



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **March 9, 2022** which reads as follows:*

“A.C. No. 10813 [Formerly CBD Case No. 17-5391] — ANITA C. BUCE, complainant, versus ATTY. AQUIL P. ISMAEL, respondent.

Complainant Anita C. Buce (Buce) files this disbarment case against Atty. Aquil P. Ismael (Atty. Ismael) for violation of the Lawyer’s Oath and Canon 1, Rule 1.01¹ and Canon 16, Rule 16.04² of the Code of Professional Responsibility (CPR).³

According to Buce, Atty. Ismael was introduced to her as one of the associates of Bantao Ronquillo & Associates Law Offices (Bantao Law Offices), the firm she hired as her defense counsel for a criminal case pending with the Court of Appeals. Atty. Ismael, together with Atty. Zahrain Bantao (Atty. Bantao) had been visiting Buce while she was detained at the Correctional Institution for Women (CIW). Buce claims that sometime in April 2013, Atty. Ismael, taking advantage of Buce’s situation at the CIW, relayed to her that he was in dire need of money. Believing that Atty. Ismael was an associate of Atty. Bantao, Buce trusted him and parted the amount of ₱100,000.00 with Atty. Ismael’s promise to pay the same after one month. The loan was evidenced by a handwritten promissory note of Atty. Ismael **dated April 15, 2013.**⁴ Buce however alleges that after several follow-ups

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¹ Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

² 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.

³ *Rollo*, p. 2.

⁴ *Id.* at 6.

made against Atty. Ismael, her demand for payment remained unheeded for more than two years. Atty. Ismael had also stopped visiting her at the CIW. Buce later on found out that Atty. Ismael is actually a Public Attorney and not an associate at Bantao Law Offices, and that Atty. Ismael borrowed money from her for his personal use, and not in connection with her case.⁵ Thus, she filed the instant administrative case.

For his part, Atty. Ismael vehemently denies all the charges against him, maintaining that the complaint was factually infirm and a product of miscommunication between him and Buce. Atty. Ismael claims that he was never introduced to Buce as an associate of Atty. Bantao and that Buce was never his client. According to Atty. Ismael, Buce had known him since 2008 or 2009 as a Public Attorney assigned at Branch 28, Metropolitan Trial Court of Manila, where Buce had several pending cases. In fact, he represented the accused in one of the cases filed by Buce, and even gave free legal advice to Buce's friends. He also explains that he became friends with Buce as he was always with Atty. Bantao, his fraternal brother and former schoolmate and officemate, whenever the latter would visit Buce at the CIW. In fact, sometime in March 2014, Atty. Ismael even brought his then pregnant wife to the CIW to introduce her to Buce. When Buce noticed that Atty. Ismael's wife was almost due, she offered and promised to extend financial assistance to the couple. On **April 14, 2014**, Atty. Ismael's wife gave birth, as evidenced by his daughter's Certificate of Live Birth.⁶ Recalling the promise of Buce, Atty. Ismael and Atty. Bantao again visited Buce at the CIW to inform her of his wife's delivery and to remind her about her offer to help. As a result, Buce gave Atty. Ismael the amount of ₱100,000.00, but it was not clear whether the same was a loan or a help as she never reminded or demanded payment from Atty. Ismael. According to Atty. Ismael, immediately after receiving a copy of Buce's complaint, he visited her and told her that there appeared to be a miscommunication as he thought the money was given to him out of Buce's generosity, and not as a loan. As gesture of good faith, Atty. Ismael tendered to Buce a check⁷ dated October 15, 2015 in the amount of ₱110,000.00 as payment of the loan plus interest, which was however rejected by Buce because she wanted Atty. Bantao to visit her first. According to Atty. Ismael, Atty. Bantao is no longer Buce's lawyer and has ceased to visit her because she already terminated his legal services.⁸

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⁵ Id. at 1-4.

⁶ Id. at 43.

⁷ Id. at 42.

⁸ Id. at 9-10.

Thereafter, Buce filed her *Reply to the Respondent's Comment* insisting that (1) the ₱100,000.00 was a loan to Atty. Ismael, as evidenced by the latter's promissory note, the due execution and authenticity of which was not assailed by Atty. Ismael; and (2) Atty. Ismael was introduced to her as an associate of Atty. Bantao of Bantao Law Offices. Buce also denies that (1) she had prior knowledge that Atty. Ismael was a Public Attorney; (2) Atty. Ismael and his wife visited her at the CIW sometime in 2014; and (3) Atty. Ismael tendered a check dated October 15, 2015 as payment of the loan.⁹

In its Notice of Resolution dated February 27, 2017, the Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.¹⁰ Thereafter, the IBP set the case for mandatory conference and only Atty. Ismael appeared.¹¹ When the mandatory conference was terminated and the parties were asked to file their position papers, it was only Atty. Ismael who complied with the directive of the IBP.¹²

