

EN BANC

[A.M. No. P-02-1651 (FORMERLY OCA IPI No. 00-1021-P), August 14, 2003]

ALEJANDRO ESTRADA, COMPLAINANT, VS. SOLEDAD S. ESCRITOR, RESPONDENT.

BELLOSILLO, J.:

SEPARATE OPINION*

Two roads diverged in a wood, and I
I took the one less traveled by
And that has made all the difference.
- Robert Frost, "The Road Not Taken"

BELLOSILLO, J.:

With due respect to my very gracious colleague, Mme. Justice Consuelo Ynares-Santiago, I beg to disagree with the majority view espoused by her. This is an exceptional case calling for an extraordinary solution, hence, the wise foreboding "not to go where the path leads; rather, go where there is no path, and blaze a trail!"

Indeed, it would have been too easy and convenient - for those who are not familiar with the whole story of this case - to conclude at first blush that immorality is present and penalty is its just reward; for the fabulous fans of the tide, their inference would not have had any better foundation. But in the proper context in which the events complained of transpired, we cannot avoid being drawn to the conclusion that respondent Soledad S. Escritor should be absolved of the administrative charge against her for there is absolutely nothing from her actuations that would constitute disgraceful or immoral conduct.

Contrary to some impressions, the core of complainant's factual allegations occurred long before respondent joined the judiciary in 1999. She was a widow *capacitated* to marry when she was appointed court interpreter. Her status as "*separada*" who had been faithfully, devotedly and peacefully taking good care of her family - her partner and their twenty-two (22) year old son - was sanctified as early as 1991 by the Jehovah's Witnesses, the religious group to which she and her family belonged, a period of almost ten (10) years before she was employed as court interpreter and before the instant complaint against her was filed in the year 2000. Indeed, in light of these facts, what better institution is there to judge her morality than her own church; what business does the government have to judge her conduct that is not criminal in nature nor destructive of her efficiency in the service? This is the pith and soul of what may be referred to as "a lonely voice in the wilderness."

For emphasis, respondent was already a widow when she joined the judiciary in

1999 as court interpreter of RTC-Br. 253, Las Piñas City. At that time she was legally free to marry her partner of more than twenty (20) years, one Feliciano D. Quilapio Jr., who has been her family ever since her husband Joselito V. de Torres, now deceased, abandoned her for another woman in 1979. Unfortunately it is Feliciano who remains incapacitated to exchange vows with respondent since his wife from whom he had been separated *de facto* even before he and Soledad fell in love with each other, is still alive and their marriage subsisting in the cold eyes of the law. These legal complications however vanished in the stream of care, understanding and love as they bore their first and only child, now twenty-two (22) years of age, in a family that each never had in their past marriages.

Respondent and her *de facto* husband belong to the church known as Jehovah's Witnesses. According to their congregation, the informal conjugal partnership between them has been characterized by faithfulness and devotion to each other for more than two (2) decades. On 28 July 1991, with the proper inspiration and guidance of their spiritual leaders in Atimonan, Quezon, where they were then residing before their transfer to Metro Manila, Soledad and Feliciano voluntarily executed a document called "*Declaration Pledging Faithfulness*," conformably with their religious practice and with the sanction of their respected elders in the Jehovah's Witnesses who acted willingly as their witnesses. In this document they confirmed the presence of legal impediments to their marrying each other but nonetheless promised to remain loyal and committed to one another at all times as they sought all avenues to obtain legal recognition of their union by civil authorities.

[1]

As the record also shows, the "*Declaration Pledging Faithfulness*" was issued only after an exhaustive investigation of the personal circumstances of respondent and her partner Feliciano while they were still residents of Atimonan, Quezon, approximately more than two hundred (200) kilometers away from Las Piñas City where respondent was eventually employed. The religious document was not given out perfunctorily and indiscriminately. It was executed in their favor and released to them only after some ten (10) years of faithful and uneventful cohabitation, as well as close monitoring and observation, and long before the instant complaint was filed.

On 22 August 2000 respondent was charged with the administrative offense of "*Disgraceful and Immoral Conduct*," a grave offense under the *Omnibus Civil Service Rules and Regulation*, by a total stranger in her life and place of work. Complainant is a resident of Bacoor, Cavite, while respondent's place of work is in Las Piñas City. Quite obviously, the sudden spark of "moral conscience" on the part of complainant Alejandro Estrada was stage-managed by an "unseen hand" against whom respondent had earlier filed an administrative complaint; hitting back, in other words.

A total outsider and a mere kibitzer in the "war" between respondent and the "unseen hand," complainant confessed that he had nothing personal against respondent whom he did not even know, much less acquainted with, but simply wanted allegedly to protect the court from the embarrassment of having to "employ a person of questionable moral standards." Significantly, while accusing her of *disgraceful and immoral conduct*, complainant admitted that respondent was a "decent woman."^[2] All told, the accusation is a fiddle and a ruse meant to impress all and sundry into believing that strangers and people in general have become

"moral crusaders without compassion" - a simply silly thought in the midst of awry moral priorities and rampant rent-seeking incredibly tolerated in our society. The succeeding paragraph apparently shows the bias and prejudice of respondent's presiding judge against her.

On 9 October 2000 respondent moved for the inhibition of the presiding judge of RTC-Br. 253, Las Piñas City, whom she accused of partiality due to the administrative complaint she had filed against him with the Office of the Court Administrator. In her perception, complainant Estrada was only a dummy of her presiding judge who, quite interestingly, was himself the subject of two (2) administrative cases for "*acts of serious impropriety unbecoming a judge*"^[3] and for "*gross ignorance of procedural law and unreasonable delay in the issuance of an order for the execution of a civil judgment.*"^[4] But the presiding judge denied the motion for his inhibition reasoning out that the mere filing of an administrative complaint against him by respondent did not disqualify him from hearing the case.

On 12 October 2000 respondent was able to confront her accuser as their respective testimonies were taken one after the other. Curiously, the presiding judge volunteered to act as counsel, as he did, for Soledad Escritor when the latter manifested that she had no lawyer who could take her direct testimony, (a seemingly improper procedure considering that he is the respondent in the other administrative case filed by respondent herein against him), thus leaving to his discretion the details of respondent's defense that went on record. Respondent judge in fact propounded the direct questions on respondent Escritor.

On 7 November 2000 the presiding judge endorsed the complaint along with respondent's answer thereto and the transcript of the initial proceedings to Executive Judge Manuel B. Fernandez Jr. of RTC, Las Piñas City, who on 13 November 2000 in turn transmitted the records to the Office of the Court Administrator for proper disposition.

On 17 July 2001 we ordered respondent Escritor to comment on the *letter-complaint* of Estrada, which she promptly did. On 22 January 2002 Executive Judge Bonifacio Sanz Maceda, RTC, Las Piñas City, was directed by the Court Administrator to investigate the *letter-complaint* and to submit his report and recommendation thereon within sixty (60) days from receipt of the records.

The parties presented their respective witnesses and documents on three (3) hearing dates where the offer of evidence apparently revolved around Judge Maceda's formulation of the issue, i.e., whether to exact from respondent Escritor the moral standards of the Catholic faith in determining her administrative responsibility when she is a member of the Jehovah's Witnesses.^[5] In the investigation *a quo*, respondent proved the due execution and authenticity of the "*Declaration Pledging Faithfulness.*"

On 1 July 2002 Judge Maceda rendered his *Report and Recommendation* absolving respondent of the charge of immorality on the ground that her relationship has been well-accepted by the religious sect to which she and her partner adhered.

Indeed, it is not quite possible to state with precision and fix an inflexible standard for the administrative offense of *disgraceful and immoral conduct*, or to specify the

moral delinquency and obliquity that should render employees of the judiciary unworthy of the public trust. Immorality covers a multitude of sins and it may be doubted whether there are in the entire civil service many persons so saintly as never to have done any act which is disapproved by the prevailing mores of our society.^[6] Truly, while in the opinion of many, laziness, gluttony, vanity, selfishness, avarice and cowardice constitute in themselves immoral conduct, moral guardians get around or avoid punishing them tangibly.

To find merit in a charge of *disgraceful and immoral conduct* is therefore a sensitive task, especially so when considered against the gravity of the offense and penalty attached to it by law^[7] together with the social consequence of ascribing a "*badge of infamy*," so to speak, that disqualifies the respondent from any further employment, including prospects of private employment, which stamps the stigma of official defamation of character.^[8] To say the least, we must be careful when delineating the fine line separating the simply obnoxious or unconventional behavior from the genuinely actionable conduct meriting administrative discipline.

"*Disgraceful and immoral conduct*" is never considered in the abstract but always in the context of conduct that is hostile to the welfare of a particular profession or the specific governmental position to which the alleged disgraceful and immoral employee belongs.^[9] To some degree the determination of disgracefulness and immorality must depend upon the nature of the acts, the circumspection or notoriety with which they are performed and the atmosphere of the community, i.e., the standards of the general public and not some higher standard,^[10] in which they take place.^[11] As explained in *Morrison v. State Board of Education* -

By interpreting these broad terms to apply to the employee's performance on the job, the decisions x x x give content to language which otherwise would be too sweeping to be meaningful. Terms such as "immoral or unprofessional conduct" or "moral turpitude" stretch over so wide a range that they embrace an unlimited area of conduct. In using them the Legislature surely did not mean to endow the employing agency with the power to dismiss any employee whose personal, private conduct incurred its disapproval. Hence the courts have consistently related the terms to the issue of whether, when applied to the performance of the employee on the job, the employee has disqualified himself.^[12]

This understanding is crucial because our jurisprudence defines *disgraceful* and *immoral conduct* as "*that which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community*,"^[13] none of which is true in this case, and the *Constitution* recognizes our multi-cultural experience and decrees a principle of *unity in diversity*. As the definition poignantly suggests, a charge of *disgraceful and immoral conduct* does not depend solely upon the character of the protested act or series of acts but must include a holistic evaluation of the circumstances obtaining in each case.^[14]

Even this Court's oft-repeated justification for penalizing disgraceful and immoral conduct does not treat the questioned action in isolation nor chastises it for its own sake, but instead refers to the tendency of the allegedly disgraceful and immoral conduct to discredit either the employee himself or the service. Verily, in appropriate cases, private morality can be isolated from the circumscription of the public sphere

where respondent's moral lapses do not prove prejudicial to the service.^[15]

Given the foregoing standard by which to judge a particular conduct as *disgraceful and immoral*, Executive Judge Bonifacio Sanz Maceda of RTC, Las Piñas City, as investigating Judge was correct when he reduced the issue in this case to whether the moral standards of the Catholic faith, to which a great majority of us belongs, must be exacted of respondent in determining her administrative responsibility when she is a member of the Jehovah's Witnesses, and recommended the absolution of respondent of the charge of *disgraceful and immoral conduct* on the ground that her relationship has been well-accepted by the religious sect to which she and her partner adhered. But even if we do apply the standards of the Catholic faith to non-Catholics, although we should not, Judge Maceda's recommendation to free respondent from any culpability is clearly justified as respondent's actuation is not, nor is it even hinted at that it is, prejudicial to the service.

None can honestly posit, much less assert, that respondent is guilty of *disgraceful and immoral* conduct in the sense that she had done something *willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community* in a manner prejudicial to the service. For one, punishing Soledad Escritor by any kind of penalty will not solve or prove anything because she stands to be harassed and penalized again and again every time somebody dislikes her face, as her situation will inevitably continue until we direct them to break up their church-sanctioned relationship, which we are not prepared to do for being cruel and unusual.

The alternative is not any better. This Court might be dissolving a strong and peaceful family of more than two (2) decades and, in the extreme case, deprive respondent of livelihood from which to feed herself and her family. At bottom, if we are to uphold the complaint, we will be breaking up an otherwise ideal union of two (2) individuals who have managed to stay together as husband and wife for more than twenty (20) years and at peace with the world as solemnly attested to by the Jehovah's Witnesses to which they belong. And what happens to their son born of their happy union? Certainly, it will adversely affect him in his interaction with his friends and neighbors. This, in all conscience, Christians cannot countenance.

Moreover, there is simply nothing *disgraceful and immoral* in respondent's decision to pursue her happiness, and perhaps security, after her lawful husband abandoned her for another woman. She did not forsake any child nor desert her household. It was her philandering husband who left her for another woman. To paraphrase Judge Learned Hand, Soledad was not obligated to live in complete celibacy otherwise forfeit her claim to good moral character.^[16] There ought to be a better order of moral priorities to avoid the perceived fixation on sex where a person may have impeccable sexual standards - or indeed be celibate - and yet steal.

To be sure, there are matters that are best left to the conscience and the moral beliefs of an individual, and matters of which public law may take cognizance. Obviously, while the latter pertains to matters affecting society and public life, not every "*irregular union*" constitutes immorality that is actionable under administrative law. Consider this: a Catholic who obtains a decree of nullity from his church would be available to remarry by the norms and precepts of his faith and moral standards. Before civil law, however, his marriage would be bigamous. The second union may