

## EN BANC

[ A.C. No. 8560, September 06, 2016 ]

**CARRIE-ANNE SHALEEN CARLYLE S. REYES, COMPLAINANT, VS.  
ATTY. RAMON F. NIEVA, RESPONDENT.**

### DECISION

**PERLAS-BERNABE, J.:**

For the Court's resolution is the Complaint<sup>[1]</sup> dated March 3, 2010 filed by complainant Carrie-Anne Shaleen Carlyle S. Reyes (complainant) against respondent Atty. Ramon F. Nieva (respondent), praying that the latter be disbarred for sexually harassing her.

#### The Facts

Complainant alleged that she has been working at the Civil Aviation Authority of the Philippines (CAAP) as an Administrative Aide on a Job Order basis since October 2004. Sometime in January 2009, she was reassigned at the CAAP Office of the Board Secretary under the supervision of respondent, who was then acting as CAAP Acting Board Secretary. During complainant's stint under respondent, she would notice that during office hours, respondent would often watch "*pampagana*" videos saved in his office laptop, all of which turned out to be pornographic films. Complainant also averred that whenever respondent got close to her, he would hold her hand and would sometimes give it a kiss. During these instances, complainant would remove her hands and tell him to desist. According to complainant, respondent even offered her a cellular phone together with the necessary load to serve as means for their private communication, but she refused the said offer, insisting that she already has her own cellular phone and does not need another one.<sup>[2]</sup>

Complainant also narrated that at about 5 o'clock in the afternoon of April 1, 2009, respondent texted her to wait for him at the office. Fearing that respondent might take advantage of her, complainant convinced two (2) of her officemates to accompany her until respondent arrived. Upon respondent's arrival and seeing that complainant had companions, he just told complainant and the other two (2) office staff to lock the door when they leave.<sup>[3]</sup>

Complainant further recounted that on the following day, April 2, 2009, respondent called her on her cellular phone, asked if she received his text message, and told her he would tell her something upon his arrival at the office. At about 9:30 in the morning of even date, respondent asked complainant to encode a memorandum he was about to dictate. Suddenly, respondent placed his hand on complainant's waist area near her breast and started caressing the latter's torso. Complainant immediately moved away from respondent and told him "*sumosobra na ho kayo*

sir." Instead of asking for an apology, respondent told complainant he was willing to give her P2,000.00 a month from his own pocket and even gave her a note stating "*just bet (between) you and me, x x x kahit na si mommy,*" referring to complainant's mother who was also working at CAAP. At around past 11 o'clock in the morning of the same day, while complainant and respondent were left alone in the office, respondent suddenly closed the door, grabbed complainant's arm, and uttered "*let's seal it with a kiss,*" then attempted to kiss complainant. This prompted complainant to thwart respondent's advances with her left arm, raised her voice in order to invite help, and exclaimed "*wag naman kayo ganyan sir, yung asawa nyo magagalit, sir may asawa ako.*" After respondent let her go, complainant immediately left the office to ask assistance from her former supervisor who advised her to file an administrative case<sup>[4]</sup> against respondent before the CAAP Committee on Decorum and Investigation (CODI).<sup>[5]</sup>

Finally, complainant alleged that after her ordeal with respondent, she was traumatized and was even diagnosed by a psychiatrist to be suffering from post-traumatic stress disorder with recurrent major depression.<sup>[6]</sup> Eventually, complainant filed the instant complaint.

In his defense,<sup>[7]</sup> respondent denied all of complainant's allegations. He maintained that as a 79-year old retiree who only took a position at the CAAP on a consultancy basis, it was very unlikely for him to do the acts imputed against him, especially in a very small office space allotted for him and his staff. In this regard, he referred to his Counter-Affidavit<sup>[8]</sup> submitted before the CODI, wherein he explained, *inter alia*, that: (a) while he indeed watches "interesting shows" in his office laptop, he never invited anyone, including complainant, to watch with him and that he would even close his laptop whenever someone comes near him;<sup>[9]</sup> (b) he never held and kissed complainant's hand because if he had done so, he would have been easily noticed by complainant's co-staffers;<sup>[10]</sup> (c) he did offer her a cellular phone, but this was supposed to be an office phone which should not be used for personal purposes, and thus, could not be given any sexual meaning;<sup>[11]</sup> (d) he did tell complainant to wait for him in the afternoon of April 1, 2009, but only for the purpose of having an available encoder should he need one for any urgent matter that would arise;<sup>[12]</sup> and (e) he would not do the acts he allegedly committed on April 2, 2009 as there were other people in the office and that those people can attest in his favor.<sup>[13]</sup> Respondent then pointed out that the administrative case filed against him before the CODI was already dismissed for lack of basis and that complainant was only being used by other CAAP employees who were agitated by the reforms he helped implement upon his assumption as CAAP consultant and eventually as Acting Corporate Board Secretary.<sup>[14]</sup>

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

In a Report and Recommendation<sup>[15]</sup> dated August 14, 2012, the Integrated Bar of the Philippines (IBP) Investigating Commissioner recommended the dismissal of the instant administrative complaint against respondent.<sup>[16]</sup> He found that complainant failed to substantiate her allegations against respondent, as opposed to respondent's defenses which are ably supported by evidence. Citing respondent's evidence, the Investigating Commissioner opined that since the CAAP Office of the

Board Secretary was very small, it is implausible that a startling occurrence such as an attempted sexual molestation would not be noticed by not only the other occupants of said office area, but also by those occupying the office adjacent to it, i.e., the CAAP Operations Center, which is separated only by glass panels. Further, the Investigating Commissioner drew attention to the investigation conducted by the CODI showing that the collective sworn statements of the witnesses point to the eventual conclusion that none of the alleged acts of misconduct attributed to respondent really occurred.<sup>[17]</sup>

In a Resolution<sup>[18]</sup> dated May 10, 2013, the IBP Board of Governors (IBP Board) unanimously reversed the aforesaid Report and Recommendation. As such, respondent was found guilty of committing sexual advances, and accordingly, recommended that he be suspended from the practice of law for three (3) months.