In his Report and Recommendation,¹³ the Investigating Commissioner of the IBP-Commission on Bar Discipline (IBP-CBD) recommended the dismissal of the complaint for lack of merit. The Investigating Commissioner noted that Buce failed to establish the existence of a lawyer-client relationship between her and Atty. Ismael. Based on the records, Buce admitted that she hired the services of Bantao Law Offices as her counsel for a pending case before the Court of Appeals. Unfortunately, aside from Buce's bare allegation that Atty. Ismael was also his lawyer, the latter being introduced to her as an associate at Bantao Law Offices, Buce failed to substantiate her claim. First, there are no documents, pleadings, correspondence, communications, papers, or electronic mails where the name of Atty. Ismael appears as one of the associates of Bantao Law Offices. Second, the allegation of Buce that Atty. Ismael was introduced to her as an associate of Bantao Law Office is self-serving and uncorroborated, noting that Buce even failed to state the name of the person who allegedly introduced Atty. Ismael as a member of the said law firm. Third, there is no allegation or evidence on record that Atty. Ismael was acting as collaborating counsel of Bantao Law Offices. Fourth, Buce failed to allege and specify the kind of legal service or

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⁹ Id. at 18-20.

¹⁰ Id. at 16.

¹¹ Id. at 28-31.

¹² Id. at 33-41.

¹³ Id. at 53-64.

assistance offered, secured, or performed by Atty. Ismael in her favor. Lastly, the complaint is limited entirely on the failure of Atty. Ismael to pay his debt within the period stipulated in the promissory note. In view of the absence of lawyer-client relationship, the IBP-CBD finds that Atty. Ismael cannot be held liable for violation of the CPR.

In addition, the IBP-CBD notes the purely civil nature of Atty. Ismael's obligation as Buce herself admitted that Atty. Ismael borrowed money from her for his personal use, and not in connection with her pending case. Therefore, without a doubt, the administrative case filed by Buce is a purely civil complaint for collection of a sum of money, falling within the exclusive and original jurisdiction of the lower courts. In any case, the IBP-CBD finds Atty. Ismael in good faith when he voluntarily tendered the check amounting to ₱110,000.00 as payment of the principal and interest of the loan.¹⁴

In its Notice of Resolution¹⁵ dated March 22, 2018, the IBP Board of Governors (IBP-BOG) resolved to adopt the findings of fact and recommendation of the Investigating Commissioner to dismiss the complaint.

Buce filed a Motion for Reconsideration claiming that she was denied proper notice of the mandatory conference set and the requirement to submit a position paper since the IBP delivered the notices to her place of residence, not to the CIW where she was detained. Further, citing *Nebraja v. Reonal*,¹⁶ Buce claims that "the mere failure of a lawyer to perform the obligations due to the client is considered *per se* a violation," and "the lawyer's act of receiving money as acceptance fee for legal services in handling the complainant's case and, subsequently, failing to render services, was a clear violation of Canon 18 of the Code of Professional Responsibility."¹⁷

In his *Comment/Opposition*,¹⁸ Atty. Ismael submits that Buce's Motion for Reconsideration should be dismissed since (1) it is a mere repetition of positions already made by Buce; (2) she reneged on her duty to inform the IBP of any change in her status and address; and (3) her pleadings were notarized in the City of Manila, not in Mandaluyong.

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¹⁴ Id.

¹⁵ Id. at 51.

¹⁶ 730 Phil. 55 (2014).

¹⁷ *Rollo*, pp. 66.

¹⁸ Id. at 73-79.

On August 8, 2020, a Resolution was passed by the IBP-BOG denying the Motion for Reconsideration of Buce.¹⁹

After a judicious examination of the records and the submission of the parties, the Court finds no cogent reason to depart from the factual findings and recommendation of the Investigating Commissioner as approved by the IBP-BOG.

As held in a long line of cases, a lawyer enjoys the legal presumption that he or she is innocent of the charges filed against him or her until evidence to the contrary is substantially proved.²⁰ He or she is also presumed to have performed his or her duties in accordance with his or her oath as an officer of the Court.²¹ In disbarment proceedings such as the instant case, the quantum of proof required is substantial evidence and the burden of proving the allegations in the complaint is imposed on the complainant.²²

Substantial evidence is defined as “that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.”²³ The basic rule is that charges based on mere allegations or conjectures cannot be given credence and should be dismissed for lack of merit.²⁴

In light of the foregoing, the Court finds that Buce failed to establish with substantial evidence that a lawyer-client relationship exists between her and Atty. Ismael. Absent this relationship, Atty. Ismael cannot be held liable for violating Canon 16, Rule 16.04 of the CPR, which prohibits a lawyer from borrowing money from his or her client unless the latter’s interest is fully protected, to wit:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL
MONIES AND PROPERTIES OF HIS CLIENTS THAT MAY
COME INTO HIS POSSESSION.

