

Republic of the Philippines
Supreme Court
Baguio City

EN BANC

RE: ANONYMOUS COMPLAINT
AGAINST ATTY. CRESCENCIO P.
CO UNTIAN, JR.,

A.C. No. 5900

Present:

BERSAMIN, C.J.,
CARPIO,
PERALTA,
DEL CASTILLO,*
PERLAS-BERNABE,**
LEONEN,
JARDELEZA,*
CAGUIOA,
REYES, A. JR.,
GESMUNDO,
REYES, J. JR.,
HERNANDO,
CARANDANG, and
LAZARO-JAVIER, JJ.

Promulgated:

April 10, 2019

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RESOLUTION

REYES, J. JR., J.:

Subject of this Resolution is an Anonymous Complaint¹ dated May 14, 2002 against Atty. Cresencio P. Co Untian, Jr. (respondent) for his alleged sexual harassment of students of Xavier University, Cagayan de Oro City (Xavier).

* On official leave.

** On leave.

¹ Rollo, pp. 5-9.

The May 14, 2002 Complaint requested the Court to investigate the alleged sexual harassments that respondent had committed against students of Xavier, particularly Antoinette Toyco (Toyco), Christina Sagarbarria (Sagarbarria) and Lea Dal (Dal). The complaint was written in the local dialect and made by an individual identifying himself or herself only as “law practitioner.” In a September 26, 2002 Letter,² the “law practitioner” sent copies of the complaint-affidavits³ of the victims of sexual harassment and the Resolution of the Committee on Decorum and Investigation (Committee on Decorum).

Toyco claimed that respondent initially expressed amorous interest when he sent her flowers anonymously through another law student. She stated that thereafter, respondent would often text her through the phone of another law student. Toyco noted eventually that respondent texted her through his own phone where he would send romantic messages, poems, love notes and sweet nothings. She said that respondent also invited her to go to Camiguin with another law student but she turned it down. Toyco explained that while she was never sexually assaulted, respondent’s unwelcome advances made her feel degraded as she could not easily ignore respondent for fear of reprisal.

On the other hand, Sagarbarria narrated that respondent showed her a photograph revealing only the face of a woman and asked her if she knew who the woman in the picture was. After she realized that the woman in the picture looked like her, respondent revealed the entire photograph revealing a naked woman and teased her within hearing distance of other law students. Sagarbarria denied that she was the woman because she had a distinctive mark on her back for the past six years. She averred that the incident caused her depression, fearing what other law students may think of her. Sagarbarria highlighted that she was unable to participate in a scheduled moot court competition because she broke down in the middle of practice and cried uncontrollably.

Meanwhile, Dal recounted that in one of her recitations during respondent’s class, she clarified a question propounded to her saying “Sir, come again?” Respondent retorted “What? You want me to come again? I have not come the first time and don’t you know that it took me five minutes to come, and you want me to come again?” She later learned that respondent would narrate the said incident to almost all of his classes. Dal felt offended that she was subjected to such sexually charged language and the fact that her embarrassment was retold in other classes.

² Id. at 4.

³ Id. at 116-128.

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In its September 5, 2002 Resolution,⁴ the Committee on Decorum recommended that respondent's teaching contract not be renewed on account of the accusations of sexual harassment against him. It explained that respondent was guilty of violating Xavier's anti-sexual harassment guidelines. The Committee on Decorum noted that respondent's unwanted sexual advances or innuendos caused distress to the complaining students as it created a hostile or offensive environment.

Respondent's Position

Respondent lamented that the complaints for sexual harassment was made by disgruntled students who failed their classes for the 2001-2002 school year as manifested by the fact that the incidents happened years apart but the complaints were made all at the same time.

Respondent denied sending flowers and text messages with romantic undertones to Toyco. He highlighted that it was in fact her who gave him gifts during Valentine's Day in 2002. Respondent added that he texting "luv u" and "miss u" are friendly text messages sent without malice especially considering that they were misspelled.

As to Sagarbarria's allegations, respondent countered that he confiscated the photograph from another student and jokingly showed it to her in the spirit of their open and uninhibited relationship. He noted that Sagarbarria is his niece and they were previously close as they would oftentimes exchange discussions on sensitive and mature matters as adults without any malice. Respondent claimed that she was never humiliated when he showed her the photograph because she even gamely lowered down her pants to prove that it was not her in the photograph because unlike her, the naked woman did not have any tattoo.

