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[A.C. No. 10050. December 3, 2013]

VICTORIA C. HEENAN, *complainant, vs.* **ATTY. ERLINDA ESPEJO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; DISCIPLINE OF LAWYERS; DELIBERATE FAILURE TO PAY JUST DEBTS AND THE ISSUANCE OF WORTHLESS CHECKS CONSTITUTE GROSS MISCONDUCT FOR WHICH A LAWYER MAY BE SANCTIONED; PRESENT IN CASE AT BAR.— It has already been settled that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned. Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. In *Tomlin II v. Moya II*, We explained that the prompt payment of financial obligations is one of the duties of a lawyer. x x x The fact that Atty. Espejo obtained the loan and issued the worthless checks in her private capacity and not as an attorney of Victoria is of no moment. As We have held in several cases, a lawyer may be disciplined not only for malpractice and dishonesty in his profession but also for gross misconduct outside of his professional capacity. While the Court may not ordinarily discipline a lawyer for misconduct committed in his nonprofessional or private capacity, the Court may be justified in suspending or removing him as an attorney where his misconduct outside of the lawyer's professional dealings is so gross in character as to show him morally unfit and unworthy of the privilege which his licenses and the law confer.

2. ID.; ID.; ID.; THE MISCONDUCT OF A LAWYER IS AGGRAVATED BY UNJUSTIFIED REFUSAL TO OBEY THE ORDERS OF THE INTEGRATED BAR OF THE PHILIPPINES DIRECTING THE FILING OF AN ANSWER TO THE COMPLAINT AND TO APPEAR AT THE SCHEDULED MANDATORY CONFERENCE; PROPER PENALTY.— The misconduct of Atty. Espejo is aggravated by her unjustified refusal to obey the orders of the IBP directing

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her to file an answer to the complaint of Victoria and to appear at the scheduled mandatory conference. This constitutes blatant disrespect for the IBP which amounts to conduct unbecoming a lawyer. In *Almendarez, Jr. v. Langit*, We held that a lawyer must maintain respect not only for the courts, but also for judicial officers and other duly constituted authorities, including the IBP: x x x We find the penalty of suspension from the practice of law for two (2) years, as recommended by the IBP, commensurate under the circumstances.

3. ID.; ID.; DISCIPLINARY PROCEEDINGS AGAINST LAWYERS DO NOT INVOLVE A TRIAL OF AN ACTION, BUT INVESTIGATIONS BY THE COURT INTO THE CONDUCT OF ONE OF ITS OFFICERS; APPLICATION IN CASE AT BAR.— We, however, cannot sustain the IBP's recommendation ordering Atty. Espejo to return the money she borrowed from Victoria. 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. Furthermore, disciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the Court into the conduct of one of its officers. The only question for determination in these proceedings is whether or not the attorney is still fit to be allowed to continue as a member of the Bar. Thus, this Court cannot rule on the issue of the amount of money that should be returned to the complainant.

APPEARANCES OF COUNSEL

Emil Bien F. Ongkiko for complainant.

D E C I S I O N

VELASCO, JR., *J.*:

This resolves the administrative complaint filed by Victoria Heenan (Victoria) against Atty. Erlinda Espejo (Atty. Espejo) before the Commission on Bar Discipline (CBD) of the Integrated

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Bar of the Philippines (IBP) for violation of lawyer's oath, docketed as CBD Case No. 10-2631.

The Facts

Sometime in January 2009, Victoria met Atty. Espejo through her godmother, Corazon Eusebio (Corazon). Following the introduction, Corazon told Victoria that Atty. Espejo was her lawyer in need of money and wanted to borrow two hundred fifty thousand pesos (PhP 250,000) from her (Victoria). Shortly thereafter, Victoria went to the house of Corazon for a meeting with Atty. Espejo where they discussed the terms of the loan. Since Atty. Espejo was introduced to her as her godmother's lawyer, Victoria found no reason to distrust the former. Hence, during the same meeting, Victoria agreed to accomodate Atty. Espejo and there and then handed to the latter the amount of PhP 250,000. To secure the payment of the loan, Atty. Espejo simultaneously issued and turned over to Victoria a check[1] dated February 2, 2009 for two hundred seventy-five thousand pesos (PhP 275,000) covering the loan amount and agreed interest.

