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the replacement of directors, being matters incidental to the sequestration, should be addressed to the ***Sandiganbayan.***" Thus, the *Sandiganbayan* has been given by the Court full discretion to evaluate and to allow or disallow the duly registered stockholders of the UCPB shares to exercise the right to vote the said shares in the UCPB elections and/or appointment/replacement of its directors. If, as in the case at hand, the *Sandiganbayan,* in the exercise of its sound discretion and for justifiable reasons cited in its assailed Order of February 28, 2001, allowed herein private respondents to vote the sequestered shares in question, one would simply be at a loss to understand how such action could be said to be tainted with grave abuse of discretion.

FOR THE FOREGOING REASONS, I vote to DISMISS the instant petition for lack of merit.

SECOND DIVISION

[A.C. No. 5020. December 18, 2001]

ROSARIO JUNIO, *complainant, vs.* **ATTY. SALVADOR M. GRUPO,** *respondent.*

SYNOPSIS

A complaint for disbarment was filed against respondent Atty. Salvador M. Grupo for malpractice and gross misconduct. Complainant Rosario N. Junio alleged that she engaged the services of respondent then a private practitioner, for the redemption of a parcel of land covered by Transfer Certificate of Title No. 20394 registered in the name of her parents, spouses Rogelio and Rufina Nietes, and located at Concepcion, Loay, Bohol. Complainant entrusted to respondent the amount of

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₱25,000.00 in cash to be used in the redemption of the aforesaid property. Respondent, however, for no valid reason did not redeem the property; as a result of which the right of redemption was lost and the property was eventually forfeited. Despite repeated demands made by complainant and without justifiable cause, respondent had continuously refused to refund the money entrusted to him. In his Answer, petitioner admitted receiving the amount in question for the purpose for which it was given. After he failed to redeem the property he requested the complainant that he be allowed, in the meantime, to avail of the money because he had an urgent need for some money himself to help defray his children's educational expenses. According to respondent, it was a personal request and a private matter between respondent and complainant. Respondent also alleged that he executed a promissory note for the amount.

The Supreme Court found respondent guilty of violation of Rule 16.04 of the Code of Professional Responsibility and ordered him suspended from the practice of law for a period of one (1) month and to pay to respondent, within 30 days from notice, the amount of ₱25,000.00 with interest at the legal rate, computed from December 12, 1996. According to the Court, respondent's liability is not for misappropriation or embezzlement but for violation of Rule 16.04 of the Code of Professional Responsibility which forbids lawyers from borrowing money from their clients unless the latter's interests are protected by the nature of the case or by independent advice. Respondent's liability is compounded by the fact that not only did he not give any security for the payment of the amount loaned to him but that he has also refused to pay the said amount. His claim that he could not pay the loan "because circumstances . . . did not allow it" and that, because of the passage of time, "he somehow forgot about his obligation" only underscored his blatant disregard of his obligation which reflects on his honesty and candor.

SYLLABUS

LEGAL ETHICS; ATTORNEYS; THE CODE OF PROFESSIONAL RESPONSIBILITY FORBIDS LAWYERS FROM BORROWING MONEY FROM THEIR CLIENTS UNLESS THE