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¹⁹ Id. at 83.

²⁰ *Tan v. Alvarico*, A.C. No. 10933, November 3, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66529>>; *Zara v. Joyas*, A.C. No. 10994, June 10, 2019, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65187>>; *BSA Tower Condominium Corporation v. Reyes*, 833 Phil. 588, 594 (2018).

²¹ Id.

²² Id.

²³ A.M. No. 19-08-15-SC (2019 Amendments to the 1989 Revised Rules on Evidence), Rule 133, Sec. 6.

²⁴ *Tan v. Alvarico*, supra note 20; *Zara v. Joyas*, supra note 20; *BSA Tower Condominium Corporation v. Reyes*, supra note 20.

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.

Thus, in *Aguilar-Dyquiango v. Arellano*,²⁵ the Court found the respondent lawyer therein liable for violating Rule 16.04 of the CPR after it was proven that she obtained several loans from her client-complainant in 2008 or two years after they established a lawyer-client relationship. The rationale behind this rule is explained in *Yu v. Dela Cruz*.²⁶

x x x This act alone shows respondent lawyer's blatant disregard of Rule 16.04. Complainant's acquiescence to the "pawning" of her jewelry becomes immaterial considering that the CPR is clear in that lawyers are proscribed from borrowing money or property from clients, unless the latter's interests are fully protected by the nature of the case or by independent advice. Here, respondent lawyer's act of borrowing does not constitute an exception. Respondent lawyer used his client's jewelry in order to obtain, and then appropriate for himself, the proceeds from the pledge. In so doing, he had abused the trust and confidence reposed upon him by his client. That he might have intended to subsequently pay his client the value of the jewelry is inconsequential. What deserves detestation was the very act of his exercising influence and persuasion over his client in order to gain undue benefits from the latter's property. The Court has repeatedly emphasized that the relationship between a lawyer and his [or her] 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 [or her] client is intended to prevent the lawyer from taking advantage of his [or her] influence over his [or her] client.** The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his [or her] 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.**²⁷ (Emphasis supplied)

Rule 16.04 of the CPR abhors the possible abuse of trust and confidence reposed by a client upon his or her lawyer. It also prevents a lawyer from taking advantage of his or her influence over his or her clients. Thus, absent the lawyer-client relationship between parties, there cannot be a violation of Rule 16.04 of the CPR since there is no fiduciary relationship or influence susceptible to abuse to begin with.

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²⁵ 789 Phil. 600 (2016).

²⁶ 778 Phil. 557 (2016).

²⁷ Id. at 564.

It is settled that:

the lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other *fora*. From that moment on, the lawyer is bound to respect the relationship and to maintain the trust and confidence of his [or her] client.²⁸

As correctly pointed out by the Investigating Commissioner, aside from the bare claim of Buce that Atty. Ismael was introduced to her as an associate of Bantao Law Offices, the law firm she retained to handle her case before the Court of Appeals, there is a dearth of evidence to prove that Atty. Ismael was indeed her lawyer. Notably, the records are lacking any indication that Buce sought Atty. Ismael's legal advice upon a legal concern. At the very least, Buce was only able to prove that Atty. Ismael was always with Atty. Bantao of Bantao Law Offices whenever the latter visited her at the CIW. This fact alone cannot establish the existence of a lawyer-client relationship between Buce and Atty. Ismael.

Thus, even if Atty. Ismael indeed borrowed money from Buce, he cannot be held liable for violating Canon 16, Rule 16.04 of the CPR. Buce's reliance on the case of *Nebraja v. Reonal* is misplaced as a lawyer-client relationship was properly established in said case and the money given to respondent lawyer was not a loan, but payment for his services that he later on failed to perform. In the instant case, Buce admitted that the money borrowed by Atty. Ismael was for his personal use and not in any way related to her pending case.

Buce also claims that Atty. Ismael violated Canon 1, Rule 1.01 of the CPR which states:

CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW OF AND LEGAL PROCESSES.

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

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²⁸ *Legaspi v. Gonzales*, A.C. No. 12076, June 22, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66369>>; *Diongzon v. Mirano*, 793 Phil. 200, 208 (2016).

