

EN BANC

A.C. No. 13082 – PAULINE S. MOYA, *complainant*, versus ATTY. ROY ANTHONY S. ORETA, *respondent*.

Promulgated:

November 16, 2021

X-----*Antonio Oreta*-----X

DISSENTING OPINION

CAGUIOA, J.:

I dissent.

There is no question that the Court should fully support the State's policy to protect the vulnerable members of society, including women and children. Neither do I dispute the *ponencia*'s sentiments that the Court should maintain the integrity of the legal profession by expelling members who abuse and assault women. Indeed, the Court should "not coddle violators of the [Anti-Violence Against Women and Their Children Act (Anti-VAWC Act)]",¹ there being no justification for domestic violence. However, the Court's duty to discipline lawyers is circumscribed by the basic principle that the power to disbar is exercised with great caution and only for clear cases of misconduct.² In this regard, the lawyer remains innocent of the charges until the complainant successfully discharges the burden of proof through substantial evidence.³ This burden cannot be reversed under the misplaced notion of championing women's rights.

The records here clearly show that not only is the complaint unsubstantiated, but respondent was able to refute the allegations against him. This is precisely where this dissent proceeds from — that in this particular case, **there is a dearth of evidence to support the factual conclusions** of the *ponencia*. Thus, I dissent from the majority in ruling to disbar Atty. Roy Anthony S. Oreta (Atty. Oreta) for his purported acts of violence. I submit that for his illicit affair during the subsistence of his and complainant Pauline S. Moya's (Moya) respective marriages, the more appropriate penalty is suspension from the practice of law.

I.

In her disbarment complaint, Moya alleges that she was in a relationship with Atty. Oreta. When they started their relationship, she

¹ *Ponencia*, p. 21; Republic Act No. (R.A.) 9262 entitled, "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFOR, AND FOR OTHER PURPOSES," March 8, 2004.

² *Kara-an v. Pineda*, A.C. No. 4306, March 28, 2007, 519 SCRA 143, 146.

³ *Tan v. Alvarico*, A.C. No. 10933, November 3, 2020.



already had four children with her estranged husband while Atty. Oreta, who was also married at that time, was similarly separated from his wife. Despite the subsistence of their respective marriages, Moya and Atty. Oreta started living together in November 2003 until their relationship soured and ended a good seven years after, or sometime in 2010.⁴

According to Moya, their relationship was going well at the beginning. However, their relationship later deteriorated when Atty. Oreta refused to contribute to the payment of the household expenses. She claims that Atty. Oreta also became verbally and physically abusive towards her and her children. The abuse got worse, again according to Moya, constraining her to file a complaint against Atty. Oreta for violation of the Anti-VAWC Act with the Office of the City Prosecutor of Quezon City (OCP), and to initiate a petition for the issuance of a Permanent Protection Order (PPO) with the Regional Trial Court of Quezon City (RTC). While the PPO was favorably granted in favor of Moya in a Decision⁵ dated January 5, 2012 of the RTC, the OCP, however, dismissed the charges of sexual, physical, psychological, and economic abuse against Atty. Oreta in a Resolution⁶ dated March 12, 2013.⁷

After due proceedings before the Integrated Bar of the Philippines–Commission on Bar Discipline (IBP-CBD), the Investigating Commissioner recommended to suspend Atty. Oreta from the practice of law for six months, for cohabiting with Moya while they were still married to their respective spouses. With respect to the allegations of abuse, the Investigating Commissioner found that these were **unsubstantiated**.⁸

The IBP-Board of Governors (IBP-BOG) adopted the factual findings of the Investigating Commissioner, but modified the recommended penalty to disbarment since Atty. Oreta had an illicit affair with Moya during his marriage.⁹ Upon the motion for reconsideration of Atty. Oreta, the recommended penalty was reduced to suspension from the practice of law for three years. Among the considerations of the IBP-BOG in lowering the penalty were the expression of remorse and the apology of Atty. Oreta, as well as the fact that Atty. Oreta and Moya had already parted ways.¹⁰

The *ponencia* disagrees with the findings of the IBP and finds Atty. Oreta guilty of violating Rules 1.01 and 7.03 of the Code of Professional Responsibility, for his acts of physical violence towards Moya and her children, and for gross immorality. With respect, however, to the allegation of sexual and economic abuse, the *ponencia* finds no evidence to substantiate the allegations of Moya, there being contrary evidence to

⁴ *Ponencia*, pp. 1-3.

