THIRD DIVISION

[A.C. No. 13601. April 17, 2023]
(Formerly CBD Case No. 20-6315)

MARY ANN B. CASTRO, *Complainant*, *v.* **ATTY. ZELDANIA D.T. SORIANO,** *Respondent*.

D E C I S I O N

DIMAAMPAO, *J.*:

At the pith of the instant administrative case is a complaint for suspension and disbarment filed by Mary Ann B. Castro (complainant) against Atty. Zeldania D.T. Soriano for violation of the Lawyer's Oath, as well as Canons 7 and 8 of the Code of Professional Responsibility (CPR).[1]

The controversy had its progenitor in the Legal Notice[2] dated September 2, 2019 prepared by respondent on behalf of her client, Alegria A. Castro (Alegria), wherein respondent apprised Spouses Ferdinand and Rowena Sendin (Spouses Sendin) that the parcels of land they purchased from Joselito S. Castro (Joselito), Alegria's estranged husband, actually belonged to Alegria by virtue of a written instrument of sale. In the same document, respondent described complainant as the "mistress" of Joselito, averring that:

> 6. By the "selling" price, clearly, you are also NOT an innocent purchaser of [sic] value. You bought the subject property for Eight Hundred Thousand Pesos (₱800,000.00) while its market value at the time of "sale" is Ten Million Pesos (₱10,000,000). Our client believes that you grabbed the cheap offer of Joselito and his mistress(,) Mary Ann B. Castro(,) despite the obvious notice of defects in the title, in the sale transaction, and in Joselito's authority.[3]

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1 Rollo, pp. 2-6.

2 Id. at 8-10.

3 Id. at 9.

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Disgruntled by respondent's remark, complainant filed a Complaint-Affidavit[4] before the Office of the Provincial Prosecutor of the Province of Isabela, inculpating respondent for the crime of Libel. Therewithal, complainant furnished[5] the Integrated Bar of the Philippines Commission on Bar Discipline (IBP-CBD) of the same Complaint-Affidavit for purposes of instituting an administrative case against respondent for having violated the Lawyer's Oath and the CPR.

Complainant bemoaned respondent's purported use of inappropriate language, asseverating that she was legally married to Joselito. Respondent avowedly dragged her in a property dispute where she did not have any participation, thereby making it appear that she took advantage of another person and committed a crime or an illegal act.[6]

In compliance with the IBP-CBD's directives,[7] respondent filed her Verified Answer[8] in which she proffered special and affirmative defenses. Respondent cashed in on the pertinency and relevance of the language she used in relation to the subject matter of the Legal Notice she sent to the Spouses Sendin. Respondent admitted to using the word "mistress," but posited that the same was necessary to describe the extramarital nature of the relationship between Joselito and complainant. To bolster her defense, respondent avouched that her client, Alegria, presented pieces of evidence to establish the invalidity of Joselito and complainant's marriage in 2016 as at that time, Alegria remained the legal wife of Joselito.

Respondent endeavored to justify her use of the word "mistress" by positing that Alegria instructed her to inform the Spouses Sendin of the whole truth and invite the latter to negotiate with the former. As respondent was representing the interest of Alegria, who claims ownership over the said parcels of land, it was inevitable

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4 Id. at 4-7.

5 Id. at 2.

6 Id. at 5. Complaint Affidavit.

7 Id. at 83. Order dated July 17, 2020 of the IBP-CBD.

8 Id. at 87-98.

to describe the extramarital nature of Joselito and complainant's relationship if only to emphasize that they should have dealt with her as regards the purchase of the subject properties, rather than Joselito and herein complainant.[9]

Respondent likewise took issue with complainant's avowal that she did not participate in the sale of the contentious landholdings. Several sworn statements of persons who were present during the purchase thereof evinced that complainant herself transacted, received the payment, and even deposited the proceeds of the sale to her bank account.[10]

Still and all, complainant expostulated that the term "mistress" did not accurately describe her relationship with Joselito as they were, in actual fact, legally married. Respondent's use of such word was malicious and irrelevant to Alegria's claim of ownership, geared for the sole purpose of injuring her character.[11]

In light of the declaration of State of Public Health Emergency due to the COVID-19 pandemic, the IBP-CBD directed the parties to inform the Commission of their willingness to participate in a mandatory conference by video conferencing and/or proceed to the filing of position papers in lieu thereof.[12] Pursuant to the respective manifestations[13] of both parties, the IBP-CBD ordered the filing of their verified position papers and thenceforth, the submission of the case for decision.[14]

Complainant's Position Paper[15] was anchored on the following postulations: 1) respondent had no reason to drag her into the controversy as she had no participation in the sale of the disputed properties; 2) the use of the word "mistress" was uncalled for

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[9] Id. at 90-92.

[10] Id. at 92-94.

