

ST. LOUIS UNIVERSITY LABORATORY HIGH SCHOOL (SLU-LHS) FACULTY AND STAFF, COMPLAINANT, VS. ATTY. ROLANDO C. DELA CRUZ, RESPONDENT.

A.C. NO. 6010. August 28, 2006

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a disbarment case filed by the Faculty members and Staff of the Saint Louis University-Laboratory High School (SLU-LHS) against Atty. Rolando C. Dela Cruz, principal of SLU-LHS, predicated on the following grounds:

1) Gross Misconduct:

From the records of the case, it appears that there is a pending criminal case for child abuse allegedly committed by him against a high school student filed before the Prosecutor's Office of Baguio City; a pending administrative case filed by the Teachers, Staff, Students and Parents before an Investigating Board created by SLU for his alleged unprofessional and unethical acts of misappropriating money supposedly for the teachers; and the pending labor case filed by SLU-LHS Faculty before the NLRC, Cordillera Administrative Region, on alleged illegal deduction of salary by respondent.

2) Grossly Immoral Conduct:

In contracting a second marriage despite the existence of his first marriage; and

3) Malpractice:

In notarizing documents despite the expiration of his commission.

According to complainant, respondent was legally married to Teresita Rivera on 31 May 1982 at Tuba, Benguet, before the then Honorable Judge Tomas W. Macaranas. He thereafter contracted a subsequent marriage with one Mary Jane Pascua, before the Honorable Judge Guillermo Purganan. On 4 October 1994, said second marriage was subsequently annulled for being bigamous.

On the charge of malpractice, complainant alleged that respondent deliberately subscribed and notarized certain legal documents on different dates from 1988 to 1997, despite expiration of respondent's notarial commission on 31 December 1987. A Certification^[1] dated 25 May 1999 was issued by the Clerk of Court of Regional Trial Court (RTC), Baguio City, to the effect that respondent had not applied for commission as Notary Public for and in the City of Baguio for the period 1988 to 1997. Respondent performed acts of notarization, as evidenced by the following documents:

- Affidavit of Ownership^[2] dated 8 March 1991, executed by Fernando T. Acosta, subscribed and sworn to before Rolando Dela Cruz;

- Affidavit[3] dated 26 September 1992, executed by Maria Cortez Atos, subscribed and sworn to before Rolando Dela Cruz;
- Affidavit[4] dated 14 January 1992, executed by Fanolex James A. Menos, subscribed and sworn to before Rolando Dela Cruz;
- Affidavit[5] dated 23 December 1993, executed by Ponciano V. Abalos, subscribed and sworn to before Rolando Dela Cruz;
- Absolute Date of Sale[6] dated 23 June 1993, executed by Danilo Gonzales in favor of Senecio C. Marzan, notarized by Rolando Dela Cruz;
- Joint Affidavit By Two Disinherited Parties[7] dated 5 March 1994, executed by Evelyn C. Canullas and Pastora C. Tacadena, subscribed and sworn to before Rolando Dela Cruz;
- Sworn Statement[8] dated 31 May 1994, executed by Felimon B. Rimorin, subscribed and sworn to before Rolando Dela Cruz;
- Deed of Sale[9] dated 17 August 1994, executed by Woodrow Apurado in favor of Jacinto Batara, notarized by Rolando Dela Cruz;
- Joint Affidavit by Two Disinterested Parties[10] dated 1 June 1994, executed by Ponciano V. Abalos and Arsenio C. Sibayan, subscribed and sworn to before Rolando Dela Cruz;
- Absolute Deed of Sale[11] dated 23 March 1995, executed by Eleanor D. Meridor in favor of Leonardo N. Benter, notarized by Rolando Dela Cruz;
- Deed of Absolute Sale[12] dated 20 December 1996, executed by Mandapat in favor of Mario R. Mabalot, notarized by Rolando Dela Cruz;
- Joint Affidavit By Two Disinterested Parties[13] dated 17 April 1996, executed by Villiam C. Ambong and Romeo L. Quiming, subscribed and sworn to before Rolando Dela Cruz;
- Conditional Deed of Sale[14] dated 27 February 1997, executed by Aurelia Demot Cados in favor of Jose Ma. A. Pangilinan, notarized by Rolando Dela Cruz;
- Memorandum of Agreement[15] dated 19 July 1996, executed by JARCO represented by Mr. Johnny Teope and AZTEC Construction represented by Mr. George Cham, notarized by Rolando Dela Cruz.

