



Republic of the Philippines
Supreme Court
Manila

EN BANC

SUPREME COURT OF THE PHILIPPINES
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BRYCE RUSSEL MITCHELL,
Complainant,

A.C. No. 10713
[Formerly CBD Case No. 15-4731]

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS,
GAERLAN, and
BALTAZAR-PADILLA, * JJ.

- versus -

ATTY. JUAN PAOLO F. AMISTOSO,
Respondent.

Promulgated:

September 8, 2020,

X-----X

DECISION

PERALTA, C.J.:

Before us is a Complaint-Affidavit¹ filed by Bryce Russel Mitchell (*complainant*) against respondent Atty. Juan Paolo F. Amistoso (*Atty. Amistoso*), docketed as A.C. No. 10713 for violation of Lawyer's Oath and Code of Professional Responsibility.

* On leave.
1 Rollo, pp. 1-4.

The facts are as follows:

Complainant Bryce Russel Mitchell, a citizen of Canada, married, and with residence at 848-F Mayon St., Plaridel 1, Malabánias, Angeles City, Pampanga, alleged that he and Atty. Amistoso had agreed to a professional fee in the amount of Six Hundred Fifty Thousand Pesos (₱650,000.00) for the handling of complainant's annulment case, as indicated in the engagement proposal. The annulment case was thereafter filed and docketed as Civil Case No. 13-13953, entitled "*Bryce Russel Mitchell vs. Mitchie Mae Benerable*," before Branch 113, Regional Trial Court of Pasay City.

During the pendency of the case, complainant alleged that Atty. Amistoso made several cash advances from him, and the total amount he gave to him amounted to ₱800,000.00, which was over and above the agreed professional fee. Complainant further averred that, on March 26, 2014, Atty. Amistoso, due to financial difficulties, also borrowed money from him in the amount of ₱65,000.00, as evidenced by a promissory note marked as Annex "B" of the Complaint-Affidavit.

However, in the course of the annulment case, complainant lamented that Atty. Amistoso vanished completely and failed to return his e-mails and telephone calls. During the scheduled hearings of the case, Atty. Amistoso also failed to appear, as evidenced by Court Orders dated August 28, 2014 and September 25, 2014, respectively.² Thus, complainant was constrained to hire another lawyer, as collaborating counsel, to handle his annulment case, as evidenced by Formal Entry of Appearance³ dated November 4, 2014.

On February 23, 2015, the Court resolved to require Atty. Amistoso to Comment on the complaint filed against him for violation of the lawyer's oath and the Code of Professional Responsibility.⁴

In a Resolution⁵ dated August 5, 2015, the Court resolved to dispense with the filing of the Comment of Atty. Amistoso, it appearing that the latter has failed to file his Comment on the complaint against him. The Court, thus, resolved to refer the instant complaint to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation within ninety (90) days from receipt.

² *Id.* at 11 and 12.

³ *Id.* at 14.

⁴ *Id.* at 17.

⁵ *Id.* at 19.

Before the IBP, a mandatory conference was scheduled on November 26, 2015, but only the complainant appeared. The Commissioner then proceeded to direct the IBP staff to locate the addresses of Atty. Amistoso. Succeeding notices of the conference were sent to Atty. Amistoso's other addresses, but the latter still failed to appear during the scheduled conferences. Thus, on March 9, 2016, the Commissioner ordered the conference terminated and directed the parties to file their respective Position Papers. Both parties, however, failed to file their Position Papers. Thus, the instant case was submitted for report and recommendation.

In its Report and Recommendation⁶ dated November 10, 2017, the IBP-Commission on Bar Discipline (*IBP-CBD*) recommended that Atty. Amistoso be suspended from the practice of law for two (2) years for his breach of duties under Canons 17 and 18, and Rule 16.04 of the Code of Professional Responsibility.

In a Resolution⁷ dated June 29, 2018, the IBP-Board of Governors adopted and approved, with modification, the IBP-CBD's report and recommendation, and instead recommended that Atty. Amistoso be suspended from the practice of law for two (2) years and fined in the amount of Ten Thousand Pesos (₱10,000.00). It, likewise, recommended that Atty. Amistoso be ordered to return to the complainant the amount of Eight Hundred Sixty-Five Thousand Pesos (₱865,000.00).

RULING

We sustain the findings of the IBP-CBD, except its recommended penalty.

Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such.⁸

⁶ *Id.* at 37-42.

⁷ *Id.* at 35-36.

⁸ *Ylaya v. Atty. Gacott*, 702 Phil. 390, 407 (2013).

