

THIRD DIVISION

[A.C. No. 9701, February 10, 2021]

**ATTY. ROGELIO S. CONSTANTINO, COMPLAINANT, VS. ATTY.
NEMESIO A. ARANSAZO, JR., RESPONDENT.**

DECISION

HERNANDO, J.:

This is a Complaint^[1] for Disbarment filed by Atty. Rogelio S. Constantino (Atty. Constantino) against Atty. Nemesio A. Aransazo, Jr. (Atty. Aransazo) for alleged violation of Canons 17 and 21 of the Code of Professional Responsibility (CPR), and Rule 138, Sections 20 (e) and 27 of the Rules of Court for disclosing confidential information acquired in the course of their lawyer-client relationship.

The antecedent facts are as follows:

Sometime in March 2003, Atty. Constantino engaged the services of Atty. Aransazo as counsel in Civil Case No. 03-105994 entitled "*Hope Claire Aldaba vs. Eduardo Tongco, Atty. Rogelio B. Constantino, Atty. Nemesio Aransazo, Jr.*"^[2] for the Annulment of Extra-Judicial Proceedings No. 03-1914. The case involved a house and lot registered in the name of Hope Claire Aldaba (Aldaba) who previously obtained a loan in the amount of P1,500,000.00 from Eduardo Tongco (Tongco).^[3]

As security for the loan, Aldaba executed a Real Estate Mortgage over the property and a Promissory Note and Irrevocable Special Power of Attorney in favor of Tongco. As Aldaba failed to pay the amount of the loan on maturity date, Tongco executed a Deed of Assignment in favor of Atty. Constantino and Atty. Aransazo, for a consideration of P2,200,000.00, ceding all his rights and interests under the Real Estate Mortgage, Promissory Note and Irrevocable Special Power of Attorney. When Aldaba failed to redeem the property despite oral and written demand, Attys. Constantino and Aransazo filed the abovementioned Extrajudicial Foreclosure Proceedings No. 03-1914.^[4]

On March 4, 2003, a Temporary Restraining Order (TRO) was issued by the Regional Trial Court (RTC) of Manila to avert the foreclosure. After trial, the RTC ordered the parties to submit their respective offer of exhibits. Both Atty. Constantino and Atty. Aransazo complied with the order and submitted, among others, documents showing proof of full payment of the consideration of the Deed of Assignment.^[5] Thereafter, on March 15, 2011, the trial court issued an Order denying Aldaba's prayer for the issuance of the TRO. Meanwhile, the *Ex-Officio* Sheriff conducted the auction sale and issued a certificate of sale to the highest bidder.^[6] Notably, on February 17, 2012, during the pre-trial in Civil Case No. 03-105994, the counsel of Aldaba manifested^[7] before the RTC that Atty. Aransazo executed a sworn statement^[8] containing the following narration of facts:

x x x x

2. In the course of my practice, sometime in the later part of 2001, Atty. Rogelio S. Constantino, a person whom I have known including his family since my junior years in the College of Law, came to visit me in my office;

3. Thereat, Constantino intimated to me a looming suit he expects out of a loan he personally extended to a person;

4. He went on to say, his dilemma is getting much complicated because a supposed investor friend is now urging for the return of his investment and eager to assign his rights;

5. His dilemma therefore pertains to a lawyer who could appear in his behalf on a possible legal proceedings including financial requirements to underwrite the costs; but more importantly is finding a willing assignee of the mortgage obligation amounting to [P]2,200,000.00.

6. Making the long story short, he pleaded that my law firm take over the legal matter and being cash-strapped I should [subsidize] in the meanwhile lawyer/s appearance fees;

7. He likewise beseech me to assume one half or [P]1,100,000.00 as co-assignee, a suggestion which I immediately declined for lack of interest; besides I was then preoccupied overseeing the growing numbers of retained clients. This was the end of our conversation.

