

SECOND DIVISION

[A.C. No. 7022, June 18, 2008]

MARJORIE F. SAMANIEGO, COMPLAINANT, VS. ATTY. ANDREW V. FERRER, RESPONDENT.

R E S O L U T I O N

QUISUMBING, J.:

For resolution is the Complaint of Marjorie F. Samaniego against respondent Atty. Andrew V. Ferrer for immorality, abandonment and willful refusal to give support to their daughter, filed before the Integrated Bar of the Philippines (IBP) and docketed as CBD Case No. 04-1184.

The facts are as follows:

Early in 1996, Ms. Samaniego was referred to Atty. Ferrer as a potential client. Atty. Ferrer agreed to handle her cases^[1] and soon their lawyer-client relationship became intimate. Ms. Samaniego said Atty. Ferrer courted her and she fell in love with him.^[2] He said she flirted with him and he succumbed to her temptations.^[3] Thereafter, they lived together as "husband and wife" from 1996 to 1997,^[4] and on March 12, 1997, their daughter was born.^[5] The affair ended in 2000^[6] and since then he failed to give support to their daughter.^[7]

Before the IBP Commission on Bar Discipline, Ms. Samaniego presented their daughter's birth and baptismal certificates, and the photographs taken during the baptism. She testified that she knew that Atty. Ferrer was in a relationship but did not think he was already married. She also testified that she was willing to compromise, but he failed to pay for their daughter's education as agreed upon.^[8] Atty. Ferrer refused to appear during the hearing since he did not want to see Ms. Samaniego.^[9]

In his position paper,^[10] Atty. Ferrer manifested his willingness to support their daughter. He also admitted his indiscretion; however, he prayed that the IBP consider Ms. Samaniego's complicity as she was acquainted with his wife and children. He further reasoned that he found it unconscionable to abandon his wife and 10 children to cohabit with Ms. Samaniego.

In Resolution No. XVII-2005-138^[11] dated November 12, 2005, the IBP Board of Governors adopted the report and recommendation of the Investigating Commissioner, and imposed upon Atty. Ferrer the penalty of six (6) months suspension from the practice of law for his refusal to support his daughter with Ms. Samaniego. The IBP also admonished him to be a more responsible member of the bar and to keep in mind his duties as a father.

On February 1, 2006, Atty. Ferrer filed a Motion for Reconsideration^[12] with prayer for us to reduce the penalty, to wit:

Without passing judgment on the correctness or incorrectness of the disposition of the Honorable Commission on Bar Discipline, herein respondent most humbly and respectfully begs the compassion of the Honorable Court and states that the gravity of the penalty imposed and meted out, depriving herein respondent to earn a modest living for a period of six (6) months, will further cause extreme hardship to his family of ten (10) children.^[13]

We referred the motion to the Office of the Bar Confidant for evaluation. Upon finding that Atty. Ferrer lacked the degree of morality required of a member of the bar for his illicit affair with Ms. Samaniego, with whom he sired a child while he was lawfully married and with 10 children, the Office of the Bar Confidant recommended that we affirm Resolution No. XVII-2005-138 and deny the prayer for reduced penalty.^[14]

We agree with the IBP on Atty. Ferrer's failure to give support to his daughter with Ms. Samaniego. We also agree with the Office of the Bar Confidant that Atty. Ferrer's affair with Ms. Samaniego showed his lack of good moral character as a member of the bar. We dismiss, however, Ms. Samaniego's charge of abandonment since Atty. Ferrer did not abandon them. He returned to his family.

Atty. Ferrer admitted his extra-marital affair; in his words, his indiscretion which ended in 2000. We have considered such illicit relation as a disgraceful and immoral conduct subject to disciplinary action.^[15] The penalty for such immoral conduct is disbarment,^[16] or indefinite^[17] or definite^[18] suspension, depending on the circumstances of the case. Recently, in *Ferancullo v. Ferancullo, Jr.*,^[19] we ruled that suspension from the practice of law for two years was an adequate penalty imposed on the lawyer who was found guilty of gross immorality. In said case, we considered the absence of aggravating circumstances such as an adulterous relationship coupled with refusal to support his family; or maintaining illicit relationships with at least two women during the subsistence of his marriage; or abandoning his legal wife and cohabiting with other women.^[20]

In this case, we find no similar aggravating circumstances. Thus we find the penalty recommended by the IBP and Office of the Bar Confidant as adequate sanction for the grossly immoral conduct of respondent.

On another point, we may agree with respondent's contention that complainant was not entirely blameless. She knew about his wife but blindly believed him to be unmarried. However, that one complicit in the affair complained of immorality against her co-principal does not make this case less serious since it is immaterial whether Ms. Samaniego is in *pari delicto*.^[21] We must emphasize that this Court's investigation is not about Ms. Samaniego's acts but Atty. Ferrer's conduct as one of its officers and his fitness to continue as a member of the Bar.^[22]

Finally, it is opportune to remind Atty. Ferrer and all members of the bar of the following norms under the Code of Professional Responsibility: