Supreme Court E-Library



**SECOND DIVISION**

[A.C. No. 10548. December 10, 2014]

**CAROLINE CASTAÑEDA JIMENEZ,** *complainant, vs.* **ATTY. EDGAR B. FRANCISCO,** *respondent.*

**SYLLABUS**

**1. LEGAL ETHICS; ATTORNEYS; SHOULD OBEY THE LAWS AND AVOID UNLAWFUL, DISHONEST OR DECEITFUL CONDUCT.—** Canon 1 [of the CPR] clearly mandates the obedience of every lawyer to laws and legal processes. To the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public. Rule 1.0, on the other hand, states the norm of conduct to be observed by all lawyers. Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element. To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness while conduct that is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.

**2. ID.; ID.; SHOULD ACT WITH HONESTY AND INTEGRITY IN ORDER TO PROMOTE THE PUBLIC'S FAITH IN THE LEGAL PROFESSION.—** Membership in the legal profession is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. "To say that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be overemphasized. Considering that, of

Supreme Court E-Library



all classes and professions, [lawyers are] most sacredly bound to uphold the law, it is imperative that they live by the law."

**3. ID.; ID.; THE LAWYER'S DUTIES TO AVOID DISHONEST AND DECEITFUL CONDUCT AND TO ACT WITH CANDOR, FAIRNESS AND GOOD FAITH, AND THE SOLEMN OATH NOT TO DO FALSEHOOD NOR CONSENT TO THE DOING OF THE SAME ARE VIOLATED IN CASE AT BAR.—** In the facts obtaining in this case, Atty. Francisco clearly violated the canons and his sworn duty. He is guilty of engaging in dishonest and deceitful conduct when he admitted to having allowed his corporate client, Clarion, to actively misrepresent to the SEC, the significant matters regarding its corporate purpose and subsequently, its corporate shareholdings. In the documents submitted to the SEC, such as the deeds of assignment and the GIS, Atty. Francisco, in his professional capacity, feigned the validity of these transfers of shares, making it appear that these were done for consideration when, in fact, the said transactions were fictitious, albeit upon the alleged orders of Jimenez. x x x As corporate secretary of Clarion, it was his duty and obligation to register valid transfers of stocks. Nonetheless, he chose to advance the interests of his clientele with patent disregard of his duties as a lawyer. Worse, Atty. Francisco admitted to have simulated the loan entered into by Clarion and to have undervalued the consideration of the effected sale of the Forbes property. He permitted this fraudulent ruse to cheat the government of taxes. Unquestionably, therefore, Atty. Francisco participated in a series of grave legal infractions and was content to have granted the requests of the persons involved. x x x Lawyers are officers of the court, called upon to assist in the administration of justice. They act as vanguards of our legal system, protecting and upholding truth and the rule of law. They are expected to act with honesty in all their dealings, especially with the court. From the foregoing, Atty. Francisco clearly violated his duties as a lawyer embodied in the CPR, namely, to avoid dishonest and deceitful conduct, (Rule 1.01, Canon 1) and to act with candor, fairness and good faith (Rule 10.01, Canon 10). Also, Atty. Franciso desecrated his solemn oath not to do any falsehood nor consent to the doing of the same.

**4. ID.; ID.; THE LAWYER'S FIDELITY TO THE CAUSE OF HIS CLIENT MUST BE HELD WITHIN THE BOUNDS**

Supreme Court E-Library



**OF LAW.—** Time and again, the Court has reminded lawyers that their support for the cause of their clients should never be attained at the expense of truth and justice. While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, as well as the exertion of his utmost learning and ability, he must do so only within the bounds of the law. It needs to be emphasized that the lawyer's fidelity to his client must not be pursued at the expense of truth and justice, and must be held within the bounds of reason and common sense. His responsibility to protect and advance the interests of his client does not warrant a course of action propelled by ill motives and malicious intentions.

**5. ID.; ID.; LAWYER-CLIENT RELATIONSHIP; SHOULD IDEALLY BE IMBUED WITH THE HIGHEST LEVEL OF TRUST AND CONFIDENCE TO PROMOTE A FULL DISCLOSURE OF THE CLIENT'S MOST CONFIDENTIAL INFORMATION TO HIS LAWYER.—** Rule 15.03, Canon 15 of the CPR provides that, "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts." "The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all his dealings and transactions with the client. Part of the lawyer's duty in this regard is to avoid representing conflicting interests…" Thus, even if lucrative fees offered by prospective clients are at stake, a lawyer must decline professional employment if the same would trigger a violation of the prohibition against conflict of interest.

**6. ID.; ID.; RULE ON CONFLICT OF INTERESTS; PRESUPPOSES A LAWYER-CLIENT RELATIONSHIP.—** [T]he rule on conflict of interests presupposes a lawyer-client relationship. The purpose of the rule is precisely to protect the fiduciary nature of the ties between an attorney and his client. Conversely,

Supreme Court E-Library



a lawyer may not be precluded from accepting and representing other clients on the ground of conflict of interests, if the lawyer-client relationship does not exist in favor of a party in the first place. x x x [T]he totality of evidence presented by the complainant miserably failed to discharge the burden of proving that Atty. Francisco was her lawyer. At most, he served as the legal counsel of Clarion and, based on the affirmation presented, of Jimenez. Suffice it to say, complainant failed to establish that Atty. Francisco committed a violation of the rule on conflict of interests. Consequently, the rule on lawyer-client privilege does not apply.

