

**JOSEFINA ROYONG, COMPLAINANT, VS. ATTY. AKISTON OBLENA,,
RESPONDENT.***Adm. Case No. 376. April 30, 1963*

Ponente: BARRERA, J.

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In a verified complaint filed with this Court on January 14, 1959, complainant Josefina Royong charged the respondent Ariston Oblena, a member of the Philippine Bar, with rape allegedly committed on her person in the manner described therein. Upon requirement of this Court,

the respondent filed his answer denying all the allegations in the complaint and praying that he be not disbarred. On February 3, 1959, this Court referred the case to the Solicitor General for investigation, report and recommendation.

On July, 10, 1961, the Solicitor General submitted his report on the case with the recommendation that the respondent "be permanently removed from his office as a lawyer and his name be stricken from the roll of attorneys". The pertinent part of the report reads as follows;

"The complainant testified that after lunch on August 5, 1958, Cecilia Angeles, her foster mother; left her alone in their house and went down to the pig sty to feed the pigs. At about 1:00 p.m., while she (complainant) was ironing clothes on the second floor of the house the respondent entered and read a newspaper at her back. Suddenly he covered her mouth with one hand and with the other hand dragged her to one of the bedrooms of the house and forced her to lie down on the floor. She did not shout for help because he threatened her and her family with death. He next undressed as she lay on the floor, then had sexual intercourse with her after he removed her panties and gave her, hard blows on the thigh with his flat to subdue her resistance. After the sexual intercourse, he warned her not to report him to her foster parents, otherwise, he would kill her and all the members of her family. She resumed ironing clothes after he left until 5:00 o'clock that afternoon when she joined her foster mother on the first floor of the house. As a result of the sexual Intercourse she became pregnant and gave birth to a baby on June 2, 1959 (pp. 4-8, 21-23, 20, 27, t.s.n., hearing of August 5, 1959).

"She admitted that had she shouted for help she would have been heard by the neighbors; that she did not report the outrage to anyone because of the threat made by the respondent; that she still frequented the respondent's house after August 5, 1959, sometimes when he was alone, ran errands for him, cooked his coffee, and received his mail for him. Once, on November 14, 1958, when respondent was sick of influenza, she was left alone with him in his house while her aunt Briccia Angeles left for Manila to buy medicine (pp. 11, 14-18, 24, t.s.n., hearing of August 5, 1959).

"The respondent on the witness stand denied that he raped the complainant (p. 5 t.s.n., hearing of Mar. 25, 1960). He testified that after lunch on August 5, 1958, he went to the Commission of Civil Service to follow up his appointment as technical in the office of the mayor of Makati, Rizal, and read the record of the administrative case against Buenaventura Perez (pp. 23f 24, 34, t.s.n., hearing of Mar. 25, 1960, Exhs. 1 and 2).

"The respondent, however, admitted that he had illicit relations with the complainant from January, 1957 to December 1958, when their clandestine affair was discovered by the complainant's foster parents, but to avoid criminal liability for seduction, according to him, he limited himself to kissing and embracing her and sucking her tongue before she completed her eighteenth birthday. They had their first sexual intercourse on May 11, 1958, after she had reached eighteen, and the second one week later, on May 18. The last intercourse took place before Christmas in December, 1958. In all, they had sexual intercourse about fifty times, mostly in her house and sometimes in his house whenever they had the opportunity. He intended to marry her when she could legally contract marriage without her foster parents' intervention, "in case occasion will permit . . . because we cannot ask permission to marry, for her foster parents will object and even my common-law wife, will object." After the discovery of their relationship by the complainant's foster parents, he confessed the affair to Briccia, explaining that he wanted to have a child, something she (Briccia) could not give him. (pp. 14-16, 19-25, t.s.n., hearing of March 25, 1960)

* * * * *

"FINDINGS AND COMMENT

"There is no controversy that the respondent had carnal knowledge of the complainant. The complainant claims she surrendered to him under circumstances of violence and intimidation, but the undersigned are convinced that the sexual intercourse was performed not once but repeatedly and with her consent. From her behaviour before and after the alleged rape, she appears to have been more of a sweetheart than of the victim of an outrage involving her honor. * * *

