



Republic of the Philippines
Supreme Court
 Manila

SECOND DIVISION

ELADIO D. PERFECTO,
 Complainant,

A.M. No. **RTJ-15-2417**
 [Formerly known as OCA IPI
 No. 10-3466-RTJ]

Present:

-versus-

CARPIO, *J.*, Chairperson,
 BRION,
 DEL CASTILLO,
 MENDOZA, and
 LEONEN, *JJ.*

JUDGE ALMA CONSUELO D.
ESIDERA,
 Respondent.

Promulgated:

'22 JUL 2015

Eladio Perfecto

X-----

RESOLUTION

LEONEN, J.:

On July 15, 2010, Eladio Perfecto filed an administrative Complaint¹ against Judge Alma Consuelo Desales-Esidera of Branch 20 of the Regional Trial Court of Catarman, Northern Samar for falsification of public document and dishonesty.

Eladio Perfecto (Perfecto) alleged that Judge Alma Consuelo Desales-Esidera (Judge Desales-Esidera) was first married to Richard Tang Tepace on May 7, 1987 at the Metropolitan Trial Court of Manila.²

¹ Rollo, p. 1.

² Id. at 1 and 4. Attached to the Complaint as Annex "A" is a photocopy of a certification dated February 21, 2009, which appears to have been issued by the Office of the Civil Registrar General. It shows that the name Alma Consuelo De Sales Esidera yielded two (2) matches in the National Indices

1

On October 3, 1990, Judge Desales-Esidera gave birth to a daughter with Renato Verano Esidera at Capitol Medical Center in Quezon City.³ Her marriage to Richard Tang Tepace was later declared void on January 27, 1992.⁴

Based on her certification of marriage records dated February 21, 2009, Judge Desales-Esidera married Renato Verano Esidera on June 3, 1992.⁵

Perfecto further alleged that Judge Desales-Esidera falsified her daughter's birth certificate to make it appear that she and Renato Verano Esidera were married on March 18, 1990 and that their daughter was a legitimate child.⁶ No marriage took place on that date based on a certification of no marriage issued by the Office of the City Civil Registrar of Paranaque City.⁷ Judge Desales-Esidera did not take any step to rectify the error on her daughter's birth certificate.⁸

Perfecto prays for Judge Desales-Esidera's dismissal from office for her alleged dishonesty.⁹

Judge Desales-Esidera filed her Comment with Motion to Dismiss on December 30, 2010.¹⁰ She argued that Perfecto did not comply with the requirement of personal knowledge under Rule 140, Section 1.¹¹ He should

of Marriages: (1) a marriage between Alma Consuelo Balitbit Desales and Renato Verano Esidera on June 3, 1992 in Paco, Manila; and (2) a marriage between Alma Consuelo Desales and Richard Tepace Tang on May 7, 1987 in Ermita, Manila.

³ Id. at 1 and 5. Attached to the Complaint as Annex "B" is a photocopy of a birth certificate of one Mary Joyce Desales Esidera. The copy indicates that Mary Joyce Desales Esidera was born on October 3, 1990 to parents Alma Consuelo Balitbit Desales and Renato Verano Esidera, who were married on March 18, 1990 in Paranaque. The birth certificate appears to have been prepared by the Medical Records Clerk per information given by Renato V. Esidera who signed as informant.

⁴ Id. at 1-2 and 13-14. Attached to the Complaint as Annex "C" is a photocopy of what appears to be the Regional Trial Court Decision issued on January 27, 1992 declaring void the marriage between Richard Tang Tepace alias Richard T. Tang and Alma Consuelo B. Desales on May 7, 1987.

⁵ Id. at 1.

⁶ Id. at 2.

⁷ Id. at 2 and 15. Attached to the Complaint as Annex "D" is a photocopy of a certificate that appears to have been issued by the Office of the City Civil Registrar upon request of Mary Joyce D. Esidera. It states that there was no record of marriage between Renato V. Esidera and Alma Consuelo B. Desales on March 18, 1990.

