

MAGDALENA OBRERO, COMPLAINANT, VS. ATTY. EFREN TAGALA, RESPONDENT.*Adm. Case No. 984. April 22, 1977*

Ponente: FERNANDO, J.

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The offense of grossly immoral conduct[1] was imputed to respondent Efren Tagala, a member of the Philippine Bar, in a complaint dated February 20, 1971. Complainant Magdalena Obrero alleged that under scandalous circumstances, she being then a clerk in his office as Registrar of the Commission on Elections at Paracale, he embraced and fondled her breasts, at the same time touching her private parts. Such acts, according to her, were repeated on other occasions, her inability to complain being due to the threat of dismissal hanging over her head in case she would do so.

There was a denial in the answer filed by respondent, dated April 5, 1971. He pointed out that the office where the acts were alleged to have been committed, at the most having a floor area of twenty-four square meters, was also occupied by a Collection Agent of the Bureau of Internal Revenue, who was then holding office in the same room. Moreover, it was accessible to anyone who had business to transact. He likewise stated that such room was adjacent to or beside other governmental offices, including that of the Municipal Treasurer and the Chief of Police. The public library was likewise in such area. He stressed that it took complainant six years to file the complaint when the acts imputed to him occurred in 1965. At the same time, he did admit that in 1967, when she was still unmarried, she filed a similar complaint using her maiden name of Magdalena U. Verin, but that it was dismissed in a resolution of this Court.[2] He prayed for the dismissal of the complaint.

The matter was then referred to the Office of the Solicitor General for investigation, report and recommendation. For the convenience of the parties, the Provincial Fiscal was designated to conduct the hearings. It was not a routine but a thorough investigation that was held, complainant testifying on her own behalf and respondent doing likewise but also calling as witnesses his wife, Segundina E. Tagala, Emerenciana Mandill, Alfredo Bacuño and Vicente Elnar. Alfredo Bacuño was the Bureau of Internal Revenue Collection Agent at the time of the alleged acts, occupying the same room as that of respondent. Thereafter, the Office of the Solicitor General went over the records of the case and on May 11, 1976, its report was submitted.[3] It is quite exhaustive being contained in eighteen pages and discussing in detail the evidence for complainant as well as that for respondent. The recommendation is "that there are no sufficient grounds to proceed against respondent Atty. Efren Tagala, and accordingly, the complaint of Magdalena Obrero should be dismissed." [4]

This Court, in the light of the records of the case as well as of the above report, agrees with such recommendation.

1. Respondent did not insist on the matter having partaken of the nature of *res judicata* in view of the previous dismissal of such complaint against him. Even had he done so, there is still merit to the approach taken by the Office of the Solicitor General that in matters of this character, the previous dismissal on the ground of lack of interest could not be considered a conclusive bar to the investigation subsequently ordered by this Court. That is

to accord deference to the doctrine of *In re Cunanan*,^[5] where the plenary power of this Tribunal over admission to and thereafter termination of membership in the legal profession was accorded impressive recognition. Thereby, there is full compliance with an explicit mandate of the Constitution.^[6] Such an approach is likewise commendable insofar as it vitalizes further the constitutional right to petition.^[7] A member of the bar being an officer of the Court and as such, in the language of *In re MacDougall*,^[8] he should be "competent, honorable, and reliable; [one] in whom courts and clients may repose confidence."^[9]

2. In this instance, moreover, the inquiry into the merits of the complainant redounded to the benefit of respondent. Even a cursory perusal of the records reveals clearly why the recommendation cannot be other than its dismissal. The alleged offended party woefully failed to substantiate her accusation. Thus respondent's name has been cleared.

