

HEINZ R. HECK, COMPLAINANT, VS. JUDGE ANTHONY E. SANTOS, REGIONAL TRIAL COURT, BRANCH 19, CAGAYAN DE ORO CITY, RESPONDENT.

A.M. No. RTJ-01-1657. February 23, 2004

Ponente: CALLEJO, SR., J.

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CALLEJO, SR., J.:

May a retired judge charged with notarizing documents without the requisite notary commission more than twenty years ago be disciplined therefor? This is the novel issue presented for resolution before this Court.

The instant case arose when in a verified Letter-Complaint dated March 21, 2001 Heinz R. Heck prayed for the disbarment of Judge Anthony E. Santos, Regional Trial Court, Branch 19, Cagayan de Oro City.

The complainant alleged that prior to the respondent's appointment as RTC judge on April 11, 1989, he violated the notarial law, thus:

Judge Santos, based on ANNEX "A," was not duly commissioned as notary public until January 9, 1984 but still subscribed and forwarded (on a non-regular basis) notarized documents to the Clerk of Court VI starting January 1980 uncommissioned until the 9th of January 1984.

a) Judge Santos was commissioned further January 16th 1986 to December 31st 1987 and January 6th 1988 to December 31st 1989 but the records fail to show any entry at the Clerk of Court after December 31st 1985 until December 31st 1989.

b) Judge Santos failed to forward his Notarial Register after the expiration of his commission in December 1989.[2]

...

WHEREFORE in light of the foregoing complainant pray[s] to order respondent:

1. To disbar Judge Anthony E. Santos and to prohibit him from all future public service.
 2. To forfeit [the] retirement benefits of Judge Santos.
 3. To prohibit Judge Santos from future practice of Law.
 4. To file a criminal suit against Judge Santos.
 5. To conduct a speedy investigation and not to grant/accept any delaying tactics from Judge Santos or any agency and or public servants involved in this administrative case.
 6. To pay all costs and related costs involved in this administrative case.
- and prays for other relief in accordance with equity and fairness based on the premises.[3]

The complainant submitted a certification from Clerk of Court, Atty. Beverly Sabio-Beja, Regional Trial Court, Misamis Oriental, which contained the following:

THIS CERTIFIES that upon verification from the records found and available in this office, the following data appear:

1. The name Atty. Anthony E. Santos is listed as a duly commissioned notary public in the following years:

- a. January 9, 1984 to December 31, 1985
- b. January 16, 1986 to December 31, 1987
- c. January 6, 1988 to December 31, 1989

2. Based on the records of transmittals of notarial reports, Atty. Anthony E. Santos submitted his notarial reports in the ff. years:

- a. January 1980 report - was submitted on Feb. 6, 1980
- b. February to April 1980 report - was submitted on June 6, 1980
- c. May to June 1980 report - was submitted on July 29, 1980
- d. July to October 1980 report - submitted but no date of submission
- e. November to December 1980-no entry
- f. January to February 1981 - no entry
- g. March to December 1981 - submitted but no date of submission
- h. January to December 1982 - submitted but no date of submission
- i. January to June 1983 - submitted on January 5, 1984
- j. July to December 1983 - no entry
- k. January to December 1984 - submitted on January 20, 1986
- l. January to December 1985 - submitted on January 20, 1986

4. Records fail to show any entry of transmittal of notarial documents under the name Atty. Anthony Santos after December 1985.

5. It is further certified that the last notarial commission issued to Atty. Anthony Santos was on January 6, 1988 until December 31, 1989.[4]

In his Answer dated June 13, 2001, the respondent judge categorically denied the charges against him. He also submitted a certification[5] from Clerk of Court, Atty. Sabio-Beja, to prove that there was no proper recording of the commissioned lawyers in the City of Cagayan de Oro as well as the submitted notarized documents/notarial register. The respondent further averred as follows:

That the complainant has never been privy to the documents notarized and submitted by the respondent before the Office of the Clerk of Court of the Regional Trial Court of Misamis Oriental, nor his rights prejudiced on account of the said notarized documents and therefore not the proper party to raise the said issues;

