

FIRST DIVISION

[A.C. No. 10145, June 11, 2018]

**OLIVER FABUGAIS, COMPLAINANT, VS. ATTY. BERARDO C.
FAUNDO JR., RESPONDENT.**

D E C I S I O N

DEL CASTILLO, J.:

In both their professional and personal lives, lawyers must conduct themselves in such a way that does not reflect negatively upon the legal profession.

Factual Antecedents

This is a Complaint^[1] filed by complainant Oliver Fabugais (complainant) against Atty. Berardo C. Faundo, Jr. (respondent lawyer), for gross misconduct and conduct unbecoming of a lawyer for having allegedly engaged in illicit and immoral relations with his wife, Annaliza Lizel B. Fabugais (Annaliza).

In her *Sinumpaang Salaysay*,^[2] then 10-year old girl Marie Nicole Fabugais (Marie Nicole), daughter of complainant, alleged that sometime in October 2006, she, along with her mother, Annaliza. Ate Mimi (Michelle Lagasca), and a certain Ate Ada (Ada Marie Campos), stayed in a house in Ipil, Zamboanga-Sibugay, that belonged to respondent lawyer, whom Marie Nicole referred to as "Tito Attorney." Marie Nicole said that when night-time fell, respondent lawyer slept in the same bed with her and her mother and that she saw respondent lawyer embracing her mother while they were sleeping.

Marie Nicole further recounted that the next morning, while she was watching television along with her mother, Ate Mimi and Ate Ada, respondent lawyer who just had a shower, and clad only in a towel or "*tapis*," suddenly entered the room; that she (Marie Nicole) along with her Ate Mimi and her Ate Ada, were told to step outside the room (either by respondent lawyer, or by her mother Annaliza), while her mother and respondent lawyer remained inside the room.

Because of these developments, complainant filed a case for the declaration of nullity of his marriage with Annaliza, with prayer for the custody of their minor children. In said case, respondent lawyer entered his appearance as collaborating counsel for Annaliza.^[3]

Complainant moreover narrated that, on February 17, 2007, while he was driving his motorcycle along the San Jose Road in Baliwasan, Zamboanga City, respondent lawyer, who was then riding in tandem in another motorcycle with his own driver, slowed down next to him (complainant) and yelled at him angrily, "*Nah, cosa man?!*" ("So, what now?!"); that he (complainant) also noticed that respondent lawyer kept following and shouting at him (complainant), and even challenged him

to a fistfight, and threatened to kill him.^[4]

Complainant further alleged that respondent lawyer also harassed his sister on February 27, 2007 by chasing and trailing after her car.^[5]

In his Answer,^[6] respondent lawyer asserted that the chasing incident actually took place on February 16, 2007, and that it was in fact complainant himself who stared menacingly at him (respondent lawyer) while he was riding a motorcycle in tandem with his driver. Respondent lawyer sought to reinforce this assertion through the affidavit of respondent lawyer's driver, Romeo T. Mirasol,^[7] and two other individuals.^[8]

Respondent lawyer denied that he had had any immoral relations with Annaliza. He claimed that he was merely assisting Annaliza in her tempestuous court battle with complainant for custody of her children. Respondent lawyer asserted that when Marie Nicole's maternal grandmother, Ma. Eglinda L. Bantoto, sought out his help in this case, he told them that they could hide in his (respondent lawyer's) parents' house in Ipil.^[9]

Respondent lawyer claimed that the cordial relationship he had had with Annaliza could be traced to her being the stepdaughter of his (respondent lawyer's) late uncle, and also to her having been his former student at the Western Mindanao State University in Zamboanga City. Respondent lawyer insisted that he was incapable of committing the misconduct imputed to him for three simple reasons to wit: because he is a good father to his three children, because he is a respected civic leader, and because he had never been the subject even of a complaint with the police. He claimed that complainant filed the instant complaint simply "to harass him from practicing his legitimate profession, and for no other reason."^[10]

Upon recommendation of the IBP-ZAMBASULTA Chapter Board, this case was forwarded to the Integrated Bar of the Philippines (IBP) Board of Governors (BOG) in April 26, 2007.^[11] And, in an Order dated August 2, 2007 this case was then consolidated with a similar case filed by the same complainant against the same respondent.^[12]

Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation,^[13] IBP Investigating Commissioner Dennis A. B. Funa (Investigating Commissioner) found respondent lawyer guilty of violating Rule 1.01 of the Code of Professional Responsibility and recommended his suspension from the practice of law for one (1) month.

The Investigating Commissioner noted that on the accusation that respondent lawyer had chased complainant in his motorcycle on February 17, 2007, this accusation had not been fully substantiated with convincing evidence. He opined that "there [was] doubt as to whether the incident did occur with the [respondent lawyer's] presence and participation. [Since] the motorcycles were moving fast and the parties were wearing helmets[, the] identity of respondent [lawyer] could not be [categorically] established."^[14]

The Investigating Commissioner likewise found no sufficient evidence to establish that respondent lawyer harassed complainant's sister.

However, the Investigating Commissioner found respondent lawyer to have acted inappropriately with Annaliza which created the appearance of immorality, viz.:

As can be gleaned from the records or the hearing, no categorical sexual activity took place between respondent and complainant's wife. One would need to inject a bit of imagination to create an image of something sexual. But as can be read, no sexual activity took place based on the witness' account.

However, it would be erroneous to conclude that respondent's behavior was in total and complete accord with how a lawyer should behave, particularly in the presence of a minor. Was respondent's behavior toward a woman, in the presence of her minor daughter of 11 years, proper and in keeping with the dignity of the legal profession? It is clear that there was impropriety on the part of respondent.

In *Tolosa v. Cargo* (A.M. No. 2385, March 8, 1989), the Court held that creating the appearance that a lawyer is flouting with moral standards is sanctionable. Thus, while the charge of immorality, viz[.], adulterous relationship, was not factually established, certain behavior of the respondent did not escape notice of the Court.

In this case, while sexual immorality was not established, respondent should be held to account for his inappropriate behavior which created the image or appearance of immorality especially in the presence of a minor girl. Respondent's act of lying in bed with another married woman, while he himself is a married man, in the presence of the woman's daughter could raise suspicions, as in fact it did. x x x.

Respondent should have been considerate of the feelings and perceptions of other people, particularly of minor children.^[15]

The Investigating Commissioner, thus, recommended respondent lawyer's suspension for one (1) month for violating Rule 1.01 of the Code of Professional Responsibility.

Report and Recommendation of the IBP-BOG

The IBP-BOG in its Resolution No. XIX-2011-302^[16] adopted and approved the findings and recommendation of the Investigating Commissioner.

Sometime in 2011, complainant's counsel Atty. Mario Frez (Atty. Frez) filed a Notice, Manifestation, and Motion for Withdrawal^[17] from this case, stating that complainant had passed away on June 12, 2011; and that he was not sure whether complainant's heirs were still willing to pursue the disbarment case against respondent lawyer since he has had no contact with the complainant since June 1,

2009; and he has had no information as to the whereabouts of complainant's heirs.

Notwithstanding the Motion for Withdrawal filed by Atty. Frez and considering the Motion for Reconsideration filed by the respondent lawyer in 2013, the IBP-BOG issued on June 21, 2013 a Resolution^[18] denying respondent lawyer's motion for reconsideration.

Pursuant to Section 12(c) of Rule 139-B of the Rules of Court, this case is before us for final action.

Our Ruling

We find substantial merit in the findings of facts of the IBP. And we reject respondent lawyer's highly implausible defense that the complainant filed the instant case for no other reason but simply "to harass him from practicing his legitimate profession."^[19] There is absolutely nothing in the record to support it.

It bears stressing that this case can proceed in spite of complainant's death and the apparent lack of interest on the part of complainant's heirs. Disciplinary proceedings against lawyers are *sui generis* in nature; they are intended and undertaken primarily to look into the conduct or behavior of lawyers, to determine whether they are still fit to exercise the privileges of the legal profession, and to hold them accountable for any misconduct or misbehavior which deviates from the mandated norms and standards of the Code of Professional Responsibility, all of which are needful and necessary to the preservation of the integrity of the legal profession. Because not chiefly or primarily intended to administer punishment, such proceedings do not call for the active service of prosecutors.^[20]

We first rule on the accusation relative to the chasing incidents. This Court agrees with the IBP's findings that the evidence presented by complainant upon this point was insufficient to establish the fact that respondent lawyer had committed the alleged acts against the complainant and his sister.

We now turn to the accusation in regard to the immoral acts claimed to have been committed by respondent lawyer with complainant's wife Annaliza. The issue to be resolved here is this: Did respondent lawyer in fact commit acts that are grossly immoral, or acts that amount to serious moral depravity, that would warrant or call for his disbarment or suspension from the practice of law?

"Immoral conduct" has been defined as that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community.^[21] This Court has held that for such conduct to warrant disciplinary action, the same must be "grossly immoral, that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree."^[22]

It is not easy to state with accuracy what constitutes "grossly immoral conduct," let alone what constitutes the moral delinquency and obliquity that renders a lawyer unfit or unworthy to continue as a member of the bar in good standing.^[23]