

THIRD DIVISION

[A.C. NO. 7204, March 07, 2007]

CYNTHIA ADVINCULA, COMPLAINANT, VS. ATTY. ERNESTO M. MACABATA, RESPONDENT.

CHICO-NAZARIO, J.:

Before Us is a complaint^[1] for disbarment filed by Cynthia Advincula against respondent Atty. Ernesto M. Macabata, charging the latter with Gross Immorality.

Complainant alleged the following:

Sometime on 1st week of December 2004 complainant [Cynthia Advincula] seek the legal advice of the respondent [Atty. Macabata], regarding her collectibles from Queensway Travel and Tours. As promised, he sent Demand Letter dated December 11, 2004 (copy attached as Annex "I") to the concerned parties.

On February 10, 2005, met (sic) at Zensho Restaurant in Tomas Morato, Quezon City to discuss the possibility of filing the complaint against Queensway Travel and Tours because they did not settle their accounts as demanded. After the dinner, respondent sent complainant home and while she is about to step out of the car, respondent hold (sic) her arm and kissed her on the cheek and embraced her very tightly.

Again, on March 6, 2005, at about past 10:00 in the morning, she met respondent at Starbucks coffee shop in West Avenue, Quezon City to finalize the draft of the complaint to be filed in Court. After the meeting, respondent offered again a ride, which he usually did every time they met. Along the way, complainant was wandering (sic) why she felt so sleepy where in fact she just got up from bed a few hours ago. At along Roosevelt Avenue immediately after corner of Felipe St., in San Francisco Del Monte, Quezon City when she was almost restless respondent stopped his car and forcefully hold (sic) her face and kissed her lips while the other hand was holding her breast. Complainant even in a state of shocked (sic) succeeded in resisting his criminal attempt and immediately manage (sic) to go (sic) out of the car.

In the late afternoon, complainant sent a text message to respondent informing him that she decided to refer the case with another lawyer and needs (sic) to get back the case folder from him. The communications transpired was recorded in her cellular phone and read as follows:

Sent by complainant - forget the case. I
At 5:33:46 pm decided to refer it

replied by respondent - at 6:16:11 pm	- with other lawyer "does this mean I can not c u anymore" (Does this mean I cannot see you anymore)
sent by complainant - at 6:17:59 pm	- I feel bad. I can't expect that u will take advantage of the situation.
Follow-up message Sent by complainantAt 6:29:30 pm	- wrong to kiss a girl especially in the lips if you don't have relationship with her.
Replied by respondent At 6:32:43 pm	- "I'm veri sri. It's not tking advantage of the situation, 2 put it rightly it s an expression of feeling. S sri' (I'm very sorry. Its not taking advantage of the situation, to put it rightly it is an expression of feeling)
Follow up message by - respondentat 6:42:25 pm	- I'm s sri. Il not do it again. Wil u stil c me s I can show u my sincerity' (I'm so sorry. I'll not do it again. Will you still see me so I can show you my sincerity)

On the following day, March 7, 2005 respondent sent another message to complainant at 3:55:32 pm saying 'I don't know wat 2 do s u may 4give me. 'Im realy sri. Puede bati na tyo.ĩ½ (I don't know what to do so you may forgive me. I'm really sorry. Puede bati na tayo).

Respondent replied "talk to my lawyer in due time." Then another message was received by her at 4:06:33 pm saying "Ano k ba. I'm really sri. Pls. Nxt ime bhav n me." (Ano ka ba. I'm really sorry. Please next time behave na ko), which is a clear manifestation of admission of guilt.

[2]

In his answer,^[3] respondent admitted that he agreed to provide legal services to the complainant; that he met with complainant on 10 February 2005 and 6 March 2005, to discuss the relevant matters relative to the case which complainant was intending to file against the owners of Queensway Travel and Tours for collection of a sum of money; that on both occasions, complainant rode with him in his car where he held and kissed complainant on the lips as the former offered her lips to him; and, that the corner of Cooper Street and Roosevelt Avenue, where he dropped off the complainant, was a busy street teeming with people, thus, it would have been

impossible to commit the acts imputed to him.

By way of defense, respondent further elucidated that: 1) there was a criminal case for Acts of Lasciviousness filed by complainant against respondent pending before the Office of the City Prosecutor in Quezon City; 2) the legal name of complainant is Cynthia Advincula Toriana since she remains married to a certain Jinky Toriana because the civil case for the nullification of their marriage was archived pursuant to the Order dated 6 December 2000 issued by the Regional Trial Court of Maburao, Occidental Mindoro; 3) the complainant was living with a man not her husband; and 4) the complainant never bothered to discuss respondent's fees and it was respondent who always paid for their bills every time they met and ate at a restaurant.

A hearing was conducted by the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) at the IBP Building, Ortigas Center, Pasig City, on 26 July 2005.

On 30 September 2005, Investigating Commissioner Dennis A. B. Funa submitted his Report and Recommendation,^[4] recommending the imposition of the penalty of one (1) month suspension on respondent for violation of the Code of Professional Responsibility.

