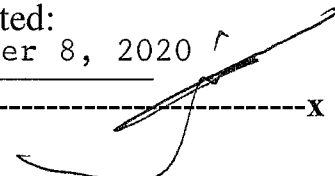


EN BANC

A.C. No. 8700 — NENA YBAÑEZ ZERNA, *complainant*, v. ATTY. ATTY. MANOLO M. ZERNA, *respondent*.

Promulgated:  
September 8, 2020

X-----X



DISSENTING OPINION

LEONEN, J.:

I respectfully disagree with the finding that respondent Atty. Manolo Zerna (Atty. Zerna) should be disbarred. Considering the evidence available, the penalty of suspension should suffice.

This case involves a complaint for disbarment filed by respondent's wife. She charges her husband with gross immorality for having illicit affairs with other women.

I reiterate my position that this Court should be cautious in administrative cases involving gross immorality. For these types of cases, only cases filed by aggrieved parties should be entertained so as not to run the risk of unduly intruding into intimate relationships of couples, which are beyond this Court's powers.<sup>1</sup>

Moreover, a clear, objective, and secular standard should be applied in cases of gross immorality, so that this Court can avoid imposing arbitrary standards of morality as benchmarks for the legal profession.

An act, to constitute gross immorality and be a ground for disbarment, must be of such extent as to constitute a criminal offense, or it must be so corrupt as to be reprehensible to a high degree.<sup>2</sup> The gravity of the act should be one that diminishes the public's confidence in the rule of law,<sup>3</sup> in line with the long-standing concept that an administrative case against a lawyer is primarily a case that involves the protection of the public good.<sup>4</sup> It is not a private suit that settles or vindicates private rights. Hence, the conduct complained of "must be so gross as to be 'willful, flagrant, or



<sup>1</sup> J. Leonen, Separate Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103, 136–156 (2017) [Per Curiam, En Banc].

<sup>2</sup> *Reyes v. Wong*, 159 Phil. 171, 177 (1975) [Per J. Makasiar, First Division].

<sup>3</sup> *Perfecto v. Esidera*, 764 Phil. 384, 399 (2015) [Per J. Leonen, Second Division].

<sup>4</sup> *See Kimteng v. Young*, 765 Phil. 944 (2015) [Per J. Leonen, Second Division].

shameless,' so much so that it 'shows a moral indifference to the opinion of the good and respectable members of the community.'<sup>5</sup>

The *ponencia* rules that respondent maintained adulterous and illicit affairs with several women during his marriage with the complainant, upholding the Integrated Bar of the Philippines Commissioner's findings:

The IBP Commissioner found that there was enough evidence to hold respondent administratively liable for maintaining illicit affairs despite him being married to complainant; that the email messages of respondent to Grace revealed a romantic relationship between the two; that the words used in their email messages *i.e.*, "*take care of yourself always,*" "*wish you were here,*" "*looking forward to that day we meet,*" were suggestive and showed affection and loving concern towards each other; that the same do not point to an exchange of messages not just between a lawyer and a client but between lovers; that as regards Judelyn, the alleged confession about that affair was too compelling an evidence for complainant, given that respondent did not refute the same; that the Affidavits of complainant's witnesses Jeffrey Villegas and Val C. Grapa revealed the romantic conduct of respondent and Judelyn that could only have been demonstrated by lovers; and that as regards Evelyn, respondent's relationship as even more open as their displays of affection in public were done without any inhibition; and that the Affidavits of complainant's witnesses, Joselito Sido and Jovito Cipres were, likewise, revealing as respondent and Evelyn were described as a couple who unabashedly displayed their affection for each other in public.<sup>6</sup>

These findings place heavy weight on the supposed meaning of the private messages exchanged between respondent and one of the women, Grace. The *ponencia* concludes that the words "*take care of yourself always,*" "*wish you were here,*" and "*looking forward to that day we meet,*" signify an illicit relationship between the two, characterizing these messages as affectionate words that could only be said in the context of a romantic relationship.