**7. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; REQUIRED IN SUSPENSION OR DISBARMENT PROCEEDINGS.—** In suspension or disbarment proceedings, lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove the allegations in the complaint by preponderant evidence. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.

**8. ID.; ID.; ID.; ID.; HOW DETERMINED.—** Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses, although it does not mean that preponderance is necessarily with the greater number.

**9. LEGAL ETHICS; ATTORNEYS; MALPRACTICE AND GROSS MISCONDUCT; MAKING UNTRUTHFUL REPRESENTATIONS TO THE SECURITIES AND EXCHANGE COMMISSION AND IN OTHER PUBLIC DOCUMENTS, A CASE OF; PENALTY IN CASE AT**

Supreme Court E-Library



**BAR.—** A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violating of 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. x x x [T]he acts of Atty. Francisco, in actively and passively allowing Clarion to make untruthful representations to the SEC and in other public documents, x x x constitute malpractice and gross misconduct in his office as attorney, for which a suspension from the practice of law for six (6) months is warranted.

**10. REMEDIAL LAW; REVISED RULES OF COURT; ATTORNEYS AND ADMISSION TO BAR; DISBARMENT OR SUSPENSION OF ATTORNEYS; GROUNDS.—** Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.

## APPEARANCES OF COUNSEL

*Reyes Francisco and Associates* for respondent.

## D E C I S I O N

**MENDOZA, *J.*:**

This refers to the Resolutions of the Integrated Bar of the Philippines, Board of Governors *(IBP-BOG)*, dated January 3,

Supreme Court E-Library



2013[1] and March 22, 2014,[2] adopting and approving the findings of the Commission on Bar Discipline *(CBD)* which found Atty. Edgar B. Francisco *(Atty. Francisco)* administratively liable for multiple violations of the Code of Professional Responsibility *(CPR)* and recommended the penalty of suspension of one (1) year from the practice of law.

On September 6, 2007, the CBD received a complaint, dated July 14, 2007,[3] filed by Caroline Castañeda Jimenez *(complainant)* against Atty. Francisco for multiple violations of the CPR. On October 24, 2007, Atty. Francisco filed his Answer.[4] On June 26, 2009, the mandatory conference was held and terminated. Only the counsel for Atty. Francisco appeared. The notice of the said conference addressed to complainant was returned with the notation "unknown at the given address." No new address was provided by the complainant. Both parties were required to submit their respective position papers. For this purpose, Atty. Francisco adopted his Answer.

**The Antecedents**

Mario Crespo, otherwise known as Mark Jimenez *(Jimenez)*, filed a complaint for estafa against complainant, her sister Rosemarie Flaminiano, Marcel Crespo, Geraldine Antonio, Brenda Heffron, Magdalena Cunanan, and Isabel Gonzalez.[5] The said complaint was docketed as IS No. 074314 with the Office of the City Prosecutor of Makati City. Jimenez alleged that he was the true and beneficial owner of the shares of stock in Clarion Realty and Development Corporation *(Clarion)*, which was incorporated specifically for the purpose of purchasing a residential house located in Forbes Park, Makati City *(Forbes property)*. The incorporators and original stockholders of Clarion were as follows:

---

[1] *Rollo*, p. 278.

[2] *Id.* at 309.

[3] *Id*. at 2-7.

[4] *Id*. at 115-140.

[5] *Id*. at 141-149.

Supreme Court E-Library



| | | |
|---|---|---|
| Thomas K. Chua | - | ₱500,000.00 |
| Teresita C. Alsua | - | ₱500,000.00 |
| Myla Villanueva | - | ₱249,998.00 |
| Edgar B. Francisco | - | ₱1.00 |
| Soledad Gamat | - | ₱1.00 |

Simultaneous with the drafting of Clarion's Articles of Incorporation, the above-named stockholders, except for Myla Villanueva *(Myla)*, executed a deed of assignment of their respective shares in favor of complainant, who was then Jimenez's common-law partner. Clarion's total capitalization was only ₱5,000,000.00. Thus, in order to achieve its purpose of purchasing the Forbes property, Clarion simulated a loan from the complainant in the amount of ₱80,750,000.00. Thereafter, Clarion purchased the Forbes property in the amount of ₱117,000,000.00 from Gerardo Contreras. To effect the sale, Myla handed a check in the said amount which was funded entirely by Jimenez. The sale, however, was undervalued. In the deed of sale, it was made to appear that the Forbes property was purchased for ₱78,000,000.00 only. Further, the money used as the purchase price was not reflected in the books of Clarion.

