



Republic of the Philippines  
**Supreme Court**  
Manila

**THIRD DIVISION**

**NOTICE**

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated August 9, 2023, which reads as follows:*

**“A.C. No. 13641 [Formerly CBD Case No. 19-5960] (MOHAMMAD SHAFI and ROSE MARIE SHAFI, Complainants v. ATTY. JOSE R. BAWALAN, Respondent).** — This administrative matter has its precursor in the Affidavit-Complaint<sup>1</sup> lodged by Mohammad Shafi and Rose Marie Shafi (complainants) before the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) and docketed as CBD Case No. 19-5960. They assert that Atty. Jose R. Bawalan (respondent) transgressed several provisions<sup>2</sup> of the Code of Professional Responsibility (CPR) of 1988, namely:

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

**Rule 15.06.** – A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

**Rule 18.04.** – A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client’s request for information.

Culled from the records are the following material operative facts:

On October 30, 2015, complainants were apprehended during a buy-bust operation in Amadeo, Cavite. As a result, they were charged with illegal sale and possession of a dangerous drug known as valium or diazepam, docketed as Criminal Case Nos. TG-15-1541 and TG-15-1542, respectively. While complainants were detained at the Amadeo Municipal Police Station, respondent introduced himself and offered his legal services, to which they obliged. For this purpose, they paid him Thirty Thousand Pesos (₱30,000.00) as his acceptance fee.<sup>3</sup> Thereupon, respondent filed a Motion for Preliminary Investigation and to Transfer Detention<sup>4</sup> before Branch 18, Regional Trial

<sup>1</sup> *Rollo*, pp. 2-6.

<sup>2</sup> *Id.* at 5.

<sup>3</sup> *Id.* at 7. Acknowledgment Receipt dated November 3, 2015 marked as Annex “A.”

<sup>4</sup> *Id.* at 8-10.

Court (RTC) of Tagaytay City. This was granted on December 7, 2015.<sup>5</sup>

Not long after, respondent visited complainants in their detention cell, bragging that he could talk to the presiding judge and the prosecutor to have their criminal cases dismissed. To this end, he asked for Three Hundred Thousand Pesos (P300,000.00) as representation expenses. However, complainants told him that they would have to seek help from their relatives to raise such a huge amount.<sup>6</sup>

On December 14, 2015, complainants received a call from respondent, instructing them to deposit to the Bank of the Philippine Islands (BPI) account of his son, Anthony Francis Bugayong Bawalan (Anthony), the amount of One Hundred Thousand Pesos (P100,000.00) for their cases to begin their course. They promptly complied with respondent's instructions on even date.<sup>7</sup> A week after, respondent demanded an additional sum in the amount of Fifty Thousand Pesos (P50,000.00), which complainants heeded. The deposit was made on December 21, 2015 to Anthony's BPI account.<sup>8</sup> From that time on complainants never heard from respondent until the hearing scheduled on January 11, 2016, when he evaded their queries about the status of their cases.<sup>9</sup>

At the interstice, complainants were transferred to the Cavite Provincial Jail. On one occasion, they encountered respondent at the said facility, who assured them that their cases would be dismissed in March 2016. Still and all, their trial carried on. When they confronted him, he avowed this time around that they would be released on bail in May 2016. Once again, respondent's guarantee did not materialize, prompting complainants to look into the records of their cases themselves. To their dismay, they discovered that the Office of the Provincial Prosecutor issued on May 17, 2016 a Resolution<sup>10</sup> recommending that the records of the cases be returned to the RTC for proper disposition as there was no discernible reason to reverse the finding of probable cause made against them by the inquest prosecutor.<sup>11</sup> Worse, there was no indication that respondent filed a motion for bail.<sup>12</sup>

With these developments, complainants demanded the return of the sum in the aggregate amount of One Hundred Fifty Thousand Pesos (P150,000.00) which they deposited in the bank account of Anthony. However, respondent merely reassured them of his continuous active participation in the prosecution of their cases. Instead of apologizing for the manner which he handled their cases, he became furious at complainants when they insisted that he withdraw his appearance as their counsel.<sup>13</sup>

<sup>5</sup> Id. at 2-3. Affidavit-Complaint.

