

## SECOND DIVISION

[ A.C. No. 8962, July 09, 2018 ]

**JILDO A. GUBATON, COMPLAINANT, VS. ATTY. AUGUSTUS  
SERAFIN D. AMADOR, RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

This administrative case arose from an affidavit-complaint<sup>[1]</sup> for disbarment filed by complainant Jildo A. Gubaton (complainant) against respondent Atty. Augustus Serafin D. Amador (respondent) on the ground of gross immoral conduct and/or immorality.

#### The Facts

Complainant alleged that respondent, a former Assistant Prosecutor at the City Prosecutor's Office in Malaybalay City, Bukidnon, was having an illicit romantic relationship with his wife, Ma. Bernadette R. Tenorio-Gubaton (Bernadette), since 2005 up to the present.<sup>[2]</sup>

He averred that it was in the early part of 2008, while working in the United States of America (USA), when he discovered the illicit relationship. Complainant and Bernadette's house helper informed him through a phone call that a man whom she knows to be "Fiscal Amador" often visits Bernadette. The house helper also told him that respondent spends nights at their house and stays with Bernadette in their bedroom. When complainant called Bernadette's dental clinic to verify the information, it was the secretary who took his call. Upon inquiry, the latter confirmed that respondent and Bernadette have been carrying on an illicit affair.<sup>[3]</sup>

Sometime in August 2009, complainant returned to the country. On his first night home, despite his pleas, Bernadette refused to lie and sleep with him; instead, she demanded that he sleep in another room, to which he acceded in order to avoid any argument. Since then, Bernadette has refused to sleep with him. Further, complainant discovered some birth-control pills and condoms in their house, in Bernadette's dental clinic, and in her handbag. When he confronted her about it, she merely denied ownership thereof. He also alleged that Bernadette wrote love letters/notes<sup>[4]</sup> to respondent, as in fact, one of these letters had the word "fiscal"<sup>[5]</sup> on it.<sup>[6]</sup>

Complainant likewise alleged that he personally saw respondent and Bernadette together in various places in Malaybalay City. At one instance, he saw them kissing while inside a vehicle; when he approached to confront them, respondent ran away.<sup>[7]</sup>

The illicit affair of respondent and Bernadette was known to other people as well. Complainant's sister, Nila Canoy,<sup>[8]</sup> told him about it during phone calls while he was still in the USA,<sup>[9]</sup> as narrated in her affidavit.<sup>[10]</sup> Likewise, Carlos Delgado (Delgado), Chief of Barangay Public Safety Office in Poblacion, Malaybalay City, and one Edgar Navarez (Navarez), an employee of the Bureau of Internal Revenue (BIR) and a resident of Casisang, Malaybalay City, knew of the affair and executed their respective affidavits<sup>[11]</sup> relative thereto.

In defense,<sup>[12]</sup> respondent denied all the allegations against him. He claimed that he was merely acquainted with Bernadette and they would only see each other on various occasions and social gatherings. He also denied the incident where complainant allegedly saw him and Bernadette kissing inside a vehicle.<sup>[13]</sup>

### **The IBP's Report and Recommendation**

After due proceedings, the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), through Commissioner Jose Alfonso M. Gomos (Commissioner Gomos), issued a Report and Recommendation<sup>[14]</sup> dated June 27, 2012 recommending the dismissal of the affidavit-complaint for insufficiency of evidence.

Commissioner Gomos found that the information supplied by complainant and Bernadette's house helper, Bernadette's clinic secretary, and complainant's sister, Nila, about the alleged illicit affair were purely hearsay. Likewise, the supposed love letters/notes offered in evidence did not prove that the same were written by Bernadette to respondent. Similarly, the affidavit executed by Delgado did not positively refer to respondent, while that of Navarez contained general statements of an affair between respondent and Bernadette.<sup>[15]</sup> As for the affidavit executed by Nila, the same is clearly biased in view of the latter's relationship with complainant.<sup>[16]</sup> Finally, with respect to the incident where complainant allegedly saw respondent and Bernadette kissing inside a vehicle and attempted to confront them, Commissioner Gomos found the same to be contrary to human experience, reasoning that an offended husband would be expected to do more than just confront them under the circumstances.<sup>[17]</sup>

In a Resolution<sup>[18]</sup> dated June 22, 2013, however, the IBP Board of Governors reversed the June 27, 2012 Report and Recommendation, and instead, suspended respondent from the practice of law for a period of two (2) years. Respondent moved for reconsideration,<sup>[19]</sup> which was denied in a Resolution 20 dated April 20, 2017.

### **The Issue Before the Court**

The sole issue for the Court's consideration is whether or not grounds exist to hold respondent administratively liable.

### **The Court's Ruling**

The Court concurs with the conclusion of the IBP Board of Governors that respondent should be held administratively liable with modification, however, as regards the penalty to be imposed.

It is fundamental that the quantum of proof in administrative cases is substantial evidence. Substantial evidence is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise.<sup>[21]</sup>

In this case, substantial evidence exist to prove complainant's claim that respondent had illicit affairs with Bernadette and hence, should be adjudged guilty of gross immorality.

As per complainant's own account, he actually saw respondent and Bernadette together on various intimate occasions. In fact, he attempted to confront them at one time when he saw them kissing inside a vehicle, although respondent was able to evade him.<sup>[22]</sup> The Court is inclined to believe that complainant's imputations against respondent are credible, considering that he had no ill motive to accuse respondent of such a serious charge – much more a personal scandal involving his own wife – unless the same were indeed true.

Complainant's statements were corroborated by the affidavit executed by Navarez, who works in BIR, Malaybalay City as a messenger and therefore, goes around the city in relation to his work. Navarez categorically stated that respondent and Bernadette have been carrying on an illicit affair while complainant was in the USA, and further averred that he had seen them together on different intimate occasions. He even saw them kissing each other at one instance.<sup>[23]</sup> Notably, it must be highlighted that Navarez is a neutral and disinterested witness and hence, his declarations deserve ample consideration.

Moreover, complainant's sister, Nila, described to complainant, while the latter was in the USA, how respondent would often visit Bernadette and spend the night in their residence, while she was still living with Bernadette and their children thereat. She narrated that Bernadette first introduced respondent to her as a "cousin" from Davao City. However, the two would often have lunch in the house and thereafter, respondent would even spend some time with Bernadette inside the latter's bedroom. Nila likewise recounted that whenever the two of them arrived home in one vehicle, they would kiss each other before alighting therefrom.<sup>[24]</sup>

In this relation, it may not be amiss to point out that complainant offered in evidence love letters/notes supposedly written by Bernadette to respondent to prove the existence of their illicit relationship. The authenticity of these love letters/notes, although not expressly shown to be written by Bernadette or received by respondent, were not refuted. Consequently, they lend credibility to complainant's claim.

Finally, it should be clarified that while the information supplied by complainant and Bernadette's house helper and Bernadette's clinic secretary about the alleged illicit affair constitute hearsay, the same should not be completely disregarded. Under the