⁵ *Id.* at 3; *rollo* (Vol. II), pp. 54-65.

⁶ *Rollo* (Vol. I), pp. 200-204.

⁷ *Ponencia*, p. 15.

⁸ *Id.* at 8; *rollo* (Vol. II), p. 146.

⁹ *Id.* at 141.

¹⁰ *Id.* at 139-140.

support Atty. Oreta's claim that he defrayed some expenses to support Moya and her children.¹¹ Lastly, the *ponencia* admonishes Atty. Oreta for his use of intemperate language in his pleadings, and for his "insolence" and arrogance.¹²

The *ponencia* orders the disbarment of Atty. Oreta not because he cohabited with Moya while he was married, but for physically abusing Moya and her children.¹³ The *ponencia* likewise finds Atty. Oreta liable for immoral conduct and imposed the additional penalty of suspension from the practice of law for two years.¹⁴ The *ponencia* ultimately deems it unnecessary to suspend Atty. Oreta in light of the imposition of disbarment.¹⁵

II.

The imposition of the supreme penalty of disbarment on Atty. Oreta is completely unwarranted. The majority, in agreeing with the *ponencia*, lost sight of the basic postulate that the power to disbar must be exercised in the preservative, and not vindictive principle. Bearing in mind the serious consequences of disbarment, it is well-settled that the Court only penalizes lawyers when the complainant satisfactorily discharges the burden of proving by substantial evidence the allegations in the complaint. Thus, even if disbarment proceedings are *sui generis*, and despite the lower quantum of proof, **mere allegation is not evidence and is not equivalent to proof.**¹⁶

The *ponencia* relied on *Cristobal v. Cristobal*¹⁷ (*Cristobal*), a case which involved a similar allegation of domestic violence committed by the respondent-lawyer. However, the Court in *Cristobal* did not simply rely on the allegations of the complainant in finding the lawyer administratively liable. There were other pieces of documentary evidence, including a police blotter and a medical certificate, attesting to the injuries sustained by the complainant. There were also pictures of the injuries that the complainant in *Cristobal* sustained because of the respondent-lawyer's violent acts. The Court then concluded that there was substantial evidence to support at least three incidents of abuse among the numerous allegations of domestic violence in the complaint. These incidents, according to the Court, were enough to hold the respondent-lawyer liable for violating the relevant provisions of the Code of Professional Responsibility.

The situation in *Cristobal* simply does not obtain in this case. Here, the *ponencia*'s finding of physical abuse is grounded solely on the RTC's issuance of a PPO, in which it was concluded that Atty. Oreta committed

¹¹ *Ponencia*, p. 16.

¹² *Id.* at 18-20.

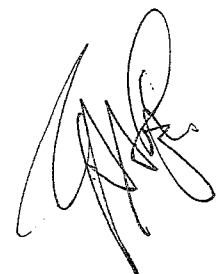
¹³ *Id.* at 20-21.

¹⁴ *Id.* at 21-23.

¹⁵ *Id.* at 23.

¹⁶ *Cabas v. Sususco*, A.C. No. 8677, June 15, 2016, 793 SCRA 309, 315.

