

EN BANC

[A.C. NO. 2474, June 30, 2005]

EDUARDO M. COJUANGCO, JR., COMPLAINANT, VS. ATTY. LEO J. PALMA, RESPONDENT.

R E S O L U T I O N

PER CURIAM:

Providing one's children with a comfortable life and good education does not render marriage a *fait accompli*. Leo J. Palma, respondent herein, may have provided well for his children but this accomplishment is not sufficient to wipe away the penalty for his transgression. He ought to remember that before he became a father, he was a husband first. As such, he should have loved, respected and remained faithful to his wife.

At bar is respondent's *Motion to Vacate*^[1] our Decision dated September 15, 2004 finding him guilty of grossly immoral conduct and violation of his oath as a lawyer and imposing upon him the penalty of disbarment from the practice of law.

In resolving the instant motion, a brief revisit of the facts is imperative. On June 22, 1982, respondent, despite his subsisting marriage with Elizabeth Hermosisima, married Maria Luisa Cojuangco, the 22-year old daughter of complainant Eduardo M. Cojuangco, Jr. This prompted the latter to file with this Court, on November 8, 1982, a complaint for disbarment against respondent.

Respondent moved to dismiss the complaint.

In our Resolution^[2] dated March 2, 1983, we referred the case to the Office of the Solicitor General (OSG) for investigation, report and recommendation. Then Assistant Solicitor General Oswaldo D. Agcaoili heard the testimonies of the complainant and his witness in the presence of respondent's counsel.

On March 19, 1984, respondent filed with the OSG an urgent motion to suspend proceedings^[3] on the ground that the final outcome of Civil Case No. Pq-0401-P,^[4] for declaration of nullity of marriage between him and his wife Lisa, poses a prejudicial question to the disbarment proceeding. The motion was denied.

Respondent then filed with this Court an urgent motion for issuance of a restraining order.^[5] On **December 19, 1984**, we issued a Resolution enjoining the OSG from continuing the disbarment proceedings.^[6]

In the interim, Rule 139-B of the Rules of Court took effect. Hence, the OSG transferred the disbarment case to the Integrated Bar of the Philippines (IBP). On **October 19, 1998**, IBP Commissioner Julio C. Elamparo required the parties to

manifest within ten (10) days from notice whether they are still interested in pursuing the case.^[7]

In his manifestation,^[8] complainant confirmed his continuing interest in prosecuting the case.

For his part, respondent moved to postpone the hearing eight (8) times. In one of those instances, particularly on August 28, 2001, complainant moved **“that respondent be deemed to have waived his right to present evidence and for the case to be deemed submitted for resolution in view of his continuing failure to present his evidence.”** However, complainant withdrew such motion upon the promise of the respondent’s counsel that on the next hearing, scheduled on October 4, 2001, he would definitely present his client’s evidence. But even before that date, respondent already manifested that he would not be able to return to the Philippines for his direct testimony. Instead, he promised to submit his “direct testimony in affidavit form.”^[9] In an Order issued that day, the IBP Commissioner reset the hearing for the last time on January 24, 2002 and warned respondent that should he fail to appear or present his “direct testimony in affidavit form,” the case will be deemed submitted for resolution.^[10] On January 24, 2002, **respondent neither appeared nor presented his “direct testimony in affidavit form,” hence, the case was deemed submitted for resolution.**^[11]

On March 20, 2003, the IBP Commissioner submitted a Report and Recommendation finding respondent guilty of gross immoral conduct and violation of his oath as a lawyer and recommending that he be suspended from the practice of law for a period of three (3) years.

The IBP Board of Governors adopted and approved the above Report and Recommendation, but reduced the penalty of suspension to only one (1) year.

On September 15, 2004, we rendered the assailed Decision.

In his motion for reconsideration, respondent raised the following issues:

First, the complaint for disbarment was filed by an improper party, complainant not being the offended party.

Second, he was denied due process because the case was submitted for resolution on January 24, 2002 without his “direct testimony in affidavit form.”

Third, the disbarment proceedings before the IBP Commission on Bar Discipline is void because our Resolution dated December 19, 1984 restraining the OSG from continuing such proceedings has not been lifted.

