

EN BANC

A.C. No. 9459 – RENE HIERRO, *Complainant*, v. ATTY. PLARIDEL C. NAVA II, *Respondent*.

Promulgated:

January 7, 2020

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SEPARATE CONCURRING OPINION

LEONEN, J.:

I fully agree with the majority that respondent Atty. Plaridel C. Nava II should be disbarred. However, I take this opportunity to reiterate a fine point.

Rule 138, Section 27 of the Rules of Court provides that grossly immoral conduct may disbar a misbehaving lawyer:

Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* — A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, *grossly immoral conduct*, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphasis supplied)

This finds reinforcement in Canon 7, Rule 7.03 of the Code of Professional Responsibility, which states:

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 a ground for disbarment, gross immorality requires a nuanced analysis of our collective notions of morality, the prevailing reality of relationships and families, and the particular circumstances of each case.

In *Perfecto v. Judge Esidera*,¹ this Court discussed how morality is understood in our jurisdiction:

Morality refers to what is good or right conduct at a given circumstance. In *Estrada v. Escritor*, this court described morality as “how we ought to live and why.”

Morality may be religious, in which case what is good depends on the moral prescriptions of a high moral authority or the beliefs of a particular religion. Religion, as this court defined in *Aglipay v. Ruiz*, is “a profession of faith to an active power that binds and elevates man to his Creator.” A conduct is religiously moral if it is consistent with and is carried out in light of the divine set of beliefs and obligations imposed by the active power.

Morality may also be secular, in which case it is independent of any divine moral prescriptions. What is good or right at a given circumstance does not derive its basis from any religious doctrine but from the independent moral sense shared as humans.

The non-establishment clause bars the State from establishing, through laws and rules, moral standards according to a specific religion. Prohibitions against immorality should be based on a purpose that is independent of religious beliefs. *When it forms part of our laws, rules, and policies, morality must be secular. Laws and rules of conduct must be based on a secular purpose.*² (Emphasis supplied, citations omitted)

Secular standards, independent of religious beliefs, must be the basis for determining immorality. After all, this Court does not have the jurisdiction to weigh in on religious doctrine.³

Lawyers are held to exacting standards as court officers. Disciplinary proceedings against them serve to curb misbehavior and promote excellent public service in the Judiciary. Thus, what constitutes gross immorality is conduct that severely erodes public trust in the rule of law.⁴ The behavior that is penalized “must be so gross as to be ‘willful, flagrant, or shameless,’ so much so that it ‘shows a moral indifference to the opinion of the good and respectable members of the community.’”⁵ In a previous case, I opined:

Grossly immoral conduct must be an act that is “so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.”

¹ 764 Phil. 384 (2015) [Per J. Leonen, Second Division].

² Id. at 397–398.

³ Id. at 399.

⁴ Id.

⁵ J. Leonen, Separate Opinion in *Tumbaga v. Teoxon*, A.C. No. 5573, November 21, 2017, 845 SCRA 415, 439 [Per J. Leonardo-De Castro, En Banc].

There is no fixed formula to define what constitutes grossly immoral conduct. The determination depends on the circumstances. In *Arciga v. Maniwang*:

It is difficult to state with precision and to fix an inflexible standard as to what is “grossly immoral conduct” or to specify the moral delinquency and obliquity which render a lawyer unworthy of continuing as a member of the bar. The rule implies that what appears to be unconventional behavior to the straight-laced may not be the immoral conduct that warrants disbarment.

.....

There is an area where a lawyer’s conduct may not be in consonance with the canons of the moral code but he is not subject to disciplinary action because his misbehavior or deviation from the path of rectitude is not glaringly scandalous. It is in connection with a lawyer’s behavior to the opposite sex where the question of immorality usually arises. Whether a lawyer’s sexual congress with a woman not his wife or without the benefit of marriage should be characterized as “grossly immoral conduct” will depend on the surrounding circumstances.⁶ (Citations omitted)

The State must not excessively intrude into the personal relationships of lawyers to the extent that it *unduly* affects their professional standing. Marital indiscretion by itself is insufficient to strip one’s license to practice law. To sensibly implement our notion of secular morality is to reckon with the prevailing realities of how marriage works, and not dwell on its idealized versions.

In previous cases, I opined that, generally, complaints for immorality should not be entertained unless initiated by the victims in each case.⁷ I proposed the following guidelines in *Anonymous Complaint v. Dagala*:⁸

If at all, any complaint for immorality should not be entertained except when it is commenced by its victims. That is, the betrayed spouse, the paramour who has been misled, or the children who have to live with the parent’s scandalous indiscretions.

I accept that in some cases, especially where there is some form of violence against women and children within the families affected, it would be difficult for the victims to come forward. It should only be then that a third party’s complaint may be entertained. The third party must show that it acts for the benefit of the victims, not as a means to cause more

⁶ Id. at 439–440.

⁷ See J. Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103 (2017) [Per Curiam, En Banc]; J. Leonen, Dissenting Opinion in *Sabillo v. Atty. Lorenzo*, A.C. No. 9392, December 4, 2018, [Per Curiam, En Banc]; and J. Leonen, Concurring and Dissenting Opinion in *Ceniza v. Atty. Ceniza, Jr.*, A.C. No. 8335, April 10, 2019, <<http://elibrary.judiciary.gov.ph/thebookshelf/showdocs/1/65158>> [Per Curiam, En Banc].

⁸ 814 Phil. 103 (2017) [Per Curiam, En Banc].

harm on them. Furthermore, the inability of the victims must be pleaded and proven.

....

I appreciate the ponente's acknowledgment that "immorality only becomes a valid ground for sanctioning members of the Judiciary when the questioned act challenges his or her capacity to dispense justice." This affirms this Court's principle that our jurisdiction over acts of lawyers and judges is confined to those that may affect the people's confidence in the Rule of Law. There can be no immorality committed when there are no victims who complain. And even when they do, it must be shown that they were directly damaged by the immoral acts and their rights violated. A judge having children with women not his wife, in itself, does not affect his ability to dispense justice. What it does is offend this country's predominantly religious sensibilities.⁹ (Citations omitted)

In *Dagala*, respondent Judge Exequil L. Dagala (Judge Dagala) admitted to fathering children with women other than his wife. However, he and his wife had mutually accepted that they were not meant for each other and amicably parted ways. He sent support to his children. More important, the victim had forgiven and forgotten.

I reiterate that caution must be taken against stereotyping women as victims who "are weak and cannot address patriarchy by themselves."¹⁰ The State's over-patronage may infringe on the agency of a woman who has found her voice and chosen to forgive.¹¹ Secular standards of morality will not view Judge Dagala's conduct as one of perverse nature, such that it undermined public trust in the legal profession.

Nonetheless, this case is different.

Here, complainant Rene Hierro (Hierro) lodged the Complaint against respondent, who engaged in sexual relations with Hierro's wife. As respondent's client *and* the husband of respondent's mistress, he was directly affected by respondent's misconduct. Moreover, Hierro's Complaint was backed by respondent's wife, Cecilia Lim-Nava, who also testified against respondent.

As the *ponencia* narrated, two (2) other witnesses in the criminal case for adultery, one of whom is a relative,¹² attested to respondent's indiscretions. The *ponencia* underscored how witness Mercedes Nava testified that she would accompany his paramour to his office, where they

⁹ Id. at 154–155.

¹⁰ Id. at 155.

¹¹ Id.

¹² *Ponencia*, p. 6. The *ponencia* named a certain Mercedes Nava as witness, but how she and respondent were related was not mentioned.

would make love.¹³ She also recounted how respondent had told his paramour that “she [would] be the only beneficiary and not to include the children so that there [would] be no problem.”¹⁴ This is not the amicable arrangement outside of marriage that may be deemed acceptable. Respondent exhibited sheer indifference to public opinion and appeared to be callous and lacking circumspection. His conduct was “so depraved as to reduce the public’s confidence in the Rule of Law”¹⁵—one that this Court penalizes.

In my separate opinion in *Dagala*, I wrote:

The highest penalty should be reserved for those who commit indiscretions that (a) are repeated, (b) result in permanent rearrangements that cause extraordinary difficulties on existing legitimate relationships, or (c) are *prima facie* shown to have violated the law. The negligence or utter lack of callousness of spouses who commit indiscretions as shown by their inability to ask for forgiveness, their concealment of the act from their legitimate relationships, or their lack of support for the children born out of wedlock should be aggravating and considered for the penalty to be imposed.¹⁶

It did not help respondent’s case that he represented his paramour in filing a petition against her husband, who was also his client, and in which he cited his client’s cases as proof to support his paramour’s petition.

All told, respondent is unworthy of continuing as a member of the Bar. He must be disbarred.

ACCORDINGLY, I concur.



MARVIC M.V.F. LEONEN
Associate Justice


¹³ Id.

¹⁴ Id.

¹⁵ J. Leonen, Concurring and Dissenting Opinion in *Anonymous Complaint v. Dagala*, 814 Phil. 103, 154 (2017) [Per Curiam, En Banc].

¹⁶ Id. at 155.

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