⁸ Id. at 2.

⁹ Id. at 3.

¹⁰ Id. at 26-34.

¹¹ Id. at 26. Judge Desales-Esidera cites Rule 140, Section 1 as follows: "All charges against judges of first instance shall be in writing and shall set out distinctly, clearly, and concisely the facts complained of as constituting the alleged serious misconduct or inefficiency of the respondent, and shall be sworn to and supported by affidavits of persons who have personal knowledge of the facts therein alleged, and shall be accompanied with copies of documents which may substantiate said facts."

Rule 140, Section 1 of the Rules of Court, as amended by Administrative Matter No. 01-8-10-SC effective October 1, 2001, provides:

have supported his Complaint “with affidavits of persons who knew her personally or with authenticated copies of documents that supported his allegations.”¹² Otherwise, Perfecto’s allegations were nothing more than “tsismis” or hearsay.¹³ Perfecto perjured himself when he subscribed to facts that were not based on his personal knowledge.¹⁴

Judge Desales-Esidera brought this court’s attention to the allegedly malicious means by which Perfecto obtained the documents supporting his allegations.¹⁵ According to her, the documents were secured in connivance with persons involved in or were related to parties in other administrative cases. Perfecto also connived with court employees who violated either the law or Supreme Court circulars by bringing court records outside the court without the judge’s knowledge or consent.¹⁶ Judge Desales-Esidera claimed that this affects Perfecto’s credibility and integrity.¹⁷

Moreover, Judge Desales-Esidera claimed that the persons involved in obtaining the documents “desperately want[ed] [her] out of the judiciary so that they could continue their illegal activities in the office[,] like temporary borrowing of funds in the Office of the Clerk of Court . . . and the abuse of the accreditation of [Perfecto][,] whose newspaper [was] not printed and circulated generally and regularly in Northern Samar.”¹⁸

Judge Desales-Esidera further argued that the charges against her were personal and not judicial.¹⁹ She did not participate in the accomplishment of the birth certificate.²⁰ She had planned to correct her daughter’s birth certificate, but she and her husband decided against it for the best interest of her daughter.²¹

On the question of integrity, honesty, and morality, Judge Desales-Esidera argued that everything she did was legal and in accordance with her religious beliefs. She was, indeed, married to her second husband on March 18, 1990, but only under recognized Catholic rites.²² The priest who

SECTION 1. How instituted. – Proceedings for the discipline of Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted *motu proprio* by the Supreme Court or upon a verified complaint, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

¹² *Rollo*, p. 27.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 28–29.

¹⁷ *Id.* at 29.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 29.

²¹ *Id.* at 33.

²² *Id.* at 30.

officiated their marriage had no authority to solemnize marriages under the civil law.

Further, Judge Desales-Esidera argued that while her religious marriage was done before the declaration of nullity of her first marriage, the prevailing jurisprudence at that time was that “there was no need for a judicial decree to establish the invalidity of void marriage.”²³ She described her state of mind and motivations for her acts as follows:

When I got married the first time, it was not our intention to live together as husband and wife. It was a secret marriage solemnized by a judge. We planned of a church wedding supposedly on my birthday of the same year. However, Richard reasoned out that he was still confused because his mother was sick while his father, a Chinese, would not agree because it was the Year of the Dragon. As established by the evidence in the annulment case (Decision, page 4 onwards, Annex C of Complaint), I continued living with my parents and using my paternal name. Never for a moment did we live together as husband and wife. For some reasons we cooled off and finally called it quits. When I met my second husband, I found it very much unfair to be bound in a marriage that was never consummated. I wanted the marriage annulled. But the annulment process was long and I was not getting any younger. Then, I got pregnant. I knew it was against my values but I had no choice. I heard that getting pregnant beyond thirty was more risky.