[11] Id. at 147-148. Reply to Verified Answer.

[12] Id. at 171. Order dated March 8, 2021 of the IBP-CBD.

[13] Id. at 172-173; 174-175. Respective Manifestations of the complainant and the respondent.

[14] Id. at 182. Order dated July 26, 2021 of the IBP-CBD.

[15] Id. at 183-194.

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and unnecessary; 3) respondent should have exercised restraint in pursuing her client's cause; and 4) she had no control over the subject parcels of land as she was not the owner thereof.

Contrariwise, respondent reverberated her prior defenses, standing firm that she did not use any abusive, offensive, improper, or libelous language against complainant.[16]

In its Report and Recommendation,[17] the IBP-CBD recommended the dismissal of the case after finding that respondent was not driven by corrupt or malicious intent in using the descriptive word "mistress" in her Legal Notice to the Spouses Sendin. Respondent was merely pursuing her sworn duty to protect the interest of her client by warning the purchasers of the subject properties to deal only with the owner thereof, Alegria, who happened to be the legal wife of Joselito. The IBP-CBD declared that complainant fell short in discharging her burden of establishing by substantial evidence the existence of bad faith on the part of respondent.[18]

All the same, the IBP Board of Governors (IBP Board) reversed the IBP-CBD's recommendation, opining that respondent's use of the word "mistress" was deplorable. Respondent failed to observe caution, prudence, and careful discretion in writing the Legal Notice, thereby engaging in an unethical behavior for using 'improper, vulgar(,) and objectionable language against a person.' Consequently, the IBP Board recommended that respondent be meted with the penalty of fine of ₱2,000.00 with a stern warning that a repetition of the act will be dealt with more severely.[19]

THE COURT'S RULING

After a percipient analysis of the case at bench, the Court resolves to dismiss the instant complaint for disbarment and suspension for failure of complainant to establish by substantial

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[16] Id. at 245-260. Respondent's Verified Position Paper.

[17] Id. at 268-272. The IBP-CBD Report and Recommendation dated February 8, 2022 was signed by Commissioner Roland B. Beltran.

[18] Id.

[19] Id. at 266. Notice of Resolution dated March 17, 2022. See also Extended Resolution dated July 1, 2022 of the IBP Board, Id. at 273-275.

evidence that respondent violated the Lawyers' Oath, as well as the CPR.

The prohibition against the use of offensive and improper language among the members of the Bar finds legal mooring under Rule 8.01 of the CPR, which reads:

> RULE 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

Complainant submits that respondent violated the foregoing edict, as well as the Lawyer's Oath, when the latter referred to her as the "mistress" of Joselito in the conduct of her duties as Alegria's counsel.

The Court could not agree less.

The doctrine of privileged communication is not a novel concept in the Philippine jurisdiction. A private communication made by any person to another shall not be considered defamatory or malicious regardless of its truth if it was expressed in the performance of any legal, moral, or social duty.[20] The statements are privileged; the communicator is generally free from liability. Nevertheless, for the statements to be covered by the protective mantle of the doctrine, it must stand the crucible of relevancy. The seminal case of *Tolentino v. Baylosis*[21] thus illuminates:

> x x x As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged the courts favor a liberal rule. The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety. In order that matter alleged in pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial. . . . (Ruling Case Law, vol. 17, p. 336, quoted with approval in Smith, Bell & Co. v. Ellis, 48 Phil. 475, 481-482).

In the earliest of the leading cases on the subject the words used in determining the extent of matter that may be absolutely privileged

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[20] See Article 354 of the Revised Penal Code.

[21] 110 Phil. 1010 (1961).

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were "relevant" or "pertinent," but these words have in a measure a technical meaning, and perhaps they are not the best words that could be used. So some courts have preferred the use of the words "have in reference," "having relation to the cause or subject matter," or "made with reference"; and strict legal materiality or relevancy is not required to confer the privilege. There is difficulty in determining in some cases what is relevant or pertinent and in deciding the question the courts are liberal, and the privilege embraces anything that may possibly be pertinent, or which has enough appearance in connection with the case so that a reasonable man might think it relevant. All doubts should be resolved in favor of its relevancy or pertinency, and for the purposes of relevancy the court will assume the alleged slanderous charges to be true, however false they may have been in fact. (53 C.J.S., pp. 171-172).[22]

Viewing from the lens of the foregoing principle, it cannot be gainsaid that respondent's use of the word "mistress" in her Legal Notice to the Spouses Sendin was relevant and pertinent to the subject matter thereof, not to mention that it was made in the performance of her legal duty to her client, Alegria. To recapitulate, the ultimate purpose of the Legal Notice was to apprise the Spouses Sendin of Joselito and herein complainant's lack of authority to negotiate and transact the sale of the disputed parcels of land. Acting upon the instructions of her client, who claims ownership over the subject properties, respondent intended to invite the Spouses Sendin to negotiate only with Alegria regarding the purchase thereof.

