

EN BANC

A.C. No. 5573: GIZALE O. TUMBAGA, *Petitioner*, v. ATTY. MANUEL P. TEOXON, *Respondent*.

Promulgated:
November 21, 2017

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L. R. Lopez
Teoxon

CONCURRING OPINION

LEONEN, J.:

This case involves a verified administrative complaint by Petitioner Gizale O. Tumbaga (Tumbaga) against Atty. Manuel P. Teoxon (Atty. Teoxon) for gross immorality, deceitful and fraudulent conduct, and gross misconduct.

I concur in the ponencia's finding that Atty. Teoxon is guilty of the charges against him and should be administratively liable.

Under Canon 1, Rule 1.01 of the Code of Professional Responsibility:

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

In relation to this, Rule 138, Section 27 of the Rules of Court provides that an attorney may be removed or suspended from the bar for deceit or grossly immoral conduct:

Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred 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. (Emphasis supplied)

Good moral character is necessary for a lawyer to practice the profession. An attorney is expected not only to be professionally competent,

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but to also have moral integrity.¹ As such, grossly immoral conduct is a ground for disbarment.

However, to warrant an administrative penalty, a lawyer's immoral conduct must be so gross as to be "willful, flagrant, or shameless," so much so that it "shows a moral indifference to the opinion of the good and respectable members of the community."² Grossly immoral conduct must be an act that is "so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree."³

There is no fixed formula to define what constitutes grossly immoral conduct. The determination depends on the circumstances. In *Arciga v. Maniwang*,⁴

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.

....

There is an area where a lawyer's conduct may not be in consonance with the canons of the moral code but he is not subject to disciplinary action because his misbehavior or deviation from the path of rectitude is not glaringly scandalous. It is in connection with a lawyer's behavior to the opposite sex where the question of immorality usually arises. Whether a lawyer's sexual congress with a woman not his wife or without the benefit of marriage should be characterized as "grossly immoral conduct" will depend on the surrounding circumstances.⁵

This Court has further ruled that to respect constitutionally-protected rights, the determination of what constitutes immoral conduct should be independent of religious beliefs and ought to be based on secular moral standards.

Thus, in *Perfecto v. Esidera*:⁶

The non-establishment clause bars the State from establishing, through laws and rules, moral standards according to a specific religion. Prohibitions against immorality should be based on a purpose that is independent of religious beliefs. When it forms part of our laws, rules,

¹ See *Arciga v. Maniwang*, 193 Phil. 730 (1981) [Per J. Aquino, Second Division].

² *Arciga v. Maniwang*, 193 Phil. 730, 735 (1981) [Per J. Aquino, Second Division] citing 7.C.J.S 959.

³ *Reyes v. Wong*, 159 Phil. 171, 177 (1975) [Per J. Makaslar, First Division].

⁴ 193 Phil. 730 (1981) [Per J. Aquino, Second Division].

⁵ Id. at 735-736.

⁶ 764 Phil. 384 (2015) [Per J. Leonen, Second Division].

and policies, morality must be secular. Laws and rules of conduct must be based on a secular purpose.

In the same way, this court, in resolving cases that touch on issues of morality, is bound to remain neutral and to limit the bases of its judgment on secular moral standards. When laws or rules refer to morals or immorality, courts should be careful not to overlook the distinction between secular and religious morality if it is to keep its part in upholding constitutionally guaranteed rights.

There is the danger of “compelled religion” and, therefore, of negating the very idea of freedom of belief and non-establishment of religion when religious morality is incorporated in government regulations and policies . . .

....

This court may not sit as judge of what is moral according to a particular religion. We do not have jurisdiction over and is not the proper authority to determine which conduct contradicts religious doctrine. *We have jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest.* (Citations omitted, emphasis supplied)⁷

This principle extends to the determination of morality in administrative cases against lawyers and judges. As stated, this Court “ha[s] jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest.” Thus, lawyers and judges may only be held administratively liable for immoral conduct when it relates to their conduct as officers of the court, such that it affects the public’s confidence in the Rule of Law:

Thus, for purposes of determining administrative liability of lawyers and judges, “immoral conduct” should relate to their conduct as officers of the court. To be guilty of “immorality” under the Code of Professional Responsibility, a lawyer’s conduct must be so depraved as to reduce the public’s confidence in the Rule of Law. Religious morality is not binding whenever this court decides the administrative liability of lawyers and persons under this court’s supervision. At best, religious morality weighs only persuasively on us.⁸

Given these standards and parameters, in *Anonymous Complaint v. Dagala*,⁹ I opined that this Court should not appoint itself as the curator of all alleged immoral conduct of lawyers. As in all cases of gross immorality, it depends on the circumstances, with the overall consideration being whether or not it affects the lawyer’s public conduct as an officer of the court.

⁷ Id. at 398–399.

⁸ Id. at 399–400.

⁹ A.M. No. MTJ-16-1886, July 25, 2017, <
<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/MTJ-16-1886.pdf>>
 [Per Curiam, En Banc].

In *Dagala*, an anonymous complaint alleged that Judge Exequil L. Dagala (Judge Dagala) brandished a high-powered firearm during an altercation and took part in illegal logging.¹⁰ The complaint mentioned in passing that there were rumors of Judge Dagala maintaining several mistresses.¹¹ From this, the issue of immorality arose. In explaining the situation, Judge Dagala admitted to having children outside his marriage but alleged that he and his wife have chosen to live separately, with the former regularly sending financial support to the latter.¹² Judge Dagala explained that his wife has knowledge of his other children.¹³ Neither his wife nor his children were shown to have complained from this arrangement.¹⁴ Judge Dagala stated that his wife had forgiven and forgotten him, and has submitted to the idea that they were “not really meant for each other and for eternity.”¹⁵ In finding that Judge Dagala is not guilty of gross imorality, I stated:

I appreciate the ponente’s acknowledgment that “immorality only becomes a valid ground for sanctioning members of the Judiciary when the questioned act challenges his or her capacity to dispense justice.” This affirms this Court’s principle that our jurisdiction over acts of lawyers and judges is confined to those that may affect the people’s confidence in the Rule of Law. There can be no immorality committed when there are no victims who complain. And even when they do, it must be shown that they were directly damaged by the immoral acts and their rights violated. A judge having children with women not his wife, in itself, does not affect his ability to dispense justice. What it does is offend this country’s predominantly religious sensibilities.

