

Promulgated: April 17, 2023

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DISSENTING OPINION

GAERLAN, J.:

For reasons explained below, I disagree with the *ponencia*'s dismissal of the complaint for suspension and disbarment against Atty. Zeldania DT. Soriano (respondent) for violation of the Lawyer's Oath and Canons 7 and 8 of the Code of Professional Responsibility (CPR).

To recall, respondent, on behalf of her client Alegria A. Castro (Alegria), sent a Legal Notice¹ to spouses Ferdinand Sendin and Rowena Sendin (spouses Sendin) describing Mary Ann B. Castro (complainant) as the "mistress" of Joselito S. Castro (Joselito), the alleged husband of Alegria. The *ponencia* held that respondent's use of the word "mistress" was relevant to the subject matter of the Legal Notice and was made in the performance of her legal duty to her client. The ultimate purpose of the Legal Notice was to apprise spouses Sendin that Joselito and complainant lack the legal authority to negotiate and transact the sale of the disputed parcels of land allegedly owned by Alegria.² The *ponencia* ruled that respondent's referral to complainant as a mistress was made in the context of privileged communication. Respondent relied on the documents presented by Alegria showing the extramarital nature of Joselito and complainant's relationship.

With all due respect, the *ponencia* misappreciated the facts of the case. Respondent's purpose to encourage the buyers to directly transact with Alegria could be achieved without calling complainant a mistress. Complainant's relationship with Joselito is not relevant to the sale of the subject properties and to Alegria's alleged ownership of the same.

For better understanding, I note that the Legal Notice involves two lots with a combined area of 10,000 square meters (collectively, property) located at Daramoangan Norte, San Mateo, Isabela covered by Transfer Certificate of Title (TCT) Nos. T-242490 and T-242489 registered under the names of Constancio Castro (Constancio) and Rosario Castro-Mariano (Rosario), respectively. **Neither Alegria nor Joselito is the registered**

¹ Rollo, pp. 21-23.

² *Ponencia*, p. 5.

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owner of the property; although Alegria claims ownership by virtue of a written instrument of sale. As stated in respondent's Legal Notice, Joselito sold the property to spouses Sendin through a Special Power of Attorney (SPA) containing the forged signatures of Constancio and Rosario. The relevant portions of the Legal Notice read:

On behalf of and under instruction of Ms. Alegria A. Castro (hereinafter referred to as "Our Client") we are serving this Legal Notice as under:

1. By virtue of a written instrument of sale, our client is the true and lawful owner of two (2) parcels of lands with combined area of 10,000 sqm located at Daramoangan Norte, San Mateo, Isabela covered by **TCT Nos. T-242490 and T-242489 (subject property) registered under the names of Constancio Castro (Constancio) and Rosario Castro-Mariano (Rosario), respectively.**
2. The above-said parcels of lands are tenanted by our client's mother-in-law Mrs. Maura S. Castro, uncle-in-law Mr. Maximo Sagum, and brothers-in-law Mr. Ricardo S. Castro and Mr. Paulo S. Castro.
3. **Sometime in December, 2018, our client learned from her tenant relatives-in-law that you allegedly bought the property from the registered owners who are also our client's relatives-in-law through their "Attorney-in-fact" Mr. Joselito S. Castro (Joselito), the estranged husband of our client. x x x**
4. **The registered owners did not give authority to Joselito to sell the subject property.**

4.1. Due to a mental illness associated with advanced age Constancio is incompetent to enter into such contract. His signature in the SPA is forged.

Also his wife passed away many years ago and her estate has not yet been settled. It could not be validly transferred without prior settlement of her estate. Her signature in the SPA is forged.

4.2. Rosario, under oath, denied signing an SPA in favor of Joselito. Her signature is forged.

x x x x

6. By the "selling price", clearly, you are also NOT an innocent purchaser of value. You bought the subject property for Eight Hundred Thousand Pesos (P800,000.00) while its market value at the time of "sale" is Ten Million Pesos (P10,000,000.00). **Our client believes that you grabbed the cheap offer of Joselito and his mistress Mary Ann B. Castro** despite the obvious notice of defects in the title, in the sale transaction, and in Joselito's authority.³ (Emphases supplied)

³ *Rollo*, pp. 8-9.

Considering the foregoing circumstances, there is no connection between and among: (a) complainant being alleged as a “mistress;” (b) Joselito’s sale of the property pursuant to a forged SPA of Constancio and Rosario; and (c) Alegria’s purchase of the property. Indeed, the Legal Notice mentioned in paragraph 6 that Joselito and complainant offered to sell the property to spouses Sendin for a cheap price. However, paragraph 3 of the same Legal Notice made a contradicting statement that it was through Joselito, acting as attorney-in-fact of the registered owners, that spouses Sendin acquired the property. Thus, including the personal relations of complainant in the notice was uncalled for and pointless.

The scenario would be different had Alegria been the registered owner of the subject property. In this case, the buyers might assume that Alegria authorized her husband, Joselito, to sell the property. However, **based on the Legal Notice, Joselito sold the property to spouses Sendin on the guise that he was authorized by the registered owners, Constancio and Rosario. It also appears that spouses Sendin was unaware that Alegria is the new owner of the property as the titles are not yet in her name. Hence, in paragraph 1 of the Legal Notice, respondent notified spouses Sendin of the property’s sale to Alegria.**

To my mind, informing spouses Sendin of the alleged extra-marital relation of Joselito and complainant serves no other purpose than revealing the indiscretion of Alegria’s husband and maligning the character of complainant. **Failing the test of relevancy, respondent’s use of the word “mistress” in the Legal Notice is not covered by the doctrine of privileged communication.**

Membership in the bar is a privilege burdened with conditions such that a lawyer’s words and actions directly affect the public’s opinion of the legal profession. Any violation of these conditions exposes the lawyer to administrative liability.⁴ A lawyer’s use of offensive, derogatory, or improper language is proscribed under Rule 8.01, Canon 8 of the CPR, which reads:

CANON 8 – A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

⁴ *Nava II v. Artuz*, A.C. No. 7253 & A.M. No. MTJ-08-1717, February 18, 2020, 932 SCRA 401, 415.