That the complainant was one of the defendants in Civil Case No. 94-334 entitled Vinas Kuranstalten Gesmbh et al. versus Lugait Aqua Marine Industries, Inc., and Heinz Heck, for Specific Performance & Sum of Money, filed before the Regional Trial Court, Branch 19, Cagayan de Oro City, wherein respondent is the Presiding Judge. The undersigned resolved the case in favor of the plaintiffs.[6]

Pursuant to the report of the Office of the Court Administrator recommending the need to resort to a full-blown investigation to determine the veracity of the parties' assertions, the Court, in a Resolution dated September 10, 2001, resolved to: (a) treat the matter as a regular administrative complaint; and (b) refer the case to Associate Justice Edgardo P. Cruz of the Court of Appeals (CA) for investigation, report and recommendation.[7]

In his Letters dated December 10, 2001 and February 1, 2002, the complainant requested that the hearing be held at Cagayan de Oro City. Justice Cruz initially denied the request but upon the complainant's insistence, the matter was forwarded to the Court, which favorably acted thereon in a Resolution dated July 8, 2002.[8] The complainant presented his evidence in Cagayan de Oro City before retired Court of Appeals Justice Romulo S. Quimbo.[9]

In a Sealed Report dated August 14, 2003, Investigating Justice Edgardo P. Cruz made the following recommendation:

It is recommended that [i] respondent (who retired on May 22, 2002) be found guilty of violation of the Notarial Law by (a) notarizing documents without commission; (b) tardiness in submission of notarial reports; and (c) non-forwarding of his notarial register to the Clerk of Court upon expiration of his commission; and [ii] that for these infractions, he be suspended from the practice of law and barred from being commissioned as notary public, both for one year, and his present commission, if any, be revoked.[10]

According to the Investigating Justice, the respondent did not adduce evidence in his defense, while the complainant presented documentary evidence to support the charges:

It is noteworthy that in his answer, respondent did not claim that he was commissioned as notary public for the years 1980 to 1983 nor deny the accuracy of the first certification. He merely alleged that “there was no proper recording of the commissioned lawyers in the City of Cagayan de Oro nor of the submitted Notarized Documents/Notarial Register.” And, as already observed, he presented no evidence, particularly on his appointment as notary public for 1980 to 1983 (assuming he was so commissioned) and submission of notarial reports and notarial register.

On the other hand, the second certification shows that “there were only two Record Books available in the notarial section” of the RTC of Misamis Oriental (Cagayan de Oro City); and that the “(f)irst book titled Petitions for Notarial Commission contains items on the Name, Date Commission was issued and Expiration of Commission of the notary public. First entry appearing was made on December 1982.”

If respondent was commissioned in 1980 to 1983, then the “first book” would disclose so (at least, for the years 1982 and 1983). However, he did not present said book. Neither did he present a certification from the Clerk of Court, RTC of Misamis Oriental, or documents from his files showing that he was commissioned in 1980 to 1983. Similarly, he did not submit a certificate of appointment for all those years. Under Section 238 of the Notarial Law, such certificate must be prepared and forwarded by the Clerk of Court, RTC, to the Office of the Solicitor General, together with the oath of office of the notary public.[11]

Thus, the Investigating Justice concluded, based on the evidence presented by the complainant, that the respondent notarized documents in 1980 and 1983 without being commissioned as a notary public therefor, considering that his earliest commission of record was on January 9, 1984.[12]

The Procedural Issues

Before the Court passes upon the merits of the instant complaint, a brief background.

On the Applicability of
Resolution A.M. No. 02-
9-02-SC

On September 17, 2002, we issued Resolution A.M. No. 02-9-02-SC,[13] to wit:

Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and the court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer’s Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.

In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or

otherwise disciplinary sanctioned as a member of the Bar. Judgment in both respects may be incorporated in one decision or resolution.

Before the Court approved this resolution, administrative and disbarment cases against members of the bar who were likewise members of the court were treated separately. Thus, pursuant to the new rule, administrative cases against erring justices of the CA and the Sandiganbayan, judges, and lawyers in the government service may be automatically treated as disbarment cases. The Resolution, which took effect on October 1, 2002, also provides that it shall supplement Rule 140 of the Rules of Court, and shall apply to administrative cases already filed where the respondents have not yet been required to comment on the complaints.

Clearly, the instant case is not covered by the foregoing resolution, since the respondent filed his Answer/Comment on June 13, 2001.

The Procedure To Be Followed
In Disbarment Cases Involving
A Retired Judge For Acts
Committed While He Was Still
A Practicing Lawyer

The undisputed facts are as follows: (1) the respondent is a retired judge; (2) the complainant prays for his disbarment; and (3) the acts constituting the ground for disbarment were committed when the respondent was still a practicing lawyer, before his appointment to the judiciary. Thus, the respondent is being charged not for acts committed as a judge; he is charged, as a member of the bar, with notarizing documents without the requisite notarial commission therefor.

Section 1, Rule 139-B of the Rules of Court on Disbarment and Discipline of Attorneys provides:

Section 1. Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon verified complaint of any person. The complaint shall state clearly, and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against erring attorneys including those in the government service: Provided, however, That all charges against Justices of the Court of Tax Appeals and lower courts, even if lawyers are jointly charged with them, shall be filed with the Supreme Court: Provided, further, That charges filed against Justices and Judges before the IBP, including those filed prior to their appointment to the Judiciary, shall be immediately forwarded to the Supreme Court for disposition and adjudication.[14]

The investigation may thereafter commence either before the Integrated Bar of the Philippines (IBP), in accordance with Sections 2 to Sections 12 of Rule 139-B, or before the Supreme Court in accordance with Sections 13 and 14, thus:

Section 13. Supreme Court Investigators. — In proceedings initiated *motu proprio* by the Supreme Court or in other proceedings when the interest of justice so requires, the Supreme Court may refer the case for investigation to the Solicitor General or to any officer of the Supreme Court or judge of a lower court, in which case the investigation shall proceed in the same manner provided in Sections 6 to 11 hereof, save that the review of the report shall be conducted directly by the Supreme Court.

Section 14. Report of the Solicitor General or other Court designated Investigator. Based upon the evidence

adduced at the investigation, the Solicitor General or other Investigator designated by the Supreme Court shall submit to the Supreme Court a report containing his findings of fact and recommendations together with the record and all the evidence presented in the investigation for the final action of the Supreme Court.

It is clear from the Rules then that a complaint for disbarment is cognizable by the Court itself, and its indorsement to the IBP is not mandatory. The Court may refer the complaint for investigation, report and recommendation to the Solicitor General, any officer of the court or a judge of a lower court, on which the Court will thereafter base its final action.[15]

Although the respondent has already retired from the judiciary, he is still considered as a member of the bar and as such, is not immune to the disciplining arm of the Supreme Court, pursuant to Article VIII, Section 6[16] of the 1987 Constitution. Furthermore, at the time of the filing of the complaint, the respondent was still the presiding judge of the Regional Trial Court, Branch 19, Cagayan de Oro City. As such, the complaint was cognizable by the Court itself, as the Rule mandates that in case the respondent is a justice of the Court of Tax Appeals or the lower court, the complaint shall be filed with the Supreme Court.[17]

The Substantive Issues

The Retirement Or Resignation
Of A Judge Will Not Preclude
The Filing Thereafter Of An
Administrative Charge Against
Him For Which He Shall Still
Be Held Answerable If Found
Liable Therefor

The fact that a judge has retired or has otherwise been separated from the service does not necessarily divest the Court of its jurisdiction to determine the veracity of the allegations of the complaint, pursuant to its disciplinary authority over members of the bench. As we held in *Gallos v. Cordero*: [18]

The jurisdiction that was ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent, had ceased in office during the pendency of his case. The Court retains jurisdiction either to pronounce the respondent public official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustice and pregnant with dreadful and dangerous implications... If innocent, respondent public official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully; if guilty, he deserves to receive the corresponding censure and a penalty proper and imposable under the situation.[19]

However, recognizing “the proliferation of unfounded or malicious administrative or criminal cases against members of the judiciary for purposes of harassment,” we issued A.M. No. 03-10-01-SC[20] which took effect on November 3, 2003. It reads in part:

1. If upon an informal preliminary inquiry by the Office of the Court Administrator, an administrative complaint against any Justice of the Court of Appeals or Sandiganbayan or any Judge of the lower courts filed in connection with a case in court is shown to be clearly unfounded and baseless and intended to harass the respondent, such a finding should be included in the report and recommendation of the Office of the Court Administrator. If the recommendation is approved or affirmed by the Court, the complainant may be required to show cause why he should not be held in contempt of court. If the complainant is a lawyer, he may further be required to show cause why he or she should not be administratively sanctioned as a member of the Bar and as an officer of the court.