On due date, Atty. Espejo requested Victoria to delay the deposit of the check for the reason that she was still waiting for the release of the proceeds of a bank loan to fund the check. However, after a couple of months of waiting, Victoria received no word from Atty. Espejo as to whether or not the check was already funded enough.

In July 2009, Victoria received an Espejo-issued check dated July 10, 2009 in the amount of fifty thousand pesos (PhP 50,000)[2] representing the interest which accrued due to the late payment of the principal obligation. Victoria deposited the said check but, to her dismay, the check bounced due to insufficiency of funds. Atty. Espejo failed to pay despite Victoria's repeated demands.

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[1] *Rollo*, p. 34. The Real Bank Check No. 3026852, Annex "A" of Victoria C. Heenan's Position Paper.

[2] *Id*. at 35. The Real Bank Check No. 3152815, Annex "B" of Victoria C. Heenan's Position Paper.

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Worried that she would not be able to recover the amount thus lent, Victoria decided to deposit to her account the first check in the amount of PhP 275,000, but without notifying Atty. Espejo of the fact. However, the said check was also dishonored due to insufficiency of funds.

Victoria thereafter became more aggressive in her efforts to recover her money. She, for instance, personally handed to Atty. Espejo a demand letter dated August 3, 2009.[3] When Atty. Espejo still refused to pay, Victoria filed a criminal complaint against Atty. Espejo on August 18, 2009 for violation of *Batas Pambansa Blg.* 22 and Estafa under Article 315 of the Revised Penal Code, as amended, before the Quezon City Prosecutor's Office.[4]

Atty. Espejo disregarded the notices and subpoenas issued by the Quezon City Prosecutor's Office which she personally received and continued to ignore Victoria's demands. She attended only one (1) scheduled preliminary investigation where she promised to pay her loan obligation.[5]

In November 2009, Atty. Espejo issued another check dated December 8, 2009 in the amount of two hundred seventy five thousand pesos (PhP 275,000.). However, to Victoria's chagrin, the said check was again dishonored due to insufficiency of funds.[6]

Atty. Espejo did not file any counter-affidavit or pleading to answer the charges against her. On November 17, 2009, the case was submitted for resolution without Atty. Espejo's participation.[7]

Victoria thereafter filed the instant administrative case against Atty. Espejo before the CBD.

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[3] *Id*. at 36. Annex "C" of Victoria C. Heenan's Position Paper.

[4] *Id*. at 38.

[5] *Id*. at 21-22.

[6] *Id*. at 50.

[7] *Id*. at 22.

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On March 1, 2010, the CBD, through Director for Bar Discipline Alicia A. Risos-Vidal, issued an Order[8] directing Atty. Espejo to submit her Answer to Victoria's administrative complaint failing which would render her in default. The warning, notwithstanding, Atty. Espejo did not submit any Answer.

On May 5, 2010, IBP Commissioner Rebecca Villanueva-Malala (Commissioner Villanueva-Malala) notified the parties to appear for a mandatory conference set on June 2, 2010. The notice stated that non-appearance of either of the parties shall be deemed a waiver of her right to participate in further proceedings.[9]

At the mandatory conference, only Victoria appeared.[10] Thus, Commissioner Villanueva-Malala issued an Order[11] noting Atty. Espejo's failure to appear during the mandatory conference and her failure to file an Answer. Accordingly, Atty. Espejo was declared in default. Victoria, on the other hand, was directed to file her verified position paper, which she filed on June 11, 2010.[12]

Findings and Recommendation of the IBP

In its Report and Recommendation[13] dated July 15, 2010, the CBD recommended the suspension of Atty. Espejo from the practice of law and as a member of the Bar for a period of five (5) years. The CBD reasoned:

> The failure of a lawyer to answer the complaint for disbarment despite due notice and to appear on the scheduled hearings set, shows his flouting resistance to lawful orders of the court and illustrates his deficiency for his oath of office as a lawyer, which deserves disciplinary sanction.