On the other hand, respondent explained that Dal answered disrespectfully when she was called for recitation uttering "Come again?" He posited that to inject humor during class, he responded "Never use slang language in my class because you might be misinterpreted. What do you mean by 'come again?' It takes me several minutes before I come again." Respondent expounded that the joke was directed at himself and that Dal never showed any resentment or showed any sign of humiliation as she even laughed at the joke and continued to sit in front of the class.

⁴ Id. at 130-150.

IBP Proceedings

In his Report and Recommendation⁵ dated January 19, 2009, Commissioner Salvador B. Hababag (Commissioner Hababag) recommended that respondent be suspended from the practice of law for two years. He observed that respondent was given all the opportunity to explain his side in the investigation that Xavier had conducted. Commissioner Hababag reminded that lawyers must be of good moral character and must continue to possess it so long as he is part of the legal profession.

In its Resolution No. XIX-2010-289⁶ dated April 16, 2010, the Integrated Bar of the Philippines-Board of Governors (IBP-BOG) affirmed with modification the recommendation of Commissioner Hababag. It resolved to disbar respondent on the ground of gross immoral conduct.

Respondent moved for reconsideration. In its Resolution No. XXII-2017-804⁷ dated January 27, 2017, the IBP-BOG partially granted his motion for reconsideration. It reduced the penalty to two years suspension and directed the Director of the Commission on Bar Discipline to prepare an extended resolution explaining its actions.

In his June 9, 2017 Extended Resolution,⁸ Director Ramon S. Esguerra (Director Esguerra) explained that respondent was not guilty of sexual harassment as defined under Republic Act (R.A.) No. 7877 or the "Anti-Sexual Harassment Law of 1995." He noted that there was no evidence to show that respondent demanded or requested sexual favors from Toyco, Sagarbarria and Dal. Nevertheless, Director Esguerra expounded that while respondent's actions do not constitute sexual harassment as defined by law, the way he interacted with his students were unbecoming of a member of the legal profession. He stressed that being a law professor, respondent should be worthy of emulation and should not have used his position and stature to make offensive sexual insults on his students. Director Esguerra postulated that the penalty of two years suspension is a sufficient sanction to protect the public and the legal profession.

The Court's Ruling

The Court modifies the recommended penalty of the IBP-BOG.

⁵ Id. at 323-347.

⁶ Id. at 322.

⁷ Id. at 452.

⁸ Id. at 454-462.

In the case at bench, some of respondent's students accused him of sexual harassment claiming that his actions were sexual in nature and had offended or humiliated them.

R.A. No. 7877 defines education related sexual harassment as sexual harassment committed by a teacher, instructor, professor, coach, trainer or any other person who, having authority, influence or moral ascendancy over another in an education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the same is accepted by the object of the act.⁹ In particular, it is committed:

1. Against one who is under the care, custody or supervision of the offender;
2. Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
3. When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations; or
4. When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.¹⁰

The IBP-BOG opined that respondent was not guilty of violating R.A. No. 7877 because there was no evidence to show that he demanded or requested sexual favors from the complainants. Nevertheless, it found respondent's action unacceptable and conduct unbecoming of a member of the legal profession.

R.A. No. 7877 does not require that the victim had acceded to the sexual desires of the abuser. Further, it is not necessary that a demand or request for sexual favor is articulated in a categorical manner as it may be discerned from the acts of the offender.¹¹ In addition, sexual harassment is also committed in an educational environment when the sexual advances result in an intimidating, hostile or offensive environment.¹² In short, it is not necessary that there was an offer for sex for there to be sexual harassment as a superior's conduct with sexual underpinnings, which offends the victim or creates a hostile environment would suffice.

In *Philippine Aeolus Automotive United Corporation v. National Labor Relations Commission*,¹³ the Court explained that the essence of sexual harassment is not the violation of the victim's sexuality but the abus:

⁹ Republic Act No. 7877, Sec. 3.

¹⁰ Id. at Sec. 3(b).

¹¹ *Bacsin v. Wahiman*, 576 Phil. 138, 143 (2008).

¹² Id. at 144.

