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[A.C. No. 9872. January 28, 2014]

NATIVIDAD P. NAVARRO and HILDA S. PRESBITERO, *complainants, vs.* **ATTY. IVAN M. SOLIDUM, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER MAY BE DISCIPLINED FOR MISCONDUCT COMMITTED EITHER IN HIS PROFESSIONAL OR PRIVATE CAPACITY; CASE AT BAR.— It is clear that respondent violated Rule 1.01 of the Code of Professional Responsibility. We have ruled that conduct, as used in [Rule 1.01 of the Code of Professional Responsibility], is not confined to the performance of a lawyer's professional duties. A lawyer may be disciplined for misconduct committed either in his professional or private capacity. The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court. In this case, the loan agreements with Navarro were done in respondent's private capacity. Although Navarro financed the registration of Yulo's lot, respondent and Navarro had no lawyer-client relationship. However, respondent was Presbitero's counsel at the time she granted him a loan. It was established that respondent misled Presbitero on the value of the property he mortgaged as a collateral for his loan from her. To appease Presbitero, respondent even made a Deed of Undertaking that he would give her another 1,000-square-meter lot as additional collateral but he failed to do so. Clearly, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional capacity with respect to his client, Presbitero, and in his private capacity with respect to complainant Navarro. Both Presbitero and Navarro allowed respondent to draft the terms of the loan agreements. Respondent drafted the MOAs knowing that the interest rates were exorbitant. Later, using his knowledge of the law, he assailed the validity of the same MOAs he prepared. He issued checks that were drawn from his son's account whose

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name was similar to his without informing complainants. Further, there is nothing in the records that will show that respondent paid or undertook to pay the loans he obtained from complainants.

2. ID.; ID.; THE FIDUCIARY NATURE OF THE RELATIONSHIP BETWEEN COUNSEL AND HIS CLIENT IMPOSES ON THE LAWYER THE DUTY TO ACCOUNT FOR THE MONEY OR PROPERTY COLLECTED OR RECEIVED FOR OR FROM HIS CLIENT; VIOLATION IN CASE AT BAR; DISBARMENT AS PENALTY.— The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. We agree with the IBP-CBD that respondent failed to fulfill this duty. In this case, the IBP-CBD pointed out that respondent received various amounts from complainants but he could not account for all of them. x x x Clearly, respondent had been negligent in properly accounting for the money he received from his client, Presbitero. Indeed, his failure to return the excess money in his possession gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of the trust reposed in him by, the client.x x x While respondent's loan from Presbitero was secured by a MOA, postdated checks and real estate mortgage, it turned out that respondent misrepresented the value of the property he mortgaged and that the checks he issued were not drawn from his account but from that of his son. Respondent eventually questioned the terms of the MOA that he himself prepared on the ground that the interest rate imposed on his loan was unconscionable. Finally, the checks issued by respondent to Presbitero were dishonored because the accounts were already closed. The interest of his client, Presbitero, as lender in this case, was not fully protected. Respondent violated Rule 16.04 of the Code of Professional Responsibility, which presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. In his dealings with his client Presbitero, respondent took advantage of his knowledge of the law as well as the trust and confidence reposed in him by his client. x x x Given the facts of the case, we see no reason to deviate from the recommendation of the IBP-CBD imposing on respondent the penalty of disbarment.

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Respondent failed to live up to the high standard of morality, honesty, integrity, and fair dealing required of him as a member of the legal profession. Instead, respondent employed his knowledge and skill of the law and took advantage of his client to secure undue gains for himself that warrants his removal from the practice of law.

3. REMEDIAL LAW; DISCIPLINE OF LAWYERS; THE ONLY ISSUE IN DISCIPLINARY PROCEEDINGS AGAINST A LAWYER IS WHETHER THE OFFICER OF THE COURT IS STILL FIT TO BE ALLOWED TO CONTINUE AS MEMBER OF THE BAR; CASE AT BAR.— We cannot sustain the IBP Board of Governors' recommendation ordering respondent to return his unpaid obligation to complainants, except for advances for the expenses he received from his client, Presbitero, that were not accounted at all. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. Our only concern is the determination of respondent's administrative liability. Our findings have no material bearing on other judicial action which the parties may choose to file against each other. Nevertheless, when a lawyer receives money from a client for a particular purpose involving the client-attorney relationship, he is bound to render an accounting to the client showing that the money was spent for that particular purpose. If the lawyer does not use the money for the intended purpose, he must immediately return the money to his client. Respondent was given an opportunity to render an accounting, and he failed. He must return the full amount of the advances given him by Presbitero, amounting to ₱50,000.