Renato and I are both religious. We both wanted to correct what we have started wrongly. I consulted at least two priests who were knowledgeable on Canon Law, a certain Fr. Albarico from San Sebastian Church and Rev. Fr. David J. Tither, C.S.S.R of the Redemptorist Church in Baclaran. I also made my own research on Catholic annulment and got a copy of the deliberations on “psychological incapacity” as a ground for annulment under the Family Code. I need not over emphasize that in view of the separation of the Church and the State, civil marriages are not recognized by the Catholic Church. Couples who are civilly married are considered living in state of sin, and may be ex-communicated. They cannot receive the sacraments. Thus, my marriage to Richard Tang was not recognized by the Catholic Church. Moreover, in my research I found this digest in Vol. 1, Civil Code Annotated, Ambrosio Padilla, p. 454, 1975 edition:

“People vs. Whipkey, (CA) 69, O.G. 9678. – Pursuant to Art. 66 of the Civil Code, before a marriage license can be obtained by a citizen or subject of a foreign country, he must first present a certificate of legal capacity to contract marriage to be issued by the diplomatic or consular official of his own country. The law stresses the mandatory character of this requirement by the use of the word “necessary”, so that marriage license secured in violation of Article 66 of the Civil Code is a void license.”

²³ Id.

I need not go into details. But anybody knows that a marriage solemnized with a void license is no marriage at all. My marriage to Richard Tang, a Chinese, was void ab initio. If I am not mistaken, at that time, the jurisprudence was that there was no need for a judicial decree to establish the invalidity of void marriage. (People vs. Aragon, 100 Phil. 1033, cited on page 470 of the same book).

The logical conclusion, therefore, was that there was no impediment for Renato and I to get married although we still need the court order to cancel the registration. But we both can receive the sacrament. Our primary purpose in availing of the Sacrament of Holy Matrimony was to continue living in a state of grace while waiting for the result of the annulment case which came two years later. So after consultations and a little catechesis with Fr. David Tither, he finally officiated the sacramental marriage rite in one of the confessional rooms in the parish office of Baclaran Church with two other priests. Rev. Fr. Patrick J. Deane, C.S.S.R and Rev. Fr. Desmond de Souza, C.S.S.R., as witnesses. Our second marriage on June 3, 1992 was again in a religious ceremony but with all the formalities required by law.

That pregnancy was very complicated. In fact, it was diagnosed as ectopic pregnancy. After two sessions with Fr. David Tither, also a known healer and exorcist, the fetus finally went down from the fallopian tube to the womb but was born prematurely. It was also difficult and painful giving birth to her. So, my husband Renato took charge of everything, including the preparation for the registration of the baby.

Complainant accuses me of falsifying the birth certificate of my daughter, Mary Joyce. However, her certificate of live birth form was accomplished by her father in his own handwriting and signed by him. My husband Renato is not a lawyer. To him, what matters is that our union is blessed by God and that before the eyes of the Almighty, our daughter is legitimate.

The date of marriage which my husband supplied in the birth certificate of our daughter, Mary Joyce, is the date we received the Sacrament of Holy Matrimony on March 18, 1990. Fr. David Tither had no license to solemnize marriage from the National Archives or from the civil government. . . . It was a purely sacramental marriage rite, without legal effect but definitely valid and recognized by the Roman Catholic Church. It is called "matrimonio de conciencia". All he could give us was a blank certificate of marriage but signed by him and the two priest witnesses, a certification and a covering letter (Annex E, F and G). The need referred to in the covering letter did not arrive because our second marriage (June 3, 1992) came before Mary Joyce attended the pre-school, so the form remained blank up to this date. If I were as scheming as my accusers, I should have filled it up a long time ago. But I am too honest and honorable to do that.