Hence, 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.⁹ Corollary, an administrative proceeding against a lawyer continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or *as in this case*, the failure of respondent to answer the charges against him despite numerous notices.

Here, the Court has given Atty. Amistoso several opportunities to answer the complaint against him yet no answer came. From the records, the Resolution dated February 23, 2015 sent by the Court to Atty. Amistoso was received by the latter on March 26, 2015 per Court's Registry Return Card No. 23101, yet he failed to comply with the Court's reminders.

The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Silence in such cases is almost always construed as implied admission of the truth thereof. Consequently, we are left with no choice but to deduce his implicit admission of the charges levelled against him. *Qui tacet consentive videtur*. Silence gives consent. This instant administrative case will, thus, proceed despite Atty. Amistoso's unwillingness to cooperate in the proceedings.

In the instant case, records show that complainant engaged the services of Atty. Amistoso for the filing of a civil case for annulment of marriage. However, despite such agreement, complainant lamented that Atty. Amistoso failed to comply with his undertakings without giving any valid reason, as shown by his failure to attend the court hearings for the annulment case. He, likewise, failed to communicate with complainant, without any reason, thus, left his client's cause in quandary.

It must be stressed that no lawyer is obliged to advocate for every person who may wish to become his client, but once he agrees to take up the cause of his client, the lawyer owes fidelity to such cause and must be mindful of the trust and confidence reposed in him. Among the fundamental rules of ethics is the principle that an attorney who undertakes an action impliedly stipulates to carry it to its termination, that is, until the case becomes final and executory. A lawyer is not at liberty to abandon his client and withdraw his services without any reasonable cause and only upon

⁹ *Id.*



notice appropriate in the circumstances. Any dereliction of duty by a counsel affects the client.¹⁰

Canon 18, Rule 18.03 requires that a lawyer “shall not neglect a legal matter entrusted to him, and his negligence in connection [therewith] shall render him liable.” What amounts to carelessness or negligence in a lawyer’s discharge of his duty to his client is incapable of an exact formulation, but the Court has consistently held that the mere failure of a lawyer to perform the obligations due his client is *per se* a violation.¹¹ Thus, by mere failing to attend court hearings with justifiable reasons, and simply vanishing in thin air, Atty. Amistoso was remiss in the discharge of his responsibility. He, thus, violated the Code of Professional Responsibility.

Further, it likewise appeared that Atty. Amistoso obtained a loan from complainant in the amount of ₱65,000.00, and failed to return the same, as evidenced by the promissory note he issued in favor of the complainant, in violation of Rule 16.04 of the CPR.¹²

We have previously emphasized that it is unethical for a lawyer to obtain loans from complainant during the existence of a lawyer-client relationship between them. 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. 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. The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. 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.¹³

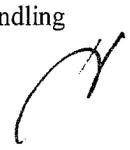
Aside from Atty. Amistoso’s violation of his duties as a lawyer. We also find deplorable his defiant stance against the IBP and the Court as demonstrated by his repetitive disregard of the IBP’s directives, and the Court’s orders to file his comment on the complaint. He has missed all scheduled hearings set by the IBP. Due to his non-chalant attitude on the proceedings before the IBP and the Court, this case has dragged on for years. There is, thus, no question that his failure or obstinate refusal without

¹⁰ *Venterez v. Atty. Cosme*, 561 Phil. 479, 485 (2007).

¹¹ *Ylaya v. Atty. Gacott*, *supra* note 8.

¹² 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.

¹³ *Yu v. Atty. Dela Cruz*, 778 Phil. 557, 564 (2016).



justification or valid reason to comply with the IBP's directives and the Court's orders indicate a lack of respect for rules and procedures.¹⁴

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. Considering Atty. Amistoso's propensity to disregard not only the laws of the land but also the lawful orders of the Court, it only shows him to be wanting in moral character, honesty, probity and good demeanor.

PENALTY

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the Code of Professional Responsibility. For the practice of law is "a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character." The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.¹⁵

In the instant case, Atty. Amistoso demonstrated not just a negligent disregard of his duties as a lawyer but a wanton betrayal of the trust of his client, the Court, and the public, in general. His acts constitute malpractice and gross misconduct in his office as an attorney. Atty. Amistoso's misconduct, and appalling indifference to his duty to his client, the courts and society render him unfit to continue discharging the trust reposed on him. For the injury he caused to the complainant because of his malpractice, he must be made to suffer the commensurate penalty. Thus, we deem a three-year suspension from the practice of law an appropriate penalty for Atty. Amistoso's gross misconduct in his professional dealings with the complainant.

