[13] *Id.*, p. 8.

[14] *Id.*, pp. 56-61.

[15] Report and Recommendation dated January 30, 2004, pp. 10-14.

[16] *Lao v. Medel*, 405 SCRA 228, July 1, 2003; *Eustaquio v. Rimorin*, 399 SCRA 422, March 24, 2003; *Sebastian v. Atty. Calis*, 372 Phil. 673, September 9, 1999; *Marcelo v. Javier, Sr.*, 214 SCRA 1, September 18, 1992.

[17] Ernesto L. Pineda, *Legal and Judicial Ethics* (1999), p. 22.

[18] *Re: Administrative Case No. 44 of the RTC, Br. IV, Tagbilaran City, Against Atty. Samuel C. Occeña*; 383

SCRA 636, 638, July 3, 2002, per curiam.

[19] *Busiños v. Atty. Ricafort*, 347 Phil. 687, December 22, 1997.

[20] *Malecdan v. Pekas*, 421 SCRA 7, January 26, 2004; *Rivera v. Corral*, 384 SCRA 1, July 4, 2002; *Nakpil v. Valdes*, 286 SCRA 758, March 4, 1998.

[21] *Sanchez v. Somoso*, 412 SCRA 569, October 3, 2003; *Lao v. Medel*, 405 SCRA 227, July 1, 2003; *Eustaquio v. Rimorin*, 399 SCRA 422, March 24, 2003.

[22] *Sanchez v. Somoso*, supra; *Sabayle v. Tandayag*, 158 SCRA 497, March 8, 1988.

[23] *Garcia v. Manuel*, 395 SCRA 386, January 20, 2003.

[24] TSN, May 20, 2002, pp. 65-66.

[25] TSN, February 4, 2002, p. 18.

[26] TSN, February 4, 2002, pp. 44-45.

[27] *Vda. de Espino v. Presquito*, 432 SCRA 609, June 28, 2004; *Rural Bank of Silay, Inc. v. Pilla*, 350 SCRA 138, January 24, 2001; *Rayos-Ombac v. Rayos*, 349 Phil. 8, January 28, 1998; *Villanueva v. Sta. Ana*, 315 Phil. 795, July 11, 1995.

[28] *Tan v. Sabandal*, 206 SCRA 473, February 24, 1992.

[29] *Constantino v. Saldares*, 228 SCRA 233, December 7, 1993; *Tan v. Sabandal*, 206 SCRA 473, February 24, 1992.

[30] *Custodio Sr. v. Esto*, 81 SCRA 517, February 22, 1978.

[31] Article 19. "Every person must in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith." New Civil Code.

[32] *Sebastian v. Atty. Calis*, 372 Phil. 673, September 9, 1999.

[33] *Sabayle v. Tandayag*, supra citing *In re Del Rosario*, 52 Phil. 399, 1928.

[34] 399 SCRA 422, March 24, 2003.

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