Quite remarkably, respondent, in his comment, denied the charges of child abuse, illegal deduction of salary and others which are still pending before the St. Louis University (SLU), National Labor Relations Commission (NLRC) and the Prosecutor's Office. He did not discuss anything about the allegations of immorality in contracting a second marriage and malpractice in notarizing documents despite the expiration of his commission.

After the filing of comment, We referred[16] the case to the Integrated Bar of the Philippines (IBP), for investigation, report and recommendation.

The IBP conducted the mandatory preliminary conference.

The complainants, thereafter, submitted their position paper which is just a reiteration of their allegations in their complaint.

Respondent, on his part, expressly admitted his second marriage despite the existence of his first marriage, and the subsequent nullification of the former. He also admitted having notarized certain documents during the period

when his notarial commission had already expired. However, he offered some extenuating defenses such as good faith, lack of malice and noble intentions in doing the complained acts.

After the submission of their position papers, the case was deemed submitted for resolution.

On 30 March 2005, Commissioner Acerey C. Pacheco submitted his report and recommended that:

WHEREFORE, premises considered, it is respectfully recommended that respondent be administratively penalized for the following acts:

- For contracting a second marriage without taking the appropriate legal steps to have the first marriage annulled first, he be suspended from the practice of law for one (1) year, and
- For notarizing certain legal documents despite full knowledge of the expiration of his notarial commission, he be suspended from the practice of law for another one (1) year or for a total of two (2) years.[17]

On 17 December 2005, the IBP Board of Governors, approved and adopted the recommendation of Commissioner Pacheco, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of 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 the applicable laws and rules, and considering that Respondent contracted a second marriage without taking appropriate legal steps to have the first marriage annulled, Atty. Rolando C. dela Cruz is hereby SUSPENDED from the practice of law for one (1) year and for notarizing legal documents despite full knowledge of the expiration of his notarial commission Atty. Rolando C. dela Cruz is SUSPENDED from the practice of law for another one (1) year, for a total of two (2) years Suspension from the practice of law.[18]

This Court finds the recommendation of the IBP to fault respondent well taken, except as to the penalty contained therein.

At the threshold, it is worth stressing that the practice of law is not a right but a privilege bestowed by the State on those who show that they possess the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law only during good behavior, and he can be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has been afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbaring him as an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of attorney and, thus, to protect the public and those charged with the administration of justice, rather than to punish an attorney. Elaborating on this, we said on *Maligsa v. Atty. Cabanting*,^[19] that the Bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. A member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. Towards this end, an attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court, all of these being broad enough to cover practically any misconduct of a lawyer in his professional or private capacity.

Equally worthy of remark is that the law profession does not prescribe a dichotomy of standards among its

members. There is no distinction as to whether the transgression is committed in the lawyer's professional capacity or in his private life. This is because a lawyer may not divide his personality so as to be an attorney at one time and a mere citizen at another.[20] Thus, not only his professional activities but even his private life, insofar as the latter may reflect unfavorably upon the good name and prestige of the profession and the courts, may at any time be the subject of inquiry on the part of the proper authorities.[21]

One of the conditions prior to admission to the bar is that an applicant must possess good moral character. Possession of such moral character as requirement to the enjoyment of the privilege of law practice must be continuous. Otherwise, "membership in the bar may be terminated when a lawyer ceases to have good moral conduct." [22]

In the case at bench, there is no dispute that respondent and Teresita Rivera contracted marriage on 31 May 1982 before Judge Tomas W. Macaranas. In less than a year, they parted ways owing to their irreconcilable differences without seeking judicial recourse. The union bore no offspring. After their separation in-fact, respondent never knew the whereabouts of Teresita Rivera since he had lost all forms of communication with her. Seven years thereafter, respondent became attracted to one Mary Jane Pascua, who was also a faculty member of SLU-LHS. There is also no dispute over the fact that in 1989, respondent married Mary Jane Pascua in the Municipal Trial Court (MTC) of Baguio City, Branch 68. Respondent even admitted this fact. When the second marriage was entered into, respondent's prior marriage with Teresita Rivera was still subsisting, no action having been initiated before the court to obtain a judicial declaration of nullity or annulment of respondent's prior marriage to Teresita Rivera or a judicial declaration of presumptive death of Teresita Rivera.

Respondent was already a member of the Bar when he contracted the bigamous second marriage in 1989, having been admitted to the Bar in 1985. As such, he cannot feign ignorance of the mandate of the law that before a second marriage may be validly contracted, the first and subsisting marriage must first be annulled by the appropriate court. The second marriage was annulled only on 4 October 1994 before the RTC of Benguet, Branch 9, or about five years after respondent contracted his second marriage. The annulment of respondent's second marriage has no bearing to the instant disbarment proceeding. Firstly, as earlier emphasized, the annulment came after the respondent's second bigamous marriage. Secondly, as we held in *In re: Almacen*, a disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers. Thus, if the acquittal of a lawyer in a criminal action is not determinative of an administrative case against him, or if an affidavit of withdrawal of a disbarment case does not affect its course, then neither will the judgment of annulment of respondent's second marriage also exonerate him from a wrongdoing actually committed. So long as the quantum of proof - clear preponderance of evidence - in disciplinary proceedings against members of the Bar is met, then liability attaches.[23]

Section 27, Rule 138 of the Rules of Court cites grossly immoral conduct as a ground for disbarment.

The Court has laid down with a common definition of what constitutes immoral conduct, *vis-à-vis*, grossly immoral conduct. Immoral conduct is "that conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community" and what is "grossly immoral," that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree." [24]

Undoubtedly, respondent's act constitutes immoral conduct. But is it so gross as to warrant his disbarment? Indeed, he exhibited a deplorable lack of that degree of morality required of him as a member of the Bar. In particular, he made a mockery of marriage which is a sacred institution demanding respect and dignity. His act of contracting a second marriage while the first marriage was still in place, is contrary to honesty, justice, decency

and morality.[25]

However, measured against the definition, we are not prepared to consider respondent's act as grossly immoral. This finds support in the following recommendation and observation of the IBP Investigator and IBP Board of Governors, thus:

The uncontested assertions of the respondent belies any intention to flaunt the law and the high moral standard of the legal profession, to wit:

- After his first failed marriage and prior to his second marriage or for a period of almost seven (7) years, he has not been romantically involved with any woman;
- His second marriage was a show of his noble intentions and total love for his wife, whom he described to be very intelligent person;
- He never absconded from his obligations to support his wife and child;
- He never disclaimed paternity over the child and husbandry (sic) with relation to his wife;
- After the annulment of his second marriage, they have parted ways when the mother and child went to Australia;
- Since then up to now, respondent remained celibate.[26]

In the case of *Terre v. Terre*,[27] respondent was disbarred because his moral character was deeply flawed as shown by the following circumstances, viz: he convinced the complainant that her prior marriage to Bercenilla was null and void ab initio and that she was legally single and free to marry him. When complainant and respondent had contracted their marriage, respondent went through law school while being supported by complainant, with some assistance from respondent's parents. After respondent had finished his law course and gotten complainant pregnant, respondent abandoned the complainant without support and without the wherewithal for delivering his own child safely to a hospital.

In the case of *Cojuangco, Jr. v. Palma*,[28] respondent was also disbarred for his grossly immoral acts such as: first, he abandoned his lawful wife and three children; second, he lured an innocent young woman into marrying him; third, he misrepresented himself as a "bachelor" so he could contract marriage in a foreign land; and fourth, he availed himself of complainant's resources by securing a plane ticket from complainant's office in order to marry the latter's daughter. He did this without complainant's knowledge. Afterwards, he even had the temerity to assure complainant that "everything is legal."

Such acts are wanting in the case at bar. In fact, no less than the respondent himself acknowledged and declared his abject apology for his misstep. He was humble enough to offer no defense save for his love and declaration of his commitment to his wife and child.

Based on the reasons stated above, we find the imposition of disbarment upon him to be unduly harsh. The power to disbar must be exercised with great caution, and may be imposed only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court. Disbarment should never be decreed where any lesser penalty could accomplish the end desired.[29] In line with this philosophy, we find that a penalty of two years suspension is more appropriate. The penalty of one (1) year suspension recommended by the IBP is too light and not commensurate to the act committed by respondent.