The relevance of the purportedly offensive remark became more apparent as the witnesses during the transaction attested to the fact that complainant actively participated in bringing the sale to fruition. Rivetingly, complainant herself admitted that she was not the owner of the properties involved, and thus, had no right to dispose of the same. Quite palpably, this undisputed fact was precisely the thrust of respondent's use of the term "mistress." If only to emphasize the illegality of Joselito and complainant's relationship and give full warning as to the possible impediments to the title of the people they were transacting with, respondent's statement must be considered to have been made in the context of a privileged communication. Moreover, it may not be amiss

[22] Id. at 1013-1014.

to point out that respondent relied on the numerous documents presented by Alegria to establish the extramarital nature of Joselito and complainant's relationship. Verily, she acted not without any basis and merely in pursuance of her client's interest.

Along this grain, the pronouncement of the Court in *Armovit v. Purisima*[23] is *apropos*, *viz.*:

> x x x "For, as aptly observed in one case, 'while the doctrine of privileged communications is liable to be abused, and its abuse may lead to great hardships, yet to give legal sanction to such suits as the present would, we think, give rise to far greater hardships.'" The language of the then Justice, later Chief Justice, Bengzon in *Dorado v. Pilar* is *apropos*: **"Undoubtedly, lawyers should be allowed some latitude of remark or comment in the furtherance of causes they uphold. For the felicity of their clients they may be pardoned some infelicities of phrase."** It bears mentioning that in Deles, such sentiment was paraphrased by Chief Justice Castro in this wise: **"Lawyers, most especially, should be allowed a great latitude of pertinent comment in the furtherance of the causes they uphold, and for felicity of their clients, they may be pardoned some infelicities of language."**[24]

WHEREFORE, the Notice of Resolution dated March 17, 2022 and Extended Resolution dated July 1, 2022 of the Integrated Bar of the Philippines Board of Governors are hereby **NOTED**. The Court resolves to **ADOPT** and **APPROVE** the findings of fact, conclusions of law, and recommendations of Investigating Commissioner Roland B. Beltran in his Report and Recommendation dated February 8, 2022. Accordingly, the instant complaint for suspension and disbarment against respondent Atty. Zeldania D.T. Soriano is **DISMISSED**.

SO ORDERED.

Inting and *Singh, JJ.*, concur.

Caguioa, J. (Chairperson), see concurring opinion.

Gaerlan, J., see dissenting opinion.

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[23] 203 Phil. 625 (1982).

[24] Id. at 631-632. Emphasis Supplied.

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CONCURRING OPINION

"Undoubtedly, lawyers should be allowed some latitude of remark or comment in the furtherance of causes they uphold. For the felicity of their clients they may be pardoned some infelicities of phrase."

- Dorado v. Pilar[1]

CAGUIOA, *J.*:

The instant complaint is anchored mainly on respondent's use of the word "mistress" to describe herein complainant in the Legal Notice that respondent, on behalf of her client, Alegria A. Castro (Alegria), sent to Spouses Ferdinand and Rowena Sendin[2] (Spouses Sendin), the buyers of the two lots (subject lots) that were previously registered in the names of Constancio Castro (Constancio) and Rosario Castro-Mariano[3] (Rosario). Said lots were sold to Spouses Sendin by Alegria's late husband, Joselito S. Castro (Joselito), through a Special Power of Attorney (SPA) issued by Constancio and Rosario,[4] and allegedly, with the help of herein complainant.[5] The relevant portion of the Legal Notice reads as follows:

> 6. By the "selling price," clearly, you are also NOT an innocent purchaser of (*sic*) value. You bought the subject property for Eight Hundred Thousand Pesos (₱800,000.00) while its market value at the time of "sale" is (*sic*) Ten Million Pesos (₱10,000,000.00). **Our client believes that you grabbed the cheap offer of Joselito and his <u>mistress</u> Mary Ann B. Castro** despite the obvious notice of defects in the title, in the sale transaction, and in Joselito's authority.[6] (Emphasis supplied)

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1 104 Phil. 743, 748 (1958).

2 *Rollo*, pp. 5-6. Complaint-Affidavit.

