



**Republic of the Philippines
Supreme Court
Manila**

SECOND DIVISION

JILDO A. GUBATON,
Complainant,

A.C. No. 8962

- versus -

Present:

**ATTY. AUGUSTUS SERAFIN
D. AMADOR,**
Respondent.

CARPIO, *J.*, Chairperson,
PERALTA,
PERLAS-BERNABE,
CAGUIOA, and
REYES, JR., *JJ.*

Promulgated:

09 JUL 2018

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D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case arose from an affidavit-complaint¹ for disbarment filed by complainant Jildo A. Gubaton (complainant) against respondent Atty. Augustus Serafin D. Amador (respondent) on the ground of gross immoral conduct and/or immorality.

The Facts

Complainant alleged that respondent, a former Assistant Prosecutor at the City Prosecutor's Office in Malaybalay City, Bukidnon, was having an illicit romantic relationship with his wife, Ma. Bernadette R. Tenorio-Gubaton (Bernadette), since 2005 up to the present.²

¹ Dated January 17, 2011. *Rollo*, pp. 3-7.

² *Id.* at 3.

He averred that it was in the early part of 2008, while working in the United States of America (USA), when he discovered the illicit relationship. Complainant and Bernadette's house helper informed him through a phone call that a man whom she knows to be "Fiscal Amador" often visits Bernadette. The house helper also told him that respondent spends nights at their house and stays with Bernadette in their bedroom. When complainant called Bernadette's dental clinic to verify the information, it was the secretary who took his call. Upon inquiry, the latter confirmed that respondent and Bernadette have been carrying on an illicit affair.³

Sometime in August 2009, complainant returned to the country. On his first night home, despite his pleas, Bernadette refused to lie and sleep with him; instead, she demanded that he sleep in another room, to which he acceded in order to avoid any argument. Since then, Bernadette has refused to sleep with him. Further, complainant discovered some birth-control pills and condoms in their house, in Bernadette's dental clinic, and in her handbag. When he confronted her about it, she merely denied ownership thereof. He also alleged that Bernadette wrote love letters/notes⁴ to respondent, as in fact, one of these letters had the word "fiscal"⁵ on it.⁶

Complainant likewise alleged that he personally saw respondent and Bernadette together in various places in Malaybalay City. At one instance, he saw them kissing while inside a vehicle; when he approached to confront them, respondent ran away.⁷

The illicit affair of respondent and Bernadette was known to other people as well. Complainant's sister, Nila Canoy,⁸ told him about it during phone calls while he was still in the USA,⁹ as narrated in her affidavit.¹⁰ Likewise, Carlos Delgado (Delgado), Chief of Barangay Public Safety Office in Poblacion, Malaybalay City, and one Edgar Navarez (Navarez), an employee of the Bureau of Internal Revenue (BIR) and a resident of Casisang, Malaybalay City, knew of the affair and executed their respective affidavits¹¹ relative thereto.

In defense,¹² respondent denied all the allegations against him. He claimed that he was merely acquainted with Bernadette and they would only see each other on various occasions and social gatherings. He also denied the

³ See id. at 5.

⁴ Id. at 11-15.

⁵ Id. at 11.

⁶ See id. at 5-6.

⁷ See id. at 6.

⁸ "Nila Gubaton" in the affidavit-complaint; id. at 5.

⁹ See id. at 5.

¹⁰ Dated January 18, 2011. Id. at 20-21.

¹¹ Id. at 16-19.

¹² Id. at 54-58.

incident where complainant allegedly saw him and Bernadette kissing inside a vehicle.¹³

The IBP's Report and Recommendation

After due proceedings, the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), through Commissioner Jose Alfonso M. Gomos (Commissioner Gomos), issued a Report and Recommendation¹⁴ dated June 27, 2012 recommending the dismissal of the affidavit-complaint for insufficiency of evidence.

Commissioner Gomos found that the information supplied by complainant and Bernadette's house helper, Bernadette's clinic secretary, and complainant's sister, Nila, about the alleged illicit affair were purely hearsay. Likewise, the supposed love letters/notes offered in evidence did not prove that the same were written by Bernadette to respondent. Similarly, the affidavit executed by Delgado did not positively refer to respondent, while that of Navarez contained general statements of an affair between respondent and Bernadette.¹⁵ As for the affidavit executed by Nila, the same is clearly biased in view of the latter's relationship with complainant.¹⁶ Finally, with respect to the incident where complainant allegedly saw respondent and Bernadette kissing inside a vehicle and attempted to confront them, Commissioner Gomos found the same to be contrary to human experience, reasoning that an offended husband would be expected to do more than just confront them under the circumstances.¹⁷

In a Resolution¹⁸ dated June 22, 2013, however, the IBP Board of Governors reversed the June 27, 2012 Report and Recommendation, and instead, suspended respondent from the practice of law for a period of two (2) years. Respondent moved for reconsideration,¹⁹ which was denied in a Resolution²⁰ dated April 20, 2017.