On July 19, 2001, Thomas Chua and Teresita Alsua assigned their shares in Clarion to Jimenez by virtue of a deed of trust. On the other hand, Myla's 249,997 shares were transferred to complainant based on a deed of assignment. The remaining one (1) share was transferred to Ma. Carolina C. Crespo. These transactions appeared in Clarion's General Information Sheet *(GIS)* filed with the Securities and Exchange Commission *(SEC)*. Resultantly, the subscribed shares of Clarion were as follows:

| | | |
|---|---|---|
| Mark Jimenez | - | ₱ 500,000.00 |
| Caroline Jimenez | - | ₱ 749,997.00 |
| Ma. Carolina C. Crespo | - | ₱ 1.00 |
| Edgar B. Francisco | - | ₱ 1.00 |
| Soledad Gamat | - | ₱ 1.00 |

On November 5, 2002, Jimenez transferred all his shares to complainant by another deed of assignment, making her the holder of Clarion shares amounting to ₱1,249,997.00.

Supreme Court E-Library



According to Jimenez's complaint, while he was in prison in the United States in 2004, he learned from Atty. Francisco that his son, Marcel Crespo *(Marcel)*, approached the complainant and threatened her, claiming that the United States Internal Revenue Service *(IRS)* was about to go after their properties. Marcel succeeded in persuading complainant to transfer her nominal shares in Clarion to Geraldine Antonio, through another deed of assignment. Again, this was reflected in Clarion's GIS for the year 2004.

Thereafter, Jimenez was informed by Atty. Francisco that, through fraudulent means, complainant and her co-respondents in the estafa case, put the Forbes property for sale sometime in August 2004. The said property was eventually sold to Philmetro Southwest Enterprise Inc. *(Philmetro)* for the amount of ₱118,000,000.00 without Jimenez's knowledge. This sale was again undervalued at ₱78,000.000.00 per the deed of sale. Atty. Francisco relayed to Jimenez that he was the one who received the payment for the sale of the Forbes property and that he handed all the proceeds thereof to Rosemarie Flaminiano in the presence of complainant.

Jimenez's complaint for estafa was based on complainant's alleged participation in the fraudulent means in selling the Forbes property which was acquired by Clarion with Jimenez's money. Complainant was duty-bound to remit all the proceeds of the sale to Jimenez as the true and beneficial owner. Complainant and her co-respondents, however, misappropriated and converted the funds for their personal use and benefit.

In support of Jimenez's complaint for estafa, Atty. Francisco executed an affidavit reiterating its factual averments.[6] A perusal of this affidavit likewise would show the following claims and admissions, among other things, of Atty. Francisco:

1. Sometime in August 2004, complainant called him, asking for assistance in the documentation of the sale of the Forbes property owned by Clarion. Atty. Francisco

[6] *Id*. at 100-104.

Supreme Court E-Library



asked her if she had secured permission from Mark Jimenez and complainant answered in the affirmative.

2. The Board of Directors of Clarion issued a resolution authorizing him to negotiate the sale of the property.

3. For purposes of the sale, he opened an account with Security Bank, San Francisco Del Monte branch. When the cash payment was deposited, he withdrew the amount and handed the same to Rosemarie Flaminiano in the presence of complainant.

4. All transfers of shares were caused without any consideration. The transfer taxes, however, were paid.

5. When Mark Jimenez returned to the Philippines, he was able to confirm that the sale of the Forbes property was without his knowledge and approval. The proceeds of the sale had already been farmed out to different corporations established by complainant and her sister.

6. The frequent changes in stockholdings were premeditated in order to steal the money of Mark Jimenez.

**The Complaint**

Complainant was shocked upon reading the allegations in the complaint for estafa filed by Jimenez against her. She felt even more betrayed when she read the affidavit of Atty. Francisco, on whom she relied as her personal lawyer and Clarion's corporate counsel and secretary of Clarion. This prompted her to file a disciplinary case against Atty. Francisco for representing conflicting interests. According to her, she usually conferred with Atty. Francisco regarding the legal implications of Clarion's transactions. More significantly, the principal documents relative to the sale and transfer of Clarion's property were all prepared and drafted by Atty. Francisco or the members of his law office.[7]

---

[7] 1) Deed of Assignment dated November 5, 2002 notarized by Atty. Pastor M. Reyes, Jr.; 2) General Information Sheet dated November 5, 2002 prepared by Atty. Francisco; 3) Deed of Assignment dated August 10, 2004 notarized by Atty. Pastor M. Reyes, Jr.; 4) General Information Sheet dated

Supreme Court E-Library



Atty. Francisco was the one who actively participated in the transactions involving the sale of the Forbes property. Without admitting the truth of the allegations in his affidavit, complainant argued that its execution clearly betrayed the trust and confidence she reposed on him as a lawyer. For this reason, complainant prayed for the disbarment of Atty. Francisco.

**The Respondent's Position**

In his Answer,[8] Atty. Francisco replied that Jimenez initially engaged his services in 1998 for the incorporation of Clarion for the purpose of purchasing a residential house in Forbes Park, where he intended to live with his long-time partner, the complainant; that the original incorporators and stockholders of Clarion held their respective shares in trust for Jimenez; that the subsequent changes in the ownership of Clarion shareholdings were also pursuant to Jimenez's orders; and that as the corporate secretary and legal counsel of Clarion, he prepared all the legal documentation to give effect to the said transfers and, ultimately, to the purchase of the Forbes property.

