

# FOR APPROVAL

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175  
The Philippines  
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Office of the Court Administrator  
Manila

## OCA CIRCULAR NO. 174~2003

TO: THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT: SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS OF ATTY. ESSEX L. SILAPAN

For the information and guidance of all concerned, quoted hereunder is the Decision of the Third Division of the Supreme Court dated July 14, 2003 in Adm. Case No. 4078, to wit:

In this complaint for disbarment filed by William Ong Genato against respondent Atty. Essex L. Silapan, complainant alleged that in July 1992, respondent asked if he could rent a small office space in complainant's building in Quezon City for his law practice. Complainant acceded and introduced respondent to Atty. Benjamin Dacanay, complainant's retained lawyer, who accommodated respondent in the building and made him handle some of complainant's cases. Hence, the start of the legal relationship between complainant and respondent.

The conflict between the parties started when respondent borrowed two hundred thousand pesos (P200,000.00) from complainant which he intended to use as downpayment for the purchase of a new car. In return, respondent issued to complainant a postdated check in the amount of P176,528.00 to answer for the six (6) months interest on the loan. He likewise mortgaged to complainant his house and lot in Quezon City but did not surrender its title claiming that it was the subject of reconstitution proceedings before the Quezon City Register of Deeds.

With the money borrowed from complainant, respondent purchased a new car. However, the document of sale of the car

was issued in complainant's name and financed through City Trust Company.

In January 1993, respondent introduced to complainant a certain Emmanuel Romero. Romero likewise wanted to borrow money from complainant. Complainant lent Romero the money and, from this transaction, respondent earned commission in the amount of P52,289.90. Complainant used the commission to pay respondent's arrears with the car financing firm.

Subsequently, respondent failed to pay the authorization on the car and the financing firm sent demand letters to complainant. Complainant tried to encash respondent's postdated check with the drawee bank but it was dishonored as respondent's account therein was already closed.

Respondent failed to heed complainant's repeated demands for payment. Complainant then filed a criminal case against respondent for violation of Batas Pambansa Blg. 22 and a civil case for judicial foreclosure of real estate mortgage.

In the foreclosure case respondent made the following allegation in his Answer.

xxx

xxx

xxx

4. That complainant is a businessman who is engaged in the real estate business, trading and buy and sell of deficiency taxed imported cars, shark loans and other shady deals and has many cases pending in court;

xxx

xxx

xxx

Complainant denied respondent's charges and claimed that respondent's allegation is libelous and not privilege as it was irrelevant to the foreclosure case. Complainant further pointed to paragraph 12 of respondent's Answer, thus:

12. That on January 29, 1993, before paying for the next installment on his car on January 30, 1993, defendant Essex L. Silapan asked the complainant to execute a Deed of Sale transferring ownership of the car to him but the latter said that he will only do so after the termination of his criminal case at Branch 138 of the Regional Trial Court of Makati, Metro Manila x x x where he (complainant)

wanted Essex L. Silapan, his former counsel in that case, to offer bribe money to the members of the review committee of the Department of Justice where a petition for review of the resolution of the Investigating Prosecutor was pending at the time, x x x or, in the event that the said petition for review is denied, he wanted Essex L. Silapan to offer bribe money to the prosecutor assigned at the above-mentioned Court, and even to the presiding Judge, for his eventual acquittal, which defendant Essex L. Silapan all refused to do not only because such acts are immoral and illegal, but also because the complainant confided to him that he was really involved in the commission of the crime that was charged of in the above-mentioned case. (emphasis supplied)

Complainant gripes that the foregoing allegations are false, immaterial to the foreclosure case and maliciously designed to defame him. He charged that in making such allegations, respondent is guilty of breaking their confidential lawyer-client relationship and should be held administratively liable therefor. Consequently, he filed this complaint for disbarment, praying also that an administrative sanction be meted against respondent for his issuance of a bouncing check.

When required by the Court to comment, respondent explained<sup>1</sup> that it was complainant who offered him an office space in his building and retained him as counsel as the latter was impressed with the way he handled a B.P. 22 case<sup>2</sup> filed against complainant. Respondent insisted that there was nothing libelous in his imputations of dishonest business practices to complainant and his revelation of complainant's desire to bribe government officials in relation to his pending criminal case. He claimed to have made these statements in the course of judicial proceedings to defend his case and discredit complainant's credibility by establishing his criminal propensity to commit fraud, tell lies and violate laws. He argued that he is not guilty of breaking his confidential lawyer-client relationship with complainant as he made the disclosure in defense of his honor and reputation.

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<sup>1</sup> See Answer, Rollo at 23-29

<sup>2</sup> It was allegedly in this case that the complainant communicated to respondent his desire to bribe the members of the review committee of the Department of Justice where the case was pending evaluation and eventually also the prosecutor and judge who would handle the case when filed in court.