"But the foregoing observations notwithstanding, the undersigned cannot in conscience recommend respondent's exoneration. The respondent tempted Briccia Angeles to live maritally with him not long after she and her husband parted, and it is not improbable that the spouses never reconciled because of him. His own evidence shows that, tiring of her after more than fifteen years of adulterous relationship with her and on the convenient excuse that she, Briccia Angeles, could not bear a child, he reduced Josefina Andalis, then 17 or 18 years of age, resulting in her pregnancy and the birth of a child, on June 2, 1959. The seduction was accomplished with grave abuse of confidence and by means of promises of marriage which he knew he could not fulfill without grievous injury to the woman who forsook her husband so that he, respondent, could have all of her. He also took advantage of his moral influence over her. From childhood, Josefina Andalis, treated him as an uncle and called him "tata" (uncle), undoubtedly because he is the paramour of a sister of her "mother. Considering her age (she was 17 to 18 years old then), it is not difficult to see why she could not resist him.

"The evidence further shows that on July 22, 1954, the respondent filed a sworn petition dated May 22, 1954 alleging 'that he is a person of good moral character' (par. 3) and praying that the Supreme Court permit him 'to take the bar examinations to be given on the first Saturday of August, 1954, or at any time as the Court may fix'.

"But he was not then the person of good moral character he represented himself to be. From 1942 to the present, he has continuously lived an adulterous life with Briccia Angeles whose husband is still alive, knowing that his concubine is a married woman and that her marriage still subsists. This fact permanently disqualified him from taking the bar examinations, and had it been known to the Supreme Court in 1954, he would not have been permitted to take the bar examinations that year or thereafter, or to take his oath of office as a lawyer. As he was then permanently disqualified from admission to the Philippine Bar by reason of his adulterous relations with a married woman, it is submitted that the same misconduct should be sufficient ground for his permanent disbarment, unless we recognize a double standard of morality, one for membership to the Philippine Bar and another for disbarment from the office of a lawyer.

* * * * *

"RECOMMENDATION

"Wherefore, the undersigned respectfully recommend that after due hearing, respondent Ariston J. Obiena be permanently removed from his office as a lawyer and his name be stricken from the roll of attorneys."

In view of his own findings as a result of his investigation, that even if respondent did not commit the alleged rape nevertheless he was guilty of other misconduct, the Solicitor General formulated, another complaint which he appended to his report, charging the respondent of falsely and deliberately alleging in his application for admission to the bar that he is a person of good moral character; of living adulterously with Briccia Angeles at the same time maintaining illicit relations with the complainant Josefina Royong, niece of Briccia, thus rendering him unworthy' of public confidence and unfit and unsafe to manage the legal business of others, and praying that this Court render judgment ordering "the permanent removal Of the respondent * * * from his office as a lawyer and the cancellation of his name from the roll of attorneys."

In his answer to this formal complaint, respondent alleged the special defense that "the complaint ;does not merit action", since the causes of action in the said complaint are different and foreign from the original cause of action for rape and that "the complaint lacks the necessary formalities called for in Sec. 1, Rule 128 of the Rules of Court". Respondent prayed that after due notice and hearing for additional evidence, the complaint be dismissed.

On September 13, 1961, this Court, designated the Court Investigators to receive the additional evidence. Accordingly, the, case was set for hearing of which the parties were duly notified. On September 29, 1961, respondent asked leave to submit a memorandum which was granted, and on,October 9, 1961 the same was filed, alleging the following: 1) That the charge of rape has not been proven; 2) That no act of seduction was committed by the respondent; 3) That no act of perjury or fraudulent concealment was committed by the respondent when he filed his petition for admission to the bar; and 4) That the respondent is not morally unfit to be a member of the bar.

At the hearing on November 16, 1961, respondent presented his common-law wife, Briccia Angeles, who testified as follows:

"* * *, Respondent, is her common-law huaband (t.s.n. 23).. She first met respondent on December 16, 1941 at Cavinti, Laguna (t.s.n., 23). She and her sister Cecilia Angeles-Royong were evacuated to Cavinti by the Red .Cross (t.s.n., 23). She was already married (to Teodoro Arines) at the time (t.s.n. 24). She and Arines are from Iriga, Camarines Sur (t.s.n., 24). Respondent and. one Mr. Flores registered them (t.s.n., 24) as evacuees. When Mr. Flores asked her about her status she told him she was 'single' (t.s.n. 25). She and her sister, Cecilia, were then told to stay at respondent's house, respondent courted hep (t.s.n, 26). Respondent asked her if she was married and "she told him 'we will fedle about that later on' (t.s.n., 26). She told respondent she was imarpied (to Arines) when she and respondent were already living together as 'husband and wife', in 1942 (t.s.n., 26). Respondent as feed her to marry him, when they were living as husband and wife (t.s.n., 2-27). Her sister Cecilia left Cavinti 2 months after their arrival thereat, but she. did not go with her because she and respondent 'had already a good understanding' (sexual relations) (t.s.n. 27). Later, she left Cavinti and went to her hometown Iriga, Cajnarines Sur, because respondent was already reluctant to live; With her and,he told her it was better for her to go home to Iriga. (t.s.n. 25). Arriving at Iriga, she met her legitimate husband (Arines), who told her he had' already a wife, named Conching Guevara. (t.s.n., 28-29). She then went back to Cafinti (in 1943), with her father, and lived with respondent (t.s.n., 29). Respondent eventually agreed that sh« live with him (t.s.n. 35); in fact, she is still presently living with respondent (t.s.n. 35) [Report of Court Investigators, March. 6, 1962, pp. 5-6]."

Thereafter, respondent requested permission to submit an affidavit at a later date, which request was also granted. The affidavit was filed or December 16, 1961, the respondent averring, among others, the following:

"* * * That he never committed any act or crime of seduction against the complainant, Tiecauso the latter was born on February 19, 1940, and his first sexual intercourse with her took, place on May 11, 1958, when she was already above 18 years of age; that he had been living with his common-law wife, Briccia Angeles, for almost 20' years, but from the time he began courting her, he had no intention. to alienate' ,her love for her

husband, Arines, or to commit the crime of adultery; that he courted Eriecia on October 16, 1941, and was shortly thereafter accepted by her; that on February 21, 1942, he found Briccia alone in his house, who told him that her sister, Cecilia, had gone to Pagsanjan with the other evacuees; that from said date (February 21), to the present, he and Briccia had been living together as common-law husband and wife, that a or 3 weeks thereafter, he asked Briccia to marry him, but she confessed she was already married, and maybe her husband (Arines) was still living in Iriga; that he could not then drive Briccia away, because she was a stranger in the place, nor could he urge her to join her sister Cecilia, as the latter had left Pagsanjan; that in 1943 she told Briccia to separate from him and to return to Iriga, and urged her never to see him again; that contrary to his expectations, Briccia returned to Cavinti 3 months thereafter; that Briccia strongly insisted to live with him again, telling him that she cannot separate from him anymore, as he was ashamed; that Briccia's father told him that Briccia's husband (Arinea) had agreed not to molest them as in fact he (Arines) was already living with another woman; that he had 'no choice but to live with her' (Briccia) again; that when he filed his petition to take the bar examinations in 1954, he 'did not have the slightest intention to hide' from this Court the fact of his 'open cohabitation with a married woman' ('Briccia Angeles'); that he did not state said fact in his petition, because he did not see in the form of the petition being used in 1954 that the fact must be stated; and that since his birth, he thought and believed he was a man of good moral character, and it was only from the Solicitor General that he first learned he was not so; and that he did not commit perjury or fraudulent concealment when he filed his petition to take the bar examinations in 1954." (Report of the Court Investigators, pp. 6-8, March 6, 1962).

After the hearing, the investigators submitted a report with the finding that: 1) Respondent used his knowledge of the law to advantage by having illicit relations with complainant, knowing as he did, that by committing immoral acts on her, he was free from any criminal liability; and 2) Respondent committed gross immorality by continuously cohabiting with a married woman even after he became a lawyer in 1955 to the present; and 3) That respondent falsified the truth as to his moral character in his petition to take the 1954 bar examinations, being then immorally (adulterously) in cohabitation with his common-law wife, Briccia Angeles, a married woman. The investigators also recommended that the respondent be

disbarred or alternatively, be suspended from the practice of law for a period of one year.

Upon the submission of this report, a copy of which was served on respondent, through his counsel of record, the case was set for hearing before the Court on April 30, 1962. Respondent asked leave to file his memorandum in lieu of oral argument. This was granted and the corresponding memorandum was duly filed.

It is an admitted and uncontroverted fact that the respondent had sexual relations with the complainant several times, and as a consequence she bore him a child on June 2, 1959; and that he likewise continuously cohabited with Briccia Angeles, in an adulterous manner, from 1942 up to the present.

The main point in issue is thus limited to only whether the illicit relations with the complainant Josefina Royong and the open cohabitation with Briccia Angeles, a married woman, are sufficient grounds to cause the respondent's disbarment.