I disagree. These words on their own, although affectionate, are not sufficient to conclude that there was an illicit relationship between the two. The messages that respondent sent were equivocal and subject to different interpretations. Telling another person to take care of themselves or that they are looking forward to their company does not always mean there is an ongoing romantic relationship between the two. While these words may be considered playful especially considering that respondent is a married man, I do not agree that they are enough to judge a person as grossly immoral.

Other pieces of evidence considered involve sworn statements by complainant's witnesses who characterize respondent's conduct towards other women as "romantic," and "could only have been demonstrated by

<sup>5</sup> *Arciga v. Maniwang*, 193 Phil. 730, 735 (1981) [Per J. Aquino, Second Division].

<sup>6</sup> *Ponencia*, p. 3-4.

lovers.” In my view, this Court cannot simply rely on the observations made by third persons as to the true status of respondent’s relationships with other women. Respondents’ words and actions should be evaluated on their own as against an objective criterion to determine whether they may be considered grossly immoral.<sup>7</sup> Otherwise, we run the risk of allowing an arbitrary standard based on third persons’ impressions to govern private relations between two individuals.

I have previously stated that “an objective criterion of immorality is that which is tantamount to an illegal act.”<sup>8</sup> I do not agree that the facts relied on by the *ponencia* are sufficient to meet this standard. The *ponencia* rules that respondent is grossly immoral because:

[I]t is morally reprehensible for a married person to maintain intimate relations with another person of the opposite sex other than his or her spouse. All the more reprehensible is respondent’s act of leaving his wife and three children to maintain an illicit relationship with another woman with little to no attempt on his part to be discreet about his liaison.<sup>9</sup>

However disagreeable his conduct may be, respondents’ actions do not constitute an illegal act for which he can be adjudged as grossly immoral. The *ponencia* refused to delve into the question of whether respondent is guilty of concubinage,<sup>10</sup> saying that this should be heard in a criminal case before the Regional Trial Court.<sup>11</sup> However, the question in an administrative case for gross immorality is not respondent’s guilt for committing a crime for which he must suffer a criminal penalty, but whether his acts are tantamount to this crime so as to strip him of his license to practice law. I find that they are not.

Nevertheless, I still find him administratively liable for violation of the Code of Professional Responsibility. In Canon 7, Rule 7.03:

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.

.....

<sup>7</sup> See J. Leonen, Dissenting Opinion in *Sabillo v. Atty. Lorenzo*, A.C. No. 9392, December 4, 2018, 9 [Per Curiam, En Banc] citing J. Leonen, Separate Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [Per Curiam, En Banc].

<sup>8</sup> Id.

<sup>9</sup> *Ponencia*, p. 6.

<sup>10</sup> REV. PEN. CODE, art. 334.

ARTICLE 334. *Concubinage*. — Any husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prisión correccional* in its minimum and medium periods.

The concubine shall suffer the penalty of *destierro*.


<sup>11</sup> *Ponencia*, p. 7.

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.

Lawyers are bound at all times to conduct themselves in a manner consistent with the integrity and dignity of the profession. They should be cautious not only in the practice of law but also in their personal dealings,<sup>12</sup> as they may be disciplined for “gross misconduct not connected with [their] professional duties, which [show them] to be unfit for the office and unworthy of the privileges which [their] license and the law confer to [them].”<sup>13</sup> Both public and private lives of lawyers must measure up to this standard.

Thus, I find that respondent’s conduct, while not grossly immoral, is highly improper and is inconsistent with the truth and honor owing to the office of being an attorney.

**ACCORDINGLY**, I vote to **SUSPEND** Atty. Manolo M. Zerna from the practice of law for three (3) years.



**MARVIC M.V.F. LEONEN**  
Associate Justice

<sup>12</sup> *Agno v. Cagatan*, 580 Phil. 1, 17 (2008) [Per J. Leonardo-De Castro, En Banc].

<sup>13</sup> *Enriquez v. De Vera*, 756 Phil. 1, 13 (2015) [Per J. Leonen, Second Division].