

SECOND DIVISION

[A.C. NO. 6854 (FORMERLY CBD CASE NO. 04-1380), April 27, 2007]

**JUAN DULALIA, JR., COMPLAINANT, VS. ATTY. PABLO C. CRUZ,
RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

Atty. Pablo C. Cruz, Municipal Legal Officer of Meycauayan, Bulacan (respondent), is charged by Juan Dulalia, Jr. (complainant) of violation Rules 1.01,^[1] 6.02,^[2] and 7.03^[3] of the Code of Professional Responsibility.

The facts which gave rise to the filing of the present complaint are as follows:

Complainant's wife Susan Soriano Dulalia filed an application for building permit for the construction of a warehouse. Despite compliance with all the requirements for the purpose, she failed to secure a permit, she attributing the same to the opposition of respondents who wrote a September 13, 2004 letter to Carlos J. Abacan, Municipal Engineer and concurrent Building Official of Meycauayan, reading as follows, quoted *verbatim*:

x x x x

This is in behalf of the undersigned himself and his family, Gregoria F. Soriano, Spouses David Perez and Minerva Soriano-Perez and Family and Mr. and Mrs. Jessie de Leon and family, his relatives and neighbors.

It has been more than a month ago already that the construction of the building of the abovenamed person has started and that the undersigned and his family, and those other families mentioned above are respective owners of the residential houses adjoining that of the high-rise building under construction of the said Mrs. Soriano-Dulalia. There is no need to mention the unbearable nuisances that it creates and its adverse effects to the undersigned and his above referred to clients particularly the imminent danger and damage to their properties, health and safety.

It was represented that the intended construction of the building would only be a regular and with standard height building and not a high rise one but an inspection of the same would show otherwise. Note that its accessory foundation already occupies portion of the vacant airspace of the undersigned's residential house in particular, which readily poses danger to their residential house and life.

To avert the occurrence of the above danger and damage to property,

loss of life and for the protection of the safety of all the people concerned, they are immediately requesting for your appropriate action on the matter please at your earliest opportune time.

Being your co-municipal official in the Municipal Government of Meycauayan who is the Chief Legal Counsel of its Legal Department, and by virtue of Sub par. (4), Paragraph (b), Section 481 of the Local Government Code of 1991, **he is inquiring if there was already full compliance on the part of the owner of the Building under construction with the requirements** provided for in Sections 301, 302 and 308 of the National Building Code and on the part of your good office, your compliance with the provisions of Sections 303 and 304 of the same foregoing cited Building Code.

Please be reminded of the adverse and unfavorable legal effect of the non-compliance with said Sections 301, 302, 303 and 304 of the National Building Code by all the parties concerned. (Which are not confined only to penalties provided in Sections 211 and 212 thereof.)

x x x x^[4] (Emphasis and underscoring partly in the original, partly supplied)

By complainant's claim, respondent opposed the application for building permit because of a personal grudge against his wife Susan who objected to respondent's marrying her first cousin Imelda Soriano, respondent's marriage with Carolina Agaton being still subsisting.^[5]

To the complaint, complainant attached a copy of his Complaint Affidavit^[6] he filed against respondent before the Office of the Ombudsman for violation of Section 3 (e)^[7] of Republic Act No. 3019, as amended (The Anti-Graft and Corrupt Practices Act) and Section 4 (a) and (c)^[8] of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees).^[9]

By Report and Recommendation dated May 6, 2005,^[10] the IBP Commission on Bar Discipline, through Commissioner Rebecca Villanueva-Maala, recommended the dismissal of the complaint in light of the following findings:

The complaint dealt with mainly on the issue that respondent allegedly opposes the application of his wife for a building permit for the construction of their commercial building. One of the reason[s] stated by the complainant was that his wife was not in favor of Imelda's relationship with respondent who is a married man. And the other reason is that respondent was not authorized to represent his neighbors in opposing the construction of his building.

From the facts and evidence presented, we find respondent to have satisfactorily answered all the charges and accusations of complainant. We find no clear, convincing and strong evidence to warrant the disbarment or suspension of respondent. An attorney enjoys the legal presumption that he is innocent of the charges preferred against him until the contrary is proved. The burden of proof rests upon the

complainant to overcome the presumption and establish his charges by a clear preponderance of evidence. In the absence of the required evidence, the presumption of innocence on the part of the lawyer continues and the complaint against him should be dismissed (In re De Guzman, 55 SCRA 1239; Balduman vs. Luspo, 64 SCRA 74; Agbayani vs. Agtang, 73 SCRA 283).

x x x x.^[11] (Underscoring supplied)

By Resolution of June 25, 2005,^[12] the Board of Governors of the IBP adopted and approved the Report and Recommendation of Commissioner Villanueva-Maala.

