



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

ATTY. ROGELIO S. A.C. No. 9701
CONSTANTINO,

Complainant,

Present:

LEONEN, J.,
Chairperson,
HERNANDO,
INTING,
DELOS SANTOS, and
LOPEZ, J. Y., JJ.

- versus -

ATTY. NEMESIO A.
ARANSAZO, JR.,

Respondent.

Promulgated:

February 10, 2021

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DECISION

HERNANDO, J.:

This is a Complaint¹ for Disbarment filed by Atty. Rogelio S. Constantino (Atty. Constantino) against Atty. Nemesio A. Aransazo, Jr. (Atty. Aransazo) for alleged violation of Canons 17 and 21 of the Code of Professional Responsibility (CPR), and Rule 138, Sections 20 (e) and 27 of the Rules of Court for disclosing confidential information acquired in the course of their lawyer-client relationship.

The antecedent facts are as follows:

Sometime in March 2003, Atty. Constantino engaged the services of Atty. Aransazo as counsel in Civil Case No. 03-105994 entitled “*Hope Claire Aldaba vs. Eduardo Tongco, Atty. Rogelio B. Constantino, Atty. Nemesio*

¹ *Rollo*, pp. 1-5.

*Aransazo, Jr.*² for the Annulment of Extra-Judicial Proceedings No. 03-1914. The case involved a house and lot registered in the name of Hope Claire Aldaba (Aldaba) who previously obtained a loan in the amount of ₱1,500,000.00 from Eduardo Tongco (Tongco).³

As security for the loan, Aldaba executed a Real Estate Mortgage over the property and a Promissory Note and Irrevocable Special Power of Attorney in favor of Tongco. As Aldaba failed to pay the amount of the loan on maturity date, Tongco executed a Deed of Assignment in favor of Atty. Constantino and Atty. Aransazo, for a consideration of ₱2,200,000.00, ceding all his rights and interests under the Real Estate Mortgage, Promissory Note and Irrevocable Special Power of Attorney. When Aldaba failed to redeem the property despite oral and written demand, Attys. Constantino and Aransazo filed the abovementioned Extrajudicial Foreclosure Proceedings No. 03-1914.⁴

On March 4, 2003, a Temporary Restraining Order (TRO) was issued by the Regional Trial Court (RTC) of Manila to avert the foreclosure. After trial, the RTC ordered the parties to submit their respective offer of exhibits. Both Atty. Constantino and Atty. Aransazo complied with the order and submitted, among others, documents showing proof of full payment of the consideration of the Deed of Assignment.⁵ Thereafter, on March 15, 2011, the trial court issued an Order denying Aldaba's prayer for the issuance of the TRO. Meanwhile, the *Ex-Officio* Sheriff conducted the auction sale and issued a certificate of sale to the highest bidder.⁶ Notably, on February 17, 2012, during the pre-trial in Civil Case No. 03-105994, the counsel of Aldaba manifested⁷ before the RTC that Atty. Aransazo executed a sworn statement⁸ containing the following narration of facts:

x x x x

2. In the course of my practice, sometime in the later part of 2001, Atty. Rogelio S. Constantino, a person whom I have known including his family since my junior years in the College of Law, came to visit me in my office;

3. Thereat, Constantino intimated to me a looming suit he expects out of a loan he personally extended to a person;

4. He went on to say, his dilemma is getting much complicated because a supposed investor friend is now urging for the return of his investment and eager to assign his rights;

5. His dilemma therefore pertains to a lawyer who could appear in his behalf on a possible legal proceedings including financial requirements to

² Id. at 1-2; 133.

³ Id.

⁴ Id. at 1-2.

⁵ Id. at 33-40.

⁶ Id. at 2.

⁷ Id. at 8-13.

⁸ Id. at 14-15.

underwrite the costs; but more importantly is finding a willing assignee of the mortgage obligation amounting to [P]2,200,000.00.

6. Making the long story short, he pleaded that my law firm take over the legal matter and being cash-strapped I should [subsidize] in the meanwhile lawyer/s appearance fees;

7. He likewise beseech me to assume one half or [P]1,100,000.00 as co-assignee, a suggestion which I immediately declined for lack of interest; besides I was then preoccupied overseeing the growing numbers of retained clients. This was the end of our conversation.