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[8] *Id*. at 10.

[9] *Id*. at 11.

[10] *Id*. at 12.

[11] *Id*. at 13.

[12] *Id*. at 17-45

[13] *Id*. at 49-51.

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Moreover, respondent['s] acts of issuing checks with insufficient funds and despite repeated demands [she] failed to comply with her obligation and her disregard and failure to appear for preliminary investigation and to submit her counter-affidavit to answer the charges against her for Estafa and Violation of BP 22, constitute grave misconduct that also warrant disciplinary action against respondent.

On December 14, 2012, the Board of Governors passed a Resolution[14] adopting the Report and Recommendation of the CBD with the modification lowering Atty. Espejo's suspension from five (5) years to two (2) years. Atty. Espejo was also ordered to return to Victoria the amount of PhP 250,000 within thirty (30) days from receipt of notice with legal interest reckoned from the time the demand was made. The Resolution reads:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and applicable laws and rules, and considering respondent's grave misconduct, Atty. Erlinda Espejo is hereby **SUSPENDED from the practice of law for two (2) years** and Ordered to Return to complainant the amount of Two Hundred Fifty Thousand (₱250,000.00) Pesos within thirty (30) days from receipt of notice with legal interest reckoned from the time the demand was made.

On August 8, 2013, the CBD transmitted to this Court the Notice of the Resolution pertaining to Resolution No. XX-2012-419 along with the records of this case.[15]

The Court's Ruling

We sustain the findings of the IBP and adopt its recommendation in part.

Atty. Espejo did not deny obtaining a loan from Victoria or traverse allegations that she issued unfunded checks to pay her obligation. It has already been settled that the deliberate failure to pay just debts and the issuance of worthless checks constitute

[14] *Id*. at 48.

[15] *Id*. at 47.

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gross misconduct, for which a lawyer may be sanctioned.[16] Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the courts and to their clients. In *Tomlin II v. Moya II*, We explained that the prompt payment of financial obligations is one of the duties of a lawyer, thus:

> In the present case, respondent admitted his monetary obligations to the complaint but offered no justifiable reason for his continued refusal to pay. Complainant made several demands, both verbal and written, but respondent just ignored them and even made himself scarce. Although he acknowledged his financial obligations to complainant, respondent never offered nor made arrangements to pay his debt. On the contrary, he refused to recognize any wrong doing nor shown remorse for issuing worthless checks, an act constituting gross misconduct. Respondent must be reminded that it is his duty as a lawyer to faithfully perform at all times his duties to society, to the bar, to the courts and to his clients. As part of his duties, he must promptly pay his financial obligations.[17]

The fact that Atty. Espejo obtained the loan and issued the worthless checks in her private capacity and not as an attorney of Victoria is of no moment. As We have held in several cases, a lawyer may be disciplined not only for malpractice and dishonesty in his profession but also for gross misconduct outside of his professional capacity. While the Court may not ordinarily discipline a lawyer for misconduct committed in his non-professional or private capacity, the Court may be justified in suspending or removing him as an attorney where his misconduct outside of the lawyer's professional dealings is so gross in character as to show him morally unfit and unworthy of the privilege which his licenses and the law confer.[18]

In *Wilkie v. Limos*, We reiterated that the issuance of a series of worthless checks, which is exactly what Atty. Espejo committed in this case, manifests a lawyer's low regard for her commitment to her oath, for which she may be disciplined. Thus:

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[16] *Lao v. Medel*, A.C. No. 5916, July 1, 2003, 405 SCRA 227.

[17] A.C. No. 6971, February 23, 2006, 483 SCRA 154, 159-160.

[18] *Lao v. Medel*, *supra* note 16, at 233.