3 Id. at 8, Legal Notice.

4 Id.

5 Id. at 87-99, Verified Answer.

6 Id. at 9, Legal Notice.

Respondent refutes complainant's allegation that the use of the word "mistress" was uncalled for, malicious, and offensive in nature. Respondent asseverates in her Verified Answer[7] that complainant's affair with Joselito was indeed extra-marital, since the latter had a subsisting marriage with Alegria during the course of his relationship and "marriage" with complainant.[8] More importantly, respondent avers that the use of the word "mistress" was relevant to the subject of the Legal Notice and was not intended to besmirch the reputation of complainant, but to invite Spouses Sendin to renegotiate the sale with Alegria for a fair price.[9] At this point, it is important to note that Alegria maintains that she is the true and lawful owner of the subject lots by virtue of a written instrument of sale executed in her favor.[10] Thus, respondent stated:

> x x x respondent humbly admits that **she could not find a better word substitute that will not only capture the factual background but will also faithfully clarify the implication of the word on the civil status and successional rights of her client and of the complainant**.
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> x x x x
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> Specifically, **Alegria's proposition was for Mr. Sendin to deal with her — and not with complainant Mary Ann** — not only because she (Alegria) is the first and legal wife of Joselito[,] but also because she is the real owner of the disputed lands subject of the letter. Thus, **it is necessary to describe the extra-marital nature of the relationship of Alegria's husband and herein complainant Mary Ann to deliver the important point and distinction**.[11] (Emphasis Supplied)

The *ponencia* of Associate Justice Japar B. Dimaampao dismisses the case for failure of complainant to establish by substantial evidence that respondent violated Canon 8 of the Code of Professional Responsibility (CPR), which proscribes lawyers

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[7] Id. at 87-99.

[8] Id. at 92.

[9] Id. at 88.

[10] Id. at 8, Legal Notice.

[11] Id. at 89 and 92.

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from using language or words that are abusive, offensive, or otherwise improper.[12] In fine, the *ponencia* finds that the use of the word "mistress" was relevant and pertinent to the subject matter of the Legal Notice,[13] and was made in the performance of respondent's legal duty to her client.[14] Accordingly, since respondent's statement was made in the context of privileged communication, she should not be held liable therefor.[15]

In all, I concur with the dismissal of the complaint, and agree with the *ponencia* that respondent should not be held liable for violating Canon 8 of the CPR. Yet, for the guidance of the Bench, the Bar, and the public, I write this Opinion to offer a nuanced discussion on the matter of privileged communication, as well as to rebut the points raised by Associate Justice Samuel H. Gaerlan (Justice Gaerlan) in his Dissenting Opinion.

The doctrine of privileged communication is explicitly provided in the Revised Penal Code,[16] as an exception to the rule that every defamatory imputation is presumed to be malicious, even if true, absent showing of good intention and justifiable motive.[17] It covers a private communication made by any person to another in the performance of any legal, moral, or social duty.[18]

As enunciated in *Deles v. Aragona, Jr.*,[19] the doctrine has a practical purpose, to wit:

> The privilege is not intended so much for the protection of those engaged in the public service and in the enactment and administration of law, as for the promotion of public welfare, **the purpose being that members of the legislature, judges of courts, jurors, lawyers, and**

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[12] *Ponencia*, p. 4.

[13] Id. at 5.

[14] Id.

[15] Id.

[16] REVISED PENAL CODE, Art. 254.

[17] *People v. Sesbreno*, 215 Phil. 411 (1984).

[18] REVISED PENAL CODE, Art. 254.

[19] 137 Phil. 61 (1969).

witnesses may speak their minds freely and exercise their respective functions without incurring the risk of a criminal prosecution or an action for damages.[20] (Emphasis Supplied)

However, in order to be cloaked with protection, the Court has time and again ruled that the communication must satisfy the requirement of **relevancy**.[21] The test is simple: if the statements are pertinent or material to the cause in hand, these are covered by the privilege however defamatory or malicious.[22]

In determining the pertinency or relevancy of the statements, **the Court should favor the liberal rule**. The test of relevancy is satisfied if the statement is "legitimately related, or so pertinent to the subject of the controversy that it may become the subject of the inquiry in the course of the trial."[23] Shedding light on this matter, the Court explained in *Tolentino v. Baylosis*[24] that:

> And the test of relevancy has been stated thus:
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> ". . . As to the degree of relevancy or pertinency necessary to make alleged defamatory matters privileged the courts favor a liberal rule. **The matter to which the privilege does not extend must be so palpably wanting in relation to the subject matter of the controversy that no reasonable man can doubt its irrelevancy and impropriety**. In order that matter alleged in a pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. It must, however, be legitimately related thereto, or so pertinent to the subject of the controversy that it may become the subject of inquiry in the course of the trial. . . ." (Ruling Case Law, vol. 17, p. 336, quoted with approval in *Smith Bell & Co. v. Ellis*, 48 Phil., 475, 581-582).
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> "In the earliest of the leading cases on the subject the words used in determining the extent of matter that may be absolutely privileged were 'relevant' or 'pertinent,' but these words have in a measure a technical meaning, and perhaps they are not the best words that

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[20] Id. at 72-73.

[21] *People v. Aquino*, 124 Phil. 1179, 1186 (1966).

[22] *People v. Sesbreno*, supra note 17, at 417.