8. Not long after that meeting with Constantino, he came back again to my office unannounced. This time he was holding in an envelope several documents which are copies of "deed of assignment of real estate mortgage". He also proudly said he managed to source [P]1,100,000.00, and therefore what is needed is the other half of the same amount which he requested from me. I immediately dismissed the idea and reiterated my lack of interest;

9. We have had a little longer meeting and continue prodding me in regards his request. However, I refused to budge an inch to his request other than agreeing to provide him with legal assistance in the event of any case; moreover, I also agreed that the costs and appearance fees of the lawyers shall be subsidized by my office;

10. Finally, he did not [insist] on me anymore the other half, rather he decided he will source it from his well-meaning friends; but at the same time he pleaded once more that inasmuch as the documents have been prepared with his and my name as co-assignee, I might as well give my imprimatur to the documents, without anymore the requested amount which he will source from other friends;

11. Initially, my reaction was to decline afraid I might [embroil] myself in a possible suit. However, due to his insistent demand and prodding, I succumbed to his plea and signed the document but with clear instructions to Constantino I am giving my imprimatur to the documents solely in accommodation but without any participation, contribution or share in the [P]1,100,000.00.

x x x x⁹

In light of Atty. Constantino's sworn statement, the counsel of Aldaba filed with the RTC a Motion to Admit Amended Complaint¹⁰ to show to the court that the Deed of Assignment executed by Tongco in favor of Atty. Constantino and Atty. Aransazo was without consideration, which therefore rendered the Deed of Assignment null and void. In view of the foregoing recitals, complainant insisted that Atty. Aransazo violated Canons 17 and 21 of the CPR, and Rule 138, Sections 20 (e) and 27 of the Rules of Court for disclosing matters confided during the course of a lawyer-client relationship.

⁹ Id.

¹⁰ Id. at 16-22.

**Report and Recommendation of
the Integrated Bar of the
Philippines (IBP):**

In a Report and Recommendation¹¹ dated May 23, 2014, Investigating Commissioner Honesto A. Villamor of the Commission on Bar Discipline of the IBP recommended the dismissal of the complaint for lack of merit. The Investigating Commissioner opined that Atty. Constantino “failed to show x x x the existence of attorney client privilege to justify the administrative complaint against [Atty. Aransazo].”¹² The Investigating Commissioner further noted that when Atty. Aransazo agreed to represent Atty. Constantino in Civil Case No. 03-105994, “there was nothing to confide anymore since both of them knew about the circumstances surrounding the execution of the Deed of Assignment.”¹³

The IBP Board of Governors (IBP-BOG), in its Resolution No. XXI-2015-318,¹⁴ reversed and set aside the Report and Recommendation of the Investigating Commissioner and recommended that Atty. Aransazo be “suspended from the practice of law for three (3) months on the ground that [he] breached confidentiality in violation of the rule on conflict of interest.”¹⁵

In its Extended Resolution¹⁶ dated August 11, 2016, the IBP-BOG further explained that:

Without a doubt, the contents of respondent’s sworn statement contained information revealed to him in confidence by complainant during a lawyer-client relationship. By executing the sworn statement alone, respondent breached his obligation to maintain inviolate the confidence reposed on him and to preserve the secrets of complainant.¹⁷

x x x x

Applying the test to determine whether conflict of interest exists, respondent’s sworn statement necessarily would refute complainant’s claim that the deed of assignment was executed with a valid consideration. Worse, based on the manifestation of complainant’s opposing party, the respondent himself may take the witness stand to testify on his sworn statement. Clearly, respondent is guilty of representing conflicting interests.¹⁸

Atty. Aransazo filed a Motion for Reconsideration¹⁹ praying that the IBP-BOG set aside its Resolution No. XXI-2015-318 dated April 19, 2015, and in lieu thereof, adopt the findings and recommendation of the Investigating Commissioner.

¹¹ Id. at 133-135.

¹² Id. at 135.

¹³ Id.

¹⁴ Id. at 137.

¹⁵ Id.

¹⁶ Id. at 136-141.

¹⁷ Id. at 140.

¹⁸ Id. at 141.

¹⁹ Id. at 143-149.