APPEARANCES OF COUNSEL

Bimbo Lavides for respondent.

D E C I S I O N

***PER CURIAM*:**

This case originated from a complaint for disbarment, dated 26 May 2008, filed by Natividad P. Navarro (Navarro) and Hilda S. Presbitero (Presbitero) against Atty. Ivan M. Solidum,

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Jr. (respondent) before the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD).

From the Report, dated 1 July 2009, of the IBP-CBD, we gathered the following facts of the case:

On 4 April 2006, respondent signed a retainer agreement with Presbitero to follow up the release of the payment for the latter's 2.7-hectare property located in Bacolod which was the subject of a Voluntary Offer to Sell (VOS) to the Department of Agrarian Reform (DAR). The agreement also included the payment of the debts of Presbitero's late husband to the Philippine National Bank (PNB), the sale of the retained areas of the property, and the collection of the rentals due for the retained areas from their occupants. It appeared that the DAR was supposed to pay ₱700,000 for the property but it was mortgaged by Presbitero and her late husband to PNB for ₱1,200,000. Presbitero alleged that PNB's claim had already prescribed, and she engaged the services of respondent to represent her in the matter. Respondent proposed the filing of a case for quieting of title against PNB. Respondent and Presbitero agreed to an attorney's fee of 10% of the proceeds from the VOS or the sale of the property, with the expenses to be advanced by Presbitero but deductible from respondent's fees. Respondent received ₱50,000 from Presbitero, supposedly for the expenses of the case, but nothing came out of it.

In May 2006, Presbitero's daughter, Ma. Theresa P. Yulo (Yulo), also engaged respondent's services to handle the registration of her 18.85-hectare lot located in Nasud-ong, Caradio-an, Himamaylan, Negros. Yulo convinced her sister, Navarro, to finance the expenses for the registration of the property. Respondent undertook to register the property in consideration of 30% of the value of the property once it is registered. Respondent obtained ₱200,000 from Navarro for the registration expenses. Navarro later learned that the registration decree over the property was already issued in the name of one Teodoro Yulo. Navarro alleged that she would not have spent for the registration of the property if respondent only apprised her of the real situation of the property.

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On 25 May 2006, respondent obtained a loan of ₱1,000,000 from Navarro to finance his sugar trading business. Respondent and Navarro executed a Memorandum of Agreement (MOA) and agreed that the loan (a) shall be for a period of one year; (b) shall earn interest at the rate of 10% per month; and (c) shall be secured by a real estate mortgage over a property located in Barangay Alijis, Bacolod City, covered by Transfer Certificate of Title No. 304688. They also agreed that respondent shall issue postdated checks to cover the principal amount of the loan as well as the interest thereon. Respondent delivered the checks to Navarro, drawn against an account in Metrobank, Bacolod City Branch, and signed them in the presence of Navarro.

In June 2006, respondent obtained an additional loan of ₱1,000,000 from Navarro, covered by a second MOA with the same terms and conditions as the first MOA. Respondent sent Navarro, through a messenger, postdated checks drawn against an account in Bank of Commerce, Bacolod City Branch. Respondent likewise discussed with Navarro about securing a "Tolling Agreement" with Victorias Milling Company, Inc. but no agreement was signed.

At the same time, respondent obtained a loan of ₱1,000,000 from Presbitero covered by a third MOA, except that the real estate mortgage was over a 263-square-meter property located in Barangay Taculing, Bacolod City. Respondent sent Presbitero postdated checks drawn against an account in Metrobank, Bacolod City Branch.

Presbitero was dissatisfied with the value of the 263-square-meter property mortgaged under the third MOA, and respondent promised to execute a real estate mortgage over a 1,000-square-meter parcel of land adjacent to the 4,000-square-meter property he mortgaged to Navarro. However, respondent did not execute a deed for the additional security.

Respondent paid the loan interest for the first few months. He was able to pay complainants a total of ₱900,000. Thereafter, he failed to pay either the principal amount or the interest thereon. In September 2006, the checks issued by respondent to complainants could no longer be negotiated because the accounts

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against which they were drawn were already closed. When complainants called respondent's attention, he promised to pay the agreed interest for September and October 2006 but asked for a reduction of the interest to 7% for the succeeding months.