[23] Id.

[24] 110 Phil. 1010 (1961).

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> could be used. So some courts have preferred the use of the words 'have in reference,' 'having relation to the cause or subject matter,' or 'made with reference'; and strict legal materiality or relevancy is not required to confer the privileges. **There is difficulty in determining in some cases what is relevant or pertinent *and in deciding the question the courts are liberal*, and the privilege embraces anything that may possibly be pertinent or which has enough appearance of connection with the case so that a reasonable man might think it relevant. All doubt should be resolved in favor of its relevancy or pertinency, and for the purposes of relevancy the court will assume the alleged slanderous charges to be true, however, false they may have been in fact.**" (53 C.J.S., pp. 171-172).[25] (Emphasis supplied)

Applying the test of relevancy here, while I agree that the word "mistress" may automatically give a negative connotation, I concur with the *ponencia* that respondent lawyer herein should not be held liable for using such language, as the same was made in the context of privileged communication. While lawyers are exhorted to always uphold the dignity of the legal profession, they should be allowed some latitude to zealously defend the cause of their clients.

To my mind, the use of the word "mistress" was relevant to the controversy between Alegria and Spouses Sendin over the subject lots. When Alegria found out that her lots were sold to Spouses Sendin by her late husband and complainant, she sent the Legal Notice to the buyers, with either the retrieval of the subject lots or the renegotiation of the sale, as end in mind.

Complainant admitted in her Position Paper that she would accompany Joselito during the negotiation of the sale since he had been suffering from a heart ailment.[26] Considering the surrounding circumstances, it can be reasonably presumed that Joselito had introduced complainant herein as his wife to Spouses Sendin. Otherwise, Spouses Sendin would not have involved complainant in the transaction, paid her the purchase price, and

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[25] Id. at 1013-1014.

[26] *Rollo*, p. 183.

allowed her to deposit the proceeds to her bank account, based on the evidence provided by Alegria to respondent.[27] Thus, to make things clear, respondent deemed it relevant to clarify matters and inform Spouses Sendin of the extra-marital nature of the relationship between Joselito and complainant herein.[28] With the demise of Joselito, respondent reasonably expected that Spouses Sendin would refer the Legal Notice to complainant herein, not just because of her participation in the subject sale, but because Spouses Sendin knew complainant as the surviving spouse and legal representative of Joselito.

Respondent's purpose for describing complainant herein as Joselito's "mistress" cannot be denied. As aptly raised by the *ponencia*, "[i]f only to emphasize the illegality of Joselito and complainant's relationship and give full warning as to the possible impediments to the title of the people they were transacting with, respondent's statement must be considered to have been made in the context of a privileged communication."[29] Verily, respondent's zealous opposition to the sale transacted by Joselito and complainant was made in legitimate defense of the interest of her client, who she believes is the real owner of the disputed lands.

Again, "**all doubts should be resolved in favor of relevancy**, and for the purposes of relevancy **the court will assume the alleged slanderous charges to be true, however, false they may have been in fact**."[30] Thus, even assuming complainant was not really Joselito's mistress, the Court cannot hold respondent liable therefor, not just because her trusts are not without basis, but because her statement was privileged to begin with.

In his Dissenting Opinion, Justice Gaerlan disputes the relevancy of the use of the word "mistress." He stresses that since Alegria is not the registered owner of the subject lots, informing the Spouses Sendin of the alleged extra-marital relation between

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[27] Id. at 93.

[28] Id. at 92.

[29] *Ponencia*, pp. 5-6.

[30] *Tolentino v. Baylosis,* supra note 24, at 1014.

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Joselito and complainant "serves no other purpose than revealing the indiscretion of Alegria's husband and maligning the character of complainant."[31] He further states that:

> The scenario would be different had Alegria been the registered owner of the subject property. In this case, the buyers might assume that Alegria authorized her husband, Joselito, to sell the property. x x x
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> x x x x
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> Here, respondent could protect and defend her client's interest by simply stating in the notice that the registered owners already sold the property to Alegria and that Joselito's SPA from the registered owners is void for being a forgery. x x x[32]

While Justice Gaerlan's observation is not totally invalid, it cannot also be denied that respondent had a worthy reason for pointing out the extra-marital nature of the relationship between Joselito and complainant. Therefore, I cannot join Justice Gaerlan's conclusion that respondent merely intended to maliciously malign the character of complainant. On this score, it is important to emphasize anew that under the liberal rule, "the privilege embraces **anything that may possibly be pertinent or which has enough appearance of connection** with the case."[33]

In light of the foregoing, I agree that the case should be dismissed, as the use of the word "mistress" was made within the trench of relevancy.