In a Resolution²⁰ dated August 2, 2017, this Court referred Atty. Aransazo's Motion for Reconsideration to the Office of the Bar Confidant (OBC) for evaluation, report, and recommendation. Thus, on October 18, 2018, the OBC issued its Report and Recommendation²¹ finding Atty. Aransazo's suspension from the practice of law for six (6) months appropriate under the circumstances. The OBC found that Atty. Aransazo is guilty of breach of confidentiality in violation of the rule on conflict of interest, *viz.*:

It is well established that respondent have accepted to represent complainant well before respondent executed his sworn statement stating that the questioned deed of assignment was made without consideration. Clearly, the content of respondent's sworn statement containing information revealed to him in confidence by complainant was made during a lawyer-client relationship. By executing the sworn statement alone, respondent [has] violated Rule 17 of the Code of Professional Responsibility (CPR), which states that a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him, and in conflict with the interest of his client.²²

Our Ruling

After a careful review of the records, the Court adopts the findings of the OBC and accepts its recommendation with modification as to the period of suspension.

Preliminary Matters

Without necessarily ruling on the validity of the Deed of Assignment, there is no dispute at this point that Atty. Aransazo's narration of facts in his sworn statement was prejudicial to Atty. Constantino's rights and interests in Civil Case No. 03-105994. Indeed, while Atty. Constantino and Atty. Aransazo, on one hand, sought to establish in Extrajudicial Foreclosure Proceedings No. 03-1914 and Civil Case No. 03-105994 the existence of the Deed of Assignment executed by Tongco in their favor, the sworn statement of Atty. Aransazo, on the other hand, unquestionably disputes the validity thereof for having been simulated by the parties and for lack of consideration. There is also no question that Atty. Aransazo acted as counsel for Atty. Constantino in Extrajudicial Foreclosure Proceedings No. 03-1914 and Civil Case No. 03-105994, which, as Atty. Aransazo admits, has stretched for a period of nine years of legal representation in behalf of Atty. Constantino.²³

We now resolve the issue of whether Atty. Aransazo violated the rule on privileged communication between attorney and client when he executed the subject sworn statement that reduced in writing information confided to him by Atty. Constantino, and which Atty. Aransazo divulged to the counsel of Aldaba in Civil Case No. 03-105994.

²⁰ Id. at 159.

²¹ Id. at 161-164.

²² Id. at 162.

²³ Id. at 62.

Atty. Aransazo maintains that the information contained in his sworn statement *i.e.*, that the Deed of Assignment was executed without any consideration, was made known to him by Atty. Constantino due to the latter's personal relationship with him, and before he agreed to represent Atty. Constantino in Civil Case No. 03-105994. In other words, Atty. Aransazo insists that Atty. Constantino did not confide such facts to him in the course of their lawyer-client relationship, but rather, due to their personal relationship as friends. Thus, nothing confidential was disclosed by Atty. Constantino at the time the latter engaged his legal services. Considering, therefore, that no attorney-client relationship existed between them at the time such relevant information was disclosed to him, the element of confidentiality, which would bring any information concerning the Deed of Assignment within the ambit of a privileged communication, is lacking in this case.

The proper resolution of the issue herein involved necessarily hinges upon the existence of an attorney-client relationship. Notably, the absence of an attorney-client relationship between Atty. Constantino and Atty. Aransazo is an essential element in the latter's defense.

Existence of a lawyer-client relationship between Atty. Constantino and Atty. Aransazo.

In this regard, it is settled that a "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 client."²⁴

Thus, if an individual consults a lawyer in respect to his business affairs or legal troubles of any kind with a view towards obtaining professional advice or assistance, and the lawyer, by virtue thereof, permits or acquiesces with the consultation, then a lawyer-client relationship is established.²⁵

As it were, Atty. Constantino went to the office of Atty. Aransazo, who, incidentally, is also considered a friend, to disclose sensitive information and documents for the purpose of obtaining legal advice. Notably, a perusal of the sworn statement of Atty. Aransazo will reveal that the communication between him and Atty. Constantino set out therein transpired within the context of Atty. Constantino intending to engage the services of Atty. Aransazo as his lawyer in relation, among others, to a mortgage obligation amounting to ₱2,200,000.00, thus:

5. His dilemma therefore pertains to a lawyer who could appear in his behalf on a possible legal proceedings including financial requirements to

²⁴ *Diongzon v. Mirano*, 793 Phil. 200, 206 (2016).