In November 2006, respondent withdrew as counsel for Yulo. On the other hand, Presbitero terminated the services of respondent as counsel. Complainants then filed petitions for the judicial foreclosure of the mortgages executed by respondent in their favor. Respondent countered that the 10% monthly interest on the loan was usurious and illegal. Complainants also filed cases for estafa and violation of Batas Pambansa Blg. 22 against respondent.

Complainants alleged that respondent induced them to grant him loans by offering very high interest rates. He also prepared and signed the checks which turned out to be drawn against his son's accounts. Complainants further alleged that respondent deceived them regarding the identity and value of the property he mortgaged because he showed them a different property from that which he owned. Presbitero further alleged that respondent mortgaged his 263-square-meter property to her for ₱1,000,000 but he later sold it for only ₱150,000.

Respondent, for his defense, alleged that he was engaged in sugar and realty business and that it was Yulo who convinced Presbitero and Navarro to extend him loans. Yulo also assured him that Presbitero would help him with the refining of raw sugar through Victorias Milling Company, Inc. Respondent alleged that Navarro fixed the interest rate and he agreed because he needed the money. He alleged that their business transactions were secured by real estate mortgages and covered by postdated checks. Respondent denied that the property he mortgaged to Presbitero was less than the value of the loan. He also denied that he sold the property because the sale was actually rescinded. Respondent claimed that the property he mortgaged to Navarro was valuable and it was actually worth more than ₱8,000,000.

Respondent alleged that he was able to pay complainants when business was good but he was unable to continue paying when the price of sugar went down and when the business with

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Victorias Milling Company, Inc. did not push through because Presbitero did not help him. Respondent also denied that he was hiding from complainants.

Respondent further alleged that it was Yulo who owed him ₱530,000 as interest due for September to December 2005. He denied making any false representations. He claimed that complainants were aware that he could no longer open a current account and they were the ones who proposed that his wife and son issue the checks. Respondent further alleged that he already started with the titling of Yulo's lot but his services were terminated before it could be completed.

A supplemental complaint was filed charging respondent with accepting cases while under suspension. In response, respondent alleged that he accepted Presbitero's case in February 2006 and learned of his suspension only in May 2006.

After conducting a hearing and considering the position papers submitted by the parties, the IBP-CBD found that respondent violated the Code of Professional Responsibility.

The IBP-CBD found that respondent borrowed ₱2,000,000 from Navarro and ₱1,000,000 from Presbitero which he failed to pay in accordance with the MOAs he executed. The IBP-CBD found that based on the documents presented by the parties, respondent did not act in good faith in obtaining the loans. The IBP-CBD found that respondent either promised or agreed to pay the very high interest rates of the loans although he knew them to be exorbitant in accordance with jurisprudence. Respondent likewise failed to deny that he misled Navarro and her husband regarding the identity of the property mortgaged to them. Respondent also mortgaged a property to Presbitero for ₱1,000,000 but documents showed that its value was only ₱300,000. Documents also showed that he sold that property for only ₱150,000. Respondent conspired with Yulo to secure loans by promising her a 10% commission and later claimed that they agreed that Yulo would "ride" on the loan by borrowing ₱300,000 from the amount he obtained from Navarro and Presbitero. Respondent could not explain how he lost all the

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money he borrowed in three months except for his claim that the price of sugar went down.

The IBP-CBD found that respondent misled Navarro and Presbitero regarding the issuance of the postdated checks, and there was nothing in the records that would show that he informed them that it would be his wife or son who would issue the checks. The IBP-CBD also found that respondent had not been transparent in liquidating the money he received in connection with Presbitero's VOS with DAR. He was also negligent in his accounting regarding the registration of Yulo's property which was financed by Navarro.

The IBP-CBD found that respondent was guilty of violating Rule 1.01 of the Code of Professional Responsibility for committing the following acts:

(1) signing drawn checks against the account of his son as if they were from his own account;

(2) misrepresenting to Navarro the identity of the lot he mortgaged to her;

(3) misrepresenting to Presbitero the true value of the 263-square- meter lot he mortgaged to her;

(4) conspiring with Yulo to obtain the loans from complainants;

(5) agreeing or promising to pay 10% interest on his loans although he knew that it was exorbitant; and

(6) failing to pay his loans because the checks he issued were dishonored as the accounts were already closed.

The IBP-CBD also found that respondent violated Canon 16 and Rule 16.01 of the Code of Professional Responsibility when he failed to properly account for the various funds he received from complainants.