The Issue Before the Court

The sole issue for the Court's consideration is whether or not grounds exist to hold respondent administratively liable.

¹³ See *id.* at 55.

¹⁴ *Id.* at 100-114.

¹⁵ See *id.* at 110-112.

¹⁶ *Id.* at 112.

¹⁷ See *id.* at 111.

¹⁸ See Notice of Resolution in Resolution No. XX-2013-787 issued by National Secretary Nasser A. Marohomsalic; *id.* at 99, including dorsal portion.

¹⁹ See motion for reconsideration dated November 13, 2013; *id.* at 115-122.

²⁰ See Notice of Resolution in Resolution No. XXII-2017-1296 issued by National Secretary Patricia-ann T. Prodigalidad; *id.* at 158-159.

The Court's Ruling

The Court concurs with the conclusion of the IBP Board of Governors that respondent should be held administratively liable with modification, however, as regards the penalty to be imposed.

It is fundamental that the quantum of proof in administrative cases is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.²¹

In this case, substantial evidence exist to prove complainant's claim that respondent had illicit affairs with Bernadette and hence, should be adjudged guilty of gross immorality.

As per complainant's own account, he actually saw respondent and Bernadette together on various intimate occasions. In fact, he attempted to confront them at one time when he saw them kissing inside a vehicle, although respondent was able to evade him.²² The Court is inclined to believe that complainant's imputations against respondent are credible, considering that he had no ill motive to accuse respondent of such a serious charge – much more a personal scandal involving his own wife – unless the same were indeed true.

Complainant's statements were corroborated by the affidavit executed by Navarez, who works in BIR, Malaybalay City as a messenger and therefore, goes around the city in relation to his work. Navarez categorically stated that respondent and Bernadette have been carrying on an illicit affair while complainant was in the USA, and further averred that he had seen them together on different intimate occasions. He even saw them kissing each other at one instance.²³ Notably, it must be highlighted that Navarez is a neutral and disinterested witness and hence, his declarations deserve ample consideration.

Moreover, complainant's sister, Nila, described to complainant, while the latter was in the USA, how respondent would often visit Bernadette and spend the night in their residence, while she was still living with Bernadette and their children thereat. She narrated that Bernadette first introduced respondent to her as a "cousin" from Davao City. However, the two would often have lunch in the house and thereafter, respondent would even spend some time with Bernadette inside the latter's bedroom. Nila likewise

²¹ See *Torres v. Dalangin*, A.C. No. 10758, December 5, 2017, citing *Reyes v. Nieva*, 794 Phil. 360, 379 (2016). See also *Adivincula v. Macabata*, 546 Phil 431, 445-446 (2007).

²² *Rollo*, p. 6.

²³ *Id.* at 18.

recounted that whenever the two of them arrived home in one vehicle, they would kiss each other before alighting therefrom.²⁴

In this relation, it may not be amiss to point out that complainant offered in evidence love letters/notes supposedly written by Bernadette to respondent to prove the existence of their illicit relationship. The authenticity of these love letters/notes, although not expressly shown to be written by Bernadette or received by respondent, were not refuted. Consequently, they lend credibility to complainant's claim.

Finally, it should be clarified that while the information supplied by complainant and Bernadette's house helper and Bernadette's clinic secretary about the alleged illicit affair constitute hearsay, the same should not be completely disregarded. Under the doctrine of independently relevant statements, only the fact that such statements were made is relevant, and the truth or falsity thereof is immaterial. The doctrine on independently relevant statements holds that conversations communicated to a witness by a third person may be admitted as proof that, regardless of their truth or falsity, they were actually made. Evidence as to the making of such statements is not secondary but primary, for in itself it (a) constitutes a fact in issue or (b) is circumstantially relevant to the existence of such fact. Accordingly, the hearsay rule does not apply, and hence, the statements are admissible as evidence.²⁵ Verily, complainant personally attests that the information about the illicit affair between respondent and his wife have been relayed to him by complainant's house helper and Bernadette's clinic secretary. Clearly, the making of such statements is circumstantially relevant to this case and therefore, may be considered in evidence against respondent. Besides, in *Re: Verified Complaint dated July 13, 2015 of Umali, Jr. v. Hernandez*:²⁶

The relaxation of the hearsay rule in disciplinary administrative proceedings against judges and justices where bribery proceedings are involved is not a novel thought in this Court; it has been advocated in the Separate Concurring Opinion of Justice Arturo D. Brion in the administrative case of Justice Ong before this Court. The Opinion essentially maintained that the Court could make a conclusion that bribery had taken place *when the circumstances – including those derived from hearsay evidence – sufficiently prove its occurrence. **It was emphasized that [t]o satisfy the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented and corroborated by other evidence that are not hearsay.***²⁷ (Emphasis and underscoring supplied)

Given that the purported hearsay are supplemented and corroborated by other evidence that are not hearsay, the Court finds no cogent reason not to apply the same pronouncement to this particular case.