¹⁷ A.C. No. 12702, November 8, 2020.



acts of violence towards Moya in separate occasions.¹⁸ The *ponencia* says, to which the majority agrees, that as “matters of judicial record,”¹⁹ Atty. Oreta is deemed liable for physically abusing Moya and her children. The abuse, continued the *ponencia*, was “established with finality by preponderance of evidence”²⁰ because the trial court acted favorably on Moya’s application for a PPO. Since the quantum of proof required in disbarment proceedings is substantial evidence, which is of lesser degree than preponderant evidence, the *ponencia* concludes that Moya was able to establish the allegations in her disbarment complaint.²¹

I disagree. This reasoning arbitrarily disregards the totality of the parties’ evidence.

Aside from the PPO, no other corroborative evidence was presented before the IBP to objectively support Moya’s claims of abuse.²² Nor was there any proof substantiating the injuries Moya purportedly sustained when Atty. Oreta supposedly abused her on March 14, 2010²³ and April 22, 2010.²⁴ In contrast to the case of *Cristobal*, there were no photographs of the alleged visible injuries, much less a medical record or medical certificate to prove Moya’s claims of abuse. The Court can only rely on the testimonial evidence on which the PPO was based — which the complainant noticeably rehashed in the present disbarment complaint — to conclude that Atty. Oreta inflicted physical harm on Moya and her children. Clearly, had the *ponencia* gone beyond the PPO, the records would readily show that the charges against Atty. Oreta were groundless.

Moreover, a review of the records paints a different picture than what Moya presented. While they were living together, Atty. Oreta provided substantial material support to Moya and her children. Atty. Oreta not only paid for their daily expenses, such as groceries, utility bills and transportation, he also supported the education of Moya’s children — **children, who are not his own.**²⁵ He did this for the seven-year period he cohabited with Moya. Atty. Oreta also purchased a Nissan Livina and a Nissan Sentra for the use of Moya and her children, as well as appliances for their home.²⁶ The records likewise established that when they separated, Atty. Oreta was still supporting Moya financially, as she continued to collect the earnings of the salon owned by Atty. Oreta.²⁷

¹⁸ *Ponencia*, pp. 12-13.

¹⁹ *Id.* at 13.

²⁰ *Id.* at 16.

²¹ *Id.*

²² *Rollo* (Vol. II), pp. 7-11.

²³ *Ponencia*, p. 3.

²⁴ *Id.*

²⁵ *Id.* at 6.

²⁶ *Id.*; *rollo* (Vol. II), pp. 45-47.

²⁷ *Id.* at 46.

During the PPO proceedings, Moya did not deny that Atty. Oreta had been providing her family with financial support.²⁸ In fact, during the mandatory conference before the Investigating Commissioner, Moya candidly admitted that it was Atty. Oreta who would regularly bring her children to school during the later years of their relationship.²⁹ Significantly, Moya also admitted having had another romantic relationship with a different man —*who she likewise accused later on as abusive*. Curiously, it was Atty. Oreta who assisted Moya in filing a complaint for violation of Anti-VAWC Act against her other paramour.³⁰ But even with Moya's own declarations, which should have been considered by the Court in the assessment of her credibility, the majority opted to turn a blind eye.

The position I am taking in this case is not borne out of an irrational rejection of Moya's allegations of abuse. Rather, a cursory examination of the totality of the parties' evidence reveals to me a different conclusion — the claims of Moya are unsupported and contradicted by the records. That the allegations of Moya were both self-serving and incredibly bare did not escape the attention of the IBP's Investigating Commissioner. In the Investigating Commissioner's Report and Recommendation, the pertinent portion reads as follows:

Based on the evidence, this Commission is not persuaded that the complainant had proved by substantial evidence her claim of physical, psychological or economic abuse including her cry of rape. **They are but just bare assertions.** The findings in the Decision of RTC Branch 94 (for issuance of Permanent Protection Order) are not controlling in the present administrative case. **Besides, this Commission notes that the respondent did not present evidence in that civil case.** In the same manner, [Moya's] declaration that [Atty. Oreta] videotaped their lovemaking and took nude pictures of her was not proved [(sic)] with the quantum of evidence required in this proceedings [(sic)].³¹

It bears noting that the Investigating Commissioner received the parties' evidence firsthand. In addition to finding the claims of Moya as "just bare assertions", the Investigating Commissioner aptly observed that the PPO was issued on the sole basis of these same assertions. But as the RTC noted in its decision granting the PPO:

Respondent was given the chance to refute the allegations imputed against him. His counsel thoroughly examined every witness and piece of evidence presented by petitioner. However, when time to present his evidence came, he opted not to. **This actuation of respondent prevented the court from hearing his side of the story.**³²

What all the foregoing clearly implies is that the favorable grant by the RTC of Moya's application for a protection order should not have been

²⁸ Id. at 55-57.