It is argued by the respondent that he is not liable for disbarment notwithstanding his illicit relations with the complainant and his open cohabitation with Briccia Angeles, a married woman, because he has not been convicted of any crime involving moral turpitude. It is true that the respondent has not been convicted of rape, seduction, or adultery on this count, and that the grounds upon which the disbarment proceeding is based are not among those enumerated by Section 25, Rule 127 of the Rules of Court for which a lawyer may be disbarred. But it has already been held that this enumeration is not exclusive and that the power of the courts to exclude unfit and unworthy members of the profession is inherent; it is a necessary incident to the proper administration of justice; it may be exercised without any special statutory authority, and in all proper cases unless positively prohibited, by

statute; and . the power may be exercised in any manner that will give the party to be disbarred a fair trial and a fair opportunity to be heard. (1 Francisco, Rules of Court [1958-ed]r698, citing in *Re Pelaez*, 44 Phil. 567). Although it is a well settled rule that the legislature (or the Supreme Court by virtue of its rulemaking power) may provide that certain acts or conduct shall require disbarment, the accepted doctrine is that statutes and rules merely regulate the power to disbar instead of creating it, and, that such statutes (or rules) do not restrict the general powers of the court over attorneys, who are its officers, and that they may be removed for other than statutory grounds (7 C.J.S. 734). In the United States, where from our system of legal ethics is derived, "the continued possession of a fair private and professional character or a good moral character is a requisite condition for the continuance of the practice of law for one who has been admitted, and its loss requires suspension or disbarment even though the statutes do not specify that as a ground of disbarment". The moral turpitude for which an attorney may be disbarred may consist of misconduct in either his professional or non-professional activities (5 An. Jur. 417). The tendency of the decisions of this Court has been toward the conclusion that a member of the bar may be removed or suspended from office as a lawyer for other than statutory grounds. Indeed, the rule is so phrased as to be broad enough to cover practically any misconduct of a lawyer (In *Re Pelaez*, 44 Phil. 567). In the case at bar, the moral depravity of the respondent is most apparent. His pretention that before complainant completed her eighteenth birthday, he refrained from having sexual intercourse with her, so as not to incur criminal liability, as he himself declared—and that he limited himself merely to kissing and embracing her and sucking her tongue, indicates a scheming mind, which together with his knowledge of the law, he took advantage of, for his lurid purpose.

Moreover, his act becomes more despicable considering that the complainant was the niece of his common-law wife and that he enjoyed a moral ascendancy over her who looked up to him as her uncle. As the Solicitor General observed: "He also took advantage of his moral influence over her. From childhood, Josefma Andalis (Royong), treated him as an uncle and called him 'tata' (uncle), undoubtedly because he is the paramour of a sister of her mother. Considering her age (she was 17 or 18 years old then), her inexperience and his moral ascendancy over her, it is not difficult to see why she could not resist him". Furthermore, the blunt admission of his illicit relations with the complainant reveals the respondent to be a person who would suffer no moral compunction for his acts if the same could be done without fear of criminal liability. He has, by these acts, proven himself to be devoid of the moral integrity expected, of a member of the bar.

The respondent's misconduct, although unrelated to his office, may constitute sufficient grounds for disbarment. This is a principle we have followed since the ruling in *In Re Pelaez*, 44 Phil. 667, where this Court quoted with approval the following portion of the decision of the Supreme Court of Kansas in the case of *Peyton's Appeal* (12 Kan. 398, 404), to wit:

"The nature of the office, the trust relation which exists between attorney and client, as well as between court and attorney, and the statutory rule prescribing the qualifications of attorneys, uniformly require that an attorney be a person of good moral character. If that qualification is a condition precedent to a license or privilege to enter upon the practice of the law, it would seem to be equally essential during the continuance of the practice and the exercise of the privilege. So it is held that an attorney will be removed not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which shows him to be unfit for the office and unworthy of the privileges which his license and the law confer upon him." (Italics supplied).

Respondent's conduct though unrelated to his office and in no way directly bearing on his profession, has nevertheless rendered him unfit and unworthy of the privileges of a lawyer. We cannot give sanction to his acts. For us to do so would be—as the Solicitor General puts it recognizing "a double standard of morality, one for membership to the Philippine Bar, and another for disbarment from the office of the lawyer". If we concede that

respondent's adulterous relations and his simultaneous seduction of his paramour's niece did not and do not disqualify him from continuing with his office of lawyer, this Court would in effect be requiring moral integrity as an essential prerequisite for admission to the bar, only to later on tolerate and close its eyes to the moral depravity and character degeneration of the members of the bar.