Atty. Francisco further stated that sometime in 2004, Jimenez was imprisoned in the United States for excessive contributions to the Democratic Party; that during this time, Jimenez's son, Marcel, and the complainant, asked him again to change the ownership of Clarion shares in order to avoid the attachment of Jimenez's properties in a tax evasion case; that he acceded to the request on the belief that this was in accordance with Jimenez's wishes; and that as a result, almost 100% of Clarion's ownership was transferred in the name of Geraldine Antonio.

Atty. Francisco also claimed that, thereafter, complainant tasked him to talk to prospective buyers and to negotiate the sale of the Forbes property until it was sold for ₱118,000,000.00; that

---

September 9, 2004 prepared by Atty. Francisco and notarized by Atty. Pastor M. Reyes, Jr.; 5) Deed of Absolute Sale dated June 15, 2005 between Clarion and Philmetro covering the Forbes property signed by Atty. Francisco on behalf of Clarion; and 6) Board Resolution dated March 28, 2005 signed by Atty. Francisco.

[8] *Rollo,* pp. 115-140.

Supreme Court E-Library



Marcel and complainant led him to believe that Jimenez had knowledge of the sale as they were in constant communication with him; that all these representations, however, turned out to be false when Jimenez returned to the Philippines and discovered that the proceeds of the sale were coursed through other corporations set up by complainant and her sister; that Jimenez likewise learned of the successive sale of his other properties, including Meridian Telekoms Inc., by the members of his family; and that this led to the filing of the estafa case against the complainant and the others. As a witness to the fraud committed against Jimenez, Atty. Francisco executed the affidavit narrating the facts and circumstances surrounding the said transactions.

Atty. Francisco mainly argued that he violated neither the rule on disclosures of privileged communication nor the proscription against representing conflicting interests, on the ground that complainant was not his client. He was the lawyer of Jimenez and the legal counsel of Clarion, but never of the complainant. He might have assisted her in some matters, but these were all under the notion that Jimenez had given him authority to do so. Further, though he acted as legal counsel for Clarion, no attorney-client relationship between him and complainant was formed, as a corporation has a separate and distinct personality from its shareholders. While he admitted that the legal documentation for the transfer of shares and the sale of the Forbes property were prepared by him and notarized by the members of his law firm, he averred that these acts were performed in his capacity as the corporate secretary and legal counsel of Clarion, and not as a lawyer of complainant. Therefore, he served no conflicting interests because it was not a "former client" and a "subsequent client" who were the opposing parties in litigation.

He opined that assuming that complainant was indeed his client, the rule on privileged communication does not apply to his case. Here, complainant failed to allege, much less prove, the requisites for the application of the privilege. When Atty. Francisco denied being her lawyer, the complainant should have established, by clear and convincing evidence, that a lawyer-

Supreme Court E-Library



client relationship indeed existed between them. Complainant failed to do this.

Arguing that the execution of his affidavit in the estafa case was but a truthful narration of facts by a witness, Atty. Francisco cited *Gonzaga v. Cañete,*[9] where the Court ruled that "the fact that one of the witnesses for the defendant had been formerly the lawyer for the defendant in this suit was no ground for rejecting his testimony." In this case, he merely attested to the fraudulent acts of complainant, in the course of which, he defended and served Jimenez as a client. This was likewise pursuant to the rule that unlawful and illegal motives and purposes were not covered by the privilege. It was just unfortunate that he fell for the ploy of complainant.

**The Findings of the Investigating Commissioner**

In the Commissioner's Report,[10] dated November 7, 2011, the Investigating Commissioner, Atty. Jose I. dela Rama, Jr. *(Investigating Commissioner),* found Atty. Francisco guilty of violations of the CPR and recommended that he be suspended for one (1) year from the practice of law.

Initially, the Investigating Commissioner noted that the subsequent affidavit of desistance executed by Jimenez in the estafa case did not affect the investigation conducted by the CBD as it was not an ordinary court which accepted compromises or withdrawals of cases. After weighing on the claims of the parties, the Investigating Commissioner concluded that nothing in the records would show that a lawyer-client relationship existed between Atty. Francisco and Jimenez.[11] The circumstances would show that Atty. Francisco was an original incorporator and shareholder of Clarion. He was also the legal counsel and corporate secretary of the said corporation, the articles of incorporation of which did not include Jimenez as an original

---

[9] 3 Phil. 394, 397 (1904).

[10] *Rollo,* pp. 279-288.

[11] Jimenez was represented by the Law Office of Chavez Miranda Aseoche in the estafa case he filed against the complainant.

Supreme Court E-Library



incorporator. He became a stockholder only in 2001, when Jimenez acquired shares from Thomas Chua and Teresita Alsua. Jimenez's participation in Clarion affairs again stopped when he assigned the entirety of his shares in favor of complainant.