¹³ 387 Phil. 250, 264 (2000).

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of power by the offender. In other words, what the law aims to punish is the undue exercise of power and authority manifested through sexually charged conduct or one filled with sexual undertones. In *Domingo v. Rayala*,¹⁴ the Court clarified that R.A. No. 7877 speaks of the criminal infraction of sexual harassment and without prejudice to any administrative charge which may be filed against one who sexually harasses another.

The Civil Service Commission (CSC) in CSC Resolution No. 01-0940 defined the administrative offense of sexual harassment in an educational environment as existing when:

SEC. 3 x x x

(b) x x x

- (1) submission to or rejection of the act or series of acts is used as a basis for any decision affecting the complainant, including, but not limited to, the giving of a grade the granting of honors or a scholarship, the payment of a stipend or allowance, or the giving of any benefit, privilege or consideration.
- (2) the act or series of acts have the purpose or effect of interfering with the performance, or creating an intimidating, hostile or offensive academic environment of the complainant; or
- (3) the act or series of acts might reasonably be expected to cause discrimination, insecurity, discomfort, offense or humiliation to a complainant who may be a trainee, apprentice, intern, tutee or ward of the person complained of.¹⁵

In addition, CSC Resolution No. 01-0940 provides examples of sexual harassment, to wit:

SEC. 5. The following are illustrative forms of sexual harassment:

(a) Physical

- i. Malicious Touching
- ii. Overt sexual advances
- iii. Gestures with lewd insinuation

(b) Verbal, such as but not limited to, requests or demands for sexual favors, and lurid remarks

(c) Use of objects, pictures or graphics, letters or [written] notes with sexual underpinnings

(d) Other forms analogous to the [foregoing].¹⁶

¹⁴ *Domingo v. Rayala*, 569 Phil. 423, 449-450 (2008).

¹⁵ CSC Resolution No. 01-0940, Rule III, Sec. 3(b).

¹⁶ Id. at Rule IV, Sec. 5.

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Respondent's actions towards the students concerned definitely constitute sexual harassment as defined by R.A. No. 7877 and the pertinent rules and regulation.

A reading of respondent's Answer would show that he substantially admitted the accusations against him, although providing a justification for them. He stated that he showed a picture of a naked woman to Sagarbarria only as a joke and after he had confiscated it from another student to prevent further circulation in the school. Respondent narrated that he would text Toyco with "luv u" and "miss u" but claimed that it was a common everyday text devoid of any romantic overtones as evidenced by its informality. Meanwhile, he clarified that the statement he made to Dal was meant to inject humor in the classroom and to teach her not to use slang language in class. Respondent assailed that these accusations were due to them failing in his class and that none of the purported victims exhibited embarrassment or discomfort during the incidents in question.

Respondent's conduct towards Sagarbarria, Dal and Toyco created a hostile and offensive environment which has no place in a learning institution. He publicly showed a lewd picture to Sagarbarria in the presence of other students. The incident deeply distressed her to the extent that she was unable to continue with her Moot Court practice because she became emotional and cried uncontrollably. The fact that Sagarbarria was bothered and humiliated was even supported by one of respondent's witnesses who stated that respondent demanded that the photograph be surrendered to him because Sagarbarria was disturbed by it.

In addition, respondent's action was reprehensible regardless of Sagarbarria's reaction. He had the audacity to show lewd images to one of his students in the hallway where other students were present. Respondent's alleged close relationship with Sagarbarria is not an excuse as it does not detract from the fact that he exhibited the indecent picture in a public place. It would have been different had he shown the photograph privately to Sagarbarria especially since he claims that as uncle and niece, they could talk about mature and sensitive topics without malice. Respondent could have saved Sagarbarria from embarrassment in having to identify the naked woman as herself in public.

On the other hand, respondent should not brush aside his text messages to Toyco and his joke to Dal as innocent remarks devoid of any impropriety. He readily admits that he would text "luv u" and "miss u" but explains that these are sweet nothings and used in everyday ordinary text messages. These are not harmless text messages especially since it appears that these were unwelcome flirtations which made Toyco uncomfortable. In addition, they cast a cloud of impropriety considering that respondent was Toyco's teacher when he sent them.