2. If the complaint is (a) filed within six months before the compulsory retirement of a Justice or Judge; (b) for an alleged cause of action that occurred at least a year before such filing and (c) shown prima facie that it is intended to harass the respondent, it must forthwith be recommended for dismissal. If such is not the case, the Office of the Court Administrator must require the respondent to file a comment within ten (10) days from receipt of the complaint, and submit to the Court a report and recommendation not later than 30 days from receipt of the comment. The Court shall act on the recommendation before the date of compulsory retirement of the respondent, or if it is not possible to do so, within six (6) months from such date without prejudice to the release of the retirement benefits less such amount as the Court may order to be withheld, taking into account the gravity of the cause of action alleged in the complaint.

Thus, in order for an administrative complaint against a retiring or retired judge or justice to be dismissed outright, the following requisites must concur: (1) the complaint must have been filed within six months from the compulsory retirement of the judge or justice; (2) the cause of action must have occurred at least a year before such filing; and, (3) it is shown that the complaint was intended to harass the respondent.

In this case, the Administrative Complaint dated March 21, 2001 was received by the Office of the Court Administrator on March 26, 2001.[21] The respondent retired compulsorily from the service more than a year later, or on May 22, 2002. Likewise, the ground for disbarment or disciplinary action alleged to have been committed by the respondent did not occur a year before the respondent's separation from the service. Furthermore, and most importantly, the instant complaint was not prima facie shown to be without merit and intended merely to harass the respondent. Clearly, therefore, the instant case does not fall within the ambit of the foregoing resolution.

A Judge May Be Disciplined For Acts Committed Before His Appointment To The Judiciary

It is settled that a judge may be disciplined for acts committed prior to his appointment to the judiciary.[22] In fact, even the new Rule itself recognizes this, as it provides for the immediate forwarding to the Supreme Court for disposition and adjudication of charges against justices and judges before the IBP, including those filed prior to their appointment to the judiciary.[23] It need not be shown that the respondent continued the doing of the act or acts complained of; it is sufficient that the evidence on record supports the charge on the respondent, considering the gravity of the offense.

Indeed, there is jurisprudence to the effect that the act complained of must be continuing in order for the respondent judge to be disciplined therefor. In *Sevilla v. Salubre*,[24] the respondent judge was charged with violating Canon 16 of the Code of Professional Responsibility, for acts committed while he was still a practicing lawyer. The respondent therein refused to turn over the funds of his client despite demands, and persisted in his refusal even after he was appointed as a judge. However, the Court also stated in this case that the respondent's subsequent appointment as a judge will not exculpate him from taking responsibility for the consequences of his acts as an officer of the court.[25]

In the case of *Alfonso v. Juanson*,[26] we held that proof of prior immoral conduct cannot be used as basis for administrative discipline against a judge if he is not charged with immorality prior to his appointment. We ratiocinated, thus:

...[I]t would be unreasonable and unfair to presume that since he had wandered from the path of moral righteousness, he could never retrace his steps and walk proud and tall again in that path. No man is beyond information and redemption. A lawyer who aspires for the exalted position of a magistrate knows, or ought to know, that he must pay a high price for that honor — his private and official conduct must at all times be free

from the appearance of impropriety. ...[27]

The Court ruled in that case that the complainant failed to prove the charges by substantial evidence.[28] The complainant therein presented evidence pertaining to the respondent's previous indiscretion while still a practicing lawyer; no evidence was, however, adduced to prove that the latter continued to engage in illicit acts after being appointed to the bench. Thus, the respondent was exonerated in this case because the complainant failed to present evidence that the indiscretion continued even after the respondent was appointed to the judiciary.