Granting that Jimenez really owned 100% of Clarion as alluded to by Atty. Francisco, the report stated that it would appear that the latter permitted misrepresentations as to Clarion's ownership to be reported to the SEC through its GIS. The Investigating Commissioner also pointed out Atty. Francisco's clear admission that the transfer of shares within Clarion were "without any consideration," ran counter to the deeds of assignment that he again admittedly executed as corporate counsel. Worse, Atty. Francisco admitted to have simulated the loan and undervalued the consideration of the effected sale of the Forbes property, which displayed his unlawful, dishonest, immoral, and deceitful conduct in violation of Canon 1 of the CPR. Further, when he executed the affidavit containing allegations against the interest of Clarion and complainant, the Investigating Commissioner held that Atty. Francisco violated the rule on privileged communication and engaged in an act that constituted representation of conflicting interests in violation of Canons 15 and 21 of the CPR.

In its January 3, 2013 Resolution,[12] the IBP-BOG adopted and approved, *in toto*, the findings and recommendation of the CBD against Atty. Francisco.

The respondent received a copy of the said resolution on March 26, 2013 and moved for its reconsideration.[13]

Atty. Francisco appealed to the compassion of the IBP-BOG, reasoning out that the penalty of suspension of one (1) year is too severe considering that in his more than three decades of practice, he had never been involved in any act that would warrant the imposition of disciplinary action upon him. It was only in 2007, when his client, Jimenez, experienced a difficult

---

[12] *Rollo*, p. 278.

[13] *Id.* at 289-304.

Supreme Court E-Library



crisis involving his children and common-law partner that he experienced a major upheaval in his professional life. He apologized for his not being too circumspect in dealing with the relatives of Jimenez.

As to the charges against him, Atty. Francisco reiterated that his participation in the execution of the documents pertaining to the sale of the Forbes property were all connected to his capacity as Clarion's corporate secretary and legal counsel, not to mention his ties with his client and friend, Jimenez. He admitted that he owed fidelity to Clarion and Jimenez, but denied that this duty extended to the incorporators and shareholders of Clarion. Thus, when complainant sought advice in her capacity as a shareholder in Clarion, no fiduciary duty arose on his part. In his own words, Atty. Francisco insisted that "Carol is not Clarion and vice versa."[14]

Attached to Atty. Francisco's motion for reconsideration was an affidavit executed by Jimenez, stating that he had retained the legal services of Atty. Francisco since 1999. Espousing Atty. Francisco's defenses, Jimenez asserted that Atty. Francisco's law firm was in charge of all the companies he owned in the Philippines. He directed Atty. Francisco to execute all the documentation to show his ownership of these companies, including Clarion. These documents were in the possession of complainant for safekeeping. When Jimenez ran for Congress in 2001, Atty. Francisco personally assisted him in the filing of his certificate of candidacy and the proceedings before the electoral tribunals. While he was in prison in the United States, it was Atty. Francisco who visited and told him that his children, Myla and Marcel, were then facilitating the sale of one of his companies, Meridian Telekoms, Inc., without his knowledge. He asked Atty. Francisco to keep quiet about his children's betrayal and to wait until he could go home. When he filed the criminal cases against his children and complainant, the latter even filed a frivolous kidnapping case against Atty. Francisco. According to Jimenez, the people who committed crimes against him were now exhausting all possible means to

[14] *Id.* at 294.

Supreme Court E-Library



keep Atty. Francisco silent and to prevent the latter from performing his duties as a lawyer.

In its March 22, 2014 Resolution,[15] the IBP-BOG denied the respondent's motion for reconsideration.

No petition for review was filed with the Court.

**The Court's Ruling**

*Violations of Canons 1 and 10 of the CPR and the Lawyer's Oath*

Canon 1 and Rule 1.01 of the CPR provide:

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

Rule 1.0 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Canon 1 clearly mandates the obedience of every lawyer to laws and legal processes. To the best of his ability, a lawyer is expected to respect and abide by the law and, thus, avoid any act or omission that is contrary thereto. A lawyer's personal deference to the law not only speaks of his character but it also inspires respect and obedience to the law, on the part of the public. Rule 1.0, on the other hand, states the norm of conduct to be observed by all lawyers.

Any act or omission that is contrary to, or prohibited or unauthorized by, or in defiance of, disobedient to, or disregards the law is "unlawful." "Unlawful" conduct does not necessarily imply the element of criminality although the concept is broad enough to include such element.[16] To be "dishonest" means the disposition to lie, cheat, deceive, defraud or betray; be unworthy; lacking in integrity, honesty, probity, integrity in principle, fairness and straightforwardness[17] while conduct that

---

[15] *Id.* at 309.

[16] *Black's Law Dictionary* (6th ed.), p. 1538.

[17] *Black's Law Dictionary* (6th ed.), p. 468.

Supreme Court E-Library



is "deceitful" means the proclivity for fraudulent and deceptive misrepresentation, artifice or device that is used upon another who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.[18]

Membership in the legal profession is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession.[19] "To say that lawyers must at all times uphold and respect the law is to state the obvious, but such statement can never be overemphasized. Considering that, of all classes and professions, [lawyers are] most sacredly bound to uphold the law, it is imperative that they live by the law."[20]

When Atty. Francisco was admitted to the Bar, he also took an oath to "obey the laws," "do no falsehood," and conduct himself as a lawyer according to the best of his knowledge and discretion.[21]

In the facts obtaining in this case, Atty. Francisco clearly violated the canons and his sworn duty. He is guilty of engaging in dishonest and deceitful conduct when he admitted to having allowed his corporate client, Clarion, to actively misrepresent to

---

[18] *Black's Law Dictionary* (6th ed.), p. 405.