<sup>6</sup> Id. at 3.

<sup>7</sup> Id. at 11. Deposit/Payment Receipt marked as Annex "C."

<sup>8</sup> Id. Deposit/Payment Receipt marked as Annex "D."

<sup>9</sup> Id. at 3-4. Affidavit-Complaint.

<sup>10</sup> Id. at 12-13. The Resolution was signed by Assistant Provincial Prosecutor Mary Jane Valeza-Maranan.

<sup>11</sup> Id. at 13.

<sup>12</sup> Id. at 4. Affidavit-Complaint.

<sup>13</sup> Id. at 4-5.

Eventually, respondent withdrew his appearance as counsel in the two criminal cases but did not return the money paid by complainants. Their demand letter<sup>14</sup> having been brushed aside by respondent, they commenced the instant disbarment case against him for committing acts of professional misconduct and for failing to live up to the ethical standards expected of all members of the Bar.<sup>15</sup>

Fulminating against the imputations made by complainants, respondent asseverated that owing to the gravity of the charges against them, the total acceptance fee would have to be Two Hundred Thousand Pesos (₱200,000.00), payable on a staggered basis.<sup>16</sup> Upon receiving the initial payment of ₱30,000.00, he filed a Motion for Preliminary Investigation and to Transfer Detention.<sup>17</sup> Regrettably, notwithstanding the conduct of a preliminary investigation, the public prosecutor still found probable cause to indict complainants. In truth, they were the ones who asked him to perform underhanded or dishonest acts to dispose their cases with dispatch. After refusing to do so, they demanded that he return to them the ₱150,000.00 which they paid in the interim. Complainant then explained that he could not return the acceptance fee to them since he was not remiss in his duties.<sup>18</sup> Ultimately, he decided to withdraw his appearance in light of his strained professional relationship with them.<sup>19</sup>

During the initial mandatory conference scheduled on December 12, 2019,<sup>20</sup> none of the parties attended.<sup>21</sup> Only complainants and their counsel appeared<sup>22</sup> at the mandatory conference held on February 27, 2020 owing to the urgent motion to cancel the mandatory conference filed by respondent earlier.<sup>23</sup> The parties were then directed to submit their mandatory conference briefs at least five days before the next setting on April 2, 2020.<sup>24</sup>

Due to the COVID-19 pandemic, complainants and respondent signified their willingness to waive the conduct of mandatory conference *via* videoconference.<sup>25</sup> Following the submission by the parties of their verified Position Papers,<sup>26</sup> Investigating Commissioner Jeffrey B. Constantino (Commissioner Constantino) rendered his Report and Recommendation,<sup>27</sup> proposing respondent's disbarment and the return of the ₱150,000.00 payment

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<sup>14</sup> Id. at 83.

<sup>15</sup> Id. at 5. Affidavit-Complaint.

<sup>16</sup> Id. at 22. Verified Answer.

<sup>17</sup> Id. at 22-23.

<sup>18</sup> Id. at 23-24.

<sup>19</sup> Id. at 24-25.

<sup>20</sup> Id. at 28. Notice of Mandatory Conference.

<sup>21</sup> Id. at 29. Order dated December 12, 2019.

<sup>22</sup> Id. at 37. Minutes of the Hearing.

<sup>23</sup> Id. at 38-39. The Order dated February 27, 2020 was issued by CBD Commissioner Rogelio N. Wong.

<sup>24</sup> Id. at 38.

<sup>25</sup> Id. at 40-41 (Order dated August 3, 2020 of CBD Commissioner Rogelio N. Wong), 42-43 (Respondent's Ex-Parte Manifestation), 44-45 (Complainants' Manifestation and Compliance), and 50-51 (Order dated March 10, 2021 of Commissioner Abelardo P. de Jesus).

<sup>26</sup> Id. at 54-61 (Position Paper for the Respondent) and 62-75 (Position Paper for the Complainants).

<sup>27</sup> Id. at 100-106. Dated February 10, 2022.

made by complainants.