Be that as it may, assuming respondent's use of the word "mistress" was not made within the context of privileged communication, respondent should still not be held administratively liable as she did not go beyond the bounds of propriety. To be sure, the Court cannot extend the privilege to patently offensive statements, which vent ill-feelings towards the opposing counsel,[34] or those that serve no purpose other than to spite or satisfy another

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[31] Dissenting Opinion of Justice Gaerlan, p. 3.

[32] Id. at 3-5.

[33] *Tolentino v. Baylosis,* supra note 24 at 1014.

[34] *Torres v. Javier*, 507 Phil. 397, 408 (2005).

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counsel's rancor,[35] or those that cast aspersions and demeans the integrity of the profession and the Judiciary.[36] The Court should not countenance undignified or unprofessional use of language from members of the Bar. Derogatory statements and personal attacks do not further one's legal arguments; neither do they adequately protect a client's interests. Such remarks or comments go beyond the bounds of relevancy and propriety, and therefore, are not covered by the doctrine of privileged communication. As the Court held in *Gutierrez v. Abila*:[37]

> The requirement of materiality and relevancy is imposed so that the protection given to individuals in the interest of an efficient administration of justice may not be abused as a cloak from beneath which private malice may be gratified.[38]

Juxtaposed against the foregoing, the language subject of the present complaint was clearly not borne out of a personal animosity against the complainant. As reasoned by respondent in her Verified Answer, she used the word "mistress" in its neutral dictionary and legal meaning.[39] She had no reason to hurt complainant's feelings, as she does not even know her personally and has no personal interest or stake in the dispute. According to respondent, she merely based her language and actions on the facts and evidence presented to her by her client. At any rate, respondent in her Answer expressly apologized to complainant if the language she used was hurtful.[40]

In all, the Court should always balance claims that lawyers used abusive language with the lawyers' duty to represent their clients with zeal, and with utmost competence and diligence.[41] Lawyers often resort to strong and powerful language in order

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[35] *Gutierrez v. Abila*, 197 Phil. 616, 622 (1982).

[36] See *Pobre v. Defensor-Santiago*, 613 Phil. 352, 361 and 365 (2009).

[37] *Gutierrez v. Abila,* supra note 35.

[38] Id. at 622.

[39] *Rollo*, p. 89.

[40] Id.

[41] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18 and Canon 19.

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to advocate for the causes they represent, and to persuade the tribunal to rule in their favor. **They should be accorded some freedom — within reasonable limits — to use words that can convey their eagerness to pursue their client's causes.** Ruling otherwise unnecessarily hampers their ability to discharge their duties to their clients with the fervency and zeal required by the legal profession.

All told, I concur with the *ponencia* and **VOTE** to **DISMISS** the complaint against respondent.

DISSENTING OPINION

GAERLAN, *J.*:

For reasons explained below, I disagree with the *ponencia's* dismissal of the complaint for suspension and disbarment against Atty. Zeldania DT. Soriano (respondent) for violation of the Lawyer's Oath and Canons 7 and 8 of the Code of Professional Responsibility (CPR).

To recall, respondent, on behalf of her client Alegria A. Castro (Alegria), sent a Legal Notice[1] to spouses Ferdinand Sendin and Rowena Sendin (spouses Sendin) describing Mary Ann B. Castro (complainant) as the "mistress" of Joselito S. Castro (Joselito), the alleged husband of Alegria. The *ponencia* held that respondent's use of the word "mistress" was relevant to the subject matter of the Legal Notice and was made in the performance of her legal duty to her client. The ultimate purpose of the Legal Notice was to apprise spouses Sendin that Joselito and complainant lack the legal authority to negotiate and transact the sale of the disputed parcels of land allegedly owned by Alegria.[2] The *ponencia* ruled that respondent's referral to complainant as a mistress was made in the context of privileged communication. Respondent relied on the documents presented by Alegria showing the extramarital nature of Joselito and complainant's relationship.

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1 *Rollo*, pp. 21-23.

2 *Ponencia*, p. 5.

With all due respect, the *ponencia* misappreciated the facts of the case. Respondent's purpose to encourage the buyers to directly transact with Alegria could be achieved without calling complainant a mistress. Complainant's relationship with Joselito is not relevant to the sale of the subject properties and to Alegria's alleged ownership of the same.

For better understanding, I note that the Legal Notice involves two lots with a combined area of 10,000 square meters (collectively, property) located at Daramoangan Norte, San Mateo, Isabela covered by Transfer Certificate of Title (TCT) Nos. T-242490 and T-242489 registered under the names of Constancio Castro (Constancio) and Rosario Castro-Mariano (Rosario), respectively. **Neither Alegria nor Joselito is the registered owner of the property;** although Alegria claims ownership by virtue of a written instrument of sale. As stated in respondent's Legal Notice, Joselito sold the property to spouses Sendin through a Special Power of Attorney (SPA) containing the forged signatures of Constancio and Rosario. The relevant portions of the Legal Notice read:

On behalf of and under instruction of Ms. Alegria A. Castro (hereinafter referred to as "Our Client") we are serving this Legal Notice as under:

1. By virtue of a written instrument of sale, our client is the true and lawful owner of two (2) parcels of lands with combined area of 10,000 sqm located at Daramoangan Norte, San Mateo, Isabela covered by **TCT Nos. T-242490 and T-242489 (subject property) registered under the names of Constancio Castro (Constancio) and Rosario Castro-Mariano (Rosario), respectively**.

