

AURORA D. CERDAN, PETITIONER, VS. ATTY. CARLO GOMEZ, RESPONDENT.*A.C. No. 9154 (Formerly CBD No. 07-1965). March 19, 2012*

Ponente: MENDOZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-9154/>**MENDOZA, J.:**

Before the Court is the undated Resolution[1] of the Board of Governors of the Integrated Bar of the Philippines (IBP) finding Atty. Carlo Gomez (Atty. Gomez) liable for violating Canon 16 of the Code of Professional Responsibility and recommending that he be suspended from the practice of law for six (6) months.

The case stemmed from the affidavit-complaint[2] of Aurora D. Cerdan (complainant), filed before the Committee on Bar Discipline of the IBP on April 16, 2007. The complaint alleged that complainant and widower Benjamin Rufino (Rufino) lived together as husband and wife; that during their cohabitation, they purchased several real properties; that they maintained savings accounts at First Consolidated Bank (FCB), at the Quezon and Narra branches in Palawan, all of which were in the name of Rufino; that when Rufino died on December 28, 2004, complainant sought the legal advice of Atty. Gomez as to what to do with the properties left by Rufino; and that she paid Atty. Gomez attorney's fees in the amount of P152,000.00 but only the amount of P100,000.00 was reflected in the receipt.

Complainant claimed that she authorized Atty. Gomez, thru a special power of attorney (SPA), to settle Rufino's savings account in FCB-Quezon branch; that the original agreement of a 50-50 sharing between complainant and the children of Rufino, as proposed by the FCB counsel, was replaced by the Compromise Agreement entered into by Atty. Gomez, wherein the heirs of Rufino got 60% of the share while she only received 40%; that Atty. Gomez included in the Compromise Agreement the savings account in FCB-Narra Branch when the scope of the SPA was only the account in FCB-Quezon branch; that Atty. Gomez took her bank book for the FCB account in Narra Branch containing deposits in the amount of more or less P165,000.00 and never returned it to her; and that Atty. Gomez withdrew from her FCB accounts and thereafter gave the amount of P290,000.00 and uttered, "ITO NA LAHATANG PERA MO ATANG SA AKIN NAKUHA KO NA."

Complainant also narrated that sometime in 2000, Atty. Gomez was her counsel in a case against a certain Romeo Necio (Necio) and paid him attorney's fees and judicial fee in the amount of PI 5,000.00, and P8,000.00, respectively; that the parties agreed to settle amicably and decided that Atty. Gomez would collect from Necio the amount agreed upon; and that as of the filing of the complaint, Atty. Gomez has yet to remit to complainant the amount of P12,000.00.

On April 16, 2007, the IBP required Atty. Gomez to file his answer.[3]

In his Answer,[4] Atty. Gomez admitted that Rufino engaged his legal services in various cases. He, however, denied the accusations stated in the complaint-affidavit filed by complainant.

Atty. Gomez averred that he was not aware that Rufino and complainant were not legally married because they

represented themselves as husband and wife so the cases filed in court were under the names of spouses Benjamin and Aurora Rufino and that he only learned of said fact upon the death of Rufino in December 2004. Atty. Gomez claimed that when he had learned that complainant was not the legal wife, he exerted earnest effort to locate the surviving heirs of Rufino and substitute them in the cases filed in court; that he informed complainant of the consequences of her status and relationship with the late Rufino including her possible denial of any share from his estate; and that he advised complainant that he would make extra effort to persuade the legitimate heirs of Rufino to discuss a possible settlement and share in the estate or ask for compassion if she would be denied her share in the estate.

With respect to the uncollected amounts, Atty. Gomez denied the same and said that all the documents relating to the indebtedness were in the name of Rufino and that he could not do anything if the legitimate heirs of Rufino collected the same from the debtors.

As to the savings account in FCB-Quezon branch, Atty. Gomez explained that said account was in the name of Rufino; that he negotiated with the legitimate heirs of Rufino for the share of the complainant; and that the proceeds thereof, in the amount of P442,547.88, were properly turned over to complainant as evidenced by an acknowledgment receipt.

