

## EN BANC

[ A.C. NO. 7214, November 30, 2006 ]

**AILEEN A. FERANCULLO, COMPLAINANT, VS. ATTY. SANCHO M. FERANCULLO, JR., RESPONDENT.**

### DECISION

**TINGA, J.**

*Tell the truth and shame the Devil  
Shakespeare-Henry IV, Part I, III-1*

Before the Court is an administrative complaint for disbarment filed by Aileen Ferancullo (petitioner) against Atty. Sancho M. Ferancullo, Jr. (respondent) grounded on his alleged commission of estafa, bigamy and violation of the lawyer's oath. Both parties have starkly contrasting stories to tell. Hence, the necessity of presenting both versions.

In a verified complaint dated December 17, 2004,<sup>[1]</sup> complainant narrated how respondent allegedly took advantage of their attorney-client relationship to extort money from her in consideration of the out-of-court settlement of her criminal cases and deceived her into marrying him by concealing his previous marriage.

Her complaint-affidavit narrated that sometime in February 2004, a certain SPO1 Lino Taytay referred her to respondent as she was in need of legal aid concerning a string of complaints for estafa filed against her. They allegedly agreed to a monthly retainer fee of P10,000.00 in consideration for respondent's legal services; the first payment thereof made in the same month of February at her residence in Central Park Condominium, Pasay City. Respondent purportedly advised complainant to stay for the meantime at his office located at GF-7, Elenel Apt., 2243 Luna corner Mabolo Sts., Pasay City, to avoid arrest and to keep her safe from the people suing and threatening her. He allegedly went to the extent of sending his cousin, Felix Reyes, to fetch complainant from her residence. At night, complainant and respondent, together with the latter's office staff, went out for dining and relaxation.<sup>[2]</sup>

Complainant recounted further that respondent prodded her to move into a more secure location, the Youth and Student Travel Association of the Philippines in Parañaque.<sup>[3]</sup> That allegedly became the start of his courtship. Complainant averred that respondent would send her breakfast and flowers. When asked about his personal circumstances, respondent supposedly told complainant that he was still single although he had a child out of wedlock. Complainant also maintained that she saw no apparent indications suggesting that respondent was married.<sup>[4]</sup>

As indicative of their romantic relationship, respondent and complainant allegedly traveled to different places. According to complainant, respondent took her to Antipolo to meet his relatives and to Mindoro to attend the birthday celebration of

his mother. They also purportedly went to Cebu City to meet complainant's eldest child.<sup>[5]</sup>

Complainant claimed that in the beginning, respondent diligently attended to her cases and advised her not to appear at the hearings before the Office of the Prosecutor, assuring her that he would attempt at a compromise agreement with the adverse parties. For this purpose, between February and July 2004, complainant purportedly entrusted to respondent varying amounts of money totaling Four Hundred Thirty One Thousand Pesos (P431,000.00) based on his assurance that her cases merely involved money claims which can be settled amicably. Complainant claimed that she had to ask this amount from her parents. Complainant did not ask from respondent for any receipt evidencing the transaction.<sup>[6]</sup>

Complainant further alleged that she and respondent moved to a unit at Parrison Tower at F.B. Harrison, Pasay City sometime in April 2004, where they started living together as husband and wife. The unit was purportedly owned by a client of respondent who agreed to offset the amount of rental with the legal fees due him.<sup>[7]</sup>

To corroborate her allegation that they lived together as husband and wife, complainant annexed to her complaint-affidavit five (5) photographs, three of which show intimate poses of complainant and respondent.<sup>[8]</sup> Complainant also recounted that during respondent's birthday celebration held on May 28, 2004 at the rooftop of the Parrison Tower, he supposedly introduced complainant as his wife to his guests.<sup>[9]</sup> Complainant attached a VCD copy documenting the event to her reply to respondent's answer.<sup>[10]</sup> As averred, at the start of the video, complainant can be seen entertaining the guests and overseeing the food preparation. Early in the party, complainant's three children arrived. While respondent was walking around and entertaining the guests, complainant stood behind the buffet table supervising last minute preparation before the food was served. As the guests started to get food from the buffet table, complainant approached respondent. Respondent placed his hand on the hips of complainant while the latter whispered at him. All throughout the video, complainant was either standing behind the buffet table or conversing with respondent and the guests.

Complainant found out that she was pregnant sometime in June 2004. On August 4, 2004, complainant and respondent allegedly wed in a rite solemnized in Kawit, Cavite.<sup>[11]</sup> In support of this averment, complainant annexed to the complaint a photocopy of the marriage certificate.<sup>[12]</sup>

Two (2) months thereafter, in a casual conversation with a certain Teresita Santos, another client of respondent, Santos told complainant that respondent was already married to a certain Marlin M. Maranan. Complainant then confronted respondent who allegedly admitted that he was married but assured complainant that he was ready to leave his wife so that they can be together. The relationship between complainant and respondent turned sour eventually leading to their separation.<sup>[13]</sup>

Complainant sought assistance from the Integrated Bar of the Philippines (IBP). In a letter dated 14 October 2006, Atty. Romarico Ayson sent a demand letter to respondent, urging the latter to shoulder complainant's hospitalization until her delivery and provide monthly support for the child in the amount of Thirty Thousand

Pesos (P30,000.00) thereafter.<sup>[14]</sup>

Complainant averred that since their separation, respondent and his agents had been threatening her with arrest and lawsuits. She also discovered that the criminal complaints remained pending filed against her with the Office of the Prosecutor. She claimed that respondent himself had been exerting efforts so that the criminal complaints against her would proceed.<sup>[15]</sup>

In compliance with the IBP Order dated 6 January 2005, respondent filed an answer,<sup>[16]</sup> denying the allegations that he committed estafa, maintained an illicit relationship and contracted a bigamous marriage with complainant. While admitting that complainant sought his legal services in connection with the latter's cases for estafa and illegal recruitment pending before the Office of the Prosecutor, respondent insisted that his relationship with complainant was purely professional. In particular, he claimed that the purpose of his visits to complainant's residence was to show her court orders issued in relation to her cases. He also averred that it was complainant who sought refuge in his office and invited him and his legal staff for dinners to discuss her cases.<sup>[17]</sup>

Respondent maintained that complainant insisted on skipping the scheduled hearings before the Office of the Prosecutor. He also denied receiving P431,000.00 from complainant, arguing that on the alleged dates of payments, he was out for court appearances.<sup>[18]</sup> He admitted going to Cebu City upon the behest of complainant who shouldered all his expenses, but the visit was only for the purpose of discussing the cases with complainant's parents.<sup>[19]</sup> Respondent denied meeting complainant's eldest child in Cebu City and all the other alleged trips they took together.<sup>[20]</sup>

Respondent likewise denied courting complainant asserting that the latter had already known since February 2004 that he was married.<sup>[21]</sup> He claimed to be happily married to his legal wife. He denied living in together with complainant or providing a residence for complainant. According to him, complainant vacated her residence at Central Park Condominium, Pasay City because her lease application was denied.<sup>[22]</sup> While he admitted that the unit at Parrison Tower at F.B. Harrison, Pasay City belonged to his client, respondent insisted that his relatives had been occupying the same since March 2004, thus making it impossible for complainant to have transferred to said unit in April 2004.<sup>[23]</sup>

Respondent described as contrary to human experience the allegation of complainant that he introduced her as his wife during his birthday celebration on 28 May 2004, where his brothers and sisters were also present. To support this claim, he submitted the affidavits of fifteen guests in his party, stating that respondent did not introduce complainant as his wife.<sup>[24]</sup>

Respondent also denied that a marriage celebration between him and complainant took place on 4 August 2004 or that he signed the marriage certificate and or that he got her pregnant. He had already instituted corresponding criminal complaints against complainant for the alleged falsification of his signature in the marriage certificate. Respondent claimed that complainant was extorting money from him,

hence the filing of the administrative complaint.<sup>[25]</sup>

Complainant submitted a Reply<sup>[26]</sup> to respondent's answer to rebut his allegations. Annexed to her reply were receipts of payments on utilities to prove that she actually lived at Parrison Tower and a VCD copy showing the video clip of respondent's birthday celebration held on 28 May 2004. Complainant and respondent also filed their respective position papers. In addition, complainant filed a Manifestation and Reply with the following annexes: (1) a blue polo barong and pants allegedly worn by respondent during his birthday celebration on 28 May 2004; (2) the original bank statement reciting the deposits made by complainant's parents of the amount of P431,000.00;<sup>[27]</sup> (3) the original passbook in the names of complainant and respondent;<sup>[28]</sup> and (4) the certified xerox copy from the original of their marriage contract.<sup>[29]</sup>

In response thereto, respondent moved to expunge from the records the annexes to complainant's Manifestation and Reply<sup>[30]</sup> on the ground that he was not furnished a copy of said annexes and that the Manifestation and Reply was an unsigned pleading. Complainant filed an opposition thereto.<sup>[31]</sup>

On 20 January 2006, the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) issued its Report and Recommendation to dismiss the complaint against respondent for lack of merit. The IBP Board of Governors adopted and approved said Report and Recommendation in a Resolution<sup>[32]</sup> dated 20 March 2006, finding the recommendation to be fully supported by the evidence on record and the applicable laws and rules, and considering that the complaint lacked merit. The IBP believed that the complainant failed to present a clear, convincing and satisfactory proof to warrant the disbarment or suspension of respondent. The IBP also ruled that the pictures and VCD not having been duly authenticated could not be received in evidence.

As is usual in cases of this nature, the adverse parties presented conflicting versions. The duty to examine the claims and counterclaims and the evidence to support them ideally lies with the IBP, but in the instant case, its evaluation leaves much to be desired.

Despite the numerous factual allegations presented by both parties and the affidavits and documents to support them, the IBP made only a general conclusion that complainant must be motivated by greed in filing the instant administrative complaint. Thus, the Court reviewed the records.

In administrative proceedings, the complainant has the burden of proving, by substantial evidence, the allegations in the complaint. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.<sup>[33]</sup> For the Court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.<sup>[34]</sup>

Contrary to the IBP's opinion, there is a preponderance of evidence that respondent maintained an illicit relationship with complainant who was not his legal wife. It also appears that respondent contracted a second marriage with complainant as evidenced by their marriage certificate.

The best proof of marriage between man and wife is a marriage contract.<sup>[35]</sup> Section 7 of Rule 130 of the Rules of Court reads as follows:

*Sec. 7. Evidence admissible when original document is a public record.*—  
When the original of a document is in the custody of a public officer or is recorded in a public office, its contents may be proved by a certified copy issued by the public officer in custody thereof.

The certified copy of the marriage contract, issued by a public officer in custody thereof, was admissible as the best evidence of its contents.<sup>[36]</sup> The marriage certificate plainly indicates that a marriage was celebrated between respondent and complainant on 4 August 2004, and it should be accorded the full faith and credence given to public documents. The marriage certificate should prevail over respondent's claim that the marriage certificate or his signature therein was falsified. The rule is that a notarized document carries the evidentiary weight conferred upon it with respect to its due execution, and documents acknowledged before a notary public have in their favor the presumption of regularity.<sup>[37]</sup>

Respondent contends that the certified true copy of the marriage contract should be expunged from the records because he was not furnished a copy thereof and the Manifestation and Reply to which it was annexed was an unsigned pleading. The records show otherwise. A copy of said marriage certificate, denominated as Annex "G," accompanied the initiatory complaint filed before the IBP and furnished to respondent. In fact, respondent admitted in paragraph 61 of his answer that he received a copy of the marriage contract.<sup>[38]</sup> A copy of complainant's Manifestation and Reply, to which a certified true copy of the questioned marriage certificate was annexed, was also sent by registered mail to the IBP.

The proscription against unsigned pleadings laid down in Section 3, Rule 7 of the Rules of Court is not applicable in the instant case. In view of its nature, administrative proceedings against lawyers are not strictly governed by the Rules of Court. As we held in *In re Almacen*, a disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers.<sup>[39]</sup> Hence, an administrative proceeding continues despite the desistance of a complainant, or failure of the complainant to prosecute the same.<sup>[40]</sup> Moreover, no defect in a complaint, notice, answer, or in the proceeding or the Investigator's Report shall be considered as substantial unless the Board of Governors, upon considering the whole record, finds that such defect has resulted or may result in a miscarriage of justice.<sup>[41]</sup> That the copy of the Manifestation and Reply furnished to respondent was not signed by either complainant or her counsel is merely an innocuous error. In any case, the copy thereof forming part of the IBP records was signed by complainant.

All told, the Court finds that complainant's version is more credible, with the caveat that the Court is not accepting hook line and sinker every allegation of complainant. There is substantial evidence suggesting that more than a business or professional