According to the Order to comment, I am also accused of immorality. The basis of morality is generally the do's and don'ts set by the Church of whatever religion. As Catholics, we have the Ten Commandments. I have sinned against one but I took advantage of the Sacrament of Reconciliation and the Sacrament of Matrimony. I did not, and do not live with anybody not my husband as defined by my Catholic faith. Chastity is a virtue. Even if one is civilly married but if there is no

religious ratification, in the eyes of my God, the spouses are living in sin and cannot take the Sacrament of the Holy Eucharist.

From the day I saw the certified copy of the birth certificate of our daughter, I already planned to correct it. But, being married, anything that would affect our family must be a conjugal decision. We decided against it, not because I am a lawbreaker, dishonest or immoral, but because not to disturb her birth record will serve her best interest and welfare. It will save her the embarrassment of being different in some way from her sisters; and the repercussion of being branded an “illegitimate” by her teachers and peers. As a mother, I have to protect her from everything detrimental to her well-being. More than a judge, I am a mother and a wife. As a lawyer, I agreed because it can always be corrected when the time or need comes. This case has already affected my daughter emotionally, especially when she learned that somebody secured her birth certificate and pretended to be “Mary Joyce.” She could not understand why she should be dragged in this controversy using her birth certificate which is supposed to be confidential. Neither do I. If the Xerox copies appended to the Complaint were perused carefully, my children, especially Mary Joyce, would have been saved from emotional shock and trauma. Being appointed to the Judiciary is not a license to pry on our personal life before I became a judge and criticize our wisdom.

Finally, my life and the status of our firstborn could not have escaped the scrutiny of all those involved in the selection process in the appointment to the Judiciary, including those who conducted the background investigation. It is personal and has nothing to do with my professional life then, and now, with my judicial life. My love story is the best proof of my morality and my honesty. I never kept it a secret; but I cannot allow it also to be publicized unnecessarily. The first civil marriage was never consummated because of our agreement to have a church wedding first. The second marriage was purely a sacramental rite in obedience to the Law of God, so that my husband and I would continue living together without offending our God until the annulment process was finalized. The third marriage was made to finally formalize our status in the eyes of the law of man.

The reason for these administrative cases is that I cannot be like my accusers. I cannot join them because I value my dignity and my peace of mind.

We all have our stories to tell. Nobody’s perfect. What is important is we learn from our mistakes, amend our lives and avoid further wrongdoings. If the Honorable Court Administrator, through the Legal Office, would only conduct discreet investigation on the life of my accusers and their lifestyles, the Office would realize who among us is leading an immoral life.²⁴ (Emphasis in the original)

On September 29, 2014, the Office of the Court Administrator recommended that Judge Desales-Esidera be found guilty of disgraceful, immoral, or dishonest conduct and that she be suspended from judicial service for 15 days with the warning that a repetition of a similar offense

²⁴ Id. at 29–34.

would be dealt with more severely.²⁵

The Office of the Court Administrator found that Judge Desales-Esidera condoned the misrepresentation made on her child's birth certificate.²⁶

The Office of the Court Administrator also found that Judge Desales-Esidera engaged in an "illicit affair" and contracted a second marriage while another marriage subsisted.²⁷ She contracted the second marriage knowing that there were legal impediments to that marriage.²⁸ Judge Desales-Esidera "did not comport herself according to her Roman Catholic faith."²⁹

We find that Judge Desales-Esidera's omission to correct her child's birth certificate is not sufficient to render her administratively liable under the circumstances. The error in the birth certificate cannot be attributed to her. She did not participate in filling in the required details in the document. The birth certificate shows that it was her husband who signed it as informant.³⁰

Judge Desales-Esidera is also not guilty of disgraceful and immoral conduct under the Code of Professional Responsibility.

Morality refers to what is good or right conduct at a given circumstance. In *Estrada v. Escritor*,³¹ this court described morality as "how we ought to live' and why."³²

Morality may be religious, in which case what is good depends on the moral prescriptions of a high moral authority or the beliefs of a particular religion. Religion, as this court defined in *Aglipay v. Ruiz*,³³ is "a profession of faith to an active power that binds and elevates man to his Creator."³⁴ A conduct is religiously moral if it is consistent with and is carried out in light of the divine set of beliefs and obligations imposed by the active power.