2. The above-said parcels of lands are tenanted by our client's mother-in-law Mrs. Maura S. Castro, uncle-in-law Mr. Maximo Sagum, and brothers-in-law Mr. Ricardo S. Castro and Mr. Paulo S. Castro.

3. **Sometime in December, 2018, our client learned from her tenant relatives-in-law that you allegedly bought the property from the registered owners who are also our client's relatives-in-law through their "Attorney-in-fact" Mr. Joselito S. Castro (Joselito), the estranged husband of our client. x x x**

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4. **The registered owners did not give authority to Joselito to sell the subject property.**

   4.1. Due to a mental illness associated with advanced age Constancio is incompetent to enter into such contract. His signature in the SPA is forged.

   Also his wife passed away many years ago and her estate has not yet been settled. It could not be validly transferred without prior settlement of her estate. Her signature in the SPA is forged.

   4.2. Rosario, under oath, denied signing an SPA in favor of Joselito. Her signature is forged.

   x x x x

6. By the "selling price," clearly, you are also NOT an innocent purchaser of value. You bought the subject property for Eight Hundred Thousand Pesos (₱800,000.00) while its market value at the time of "sale" is Ten Million Pesos (₱10,000,000.00). **Our client believes that you grabbed the cheap offer of Joselito and his mistress Mary Ann B. Castro** despite the obvious notice of defects in the title, in the sale transaction, and in Joselito's authority.[3] (Emphases supplied)

Considering the foregoing circumstances, there is no connection between and among: (a) complainant being alleged as a "mistress"; (b) Joselito's sale of the property pursuant to a forged SPA of Constancio and Rosario; and (c) Alegria's purchase of the property. Indeed, the Legal Notice mentioned in paragraph 6 that Joselito and complainant offered to sell the property to spouses Sendin for a cheap price. However, paragraph 3 of the same Legal Notice made a contradicting statement that it was through Joselito, acting as attorney-in-fact of the registered owners, that spouses Sendin acquired the property. Thus, including the personal relations of complainant in the notice was uncalled for and pointless.

The scenario would be different had Alegria been the registered owner of the subject property. In this case, the buyers might assume that Alegria authorized her husband, Joselito, to sell the property. However, **based on the Legal Notice, Joselito sold the**

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[3] *Rollo*, pp. 8-9.

property to spouses Sendin on the guise that he was authorized by the registered owners, Constancio and Rosario. It also appears that spouses Sendin was unaware that Alegria is the new owner of the property as the titles are not yet in her name. Hence, in paragraph 1 of the Legal Notice, respondent notified spouses Sendin of the property's sale to Alegria.

To my mind, informing spouses Sendin of the alleged extra-marital relation of Joselito and complainant serves no other purpose than revealing the indiscretion of Alegria's husband and maligning the character of complainant. **Failing the test of relevancy, respondent's use of the word "mistress" in the Legal Notice is not covered by the doctrine of privileged communication.**

Membership in the bar is a privilege burdened with conditions such that a lawyer's words and actions directly affect the public's opinion of the legal profession. Any violation of these conditions exposes the lawyer to administrative liability.[4] A lawyer's use of offensive, derogatory, or improper language is proscribed under Rule 8.01, Canon 8 of the CPR, which reads:

CANON 8 — A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD HIS PROFESSIONAL COLLEAGUES, AND SHALL AVOID HARASSING TACTICS AGAINST OPPOSING COUNSEL.

Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

Thus, a lawyer's language, though forceful and emphatic, must always be dignified and respectful, befitting the dignity of the legal profession. The language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, and illuminating but not offensive. Unkind ascriptions and intemperate language have no place in the judicial forum.[5]

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[4] *Nava II v. Artuz*, A.C. No. 7253 & A.M. No. MTJ-08-1717, February 18, 2020, 932 SCRA 401, 415.

[5] *Velasco v. Causing*, A.C. No. 12883, March 2, 2021.