Meanwhile, respondent's statement to Dal during her recitation in class cannot be categorized as an innocent joke only meant to lighten the mood of the class. When she was unable to comprehend the question propounded to her, she asked him "to come again." In response, respondent said, "Never use slang language in my class because you might be misinterpreted. What do you mean by 'come again'? It takes me several minutes before I come again."

It is readily apparent that the remark is tasteless, vulgar and crude and has no place in any academic setting. It is not a clever word play or a mere statement with sexual innuendos as its intended meaning is obviously discernable. Respondent's attempt at humor miserably fails as his words clearly refer to him needing five minutes to ejaculate again. Respondent's statements made Dal uncomfortable and embarrassed in front of her classmates as it went beyond an innocent joke and was instead a gross, graphic and an insensitive remark.

Clearly, respondent abused the power and authority he possessed over the complainants. His sexually laced conduct had created a hostile and offensive environment which deeply prejudiced his students. In what was supposed to be a safe place for them to learn and develop, they were instead subjected to unwarranted sexual advances.

What makes respondent's act of sexual harassment even more reprehensible is the fact that he is both a professor and a member of the legal profession.

Lawyers carry the burden of living up to the ethical standards of the legal profession as embodied in the Code of Professional Responsibility because public confidence in law and in lawyers may be tainted by the irresponsible and improper conduct of members of the Bar.¹⁷ Those privileged to practice the legal profession are expected to maintain not only a high standard of legal proficiency, but also of morality considering that they are always under the watchful public eye scrutinizing them both in their public and private lives.¹⁸

Rule 1.01 of the Code of Professional Responsibility (CPR) provides that a lawyer shall not engage in an unlawful, dishonest, immoral or deceitful conduct. On the other hand, Canon 7 mandates that lawyers shall, at all times, uphold the integrity and dignity of the legal profession. Further,

¹⁷ *Belleza v. Atty. Macasa*, 611 Phil. 179, 192 (2009).

¹⁸ *Garrido v. Atty. Garrido and Valencia*, 625 Phil. 347, 362 (2010).

Rule 7.03 of the CPR commands lawyers not to engage in conduct that adversely reflects on his fitness to practice law, or behave in a scandalous manner to the discredit of the legal profession. In *Arnobit v. Atty. Arnobit*,¹⁹ the Court emphasized on the primacy of maintaining a high sense of morality and decorum among lawyers, to wit:

As this Court often reminds members of the bar, the requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning. Good moral character is not only a condition precedent for admission to the legal profession, but it must also remain intact in order to maintain one's good standing in that exclusive and honored fraternity. **Good moral character is more than just the absence of bad character. Such character expresses itself in the will to do the unpleasant thing if it is right and the resolve not to do the pleasant thing if it is wrong.** This must be so because "vast interests are committed to his care; he is the recipient of unbounded trust and confidence; he deals with his client's property, reputation, his life, his all."

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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. A member of the bar and an officer of the court is not only required to refrain from adulterous relationships or keeping a mistress but must also so behave himself as to avoid scandalizing the public by creating the impression that he is flouting those moral standards. (Emphases supplied)

Much is expected of lawyers in that it does not suffice that they are persons of integrity and values, but must also appear to be so in the eyes of the people, and of God. Notwithstanding the relativity of morality, lawyers, as keepers of public faith, are burdened with a high degree of social responsibility — they must handle their personal affairs with greater caution.²⁰ In other words, members of the bar are measured in a more demanding light because their actions or inactions not only affect themselves, but also the legal profession and the public's trust and respect for the law. As such, any errant behavior on the part of the lawyer, whether in a public or private capacity, which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.²¹

It must be remembered that lawyers are both preachers and stewards of law, justice, morals and fairness in that they are duty-bound to propagate observance and deference thereto. It is not enough that they know

¹⁹ 590 Phil. 270, 276 (2008).

²⁰ *Valdez v. Atty. Dabon, Jr.*, 773 Phil. 109, 126 (2015).

²¹ *Abella v. Barrios, Jr.*, 711 Phil. 363, 371 (2013).

right from wrong, just from unjust, moral or immoral, because they must not only speak of such ideals, but must also live by them. Lawyers, aside from being competent and adept in dealing with the intricacies of the law, must also be individuals of honor and virtue. Legal knowledge and ability, without the guidance of morals and justice, is a dangerous tool, which may harm, instead of uplift others.