The practice of law is so ultimately affected with public interest that it is both the right and duty of the State to control and regulate it in order to promote the public welfare. The Constitution vests this power of control and regulation in this Court.[29] The Supreme Court, as guardian of the legal profession, has ultimate disciplinary power over attorneys, which authority is not only a right but a bounden duty as well. This is why respect and fidelity to the Court is demanded of its members.[30]

Notarizing Documents Without
The Requisite Commission
Therefore Constitutes
Malpractice, If Not The Crime
Of Falsification Of Public
Documents

It must be remembered that notarization is not an empty, meaningless, routinary act. On the contrary, it is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.[31] Notarization by a notary public converts a private document into a public one, making it admissible in evidence without the necessity of preliminary proof of its authenticity and due execution.[32]

The requirements for the issuance of a commission as notary public must not be treated as a mere casual formality.[33] The Court has characterized a lawyer's act of notarizing documents without the requisite commission therefore as "reprehensible, constituting as it does not only malpractice, but also the crime of falsification of public documents." [34] For such reprehensible conduct, the Court has sanctioned erring lawyers by suspension from the practice of law, revocation of the notarial commission and disqualification from acting as such, and even disbarment.[35]

In the case of *Nunga v. Viray*, [36] the Court had the occasion to state —

Where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. For one, performing a notarial [act] without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." [37]

The importance of the function of a notary public cannot, therefore, be over-emphasized. No less than the public faith in the integrity of public documents is at stake in every aspect of that function.[38]

The Charge Against The
Respondent Is Supported By
The Evidence On Record

The respondent did not object to the complainant's formal offer of evidence, prompting the Investigating Justice to decide the case on the basis of the pleadings filed.[39] Neither did he claim that he was commissioned as notary public for the years 1980 to 1983, nor deny the accuracy of the first certification. The respondent merely alleged in his answer that "there was no proper recording of the commissioned lawyers in the City of Cagayan de Oro nor of the submitted Notarized Documents/Notarial Register." Furthermore, as found by the Investigating Justice, the respondent presented no evidence of his commission as notary public for the years 1980 to 1983, as well as proof of submission of notarial reports and the notarial register.[40]

The respondent in this case was given an opportunity to answer the charges and to controvert the evidence against him in a formal investigation. When the integrity of a member of the bar is challenged, it is not enough that he deny the charges; he must meet the issue and overcome the evidence against him.[41]

The respondent's allegation that the complainant was not a party in any of the documents so notarized, and as such was not prejudiced thereby, is unavailing. An attorney may be disbarred or suspended for any violation of his oath or of his duties as an attorney and counselor which include the statutory grounds under Section 27, Rule 138[42] of the Revised Rules of Court. Any interested person or the court *motu proprio* may initiate disciplinary proceedings. There can be no doubt as to the right of a citizen to bring to the attention of the proper authority acts and doings of public officers which citizens feel are incompatible with the duties of the office and from which conduct the citizen or the public might or does suffer undesirable consequences.[43]

An Administrative Complaint Against A Member Of The Bar Does Not Prescribe

The qualification of good moral character is a requirement which is not dispensed with upon admission to membership of the bar. This qualification is not only a condition precedent to admission to the legal profession, but its continued possession is essential to maintain one's good standing in the profession. It is a continuing requirement to the practice of law and therefore does not preclude a subsequent judicial inquiry, upon proper complaint, into any question concerning one's mental or moral fitness before he became a lawyer. This is because his admission to practice merely creates a rebuttable presumption that he has all the qualifications to become a lawyer.[44] The rule is settled that a lawyer may be suspended or disbarred for any misconduct, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law.[45]

Furthermore, administrative cases against lawyers belong to a class of their own, distinct from and may proceed independently of civil and criminal cases.[46] As we held in the leading case of *In re Almacen*: [47]

[D]isciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but are rather investigations by the Court into the conduct of one of its officers. Not being intended to inflict punishment, [they are] in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. [They] may be initiated by the Court *motu proprio*. Public interest is [their] primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have prove[n] themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[48]