Secondly, respondent asserted that he executed the real estate mortgage in favor of complainant without consideration and only as a "formal requirement" so he could obtain the P200,000.00 loan and for this reason, he did not surrender his title over the mortgaged property to complainant.

Thirdly, respondent claimed that he issued the postdated check, not for account or for value, but only: (a) to serve as "some kind of acknowledgment" that he already received in advance a portion of his attorney's fees from the complainant for the legal services he rendered, and (b) as a form of assurance that he will not abandon the cases he was handling for complainant.

Lastly, respondent denied that he received a P52,289.90 commission from Romero's loan which he allegedly helped facilitate. He alleged that the amount was paid to him by Romero as attorney's fees, the latter being his client. He used this amount to pay his arrears with the car financing firm. On January 29, 1993, before paying the next amortization on the car, he asked complainant to execute a deed of sale transferring ownership of the car to him. Complainant refused and insisted that he would transfer ownership of the car only after the termination of his criminal case which respondent was handling as his defense lawyer. Consequently, respondent stopped paying the amortization on the car. Respondent also alleged that **he filed a perjury case against complainant who, in turn, filed a complaint for libel against him.**

In a Resolution, dated October 27, 1993, the Court referred the administrative case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.

On August 3, 2002, the Board of Governors of the IBP approved the report of the investigating commissioner finding the respondent guilty as charged and recommending his suspension from the practice of law for one (1) year.

We affirm the findings and recommendation of the IBP.

Prefatorily, we stress that we shall not delve into the merits of the various criminal and civil cases pending between the parties. It is for the trial courts handling these cases to ascertain the truth or falsity of the allegations made therein. For this reason, it is not for us to sanction respondent for his issuance of a bouncing check. His liability has yet to be determined by the trial court where his case is pending.

The only issue in this administrative case is whether respondent committed a breach of trust and confidence by imputing to complainant illegal practices and disclosing complainant's alleged intention to bribe government officials in connection with a pending case.

Canon 17 of the Code of Professional Responsibility provides that a lawyer owes fidelity to the cause of his client and shall be mindful of the trust and confidence reposed on him. The long-established rule is that an attorney is not permitted to disclose communications made to him in his professional character by a client, unless the latter consents. This obligation to preserve the confidences and secrets of a client arises at the inception of their relationship.<sup>3</sup> The protection given to the client is perpetual and does not cease with the termination of the litigation, nor is it affected by the party's ceasing to employ the attorney and retaining another, or by any other change of relation between them. It even survives the death of the client.<sup>4</sup>

It must be stressed, however, that the privilege against disclosure of confidential communication or information is limited only to communications which are legitimately and properly within the scope of a lawful employment of a lawyer. It does not extend to those made in contemplation of a crime or perpetration of a fraud.<sup>5</sup> If the unlawful purpose is avowed, as in this case, the complainant's alleged intention to bribe government officials in relation to his case, the communication is not covered by the privilege as the client does not consult the lawyer professionally. It is not within the profession of a lawyer to advise a client as to how he may commit a crime as a lawyer is not a gun for hire. Thus, the attorney-client privilege does not attach, there being no professional employment in the strict sense.

Be that as it may, respondent's explanation that it was necessary for him to make the disclosures in his pleadings fails to satisfy us. The disclosures were not indispensable to protect his rights as they were not pertinent to the foreclosure case. It was improper for the respondent to use it against the complainant in the foreclosure case as it was not the subject matter of litigation therein and respondent's professional competence and legal advice were not being attacked in said case. A lawyer must conduct himself, especially in his dealings with his clients, with integrity in a manner that is beyond

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<sup>3</sup> *Hoyas vs. State* (Fla App D3) 456 So 2d 1225, 9 FLW 1993

<sup>4</sup> *Schwimmer vs. United States* (CA8 mo) 232 F2d 855, 353 US 833, 1 L Ed 2d 52, 77 S Ct 48

<sup>5</sup> *People vs. Van Alshine*, 23 NW 594 (1885); *Regala vs. Sandiganbayan*, 262 SCRA 122 (1996).


reproach. His relationship with his clients should be characterized by the highest degree of good faith and fairness.

Thus, this Court agrees with the evaluation of the IBP and finds that respondent's allegation and disclosures in the foreclosure case amount to a breach of fidelity sufficient to warrant the imposition of disciplinary sanction against him. However, the recommended penalty of one (1) year suspension of respondent from the practice of law seems to be disproportionate to his breach of duty considering that a review of the records of this Court reveals that this is the first administrative complaint against him.

IN VIEW WHEREOF, respondent Atty. Essex L. Silapan is ordered suspended from the practice of law for a period of six (6) months effective upon receipt of this Decision. x x x.

The Decision was served upon respondent on July 14, 2003.

\_\_\_\_ November 2003.

  
PRESBITERO J. VELASCO, JR.  
Court Administrator

TCB/cecil  
d-242/ atty. silapan (susp.)