8. Not long after that meeting with Constantino, he came back again to my office unannounced. This time he was holding in an envelope several documents which are copies of "deed of assignment of real estate mortgage". He also proudly said he managed to source [P]1,100,000.00, and therefore what is needed is the other half of the same amount which he requested from me. I immediately dismissed the idea and reiterated my lack of interest;

9. We have had a little longer meeting and continue prodding me in regards his request. However, I refused to budge an inch to his request other than agreeing to provide him with legal assistance in the event of any case; moreover, I also agreed that the costs and appearance fees of the lawyers shall be subsidized by my office;

10. Finally, he did not [insist] on me anymore the other half, rather he decided he will source it from his well-meaning friends; but at the same time he pleaded once more that inasmuch as the documents have been prepared with his and my name as co-assignee, I might as well give my imprimatur to the documents, without anymore the requested amount which he will source from other friends;

11. Initially, my reaction was to decline afraid I might [embroil] myself in a possible suit. However, due to his insistent demand and prodding, I succumbed to his plea and signed the document but with clear

instructions to Constantino I am giving my imprimatur to the documents solely in accommodation but without any participation, contribution or share in the [P]1,100,000.00.

x x x x^[9]

In light of Atty. Constantino's sworn statement, the counsel of Aldaba filed with the RTC a Motion to Admit Amended Complaint^[10] to show to the court that the Deed of Assignment executed by Tongco in favor of Atty. Constantino and Atty. Aransazo was without consideration, which therefore rendered the Deed of Assignment null and void. In view of the foregoing recitals, complainant insisted that Atty. Aransazo violated Canons 17 and 21 of the CPR, and Rule 138, Sections 20 (e) and 27 of the Rules of Court for disclosing matters confided during the course of a lawyer-client relationship.

**Report and
Recommendation
of the Integrated
Bar of the
Philippines
(IBP):**

In a Report and Recommendation^[11] dated May 23, 2014, Investigating Commissioner Honesto A. Villamor of the Commission on Bar Discipline of the IBP recommended the dismissal of the complaint for lack of merit. The Investigating Commissioner opined that Atty. Constantino "failed to show x x x the existence of attorney client privilege to justify the administrative complaint against [Atty. Aransazo]."^[12] The Investigating Commissioner further noted that when Atty. Aransazo agreed to represent Atty. Constantino in Civil Case No. 03-105994, "there was nothing to confide anymore since both of them knew about the circumstances surrounding the execution of the Deed of Assignment."^[13]

The IBP Board of Governors (IBP-BOG), in its Resolution No. XXI-2015-318,^[14] reversed and set aside the Report and Recommendation of the Investigating Commissioner and recommended that Atty. Aransazo be "suspended from the practice of law for three (3) months on the ground that [he] breached confidentiality in violation of the rule on conflict of interest."^[15]

In its Extended Resolution^[16] dated August 11, 2016, the IBP-BOG further explained that:

Without a doubt, the contents of respondent's sworn statement contained information revealed to him in confidence by complainant during a lawyer-client relationship. By executing the sworn statement alone, respondent breached his obligation to maintain inviolate the confidence reposed on him and to preserve the secrets of complainant.^[17]

x x x x

Applying the test to determine whether conflict of interest exists, respondent's sworn statement necessarily would refute complainant's

claim that the deed of assignment was executed with a valid consideration. Worse, based on the manifestation of complainant's opposing party, the respondent himself may take the witness stand to testify on his sworn statement. Clearly, respondent is guilty of representing conflicting interests.^[18]

Atty. Aransazo filed a Motion for Reconsideration^[19] praying that the IBPBOG set aside its Resolution No. XXI-2015-318 dated April 19, 2015, and in lieu thereof, adopt the findings and recommendation of the Investigating Commissioner.