Thereafter, the Commission of Bar Discipline through Commissioner Jose Dela Rama, Jr. (Commissioner Dela Rama) conducted a mandatory conference and thereafter required the parties to submit their verified position papers. Upon filing of their respective position papers, the case was submitted for resolution.

In his Report and Recommendation,[5] Commissioner Dela Rama wrote his findings as follows:

That it appears on record that complainant granted the respondent a Special Power of Attorney the specific powers of which are as follows:

- To enter into amicable settlement of my account with the First Consolidated Bank, Quezon Branch with Savings Account No. 30-0201-01020-0. (Underlining supplied)
- To agree to such matters as they may deem fit and proper to be done in connection with the said savings account
- To withdraw the said amount as agreed on the settlement, receive and sign for and in my behalf.

The Special Power of Attorney appears to have been signed and notarized on February 28, 2008 at Puerto Princesa City.

It appears further that as alleged, the complainant maintains two accounts at First Consolidated Bank. One is in Quezon, Palawan Branch in the amount of P442,547.88. The other account being maintained at FBC Narra Branch contains an amount equivalent to P165,000.00, more or less.

According to the complainant, she did not authorize the respondent to enter into a settlement with respect to the properties left by Benjamin Rufino.

Xxxx

To begin with, respondent was given a Special Power of Attorney with respect to FCB Quezon account. That as far as the respondent can recall the account with FCB Quezon Branch had Pi million, more or less.

COMM. DE LA RAMA: At that time, how much is the amount of deposit in FCB Quezon?

Atty. Gomez: I believe, Your Honor, its Php 1million. COMM. DE LA RAMA: How much is the Narra Branch?

Atty. Gomez: I am not aware, Your Honor. In fact, I have not even seen the bank account passbook.

(TSN pages 30-31, September 7, 2007)

Based on the Compromise Agreement marked as Annex "F," with respect to Quezon Branch with account No. 3030-0201-0102-o, the same shall be divided as follows: 60 percent goes to the heirs of Benjamin Rufino, Jr. and 40 percent goes to Aurora Cerdan who was then presented by the respondent. This time, it was Atty. Gomez who signed the said agreement by virtue of the Special Power of Attorney dated February 28, 2005.

While it is clear that in the Compromise Agreement where the complainant was supposed to receive 40% refers to FCB Quezon Branch, it cannot also be denied that in the same Compromise Agreement it speaks of FCB Narra Branch which, as admitted by the respondent, he has no authority to bind the complainant.

But in the said Compromise Agreement, it cannot be denied that the respondent entered into an agreement with respect to FCB Narra Branch. Portion of the agreement reads as follows:

Xxxx

The first question is, when the respondent entered into a Compromise Agreement on March 1, 2005, was he acting within the powers granted to him in the Special Power of Attorney.

The undersigned Commissioner believes that the respondent acted beyond the powers granted to him by virtue of the Special Power of Attorney.

It is very specific that the respondent was only authorized to enter into an amicable settlement with respect to FCB Quezon Branch and not with the account in FCB Narra Branch.

Xxxx

The respondent, despite the fact that he was not armed with a particular document authorizing him to enter into an agreement with respect to Narra account, entered and signed a compromise agreement to the prejudice and surprise of his client. In effect, he forfeited the lawful share of his client with respect to FCB Narra Branch.

Xxxx

According to the complainant, the amount of cash that was given to the respondent amounted to P152,000.00 as attorney's fees. The respondent got the money at her house in Quezon, Palawan and the following week, the complainant went to the office of the respondent at Puerto Princesa to get receipt of the P152,000.00. It was at this point when the respondent allegedly stated that he only received P100,000.00 and for this reason, an Acknowledgement Receipt (annex "C") was issued by the law office of the respondent.

Respondent on the other hand, during the preliminary conference stated the following:

COMM. DE LA RAMA, JR.: What I am asking you is did you receive Php100,000.00 from the sendees rendered from Mrs. Cerdan?

Atty. Gomez: Your Honor, please. That is the reason why I likewise fired out my secretary.