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We have held that the issuance of checks which were later dishonored for having been drawn against a closed account indicates a lawyer's unfitness for the trust and confidence reposed on her. It shows a lack of personal honesty and good moral character as to render her unworthy of public confidence. The issuance of a series of worthless checks also shows the remorseless attitude of respondent, unmindful to the deleterious effects of such act to the public interest and public order. It also manifests a lawyer's low regard to her commitment to the oath she has taken when she joined her peers, seriously and irreparably tarnishing the image of the profession she should hold in high esteem.

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In *Barrios v. Martinez*, we disbarred the respondent who issued worthless checks for which he was convicted in the criminal case filed against him.

In *Lao v. Medel*, we held that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with one-year suspension from the practice of law. The same sanction was imposed on the respondent-lawyer in *Rangwani v. Dino* having been found guilty of gross misconduct for issuing bad checks in payment of a piece of property the title of which was only entrusted to him by the complainant.[19]

Further, the misconduct of Atty. Espejo is aggravated by her unjustified refusal to obey the orders of the IBP directing her to file an answer to the complaint of Victoria and to appear at the scheduled mandatory conference. This constitutes blatant disrespect for the IBP which amounts to conduct unbecoming a lawyer. In *Almendarez, Jr. v. Langit*, We held that a lawyer must maintain respect not only for the courts, but also for judicial officers and other duly constituted authorities, including the IBP:

The misconduct of respondent is aggravated by his unjustified refusal to heed the orders of the IBP requiring him to file an answer to the complaint-affidavit and, afterwards, to appear at the mandatory conference. Although respondent did not appear at the conference,

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[19] *Wilkie v. Limos*, A.C. No. 7505, October 24, 2008, 570 SCRA 1, 8, 10.

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the IBP gave him another chance to defend himself through a position paper. Still, respondent ignored this directive, exhibiting a blatant disrespect for authority. Indeed, he is justly charged with conduct unbecoming a lawyer, for a lawyer is expected to uphold the law and promote respect for legal processes. Further, a lawyer must observe and maintain respect not only to the courts, but also to judicial officers and other duly constituted authorities, including the IBP. Under Rule 139-B of the Rules of Court, the Court has empowered the IBP to conduct proceedings for the disbarment, suspension, or discipline of attorneys.[20]

Undoubtedly, Atty. Espejo's issuance of worthless checks and her blatant refusal to heed the directives of the Quezon City Prosecutor's Office and the IBP contravene Canon 1, Rule 1.01; Canon 7, Rule 7.03; and Canon11 of the Code of Professional Responsibility, which provide:

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

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

CANON 7 – A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

Rule 7.03 – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

CANON 11 – A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICES AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

We find the penalty of suspension from the practice of law for two (2) years, as recommended by the IBP, commensurate under the circumstances.

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[20] A.C. No. 7057, July 25, 2006, 496 SCRA 402, 408.

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We, however, cannot sustain the IBP's recommendation ordering Atty. Espejo to return the money she borrowed from Victoria. 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.[21] Furthermore, disciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the Court into the conduct of one of its officers. The only question for determination in these proceedings is whether or not the attorney is still fit to be allowed to continue as a member of the Bar. Thus, this Court cannot rule on the issue of the amount of money that should be returned to the complainant.[22]

WHEREFORE, We find Atty. Erlinda B. Espejo **GUILTY** of gross misconduct and of violating Canons 1, 7 and 11 of the Code of Professional Responsibility. We **SUSPEND** respondent from the practice of law for two (2) years, effective immediately.

Let copies of this Decision be furnished the Office of the Court Administrator for dissemination to all courts, the Integrated Bar of the Philippines and the Office of the Bar Confidant and recorded in the personal files of respondent.

SO ORDERED.

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

Leonardo-de Castro, J., on official leave.

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[21] *Roa v. Moreno,* A.C. No. 8232, April 21, 2010, 618 SCRA 693, 700.

[22] *Ronquillo v. Cezar,* A.C. No. 6288, June 16, 2006, 491 SCRA 1, 8.