Morality may also be secular, in which case it is independent of any divine moral prescriptions. What is good or right at a given circumstance does not derive its basis from any religious doctrine but from the

²⁵ Id. at 51–52.

²⁶ Id. at 49.

²⁷ Id. at 49.

²⁸ Id.

²⁹ Id.

³⁰ Id. at 29–34.

³¹ 455 Phil. 411 (2003) [Per J. Puno, En Banc].

³² Id. at 580.

³³ 64 Phil. 201 (1937) [Per J. Laurel, First Division].

³⁴ Id. at 206.

independent moral sense shared as humans.

The non-establishment clause³⁵ bars the State from establishing, through laws and rules, moral standards according to a specific religion. Prohibitions against immorality should be based on a purpose that is independent of religious beliefs. When it forms part of our laws, rules, and policies, morality must be secular. Laws and rules of conduct must be based on a secular purpose.³⁶

In the same way, this court, in resolving cases that touch on issues of morality, is bound to remain neutral and to limit the bases of its judgment on secular moral standards. When laws or rules refer to morals or immorality, courts should be careful not to overlook the distinction between secular and religious morality if it is to keep its part in upholding constitutionally guaranteed rights.³⁷

There is the danger of “compelled religion”³⁸ and, therefore, of negating the very idea of freedom of belief and non-establishment of religion when religious morality is incorporated in government regulations and policies. As explained in *Estrada v. Escritor*:³⁹

Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, *i.e.*, to a “compelled religion” anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens. Expansive religious freedom therefore requires that government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality.⁴⁰

The Office of the Court Administrator recommended that we find respondent judge guilty of immoral conduct based on, among others, her alleged affair and her failure to comport herself according to the Roman Catholic faith.

³⁵ CONST., art. III, sec. 5.

³⁶ See *Estrada v. Escritor*, 455 Phil. 411, 586-594 (2003) [Per J. Puno, En Banc].

³⁷ See *Estrada v. Escritor*, 455 Phil. 411 (2003) [Per J. Puno, En Banc].

³⁸ *Estrada v. Escritor*, 455 Phil. 411, 589 (2003) [Per J. Puno, En Banc].

³⁹ 455 Phil. 411 (2003) [Per J. Puno, En Banc].

⁴⁰ *Id.* at 588–589.

This court may not sit as judge of what is moral according to a particular religion. We do not have jurisdiction over and is not the proper authority to determine which conduct contradicts religious doctrine. We have jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest.

Thus, for purposes of determining administrative liability of lawyers and judges, “immoral conduct” should relate to their conduct as officers of the court. To be guilty of “immorality” under the Code of Professional Responsibility, a lawyer’s conduct must be so depraved as to reduce the public’s confidence in the Rule of Law. Religious morality is not binding whenever this court decides the administrative liability of lawyers and persons under this court’s supervision. At best, religious morality weighs only persuasively on us.

Therefore, we cannot properly conclude that respondent judge’s acts of contracting a second marriage during the subsistence of her alleged first marriage and having an alleged “illicit” affair are “immoral” based on her Catholic faith. This court is not a judge of religious morality.

We also do not find that respondent judge’s acts constitute immorality for purposes of administrative liability. Under the circumstances, respondent judge’s second marriage and her alleged affair with her second husband were *not of such depravity* as to reduce confidence in the Rule of Law. Respondent judge and her first husband never really lived together as husband and wife. She claimed that her first husband did not want to have a church wedding. She and her husband did not have a child. She claimed that this marriage was not recognized by her church. Eventually, their marriage was declared void,⁴¹ and she was wed civilly to her second husband, with whom respondent judge allegedly had an affair.