[19] *Rivera v. Corral,* 433 Phil. 331, 342 (2002).

[20] *Resurreccion v. Sayson,* 360 Phil. 313, 315 (1998), citing *Ex parte Wall,* 107 U.S. 265; cited in Malcolm, Legal and Judicial Ethics, p. 214.

[21] The Lawyer's Oath states in full:

I, _____ do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support the Constitution and **obey the laws as well as the legal orders of the duly constituted authorities therein**; **I will do no falsehood**, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, or give aid nor consent to the same; I will delay no man for money or malice, and **will conduct myself as a lawyer according to the best of my knowledge and discretion**, with all good fidelity as well to the courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.

the SEC, the significant matters regarding its corporate purpose and subsequently, its corporate shareholdings. In the documents submitted to the SEC, such as the deeds of assignment and the GIS, Atty. Francisco, in his professional capacity, feigned the validity of these transfers of shares, making it appear that these were done for consideration when, in fact, the said transactions were fictitious, albeit upon the alleged orders of Jimenez. The Investigating Commissioner was correct in pointing out that this ran counter to the deeds of assignment which he executed as corporate counsel. In his long practice as corporate counsel, it is indeed safe to assume that Atty. Francisco is knowledgeable in the law on contracts, corporation law and the rules enforced by the SEC. As corporate secretary of Clarion, it was his duty and obligation to register valid transfers of stocks. Nonetheless, he chose to advance the interests of his clientele with patent disregard of his duties as a lawyer. Worse, Atty. Francisco admitted to have simulated the loan entered into by Clarion and to have undervalued the consideration of the effected sale of the Forbes property. He permitted this fraudulent ruse to cheat the government of taxes. Unquestionably, therefore, Atty. Francisco participated in a series of grave legal infractions and was content to have granted the requests of the persons involved.

Despite assertions that these were in accordance to Jimenez's wishes, or pursuant to complainant's misrepresentations, the Court cannot turn a blind eye on Atty. Francisco's act of drafting, or at the very least, permitting untruthful statements to be embodied in public documents. If the Court allows this highly irregular practice for the specious reason that lawyers are constrained to obey their clients' flawed scheming and machinations, the Court would, in effect, sanction wrongdoing and falsity. This would undermine the role of lawyers as officers of the court.

Time and again, the Court has reminded lawyers that their support for the cause of their clients should never be attained at the expense of truth and justice. While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, as well as the exertion of his utmost learning and ability,

Supreme Court E-Library



he must do so only within the bounds of the law. It needs to be emphasized that the lawyer's fidelity to his client must not be pursued at the expense of truth and justice, and must be held within the bounds of reason and common sense. His responsibility to protect and advance the interests of his client does not warrant a course of action propelled by ill motives and malicious intentions.[22]

In the same vein, Atty. Francisco's admissions show that he lacks candor regarding his dealings. Canon 10 of the CPR provides that, "[a] lawyer owes candor, fairness and good faith to the court." Corollary thereto, Rule 10.0 of the CPR provides that "a lawyer shall do no falsehood, nor consent to the doing of any in Court, nor shall he mislead or allow the Court to be misled by an artifice." Lawyers are officers of the court, called upon to assist in the administration of justice. They act as vanguards of our legal system, protecting and upholding truth and the rule of law. They are expected to act with honesty in all their dealings, especially with the court.[23]

From the foregoing, Atty. Francisco clearly violated his duties as a lawyer embodied in the CPR, namely, to avoid dishonest and deceitful conduct, (Rule 1.01, Canon 1) and to act with candor, fairness and good faith (Rule 10.01, Canon 10). Also, Atty. Franciso desecrated his solemn oath not to do any falsehood nor consent to the doing of the same.

***Rule on Conflicting Interests and Disclosure of Privileged Communication***

With respect to Atty. Francisco's alleged representation of conflicting interests and disclosure of privileged communication, the Court deviates from the findings of the IBP-BOG.

---

[22] *Plus Builders, Inc. v. Revilla, Jr.*, 533 Phil. 250, 261 (2006), citing *Choa v. Chiongson* 329 Phil. 270 (1996).

[23] *Id.*, citing *Ting-Dumali v. Torres*, 471 Phil. 1, 9 (2004); *Radjaie v. Alovera*, 392 Phil. 1, 17 (2000); *Ziga v. Arejola*, 486 Phil. 37, 49 (2004); *Berbano v. Barcelona*, 457 Phil. 331, 345 (2003); *Radjaie v. Alovera*, *supra*; *Busiños v. Ricafort*, 347 Phil. 687, 692 (1997).