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It is my firm opinion that respondent violated Rule 8.01 of the CPR when she described complainant as the "mistress" of Joselito. While the word "mistress" has many definitions, the context by which respondent used it in the Legal Notice means that complainant was Joselito's other woman. Respondent in her Position Paper admitted this usage.[6] A mistress is "a woman other than his wife with whom a married man has continuing sexual relationship."[7] Under our laws, being a mistress or a concubine is a crime. Article 334 of the Revised Penal Code states that, "[a]ny husband who shall keep a mistress in the conjugal dwelling, or, shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife, or shall cohabit with her in any other place, shall be punished by *prisión correccional* in its minimum and medium periods. The concubine shall suffer the penalty of *destierro*." Here, respondent imputed a crime against complainant when she called the latter a "mistress" of Joselito.

In *Spouses Nuezca v. Villagarcia*,[8] the Court found therein respondent administratively liable for violating Rule 8.01 of the CPR when he sent a demand letter to the complainants which did not only ask for the payment of their obligations to his clients but also imputed crimes against them, that is, that they were criminally liable for worthless or bum checks and estafa. The Court's disquisition, in that case, is enlightening:

Indeed, respondent could have simply stated the ultimate facts relative to the alleged indebtedness of complainants to his client, made the demand for settlement thereof, and refrained from the imputation of criminal offenses against them, especially considering that there is a proper forum therefor and they have yet to be found criminally liable by a court of proper jurisdiction. Respondent's use of demeaning and immoderate language put complainants in shame and disgrace. Moreover, it is important to consider that several other persons had been copy furnished with the demand letter. As such,

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6 *Rollo*, p. 255.

7 Merriam-Webster Dictionary <https://www.merriam-webster.com/dictionary/mistress> (visited February 18, 2023).

8 792 Phil. 535 (2016).

respondent could have besmirched complainants' reputation to its recipients.[9] (Emphasis supplied)

Similarly, in *Washington v. Dicen*[10] (*Washington*), the Court found that Atty. Dicen violated Rule 8.01 of the CPR for his use of language that not only maligned complainant's character, but also imputed a crime against her, *i.e.*, that she was committing adultery against her husband who was, at the time, living in the United States. We ruled that:

> **Indeed, Atty. Dicen could have simply stated the ultimate facts relative to complainant's allegations against him, explained his participation (or the lack of it) in the latter's arrest and detention**, and refrained from resorting to name-calling and personal attacks in order to get his point across. After all, "[t]hough a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum."[11] (Emphasis supplied)

Here, respondent could protect and defend her client's interest by simply stating in the Legal Notice that the registered owners already sold the property to Alegria and that Joselito's SPA from the registered owners is void for being a forgery. That respondent has no ill will against complainant and that she has some basis for describing the latter as "mistress" pursuant to Alegria's evidence would not absolve her from administrative liability. **Without a court judgment or pronouncement as to the validity of the marriage between Alegria and Joselito, and between complainant and Joselito, respondent is not in the position to call complainant a mistress.**

In *Buenviaje v. Magdamo*,[12] We ruled that Atty. Magdamo failed to comply with Canon 8 of the CPR when, in his Notice of Death of Depositor sent to BPI-Dagupan, he stated that complainant is: (1) a clever swindler who made it appear on a spurious document

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[9] Id. at 539.

[10] 835 Phil. 837 (2018).

[11] Id. at 843.

[12] 817 Phil. 1 (2017).

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that he is the husband of Fe Gonzalo (Fe) when in truth and in fact, he is married to another; (2) a fugitive from justice hiding from a criminal charge pending in Manila; and (3) Fe never had a husband or child in his entire life. As to the third imputation, the Court declared that Atty. Magdamo is out of line when he made an inference that therein complainant and Fe's marriage documents were spurious. Atty. Magdamo should know better that without the courts' pronouncement, he is in no position to draw conclusions and pass judgment as to the existence, and validity or nullity of the complainant's marriage with Fe. Thus, the Court noted that Atty. Magdamo's statements in the Notice given to BPI-Dagupan was careless, premature, and without basis.[13]

More, in *Velasco v. Causing*,[14] the Court held Atty. Causing liable for violation of Rule 8.01 of the CPR when he used the following words in his Facebook post and in pleadings in direct reference to therein complainant, namely: "polygamous," "criminal," "dishonest," "arrogance," "disgusting," and "cheater." The Court stressed that the use of intemperate language and unkind ascriptions have no place in the dignity of judicial forum.[15]

Like the word "polygamous" and/or "cheater," I humbly believe that the word "mistress" is derogatory and when unnecessarily employed, such as in this case, should warrant the user's discipline.

In *Washington*, the Court admonished therein respondent to refrain from using language that is abusive, offensive, or otherwise improper, with a stern warning that a repetition of the same or similar acts will be dealt with more severely.

The factual *milieu* of this case is analogous to *Washington*. Accordingly, instead of dismissing the complaint, the Court should have admonished respondent for violation of Rule 8.01, Canon 8 of the Code of Professional Responsibility with a warning that the commission of the same or similar act will merit a harsher penalty.

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[13] Id. at 7-8.

[14] Supra note 5.

[15] Id.