Thereafter, the IBP passed Resolution No. XVII-2006-117 dated 20 March 2006, approving and adopting, with modification, the recommendation of the Investigating Commissioner, thus:

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering the behavior of Respondent went beyond the norms of conduct required of a lawyer when dealing with or relating with a client, Atty. Ernesto A. Macabata is SUSPENDED from the practice of law for three (3) months.^[5]

The issue to be resolved in this case is: whether respondent committed acts that are grossly immoral or which constitute serious moral depravity that would warrant his disbarment or suspension from the practice of law.

Simple as the facts of the case may be, the manner by which we deal with respondent's actuations shall have a rippling effect on how the standard norms of our legal practitioners should be defined. Perhaps morality in our liberal society today is a far cry from what it used to be. This permissiveness notwithstanding, lawyers, as keepers of public faith, are burdened with a high degree of social responsibility and, hence, must handle their personal affairs with greater caution.

The Code of Professional Responsibility provides:

CANON I - x x x

Rule 1.01-- A lawyer shall not engage in unlawful, dishonest, immoral or

deceitful conduct.

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 shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

As may be gleaned from above, the Code of Professional Responsibility forbids lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct.

Lawyers have been repeatedly reminded that their possession of good moral character is a continuing condition to preserve their membership in the Bar in good standing. The continued possession of good moral character is a requisite condition for remaining in the practice of law.^[6] In *Aldovino v. Pujalte, Jr.*,^[7] we emphasized that:

This Court has been exacting in its demand for integrity and good moral character of members of the Bar. They are expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession. Membership in the legal profession is a privilege. And whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of the public, it becomes not only the right but also the duty of this Court, which made him one of its officers and gave him the privilege of ministering within its Bar, to withdraw the privilege.

It is the bounden duty of lawyers to adhere unwaveringly to the highest standards of morality. The legal profession exacts from its members nothing less. Lawyers are called upon to safeguard the integrity of the Bar, free from misdeeds and acts constitutive of malpractice. Their exalted positions as officers of the court demand no less than the highest degree of morality.^[8] We explained in *Barrientos v. Daaro*^[9] 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 and leading lives in accordance with the highest moral standards of the community."

Lawyers are expected to abide by the tenets of morality, not only upon admission to the Bar but also throughout their legal career, in order to maintain their good standing in this exclusive and honored fraternity. They may be suspended from the practice of law or disbarred for any misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor.^[10]

In *Bar Matter No. 1154*,^[11] **good moral character** was defined as what a person really is, as distinguished from good reputation, or from the opinion generally entertained of him, or the estimate in which he is held by the public in the place where he is known. Moral character is not a subjective term but one which

corresponds to objective reality.

It should be noted that the requirement of good moral character has four ostensible purposes, namely: (1) to protect the public; (2) to protect the public image of lawyers; (3) to protect prospective clients; and (4) to protect errant lawyers from themselves.^[12]

In the case at bar, respondent admitted kissing complainant on the lips.

In his Answer,^[13] respondent confessed, thus:

27. When she was about to get off the car, I said can I kiss you goodnight. She offered her left cheek and I kissed it and with my left hand slightly pulled her right face towards me and kissed her gently on the lips. We said goodnight and she got off the car.

x x x x

35. When I stopped my car I said okay. I saw her offered (sic) her left cheek and I lightly kissed it and with my right hand slightly pulled her right cheek towards me and plant (sic) a light kiss on her lips. There was no force used. No intimidation made, no lewd designs displayed. No breast holding was done. Everything happened very spontaneously with no reaction from her except saying "sexual harassment."

During the hearing held on 26 July 2005 at the 3rd floor, IBP Building, Dona Julia Vargas Avenue, Ortigas City, respondent candidly recalled the following events:

ATTY. MACABATA:

That time in February, we met ... I fetched her I should say, somewhere along the corner of Edsa and Kamuning because it was then raining so we are texting each other. So I parked my car somewhere along the corner of Edsa and Kamuning and I was there about ten to fifteen minutes then she arrived. And so I said ... she opened my car and then she went inside so I said, would you like that we have a Japanese dinner? And she said yes, okay. So I brought her to Zensho which is along Tomas Morato. When we were there, we discussed about her case, we ordered food and then a little while I told her, **would it be okay for you of I (sic) order wine? She said yes so I ordered two glasses of red wine.** After that, after discussing matters about her case, so I said ... it's about 9:00 or beyond that time already, so I said okay, let's go. So when I said let's go so I stood up and then I went to the car. I went ahead of my car and she followed me then she rode on (sic) it. So I told her where to? She told me just drop me at the same place where you have been dropping me for the last meetings that we had and that was at the corner of Morato and Roosevelt Avenue. So, before she went down, I told her can I kiss you goodnight? She offered her left cheek and **I kissed it and with the slight use of my right hand, I ... should I say tilted her face towards me**