

CYNTHIA ADVINCULA, COMPLAINANT, VS. ATTY. ERNESTO M. MACABATA, RESPONDENT.

A.C. No. 7204. March 07, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a complaint[1] for disbarment filed by Cynthia Advincula against respondent Atty. Ernesto M. Macabata, charging the latter with Gross Immorality.

Complainant alleged the following:

Sometime on 1st week of December 2004 complainant [Cynthia Advincula] seek the legal advice of the respondent [Atty. Macabata], regarding her collectibles from Queensway Travel and Tours. As promised, he sent Demand Letter dated December 11, 2004 (copy attached as Annex "I") to the concerned parties.

On February 10, 2005, met (sic) at Zensho Restaurant in Tomas Morato, Quezon City to discuss the possibility of filing the complaint against Queensway Travel and Tours because they did not settle their accounts as demanded. After the dinner, respondent sent complainant home and while she is about to step out of the car, respondent hold (sic) her arm and kissed her on the cheek and embraced her very tightly.

Again, on March 6, 2005, at about past 10:00 in the morning, she met respondent at Starbucks coffee shop in West Avenue, Quezon City to finalize the draft of the complaint to be filed in Court. After the meeting, respondent offered again a ride, which he usually did every time they met. Along the way, complainant was wandering (sic) why she felt so sleepy where in fact she just got up from bed a few hours ago. At along Roosevelt Avenue immediately after corner of Felipe St., in San Francisco Del Monte, Quezon City when she was almost restless respondent stopped his car and forcefully hold (sic) her face and kissed her lips while the other hand was holding her breast. Complainant even in a state of shocked (sic) succeeded in resisting his criminal attempt and immediately manage (sic) to go (sic) out of the car.

In the late afternoon, complainant sent a text message to respondent informing him that she decided to refer the case with another lawyer and needs (sic) to get back the case folder from him. The communications transpired was recorded in her cellular phone and read as follows:

Sent by complainant At 5:33:46 pm -

forget the case. I decided to refer it with other lawyer

replied by respondent at 6:16:11 pm -

"does this mean I can not c u anymore"(Does this mean I cannot see you anymore)

sent by complainant at 6:17:59 pm -

I feel bad. I can't expect that u will take advantage of the situation.

Follow-up message Sent by complainant At 6:29:30 pm

-

wrong to kiss a girl especially in the lips if you don't have relationship with her.

Replied by respondent At 6:32:43 pm -

"I'm veri sri. It's not tking advantage of the situation, 2 put it rightly it s an expression of feeling. S sri' (I'm very sorry. Its not taking advantage of the situation, to put it rightly it is an expression of feeling)

Follow up message by respondentat 6:42:25 pm -

I'm s sri. Il not do it again. Wil u stil c me s I can show u my sincerity' (I'm so sorry. I'll not do it again. Will you still see me so I can show you my sincerity)

On the following day, March 7, 2005 respondent sent another message to complainant at 3:55:32 pm saying 'I don't know wat 2 do s u may 4give me. 'Im realy sri. Puede bati na tyo.ĩ½ (I don't know what to do so you may forgive me. I'm really sorry. Puede bati na tayo).

Respondent replied "talk to my lawyer in due time." Then another message was received by her at 4:06:33 pm saying "Ano k ba. I'm really sri. Pls. Nxt ime bhave n me." (Ano ka ba. I'm really sorry. Please next time behave na ko), which is a clear manifestation of admission of guilt.[2]

In his answer,[3] respondent admitted that he agreed to provide legal services to the complainant; that he met with complainant on 10 February 2005 and 6 March 2005, to discuss the relevant matters relative to the case which complainant was intending to file against the owners of Queensway Travel and Tours for collection of a sum of money; that on both occasions, complainant rode with him in his car where he held and kissed complainant on the lips as the former offered her lips to him; and, that the corner of Cooper Street and Roosevelt Avenue, where he dropped off the complainant, was a busy street teeming with people, thus, it would have been impossible to commit the acts imputed to him.

By way of defense, respondent further elucidated that: 1) there was a criminal case for Acts of Lasciviousness filed by complainant against respondent pending before the Office of the City Prosecutor in Quezon City; 2) the legal name of complainant is Cynthia Advincula Toriana since she remains married to a certain Jinky Toriana because the civil case for the nullification of their marriage was archived pursuant to the Order dated 6 December 2000 issued by the Regional Trial Court of Maburao, Occidental Mindoro; 3) the complainant was living with a man not her husband; and 4) the complainant never bothered to discuss respondent's fees and it was respondent who always paid for their bills every time they met and ate at a restaurant.

A hearing was conducted by the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) at the IBP Building, Ortigas Center, Pasig City, on 26 July 2005.

On 30 September 2005, Investigating Commissioner Dennis A. B. Funa submitted his Report and Recommendation,[4] recommending the imposition of the penalty of one (1) month suspension on respondent for violation of the Code of Professional Responsibility.

Thereafter, the IBP passed Resolution No. XVII-2006-117 dated 20 March 2006, approving and adopting, with modification, the recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, 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 the behavior of Respondent went beyond the norms of conduct required of a lawyer when dealing with or relating with a client, Atty. Ernesto A. Macabata is

SUSPENDED from the practice of law for three (3) months.[5]

The issue to be resolved in this case is: whether respondent committed acts that are grossly immoral or which constitute serious moral depravity that would warrant his disbarment or suspension from the practice of law.

Simple as the facts of the case may be, the manner by which we deal with respondent's actuations shall have a rippling effect on how the standard norms of our legal practitioners should be defined. Perhaps morality in our liberal society today is a far cry from what it used to be. This permissiveness notwithstanding, lawyers, as keepers of public faith, are burdened with a high degree of social responsibility and, hence, must handle their personal affairs with greater caution.

The Code of Professional Responsibility provides:

CANON I - x x x

Rule 1.01-- A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7-- A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.

x x x x

Rule 7.03-- A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

As may be gleaned from above, the Code of Professional Responsibility forbids lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct.

Lawyers have been repeatedly reminded that their possession of good moral character is a continuing condition to preserve their membership in the Bar in good standing. The continued possession of good moral character is a requisite condition for remaining in the practice of law.[6] In *Aldovino v. Pujalte, Jr.*,[7] we emphasized that:

This Court has been exacting in its demand for integrity and good moral character of members of the Bar. They are expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession. Membership in the legal profession is a privilege. And whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of the public, it becomes not only the right but also the duty of this Court, which made him one of its officers and gave him the privilege of ministering within its Bar, to withdraw the privilege.

It is the bounden duty of lawyers to adhere unwaveringly to the highest standards of morality. The legal profession exacts from its members nothing less. Lawyers are called upon to safeguard the integrity of the Bar, free from misdeeds and acts constitutive of malpractice. Their exalted positions as officers of the court demand no less than the highest degree of morality.[8] We explained in *Barrientos v. Daarol*[9] that, "as officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community."

Lawyers are expected to abide by the tenets of morality, not only upon admission to the Bar but also throughout their legal career, in order to maintain their good standing in this exclusive and honored fraternity. They may be suspended from the practice of law or disbarred for any misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor.[10]

In Bar Matter No. 1154,[11] good moral character was defined as what a person really is, as distinguished from

good reputation, or from the opinion generally entertained of him, or the estimate in which he is held by the public in the place where he is known. Moral character is not a subjective term but one which corresponds to objective reality.

It should be noted that the requirement of good moral character has four ostensible purposes, namely: (1) to protect the public; (2) to protect the public image of lawyers; (3) to protect prospective clients; and (4) to protect errant lawyers from themselves.[12]

In the case at bar, respondent admitted kissing complainant on the lips.

In his Answer,[13] respondent confessed, thus:

27. When she was about to get off the car, I said can I kiss you goodnight. She offered her left cheek and I kissed it and with my left hand slightly pulled her right face towards me and kissed her gently on the lips. We said goodnight and she got off the car.

x x x x

35. When I stopped my car I said okay. I saw her offered (sic) her left cheek and I lightly kissed it and with my right hand slightly pulled her right cheek towards me and plant (sic) a light kiss on her lips. There was no force used. No intimidation made, no lewd designs displayed. No breast holding was done. Everything happened very spontaneously with no reaction from her except saying "sexual harassment."

During the hearing held on 26 July 2005 at the 3rd floor, IBP Building, Dona Julia Vargas Avenue, Ortigas City, respondent candidly recalled the following events:

ATTY. MACABATA:

That time in February, we met ... I fetched her I should say, somewhere along the corner of Edsa and Kamuning because it was then raining so we are texting each other. So I parked my car somewhere along the corner of Edsa and Kamuning and I was there about ten to fifteen minutes then she arrived. And so I said ... she opened my car and then she went inside so I said, would you like that we have a Japanese dinner? And she said yes, okay. So I brought her to Zensho which is along Tomas Morato. When we were there, we discussed about her case, we ordered food and then a little while I told her, would it be okay for you of I (sic) order wine? She said yes so I ordered two glasses of red wine. After that, after discussing matters about her case, so I said ... it's about 9:00 or beyond that time already, so I said okay, let's go. So when I said let's go so I stood up and then I went to the car. I went ahead of my car and she followed me then she rode on (sic) it. So I told her where to? She told me just drop me at the same place where you have been dropping me for the last meetings that we had and that was at the corner of Morato and Roosevelt Avenue. So, before she went down, I told her can I kiss you goodnight? She offered her left cheek and I kissed it and with the slight use of my right hand, I ... should I say tilted her face towards me and when she's already facing me I lightly kissed her on the lips. And then I said good night. She went down the car, that's it.

COMM. FUNA:

February 10 iyan.

x x x x

ATTY. MACABATA:

Okay. After that were through so I said let's go because I have an appointment. So we went out, we went inside my car and I said where to? Same place, she said, so then at the same corner. So before she went down, before she opened the door of the car, I saw her offered her left cheek. So I kissed her again.

COMM. FUNA:

Pardon?

ATTY. MACABATA:

I saw her offered her left cheek like that, so I kissed her again and then with the use of my left hand, pushed a little bit her face and then kissed her again softly on the lips and that's it. x x x.[14] (Emphases supplied.)

It is difficult to state with precision and to fix an inflexible standard as to what is "grossly immoral conduct" or to specify the moral delinquency and obliquity which render a lawyer unworthy of continuing as a member of the bar. The rule implies that what appears to be unconventional behavior to the straight-laced may not be the immoral conduct that warrants disbarment.[15]

In *Zaguire v. Castillo*,^[16] we reiterated the definition of immoral conduct, as such conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. Furthermore, for such conduct to warrant disciplinary action, the same must not simply be immoral, but . It must be so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.

The following cases were considered by this Court as constitutive of grossly immoral conduct:

In *Toledo v. Toledo*,^[17] a lawyer was disbarred from the practice of law, when he abandoned his lawful wife and cohabited with another woman who had borne him a child.

In *Obusan v. Obusan, Jr.*,^[18] a lawyer was disbarred after complainant proved that he had abandoned her and maintained an adulterous relationship with a married woman. This court declared that respondent failed to maintain the highest degree of morality expected and required of a member of the bar.

In *Dantes v. Dantes*,^[19] respondent's act of engaging in illicit relationships with two different women during the subsistence of his marriage to the complainant constitutes grossly immoral conduct warranting the imposition of appropriate sanctions. Complainant's testimony, taken in conjunction with the documentary evidence, sufficiently established that respondent breached the high and exacting moral standards set for members of the law profession.

In *Delos Reyes v. Aznar*,^[20] it was ruled that it was highly immoral of respondent, a married man with children, to have taken advantage of his position as chairman of the college of medicine in asking complainant, a student in said college, to go with him to Manila where he had carnal knowledge of her under the threat that she would flank in all her subjects in case she refused.

In *Cojuangco, Jr. v. Palma*,^[21] respondent lawyer was disbarred when he abandoned his lawful wife and three children, lured an innocent woman into marrying him and misrepresented himself as a "bachelor" so he could contract marriage in a foreign land.

In *Macarrubo v. Macarrubo*,^[22] respondent entered into multiple marriages and then resorted to legal remedies to sever them. There, we ruled that "[s]uch pattern of misconduct by respondent undermines the institutions of marriage and family, institutions that this society looks to for the rearing of our children, for the development of values essential to the survival and well-being of our communities, and for the strengthening of our nation as a whole." As such, "there can be no other fate that awaits respondent than to be disbarred."

In *Tucay v. Tucay*,^[23] respondent contracted marriage with another married woman and left complainant with whom he has been married for thirty years. We ruled that such acts constitute "a grossly immoral conduct and only indicative of an extremely low regard for the fundamental ethics of his profession," warranting respondent's

disbarment.

In *Villasanta v. Peralta*,^[24] respondent married complainant while his first wife was still alive, their marriage still valid and subsisting. We held that "the act of respondent of contracting the second marriage is contrary to honesty, justice, decency and morality." Thus, lacking the good moral character required by the Rules of Court, respondent was disqualified from being admitted to the bar.

In *Cabrera v. Agustin*,^[25] respondent lured an innocent woman into a simulated marriage and thereafter satisfied his lust. We held that respondent failed to maintain that degree of morality and integrity which, at all times, is expected of members of the bar. He is, therefore, disbarred from the practice of law.

Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness; or is willful, flagrant, or shameless conduct showing moral indifference to opinions of respectable members of the community, and an inconsiderate attitude toward good order and public welfare.^[26]

Guided by the definitions above, we perceived acts of kissing or beso-beso on the cheeks as mere gestures of friendship and camaraderie,^[27] forms of greetings, casual and customary. The acts of respondent, though, in turning the head of complainant towards him and kissing her on the lips are distasteful. However, such act, even if considered offensive and undesirable, cannot be considered grossly immoral.

Complainant's bare allegation that respondent made use and took advantage of his position as a lawyer to lure her to agree to have sexual relations with him, deserves no credit. The burden of proof rests on the complainant, and she must establish the case against the respondent by clear, convincing and satisfactory proof,^[28] disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power.^[29] Thus, the adage that "he who asserts not he who denies, must prove."^[30] As a basic rule in evidence, the burden of proof lies on the party who makes the allegations-ei incumbit probation, qui decit, non qui negat; cum per rerum naturam factum negantis probation nulla sit.^[31] In the case at bar, complainant miserably failed to comply with the burden of proof required of her. A mere charge or allegation of wrongdoing does not suffice. Accusation is not synonymous with guilt.^[32]

Moreover, while respondent admitted having kissed complainant on the lips, the same was not motivated by malice. We come to this conclusion because right after the complainant expressed her annoyance at being kissed by the respondent through a cellular phone text message, respondent immediately extended an apology to complainant also via cellular phone text message. The exchange of text messages between complainant and respondent bears this out.

Be it noted also that the incident happened in a place where there were several people in the vicinity considering that Roosevelt Avenue is a major jeepney route for 24 hours. If respondent truly had malicious designs on complainant, he could have brought her to a private place or a more remote place where he could freely accomplish the same.

All told, as shown by the above circumstances, respondent's acts are not grossly immoral nor highly reprehensible to warrant disbarment or suspension.

The question as to what disciplinary sanction should be imposed against a lawyer found guilty of misconduct requires consideration of a number of factors.^[33] When deciding upon the appropriate sanction, the Court must consider that the primary purposes of disciplinary proceedings are to protect the public; to foster public confidence in the Bar; to preserve the integrity of the profession; and to deter other lawyers from similar misconduct.^[34] Disciplinary proceedings are means of protecting the administration of justice by requiring those

who carry out this important function to be competent, honorable and reliable men in whom courts and clients may repose confidence.[35] While it is discretionary upon the Court to impose a particular sanction that it may deem proper against an erring lawyer, it should neither be arbitrary and despotic nor motivated by personal animosity or prejudice, but should ever be controlled by the imperative need to scrupulously guard the purity and independence of the bar and to exact from the lawyer strict compliance with his duties to the court, to his client, to his brethren in the profession and to the public.

The power to disbar or suspend ought always to be exercised on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons and only on clear cases of misconduct which seriously affect the standing and character of the lawyer as an officer of the court and member of the Bar. Only those acts which cause loss of moral character should merit disbarment or suspension, while those acts which neither affect nor erode the moral character of the lawyer should only justify a lesser sanction unless they are of such nature and to such extent as to clearly show the lawyer's unfitness to continue in the practice of law. The dubious character of the act charged as well as the motivation which induced the lawyer to commit it must be clearly demonstrated before suspension or disbarment is meted out. The mitigating or aggravating circumstances that attended the commission of the offense should also be considered.[36]

Censure or reprimand is usually meted out for an isolated act of misconduct of a lesser nature. It is also imposed for some minor infraction of the lawyer's duty to the court or the client.[37] In the Matter of Darell Adams,[38] a lawyer was publicly reprimanded for grabbing a female client, kissing her, and raising her blouse which constituted illegal conduct involving moral turpitude and conduct which adversely reflected on his fitness to practice law.