As to the charge of misconduct for having notarized several documents during the years 1988-1997 after his commission as notary public had expired, respondent humbly admitted having notarized certain documents despite his knowledge that he no longer had authority to do so. He, however, alleged that he received no payment

in notarizing said documents.

It has been emphatically stressed that notarization is not an empty, meaningless, routinary act. On the contrary, it is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization of a private document converts the document into a public one making it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.[30]

The requirements for the issuance of a commission as notary public must not be treated as a mere casual formality. The Court has characterized a lawyer's act of notarizing documents without the requisite commission to do so as "reprehensible, constituting as it does not only malpractice but also x x x the crime of falsification of public documents." [31]

The Court had occasion to state that where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action or one, performing a notarial act without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." By acting as a notary public without the proper commission to do so, the lawyer likewise violates Canon 7 of the same Code, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

In the case of *Buensuceso v. Barera*, [32] a lawyer was suspended for one year when he notarized five documents after his commission as Notary Public had expired, to wit: a complaint for ejectment, affidavit, supplemental affidavit, a deed of sale, and a contract to sell. Guided by the pronouncement in said case, we find that a suspension of two (2) years is justified under the circumstances. Herein respondent notarized a total of fourteen (14) documents [33] without the requisite notarial commission.

Other charges constituting respondent's misconduct such as the pending criminal case for child abuse allegedly committed by him against a high school student filed before the Prosecutor's Office of Baguio City; the pending administrative case filed by the Teachers, Staff, Students and Parents before an Investigating Board created by SLU; and the pending labor case filed by SLU-LHS Faculty before the NLRC, Cordillera Administrative Region, on alleged illegal deduction of salary by respondent, need not be discussed, as they are still pending before the proper forums. At such stages, the presumption of innocence still prevails in favor of the respondent.

WHEREFORE, finding respondent Atty. Rolando Dela Cruz guilty of immoral conduct, in disregard of the Code of Professional Responsibility, he is hereby **SUSPENDED** from the practice of law for a period of two (2) years, and another two (2) years for notarizing documents despite the expiration of his commission or a total of four (4) years of suspension.

Let copies of this Decision be furnished all the courts of the land through the Court Administrator, as well as the IBP, the Office of the Bar Confidant, and recorded in the personal records of the respondent.

SO ORDERED.

Panganiban, C.J., Puno, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Carpio

Morales, Callejo, Sr., Azcuna, Tinga, Garcia and Velasco, Jr., JJ., concur. Corona, J., on leave.

- [1] Rollo, p. 5.
- [2] Id. at 6.
- [3] Id. at 7-8
- [4] Id. at 9.
- [5] Id. at 10.
- [6] Id. at 11.
- [7] Id. at 12.
- [8] Id. at 13.
- [9] Id. at 14.
- [10] Id. at 15.
- [11] Id. at 16.
- [12] Id. at 17.
- [13] Id. at 18.
- [14] Id. at 19-21.
- [15] Id. at 22-23.
- [16] Id. at 309.
- [17] Id. at 477.
- [18] Id. at 472.
- [19] 338 Phil. 912, 916-917 (1997).
- [20] In re: Almacen, G.R. No. L-27654, 18 February 1970, 31 SCRA 562, 581
- [21] Bustamante-Alejandro v. Alejandro, A.C. No. 4256, 13 February 2004, 422 SCRA 527, 532.
- [22] Royong v. Oblena, 117 Phil. 865, 878 (1963).
- [23] Cojuangco, Jr. v. Palma, A.C. No. 2474, 15 September 2004, 438 SCRA 306, 317.
- [24] See Reyes v. Wong, A.C. No. 547, 29 January 1975, 63 SCRA 667, 673.
- [25] Villasanta v. Peralta, 101 Phil 313, 314 (1957).
- [26] Rollo, p. 476.
- [27] Adm. Case. No. 2349, 3 July 1992, 211 SCRA 6, 12.
- [28] Adm. Case No. 2474, 15 September 2004, 438 SCRA 306, 315.
- [29] T'boli Agro-Industrial Development, Inc. v. Atty. Solilapsi, 442 Phil. 499, 515 (2002).

[30] *Arrieta v. Llosa*, 346 Phil. 932, 937 (1997).

[31] *Buensuceso v. Barrera*, A.C. No. 3727, 11 December 1992, 216 SCRA 309, 312.

[32] *Id.*

[33] *Supra* notes 2-15.

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