COMM. DE LA RAMA, JR.: Why, did you not receive Php 100,000.00?

Atty. Gomez: I deny that I received Php100,000.00, Your Honor.

COMM. DE LA RAMA, JR.: So you are telling us that it was your secretary who received the P100,000.00.

Atty. Gomez: Probably, Your Honor.

COMM. DE LA RAMA, JR.: Did you file any action against your secretary?

Atty. Gomez: I cannot locate her anymore.

COMM. DE LA RAMA, JR.: You know what to do, you are a lawyer. And did you file any civil case?

Atty. Gomez: None, Your Honor because the family went to my office asking for compassion.

(TSN pages 107-109, October 5, 2007)

What puzzles the undersigned Commissioner is the complainant even stated that she did not give P100,000.00 to the secretary.

COMM. DE LA RAMA, JR.: Ma'am Cerdan, when you went to the office of Atty. Gomez, did you give P100,000.00 to the secretary?

Mrs. Cerdan: No.

(TSN Page 110, October 5, 2007)

Further, Mrs. Cerdan did not promise anything to Atty. Gomez by way of compensation. The complaint stated the following:

COMM. DE LA RAMA, JR.: Okay. Liliwanagin ko lang para sa kapakanan ng lahat, meron po ba kayong ipinangako naman kay Atty. Gomez na kung maiaayos niya ang usaping ito ay magkakaroon siya ng attorney's fees?

Mrs. Cerdan: Wala po.

Likewise, on the part of the respondent, he claims that he has no agreement with respect to his professional fees.

COMM. DE LA RAMA, JR.: How about you Atty. Gomez, any agreement with complainant?

Atty. Gomez: None, Your Honor. I volunteer myself to assist Mrs. Cerdan.

COMM. DE LA RAMA, JR.: Without expecting anything?

Atty. Gomez: Yes, Your Honor, in fact, I spent money to assist her.

(TSN Page 111, October 5, 2007)

X x x x

Although the respondent is denying that he received a compensation for the services rendered, we cannot deny the fact that his own law office issued an acknowledgement receipt on March 9, 2005 in the amount of P 100,000.00. Although the respondent is blaming the secretary, the undersigned is not convinced that his law office did not receive certain consideration for the services rendered. Unless this case is really under the IBP Legal Aid Program. There is nothing wrong with a lawyer receiving reasonable compensation for the services rendered. In fact, under

Canon 20 of the Code of Professional Responsibility, a lawyer shall charge only fair and reasonable fees. Whether the lawyer's sendees were solicited or they were offered to the client for his assistance, in as much as these services were accepted and made use of the latter, there is a tacit and mutual consent as to the rendition of the services, which gives rise to the obligation upon the person benefited by the services to make compensation therefore. Lawyers are thus as much entitled to judicial protection against injustice on the part of their clients as the clients are against abuses on the part of the counsel. The duty of the court is not only to see that lawyers act in

a proper and lawful manner, and also see that lawyers are paid their just and lawful fees (Camacho vs. Court of Appeals, et. al. G.R. No. 127520, February 9, 2007, 515 SCRA 242)."[6]

Commissioner Dela Rama found that Atty. Gomez violated Canon 16 of the Code of Professional Responsibility and recommended that he be suspended from the practice of law for six (6) months.

On June 5, 2006, the IBP Board of Governors passed its Resolution[7] adopting and approving the Report and Recommendation of the Investigating Commissioner.

Atty. Gomez moved for reconsideration,[8] but in its Resolution No. XIX-2011-415 dated June 26, 2011, the IBP Board of Governors denied his motion for reconsideration.

The Court agrees with the findings of the IBP.