Moreover, respondent judge’s acts were not intrinsically harmful. When respondent judge married her second husband, no harm was inflicted upon any one, not even the complainant. There was no evidence on the records that the first husband, who was the most interested person in the issue, even objected to the second marriage.

While we do not find respondent judge administratively liable for

⁴¹ Pertinent portions of the dispositive portion of the Regional Trial Court’s Decision in Sp. Civil Case No. 148 reads: “WHEREFORE, judgment is hereby rendered declaring the marriage contracted by Richard Tang Tepace alias Richard T. Tang and Alma Consuelo B. Desales on May 7, 1987, solemnized by Judge Antonio de Castro of Metropolitan Trial Court, Branch 29, Manila NULL and VOID by reason of defendant’s psychological incapacity to comply with the essential obligations of marriage, with all the legal effects and consequences and subject to the provisions of existing laws[.]”

immorality, we can determine if she is administratively liable for possible misconduct. The Code of Professional Responsibility directs lawyers to obey the laws and promote respect for the law.⁴²

We cannot conclude that, for purposes of determining administrative liability, respondent judge disobeyed the law against bigamy when she and her second husband conducted a marriage ceremony on March 18, 1990.

Respondent judge claimed that this marriage was merely a sacramental marriage entered into only to comply with the requirements of their religious beliefs. It was valid only under the Roman Catholic Church but has no legal effect. Their solemnizing officer was not licensed to solemnize marriage from the National Archives or from the civil government.⁴³

Article 349 of the Revised Penal Code prohibits a second or subsequent marriage before the legal dissolution of a first marriage:

Art. 349. Bigamy. – The penalty of *prision mayor* shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

The second or subsequent marriage contemplated under this provision is the marriage entered into under the law. Article 1 of the Family Code defines marriage as “a special contract of permanent union between a man and a woman entered into *in accordance with law* for the establishment of conjugal and family life[.]”

Thus, the validity of the second marriage, if not for the subsistence of the first marriage, is considered one of the elements of the crime of bigamy. The elements of bigamy are:

(a) the offender has been legally married; (b) the marriage has not

⁴² CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

⁴³ FAMILY CODE, art. 7. Marriage may be solemnized by:

- (1) Any incumbent member of the judiciary within the court’s jurisdiction;
- (2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect **and registered with the civil registrar general**, acting within the limits of the written authority granted by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer’s church or religious sect;
- (3) Any ship captain or airplane chief only in the case mentioned in Article 31[.]

been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; (c) that he contracts a second or subsequent marriage; and (d) the second or subsequent marriage has all the essential requisites for validity. The felony is consummated on the celebration of the second marriage or subsequent marriage. *It is essential in the prosecution for bigamy that the alleged second marriage, having all the essential requirements, would be valid were it not for the subsistence of the first marriage.*⁴⁴ (Emphasis supplied, citations omitted)

Respondent judge's act of participating in the marriage ceremony as governed only by the rules of her religion is not inconsistent with our law against bigamy. What the law prohibits is not second marriage during a subsisting marriage per se. What the law prohibits is a second marriage that would have been valid had it not been for the subsisting marriage. Under our law, respondent judge's marriage in 1990 was invalid because of the solemnizing officer's lack of authority.

Marriages entered into in accordance with the law may or may not include marriages recognized in certain religions. Religious marriages are recognized in and may be governed by our laws only if they conform to legal requirements. Religious marriages that lack some or all the requirements under the law are invalid.⁴⁵ They are not considered to have

⁴⁴ *Montanez v. Cipriano*, G.R. No. 181089, October 22, 2012, 684 SCRA 315, 322 [Per J. Peralta, Third Division].

⁴⁵ FAMILY CODE, Art. 2. No marriage shall be valid, unless these essential requisites are present:
(1) Legal capacity of the contracting parties who must be a male and a female; and
(2) Consent freely given in the presence of the solemnizing officer.

