EN BANC

A.C. No. 5900 – RE: ANONYMOUS COMPLAINT AGAINST ATTY. CRESENCIO P. CO UNTIAN, JR.

Promulgated:
April 10, 2019

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SEPARATE CONCURRING OPINION

LEONEN, *J.*:

Respondent Atty. Cresencio P. Co Untian, Jr. committed sexual harassment. He abused his position of authority. He degraded and embarrassed his students with selfish and sexually charged acts. His actions created a hostile, uncomfortable, and offensive school environment. For these, he deserves the penalty meted upon him. If he repeats the same or similar acts, he should be disbarred.

I concur in reaffirming *Bacsin v. Wahiman*,[1] reiterating *Domingo v. Rayala*,[2] that sexual harassment may be committed even without a categorical demand for a sexual favor. In an educational setting, sexual harassment may be committed when the acts of the offender create an "intimidating, hostile[,] or offensive environment for the student, trainee[,] or apprentice:"

> Contrary to the argument of petitioner, the demand of a sexual favor need not be explicit or stated. In *Domingo v. Rayala*, it was held, "It is true that this provision calls for a 'demand, request or requirement of a sexual favor.' But it is not necessary that the demand, request, or requirement of a sexual favor be articulated in a categorical oral or written statement. It may be discerned, with equal certitude, from the acts of the offender" . . . Moreover, under Section 3 (b) (4) of RA 7877, *sexual harassment in an education or training environment is committed "(w)hen the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.*"[3] (Emphasis supplied, citation omitted)

The Extended Resolution of the Integrated Bar of the Philippines Commission on Bar Discipline is evidently wrong. The Integrated Bar of the Philippines explained that since respondent did not demand sexual favors

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1 576 Phil. 138 (2008) [Per J. Velasco, Jr., Second Division].
2 569 Phil. 423 (2008) [Per J. Nachura, Third Division].
3 *Bacsin v. Wahiman*, 576 Phil. 138, 143–144 (2008) [Per J. Velasco, Jr., Second Division].

from his students, no sexual harassment was committed.[4] The official organization of lawyers should have known better.

This Court has capably discussed respondent's actions as being sexually charged and having created an uncomfortable, hostile, and offensive school environment for his students. Likewise, it correctly found that the essence of sexual harassment is one's abuse of power over another.[5] In *Garcia v. Judge Drilon*,[6] I had the honor to restate that "violence in the context of intimate relationships should not be seen and encrusted as a gender issue; rather, it is a power issue."[7]

In sexual harassment cases, the offender's acts amount to an exertion of power over the victim, rather than a violation of the victim's sexuality.[8] Here, respondent subjected his students to sexually charged words and actions, cowardly justifying his acts with the platform of power provided to him as a professor and a lawyer. His students had to endure these advances despite the emotional and psychological toll on them.

Among these advances was respondent's inappropriate sending of love letters, text messages, and invitations to a female student. It was an unwelcome gesture that made her feel degraded. She was forced to respond to his messages only out of fear of reprisal.[9]

Respondent also publicly ridiculed another female student by showing her a naked picture of a woman that seemingly resembled her. Respondent teased her with the picture within earshot of other students, causing her severe distress. She suffered from depression, and was unable to participate in a moot court competition.[10]

Finally, respondent embarrassed yet another female student when he infused her class recitation with sexual innuendo. The student asked respondent to repeat a question by saying "come again," which respondent took as an opportunity to badger her with unnecessary information about his virility. Respondent would repeat this anecdote to most of his classes, callous to her feelings and her dignity.[11] He was the type of person who thrived on his ability to ridicule women.

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4 Ponencia, p. 4.
5 Id. at 6.
6 712 Phil. 44 (2013) [Per J. Perlas-Bernabe, En Banc].
7 Id. at 171.
8 *Philippine Aeolus Auto-Motive Corporation v. National Labor Relations Commission*, 387 Phil. 250, 264 (2000) [Per J. Bellosillo, Second Division].
9 Ponencia, p. 2.
10 Id.
11 Id.

Moreover, in answering the allegations against him, respondent was quick to dismiss his victims' suffering. Ignorant of his duties as a teacher, he failed to acknowledge the professionalism and moral integrity required of him as a member of the Bar. This Court has held:

> "[A]s 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 so behave himself 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.*[12] (Emphasis supplied, citation omitted)

Our ruling today acknowledges the persistence of patriarchy in our society. The historical and cultural expression of male privilege—or simply, the privilege of males *qua* males over females *qua* females—still exists. It is a powerful, dominant, molding attitude that is nefariously manifested when demeaning and distressing representations of any woman, especially when clearly identified, are disguised as jokes. While normally entertaining for most men, this is generally callous to women, whose dignity may suffer.

When respondent replied to his students' innocent comments by crudely and unnecessarily analogizing them with blatant sexual overtones, he took liberties on what should be the most private part of his student's life. How we choose to be intimate with each other forms the core of our autonomy as social beings. This includes how and with whom we communicate our intimacy, with the kinds of sexualized language of our own choosing.

Respondent breached his professional relationship with his students when he took liberties with, trivialized, and then embarrassed them. By engaging in talk with undisguised sexual overtones, he forced himself on his students. He created an unnecessary burden on his students, who had to find ways to avoid both the unwanted advance and the embarrassment that they, to begin with, wanted no part of.

That respondent coded his advances through jokes is aggravating. Not only were they means to trivialize, he also wanted to entertain others at the expense of women. He hoped to create an environment that normalized his act. Those who laughed were complicit. The more they laughed, the more his act appeared normal; the more, too, that his act directly caused unsolicited suffering upon his victims.

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[12] *Valdez v. Atty. Dabon, Jr.*, 773 Phil. 109, 121–122 (2015) [Per Curiam, En Banc].

Patriarchy becomes encoded in our culture when it is normalized. The more it pervades our culture, the more its chances to infect this and future generations.

Respondent not only exceeded his male privilege, he was also a law professor. Embedded in his role was his power and influence over his students. This should have been used to teach. All professors have their own idiosyncrasies, which students either grow fondly of or simply become annoyed at. Certainly, however, any unsolicited sexual act that causes a hostile environment goes beyond what is acceptable. Not only is this uncivilized, it is also insulting to the entire legal profession.

It was my understanding that the deliberations on this matter would have resulted in my colleagues voting unanimously in favor of disbarring respondent. Had this not been the first time that this Court was required to penalize a law professor for sexually harassing his students, I would have maintained that respondent be disbarred to uphold the profession's standards of moral integrity.

Nonetheless, respondent should, without a doubt, be disciplined. His failure to appreciate the gravity of his actions evinces a lack of moral character to serve as an officer of the court, let alone serve as an example for aspiring lawyers. Should he or any other law professor repeat any of these acts, the penalty should be graver.

ACCORDINGLY, in light of the circumstances, I concur.

MARVIC M.V.F. LEONEN
Associate Justice

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EDGAR O. ARICHETA
Clerk of Court En Banc
Supreme Court