²⁹ Id. at 1.

³⁰ Id.

³¹ Id. at 5. Emphasis and underscoring supplied.

³² Id. at 64. Emphasis supplied.



made the basis for the disbarment of Atty. Oreta. The majority egregiously erred when it gave more premium to the factual conclusions of the RTC over that of the IBP, without taking into consideration how each tribunal arrived at their findings. **In stark contrast with the proceedings for the issuance of the PPO, the IBP had the benefit of receiving controverting evidence from Atty. Oreta.** To my mind, therefore, greater weight should have been given to the IBP's factual findings as it was in a better position to assess the veracity of both parties' submissions. At the very least, the evidence presented by Atty. Oreta should call into question Moya's credibility.

To be sure, Moya's own admissions on the support that Atty. Oreta had consistently provided to her and her children during their relationship, markedly runs counter to, and certainly casts doubt on, the narrative Moya sought to establish in her disbarment complaint — that Atty. Oreta was an abusive, selfish, and indolent partner. The majority, however, adopted the allegations of Moya hook line and sinker despite the conspicuous inconsistencies in her testimony and the glaring absence of independent and objective evidence to support her claim. This is grievous error on the part of the Court. We cannot automatically dismiss a respondent's well-founded defense on the pretext of eradicating the social ill of domestic violence. The lower threshold of substantial evidence does not do away with Moya's burden of proving the allegations in the complaint, and in my view, she glaringly failed to discharge this burden.

III.

But that is not all.

The factual basis for the issuance of the PPO are the very same allegations in the criminal case for violation of the Anti-VAWC Act. On March 12, 2013, the OCP issued a Resolution dismissing the complaint for lack of probable cause. It found, “[a]fter analysis of the allegations and the evidence adduced by the complainant and the respondent x x x that there is no sufficient basis to indict the respondent for sexual, physical, psychological[,] and economic abuse.”³³ The relevant portions of the OCP Resolution provide:

x x x Respondent could not be charged for economic abuse since the evidence proves that he gave financial support to the complainant and her children while they were living together. Such support includes electricity, water, telephone and internet bills of the complainant, among others, which were itemized in his counter-affidavit. **Neither could the respondent be charged for psychological and physical abuse as the complainant's allegations relative thereto appear to be not in accordance with common experience and observations of mankind that is probable under the circumstance.** Complainant herself averred that a few months after the respondent transferred to her house, he showed his true character by spanking, hitting, [and] slapping her youngest child[,]

³³ Rollo (Vol. I), p. 202. As cited in the *ponencia*, p. 15.

Don[,] and he also shouted to (*sic*) her daughters to the point of making them cry and yet, complainant had to wait for several years to seek redress for her grievances, which does not speak well of the veracity of her allegations. The same is true with the alleged sexual abuses – that respondent used to rape her and would force her to have sex with him against her will[,] which was her “dilemma for the longest time.” If she and her children were truly suffering abuses from the respondent, she should have evicted (*sic*) from her house right at the start and need not wait for seven years to pass before she could file this complaint against him. **Even if the complainant has secured a Barangay Protection Order, it does not necessarily prove that the respondent is a violent person[,] since the alleged threat on her life could either be imagined or real[,] considering that the Barangay issues the Order summarily and [*ex-parte*] or merely on the basis of the application.** The law and jurisprudence dictate that “evidence to be believed must be credible in itself such that common observation of mankind can show it as probable under the circumstances.[”]