3. Complainant would have this Court believe that the "immoral acts were repeated on several occasions inside [respondent's] office;"^[10] that such acts lasted some "fifteen to twenty minutes" on several occasions;^[11] and worse they allegedly occurred "almost daily the moment he enters the office."^[12] As was pointed out by the Solicitor General, if such were the case, why did she not report the repeated commission of such acts to the proper authorities "to bring to task respondent for his misdeeds * * *."^[13] After noting that complainant "could not give any detail as to when the 'immoral acts' were committed," the Solicitor General further observed: "What is worse, however, is the fact that complainant had not, even for one instance, reported respondent's actuations to the police when the police department was just 3 or 4 steps away, or just within shouting distance, from the room occupied by the Comelec."^[14] An even graver objection to the testimony of complainant being accepted, in view of its "highly unbelievable and improbable character" was explained in the Report in this wise: "The room occupied by respondent and complainant is more or less a 24-square meter affair, and is also occupied by 2 other persons, a BIR Collection Agent and another Election Registrar. It is one of several other government offices housed in the municipal building of Paracale, the other offices being the police department which is just opposite the Comelec office, the municipal treasurer's office, the public library, the PACD, APC. The Comelec office in particular is so situated that in going to the comfort rooms, one has to pass by the narrow corridor separating the Comelec office from the police department. There are two windows of the room through which one could see below the ALATCO Bus Terminal on one side and a street on the other side along which are private houses and the post office building * * *. The year 1965, being an election year, was a busy year for the Comelec, and the Paracale Comelec office was no exception. The same office was indeed a beehive of activity with the registration of voters, with several political leaders following up important papers, and with other people transacting business with the BIR Collection Agent in the matter of the payment of internal revenue, taxes and forest charges, buying of documentary stamps, securing of residence certificates, * * *. The office was always open * * *. The location of the Comelec office in relation to other government offices, particularly the police department, and the varied activities therein, create reasonable doubt as to the possibility that the respondent may have committed the acts of kissing, embracing, fondling, [and] holding of private parts, complained of."^[15]

3. What other conclusion could there be then than that the complaint must be dismissed. That is to defer to what was so clearly stated in the *In re Tionko* opinion of Justice Malcolm,^[16] a 1922 decision. Thus: "The serious consequences of disbarment or suspension should follow only where there is a clear preponderance of evidence against the respondent. The presumption is that the attorney is innocent of the charges preferred and has performed his duty as an officer of the court in accordance with his oath."^[17] The authoritative character of such a doctrine is undeniable. So many later cases have been decided in conformity with its dictate.^[18] There is no justification then for failing to show adherence to such a norm.

WHEREFORE, the administrative complaint against Attorney Efren Tagala is dismissed. Let a copy of this

resolution be spread on his record.

Barredo, Antonio, Aquino, and Concepcion, Jr., JJ., concur.

[1] The complaint is based on Section 27, Rule 138 of the Rules of Court which read as follows: "Attorneys removed or suspended by Supreme Court on what grounds. — A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or wilfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice."

[2] This Court, on April 29, 1971, dismissed *Verin v. Tagala*, Adm. Case No. 760, upon recommendation of the Solicitor General for lack of interest on the part of complainant.

[3] It was filed by Solicitor General Estelito P. Mendoza. He was assisted by Assistant Solicitor General Santiago M. Kapunan and Solicitor Oswaldo D. Agcaoili.

[4] Report and Recommendation, 17-18.

[5] 94 Phil. 534 (1954).

[6] According to Article VIII, Section 13 of the 1935 Constitution, in force and effect when this complaint was investigated: "The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law." Such provision is now found in Article X, Section 5, par. 5 of the new Constitution.

[7] Cf. *Tobias v. Ericta*, Adm. Case No. 212-J, July 29, 1972, 46 SCRA 83; *Bartolome v. de Borja*, Adm. Case No. 1096-CFI, May 31, 1976, 71 SCRA 153; *Lim v. Salvador*, Adm. Case No. 1426-CFI, February 28, 1977.

[8] 3 Phil. 70 (1903).

[9] *Ibid*, 78.

[10] T.s.n., 37.

[11] *Ibid*, 38.

[12] *Ibid.*, 69.

[13] Report and Recommendation, 11.

[14] *Ibid*.

[15] *Ibid*, 13-14.

[16] 43 Phil. 191.

[17] *Ibid*, 194.

[18] Cf. *Javier v. Cornejo*, 63 Phil. 293 (1936); *De Guzman v. Tadeo*, 68 Phil. 554 (1939); *In re Attorney C. T. Oliva*, 103 Phil. 312 (1958); *Blanza v. Arcangel*, Adm. Case No. 492, Sept. 5, 1967, 21 SCRA 1; *Magno v. Gellada*, Adm. Case No. 767, Dec. 20, 1971, 42 SCRA 549; *Misamin v. San Juan*, Adm. Case No. 1418, Aug. 31,

1976; Maderazo v. Del Rosario, Adm. Case No. 1267, Oct. 29, 1976.

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