The decisions relied upon by the respondent in justifying his stand that even if he admittedly committed fornication, this is no ground for disbarment, are not controlling. Fornication, if committed under such scandalous or revolting circumstances as have been proven in this case, as to shock common sense of decency, certainly may justify positive action by the Court in protecting the prestige of the noble profession of the law. The reasons advanced by the respondent why he continued his adulterous relations with Briccia Angeles, in that she helped him in some way finish his law studies, and that this "sense of propriety and Christian charity" did not allow him to abandon her after his admission to the bar after almost 13 years of cohabitation, are hardly an excuse for his moral dereliction. The means he employed, as he stated, in order to enticate himself from the predicament he found himself in, by courting the complainant and maintaining sexual relations with her makes his conduct more revolting. An immoral act cannot justify, another immoral act. The noblest means he could have employed was to have married the complainant as he was then free to do so. But to continue maintaining adulterous, relations with a married woman and simultaneously maintaining promiscuous relations with the latter's niece. is moral perversion that can not be condoned. Respondent's conduct therefore renders him unfit and unworthy for the privileges of the legal profession. As good character is an essential qualification for admission of an attorney to practice, he may be removed therefrom whenever he ceases to possess such character (7 C.J.S. 735).

The respondent further maintains that the Solicitor General exceeded his authority in filling the present complaint against him for seduction, adultery and perjury, as it charges an offense or offenses different from those originally charged in the complaint of January 14, 1959 for rape, and cites as authority Sections 4 and 5 of Rule 128 of the Rules of Court, which state:

SEC., 4. Report of the Solicitor General.—Based upon the evidence adduced at the hearing, if the Solicitor General finds no sufficient ground to proceed against the respondent, he shall submit a report to the Supreme Court containing his findings of fact and conclusion, whereupon the respondent shall be exonerated unless the court orders differently.

"SEC. 5. Complaint of the Solicitor General. Answer of the Respondent.—If the Solicitor General finds sufficient. ground to proceed, against the respondent, he shall file the corresponding complaint, accompanied with all the evidence introduced in his investigation, with the Supreme Court, and the respondent shall be served by the clerk of the Supreme Court with a copy of the complaint with direction to answer the same within fifteen days."

The contention is devoid of merit. Nothing in the language of the foregoing rules requires the Solicitor General to charge in his complaint the same offense charged in the complaint originally filed by the complainant for disbarment. Precisely, the law. provides that should the Solicitor General find sufficient grounds to proceed against the respondent, he shall file the corresponding complaint, accompanied by the evidence introduced in his investigation. The Solicitor General therefore is at liberty to file any case against the respondent as may be justified by the evidence adduced during the investigation.

The respondent also maintains that he did not falsify his petition to take the bar examination in 1954 since according to his own opinion and estimation of himself at that time, he was a person of good moral character. This contention is clearly erroneous. One's own approximation of himself' is not a gauge to his moral character. Moral character is not a subjective term, but one which corresponds to objective reality. Moral character is what a person really is; and not what he or other people think he is. As former Chief Justice Moran observed: An applicant for

license to practice law is required to show good moral character, or what he really is, as distinguished from good reputation, or from the opinion generally entertained of him, the estimate in which he, is held by the public in the place where he is known. As has been said, ante the standard of personal and professional integrity which should be applied to persons admitted to practice law is not satisfied by such conduct as merely enables them to escape the penalties of criminal law. Good moral character includes at least common honesty (3 Moran, Comments on the Rules of Court, [1957 ed] 626, citing *In Re Weinstein*, 42 P. (2d) 744 B.L.D., *Cooper vs. Greeley*, 1 Den. (N.Y.) 3447; *In Re Del Rosario*, 52 Phil, 899; and *People vs. Macauley*, 82 N.E. 612). Respondent, therefore, did not possess a good moral character at the time he applied for admission to the bar. He lived an adulterous life with Briceia Angeles, and the fact that people who knew him seemed to have acquiesced to his status, did not render him a person of good moral character. It is of no moment that his immoral state was discovered then or now as he is clearly not fit to remain a member of the bar.

Wherefore, judgment is hereby entered striking the name of herein respondent, Ariston J. Oblena, from the roll of Attorneys.

Bengzon, C. J., Bautista Angelo, Labrador, Conception, Paredes, Regala, and Makalintal, JJ., concur.

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