



Republic of the Philippines
Supreme Court
Manila

EN BANC

NENA YBAÑEZ ZERNA,
Complainant,

A.C. No. 8700

Present:

PERALTA, C.J.,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
REYES, J., JR.,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ,
DELOS SANTOS
GAERLAN, and
BALTAZAR-PADILLA,* JJ.

- versus -

ATTY. MANOLO M. ZERNA,
Respondent.

Promulgated:

September 8, 2020

X-----X

DECISION

PER CURIAM:

This administrative case stemmed from a Complaint-Affidavit¹ for disbarment dated August 6, 2010 filed by Nena Ybañez Zerna (*complainant*) against her husband, Atty. Manolo M. Zerna (*respondent*), charging the latter with gross immorality.

* On leave.

¹ Rollo, pp. 3-142.

The facts are as follows.

Complainant and respondent were married on May 6, 1990 at the Mary Immaculate Church in Dumaguete City. Their union produced three daughters: Phoebe Manelle, Kristine Anne, and June Evangel.

In May 1999, respondent took his oath as a member of the Bar.

Complainant alleged that after passing the Bar, respondent stopped extending financial support to their children and started having illicit affairs with women.

In September 1999, complainant discovered that respondent was involved with a *balikbayan* named Grace, whom he met up with in Cebu City, based on their email correspondence. This affair did not last long. By December 1999, respondent was engaged in another illicit relationship with a woman named Judelyn.

When complainant found out about this affair, she went to the apartment in Dumaguete City where Judelyn lived and was surprised when it was respondent himself who opened the door. Complainant then had a confrontation with respondent and Judelyn, wherein respondent confessed about the affair and told complainant that between her and Judelyn, he would choose the latter. In spite of her husband's confession, complainant was still able to convince him to go home with her. Judelyn and respondent, however, continued their relationship.

Complainant claimed that because of her husband's extramarital affairs, they started having frequent arguments and fights. On March 14, 2001, respondent mauled complainant after she confronted him about a letter she received which was purportedly sent by Judelyn. She then filed a criminal complaint for Less Serious Physical Injuries against the respondent before the Provincial Prosecutor's Office of Negros Oriental. After the said incident, the complainant decided to leave the respondent as she could no longer take his emotional, psychological, and physical abuse.

The complaint further alleged that apart from Judelyn, respondent maintained romantic relations with another woman named Evelyn Martinez (*Evelyn*). Complainant said she discovered the affair when she saw the two having a dinner date in a restaurant in Tanjay City. Thereafter, she would see respondent and Evelyn roaming around the city riding either her husband's motorcycle or his car. On July 5, 2009, complainant filed criminal charges

against respondent for concubinage,² for allegedly openly cohabiting with Evelyn and siring a child with the latter. Complainant claimed that respondent abandoned his financial obligation to his legal family, resulting in severe financial difficulties as well as mental and emotional anguish.³

In his Comment,⁴ respondent countered that while he and complainant indeed got married on May 6, 1990, he categorically denied that he was still legally married to the complainant.⁵ Respondent explained that it was only when he took up law several years after they contracted marriage that he realized his union with complainant was void *ab initio* for lack of a valid marriage license, as complainant allegedly forged his signature and obtained a marriage license even without his personal appearance.⁶ Respondent said that despite such realization, he did not have their marriage declared void *ab initio* as their children would only suffer further. Respondent added that complainant never supported him either financially or emotionally as a dutiful wife should. He denied the accusation that he failed to give support to his children, and that he abandoned his family.⁷ He, likewise, denied complainant's allegations of concubinage, claiming that these were brought about by complainant's misplaced and unfounded jealousy. He claimed that Grace was a mere acquaintance and prospective client; that Judelyn was just a friend; and that Evelyn was just a close family friend.

The matter was referred to the Integrated Bar of the Philippines (*IBP*) for investigation, report, and recommendation.⁸ In his Report and Recommendation⁹ dated November 15, 2011, Commissioner Oliver A. Cachapero of the IBP-Commission on Bar Discipline found merit in the complaint and recommended that respondent be suspended from the practice of law for a period of one (1) year.

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 their affair was too compelling an evidence for complainant, given that respondent did not refute the same; that the Affidavits¹⁰ of complainant's witnesses Jeffrey

² *Id.* at 128-140.

³ *Id.* at 17.

⁴ *Id.* at 150-164.

⁵ *Id.* at 150.

⁶ *Id.* at 151.

⁷ *Id.* at 158.

⁸ *Id.* at 176.

⁹ *Id.* at 338-341.

¹⁰ *Id.* at 45, 46.

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 was even more open as their displays of affection in public were done without any inhibition; and that the Affidavits¹¹ 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.

In gist, Respondent and his partners showed intimacy when said Respondent possesses a legal impediment to marry and/or openly covet a lover. Thus for his conduct, it is shown that Respondent is wanting in moral character in honesty, probity and good demeanor. To be sure, he conducted himself in an immoral manner.

His claim that his marriage to Complainant is void *ab initio* can never justify the immoral conduct he had shown because no judicial declaration has been made in that regard.¹²

On September 28, 2013, the IBP Board of Governors issued Resolution No. XX-2013-72¹³ adopting and approving, with modification, the Report and Recommendation of the IBP Commissioner, and suspending respondent from the practice of law for three (3) years instead of one (1) year.

On April 18, 2016, the Court resolved to require the complainant to report to the Court within ten (10) days from notice the veracity of the "death" of the respondent, it appearing that the copy of the Court's Resolution dated August 13, 2014 which, among others, noted the Notice of Resolution No. XX-2013-72 dated September 28, 2013 of the IBP Board of Governors suspending respondent from the practice of law was returned unserved, with postal carrier's notation "RTS-addressee deceased" on the envelope.¹⁴

On December 5, 2018, the Court resolved to deem the April 18, 2016 Resolution served on complainant, it appearing that the copy of the same sent to her was, likewise, returned unserved with postal carrier's notation "RTS-unclaimed" on the envelope.¹⁵

On January 30, 2019, the Court resolved to direct the IBP and the Office of the Bar Confidant to verify within ten (10) days from notice the veracity of respondent's death.¹⁶

On May 14, 2019, the IBP National Secretary submitted to the Court its compliance with the Court's January 30, 2019 Resolution, informing the

¹¹ *Id.* at 90, 92.

¹² *Id.* at 340-341.

¹³ *Id.* at 337.

¹⁴ *Id.* at 346.

¹⁵ *Id.* at 354.

¹⁶ *Id.* at 355.

Court that as of that date, the IBP National Office had not officially received any information about the death of respondent Atty. Manolo M. Zerna and was, thus, unable to confirm the same.¹⁷ In view of the foregoing, the Office of the Bar Confidant recommended that the case be resolved by the Court.¹⁸

After a thorough review of the records, the Court agrees with the finding of the IBP Commission on Bar Discipline and IBP Board of Governors that the complainant has presented enough evidence to substantiate her claim that respondent Atty. Manolo M. Zerna is guilty of gross immorality and may, therefore, be removed or suspended by the Supreme Court for conduct unbecoming a member of the Bar.¹⁹

The *Code of Professional Responsibility* mandates all lawyers to possess good moral character at the time of their application for admission to the Bar, and requires them to maintain such character until their retirement from the practice of law.²⁰ In this regard, the Code states:

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x

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.

x x x x

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Time and again, this Court has emphasized that 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 in leading lives in accordance with the highest moral standards of the community.²¹ More specifically, a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses but also to conduct himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards.²²

In the present case, complainant alleged that respondent carried on a number of adulterous and illicit relations throughout their marriage,

¹⁷ *Id.* at 357.

¹⁸ *Id.* at 358.

¹⁹ Rules of Court, Rule 138, Sec. 27.