In a Resolution^[20] dated August 2, 2017, this Court referred Atty. Aransazo's Motion for Reconsideration to the Office of the Bar Confidant (OBC) for evaluation, report, and recommendation. Thus, on October 18, 2018, the OBC issued its Report and Recommendation^[21] finding Atty. Aransazo's suspension from the practice of law for six (6) months appropriate under the circumstances. The OBC found that Atty. Aransazo is guilty of breach of confidentiality in violation of the rule on conflict of interest, viz.:

It is well established that respondent have accepted to represent complainant well before respondent executed his sworn statement stating that the questioned deed of assignment was made without consideration. Clearly, the content of respondent's sworn statement containing information revealed to him in confidence by complainant was made during a lawyer-client relationship. By executing the sworn statement alone, respondent [has] violated Rule 17 of the Code of Professional Responsibility (CPR), which states that a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him, and in conflict with the interest of his client.^[22]

Our Ruling

After a careful review of the records, the Court adopts the findings of the OBC and accepts its recommendation with modification as to the period of suspension.

Preliminary Matters

Without necessarily ruling on the validity of the Deed of Assignment, there is no dispute at this point that Atty. Aransazo's narration of facts in his sworn statement was prejudicial to Atty. Constantino's rights and interests in Civil Case No. 03-105994. Indeed, while Atty. Constantino and Atty. Aransazo, on one hand, sought to establish in Extrajudicial Foreclosure Proceedings No. 03-1914 and Civil Case No. 03-105994 the existence of the Deed of Assignment executed by Tongco in their favor, the sworn statement of Atty. Aransazo, on the other hand, unquestionably disputes the validity thereof for having been simulated by the parties and for lack of consideration. There is also no question that Atty. Aransazo acted as counsel for Atty. Constantino in Extrajudicial Foreclosure Proceedings No. 03-1914 and Civil Case No. 03-105994, which, as Atty. Aransazo admits, has stretched for a period of nine years of legal representation in behalf of Atty. Constantino.^[23]

We now resolve the issue of whether Atty. Aransazo violated the rule on privileged communication between attorney and client when he executed the subject sworn

statement that reduced in writing information confided to him by Atty. Constantino, and which Atty. Aransazo divulged to the counsel of Aldaba in Civil Case No. 03-105994.

Atty. Aransazo maintains that the information contained in his sworn statement *i.e.*, that the Deed of Assignment was executed without any consideration, was made known to him by Atty. Constantino due to the latter's personal relationship with him, and before he agreed to represent Atty. Constantino in Civil Case No. 03-105994. In other words, Atty. Aransazo insists that Atty. Constantino did not confide such facts to him in the course of their lawyer-client relationship, but rather, due to their personal relationship as friends. Thus, nothing confidential was disclosed by Atty. Constantino at the time the latter engaged his legal services. Considering, therefore, that no attorney-client relationship existed between them at the time such relevant information was disclosed to him, the element of confidentiality, which would bring any information concerning the Deed of Assignment within the ambit of a privileged communication, is lacking in this case.

The proper resolution of the issue herein involved necessarily hinges upon the existence of an attorney-client relationship. Notably, the absence of an attorney-client relationship between Atty. Constantino and Atty. Aransazo is an essential element in the latter's defense.

**Existence of
a lawyer-
client
relationship
between
Atty.
Constantino
and Atty.
Aransazo.**

In this regard, it is settled that a "lawyer-client relationship begins from the moment a client seeks the lawyer's advice upon a legal concern. The seeking may be for consultation on transactions or other legal concerns, or for representation of the client in an actual case in the courts or other fora. From that moment on, the lawyer is bound to respect the relationship and to maintain the trust and confidence of his client."^[24]

Thus, if an individual consults a lawyer in respect to his business affairs or legal troubles of any kind with a view towards obtaining professional advice or assistance, and the lawyer, by virtue thereof, permits or acquiesces with the consultation, then a lawyer-client relationship is established.^[25]

As it were, Atty. Constantino went to the office of Atty. Aransazo, who, incidentally, is also considered a friend, to disclose sensitive information and documents for the purpose of obtaining legal advice. Notably, a perusal of the sworn statement of Atty. Aransazo will reveal that the communication between him and Atty. Constantino set out therein transpired within the context of Atty. Constantino intending to engage the services of Atty. Aransazo as his lawyer in relation, among others, to a mortgage obligation amounting to P2,200,000.00, thus: