

## THIRD DIVISION

**[ A.C. NO. 6313, September 07, 2006 ]**

**CATHERINE JOIE P. VITUG COMPLAINANT, VS. ATTY. DIOSDADO M. RONGCAL, RESPONDENT.**

### DECISION

**TINGA, J.:**

The allegations raised in this complaint for disbarment are more sordid, if not tawdry, from the usual. As such, close scrutiny of these claims is called for. Disbarment and suspension of a lawyer, being the most severe forms of disciplinary sanction, should be imposed with great caution and only in those cases where the misconduct of the lawyer as an officer of the court and a member of the bar is established by clear, convincing and satisfactory proof.<sup>[1]</sup>

Under consideration is the administrative complaint for disbarment filed by Catherine Joie P. Vitug (complainant) against Atty. Diosdado M. Rongcal (respondent). A classic case of "he said, she said," the parties' conflicting versions of the facts as culled from the records are hereinafter presented.

Complainant narrates that she and respondent met sometime in December 2000 when she was looking for a lawyer to assist her in suing Arnulfo Aquino ("Aquino"), the biological father of her minor daughter, for support. Her former classmate who was then a Barangay Secretary referred her to respondent. After several meetings with complainant, respondent sent a demand letter <sup>[2]</sup> in her behalf to Aquino wherein he asked for the continuance of the monthly child support Aquino used to give, plus no less than P300,000.00 for the surgical operation their daughter would need for her congenital heart ailment.

At around this point, by complainant's own admission, she and respondent started having a sexual relationship. She narrates that this twist in the events began after respondent started calling on her shortly after he had sent the demand letter in her behalf. Respondent allegedly started courting her, giving her financial aid. Soon he had progressed to making sexual advances towards complainant, to the accompaniment of sweet inducements such as the promise of a job, financial security for her daughter, and his services as counsel for the prospective claim for support against Aquino. Complainant acknowledges that she succumbed to these advances, assured by respondent's claim that the lawyer was free to marry her, as his own marriage had already been annulled.

On 9 February 2001, respondent allegedly convinced complainant to sign an Affidavit of Disclaimer<sup>[3]</sup> ("Affidavit") categorically stating that even as Aquino was denoted as the father in the birth certificate<sup>[4]</sup> of her daughter, he was, in truth, not the real father. She was not allowed to read the contents of the Affidavit, she claims. Respondent supposedly assured her that the document meant nothing, necessary as

it was the only way that Aquino would agree to give her daughter medical and educational support. Respondent purportedly assured complainant that despite the Affidavit, she could still pursue a case against Aquino in the future because the Affidavit is not a public document. Because she completely trusted him at this point, she signed the document "without even taking a glance at it."<sup>[5]</sup>

On 14 February 2001, respondent allegedly advised complainant that Aquino gave him P150,000.00 cash and P58,000.00 in two (2) postdated checks to answer for the medical expenses of her daughter. Instead of turning them over to her, respondent handed her his personal check <sup>[6]</sup> in the amount of P150,000.00 and promised to give her the balance of P58,000.00 soon thereafter. However, sometime in April or May 2001, respondent informed her that he could not give her the said amount because he used it for his political campaign as he was then running for the position of Provincial Board Member of the 2nd District of Pampanga.

Complainant maintains that inspite of their sexual relationship and the fact that respondent kept part of the money intended for her daughter, he still failed in his promise to give her a job. Furthermore, he did not file the case against Aquino and referred her instead to Atty. Federico S. Tolentino, Jr. ("Atty. Tolentino").

Sometime in 2002, assisted by Atty. Tolentino, complainant filed a criminal case for child abuse as well as a civil case against Aquino. While the criminal case was dismissed, the civil case was decided on 30 August 2004 by virtue of a compromise agreement.<sup>[7]</sup> It was only when said cases were filed that she finally understood the import of the Affidavit.

Complainant avers that respondent failed to protect her interest when he personally prepared the Affidavit and caused her to sign the same, which obviously worked to her disadvantage. In making false promises that all her problems would be solved, aggravated by his assurance that his marriage had already been annulled, respondent allegedly deceived her into yielding to his sexual desires. Taking advantage of the trust and confidence she had in him as her counsel and paramour, her weak emotional state, and dire financial need at that time, respondent was able to appropriate for himself money that rightfully belonged to her daughter. She argues that respondent's aforementioned acts constitute a violation of his oath as a lawyer as well as the Code of Professional Responsibility ("Code"), particularly Rule 1.01, Rule 1.02, Rule 16.01, Rule 16.02, and Canon 7.<sup>[8]</sup> Hence, she filed the instant complaint<sup>[9]</sup> dated 2 February 2004.

Expectedly, respondent presents a different version. According to him, complainant needed a lawyer who would file the aforementioned action for support. Complainant's former high school classmate Reinilda Bansil Morales, who was also his fellow barangay official, referred her to him. He admits sending a demand letter to her former lover, Aquino, to ask support for the child.<sup>[10]</sup> Subsequently, he and Aquino communicated through an emissary. He learned that because of Aquino's infidelity, his relationship with his wife was strained so that in order to settle things the spouses were willing to give complainant a lump sum provided she would execute an affidavit to the effect that Aquino is not the father of her daughter.

Respondent relayed this proposal to complainant who asked for his advice. He then advised her to study the proposal thoroughly and with a practical mindset. He also

explained to her the pros and cons of pursuing the case. After several days, she requested that he negotiate for an out-of-court settlement of no less than P500,000.00. When Aquino rejected the amount, negotiations ensued until the amount was lowered to P200,000.00. Aquino allegedly offered to issue four postdated checks in equal amounts within four months. Complainant disagreed. Aquino then proposed to rediscount the checks at an interest of 4% a month or a total of P12,000.00. The resulting amount was P188,000.00.

Complainant finally agreed to this arrangement and voluntarily signed the Affidavit that respondent prepared, the same Affidavit adverted to by complainant. He denies forcing her to sign the document and strongly refutes her allegation that she did not know what the Affidavit was for and that she signed it without even reading it, as he gave her the draft before the actual payment was made. He notes that complainant is a college graduate and a former bank employee who speaks and understands English. He likewise vehemently denies pocketing P58,000.00 of the settlement proceeds. When complainant allegedly signed the Affidavit, the emissary handed to her the sum of P150,000.00 in cash and she allegedly told respondent that he could keep the remaining P38,000.00, not P58,000.00 as alleged in the complaint. Although she did not say why, he assumed that it was for his attorney's fees.

As regards their illicit relationship, respondent admits of his sexual liaison with complainant. He, however, denies luring her with sweet words and empty promises. According to him, it was more of a "chemistry of (sic) two consensual (sic) adults," [11] complainant then being in her thirties. He denies that he tricked her into believing that his marriage was already annulled. Strangely, respondent devotes considerable effort to demonstrate that complainant very well knew he was married when they commenced what was to him, an extra-marital liaison. He points out that, first, they had met through his colleague, Ms. Morales, a friend and former high school classmate of hers. Second, they had allegedly first met at his residence where she was actually introduced to his wife. Subsequently, complainant called his residence several times and actually spoke to his wife, a circumstance so disturbing to respondent that he had to beg complainant not to call him there. Third, he was the Punong Barangay from 1994 to 2002, and was elected President of the Association of Barangay Council ("ABC") and as such was an *ex-officio* member of the Sangguniang Bayan of Guagua, Pampanga. He ran for the position of Provincial Board Member in 2001. Thus, he was known in his locality and it was impossible for complainant not to have known of his marital status especially that she lived no more than three (3) kilometers away from his house and even actively helped him in his campaign.

Respondent further alleges that while the demand for support from Aquino was being worked out, complainant moved to a rented house in Olongapo City because a suitor had promised her a job in the Subic Naval Base. But months passed and the promised job never came so that she had to return to Lubao, Pampanga. As the money she received from Aquino was about to be exhausted, she allegedly started to pester respondent for financial assistance and urged him to file the Petition for Support against Aquino. While respondent acceded to her pleas, he also advised her "to look for the right man"[12] and to stop depending on him for financial assistance. He also informed her that he could not assist her in filing the case, as he was the one who prepared and notarized the Affidavit. He, however, referred her to Atty. Tolentino.

In August 2002, respondent finally ended his relationship with complainant, but still he agreed to give her monthly financial assistance of P6,000.00 for six (6) months. Since then, they have ceased to meet and have communicated only through an emissary or by cellphone. In 2003, complainant begged him to continue the assistance until June when her alleged fiancé from the United States would have arrived. Respondent agreed. In July 2003, she again asked for financial assistance for the last time, which he turned down. Since then he had stopped communicating to her.

Sometime in January 2004, complainant allegedly went to see a friend of respondent. She told him that she was in need of P5,000.00 for a sari-sari store she was putting up and she wanted him to relay the message to respondent. According to this friend, complainant showed him a prepared complaint against respondent that she would file with the Supreme Court should the latter not accede to her request. Sensing that he was being blackmailed, respondent ignored her demand. True enough, he alleges, she filed the instant complaint.

On 21 July 2004, the case was referred to the Integrated Bar of the Philippines ("IBP") for investigation, report and recommendation.<sup>[13]</sup> After the parties submitted their respective position papers and supporting documents, the Investigating Commissioner rendered his Report and Recommendation<sup>[14]</sup> dated 2 September 2005. After presenting the parties' conflicting factual versions, the Investigating Commissioner gave credence to that of complainant and concluded that respondent clearly violated the Code, reporting in this wise, to wit:

Respondent, through the above mentioned acts, clearly showed that he is wanting in good moral character, putting in doubt his professional reputation as a member of the BAR and renders him unfit and unworthy of the privileges which the law confers to him. From a lawyer, are (sic) expected those qualities of truth-speaking, high sense of honor, full candor, intellectual honesty and the strictest observance of fiduciary responsibility all of which throughout the passage of time have been compendiously described as MORAL CHARACTER.

Respondent, unfortunately took advantage and (sic) every opportunity to entice complainant to his lascivious hungerness (sic). On several occasions[,] respondent kept on calling complainant and dropped by her house and gave P2,000.00 as aid while waiting allegedly for the reply of (sic) their demand letter for support. It signals the numerous visits and regular calls all because of [l]ewd design. He took advantage of her seeming financial woes and emotional dependency.

x x x x

Without doubt, a violation of the high moral standards of the legal profession justifies the impositions (sic) of the appropriate penalty, including suspension and disbarment. x x x<sup>[15]</sup>

It was then recommended that respondent be suspended from the practice of law for six (6) months and that he be ordered to return to complainant the amount of P58,000.00 within two months. The IBP Board of Governors adopted and approved

the said Report and Recommendation in a Resolution<sup>[16]</sup> dated 17 December 2005, finding the same to be fully supported by the evidence on record and the applicable laws and rules, and "considering Respondent's obviously taking advantage of the lawyer-client relationship and the financial and emotional problem of his client and attempting to mislead the Commission,"<sup>[17]</sup> respondent was meted out the penalty of suspension for one (1) year with a stern warning that a repetition of similar acts will merit severe sanctions. He was likewise ordered to return P58,000.00 to complainant.

Respondent filed a Motion for Reconsideration with Motion to Set Case for Clarificatory Questioning<sup>[18]</sup> ("Motion") dated 9 March 2006 with the IBP and a Motion to Reopen/Remand Case for Clarificatory Questioning dated 22 March 2006 with the Supreme Court. He reiterates his own version of the facts, giving a more detailed account of the events that transpired between him and complainant. Altogether, he portrays complainant as a shrewd and manipulative woman who depends on men for financial support and who would stop at nothing to get what she wants. Arguing that the IBP based its Resolution solely on complainant's bare allegations that she failed to prove by clear and convincing evidence, he posits the case should be re-opened for clarificatory questioning in order to determine who between them is telling the truth.

In a Resolution<sup>[19]</sup> dated 27 April 2006, the IBP denied the Motion on the ground that it has no more jurisdiction over the case as the matter had already been endorsed to the Supreme Court.

While we find respondent liable, we adjudicate the matter differently from what the IBP has recommended.

On the charge of immorality, respondent does not deny that he had an extra-marital affair with complainant, albeit brief and discreet, and which act is not "so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree"<sup>[20]</sup> in order to merit disciplinary sanction. We disagree.

One of the conditions prior to admission to the bar is that an applicant must possess good moral character. Said requirement persists as a continuing condition for the enjoyment of the privilege of law practice, otherwise, the loss thereof is a ground for the revocation of such privilege.<sup>[21]</sup> 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.<sup>[22]</sup> The Court has held that to justify suspension or disbarment the act complained of must not only be immoral, but grossly immoral.<sup>[23]</sup> A grossly immoral act is one that is so corrupt and false as to constitute a criminal act or so unprincipled or disgraceful as to be reprehensible to a high degree.<sup>[24]</sup> It is a willful, flagrant, or shameless act that shows a moral indifference to the opinion of the good and respectable members of the community.<sup>[25]</sup>

While it has been held in disbarment cases that the mere fact of sexual relations between two unmarried adults is not sufficient to warrant administrative sanction for such illicit behavior,<sup>[26]</sup> it is not so with respect to betrayals of the marital vow of