²⁰ *Daisy D. Panagsagan v. Atty. Bernie Y. Panagsagan*, A.C. No. 7733, October 1, 2019.

²¹ *Barrientos v. Daarol*, 291-A Phil. 33, 44 (1993); *Arnobit v. Atty. Arnobit*, 590 Phil. 270, 276 (2008).

²² *Advincula v. Atty. Advincula*, 787 Phil. 101, 112 (2016).

eventually abandoning her and their children to openly cohabit with one paramour. Through pieces of documentary evidence in the form of email messages and photos, among others, as well as the corroborating affidavits of her witnesses, complainant was able to establish respondent's illicit relations with other women, particularly Evelyn, through substantial evidence which is necessary to justify the imposition of administrative penalties on a member of the Bar.

On the other hand, respondent's main defense against complainant's asseverations was that his marriage with complainant was void *ab initio*, a defense that is untenable as respondent, a lawyer, should know that Article 40 of *The Family Code*, which was already in effect at the time of respondent's marriage to complainant, states that the absolute nullity of a previous marriage may not be invoked for purposes of remarriage unless there is a final judgment declaring such previous marriage void. Thus, under the law, even if respondent's defense that his marriage to complainant was void *ab initio* because there was no valid marriage license were true, their marriage is still deemed valid unless declared otherwise in a judicial proceeding.

As against complainant's overwhelming and detailed allegations of his marital indiscretions, respondent only offered self-serving denials. Basic is the principle that denials are weak especially if unsupported by evidence.²³ Thus, it bears emphasis that aside from respondent's claim that complainant was not the hapless and pitiful wife she claimed to be²⁴ and that complainant's allegations of his infidelities were purely brought about by misplaced and unfounded jealousy, respondent did not present countervailing evidence to substantiate his bare allegations.

While this Court is cognizant that cases such as this usually include self-serving arguments, this Court finds that between the two parties, it was complainant who was able to build her case against respondent. Thus, this Court will not deviate from the findings of the IBP Commission on Bar Discipline that there was enough evidence to support the claims of gross immorality against the respondent.

There can be no doubt that it 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. Such acts of engaging in illicit relationships with other women during the subsistence of his marriage to the complainant constitutes grossly immoral conduct warranting the imposition appropriate sanctions.

²³ *Amalia R. Ceniza v. Atty. Eliseo B. Ceniza, Jr.*, A.C. No. 8335, April 10, 2019.

²⁴ *Rollo*, p. 158.

With regard to the penalty to be imposed, this Court finds the recommended penalty of suspension from the practice of law for three (3) years too light given the infraction committed by respondent. In numerous occasions, this Court has revoked the licenses of members of the Bar who were proven to have not only failed to retain good moral character in their professional and personal lives, but have also made a mockery of the institution of marriage by maintaining illicit affairs.

In *Toledo v. Toledo*,²⁵ the Court disbarred respondent Jesus B. Toledo for having abandoned his lawful wife and cohabited with another woman who had borne him a child.

In *Narag v. Narag*,²⁶ respondent Dominador M. Narag was disbarred after he abandoned his family to live with a 22-year-old who was his former student and with whom he begot two (2) children.

In *Dantes v. Dantes*,²⁷ the Court imposed the penalty of disbarment on the respondent lawyer Crispin G. Dantes who maintained illicit relationships with two different women during the subsistence of his marriage to the complainant.

The Court need not delve into the question of whether respondent was guilty of concubinage, a matter which is within the jurisdiction of the Regional Trial Court. It is enough that the records of this administrative case established through substantial evidence the findings that indeed respondent, while married to complainant, had been carrying on an illicit affair and living with another woman, a grossly immoral conduct and only indicative of an extremely low regard for the fundamental ethics of his profession.

WHEREFORE, respondent Manolo M. Zerna is found **GUILTY** of **GROSS IMMORALITY** and is hereby **DISBARRED** from the practice of law.

Let respondent's name be stricken off from the Roll of Attorneys immediately, and furnish the Bar Confidant, the Integrated Bar of the Philippines and all courts throughout the country with copies of this Decision. 9

²⁵ 117 Phil. 768 (1963).

²⁶ 353 Phil. 643 (1998).

²⁷ 482 Phil. 64 (2004).

SO ORDERED.

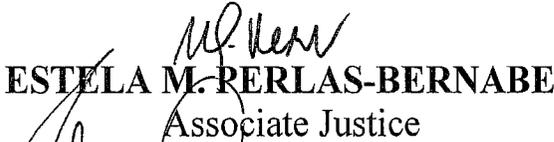


DIOSDADO M. PERALTA
Chief Justice

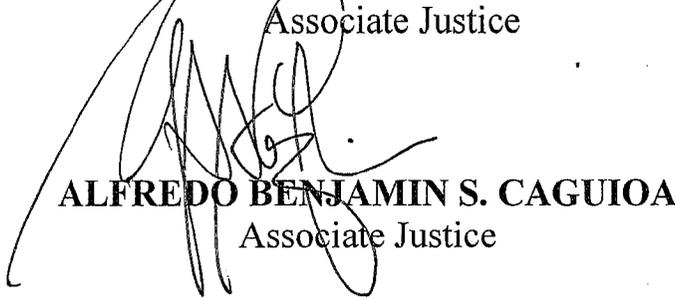
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MARVIC M.V.F. LEONEN
Associate Justice



ESTELA M. PERLAS-BERNABE
Associate Justice



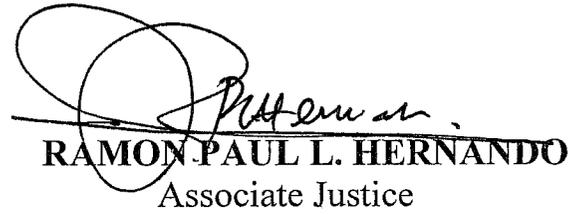
ALFREDO BENJAMIN S. CAGUIOA
Associate Justice



ALEXANDER G. GESMUNDO
Associate Justice



JOSE C. REYES, JR.
Associate Justice



RAMON PAUL L. HERNANDO
Associate Justice



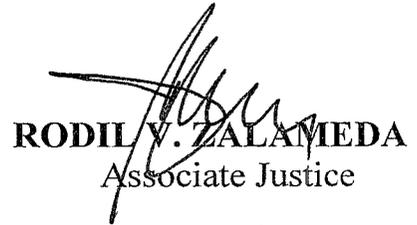
ROSMARIE B. CARANDANG
Associate Justice



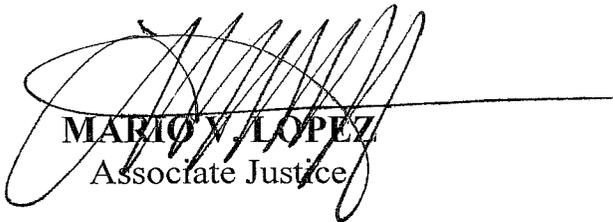
AMY C. LAZARO-JAVIER
Associate Justice



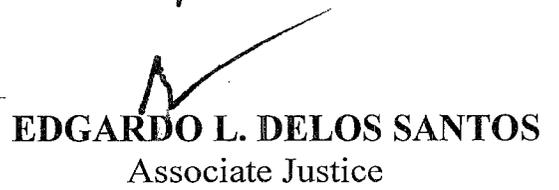
HENRI JEAN PAUL B. INTING
Associate Justice



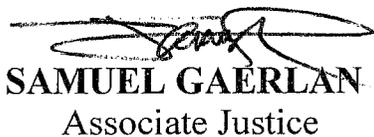
RODIL V. ZALAMEDA
Associate Justice



MARIO Y. LOPEZ
Associate Justice



EDGARDO L. DELOS SANTOS
Associate Justice



SAMUEL GAERLAN
Associate Justice

On leave
PRISCILLA J. BALTAZAR-PADILLA
Associate Justice