In a case involving a mere court employee[49] the Court disregarded the Court Administrator's recommendation

that the charge for immorality against the respondent be dismissed on the ground that the complainants failed to adduce evidence that the respondent's immoral conduct was still ongoing. Aside from being found guilty of illicit conduct, the respondent was also found guilty of dishonesty for falsifying her children's certificates of live birth to show that her paramour was the father. The complaint in this case was filed on August 5, 1999, almost twenty years after the illicit affair ended.[50] The Court held that administrative offenses do not prescribe.[51]

Pursuant to the foregoing, there can be no other conclusion than that an administrative complaint against an erring lawyer who was thereafter appointed as a judge, albeit filed only after twenty-four years after the offending act was committed, is not barred by prescription. If the rule were otherwise, members of the bar would be emboldened to disregard the very oath they took as lawyers, prescinding from the fact that as long as no private complainant would immediately come forward, they stand a chance of being completely exonerated from whatever administrative liability they ought to answer for. It is the duty of this Court to protect the integrity of the practice of law as well as the administration of justice. No matter how much time has elapsed from the time of the commission of the act complained of and the time of the institution of the complaint, erring members of the bench and bar cannot escape the disciplining arm of the Court. This categorical pronouncement is aimed at unscrupulous members of the bench and bar, to deter them from committing acts which violate the Code of Professional Responsibility, the Code of Judicial Conduct, or the Lawyer's Oath. This should particularly apply in this case, considering the seriousness of the matter involved - the respondent's dishonesty and the sanctity of notarial documents.

Thus, even the lapse of considerable time, from the commission of the offending act to the institution of the administrative complaint, will not erase the administrative culpability of a lawyer who notarizes documents without the requisite authority therefor.

At Most, The Delay In The
Institution Of The
Administrative Case Would
Merely Mitigate The
Respondent's Liability

Time and again, we have stressed the settled principle that the practice of law is not a right but a privilege bestowed by the State on those who show that they possess the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions. A high sense of morality, honesty, and fair dealing is expected and required of a member of the bar.[52] By his actuations, the respondent failed to live up to such standards;[53] he undermined the confidence of the public on notarial documents and thereby breached Canon I of the Code of Professional Responsibility, which requires lawyers to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes. The respondent also violated Rule 1.01 thereof which proscribes lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct.[54] In representing that he was possessed of the requisite notarial commission when he was, in fact, not so authorized, the respondent also violated Rule 10.01 of the Code of Professional Responsibility and his oath as a lawyer that he shall do no falsehood.

The supreme penalty of disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court. While we will not hesitate to remove an erring attorney from the esteemed brotherhood of lawyers where the evidence calls for it, we will likewise not disbar him where a lesser penalty will suffice to accomplish the desired end.[55] Furthermore, a tempering of justice is mandated in this case, considering that the complaint against the respondent was filed twenty-four years after the commission of the act complained of;[56] that there was no private offended party who came forward and claimed

to have been adversely affected by the documents so notarized by the respondent; and, the fact that the respondent is a retired judge who deserves to enjoy the full measure of his well-earned retirement benefits.[57] The Court finds that a fine of P5,000.00 is justified in this case.

WHEREFORE, respondent Judge Anthony E. Santos is found GUILTY of notarizing documents without the requisite notarial commission therefor. He is hereby ORDERED to pay a fine in the amount of Five Thousand Pesos (P5,000.00).

SO ORDERED.

Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Azcuna, and Tinga, JJ., concur.

Davide, Jr., C.J., join Mr. Justice J. C. Vitug in his separate opinion.

Vitug, J., see separate opinion.

[1] The respondent compulsorily retired from the judiciary on May 22, 2002.

[2] Rollo, pp. 5-6.

[3] Id. at 8.

[4] Annex "A," Rollo, p. 22.

[5] Rollo, p. 16.

[6] Id. at 14.

[7] Id. at 79.

[8] Id. at 208-209.

[9] Resolutions dated July 8, 2002 and November 13, 2002.

[10] Report, p. 18.

[11] Id. at 10-11.

[12] Id. at 11-12.

[13] Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Themselves Both as Such Officials and Members of the Philippine Bar.

[14] As amended by Bar Matter No. 1960, May 1, 2000.