Hence, the present Petition for Review^[13] filed by complainant.

Complainant maintains that respondent violated Rule 1.01 when he contracted a second marriage with Imelda Soriano on September 17, 1989 while his marriage with Carolina Agaton, which was solemnized on December 17, 1967, is still subsisting.

Complainant further maintains that respondent used his influence as the Municipal Legal Officer of Meycauayan to oppose his wife's application for building permit, in violation of Rule 6.02 of the Code of Professional Responsibility.

And for engaging in the practice of law while serving as the Municipal Legal Officer of Meycauayan, complainant maintains that respondent violated Rule 7.03.

To his Comment,^[14] respondent attached the July 29, 2005^[15] Joint Resolution of the Office of the Deputy Ombudsman for Luzon dismissing complainant's complaint for violation of Sec. 3 (e) of RA 3019 and Section 4 (a) and (c) of RA 6713, the pertinent portion of which joint resolution reads:

x x x A perusal of the questioned letter dated September 13, 2004 of herein respondent Atty. Pablo Cruz addressed to the Building official appears to be not an opposition for the issuance of complainant's building permit, but rather to redress a wrong and an inquiry as to whether compliance with the requirements for the construction of an edifice has been met. In fact, the Office of the Building Official after conducting an investigation found out that there was [a] violation of the Building Code for constructing without a building permit committed by herein complainant's wife Susan Dulalia. Hence, a Work Stoppage Order was issued. Records disclose fu[r]ther [that] it was only after the said violation had been committed that Susan Dulalia applied for a building permit. As correctly pointed out by respondent, the same is being processed pending approval by the Building Official and not of the Municipal Zoning Administrator as alleged by complainant. Anent the allegation that respondent was engaged in the private practice of his law profession despite being employed in the government as Municipal Legal Officer of Meycauayan, Bulacan, the undersigned has taken into consideration the explanation and clarification made by the respondent to be justifiable and meritorious. Aside from the bare allegations of herein complainant, there is no sufficient evidence to substantiate the complaints against the respondent.^[16] (Underscoring supplied)

After a review of the record of the case, this Court finds the dismissal of the charges of violating Rules 6.02 and 7.03 in order.

Indeed, complaint failed to prove that respondent used his position as Municipal Legal Officer to advance his own personal interest against complainant and his wife.

As for respondent's September 13, 2004 letter, there is nothing to show that he opposed the application for building permit. He just inquired whether complainant's wife fully complied with the requirements provided for by the National Building Code, on top of expressing his concerns about "the danger and damages to their properties, health and safety" occasioned by the construction of the building.

Besides, as reflected above, the application for building permit was filed on September 28, 2004,^[17] whereas the questioned letter of respondent was priorly written and received on September 13, 2004 by the Municipal Engineer/ Building Official, who on the same day, ordered an inspection and issued a Cease and Desist Order/Notice stating that "[f]ailure to comply with th[e] notice shall cause this office to instate proper legal action against you."^[18]

Furthermore, as the Certification dated April 4, 2005^[19] from the Office of the Municipal Engineer showed, complainant's wife eventually withdrew the application as she had not yet secured clearances from the Municipal Zoning Administrator and from the barangay where the building was to be constructed.

Respecting complainant's charge that respondent engaged in an unauthorized private practice of law while he was the Municipal Legal Officer of Meycauayan, a position coterminous to that of the appointing authority, suffice it to state that respondent proffered proof that his private practice is not prohibited.^[20]

It is, however, with respect to respondent's admitted contracting of a second marriage while his first marriage is still subsisting that this Court finds respondent liable, for violation of Rule 1.01 of the Code of Professional Responsibility.

Respondent married Imelda Soriano on September 17, 1989 at the Clark County, Nevada, USA,^[21] when the Family Code of the Philippines had already taken effect.^[22] He invokes good faith, however, he claiming to have had the impression that the applicable provision at the time was Article 83 of the Civil Code.^[23] For while Article 256 of the Family Code provides that the Code shall have retroactive application, there is a qualification thereunder that it should not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

Immoral conduct which is proscribed under Rule 1.01 of the Code of Professional Responsibility, as opposed to grossly immoral conduct, connotes "conduct that shows indifference to the moral norms of society and the opinion of good and respectable members of the community."^[24] Gross immoral conduct on the other hand must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree.^[25]

In *St. Louis University Laboratory High School v. De la Cruz*,^[26] this Court declared that the therein respondent's act of contracting a second marriage while the first