Art. 3. The formal requisites of marriage are:

- (1) Authority of the solemnizing officer;
- (2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and
- (3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

Art. 4. The absence of any of the essential or formal requisites shall render the marriage *void ab initio*, except as stated in Article 35(2).

....

Art. 7. Marriage may be solemnized by:

....

- (2) Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general, acting within the limits of the written authority granted him by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;

....

Art. 35. The following marriages shall be void from the beginning:

....

been entered into. They do not enjoy the benefits, consequences, and incidents of marriage provided under the law.

The lack of authority of the officer that solemnized respondent judge's marriage in 1990 renders such marriage invalid. It is not recognized in our law. Hence, no second marriage can be imputed against respondent judge while her first marriage subsisted.

However, respondent judge may have disobeyed the law, particularly Article 350 of the Revised Penal Code, which prohibits knowingly contracting marriages against the provisions of laws. Article 350 of the Revised Penal Code provides:

ART. 350. *Marriage contracted against provisions of laws.* – The penalty of *prision correccional* in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall contract marriage *knowing that the requirements of the law have not been complied with* or that the marriage is in disregard of a legal impediment. (Emphasis supplied)

Respondent judge knew that the solemnizing officer during her and her husband's marriage in 1990 had no civil authority to solemnize marriages. It is clear from her Comment that she and her husband's only consideration for their 1990 marriage was the recognition from the Roman Catholic Church. She stated that:

Fr. David Tither had no license to solemnize marriage from the National Archives or from the civil government. Hence, he was not under obligation to register our marriage. It was a purely sacramental marriage rite, without legal effect but definitely valid and recognized by the Roman Catholic Church. It is called "matrimonio de conciencia."⁴⁶

However, Article 350 may be of doubtful constitutionality when applied to religious exercise and expression insofar as it prescribes upon individuals and religious communities formal requirements for the conduct of their religious ceremonies. It puts a burden⁴⁷ upon the exercise of beliefs by criminalizing marriages performed in accordance with those beliefs, but lacks some or all the requisites of a valid marriage under the law. These requirements include not only age and consent, but also formal requisites such as marriage license and civil authority of the solemnizing officer even though violence, fraud, or intimidation was not present under the

(2) Those solemnized by any person not legally authorized to perform marriages unless such marriages were contracted with either or both parties believing in good faith that the solemnizing officer had the legal authority to do so[.]

⁴⁶ *Rollo*, p. 30.

⁴⁷ *See Estrada v. Escritor*, 455 Phil. 411, 597 (2003) [Per J. Puno, En Banc].

circumstances. It may, therefore, limit religious exercise and expression to the formalities of law.

Thus, unless respondent judge's act of participating in a marriage ceremony according to her religious beliefs violates other peoples' rights or poses grave and imminent danger to the society,⁴⁸ we cannot rule that respondent judge is administratively liable for her participation in her religious marriage ceremony.⁴⁹

In *Estrada*,⁵⁰ this court ruled that in religious freedom cases, the test of benevolent neutrality should be applied. Under the test of benevolent neutrality, religious freedom is weighed against a compelling state interest:

Benevolent neutrality recognizes that government must pursue its secular goals and interests but at the same time strives to uphold religious liberty to the greatest extent possible within flexible constitutional limits. Thus, although the morality contemplated by laws is secular, *benevolent neutrality* could allow for *accommodation* of morality based on religion, provided it does not offend compelling state interests.⁵¹ (Emphasis in the original)

We find that there is no compelling state interest that may limit respondent judge's right to participate in religious and merely ceremonial acts that are non-violative of other people's rights and with no legally binding effect. The institution of marriage is not threatened when we accommodate respondent judge's freedom to participate in such ceremonies even if they have secular counterparts under our laws.