²⁵ *Burbe v. Magulta*, 432 Phil. 840, 848-849 (2002).

underwrite the costs; but more importantly is finding a willing assignee of the mortgage obligation amounting to [P]2,200,000.00.

6. Making the long story short, **he pleaded that my law firm take over the legal matter** and being cash-strapped I should [subsidize] in the meanwhile lawyer/s appearance fees;

x x x x

8. Not long after that meeting with Constantino, he came back to my office unannounced. This time he was holding in an envelope several documents which are copies of “deed of assignment of real estate mortgage”. He also proudly said he managed to source [P]1,100,000.00, and therefore what is needed is the other half of the same amount which he requested from me. I immediately dismissed the idea and reiterated my lack of interest;

9. We have had a little longer meeting and continue prodding me in regards his request. However, **I refused to budge an inch to his request other than agreeing to provide him with legal assistance in the event of any case;** moreover, I also agreed that costs and appearance fees of the lawyer’s shall be subsidized by my office;

x x x x²⁶ (Underscoring and emphasis supplied)

Thus, the moment Atty. Constantino approached Atty. Aransazo to seek legal advice, a veritable lawyer-client relationship evolved between the two. Likewise, a lawyer-client relationship exists notwithstanding the personal relationship between Atty. Constantino and Atty. Aransazo. At this point, the relationship between them imposed upon Atty. Aransazo certain restrictions circumscribed by the profession. In this regard, Canon 17 of the CPR states that “a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.” Having ascertained the existence of a lawyer-client relationship between Atty. Constantino and Atty. Aransazo, it is beyond cavil that the latter is enjoined to keep inviolate confidential and privileged information acquired or revealed during legal consultations.

Notably, notwithstanding the fact that Atty. Aransazo may have initially dispensed legal advice to Atty. Constantino as a personal favor, he was still duty-bound to preserve and protect the personal, confidential and fiduciary relation established between them.²⁷

Atty. Aransazo violated the rule on privileged communication between attorney and client when he executed the subject sworn statement.

²⁶ Rollo, p. 14.

²⁷ See *Burbe v. Magulta*, supra note 25.

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Dean Wigmore cites the factors essential to establish the existence of the privilege, *viz.*:

Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal advisor, (8) except the protection be waived.²⁸

In this regard, Rules 21.01 and 21.02 of the CPR state the duty of a lawyer to preserve his client's confidences, *viz.*:

CANON 21- A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated.

Rule 21.01-A lawyer shall not reveal the confidences or secrets of his client except;

(a) When authorized by the client after acquainting him of the consequences of the disclosure;

(b) When required by law;

(c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

Rule 21.02-A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.

Along the same lines, Section 20(e), Rule 138 of the Rules of Court provides that it is the duty of the attorney to “maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client, and to accept no compensation in connection with his client's business except from him or with his knowledge and approval.” The purpose of the rule of confidentiality is to protect the client from possible breach of confidence as a result of a consultation with a lawyer and preserve the confidential and trust relation which exists between attorney and client.²⁹

Applying all these rules to the case at bar, we hold that Atty. Aransazo indeed breached his duty of preserving the confidence of a client. As correctly held by the IBP-BOG:

Without a doubt, the contents of respondent's sworn statement contained information revealed to him in confidence by complainant during a lawyer-client relationship. By executing the sworn statement alone, respondent breached his obligation to maintain inviolate the confidence reposed on him and to preserve the secrets of complainant.³⁰

²⁸ *Mercado v. Vitriolo*, 498 Phil. 49, 58 (2005) citing J. Wigmore, Evidence §2292 (McNaughton rev. 1961).

²⁹ *Hadlaja v. Madianda*, 553 Phil. 221, 228 (2007).

³⁰ *Rollo*, p. 140.

Clearly, the information regarding the real estate mortgage, private documents such as the Deed of Assignment, and other pertinent facts and figures revealed in confidence to Atty. Aransazo used as basis or support in the execution of his sworn statement and the filing of the amended complaint of Aldaba against Atty. Constantino, were all acquired through an attorney-client relationship. Such act is in direct violation of the CPR and constitutes a breach of trust sufficient to warrant imposition of disciplinary sanction against Atty. Aransazo.