In addition, the IBP-CBD found that respondent violated Rule 16.04 of the Code of Professional Responsibility which prohibits borrowing money from a client unless the client's interest is fully protected or the client is given independent advice.

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On the matter of practicing law while under suspension, the IBP-CBD found that the records were not clear whether the notice of suspension respondent received on 29 May 2006 was the report and recommendation of the IBP-CBD or the final decision of this Court. The IBP-CBD likewise found that there was insufficient evidence to prove that respondent mishandled his cases.

The IBP-CBD recommended that respondent be meted the penalty of disbarment.

In Resolution No. XIX-2011-267 dated 14 May 2011, the IBP Board of Governors adopted and approved the recommendation of the IBP-CBD with modification by reducing the recommended penalty from disbarment to suspension from the practice of law for two years. The IBP Board of Governors likewise ordered respondent to return the amount of his unpaid obligation to complainants.

Complainants filed a motion for reconsideration, praying that the penalty of disbarment be instead imposed upon respondent.

The only issue in this case is whether respondent violated the Code of Professional Responsibility.

The records show that respondent violated at least four provisions of the Code of Professional Responsibility.

Rule 1.01 of the Code of Professional Responsibility provides:

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

With respect to his client, Presbitero, it was established that respondent agreed to pay a high interest rate on the loan he obtained from her. He drafted the MOA. Yet, when he could no longer pay his loan, he sought to nullify the same MOA he drafted on the ground that the interest rate was unconscionable. It was also established that respondent mortgaged a 263-square-meter property to Presbitero for ₱1,000,000 but he later sold the property for only ₱150,000, showing that he deceived his client as to the real value of the mortgaged property. Respondent's

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allegation that the sale was eventually rescinded did not distract from the fact that he did not apprise Presbitero as to the real value of the property.

Respondent failed to refute that the checks he issued to his client Presbitero and to Navarro belonged to his son, Ivan Garcia Solidum III whose name is similar to his name. He only claimed that complainants knew that he could no longer open a current bank account, and that they even suggested that his wife or son issue the checks for him. However, we are inclined to agree with the IBP-CBD's finding that he made complainants believe that the account belonged to him. In fact, respondent signed in the presence of Navarro the first batch of checks he issued to Navarro. Respondent sent the second batch of checks to Navarro and the third batch of checks to Presbitero through a messenger, and complainants believed that the checks belonged to accounts in respondent's name.

It is clear that respondent violated Rule 1.01 of the Code of Professional Responsibility. We have ruled that conduct, as used in the Rule, is not confined to the performance of a lawyer's professional duties.[1] A lawyer may be disciplined for misconduct committed either in his professional or private capacity.[2] The test is whether his conduct shows him to be wanting in moral character, honesty, probity, and good demeanor, or whether it renders him unworthy to continue as an officer of the court.[3]

In this case, the loan agreements with Navarro were done in respondent's private capacity. Although Navarro financed the registration of Yulo's lot, respondent and Navarro had no lawyer-client relationship. However, respondent was Presbitero's counsel at the time she granted him a loan. It was established that respondent misled Presbitero on the value of the property he mortgaged as a collateral for his loan from her. To appease Presbitero, respondent even made a Deed of Undertaking that

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[1] *Roa v. Moreno*, A.C. No. 8382, 21 April 2010, 618 SCRA 693.

[2] *Id.*

[3] *Id.*

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he would give her another 1,000-square-meter lot as additional collateral but he failed to do so.

Clearly, respondent is guilty of engaging in dishonest and deceitful conduct, both in his professional capacity with respect to his client, Presbitero, and in his private capacity with respect to complainant Navarro. Both Presbitero and Navarro allowed respondent to draft the terms of the loan agreements. Respondent drafted the MOAs knowing that the interest rates were exorbitant. Later, using his knowledge of the law, he assailed the validity of the same MOAs he prepared. He issued checks that were drawn from his son's account whose name was similar to his without informing complainants. Further, there is nothing in the records that will show that respondent paid or undertook to pay the loans he obtained from complainants.

Canon 16 and Rule 16.01 of the Code of Professional Responsibility provide:

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

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client.[4] We agree with the IBP-CBD that respondent failed to fulfill this duty. In this case, the IBP-CBD pointed out that respondent received various amounts from complainants but he could not account for all of them.