Commissioner Constantino held that complainants did not discharge their burden of proving that respondent violated Rule 18.04 of the CPR, *i.e.*, he failed to inform them of the status of their cases or to respond within a reasonable time to their request for information.<sup>28</sup>

All the same, respondent was found to have breached Rules 1.01 and 15.06 of the CPR. Commissioner Constantino elucidated that while the deposit of ₱150,000.00 to the bank account of Anthony, respondent's son, did not *per se* prove that respondent attempted to influence any public officer for the release of complainants, his failure to adduce evidence to show that the said amount formed part of his acceptance fee, coupled with the consistent narration of complainants as to the manner by which he asked for the aforementioned sum, led to no other conclusion than that respondent gave the impression to complainants that he could secure the dismissal of their cases in exchange for money.<sup>29</sup>

Finally, Commissioner Constantino ruled that respondent contravened Rules 16.01,<sup>30</sup> 16.02,<sup>31</sup> and 16.03<sup>32</sup> of the CPR when he failed to account for the sum of ₱150,000.00. No receipts or similar documents to establish the purpose for the payment of such amount were submitted. Contrary to respondent's asseverations, it was manifest from the Acknowledgement Receipt which he executed on November 3, 2015 that he received ₱30,000.00 from complainants as his acceptance fee, sans any qualification that it was only a partial payment thereof. Accordingly, it was incumbent upon him to return the money after its demand was made by complainants.<sup>33</sup>

In the Resolution<sup>34</sup> dated March 18, 2022, the IBP Board of Governors (IBP BOG) reversed Commissioner Constantino's report and recommendation. Instead, it recommended the dismissal of the complaint for insufficiency of evidence, clarifying that the prevailing quantum of evidence in administrative proceedings is substantial evidence. Complainants were unable to discharge their burden of proving the allegations in their complaint by substantial evidence because they were self-serving, at best. By contrast, respondent proffered a plausible explanation as regards the amounts he received from complainants.<sup>35</sup>

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<sup>28</sup> Id. at 103.

<sup>29</sup> Id. at 105.

<sup>30</sup> A lawyer shall account for all money or property collected or received for or from the client.

<sup>31</sup> A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

<sup>32</sup> A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.

<sup>33</sup> Id. at 105.

<sup>34</sup> Id. at 98-99. The Notice of Resolution was signed by National Secretary Doroteo Lorenzo B. Aguila.

<sup>35</sup> Id. at 107-108. The Extended Resolution dated July 3, 2022 was signed by CBD Task Force Commissioner Jose Angel B. Guidote, Jr., for and by authority of the IBP Board of Governors.

*Upon a judicious evaluation of the records, the Court adopts with modification the findings and recommendation of Investigating Commissioner Constantino, in that respondent committed the less serious offense of unjustifiable failure or refusal to render an accounting of the funds or properties of a client under Section 34(n), Canon VI of the Code of Professional Responsibility and Accountability (CPRA).<sup>36</sup>*

Prefatorily, it is axiomatic that in the determination whether a lawyer is still worthy to be in the roll of attorneys, the quantum of proof necessary for a finding of guilt is *substantial evidence*, i.e., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>37</sup> Corollary thereto, the burden to prove the misconduct of a lawyer rests on the complainant to establish the allegations in their complaint.<sup>38</sup>

In the case at bench, complainants were unable to substantiate their claim that respondent violated Rule 15.06 of the CPR when he impressed upon them that he could obtain a favorable decision from the presiding judge in exchange for ₱150,000.00. Indeed, the basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.<sup>39</sup>

On the other hand, the totality of the evidence adduced by complainants would evince that respondent failed to render an accounting of the sums he received from them – even after he withdrew his appearance on their behalf – pursuant to Sections 49 and 56, Canon III of the Code of Professional Responsibility and Accountability,<sup>40</sup> which reads:

**SECTION 49. Accounting during engagement.** – A lawyer, during the existence of the lawyer-client relationship, shall account for and prepare an inventory of any fund or property belonging to the client, whether received from the latter or from a third person, immediately upon such receipt.