Atty. Aransazo represented conflicting interests in violation of the CPR.

We also agree with the findings of the IBP-BOG and OBC that Atty. Aransazo represented conflicting interests in violation of Canon 15, Rule 15.03 of the CPR which provides that “a lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.”

In *Diongzon v. Mirano*,³¹ the Court discussed the rule on conflict of interest in this wise:

A conflict of interest exists where a lawyer represents inconsistent interests of two opposing parties, like when the lawyer performs an act that will injuriously affect his first client in any matter in which he represented him, or when the lawyer uses any knowledge he previously acquired from his first client against the latter. The prohibition against conflict of interest is founded on principles of public policy and good taste, inasmuch as the lawyer-client relationship is based on trust and confidence. A lawyer has a duty to preserve his client's confidence in him, even if their relationship ends. The purpose is to assure freedom of communication between the lawyer and the client in order to enable the former to properly represent and serve the latter's interests. To use against the latter any information the former gains during the relationship is deplorable and unethical.³²

As counsel for Atty. Constantino in Civil Case No. 03-105994, Atty. Aransazo advocated the validity and due execution of the Deed of Assignment upon which Atty. Constantino's interest over the real estate mortgage is based. On the other hand, the sworn statement of Atty. Aransazo refuted Atty. Constantino's claim that the Deed of Assignment was executed with a valid consideration, which necessarily jeopardized and prejudiced the latter's interest in Civil Case No. 03-105994. Worse still, it appears that Atty. Aransazo even intended to take the witness stand to testify on his sworn statement. Clearly, Atty. Aransazo violated the rule against conflict of interest.

Thus, as correctly held by the IBP-BOG:

³¹ *Supra* note 23.

³² *Id.* at 208.

Applying the test to determine whether conflict of interest exists, respondent's sworn statement necessarily would refute complainant's claim that the deed of assignment was executed with a valid consideration. Worse, based on the manifestation of complainant's opposing party, the respondent himself may take the witness stand to testify on his sworn statement. Clearly, respondent is guilty of representing conflicting interests.³³

Atty. Aransazo further insisted that in executing his sworn statement, he merely intended to rectify the error he committed and reveal the truth in conformity with his duties under the CPR. This Court, however, finds counsel's excuse as irrelevant, if not inconsequential, in determining his culpability. Whether there is some truth to Atty. Aransazo's statements *i.e.*, that the Deed of Assignment is void for lack of consideration, is a factual matter to be determined before the proper forum, and not in disbarment proceedings, such as in this case. As it stands, Atty. Aransazo advocated for the rights of Atty. Constantino for nine long years before a competent court. Atty. Aransazo cannot simply be allowed to commit such acts that are diametrically opposed to his client's interests without this Court meting the proper penalty against him.

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violating the lawyer's oath and/or for breaching the ethics of the legal profession as embodied in the CPR, 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 on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.³⁴

WHEREFORE, for violating Canons 15, 17, and 21 of the Code of Professional Responsibility, Atty. Nemesio A. Aransazo, Jr. is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon receipt of this Decision, with a **STERN WARNING** that a commission of the same or similar offense in the future will result in the imposition of a more severe penalty.

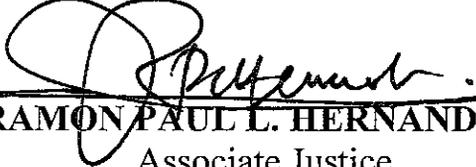
Respondent is **DIRECTED** to file a Manifestation to this Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Nemesio A. Aransazo, Jr. as an attorney; to the Integrated Bar of the Philippines; and to the Office of the Court Administrator for dissemination to all courts throughout the country for their guidance and information.

³³ *Rollo*, p. 141.

³⁴ *Huang v. Zambrano*, A.C. No. 12460, March 26, 2019.

SO ORDERED.


RAMON PAUL L. HERNANDO
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


HENRI JEAN PAUL B. INTING
Associate Justice


EDGARDO L. DELOS SANTOS
Associate Justice


JHOSEP Y. LOPEZ
Associate Justice