Thus, a lawyer's language, though forceful and emphatic, must always be dignified and respectful, befitting the dignity of the legal profession. The language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, and illuminating but not offensive. Unkind ascriptions and intemperate language have no place in the judicial forum.⁵

It is my firm opinion that respondent violated Rule 8.01 of the CPR when she described complainant as the “mistress” of Joselito. While the word “mistress” has many definitions, the context by which respondent used it in the Legal Notice means that complainant was Joselito's other woman. Respondent in her Position Paper admitted this usage.⁶ A mistress is “a woman other than his wife with whom a married man has continuing sexual relationship.”⁷ Under our laws, being a mistress or a concubine is a crime. Article 334 of the Revised Penal Code states that, “[a]ny 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*.” Here, respondent imputed a crime against complainant when she called the latter a “mistress” of Joselito.

In *Spouses Nuezca v. Villagarcia*,⁸ the Court found therein respondent administratively liable for violating Rule 8.01 of the CPR when he sent a demand letter to the complainants which did not only ask for the payment of their obligations to his clients but also imputed crimes against them, that is, that they were criminally liable for worthless or bum checks and estafa. The Court's disquisition, in that case, is enlightening:

Indeed, respondent could have simply stated the ultimate facts relative to the alleged indebtedness of complainants to his client, made the demand for settlement thereof, and refrained from the imputation of criminal offenses against them, especially considering that there is a proper forum therefor and they have yet to be found criminally liable by a court of proper jurisdiction. Respondent's use of demeaning and immoderate language put complainants in shame and disgrace. Moreover, it is important to consider that several other persons had been copy furnished with the demand letter. As such, respondent could have besmirched complainants' reputation to its recipients.⁹ (Emphasis supplied)

⁵ *Velasco v. Causing*, A.C. No. 12883, March 2, 2021.

⁶ *Rollo*, p. 255.

⁷ Merriam-Webster Dictionary <<https://www.merriam-webster.com/dictionary/mistress>> (visited February 18, 2023).

⁸ 792 Phil. 535 (2016).

⁹ *Id.* at 539.

Similarly, in *Washington v. Dicen*¹⁰ (*Washington*), the Court found that Atty. Dicen violated Rule 8.01 of the CPR for his use of language that not only maligned complainant's character, but also imputed a crime against her, *i.e.*, that she was committing adultery against her husband who was, at the time, living in the United States. We ruled that:

Indeed, Atty. Dicen could have simply stated the ultimate facts relative to complainant's allegations against him, explained his participation (or the lack of it) in the latter's arrest and detention, and refrained from resorting to name-calling and personal attacks in order to get his point across. After all, "[t]hough a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum."¹¹ (Emphasis supplied)

Here, respondent could protect and defend her client's interest by simply stating in the Legal Notice that the registered owners already sold the property to Alegria and that Joselito's SPA from the registered owners is void for being a forgery. That respondent has no ill will against complainant and that she has some basis for describing the latter as "mistress" pursuant to Alegria's evidence would not absolve her from administrative liability. **Without a court judgment or pronouncement as to the validity of the marriage between Alegria and Joselito, and between complainant and Joselito, respondent is not in the position to call complainant a mistress.**

In *Buenviaje v. Magdamo*,¹² We ruled that Atty. Magdamo failed to comply with Canon 8 of the CPR when, in his Notice of Death of Depositor sent to BPI-Dagupan, he stated that complainant is: (1) a clever swindler who made it appear on a spurious document that he is the husband of Fe Gonzalo (Fe) when in truth and in fact, he is married to another; (2) a fugitive from justice hiding from a criminal charge pending in Manila; and (3) Fe never had a husband or child in his entire life. As to the third imputation, the Court declared that Atty. Magdamo is out of line when he made an inference that therein complainant and Fe's marriage documents were spurious. Atty. Magdamo should know better that without the courts' pronouncement, he is in no position to draw conclusions and pass judgment as to the existence, and validity or nullity of the complainant's marriage with Fe. Thus, the Court noted that Atty. Magdamo's statements in the Notice given to BPI-Dagupan was careless, premature, and without basis.¹³

¹⁰ 835 Phil. 837 (2018).

¹¹ *Id.* at 843.

¹² 817 Phil. 1 (2017).


¹³ *Id.* at 7-8.

More, in *Velasco v. Causing*,¹⁴ the Court held Atty. Causing liable for violation of Rule 8.01 of the CPR when he used the following words in his Facebook post and in pleadings in direct reference to therein complainant, namely: “polygamous,” “criminal,” “dishonest,” “arrogance,” “disgusting,” and “cheater.” The Court stressed that the use of intemperate language and unkind ascriptions have no place in the dignity of judicial forum.¹⁵

Like the word “polygamous” and/or “cheater,” I humbly believe that the word “mistress” is derogatory and when unnecessarily employed, such as in this case, should warrant the user’s discipline.

In *Washington*, the Court admonished therein respondent to refrain from using language that is abusive, offensive, or otherwise improper, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

The factual *milieu* of this case is analogous to *Washington*. Accordingly, instead of dismissing the complaint, the Court should have admonished respondent for violation of Rule 8.01, Canon 8 of the Code of Professional Responsibility with a warning that the commission of the same or similar act will merit a harsher penalty.


SAMUEL H. GAERLAN
Associate Justice

¹⁴ Supra note 5.

¹⁵ Id.