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By and large, complainant’s testimonial evidence, although coming from a credible source, sans any relevant documentary support, does not appear to be credible, reasonable and in accord with human experience tantamount to lack of probable cause.³⁴

Similar to the proceedings before the IBP, both Moya and Atty. Oreta actively participated and presented their respective evidence before the OCP. **In both proceedings, Moya’s claims were deemed incredible.** The *ponencia*, however, perfunctorily dismisses the factual findings of the OCP, arguing that the disbarment proceeding may proceed independently of a criminal case.³⁵

I respectfully disagree with this kind of skewed reasoning. **The Court cannot, on the one hand, argue that the OCP’s findings are immaterial to the present case, and on the other, rely on the factual conclusions of the RTC in granting the PPO.** We are not engaged in the business of cherry-picking evidence to fit a foregone conclusion. If the Court were to take the position that the dismissal of the criminal complaint against Atty. Oreta is not binding, neither should the Court proceed to hold him liable on the basis of the RTC’s favorable issuance of a PPO.³⁶

While it is oft-repeated that a disbarment proceeding is *sui generis*, the question of Atty. Oreta’s moral fitness to continue being a member of the bar requires the Court to pass upon Moya’s allegations of abuse, and to weigh her claims against the defense of Atty. Oreta. As such, it is of little consequence that a disbarment proceeding has a different objective than the reliefs afforded in a criminal case or a civil action. In arriving at the conclusion that Atty. Oreta violated the relevant provisions of the Code of

³⁴ *Rollo* (Vol. I), pp. 202 and 204. Emphasis supplied.

³⁵ *Ponencia*, p. 14.

³⁶ See *Gatchalian Promotions Talents Pool, Inc. v. Naldoza*, A.C. No. 4017, September 29, 1999, 315 SCRA 406.

Professional Responsibility, the Court necessarily must make a factual finding that Atty. Oreta indeed committed acts of violence against Moya and her children. **Thus, the perceived distinction among these proceedings is wholly illusory since the factual basis for the lawyer's administrative liability is inextricably intertwined with those already litigated in the civil and criminal actions.**

In my Dissenting and Concurring Opinion in *Laurel v. Delute*,³⁷ I explained the danger of rendering conflicting rulings in different proceedings that arose from the same set of facts:

Facts are facts. There simply cannot be two versions of the same truth. To allow a resolution in this disbarment proceeding of the alleged manipulation of respondent against his client in the execution of the compromise agreement would create a situation where the "facts" as already established before Civil Case No. T-2497 would now be different from the "facts" established here. This would be unacceptable. The ineluctable consequence in such situation would mean having conflicting or contradictory "findings of facts," that would cast a cloud of uncertainty over Civil Case No. T-2497.

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The fear that generating conflicting "findings of facts" will unnecessarily and unwarrantedly foment more litigation between the contending parties (*i.e.*, between complainant and Azucena) and hence, defeat — rather than promote — the tenets of the orderly administration of justice, is legitimate. It is truly not hard to imagine that any "findings of facts" the Court makes in this disbarment proceeding can and will be used by complainant in another civil litigation against Azucena as basis for having the compromise agreement annulled. **In fact, in *Esquivias v. CA*, while the Court held that the factual findings in a disbarment case are conclusive only in said proceedings and not to a related action, it acknowledged, nevertheless, that the judgment in the disbarment case may, at best, be given weight when introduced as evidence in another case. This, in my view, is recognition that the outcome of a disbarment case which involves a crucial issue between other parties may urge any of them to bring an action in court to settle a controversy that rests closely on the said issue.**

At the same time, should a subsequent case proceed and the trial court arrive at factual findings that are diametrically opposed to that which the Court has come up with to support its decision in disbarring a lawyer in a disciplinary proceeding, the unfairness against the lawyer is, at once, palpable. **In that given scenario, a lawyer would suffer the stinging effects of disbarment on the basis of factual findings that run entirely different from a version in another case — which, I hasten to add, would be more "truthful" if arrived at through a trial with the right of cross-examination being available.**³⁸

³⁷ Dissenting and Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Laurel v. Delute*, A.C. No. 12298, September 1, 2020.