Supreme Court E-Library



Rule 15.03, Canon 15 of the CPR provides that, "[a] lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts."[24] "The relationship between a lawyer and his/her client should ideally be imbued with the highest level of trust and confidence. This is the standard of confidentiality that must prevail to promote a full disclosure of the client's most confidential information to his/her lawyer for an unhampered exchange of information between them. Needless to state, a client can only entrust confidential information to his/her lawyer based on an expectation from the lawyer of utmost secrecy and discretion; the lawyer, for his part, is duty-bound to observe candor, fairness and loyalty in all his dealings and transactions with the client. Part of the lawyer's duty in this regard is to avoid representing conflicting interests…"[25] Thus, even if lucrative fees offered by prospective clients are at stake, a lawyer must decline professional employment if the same would trigger a violation of the prohibition against conflict of interest.

In *Quiambao v. Bamba*,[26] the Court discussed the application of the rule on conflict of interest in this wise:

> In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose. Developments in jurisprudence have particularized various tests to determine whether a lawyer's conduct lies within this proscription. One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.
>
> Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion

---

[24] *Aniñon v. Sabitsana, Jr.*, A.C. No. 5098, April 11, 2012, 669 SCRA 76, 81.

[25] *Id.* at 80-81.

[26] 505 Phil. 126, 134-135 (2005).

Supreme Court E-Library



of unfaithfulness or double-dealing in the performance of that duty. Still another test is whether the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

The proscription against representation of conflicting interest applies to a situation where the opposing parties are present clients in the same action or in an unrelated action. It is of no moment that the lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other client, or that there would be no occasion to use the confidential information acquired from one to the disadvantage of the other as the two actions are wholly unrelated. It is enough that the opposing parties in one case, one of whom would lose the suit, are present clients and the nature or conditions of the lawyer's respective retainers with each of them would affect the performance of the duty of undivided fidelity to both clients.

From the foregoing, it is obvious that the rule on conflict of interests presupposes a lawyer-client relationship. The purpose of the rule is precisely to protect the fiduciary nature of the ties between an attorney and his client. Conversely, a lawyer may not be precluded from accepting and representing other clients on the ground of conflict of interests, if the lawyer-client relationship does not exist in favor of a party in the first place.

In determining whether or not Atty. Francisco violated the rule on conflict of interests, a scrutiny of the parties' submissions with the IBP reveals that the complainant failed to establish that she was a client of Atty. Francisco.

*First*, complainant's claim of being Atty. Francisco's client remains unsubstantiated, considering its detailed refutation. All that the complaint alleged was that Atty. Francisco was Clarion's legal counsel and that complainant sought advice and requested documentation of several transfers of shares and the sale of the Forbes property. This was only successful in showing that Atty. Francisco, indeed, drafted the documents pertaining to the transaction and that he was retained as legal counsel of Clarion. There was no detailed explanation as to how she supposedly engaged the services of Atty. Francisco as her personal counsel and as to what and how she communicated

with the latter anent the dealings she had entered into. With the complaint lacking in this regard, the unrebutted answer made by Atty. Francisco, accompanied with a detailed narrative of his engagement as counsel of Jimenez and Clarion, would have to prevail.

*Second*, there is a stark disparity in the amount of narrative details presented by the parties. Atty. Francisco's claim that he was the counsel of Clarion and Jimenez, and not of the complainant, was clearly established in a sworn statement executed by Jimenez himself. Complainant's evidence pales in comparison with her claims of being the client of Atty. Francisco couched in general terms that lacked particularity of circumstances.

*Third*, noteworthy is the fact that complainant opted not to file a reply to Atty. Francisco's answer. This could have given her opportunity to present evidence showing their professional relationship. She also failed to appear during the mandatory conference with the IBP-CBD without even updating her residential address on record. Her participation in the investigation of the case apparently ended at its filing.

In suspension or disbarment proceedings, lawyers enjoy the presumption of innocence, and the burden of proof rests upon the complainant to clearly prove the allegations in the complaint by preponderant evidence. Preponderance of evidence means that the evidence adduced by one side is, as a whole, superior to or has greater weight than that of the other. It means evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto. Under Section 1 of Rule 133, in determining whether or not there is preponderance of evidence, the court may consider the following: (a) all the facts and circumstances of the case; (b) the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony; (c) the witnesses' interest or want of interest, and also their personal credibility so far as the same may ultimately appear in the trial; and (d) the number of witnesses,

Supreme Court E-Library



although it does not mean that preponderance is necessarily with the greater number.[27]

Markedly, Atty. Francisco could have prevented his entanglement with this fiasco among the members of Jimenez's family by taking an upfront and candid stance in dealing with Jimenez's children and complainant. He could have been staunch in reminding the latter that his tasks were performed in his capacity as legal counsel for Clarion and Jimenez. Be that as it may, Atty. Francisco's indiscretion does not detract the Court from finding that the totality of evidence presented by the complainant miserably failed to discharge the burden of proving that Atty. Francisco was her lawyer. At most, he served as the legal counsel of Clarion and, based on the affirmation presented, of Jimenez. Suffice it to say, complainant failed to establish that Atty. Francisco committed a violation of the rule on conflict of interests.