When funds are entrusted to a lawyer by a client for a specific purpose, the lawyer shall use such funds only for the client's declared purpose. Any unused amount of the entrusted funds shall be promptly returned to the client upon accomplishment of the stated purpose or the client's demand.

x x x x

**SECTION 56. Accounting and turn over upon termination of**

<sup>36</sup> A.M. No. 22-09-01-SC, effective on May 29, 2023, or 15 calendar days after its publication in the Manila Bulletin and the Philippine Star on May 14, 2023.

<sup>37</sup> See *Jumalon v. Atty. Dela Rosa*, A.C. No. 9288, January 31, 2023. Citation omitted.

<sup>38</sup> See *Marcelo-Salud v. Atty. Bolivar*, A.C. No. 11369, July 4, 2022. Citation omitted.

<sup>39</sup> See *Dillon v. Atty. De Quiroz*, A.C. No. 12876, January 12, 2021. Citation omitted.

<sup>40</sup> Section 1 of the General Provisions of the CPRA provides: *Transitory provision.* – The CPRA shall be applied to all pending and future cases, except to the extent that in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice, in which case the procedure under which the cases were filed shall govern.

**engagement.** – A lawyer who is discharged from or terminates the engagement shall, subject to an attorney’s lien, immediately render a full account of and turn over all documents, evidence, funds, and properties belonging to the client.

The lawyer shall cooperate with the chosen successor in the orderly transfer of the legal matter, including all information necessary for the efficient handling of the client’s representation.

A lawyer shall have a lien upon the funds, documents, and papers of the client which have lawfully come into his or her possession and may retain the same until the fair and reasonable fees and disbursements have been paid, and may apply such funds to the satisfaction thereof.

Certainly, the relationship between a lawyer and his or her client is highly fiduciary and ascribes to a lawyer a great degree of fidelity and good faith. Thus, when they receive money from a client for a particular purpose, they are bound to render an accounting of how the money was spent for the said purpose; and in case the money was not used for the intended purpose, they must immediately return the money to the client. Failure of a lawyer to return the money entrusted to him or her by the client upon demand creates a presumption that he or she has appropriated the same for his or her own use.<sup>41</sup> Simply put, a lawyer’s failure either to render an accounting or to return the money if the intended purpose of the money does not materialize constitutes a blatant disregard of Rule 16.01 of the CPR<sup>42</sup> – the precursor of Section 49, Canon III of the CPRA.

Here, unlike the amount of ₱30,000.00 for which respondent issued an Acknowledgment Receipt<sup>43</sup> expressly stating that such amount represented his acceptance fee, there is no other proof as to the purpose of the ₱150,000.00 he subsequently received from complainants. Assuming *arguendo* that complainants paid the said sum to him to shoulder the litigation expenses, it behooved him to render the proper accounting or to return the money, as the case may be. His omission in this respect undeniably constitutes a wanton disregard of Section 49, Canon III of the CPRA.

Anent the impossible penalty against respondent, the unjustifiable failure or refusal to render an accounting of the funds or properties of a client is deemed as a less serious offense under Section 34(n), Canon VI<sup>44</sup> of the CPRA. On this score, Section 37(b), Canon VI thereof summarizes the impossible penalties for less serious offenses, *viz.*:

- (b) If the respondent is found guilty of a less serious offense, any of the following sanctions, or a combination thereof, shall be imposed:

<sup>41</sup> See *Professional Services, Inc. v. Atty. Rivera*, A.C. No. 11241, November 3, 2020. Citations omitted.

<sup>42</sup> See *Yoshimura v. Atty. Panagsagan*, A.C. No. 10962, September 11, 2018. Citation omitted.

<sup>43</sup> *Rollo*, p. 7.

<sup>44</sup> **Less serious offenses.** – Less serious offenses include: x x x x

(n) unjustifiable failure or refusal to render an accounting of the funds or *properties* of a client; x x x x



- (1) Suspension from the practice of law for a period within the range of one (1) month to six (6) months, or revocation of notarial commission and disqualification as notary public for less than two (2) years;
- (2) A fine within the range of ₱35,000.00 to ₱200,000.00.