In view of respondent's Motion for Reconsideration,<sup>[19]</sup> the IBP Board referred the case to the IBP Commission on Bar Discipline (IBP-CBD) for study, evaluation, and submission of an Executive Summary to the IBP Board.<sup>[20]</sup>

In the Director's Report<sup>[21]</sup> dated July 8, 2014, the IBP-CBD National Director recommended that the current IBP Board adhere to the report and recommendation of the Investigating Commissioner as it is supported by the evidence on record; on the other hand, the reversal made by the previous IBP Board is bereft of any factual and legal bases, and should therefore, be set aside. In this light, the current IBP Board issued a Resolution<sup>[22]</sup> dated August 10, 2014 setting aside the previous IBP Board's Resolution, and accordingly, dismissed the administrative complaint against respondent.

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

The essential issue in this case is whether or not respondent should be held administratively liable for violating the Code of Professional Responsibility (CPR).

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

Rule 1.01, Canon 1 of the CPR provides:

**CANON 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.**

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

The provision instructs that "[a]s officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing."<sup>[23]</sup>

In similar light, Rule 7.03, Canon 7 of the CPR states:

**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.

Good moral character is a trait that every practicing lawyer is required to possess. It may be 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."<sup>[24]</sup> Such requirement has four (4) ostensible purposes, namely: (a) to protect the public; (b) to protect the public image of lawyers; (c) to protect prospective clients; and (d) to protect errant lawyers from themselves.<sup>[25]</sup>

In *Valdez v. Dabon*,<sup>[26]</sup> the Court emphasized that a lawyer's continued possession of good moral character is a requisite condition to remain a member of the Bar, viz.:

Lawyers have been repeatedly reminded by the Court that possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession. This proceeds from the lawyer's bounden duty to observe the highest degree of morality in order to safeguard the Bar's integrity, and 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.

The Court explained in *Arnobit v. Atty. Arnobit* 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. A member of the bar and an officer of the court is not only required to refrain from adulterous relationships or keeping a mistress but must also behave himself so as to avoid scandalizing the public by creating the impression that he is flouting those moral standards.**" Consequently, any errant behavior of the lawyer, be it in his public or private activities, which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.<sup>[27]</sup> (Emphasis and underscoring supplied)

Verily, 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.<sup>[28]</sup>

After due consideration, the Court reverses the findings and recommendations of the

IBP, and finds respondent administratively liable for violations of the CPR, as will be explained hereunder.

To recapitulate, the IBP found that as compared to complainant's purportedly bare and uncorroborated allegations, respondent's evidence point to the conclusion that none of the alleged sexual advances made by respondent against complainant actually occurred. As such, it absolved respondent from any administrative liability. In support of such finding, the IBP largely relied on the following: (a) the five (5) photographs<sup>[29]</sup> respondent submitted to the CODI to show that respondent's office space was so small that any commotion caused by a sexual harassment attempt would have been easily noticed by the other occupants thereof;<sup>[30]</sup> and (b) the investigation conducted by the CODI per the Transcript<sup>[31]</sup> submitted by respondent where the witnesses said that they did not notice anything out of the ordinary on April 2, 2009, the date when respondent's alleged sexual advances against complainant were committed.<sup>[32]</sup> However, the foregoing evidence, taken as a whole, did not actually refute complainant's allegation that at around past 11 o'clock in the morning of April 2, 2009, respondent closed the door, grabbed complainant's right arm, uttered the words "let's seal it with a kiss" and attempted to kiss complainant despite the latter's resistance.

A careful perusal of the aforesaid Transcript shows that at around past 11 o'clock in the morning of April 2, 2009, there was a time that complainant and respondent were indeed left alone in the office:

Mr. Mendoza: *Ngayon, puwede mo bang idescribe sa amin nung 9:30 to 11:00 sinu-sino kayo doon?*

Witness 1: *Tatlo (3) lang kami sir po dun. Si Ma'am Carrie Anne [complainant], si sir Nieva [respondent] tsaka aka po.*

Mr. Mendoza: *So ikaw lang ang witness, ang taong naroon 9:30 to 11?*

Witness 1: *Yes sir.*

x x x x

Mr. Mendoza: *Saan kayo kumakain ng lunch?*

Witness 1: *Sa loob po kami naglulunch.*

Mr. Mendoza: *Pag nag-order ng pagkain minsan may natitira pa bang iba?*

Witness 1: *Itong po yung dalawa yung natira nung umalis po aka. Um... pagbalik ko po wala na po si Ma'am Caan [complainant] si Ma'am Amy nalang po ang nandoon.*

Mr. Mendoza: *So siya [complainant] nalang at tsaka si Atty. Nieva [respondent] ang naiwan doon sa room? Eh nasaan na yung ibang OJT pa?*