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LATTER'S INTERESTS ARE PROTECTED BY THE NATURE OF THE CASE OR BY INDEPENDENT ADVICE; CASE AT BAR.— It would indeed appear from the records of the case that respondent was allowed to borrow the money previously entrusted to him by complainant for the purpose of securing the redemption of the property belonging to complainant's parents. Respondent, however, did not give adequate security for the loan and subsequently failed to settle his obligation. Although complainant denied having loaned the money to respondent, the fact is that complainant accepted the promissory note given her by respondent on December 12, 1996. In effect, complainant consented to and ratified respondent's use of the money. It is noteworthy that complainant did not attach this promissory note to her complaint nor explain the circumstances surrounding its execution. She only mentioned it in her demand letter of March 12, 1998 (Annex B), in which she referred to respondent's undertaking to pay her the ₱25,000.00 on or before January 1997. Under the circumstances and in view of complainant's failure to deny the promissory note, the Court is constrained to give credence to respondent's claims that the money previously entrusted to him by complainant was later converted into a loan. Respondent's liability is thus not for misappropriation or embezzlement but for violation of Rule 16.04 of the Code of Professional Responsibility which forbids lawyers from borrowing money from their clients unless the latter's interests are protected by the nature of the case or by independent advice. In this case, respondent's liability is compounded by the fact that not only did he not give any security for the payment of the amount loaned to him but that he has also refused to pay the said amount. His claim that he could not pay the loan "because circumstances . . . did not allow it" and that, because of the passage of time, "he somehow forgot about his obligation" only underscores his blatant disregard of his obligation which reflects on his honesty and candor. A lawyer is bound to observe candor, fairness, and loyalty in all his dealings and transactions with his client.

APPEARANCES OF COUNSEL

Ongkiko Kalaw Manhit & Acorda Law Offices for complainant.

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DECISION

MENDOZA, *J.*:

This is a complaint for disbarment filed against Atty. Salvador M. Grupo for malpractice and gross misconduct.

Complainant Rosario N. Junio alleged that —

3. Sometime in 1995, [she] engaged the services of [respondent], then a private practitioner, for the redemption of a parcel of land covered by Transfer Certificate of Title No. 20394 registered in the name of her parents, spouses Rogelio and Rufina Nietes, and located at Concepcion, Loay, Bohol.

4. On 21 August 1995, [complainant] entrusted to [respondent] the amount of ₱25,000.00 in cash to be used in the redemption of the aforesaid property. Respondent received the said amount as evidenced by an acknowledgment receipt, a copy of which is being hereto attached as Annex "A".

5. Notwithstanding the foregoing and for no valid reason, respondent did not redeem the property; as a result of which the right of redemption was lost and the property was eventually forfeited.

6. Because of respondent's failure to redeem the property, complainant had demanded [the] return of the money which she entrusted to the former for the above-stated purpose.

7. Despite repeated demands made by the complainant and without justifiable cause, respondent has continuously refused to refund the money entrusted to him.[1]

In his Answer, respondent admitted receiving the amount in question for the purpose for which it was given. However, he alleged that —

6. The subject land for which the money of complainant was initially intended to be applied could really not be redeemed anymore . . ;

7. Complainant knew the mortgage agreement between her parents and the mortgage-owner had already expired, and what respondent

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[1] Comment, pp. 1-2, *Rollo*, pp. 1-2.

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was trying to do was a sort of [a] desperate, last-ditch attempt to persuade the said mortgagee to relent and give back the land to the mortgagors with the tender of redemption; but at this point, the mortgagee simply would not budge anymore. For one reason or another, he would no longer accept the sum offered;

8. By the time that complainant was to return to Manila, it was already a foregone matter that respondent's efforts did not succeed. And so, when transaction failed, respondent requested the complainant that he be allowed, in the meantime, to avail of the money because he had an urgent need for some money himself to help defray his children's educational expenses. It was really a personal request, a private matter between respondent and complainant, thus, respondent executed a promissory note for the amount, a copy of which is probably still in the possession of the complainant.

9. . . . [T]he family of the complainant and that of the respondent were very close and intimate with each other. Complainant, as well as two of her sisters, had served respondent's family as household helpers for many years when they were still in Manila, and during all those times they were treated with respect, affection, and equality. They were considered practically part of respondent's own family.

That is why, when complainant requested . . . assistance regarding the problem of the mortgaged property which complainant wanted to redeem, respondent had no second-thoughts in extending a lending hand . . . .

Respondent did not ask for any fee. His services were purely gratuitous; his acts [were] on his own and by his own. It was more than *pro bono*; it was not even for charity; it was simply an act of a friend for a friend. It was just lamentably unfortunate that his efforts failed.