The Court, in *Buenaventura v. Gille*²⁹ (*Buenaventura*), further elucidated the aforementioned Canon, to wit:

x x x The “conduct” under the Rule does not pertain solely to a lawyer’s performance of professional duties. It has long been settled that “[a] lawyer may be disciplined for misconduct committed either in his or her professional or private capacity. **The test is whether [a lawyer’s conduct manifests his or her wanting] in moral character, honesty, probity, and good demeanor, or [unworthiness] to continue as an officer of the court.**”

x x x x

x x x A lawyer must conduct himself [or herself] with great propriety, and his [or her] behavior should be beyond reproach anywhere and at all times. For, 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. Likewise, the oath that lawyers swear to impress upon them the duty of exhibiting the highest degree of good faith, fairness and candor in their relationships with others. 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.³⁰ (Emphasis supplied)

In line with the Court’s ruling in *Buenaventura*, a lawyer’s failure to pay his or her just debt despite repeated demands constitutes dishonest and deceitful conduct. “Prompt payment of financial obligations is one of the duties of a lawyer. This is in accord with his [or her] mandate to faithfully perform at all times his [or her] duties to society, to the bar, to the courts and to his [or her] clients.”³¹

In the instant case, it is not disputed that on **April 15, 2013**, Atty. Ismael issued a handwritten promissory note acknowledging that he borrowed ₱100,000.00 from Buce and that he promised to return the same after one month. Regardless of whether Atty. Ismael was unsure if the money given to him was a gift or a loan, it was established that Atty. Ismael promised to pay back Buce ₱100,000.00 on or before May 15, 2013. Clearly, Atty. Ismael failed to make good on his promise to pay. The Court also notes that based on the narration of facts of Atty. Ismael, the money was given to him after his wife

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²⁹ A.C. No. 7446, December 9, 2020, accessed at <<https://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/66838>>.

³⁰ Id.

³¹ Id.

delivered their second daughter on **April 14, 2014**; however, his promissory note bears the date of April 15, 2013. He failed to explain this discrepancy in any of his submissions.

In any case, lawyers are presumed innocent from charges against them unless the contrary is proven by substantial evidence.³² Thus, three essential facts may be culled from the records of the case: (1) Atty. Ismael failed to make good his promise to pay back Buce on or before May 15, 2013; (2) there was no written demand or any evidence to show that Buce indeed demanded payment from Atty. Ismael; and (3) upon receipt of a copy of the complaint, Atty. Ismael visited Buce and tendered a check amounting to ₱110,000.00 as payment for the loan plus interest. In fine, the Court is not prepared to rule that Atty. Ismael's alleged failure to pay his debt amounts to a dishonest or deceitful conduct in violation of Canon 1 of the CPR, especially since Atty. Ismael did not commit other unscrupulous acts such as offering spurious title of a property that was offered as a collateral,³³ issuing worthless checks,³⁴ employing deceit and misrepresentations,³⁵ or ignoring the repeated demands of the creditor.³⁶ On the other hand, when Atty. Ismael confirmed upon receipt of Buce's complaint that the ₱100,000.00 given to him was a loan, he immediately tendered a check amounting to ₱110,000.00 as payment for his loan to Buce plus interest. As correctly pointed out by the IBP, this shows Atty. Ismael's good faith.

In view of the foregoing, the Court agrees with the findings of the IBP that Atty. Ismael should also not be held liable for violation of Canon 1 of the CPR.

Following the conclusions drawn above, the Court also agrees with the findings of the IBP that the instant disbarment case is actually just a civil complaint for collection of sum of money, the original jurisdiction of which falls exclusively with the lower courts. In *Sosa v. Mendoza*,³⁷ the Court further elucidated:

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³² Supra note 20.

³³ *Buenaventura v. Gille*, supra note 29.

³⁴ *Buenaventura v. Gille*, id.; *Sosa v. Mendoza*, 756 Phil. 490 (2015); *Huyssen v. Gutierrez*, 520 Phil. 117 (2006); *Tomlin v. Moya II*, 518 Phil. 325 (2006).

³⁵ *Yuhico v. Gutierrez*, 650 Phil. 225 (2010).

³⁶ *Buenaventura v. Gille*, supra note 29; *Sosa v. Mendoza*, supra note 34; *Yuhico v. Gutierrez*, id.; *Huyssen v.*, supra note 34; *Tomlin v. Moya II*, supra note 34.

³⁷ Supra note 34.


A proceeding for suspension or disbarment is **not a civil action** where the complainant is a plaintiff and the respondent lawyer is a defendant. **Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare.**

The purpose of disbarment is mainly to determine the fitness of a lawyer to continue acting as an officer of the court and as participant in the dispensation of justice. The purpose of disbarment is to protect the courts and the public from the misconduct of the officers of the court and to ensure the administration of justice by requiring that those who exercise this important function shall be competent, honorable and trustworthy men in whom courts and clients may repose confidence.³⁸ (Emphasis and underscoring in the original)

WHEREFORE, the administrative complaint against Atty. AQUIL P. ISMAEL is **DISMISSED** for lack of merit and jurisdiction on the part of the Integrated Bar of the Philippines.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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³⁸ *Sosa v. Mendoza*, supra note 34, at 499-500.

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