Navarro, who financed the registration of Yulo's 18.85-hectare lot, claimed that respondent received ₱265,000 from her. Respondent countered that ₱105,000 was paid for real estate taxes but he could not present any receipt to prove his claim. Respondent also claimed that he paid ₱70,000 to the surveyor

[4] *Belleza v. Macasa,* A.C. No. 7815, 23 July 2009, 593 SCRA 549.

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but the receipt was only for ₱15,000. Respondent claimed that he paid ₱50,000 for filing fee, publication fee, and other expenses but again, he could not substantiate his claims with any receipt. As pointed out by the IBP-CBD, respondent had been less than diligent in accounting for the funds he received from Navarro for the registration of Yulo's property. Unfortunately, the records are not clear whether respondent rendered an accounting to Yulo who had since passed away.

As regards Presbitero, it was established during the clarificatory hearing that respondent received ₱50,000 from Presbitero. As the IBP-CBD pointed out, the records do not show how respondent spent the funds because he was not transparent in liquidating the money he received from Presbitero.

Clearly, respondent had been negligent in properly accounting for the money he received from his client, Presbitero. Indeed, his failure to return the excess money in his possession gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of the trust reposed in him by, the client.[5]

Rule 16.04 of the Code of Professional Responsibility provides:

> 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.

Here, respondent does not deny that he borrowed ₱1,000,000 from his client Presbitero. At the time he secured the loan, respondent was already the retained counsel of Presbitero.

While respondent's loan from Presbitero was secured by a MOA, postdated checks and real estate mortgage, it turned out that respondent misrepresented the value of the property he mortgaged and that the checks he issued were not drawn from his account but from that of his son. Respondent eventually

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[5] *Id.*

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questioned the terms of the MOA that he himself prepared on the ground that the interest rate imposed on his loan was unconscionable. Finally, the checks issued by respondent to Presbitero were dishonored because the accounts were already closed. The interest of his client, Presbitero, as lender in this case, was not fully protected. Respondent violated Rule 16.04 of the Code of Professional Responsibility, which presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation.[6] In his dealings with his client Presbitero, respondent took advantage of his knowledge of the law as well as the trust and confidence reposed in him by his client.

We modify the recommendation of the IBP Board of Governors imposing on respondent the penalty of suspension from the practice of law for two years. Given the facts of the case, we see no reason to deviate from the recommendation of the IBP-CBD imposing on respondent the penalty of disbarment. Respondent failed to live up to the high standard of morality, honesty, integrity, and fair dealing required of him as a member of the legal profession.[7] Instead, respondent employed his knowledge and skill of the law and took advantage of his client to secure undue gains for himself[8] that warrants his removal from the practice of law. Likewise, we cannot sustain the IBP Board of Governors' recommendation ordering respondent to return his unpaid obligation to complainants, except for advances for the expenses he received from his client, Presbitero, that were not accounted at all. In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar.[9] Our only concern is the determination of respondent's administrative liability.[10] Our findings have no material bearing on other judicial

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[6] *Frias v. Atty. Lozada*, 513 Phil. 512 (2005).

[7] *Tabang v. Atty. Gacott*, A.C. No. 6490, 9 July 2013.

[8] *Id.*

[9] *Roa v. Moreno*, *supra* note 1.

[10] *Id.*

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action which the parties may choose to file against each other.[11] Nevertheless, when a lawyer receives money from a client for a particular purpose involving the client-attorney relationship, he is bound to render an accounting to the client showing that the money was spent for that particular purpose.[12] If the lawyer does not use the money for the intended purpose, he must immediately return the money to his client.[13] Respondent was given an opportunity to render an accounting, and he failed. He must return the full amount of the advances given him by Presbitero, amounting to ₱50,000.

WHEREFORE, the Court finds Atty. Ivan M. Solidum, Jr. **GUILTY** of violating Rule 1.01, Canon 16, Rule 16.01, and Rule 16.04 of the Code of Professional Responsibility. Accordingly, the Court **DISBARS** him from the practice of law effective immediately upon his receipt of this Decision.

Atty. Solidum is **ORDERED** to return the advances he received from Hilda S. Presbitero, amounting to ₱50,000, and to submit to the Office of the Bar Confidant his compliance with this order within thirty days from finality of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for dissemination to all courts all over the country. Let a copy of this Decision be attached to the personal records of respondent.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

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[11] *Id.*

[12] *Freeman v. Reyes,* A.C. No. 6246, 15 November 2011, 660 SCRA 48.

[13] *Id.*