Based on the circumstances of the case as discussed and considering that this is respondent's first offense, reprimand would suffice.

We laud complainant's effort to seek redress for what she honestly believed to be an affront to her honor. Surely, it was difficult and agonizing on her part to come out in the open and accuse her lawyer of gross immoral conduct. However, her own assessment of the incidents is highly subjective and partial, and surely needs to be corroborated or supported by more objective evidence.

WHEREFORE, the complaint for disbarment against respondent Atty. Ernesto Macabata, for alleged immorality, is hereby DISMISSED. However, respondent is hereby REPRIMANDED to be more prudent and cautious in his dealing with his clients with a STERN WARNING that a more severe sanction will be imposed on him for any repetition of the same or similar offense in the future.

SO ORDERED.

Ynares-Santiago, Austria-Martinez, and Nachura, JJ., concur.
Callejo, Sr., J., on leave.

[1] Rollo, pp. 1-2.

[2] Id.

[3] Id. at 13-20.

[4] Id. at 149-155.

[5] Id. at 148.

- [6] *Mortel v. Aspiras* 100 Phil. 586, 592 (1956); *Cordova v. Cordova*, A.C. No. 3249, 29 November 1989, 179 SCRA 680, 683.
- [7] A.C. No. 5082, 17 February 2004, 423 SCRA 135, 140-141.
- [8] *Ui v. Bonifacio*, 388 Phil. 691, 708 (2000).
- [9] A.C. No. 1512, 29 January 1993, 218 SCRA 30, 40.
- [10] *Rural Bank of Silay, Inc. v. Pilla*, 403 Phil. 1, 9 (2001).
- [11] In the Matter of the Disqualification of Bar Examinee Haron S. Meling in the 2002 Bar Examinations and for Disciplinary Action as Member of the Philippine Shari'a Bar, B.M. No. 1154, 8 June 2004, 431 SCRA 146.
- [12] *Dantes v. Dantes*, A.C. No. 6486, 22 September 2004, 438 SCRA 582, 589.
- [13] *Rollo*, pp. 27, 35.
- [14] *TSN*, 26 July 2005, pp.18-24.
- [15] *Ui v. Bonifacio*, *supra* note 8.
- [16] 446 Phil. 861, 867 (2003).
- [17] 117 Phil. 768, 776 (1963).
- [18] 213 Phil. 437, 440 (1984).
- [19] *Supra* note 12 at 588.
- [20] A.C. No. 1334, 28 November 1989, 179 SCRA 653, 659.
- [21] A.C. No. 2474, 15 September 2004, 438 SCRA 306, 315.
- [22] A.C. No. 6148, 27 February 2004, 424 SCRA 42, 54-55.
- [23] A.C. No. 5170, 17 November 1999, 318 SCRA 229, 231.
- [24] 101 Phil. 313, 314 (1957).
- [25] 106 Phil. 256, 259 (1960).
- [26] *Madredijo v. Loyao, Jr.*, 375 Phil. 1, 17 (1999); *Alfonso v. Juanson*, A.M. No. RTJ-92-904, 7 December 1993, 228 SCRA 239, 255-256, citing *Black's Law Dictionary*, 6th ed. (1990), p. 751.
- [27] *Atty. Aquino v. Judge Acosta*, 429 Phil. 498, 510 (2002).
- [28] *Angeles v. Figueroa*, A.C. No. 5050, 20 September 2005, 470 SCRA 186, 195.
- [29] *Reyes v. Wong*, Adm. Case No. 547, 29 January 1975, 63 SCRA 667, 673.
- [30] *Angeles v. Figueroa*, *supra* note 28.
- [31] *Uytensu III v. Baduel*, Adm. Case No. 5134, 14 December 2005, 477 SCRA 621, 632.
- [32] *Boyboy v. Yabut, Jr.*, A.C. No. 5225, 29 April 2003, 401 SCRA 622, 627.
- [33] *Agpalo*, *LEGAL ETHICS* (4th Ed., 1989), p. 445.
- [34] In the Matter of a Member of the Bar of the Supreme Court of Delaware Joel D. Tenenbaum, 6 February

2007.

[35] *Ting-Dumali v. Torres*, A.C. No. 5161, 14 April 2004, 427 SCRA 108, 119.

[36] *Id.* at 445-446.

[37] *Id.*

[38] 428 N.E. 2 d 786 (Ind. 1981).

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