. . . . . .

Of course, respondent accepts his fault, because, indeed, there were occasions when complainant's sisters came to respondent to ask for the payment in behalf of complainant, and he could not produce the money because the circumstances somehow, did not allow it. [I]t does not mean that respondent will not pay, or that he is that morally depraved as to wilfully and deliberately re[nege] in his obligation towards the complainant.[2]

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[2] Answer, pp. 1-3; *Rollo*, pp. 32-34.

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Complainant filed a reply denying that respondent informed her of his failure to redeem the property and that respondent requested her to instead lend the money to him.[3]

The case was thereafter referred to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation. However, while two hearings were set for this purpose, both were postponed at the instance of respondent. For this reason, on August 28, 2000, complainant asked the Investigating Commissioner[4] to consider the case submitted for decision on the basis of the pleadings theretofore filed. Respondent was required to comment on complainant's motion, but he failed to do so. Consequently, the case was considered submitted for resolution.

In his report, dated January 5, 2001, the Investigating Commissioner found respondent liable for violation of Rule 16.04 of the Code of Professional Responsibility which forbids lawyers from borrowing money from their clients unless the latter's interests are "protected by the nature of the case or by independent advice." The Investigating Commissioner found that respondent failed to pay his client's money. However, in view of respondent's admission of liability and "plea for magnanimity," the Investigating Commissioner recommended that respondent be simply reprimanded and ordered to pay the amount of ₱25,000.00 loan plus interest at the legal rate.

In its Resolution No. XIV-2001-183, dated April 29, 2001, the IBP Board of Governors adopted and approved the Investigating Commissioner's findings. However, it ordered —

> [R]espondent . . . suspended indefinitely from the practice of law for the commission of an act which falls short of the standard of the norm of conduct required of every attorney and . . . ordered [him] to return to the complainant the amount of ₱25,000.00 plus interest at the legal rate from the time the said amount was misappropriated, until full payment; provided that the total suspension shall be at least one (1) year from the date of said full payment.

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[3] Reply, p. 5; *id.*, p. 50.

[4] Pedro A. Magpayo, Jr.

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On July 4, 2001, respondent filed a motion for reconsideration alleging that —

(a) there was no actual hearing of the case wherein respondent could have fully ventilated and defended his position;

(b) the subject Resolution gravely modified the Report and Recommendation of the Trial Commissioner, Hon. Pedro Magpayo, Jr., . . . such that the resultant sanctions that are ordered imposed are too leonine, unjust and cruel;

(c) that the factual circumstances attending the matter which gave rise to the complaint were not rightly or fairly appreciated.[5]

He argues that the Court should adopt the report and recommendation of the IBP Investigating Commissioner.

In its resolution of August 15, 2001, the Court resolved to treat respondent's motion for reconsideration as a petition for review of IBP Resolution No. XIV 2001-183 and required complainant to comment on the petition.

In her comment, complainant states that her primary interest is to recover the amount of ₱25,000.00 with interest and that she is leaving it to the Court to decide whether respondent deserves the penalty recommended by the IBP.[6]

The Court resolves to partially grant the petition. In his report and recommendation, Investigating Commissioner Magpayo, Jr. made the following findings:

In his Answer, the respondent ADMITS all the allegations in paragraph 4 of the complaint which avers:

> 4. On 21 August 1995, complainant entrusted to respondent the amount of ₱25,000.00 in cash to be used in the redemption of the aforesaid property (parcel of land covered by TCT No. 20394 registered in the name of complainant's parents located

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[5] Motion For Reconsideration, p. 1.

[6] Comment to the Motion for Reconsideration, p. 2.

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at Concepcion, Loay, Bohol). Respondent received the said amount as evidenced by an acknowledgment receipt (Annex A).