Consequently, the rule on lawyer-client privilege does not apply. In *Mercado v. Vitriolo*,[28] the Court elucidated on the factors essential to establish the existence of the said privilege, *viz*:

> In fine, the factors are as follows:
>
> (1) **There exists an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication.**
>
> Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines the employment. The reason for this is to make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will be divulged or used against him, and for the lawyer to be equally free to obtain information from the prospective client.

---

[27] *Rodica v. Lazaro*, A.C. No. 9259, August 23, 2012, 679 SCRA 1, 9-10, citing *Aba Siao v. Atty. De Guzman, Jr.*, A.C. No. 7649, December 14, 2011, 662 SCRA 361, 372.

[28] 498 Phil. 49, 58-60 (2005).

Supreme Court E-Library



x x x x x x x x x

**(2) The client made the communication in confidence.**

**The mere relation of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential.**

A confidential communication refers to information transmitted by voluntary act of disclosure between attorney and client in confidence and by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or the accomplishment of the purpose for which it was given.

Our jurisprudence on the matter rests on quiescent ground. Thus, a compromise agreement prepared by a lawyer pursuant to the instruction of his client and delivered to the opposing party, an offer and counter-offer for settlement, or a document given by a client to his counsel not in his professional capacity, are not privileged communications, the element of confidentiality not being present.

**(3) The legal advice must be sought from the attorney in his professional capacity.**

The communication made by a client to his attorney must not be intended for mere information, but for the purpose of seeking legal advice from his attorney as to his rights or obligations. The communication must have been transmitted by a client to his attorney for the purpose of seeking legal advice.

If the client seeks an accounting service, or business or personal assistance, and not legal advice, the privilege does not attach to a communication disclosed for such purpose.

[Emphases supplied]

Considering these factors in the case at bench, the Court holds that the evidence on record fails to demonstrate the claims of complainant. As discussed, the complainant failed to establish the professional relationship between her and Atty. Francisco. The records are further bereft of any indication that the "advice" regarding the sale of the Forbes property was given to Atty. Francisco in confidence. Neither was there a demonstration of what she had communicated to Atty. Francisco nor a recital of circumstances under which the confidential

Supreme Court E-Library



communication was relayed. All that complainant alleged in her complaint was that "she sought legal advice from respondent in various occasions."[29] Considering that complainant failed to attend the hearings at the IBP, there was no testimony as to the specific confidential information allegedly divulged by Atty. Francisco without her consent. It is, therefore, difficult, if not impossible, to determine if there was any violation of the rule on privileged communication. As held in *Mercado*, such confidential information is a crucial link in establishing a breach of the rule on privileged communication between attorney and client. It is not enough to merely assert the attorney-client privilege.[30] It cannot be gainsaid then that complainant, who has the burden of proving that the privilege applies, failed in this regard.

**The Penalty**

A member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violating of the lawyer's oath and/or for breaching the ethics of the legal profession as embodied in the CPR,[31] 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.[32] The appropriate penalty on an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.[33]

Under Section 27, Rule 138 of the Revised Rules of Court, a member of the Bar may be disbarred or suspended on any of the following grounds: (1) deceit; (2) malpractice or other gross misconduct in office; (3) grossly immoral conduct; (4) conviction of a crime involving moral turpitude; (5) violation of the lawyer's oath; (6) willful disobedience of any lawful order of a superior court; and (7) willful appearance as an attorney for a party

---

[29] *Rollo*, p. 3.

[30] *Supra* note 28, at 61.

[31] *Catu v. Rellosa*, 569 Phil. 539, 550 (2008).

[32] *Director of Religious Affairs v. Bayot*, 74 Phil. 579, 581 (1944).

[33] *Lim-Santiago v. Saguico*, 520 Phil. 538, 552 (2006).

Supreme Court E-Library



without authority. A lawyer may be disbarred or suspended for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, honesty, probity and good demeanor, or unworthy to continue as an officer of the court.

While the Court finds no violation of the rule on conflict of interests and disclosure of privileged communication, the acts of Atty. Francisco, in actively and passively allowing Clarion to make untruthful representations to the SEC and in other public documents, still constitute malpractice and gross misconduct in his office as attorney, for which a suspension from the practice of law for six (6) months is warranted.

**WHEREFORE,** the Court finds Atty. Edgar B. Francisco **GUILTY** of violation of Canons 1 and 10 of the Code of Professional Responsibility for which he is **SUSPENDED** from the practice of law for a period of six (6) months, 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.

Let a copy of this Decision be entered into the records of Atty. Edgar B. Francisco and furnished to the Office of the Clerk of Court, the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts in the Philippines, for their information and guidance.

Atty. Francisco is **DIRECTED** to inform the Court of the date of his receipt of this Decision so that the Court can determine the reckoning point when his suspension shall take effect.

**SO ORDERED.**

*Peralta,*[*] *del Castillo (Acting Chairperson), Villarama, Jr.,*[**] and *Leonen, JJ.,* concur.

---

[*] Designated Acting Member in lieu of Associate Justice Antonio T. Carpio, who inhibited himself, as a member of his staff is closely related to a party, per Raffle dated December 9, 2014.

[**] Designated Acting Member in lieu of Associate Justice Arturo D. Brion, per Special Order No. 1888, dated November 28, 2014.