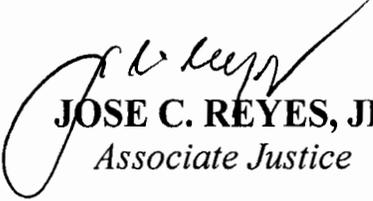
Respondent's responsibilities and expectations are even more heightened because he is a law professor. He should be a beacon of righteous and conscientious conduct. Respondent, as a mold of minds of soon-to-be lawyers, should guide his students to behave and act in a manner consistent with the lofty standards of the legal profession. Instead, he abused his position of authority creating an offensive and uncomfortable atmosphere in school. Again, what should be a place of learning and growth had become a place of fear and distrust for the affected students.

Further, it is even more disappointing that respondent fails to acknowledge the consequences of his actions and disregard the hurt Sagarbarria, Toyco and Dal may have felt. He generally claimed that they did not express any distress, embarrassment, or humiliation during the incidents complained of. It must be stressed that as their law professor, respondent exercised moral ascendancy over them. Thus, it is within reason that the concerned students could not have readily expressed disgust or annoyance over a person in authority. It takes courage and strength to stand up and speak against any form of sexual harassment. This is especially true considering that in most cases, the offender wields power, authority, or influence over the victim.

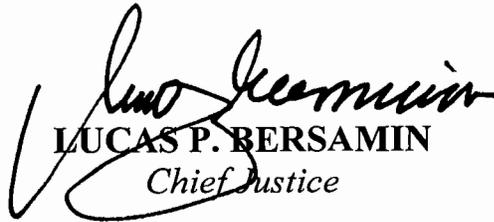
WHEREFORE, respondent Atty. Cresencio P. Co Untian, Jr. is **SUSPENDED** from the practice of law for five (5) years and ten (10) years from teaching law in any school effective upon the finality of this Resolution, with a **STERN WARNING** that a repetition of the same or similar act will be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be reflected on the records of respondent; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.


JOSE C. REYES, JR.
Associate Justice

WE CONCUR:


LUCAS P. BERSAMIN
Chief Justice

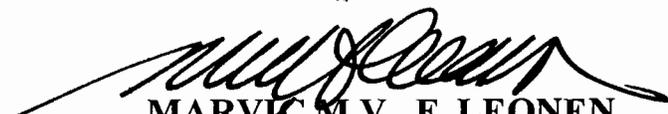

ANTONIO T. CARPIO
Associate Justice


DIOSDADO M. PERALTA
Associate Justice

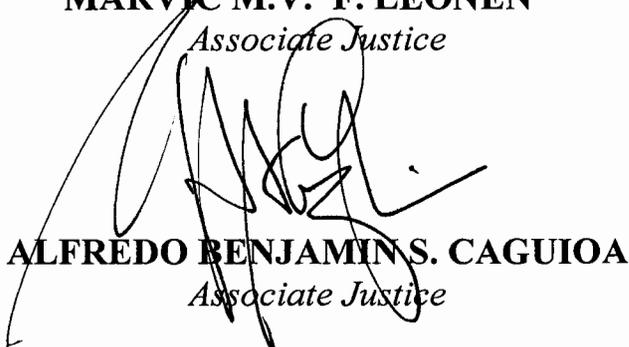
(On Official Leave)
MARIANO C. DEL CASTILLO
Associate Justice

(On Leave)
ESTELA M. PERLAS-BERNABE
Associate Justice

I concur. See separate opinion

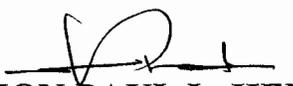

MARVIC M.V. F. LEONEN
Associate Justice

(On Official Leave)
FRANCIS H. JARDELEZA
Associate Justice


ALFREDO BENJAMINS S. CAGUIOA
Associate Justice

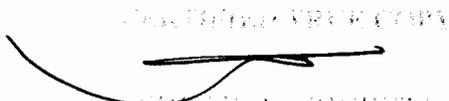
Reyes
ANDRES B. REYES, JR.
Associate Justice


ALEXANDER G. GESMUNDO
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


ROSMARI D. CARANDANG
Associate Justice


AMY C. LAZARO-JAVIER
Associate Justice


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