By way of confession and avoidance, the respondent, . . . however, contended that when the mortgagee refused to accept the sum tendered as the period of redemption had already expired, he requested the complainant to allow him in the meantime to use the money for his children's educational expenses[,] to which request the complainant allegedly acceded and respondent even executed a promissory note (please see 4th par. of Annex "B" of complaint).

Respondent takes further refuge in the intimate and close relationship existing between himself and the complainant's family on the basis of which his legal services were purely gratuitous or "simply an act of a friend for a friend" with "no consideration involved." Unfortunately, his efforts to redeem the foreclosed property, as already stated, did not produce the desired result because the mortgagee "would not budge anymore" and "would not accept the sum offered."

Thus, the respondent concluded that there was, strictly speaking, no attorney-client [relationship] existing between them. Rather, right from the start[,] everything was sort of personal, he added.

Granting to the respondent the benefit of the doubt, we shall assume that there was in reality a loan in the amount of ₱25,000.00. This is likewise confirmed by the execution of a promissory note on 12 December 1996 by the respondent who "undertook to pay Mrs. Junio on or before January 1997" (Annex B of complaint). Moreover, the demand letter of 12 March 1998 (Annex B) mentions of "reimbursement of the sum received" and interest of "24% per annum until fully paid" giving the impression that the funds previously intended to be used for the repurchase of a certain property (Annex A of complaint) was converted into a loan with the consent of the complainant who gave way to the request of the respondent "to help defray his children's educational expenses" (par. 8 of Answer).

Be that as it may, the duty and obligation to repay the loan remains unshaken. Having utilized the sum to fulfill his "urgent need for some money," it is but just and proper that he return the amount borrowed together with interest.

Five (5) years had already passed since respondent retained the cash for his own personal use. But notwithstanding the same and

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his firm promise "to pay Mrs. Junio on or before January 1997" he has not demonstrated any volition to settle his obligation to his creditor[,] although admittedly "there w[ere] occasions when complainant's sister came to respondent to ask for the payment in behalf of complainant," worse, "the passage of time made respondent somehow forgot about the obligation."

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 (Rule 16.04, Code of Professional Responsibility). This rule is intended to prevent the lawyer from taking advantage of his influence over the client.

This rule is especially significant in the instant case where the respondent enjoys an immense ascendancy over the complainant who, "as well as two of his sisters, had served respondent's family as household helpers for many years."

Having gained dominance over the complainant by virtue of such long relation of master and servant, the respondent took advantage of his influence by not returning the money entrusted to him. Instead, he imposed his will on the complainant and borrowed her funds without giving adequate security therefor and mindless of the interest of the complainant.

In the light of the foregoing, . . . respondent has committed an act which falls short of the standard of the norm of conduct required of every attorney. If an ordinary borrower of money is required by the law to repay the loan failing which he may be subjected to court action, it is more so in the case of a lawyer whose conduct serves as an example.[7]

It would indeed appear from the records of the case that respondent was allowed to borrow the money previously entrusted to him by complainant for the purpose of securing the redemption of the property belonging to complainant's parents. Respondent, however, did not give adequate security for the loan and subsequently failed to settle his obligation. Although complainant denied having loaned the money to respondent, the fact is that complainant accepted the promissory note given her by

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[7] Report and Recommendation, pp. 2-5.

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respondent on December 12, 1996. In effect, complainant consented to and ratified respondent's use of the money. It is noteworthy that complainant did not attach this promissory note to her complaint nor explain the circumstances surrounding its execution. She only mentioned it in her demand letter of March 12, 1998 (Annex B), in which she referred to respondent's undertaking to pay her the ₱25,000.00 on or before January 1997. Under the circumstances and in view of complainant's failure to deny the promissory note, the Court is constrained to give credence to respondent's claims that the money previously entrusted to him by complainant was later converted into a loan.