[15] *Bautista v. Gonzales*, 182 SCRA 151 (1990).

[16] Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

[17] See Section 1, Rule 139-B, *supra*.

[18] 245 SCRA 218 (1995).

[19] Id. at 226.

[20] RESOLUTION PRESCRIBING MEASURES TO PROTECT MEMBERS OF THE JUDICIARY FROM BASELESS AND UNFOUNDED ADMINISTRATIVE COMPLAINTS.

[21] Rollo, p. 5.

[22] Sevilla v. Salubre, 348 SCRA 592 (2000).

[23] Section 1, Rule 139-B of the Rules of Court, as amended by Bar Matter No. 1960, May 1, 2000.

[24] 348 SCRA 592 (2000).

[25] Id. at 601.

[26] 228 SCRA 239 (1993).

[27] Id. at 254.

[28] Id. at 254.

[29] Sevilla v. Salubre, supra, citing Fernando Cruz and Amelia Cruz v. Atty. Ernesto Jacinto, 328 SCRA 636 (2000).

[30] Dumadag v. Lumaya, 334 SCRA 512 (2000).

[31] Ma. Corazon D. Fulgencio v. Atty. Bienvenido G. Martin, A.C. 3223, May 29, 2003.

[32] Ruiz, Sr. v. Court of Appeals, 362 SCRA 40 (2001).

[33] Section 2632 of the Notarial Law, provides:

SEC. 2632. Certification of document after expiration of authority of notary. — Any person who, after the expiration of his commission as notary or after the termination of his authority to act as such, shall affix his seal or official signature to any document with intent to impart the appearance of notarial authenticity thereto, shall be punished by a fine not exceeding one thousand pesos or imprisonment for a period not exceeding one year, or both.

[34] Buensuceso v. Barrera, 216 SCRA 309 (1992).

[35] Joson v. Baltazar, 194 SCRA 114 (1991).

[36] 306 SCRA 487 (1999).

[37] Id. at 491-492.

[38] Mena U. Gerona vs. Atty. Alfredo Datingaling, A.C. No. 4801, February 27, 2003.

[39] Rollo, Vol. II, p. 514; Report and Recommendation, p. 6.

[40] Report and Recommendation, p. 10.

[41] Radjaie v. Alovera, 337 SCRA 244 (2000).

[42] Sec. 27. Disbarment or suspension of attorneys by Supreme Court, grounds therefore. — A member of the bar

may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law, for the purpose of gain, either personally or through pad agents or brokers, constitutes malpractice. ...

[43] Marcelo v. Javier, Sr., 214 SCRA 1 (1992).

[44] Carmelita I. Zaguirre v. Atty. Alfredo Castillo, Adm. Case No. 4921, March 6, 2003.

[45] Nakpil v. Valdes, 286 SCRA 758 (1998).

[46] Gatchalian Promotions Talents Pool, Inc. v. Naldoza, 315 SCRA 406 (1999).

[47] 31 SCRA 562 (1970).

[48] Cited in Gatchalian Promotions Talents Pool, Inc. v. Naldoza, supra.

[49] Floria v. Sunga, 368 SCRA 550 (2001).

[50] The complainant admitted having indulged in an illicit relation from 1974 to 1980, with a married co-employee whose wife was employed in the same court (Id. at 558).

[51] Id. at 559.

[52] Emiliana M. Eustaquio, Piorillo Gutierrez Rubis and Alicia Montero Rubis v. Atty. Rex Rimorin, A.C. 5081, March 24, 2003.

[53] Fidel D. Aquino v. Atty. Oscar Manese, A.C. NO. 4958, April 3, 2003.

[54] Saburnido v. Madroxio, 366 SCRA 1 (2001).

[55] Floria v. Sunga, supra at 561.

[56] Sanlakas ng Barangay Julo, San Antonio, Incorporated v. Empaynado, Jr., 351 SCRA 201 (2001).

[57] Sanlakas ng Barangay Julo, San Antonio, Inc. v. Empaynado, Jr., 351 SCRA 201 (2001).

SEPARATE OPINION

(Concurring in the Result)

VITUG, J.:

Allow me to express, very briefly, my views on the various scenarios appurtenant to the subject of inquiry.