We should not accept the stereotype that all women, because they are victims, are weak and cannot address patriarchy by themselves. The danger of the State’s over-patronage through its stereotype of victims will be far reaching. It intrudes into the autonomy of those who already found their voice and may have forgiven.

The highest penalty should be reserved for those who commit indiscretions that (a) are repeated, (b) result in permanent rearrangements that cause extraordinary difficulties on existing legitimate relationships, or (c) are prima facie shown to have violated the law. The negligence or utter lack of callousness of spouses who commit indiscretions as shown by their inability to ask for forgiveness, their concealment of the act from their legitimate relationships, or their lack of support for the children born out of wedlock should be aggravating and considered for the penalty to be imposed.

¹⁰ Id. at 2.

¹¹ Id. at 2–3.

¹² Id. at 3.

¹³ Id.

¹⁴ Id.

¹⁵ Id. at 8.

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Many of us hold the view that it is unethical to breach one's fervent commitments in an intimate relationship. At times however, the breach is not concealed and arises as a consequence of the couple's often painful realization that their marriage does not work. In reality, there are couples who already live separately and whose children have grown and matured understanding that their environment best nurtured them when their natural parents do not live with each other with daily pain.

.....

It is time that we show more sensitivity to the reality of many families. Immorality is not to be wielded high-handedly and in the process cause shame on many of its victims. It should be invoked in a calibrated manner, always keeping in mind the interests of those who have to suffer its consequences on a daily basis. There is a time when the law should exact accountability; there is also a time when the law should understand the humane act of genuine forgiveness.¹⁶ (Citations omitted)

The circumstances in *Dagala* are different from the case at bar.

First, the instant complaint is one for gross immorality and is commenced by Tumbaga as the misled paramour directly affected by Atty. Teoxon's acts. Tumbaga asserts that Atty. Teoxon assured her and her mother that his marriage was a sham. There was fraud committed on Tumbaga.

Second, there is substantial evidence to support the allegation that Atty. Teoxon did have an extramarital affair with Tumbaga. Atty. Teoxon failed to prove that Tumbaga was only seeking to exact money from him.

Third, it is not shown or alleged that Atty. Teoxon's wife was aware of or consented to his extramarital affair with Tumbaga. Tumbaga even alleged that Atty. Teoxon's wife attacked her during the September 9, 2001 raid; thus, showing hostility, which may indicate that the latter had objections to their relations.

Fourth, there is no showing that Atty. Teoxon was repentant. He even still denies his relations with Tumbaga and even accuses her of extortion.

As to Billy John, his paternity remains to be proved definitely and should be the subject matter of a separate case. However, assuming Atty. Teoxon is Billy John's father, which is what is stated in the latter's Birth Certificate, Atty. Teoxon's denial of his paternity and withdrawal of

¹⁶ *Dissenting and Concurring Opinion of J. Leonen in Anonymous Complaint v. Dagala*, A.M. No. MTJ-16-1886, July 25, 2017, <
http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/july2017/MTJ-16-1886_leonen.pdf> 15-16 [Per Curiam, En Banc].

financial support may even amount to violence against women and children under Republic Act No. 9262.¹⁷

These circumstances show that Atty. Teoxon is guilty of gross immorality. He displayed that he lacked good moral character, acting dishonestly and with deceit. Moreover, in denying his relations with Tumbaga, he displayed a lack of accountability and integrity. His actions injured others.

Deceit and lack of accountability and integrity reflect on his ability to perform his functions as a lawyer, who is always expected to act and appear to act lawfully and honestly and must uphold the integrity and dignity of the legal profession.¹⁸ A lawyer is expected not only to have good moral character, but must also *appear* to have good moral character. In *Tolosa v. Cargo* this Court said:¹⁹

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.²⁰
(Citation omitted)

Atty. Teoxon failed in these respects as a lawyer.

¹⁷ Rep. Act No. 9262, sec. 5(e) provides:

Section 5. Acts of Violence Against Women and Their Children. — The crime of violence against women and their children is committed through any of the following acts:

....
(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or to desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

....
(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support[.]

¹⁸ Code of Professional Responsibility, Canon 1, Canon 7, and Rule 7.03 provide:

Canon 1, 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.

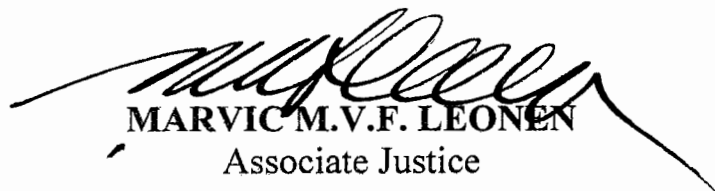
....
RULE 7.03 A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

¹⁹ 253 Phil. 154 (1989) [Per J. Feliciano, Third Division].


²⁰ Id. at 159.

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ACCORDINGLY, I concur in the result finding Atty. Manuel P. Teoxon **GUILTY** of **GROSS IMMORALITY**.


MARVIC M.V.F. LEONEN
Associate Justice

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