

OCA CIRCULAR NO. 41-2003, May 05, 2003

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TO:

THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT:

INDEFINITE SUSPENSION FROM THE PRACTICE OF LAW OF ATTY. ALFREDO CASTILLO

For the information and guidance of all concerned, quoted hereunder is the decision of the Court En Bane in Administrative Case No. 4921 entitled Carmelita I. Zaguirre vs. Atty. Alfredo Castillo dated March 6, 2003, to wit:

"xxx xxx xxx

The Code of Professional Responsibility provides:

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

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

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'Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, not should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.'

Immoral conduct has been defined as:

'xxx that conduct which is so willfull, flagrant or shameless as to show indifference to the opinion of good and respectable members of the community. Furthermore, such conduct must not only be immoral, but grossly immoral. That is, it must be so corrupt as to constitute a criminal act or so unprincipled as to be reprehensible to be a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.'

In his affidavit dated September 10, 1997, duly acknowledged before a notary public, he declared explicitly:

- ' 1. That I had a relationship with one Carmelita Zaguirre, my officemate;
- '2. That as a result of that relationship, she is presently pregnant with my child;

'3. That I hereby voluntarily recognize the child now under (sic) he womb to be my own;

'4. That I am willing to support the said child henceforth, including his/her personal and medical needs, education, housing, food, clothing and other necessities for living, which I will give through his/her mother, Carmelita Zaguirre, until he/she becomes of legal age and capable to live on his/her own"

'5. That I undertake to sign the birth certificate as an additional proof that he/she is my child, however, my failure to sign does not negate the recognition and acknowledgment already done herein;

'6. That I am executing this affidavit without compulsion on my part and being a lawyer, I have full knowledge of the consequence of such acknowledgment and recognition.'[14]

More incriminating is his handwritten letter dated March 12, 1998 which states in part:

'Ayokong umabot tayo sa kung saan-saan pa. All your officemates, e.g., Ate Ging, Glo, Guy and others (say) that I am the look like (sick) of your daughter.

'Here's my bargain. I will help you in supporting y our daughter, but I cannot promise fix amount for monthly support of your daughter. However it shall not be less than P500 but not more than P1,000.'[15]

In the recent case of *Luguid vs. Judge Camano, Jr.*, the Court in castigating a judge stated that:

..even as an ordinary lawyer, respondent has to conform to the strict standard of conduct demanded of members of the profession. Certainly, fathering children by a woman other than his lawful wife fails to meet these standards.'[16]

Siring a child with a woman other than his wife is a conduct way below the standards of morality required of every lawyer.[17]

Moreover, the attempt of respondent to renege on his notarized statement recognizing and undertaking to support his child by Carmelita demonstrates a certain unscrupulousness on his part which is highly censurable, unbecoming a member of a noble profession, tantamount to self-stultification.[18]

The Court has repeatedly held:

'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. More specifically, a member of the Bar and officer of the court is not only required to refrain from adulterous relationships or the keeping of mistresses but must also so behave himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards.'[19]

While respondent does not deny having an extra-judicial affair with complainant he seeks understanding from the Court, pointing out that 'men by nature are polygamous,[20] and that what happened between them was 'nothing but mutual lust and desire.[21] The Court is not convinced. In fact, it is appalled at the reprehensible, amoral attitude of the respondent.

Respondent claims that he did not use any deception to win her affection. Granting arguendo that complainant entered into a relationship with him knowing full well his marital status, still it does not absolve him of gross immorality for what is in question in a case like this is respondent's fitness to be a member of the legal profession. It is not dependent whether or not the other party knowingly engaged in an immoral relationship with him.

The illicit relationship with Carmelita took place while respondent was preparing to take the bar examinations. Thus, it cannot be said that it is unknown to him that an applicant for admission to membership in the bar. must show that he is possessed of good moral character, a requirement which is not dispensed with upon admission to membership of the bar.[23] This qualification is not only a condition precedent to admission to the legal

profession, but its continued possession is essential to maintain one's good standing in the profession,[24] it is a continuing requirement to the practice of law[25] and therefore admission to the bar does not preclude a subsequent judicial inquiry, upon proper complaint, into any question concerning his mental or moral fitness before he became a lawyer. This is because his admission to practice merely creates a rebuttable presumption that he has all the qualifications to become a lawyer.

The Court held:

'The practice of law is not a right but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. We must stress that membership in the bar is a privilege burdened with conditions. A lawyer has the privilege to practice law only during good behavior. He can be deprived of his license for misconduct ascertained and declared by judgment of the court after giving him the opportunity to be heard.'[26]

and in *Dumadag vs. Lumaya*:

'The practice of law is a privilege burdened with conditions. Adherence to the rigid standards of mental fitness, maintenance of the highest degree of morality and faithful compliance with the rules of the legal profession are the conditions required for remaining a member of good standing of the bar and for enjoying the privilege to practice law.'[27]

Respondent repeatedly engaged in sexual congress with a woman not his wife and now refuses to recognize and support a child whom he previously recognized and promised to support. Clearly therefore, respondent violated the standards of morality required of the legal profession and should be disciplined accordingly.

As consistently held by this Court, disbarment shall not be meted out if a lesser punishment could be given. [28] Records show that from the time he took his oath in 1997, he has severed his ties with complainant and now lives with his wife and children in Mindoro. As of now, the Court does not perceive this fact as an indication of respondent's effort to mend his ways or that he recognizes the impact of his offense on the noble profession of law. Nevertheless, the Court deems it more appropriate under the circumstances that indefinite suspension should be meted out than disbarment/ The suspension shall last until such time that respondent is able to show, to the full satisfaction of the Court, that he had instilled in himself a firm conviction of maintaining moral integrity and uprightness required of every member of the profession.

The rule is settled that a lawyer may be suspended 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. [29]

ACCORDINGLY, in view of the foregoing, the Court finds respondent GUILTY of Gross Immoral Conduct and ordered to suffer INDEFINITE SUSPENSION from the practice of law.

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PRESBITERO J. VELASCO, JR.

Court Administrator

[14] Annex "C", Rollo, p. 7 [15] Id., at p. 39

[16] AM No. RTJ-99-1509, August 8, 2002.

[17] Paras vs. Paras, 343 SCRA 414,426 (2000)

[18] Macayda vs. Naz, 125 SCRA 466,469 (1983)

[19] Narag vs. Narag, supra, footnote 13

[20] Rollo, p. 14

[21] Id., at p. 11 [23] Cordova vs. Cordova, 179 SCRA 680, 683 (1989); Vda. de Mijares vs. Villaluz, 274 SCRA 1, 8 (1997)

[24] Rayos-Ombac vs. Rayos, 285 SCRA 93, 100 (1998); Igual vs. Javier, 254 SCRA 416 (1996); Villanueva vs. Sta. Ana, 245 SCRA 707 (1995); People vs. Tunada, 18 SCRA 692 (1990); Melendrez vs. Decena, 176 SCRA 662 (1989). [25] Nakpil vs. Valdes, 286 SCRA 758, 774 (1998)

[26] Sebastian vs. Calis, 344 SCRA 1, 8 (1999)

[28] Saburdino vs. Madronio, A.C. N. 4497, September 26,2001

[29] Nakpil vs. Valdez, supra.

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