Further, the Court would have required Atty. Amistoso to return the moneys which he received as attorney-in-fact for handling the annulment case of complainant, however, due to lack of evidence, we cannot determine the exact amount Atty. Amistoso received as professional fees. Complainant failed to prove that he has actually paid the amount of ₱800,000.00 as professional fees as the records are devoid of evidence showing any proof of payment. The unsigned engagement proposal, while it contains the proposed professional fee, cannot be raised as evidence to prove that he had actually paid such amount to Atty. Amistoso.

¹⁴ *POI Caspe v. Atty. Mejica*, 755 Phil. 312, 321 (2015).

¹⁵ *Jimenez v. Atty. Francisco*, 749 Phil. 551, 574 (2014).

As to the amount of ₱65,000.00 which Atty. Amistoso borrowed from complainant due to the former's family's financial difficulties, We, likewise, cannot require Atty. Amistoso to return the same to complainant. 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. 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.¹⁶ Accordingly, We cannot order Atty. Amistoso to make the payment for the ₱65,000.00 he borrowed from complainant.

WHEREFORE, the Resolution dated June 29, 2018 of the IBP-Board of Governors, which found respondent Atty. Juan Paolo F. Amistoso **GUILTY** of violation of the Lawyer's Oath and Rule 16.04 of the Code of Professional Responsibility, is **AFFIRMED**. He is **SUSPENDED** for a period of three (3) years from the practice of law, effective upon receipt of this Decision. Atty. Amistoso is **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Atty. Juan Paolo F. Amistoso is **DIRECTED** to formally **MANIFEST** to this Court, upon receipt of this Decision, the date of his receipt which shall be the starting point of his suspension. He shall furnish a copy of this Manifestation to all the courts and *quasi-judicial* bodies where he has entered his appearance as counsel.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Amistoso as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

SO ORDERED.

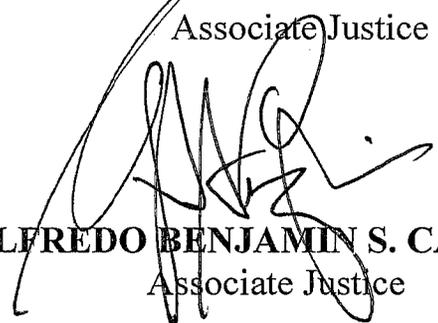

DIOSDADO M. PERALTA
Chief Justice

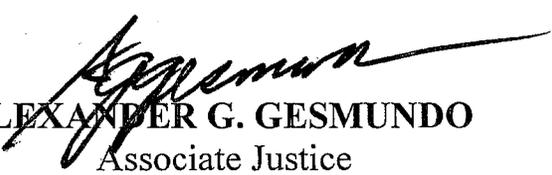
¹⁶ *Yu v. Atty. Dela Cruz*, *supra* note 13, at 566.

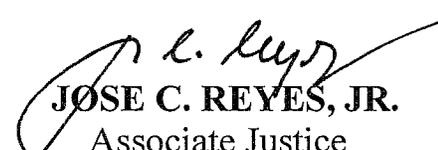
WE CONCUR:


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice

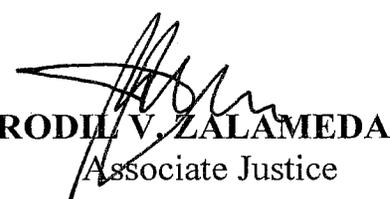

JOSE C. REYES, JR.
Associate Justice

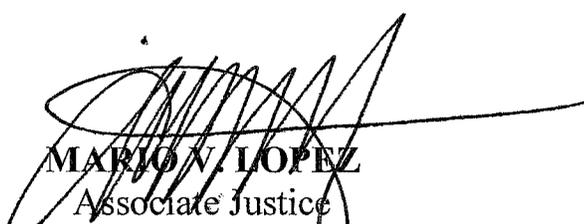

RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice

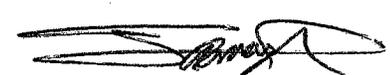

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HENRI JEAN PAUL B. INTING
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RODIL V. ZALAMEDA
Associate Justice

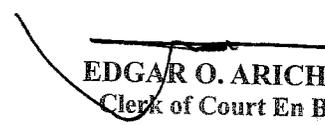

MARIO N. LOPEZ
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EDGARDO L. DELOS SANTOS
Associate Justice


SAMUEL H. GAERLAN
Associate Justice

On leave
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court