In A.M. No. RTJ-01-1657, respondent Judge, now retired, has been charged on 21 March 2001, while still an incumbent judge, with having transgressed, prior to his appointment to the judiciary, the Notarial Law.

A. Exceptionally, a judge may be held administratively accountable for acts committed before his appointment to the Judiciary.

Generally, a judge is not made to account administratively for acts committed prior to his appointment. In *Sevilla v. Salubre*[1], respondent judge was charged with misappropriating for his own benefit money entrusted to him by his client while he was still a practicing lawyer. He, however, continued to ignore, even after his appointment in

the judiciary, his previous client's demand for restitution. The Court explained: "Being the visible representation of law, and more importantly, of justice, the people see in the respondent the intermediary of justice between two conflicting interests. If while still in active litigation practice lawyers do not know how to (so) uphold this kind of justice to their clients previous to their appointment as Judges, how then could people expect them to render judgments in the cases before them?" In the earlier case of *Alfonso v. Juanson*[2] where respondent judge was simply admonished for "appearance of impropriety," the Court said that he could not be disciplined for immoral acts committed prior to his appointment in the judiciary absent showing that he continued to engage in these acts after his appointment.

B. The retirement or resignation of a judge could preclude the filing thereafter of an administrative charge against him for an infraction committed during his incumbency.

The filing of an administrative proceeding against a judge is predicated on the holding of his office or position in the judiciary; thus, his resignation or retirement from office could bar an administrative case[3] from being initiated. An administrative charge already pending upon resignation or retirement is not necessarily rendered moot since the penalty that can still be imposed, if the respondent is found guilty, goes beyond just dismissal from the service. Noteworthy is A.M. No. 03-10-01-SC which provides that if a complaint against a judge is filed within six months before his compulsory retirement for an alleged infraction occurring at least a year before such filing, and shown *prima facie* to be intended to harass the judge, the complaint must forthwith be recommended for dismissal.

C. A judge, already retired, may, but only under certain conditions, be subject to disciplinary action for acts committed prior to his appointment to the judiciary.

A judge, already retired, may yet be subject to disciplinary sanction for an act committed prior to his appointment in the judiciary if (a) the judge has persisted, even after his appointment to the judiciary, in his assailed act, and (b) the administrative charge is filed while still an incumbent in the judiciary.

D. If, such as in the instant administrative case, the two conditions, above, are not shown, respondent judge may still be disciplinarily dealt with for his misconduct not as a judge but as a lawyer.

A disciplinary proceeding against a lawyer is *sui generis*; neither purely civil nor purely criminal. It is not — and it does not involve — a trial of an action or a suit; it is rather an investigation into the conduct of an officer of the court. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor. Interest in the service of the profession is its primary objective, and the real question for determination is whether or not the attorney may still be a fit person to continue enjoying his privileges as such.⁴ It may thus be concluded that the administrative complaint can still be pursued.

While the cause of action does not prescribe, it is to be assumed, however, that the complaint must be filed within a reasonable time. What may or may not be a reasonable time is determined by circumstances peculiar and pertinent to the case.⁵ The administrative charge for alleged violation of the Notarial Law in this instance is said to have been committed more than twenty years ago by respondent judge prior to his appointment in the judiciary, filed several years after that appointment and just about a year prior to his retirement. No specific injury or damage has been shown for the alleged violation. The circumstances are enough, in my view, to warrant the dismissal of the complaint, and I so vote.

[1] Adm. Matter No. MTJ-00-1336, 19 December 2000, 348 SCRA 592.

[2] Adm. Matter No. RTJ-92-904, 7 December 1993, 228 SCRA 239.

[3] See *Diamalon v. Quintillan*, Adm. Case No. 116, 29 August 1969, 29 SCRA 347; *Absalud v. Ramos*, Adm. Case No. 57, 30 October 1962, 6 SCRA 268; *Reyes v. Arca*, No. L-28234, 30 September 1970, 35 SCRA 247.

[4] *In re Almacen*, No. L-27654, 18 February 1970, 31 SCRA 562.

[5] See Guidelines for Imposing Lawyer Sanctions prepared by the Integrated Bar of the Philippines.

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