Significantly, respondent was twice held administrative liable in his capacity as then Clerk of Court of Branch 23, Regional Trial Court of Trece Martires City, for which he was ultimately meted the penalty of dismissal from the service.<sup>45</sup> The finding of grave misconduct on the part of respondent *as a court official* may be treated as an aggravating circumstance under Section 38(b)(8), Canon VI of the CPRA,<sup>46</sup> since it is analogous to previous administrative liability where a penalty is imposed, regardless of nature or gravity. Hence, by virtue of the immediately following Section 39,<sup>47</sup> the Court may impose the penalties of suspension or fine for a period or amount not exceeding double of the maximum prescribed by the CPRA.

Given the above disquisitions, the penalty of suspension from the practice of law for a period of one (1) year is warranted by the attendant circumstances.

*A final cadence.* The last paragraph of Section 37, Canon VI<sup>48</sup> of the CPRA dictates that in all instances, when the offense involves money or property owed, which is intrinsically linked to the lawyer-client relationship, the respondent shall be ordered to return the same. Perforce, respondent must be enjoined to return the amount of ₱150,000.00 to complainants, subject to legal interest at the rate of six percent (6%) *per annum*.<sup>49</sup> In *San Gabriel v. Atty. Sempio*,<sup>50</sup> the Court expounded that since the obligation to return arose – and thus became due and demandable – only from the time of the Court’s resolution of respondent’s administrative liability, the interest on the said monetary amount should begin to accrue once respondent has been duly notified of his administrative liability, that is, upon receipt of the Court’s resolution herein.<sup>51</sup>

**WHEREFORE**, respondent Atty. Jose R. Bawalan is hereby declared **GUILTY** of the less serious offense of unjustifiable failure or refusal to render

<sup>45</sup> See *Office of the Court Administrator v. Atty. Bawalan*, 301 Phil. 414 (1994); and *Dizon v. Atty. Bawalan*, 453 Phil. 125 (2003).

<sup>46</sup> **Modifying circumstances.** – In determining the appropriate penalty to be imposed, the Court may, in its discretion, appreciate the following mitigating and aggravating circumstances: x x x x

(b) Aggravating Circumstances: x x x x

(8) Other analogous circumstances.

<sup>47</sup> **Manner of imposition.** – If one (1) or more aggravating circumstances and no mitigating circumstances are present, the Supreme Court may impose the penalties of suspension or fine for a period or amount not exceeding double of the maximum prescribed under this Rule x x x x.

<sup>48</sup> **Sanctions.** – x x x x In all instances, when the offense involves money or property owed, which is intrinsically linked to the lawyer-client relationship, the respondent shall be ordered to return the same.

<sup>49</sup> See *Caballero v. Atty. Pilapil*, A.C. No. 7075, January 21, 2020.

<sup>50</sup> 850 Phil. 533 (2019).

<sup>51</sup> See *id.* at 542.

an accounting of the funds or properties of a client under Section 34(n), Canon VI of the Code of Professional Responsibility and Accountability (CPRA).

Respondent Atty. Jose R. Bawalan is **SUSPENDED** from the practice of law for one (1) year. He is also **ORDERED** to **RETURN** to complainants Mohammad Shafi and Rose Marie Shafi the amount of One Hundred Fifty Thousand Pesos (₱150,000.00), which shall earn legal interest at the rate of six percent (6%) *per annum* from his receipt of this Resolution until full payment. The amount of ₱150,000.00, inclusive of legal interest, shall be returned within a period not exceeding three (3) months from receipt of this Resolution, pursuant to Section 41, Canon VI of the CPRA.

This Resolution is immediately executory. Respondent Atty. Jose R. Bawalan is **DIRECTED** to **INFORM** the Court of the date of his receipt of this Resolution for the purpose of reckoning the period of his suspension.

Finally, let copies of this Resolution be furnished the Office of the Bar Confidant for the updating of the personal record as an attorney of respondent Atty. Jose R. Bawalan; the Integrated Bar of the Philippines National Office and the local chapter to which respondent Atty. Jose R. Bawalan belongs, for their information and guidance; and the Office of the Court Administrator, for circulation to all the courts.

**SO ORDERED.”**

By authority of the Court:

*Misael Domingo C. Battung III*  
**MISAELO DOMINGO C. BATTUNG III**  
*Division Clerk of Court* *7/11/23/23*

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