

GINA E. ENDAYA, COMPLAINANT, VS. ATTY. EDGARDO O. PALAY, RESPONDENT.*A.C. No. 10150. September 21, 2016*

Ponente: JARDELEZA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a-c-no-10150/>**JARDELEZA, J.:**

For resolution is the second motion for reconsideration,[1] which we treated as a petition for review,[2] of Resolution No. XX-2011-279[3] promulgated by the Board of Governors of the Integrated Bar of the Philippines (IBP) suspending Atty. Edgardo O. Palay (Atty. Palay) from the practice of law for the period of one (1) year and perpetually disqualifying him from being commissioned as a notary public. The case originated from a complaint for disbarment[4] filed by Gina E. Endaya (Endaya) charging Atty. Palay, a notary public in Puerto Princesa, Palawan, with violation of Canon 1, Rules 1.01 and 1.02, Canon 7, Rule 7.03 and the 2004 Rules on Notarial Practice.[5]

The records show that on July 27, 2004, Atty. Palay notarized the Deed of Sale covering eight (8) parcels of land covered by Transfer Certificate of Title Nos. 8940, 8941, 8942, 8943, 8944, 10774, 17938, and 19319, allegedly executed and thumbmarked by Engr. Atilano AB. Villaos (Villaos), father of the complainant.[6] Endaya claimed that Villaos was already confined at the Philippine Heart Center in Quezon City from May 27 to August 17, 2004, and it was therefore impossible that he appeared before Atty. Palay in Puerto Princesa, Palawan, to affix his thumbmark in the Deed of Sale. During that period, Villaos was no longer of sound mind and incapable of discerning and knowing the consequences of the Deed of Sale as shown in the affidavit executed by Dr. Bella L. Fernandez. Villaos eventually passed away on August 28, 2004.[7]

In his answer, Atty. Palay said that he was approached by Villaos' driver sometime in May 2004 to render notarial services and asked him to meet Villaos in the car. According to Atty. Palay, it was Villaos who begged him to be allowed to affix his thumbmark on the Deed of Sale because the latter was already very ill and could no longer sign.[8] Endaya rebutted this by presenting the affidavit of Dr. Carlos Tan, who stated that Villaos was under intravenous fluid since the last week of April 2004 and was breathing through an oxygen mask.[9] Villaos' driver, Arnel Villafuerte, also denied under oath that he approached Atty. Palay to have the Deed of Sale notarized.[10]

IBP Investigating Commissioner Jordan M. Pizarra found that Atty. Palay failed to faithfully discharge his duties as a notary public and recommended that he be suspended from the practice of law for three (3) months and be permanently disqualified from being a notary public.[11] The IBP Board of Governors adopted and approved the recommendation of the Investigating Commissioner, but increased the suspension to a period of one (1) year.[12] Atty. Palay moved for reconsideration but the IBP denied the same.[13]

Atty. Palay filed a second motion for reconsideration,[14] admitting that he violated the canons and ethics of the legal profession but only with regard to the performance of his duties as a notary public. He maintains that he did not commit any wrongdoing in respect of his duties as counsel to his clients; hence, he appeals that his one-year suspension from the practice of law be lifted.[15] Atty. Palay's motion, which we treated as a petition for review,

has no merit.

Contrary to Atty. Palay's argument, we find that the duties of a notary public are intricately related with the practice of law. Under the 2004 Rules on Notarial Practice, only members of the Philippine Bar in good standing are eligible to be commissioned as notaries public.[16] Thus, performing the functions of a notary public constitutes the practice of law. In this case, Atty. Palay no longer disputed the findings of the IBP, which is tantamount to an admission that he notarized a document without the presence of the person who allegedly placed his thumbmark therein. This constitutes a direct violation of the 2004 Rules on Notarial Practice, specifically Rule IV, Section 2(b).[17] By acknowledging the Deed of Sale, he made it appear that Villaos personally appeared before him when this was not in fact the case. Worse, in his answer to the complaint, he lied about being called into a car by Villaos' driver. These actions evince dishonesty on the part of Atty. Palay—in direct violation of Rule 1.01 of the Code of Professional Responsibility.[18] These adversely reflect on his fitness to be a member of the legal profession. This warrants a suspension from the practice of law for a period of six (6) months,[19] in addition to his disqualification from being commissioned as a notary public for two (2) years.[20]

On a separate matter, we ordered counsel for the complainant, Atty. Paul Resurreccion (Atty. Resurreccion), to file a comment on Atty. Palay's second motion for reconsideration. We had already fined him P1,000.00 for failure to comply with our initial directive and required him anew to comply with the order.[21] To date, however, Atty. Resurreccion still failed to do so. His act of disobeying a court order constitutes indirect contempt,[22] and, accordingly, we deem it proper to impose an additional fine of P5,000.00 for his repeated disregard thereof.

WHEREFORE, the Court finds respondent Atty, Edgardo O. Palay GUILTY of violating Canon 1, Rule 1.01 of the Code of Professional Responsibility and the 2004 Rules on Notarial Practice. Accordingly, the Court SUSPENDS him from the practice of law for six (6) months, REVOKES his incumbent notarial commission, if any, and DISQUALIFIES him from being commissioned as a notary public for two (2) years. Respondent is also STERNLY WARNED that more severe penalties will be imposed for any further breach of the Canons in the Code of Professional Responsibility.

The Court also finds Atty. Paul Resurreccion GUILTY of INDIRECT CONTEMPT and orders him to PAY A FINE of FIVE THOUSAND PESOS (P5,000.00) within ten (10) days from notice, with a STERN WARNING that repetition of the same or similar offense in the future will be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant to be included in the records of the respondent and counsel for the complainant, the Integrated Bar of the Philippines for distribution to all its chapters, and the Office of the Court Administrator for dissemination to all courts throughout the country.

SO ORDERED.

Velasco, Jr., (Chairperson), Peralta, Perez, and Reyes, JJ., concur.

October 28, 2016

NOTICE OF JUDGMENT

Sirs / Mesdames:

Please take notice that on September 21, 2016 a Decision, copy attached hereto, was rendered by the Supreme Court in the above-entitled case, the original of which was received by this Office on October 28, 2016 at 10:35 a.m.

Very truly yours,

(SGD)

WILFREDO V. LAPITAN

Division Clerk of Court

[1] Rollo, pp. 242-244.

[2] Id. at 259-260.

[3] Id. at 150.

[4] Id. at 2-5.

[5] A.M. No. 02-8-13-SC, August 1, 2004.

[6] Rollo, p. 151.

[7] Id. at 151-152.

[8] Id. at 152.

[9] Id. at 152-153.

[10] Id. at 153.

[11] Id. at 157-158.

[12] Supra note 3.

[13] Rollo, pp. 230-231.

[14] Supra note 1.

[15] Rollo, p. 243.

[16] 2004 Rules on Notarial Practice, Rule III, Sec. 1, par. (4).

[17] 2004 Rules on Notarial Practice, Rule IV, Sec. 2. Prohibitions. -

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(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

[18] Rule 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[19] Almazan, Sr. v. Suerte-Felipe, A.C. No. 7184, September 17, 2014, 735 SCRA 230; Laquindanum v. Quintana, A.C. No. 7036, June 29, 2009, 591 SCRA 204.

[20] Bartolome v. Basilio, A.C. No. 10783, October, 14, 2015, 772 SCRA 213; Sultan v. Macabanding, A.C. No.

7919, October 8, 2014, 737 SCRA 530.

[21] Rollo, p. 262.

[22] RULES OF COURT, Rule 71, Sec. 3, par. (b).

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