In any case, respondent judge did not ask that she and her husband be given the same rights as civilly married partners before their civil wedding in 1992. She does not ask that our laws recognize her marriage in 1990 as valid. Respondent judge also does not seem to be against civil marriages. She and her husband were even civilly wed after her marriage with her first spouse was declared void.

However, benevolent neutrality and claims of religious freedom cannot shield respondent judge from liability for misconduct under our laws. Respondent judge knowingly entered into a civil marriage with her first husband. She knew its effects under our laws. She had sexual relations with

⁴⁸ See *Ebralinag v. Superintendent*, G.R. No. 95770, March 1, 1993, 219 SCRA 256, 271 [Per J. Griño-Aquino, En Banc].

⁴⁹ CONST., art. III, sec. 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

⁵⁰ 455 Phil. 411 (2003) [Per J. Puno, En Banc].

⁵¹ *Id.* at 590.

her second husband while her first marriage was subsisting.

Respondent judge cannot claim that engaging in sexual relations with another person during the subsistence of a marriage is an exercise of her religious expression. Legal implications and obligations attach to any person who chooses to enter civil marriages. This is regardless of how civil marriages are treated in that person's religion.

Moreover, respondent judge, as a lawyer and even more so as a judge, is expected to abide by the law. Her conduct affects the credibility of the courts in dispensing justice. Thus, in finding respondent judge administratively liable for a violation of her marriage obligations under our laws, this court protects the credibility of the judiciary in administering justice. In the words of Justice Carpio in his dissenting opinion in *Estrada*:

Court employees, from the highest magistrate to the lowliest clerk, are expected to abide scrupulously with the law. They are held to a higher standard since they are part of the judicial machinery that dispenses justice. . . . [T]here exists a compelling state interest to hold Escritor to the same standards required of every court employee. If unsanctioned, Escritor's unlawful conduct would certainly impair the integrity and credibility of the judiciary.⁵²

Lawyers are not and should not be expected to be saints. What they do as citizens of their faiths are beyond this court's power to judge. Lawyers, however, are officers of court. They are expected to care about and sustain the law. This court's jurisdiction over their actions is limited to their acts that may affect public confidence in the Rule of Law. Our state has secular interests to protect. This court cannot be expected to condone misconduct done knowingly on account of religious freedom or expression.

Finally, the Office of the Court Administrator and the Administrators of lower courts should look into the motives of persons who file complaints against our judges and officers of court when allegations point to possible administrative violations. This is not to say that complainants' motives are relevant to their causes of actions. However, complainants who come to court with unclean hands should not be spared from liability just because they were the first to submit their accusations.

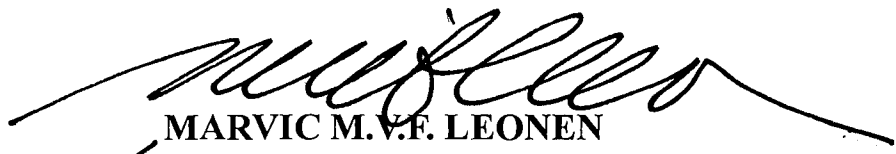
WHEREFORE, we find respondent Judge Alma Consuelo Desales-Esidera guilty of violating Canon 1 of the Code of Professional Responsibility. Respondent Judge Desales-Esidera is **SUSPENDED** from judicial service for one (1) month with a warning that repetition of a similar offense will be dealt with more severely. She is **STERNLY WARNED** that

⁵² J. Carpio, Dissenting Opinion in *Estrada v. Escritor*, 455 Phil. 411, 651 (2003) [Per J. Puno, En Banc].

repetition of the same violations in the future will be dealt with more severely.


The Office of the Court Administrator is **ORDERED** to conduct an investigation regarding respondent's claims of illegal court activities.

SO ORDERED.



MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:



ANTONIO T. CARPIO
Associate Justice
Chairperson



ARTURO D. BRION
Associate Justice



MARIANO C. DEL CASTILLO
Associate Justice



JOSE CATRAL MENDOZA
Associate Justice