Fourth, our Decision is barred by laches because of the lapse of almost fourteen (14) years from December 19, 1984, the date we restrained the OSG from continuing the disbarment proceedings, until October 19, 1998, the date the IBP Commissioner required the parties to “manifest whether or not they are still interested in prosecuting the case.”

Fifth, the Resolution dated June 21, 2003 of the IBP Board of Governors imposing upon him the penalty of one (1) year suspension "has attained finality and should be deemed served already."

And sixth, he acted under a "firm factual and legal conviction" in declaring before the Hong Kong Marriage Registry that he is a "bachelor" because his first marriage is void even if there is no judicial declaration of nullity.

In his comment, complainant countered that: **first**, respondent cannot claim denial of due process because his failure to adduce evidence was due to his own fault; **second**, it is now too late to invoke this Court's Resolution of December 19, 1984 restraining the OSG from continuing the disbarment proceedings; **third**, laches does not apply because the 14-year hiatus was brought about by the said Resolution; **fourth**, the penalty of one-year suspension imposed by the IBP Board of Governors cannot be deemed "final and served already" because it is a mere recommendation to this Court; and **fifth**, although his previous marriage was annulled, it can not erase the betrayal of trust and abuse of confidence he committed against complainant.

Respondent's motion is bereft of merit.

We observe that in his motion, respondent alleged new issues^[12] which were not considered below. Nonetheless, in view of the caveat that the power to disbar must be exercised with great caution, we shall resolve all these new issues.

I - Improper Party

We find no merit in respondent's contention that the complainant, being the father of the offended party, does not have the standing to file the instant complaint.

Disbarment proceedings are undertaken solely for public welfare. The only question for determination is whether respondent is fit to be a member of the Bar. The complainant or the person who called the attention of this Court to the lawyer's alleged misconduct is in no sense a party and generally has no interest in the outcome except as all good citizens may have in the proper administration of justice.^[13] Thus, this Court may investigate charges against lawyers, regardless of complainant's standing. In fact, it can do so *motu proprio*. Our ruling in Rayos-Ombac vs. Rayos^[14] applies four-square, thus:

"x x x **A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven.** This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. **Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare.** They are undertaken for the purpose of preserving courts of justice from the official

ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice. Hence, if the evidence on record warrants, the respondent may be suspended or disbarred despite the desistance of complainant or his withdrawal of the charges."

II – Due Process

Neither do we find merit in respondent's claim that the IBP Commission on Bar Discipline violated his right to due process when it considered the case submitted for resolution on January 24, 2002 without his "direct testimony in affidavit form." The records show that the case dragged on for three (3) years after the IBP Commission on Bar Discipline resumed its investigation on October 19, 1998. Of the fifteen^[15] (15) settings from February 2, 1999 to January 24, 2002, respondent had the hearing postponed for eight (8) times.

Indisputably, it was respondent's failure to submit his "direct testimony in affidavit form" that caused delay. Since the proceedings had been dragging on a lethargic course, the IBP Commissioner is correct in considering the case submitted for resolution. At this juncture, it must be stressed that the essence of due process in administrative proceedings is the opportunity to explain one's side or seek a reconsideration of the action or ruling complained of. As long as the parties are given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.^[16] Here, respondent was given sufficient opportunity to explain his side and adduce his evidence. Despite his sudden "flight into oblivion," the IBP Commissioner notified him of the proceedings. Significantly, he was duly represented by a counsel who attended the hearings and submitted manifestations and motions on his behalf, the latest of which is the instant Motion to Vacate. In short, the active participation of his lawyer in every stage of the proceedings rules out any badge of procedural deficiency therein. Of course, we need not mention the fact that respondent was able to file with this Court a motion to dismiss the complaint, as well as to confront and cross-examine the complainant and his witness during the investigation in the OSG.

III – Restraining Order

The restraining order was anchored on the ground that the final outcome of Civil Case No. Pq-0401-P poses a prejudicial question to the disbarment proceedings. It appears from complainant's allegation, which respondent does not deny, that Civil Case No. Pq-0401-P was dismissed without prejudice.^[17] **Necessarily, there is no more prejudicial question to speak of.**

IV - Laches

Respondent cannot find solace in the principle of laches. While it is true that there was a hiatus or delay of 14 years before the IBP Commissioner resumed the investigation, the same was pursuant to the said restraining order of December 19, 1984.