Respondent's liability is thus not for misappropriation or embezzlement but for violation of Rule 16.04 of the Code of Professional Responsibility which forbids lawyers from borrowing money from their clients unless the latter's interests are protected by the nature of the case or by independent advice. In this case, respondent's liability is compounded by the fact that not only did he not give any security for the payment of the amount loaned to him but that he has also refused to pay the said amount. His claim that he could not pay the loan "because circumstances . . . did not allow it" and that, because of the passage of time, "he somehow forgot about his obligation" only underscores his blatant disregard of his obligation which reflects on his honesty and candor. A lawyer is bound to observe candor, fairness, and loyalty in all his dealings and transactions with his client.[8]

Respondent claims that complainant is a close personal friend and that in helping redeem the property of complainant's parents, he did not act as a lawyer but as a friend, hence there is no client-attorney relationship between them. This contention has no merit. As explained in *Hilado v. David*,[9]

> To constitute professional employment it is not essential that the client should have employed the attorney professionally on any

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[8] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 15.

[9] 84 Phil. 569, 576 (1949), *citing* 5 Jones Commentaries on Evidence 4118-4119 (italics added).

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previous occasion . . . *It is not necessary that any retainer should have been paid, promised, or charged for*; neither is it material that the attorney consulted did not afterward undertake the case about which the consultation was had. *If a person, in respect to his business affairs or troubles of any kind, consults with his attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established* . . . .

Considering the foregoing, the Investigating Commissioner's recommendation to impose on respondent the penalty of reprimand and restitution of the amount loaned by him is clearly inadequate. On the other hand, the penalty of indefinite suspension with restitution imposed by the IBP Board of Governors is too harsh in view of respondent's apparent lack of intent to defraud complainant and of the fact that this appears to be his first administrative transgression. It is the penalty imposed in *Igual v. Javier*[10] which applies to this case. In that case, this Court ordered the respondent suspended for one month from the practice of law and directed him to pay the amount given him by his clients within 30 days from notice for his failure to return the money in question notwithstanding his admission that he did not use the money for the filing of the appellee's brief, as agreed by them, because of an alleged quarrel with his clients.

Anent respondent's allegation regarding the lack of hearing during the IBP investigation, suffice it to say that he waived such right when he failed to comment on petitioner's motion to submit the case for resolution on the basis of the pleadings theretofore filed despite due notice to him, not to mention the fact that it was he who had requested the postponement of the two hearings scheduled by the Investigating Commissioner.

WHEREFORE, the Court finds respondent guilty of violation of Rule 16.04 of the Code of Professional Responsibility and orders him suspended from the practice of law for a period of one (1) month and to pay complainant within 30 days from notice,

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[10] 254 SCRA 416 (1996).

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the amount of ₱25,000.00 with interest at the legal rate, computed from December 12, 1996.

SO ORDERED.

Bellosillo (Chairman), Quisumbing, and *De Leon, Jr., JJ.,* concur.

Buena, J., abroad on official business.

FIRST DIVISION

[A.M. No. MTJ-00-1310. December 18, 2001]
(Formerly OCA I.P.I. No. 98-510-MTJ)

ROSALINDA PUNZALAN AND RAINIER PUNZALAN, *complainants, vs.* **JUDGE RUBEN R. PLATA,** *respondent.*

SYNOPSIS

Complainants filed an administrative complaint against the respondent judge charging him with grave misconduct, lack of moral character and oppressive conduct unbecoming a judge. After reviewing the records of the case, the Supreme Court held: that complainants failed to adduce evidence that respondent judge participated in the filing of the fourteen allegedly retaliatory and harassment suits against the complainants and their eyewitnesses; that even assuming that respondent judge was in fact aware that his family and companions would file the subject fourteen cases, such awareness does not necessarily amount to promoting, giving aid or consenting to the filing of groundless, false or unlawful suits; but that it was glaringly improper for respondent judge to execute a compromise agreement for the dismissal of the instant administrative case. This is prohibited under Section 5, Rule 139-B of the Rule of Court.