A lawyer-client relationship is highly fiduciary in nature and it requires a high standard of conduct and demands utmost fidelity, candor, fairness, and good faith. Once a lawyer agrees to handle a case, he is required by the Canons of Professional Responsibility to undertake the task with zeal, care and utmost devotion.[10]

In the case at bench, Atty. Gomez failed to observe the utmost good faith, loyalty, candor, and fidelity required of an attorney in his dealings with complainant. Atty. Gomez exceeded his authority when he entered into a compromise agreement with regard to the FCB account in Quezon Branch, where he agreed that complainant shall receive 40 percent of the proceeds while the heirs of Rufino shall get the 60 percent, which was contrary to the original agreement of 50-50 sharing. Atty. Gomez likewise acted beyond the scope of the SPA when he included in the compromise agreement the FCB account in Narra branch when it was issued only with respect to the FCB account, Quezon branch. Moreover, Atty. Gomez entered into a compromise agreement with respect to the other properties of Rufino without authority from complainant.

Furthermore, Atty. Gomez failed to account for the money he received for complainant as a result of the compromise agreement. Worse, he remitted the amount of P290,000.00 only, an amount substantially less than the share of complainant. Records reveal that complainant's share from the FCB savings accounts amounted to P442,547.88 but only P290,000.00 was remitted by Atty. Gomez after deducting his share.

This Court will not tolerate such acts. Atty. Gomez has no right to unilaterally retain his lawyer's lien.[11] Having obtained the funds in the course of his professional employment, Atty. Gomez had the obligation to account and deliver such funds to his client when they became due, or upon demand. Moreover, there was no agreement between him and complainant that he could deduct therefrom his claimed attorney's fees.

The Code of Professional Responsibility specifically Section 16, provides:

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

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.

X x x x

The fiduciary nature of the relationship between counsel and client imposes on a lawyer the duty to account for the money or property collected or received for or from the client.[12] He is obliged to render a prompt accounting of all the property and money he has collected for his client.[13]

Lawyers should always live up to the ethical standards of the legal profession as embodied in the Code of Professional Responsibility. Public confidence in law and in lawyers may be eroded by the irresponsible and improper conduct of a member of the bar. Thus, every lawyer should act and comport himself in a manner that

would promote public confidence in the integrity of the legal profession.[14]

The penalty for violation of Canon 16 of the Code of Professional Responsibility usually ranges from suspension for six months, 5 to suspension for one year,[16] or two years[17] and even disbarment[18] depending on the amount involved and the severity of the lawyer's misconduct. Considering that this is Atty. Gomez's first offense, the penalty of suspension for one (1) year is a sufficient sanction.

WHEREFORE, respondent Atty. Carlo Gomez is hereby declared GUILTY of violation of Canon 16 of the Code of Professional Responsibility and is SUSPENDED from the practice of law for a period of one (1) year effective upon receipt of this Resolution, with a WARNING that a repetition of the same or similar acts will be dealt with severely.

Let a copy of this decision be furnished the Court Administrator for distribution to all courts of the land, the IBP, the Office of the Bar Confidant, and entered into the personal records of Atty. Gomez as an attorney and as a member of the Philippine Bar.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Abad, and Perlas-Bernabe, JJ., concur

[1] Rollo, p. 433.

[2] Id. at 2-3.

[3] Id. at 29.

[4] Id. at 33-40.

[5] Id. at 434-452.

[6] Id. at 439-450.

[7] Id. at 433.

[8] Id. at 380-388.

[9] *Mucarilay v. Serina*, 497 Phil. 348, 356 (2005).

[10] *Rollon v. Naraval*, 493 Phil. 24, 29 (2005).

[11] *Aldovino v. Pujalte*, 467 Phil. 556, 561 (2004).

[12] *Belleza v. Macasa*, A.C. No. 7815, July 23, 2009, 593 SCRA 549, 560.

[13] *Bayonla v. Reyes*, A.C. No. 4808, November 22, 2011.

[14] *Belleza v. Macasa*, supra note 12 at 562.

[15] *Espiritu v. Ulep*, 497 Phil. 339, (2005).

[16] *Villanneva v. Atty. Ishiwala*, 486 Phil. I (2004); *Aldovino v. Pujalte*, supra note 11.

[17] *Morteru v. Atty. Pagalpalan*, 499 Phil. 93 (2005).

[18] *Hernandez v. Atty. Go*, 490 Phil. 420 (2005).

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.