³⁸ *Id.* Emphasis supplied; underscoring omitted.



Again, regardless of the purpose of the proceedings — to discipline an errant lawyer for disbarment or to prosecute an offense for criminal actions — the case would depend on the same set of facts. **Thus, the Court cannot rely on the sole fact that a PPO was issued in favor of Moya (where only Moya participated), and then close its eyes to the conclusions of both the IBP and the OCP (where both Moya and Atty. Oreta actively participated) that there was insufficient basis to establish the claims of abuse.** To emphasize, the allegations of Moya rely on the same evidence in these proceedings. However, unlike the action for the issuance of the protection order, both the IBP and the OCP had the benefit of receiving controverting evidence from Atty. Oreta — thus, fully threshing out the issues and the veracity of Moya’s assertions. The Court should not discount these findings and unduly place greater weight to the RTC’s grant of a PPO.

In all, it bears stressing that “[t]he 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.”³⁹ I cannot see why the Court should insist in the disbarment of Atty. Oreta when the evidence paints a totally different picture as to what Moya claims. The Court has consistently ruled that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in the complaint through substantial evidence.⁴⁰ Failing this, judiciousness dictates that the Court exercise restraint in imposing the most severe penalty of disbarment.

That Atty. Oreta accepted the children of Moya as his very own, and treated them as his very own, providing them financial support during their formative years, paying for their groceries and utility bills, paying for their education, and even furnishing them with cars — these acts, to me, are acts of love that lead me to believe the finding of the IBP that the charges of abuse were unsubstantiated, if not totally made up and concocted.⁴¹ That Atty. Oreta eventually parted ways with Moya only means that the love that was there had vanished. To me, these acts of love towards children not of his own blood, should have been taken in favor of Atty. Oreta in the Court’s determination of the appropriate penalty. To me, a suspension of three years is more than sufficient especially considering the IBP-BOG’s finding that Atty. Oreta had expressed remorse.

In all, I dissent from the majority’s decision to be heavy handed by imposing the penalty of disbarment on Atty. Oreta. However, for engaging in an illicit affair prior to the nullification of his marriage,⁴² I concur with the *ponencia* that Atty. Oreta should be held liable for gross immorality, in violation of Rule 1.01, Canon 7, and Rule 7.03 of the Code of Professional

³⁹ *Gatmaytan, Jr. v. Ilaog*, A.C. No. 6086, January 26, 2005, 449 SCRA 269, 270. Underscoring supplied.

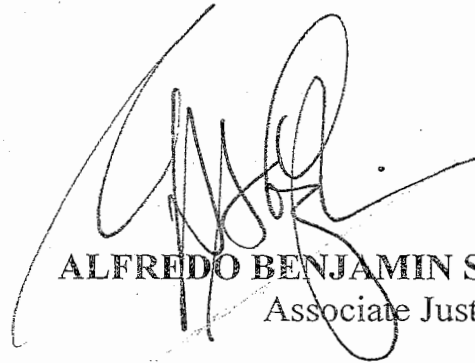
⁴⁰ *Nocuenca v. Bensi*, A.C. No. 12609, February 10, 2020. *See also Alag v. Senupe, Jr.*, A.C. No. 12115, October 15, 2018, 883 SCRA 172, 179.

⁴¹ *Ponencia*, p. 6.

⁴² *Id.* at 22-23.

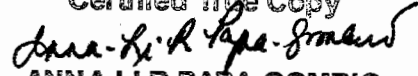


Responsibility. In consideration of his expression of remorse, as well as the subsequent nullity of his marriage to his previous spouse, I vote to suspend Atty. Oreta from the practice of law for a period of three years.



ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

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ANNA-LI R. PAPA-GOMBIO

Deputy Clerk of Court En Banc
OCC En Banc, Supreme Court