

94 Phil. 277

[Adm. No. 104. January 28, 1954]

**BENITA S. BALINON, PETITIONER, VS. CELESTINO M. DE LEON ET AL.,
RESPONDENTS.**

D E C I S I O N

PARAS, C.J.:

The Solicitor General has filed a complaint against the respondent Celestino M. de Leon and Justo T. Velayo, duly qualified members of the bar in active practice, alleging that, since December, 1948, respondent De Leon, still legally married to Vertudes Marquez, lived as husband and wife with Regina S. Balinon; that said respondent prepared and subscribed on February 4, 1948, before respondent Velayo, a notary public, an affidavit which reads as follows:

“KNOW ALL MEN BY THESE PRESENTS:

“I, Celestino de Leon, of legal age, married, Filipino citizen, after being duly sworn to according to law depose and say:

“That there exists a contract of separation executed and perfected between my wife, Vertudes Marquez and myself;

“That said contract states among other things that each of us is at liberty and free to take for himself and herself a lifetime partner with the full consent and authorization of each other;

“That by the same contract our conjugal partnership was dissolved and our existing property, rights and interests were divided and apportioned;

“That
in the said contract my wife shall have the full control, care and
custody of the children, and as such all of our conjugal property
rights and interests were apportioned to her with the exception of my
private personal belongings and things pertaining to my law profession;

“That,
besides the said dissolution and apportionment, said contract further
states about my wife’s and also my children’s share to my current
income by way of alimony and support;

“Now, therefore, by
virtue of the said contract of separation, I now by these presents take
my new found life-partner. Regina S. Balinon, as my true and lawful
wife;

“That, in order to protect her rights and interests
with regards to her personality and future property rights, I, hereby
voluntarily and of my own free will solemnly swear under oath;

“That
I will uphold and defend her honor and dignity and prestige as a woman
of the weaker sex as well as any and all members of her family arising
by reasons of said relationship;

“That I will remain loyal and faithful to her as a lawful and devoted loving
husband for the rest of my life at all costs;

“That
I will maintain and preserve the new existing companionship, the love,
respect and goodwill prevailing among the members of her family of
which I am now a member as well as equally mine;

“That I will
not do any act that may tend to degrade or dishonor her or any member
of her family unbecoming the dignity of said relationship but would
rather take and respect her as my true and lawful wife;

“That
in case of intentional desertion on my part thereby frustrating the
true and honest intent of my affirmations, the same may be sufficient
ground for my perpetual disbarment upon her instance or any third party
in interest;

“That except for such minor dues and allowances
by way of alimony and support mentioned above, any and all such future
properties, rights and interests that we shall acquire during said
relationship shall exclusively appertain and belong to her as her due
share and shall bear her name in all such titles and documents thereto,
subject to her legal heirs as such;

“That any offspring that
we shall bear by reason of said companionship and relationship shall be
acknowledged by me as my true and legal child with all the rights and
privileges accorded by law pertaining to that of a legitimate child;

“That
this contract of companionship is done of my own accord, freely and
voluntarily without any mental reservation or purpose of evasion, So
help me God.

“In witness whereof, I have hereunto set my signature this 4th day of February
1949.

“(Sgd.) CELESTINO M. DE LEON

“Signed in the Presence of:

.....

.....

“REPUBLIC OF THE PHILIPPINES
CITY OF BACOLOD

s.s.

“Personally appeared before me this 4th day of February 1949, Celestino
de Leon with Residence Certificate No.
issued at
on.....1949, who executed the
foregoing affidavit with contract of companionship consisting of two
pages, and acknowledged by me that the same is his own free and

voluntary act and deed.

“IN WITNESS WHEREOF, I have hereunto set my hand and seal on the place and date first written above.

“(Sgd.) CELESTINO
M. DE LEON
Notary Public
Until December 31,
1948

“Doc. No. 484

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“Book No. XVI

“Series of 1949.”

The complaint also alleges that, notwithstanding the unlawful and immoral purposes of the foregoing affidavit, respondent Velayo knowingly signed the same in violation of his oath of office as attorney and notary public.

Respondent De Leon admits his continuous cohabitation with Regina S. Balinon during his subsisting marriage with Vertudes Marquez and the fact that he prepared and subscribed the affidavit above quoted, but contends that he has not yet been finally convicted of a crime involving moral turpitude; that while the affidavit may be illicit, it is not an agreement but a mere innocent unilateral declaration of facts; and that while the execution of said affidavit may be illegal and void *ab initio*, no specific law has been violated so as to give rise to an action. Respondent Velayo alleges, on the other hand, that his participation was limited to the task of notarizing the affidavit, as a matter of courtesy to a brother lawyer and without knowing its contents, and this allegation is corroborated by respondent De Leon who further stated that no consideration whatsoever passed to the former.

This court had heretofore imposed the penalty of suspension upon an attorney who prepared a document stipulating, among others, that the

contracting parties, who are husband and wife, authorized each other to marry again and that each renounced whatever right of action one might have against the party so marrying (In re Roque Santiago, 40 Off. Gaz. [7th Supp.] p. 208). In effect the affidavit prepared and signed by respondent De Leon has similar implication, in that although it does not bluntly authorize said respondent to marry another during his subsisting wedlock with Vertudes Marquez, he made it appear that he could take in another woman as a lifetime partner to whom he would remain loyal and faithful as a lawful and devoted loving husband and whom he could take and respect as his true and lawful wife; thereby virtually permitting himself to commit the crime of concubinage.

It is true, as respondent De Leon argues, that the consent or pardon of either spouse constitutes a bar to a criminal prosecution for adultery and concubinage, but, as the Solicitor General observes, said crimes are not thereby legalized, the result being merely that prosecution in such cases would not lie. The contention that the affidavit is only a unilateral declaration of facts is of no moment, since it undoubtedly enabled respondent De Leon to attain his purpose of winning over Regina S. Balinon with some degree of permanence.

It is likewise insisted that the acts imputed to respondent De Leon had no relation with his professional duties and therefore cannot serve as a basis for suspension or disbarment under section 25 of Rule 127. It should be remembered, however, that a member of the bar may be removed or suspended from office as a lawyer on grounds other than those enumerated by said provision (In re Pelaez, 44 Phil., 567). Moreover, we can even state that respondent De Leon was able to prepare the affidavit in question because he is a lawyer, and has rendered professional service to himself as a client. He surely employed his knowledge of the law and skill as an attorney to his advantage. (Manalo vs. Gan, Adm. Case No. 72, May 13, 1953.)

With reference to respondent Velayo, there is no question that he did nothing except to affix his signature to the affidavit in question as a notary public. While, as contended by his counsel, the duty of a notary public is principally to ascertain the identity of the affiant

and the voluntariness of the declaration, it is nevertheless incumbent upon him at least to guard against having anything to do with an illegal or immoral arrangement. In the present case respondent Velayo was somewhat negligent in just affixing his signature to the affidavit, although his fault is mitigated by the fact that he had relied on the good faith of his co-respondent.

Wherefore, we hereby decree the suspension from the practice of law of respondent Celestino M. de Leon for three years from the date of the promulgation of this decision. Respondent Justo T. Velayo is hereby merely reprimanded. So ordered.

Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo, Bautista Angelo, and Labrador, JJ., concur.