²⁴ Id. at 20.

²⁵ See *People v. Lobrigas*, 442 Phil. 382, 392 (2002).

²⁶ 781 Phil. 375 (2016).

²⁷ Id. at 389.

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For his part, respondent only proffered a bare denial of the imputed affair. He insists that he was merely acquainted with Bernadette and that they would only see each other during social gatherings or by pure accident. The thrust of his denial was that, although they would see each other on occasion, such meetings were innocent, as in instances when she gave him a short ride from his office to the trial court, the times when he visited her dental clinic for a procedure and during its anniversary celebration, and when he “bumped” into her at a department store and she apologized to him for her husband’s jealousy.²⁸

Suffice it to say that “[d]enial is an intrinsically weak defense. To merit credibility, it must be buttressed by strong evidence of non-culpability. If unsubstantiated by clear and convincing evidence [as in this case] it is negative and self-serving, deserving no greater value than the testimony of credible witnesses who testify on affirmative matters.”²⁹ In any event, the Court observes that the alleged “accidental” and “innocent” encounters of respondent and Bernadette are much too many for comfort and coincidence. Such encounters actually buttress the allegations of the witnesses that they carried on an illicit affair.

All told, the Court finds that substantial evidence – which only entail “evidence to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise” – exist to prove complainant’s accusation of gross immorality against respondent.

Based on jurisprudence, extramarital affairs of lawyers are regarded as offensive to the sanctity of marriage, the family, and the community. When lawyers are engaged in wrongful relationships that blemish their ethics and morality, the usual recourse is for the erring attorney’s suspension from the practice of law, if not disbarment.³⁰ This is because possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession.³¹ Under the Code of Professional Responsibility:

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.

²⁸ *Rollo*, pp. 54-57.

²⁹ See *People v. Pulgo*, G.R. No. 218205, July 5, 2017.

³⁰ See *Torres v. Dalangin*, supra note 21.

³¹ *Valdez v. Dabon, Jr.*, 773 Phil. 109, 121 (2015).

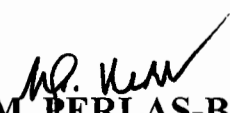
The penalty for maintaining an illicit relationship may either be suspension or disbarment, depending on the circumstances of the case. In case of suspension, the period would range from one year³² to indefinite suspension.³³ Under the given circumstances, the Court sees fit to impose on respondent a penalty of suspension from the practice of law for a period of one (1) year.³⁴

WHEREFORE, respondent Atty. Augustus Serafin D. Amador is found guilty of gross immorality. Accordingly, he is **SUSPENDED** from the practice of law for a period of one (1) year, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

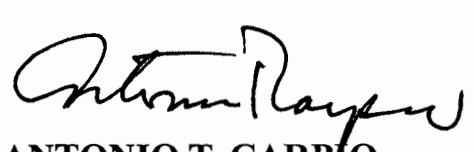
Respondent's suspension from the practice of law shall take effect immediately upon his receipt of this Decision. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be entered in respondent's personal records as a member of the Philippine Bar, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for circulation to all courts.

SO ORDERED.


ESTELA M. PERLAS-BERNABE
Associate Justice

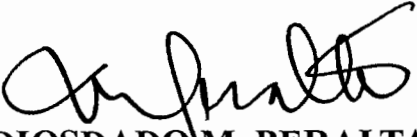
WE CONCUR:


ANTONIO T. CARPIO
Senior Associate Justice
(Per Section 12, Republic Act No. 296,
The Judiciary Act of 1948, As Amended)
Chairperson

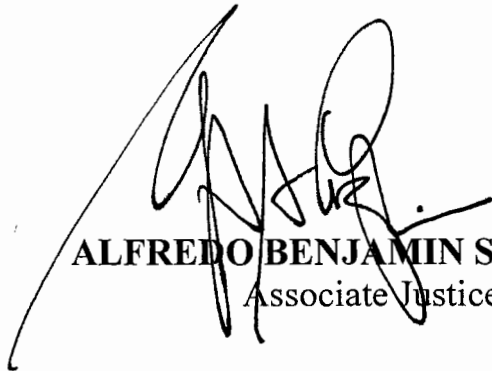
³² *Ferancullo v. Ferrancullo, Jr.*, 538 Phil. 501, 517 (2006), citing *Re: Initial Reports on the Grenade Incident*, 419 Phil. 267 (2001).

³³ *Valdez v. Dabon, Jr.*, supra note 31.

³⁴ *Tanieza-Calayoan v. Calayoan* 767 Phil. 215 (2015); *Salana-Abbu v. Laurenciana-Huraño*, 558 Phil. 25 (2007); and *Re: Initial Reports on the Grenade Incident*, supra note 32.



DIOSDADO M. PERALTA
Associate Justice



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

Reyes
ANDRES B. REYES, JR.
Associate Justice