

JOY A. GIMENO, COMPLAINANT, VS. ATTY. PAUL CENTILLAS ZAIDE, RESPONDENT.

A.C. No. 10303. April 22, 2015

Ponente: BRION, J.

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BRION, J.:

We review Resolution No. XX-2011-264[1] of the Board of Governors of the Integrated Bar of the Philippines (IBP) in CBD Case No. 07-2069, which imposed on Atty. Paul Centillas Zaide (Atty. Zaide) the penalty of one-year suspension from the practice of law, revocation of notarial commission, if existing, and two years suspension from being commissioned as a notary public, for violation of the 2004 Rules on Notarial Practice (Notarial Practice Rules).[2]

The Case

On August 8, 2007, complainant Joy A. Gimeno (Gimeno) filed a complaint[3] with the IBP's Commission on Bar Discipline, charging Atty. Zaide with: (1) usurpation of a notary public's office; (2) falsification; (3) use of intemperate, offensive and abusive language; and (4) violation of lawyer-client trust.

In her complaint, Gimeno alleged that even before Atty. Zaide's admission[4] to the Bar and receipt[5] of his notarial commission, he had notarized a partial extrajudicial partition with deed of absolute sale on March 29, 2002.[6] She also accused Atty. Zaide of making false and irregular entries in his notarial registers.[7]

Gimeno further submitted that she was Atty. Zaide's former client. She engaged the services of his law firm Zaragoza-Makabangkit-Zaide Law Offices (ZMZ) in an annulment of title case that involved her husband and her parents-in-law.

Despite their previous lawyer-client relationship, Atty. Zaide still appeared against her in the complaint for estafa and violation of RA 3019[8] that one Priscilla Somontan (Somontan) filed against her with the Ombudsman. Gimeno posited that by appearing against a former client, Atty. Zaide violated the prohibition against the representation of conflicting clients' interests.[9]

Lastly, Gimeno contended that Atty. Zaide called her a "notorious extortionist" in the same administrative complaint that Somontan filed against her.[10] In another civil case where she was not a party, Gimeno observed that Atty. Zaide referred to his opposing counsel as someone suffering from "serious mental incompetence" in one of his pleadings.[11] According to Gimeno, these statements constitute intemperate, offensive and abusive language, which a lawyer is proscribed from using in his dealings.

In his answer[12] dated September 13, 2007, Atty. Zaide argued that he did not notarize the March 29, 2002 partial extrajudicial partition. As it appeared on the notarial page of this document, his notarial stamp and falsified signature were superimposed over the typewritten name of Atty. Elpedio Cabasan, the lawyer who actually notarized this document.[13] Atty. Zaide claimed that Gimeno falsified his signature to make it appear that he notarized it before his admission to the Bar.

On the alleged falsification of his notarial entries, Atty. Zaide contended that he needed to simultaneously use several notarial registers in his separate satellite offices in order to better cater to the needs of his clients and accommodate their growing number.[14] This explains the irregular and non-sequential entries in his notarial registers.

Further, Atty. Zaide argued that Gimeno was never his client since she did not personally hire him as her counsel. Gimeno engaged the services of ZMZ where he previously worked as an associate. The real counsel of Gimeno and her relatives in their annulment of title case was Atty. Leo Montalban Zaragoza, one of ZMZ's partners.[15] On this basis, the respondent should not be held liable for representing conflicting clients' interests.

Finally, he denied that he used any intemperate, offensive, and abusive language in his pleadings.[16]

The IBP Proceedings

On October 4, 2007, the IBP CBD issued an order setting the case for mandatory conference.[17] After this, both parties were required to submit their position papers.

In his report and recommendation[18] dated May 18, 2010, Commissioner Pedro A. Magpayo, Jr. (Commissioner Magpayo) found Atty. Zaide administratively liable for violating the Notarial Practice Rules, representing conflicting interests, and using abusive and insulting language in his pleadings.

He noted that Atty. Zaide violated Section 1 (a) and 1 (b), Rule VI of the Notarial Practice Rules when he maintained several active notarial registers in different offices. These provisions respectively require a notary public to "keep, maintain, protect and provide for lawful inspection, a chronological official register of notarial acts consisting of a permanently bound book with numbered papers" and to "keep only one active notarial register at any given time." [19]

However, Commissioner Magpayo opined that Atty. Zaide should not be held administratively liable for usurping a notary public's office. The investigating commissioner noted that the evidence presented on this issue is not enough to prove that Atty. Zaide signed and notarized the March 29, 2002 partial extrajudicial partition even after his admission to the Bar and receipt of his notarial commission.[20]

Commissioner Magpayo also found that the evidence presented proved that Gimeno was indeed Atty. Zaide's former client. He disagreed with Atty. Zaide's defense that Gimeno only hired ZMZ but did not personally hire him to defend them in their annulment of title case. The retainer of a law firm is equivalent to the retainer of all its lawyers.[21] But despite this previous attorney-client relationship, the investigating commissioner noted that Atty. Zaide should not be held liable for representing conflicting interests since the annulment of title case is totally unrelated to the Ombudsman complaint that Somontan filed against Gimeno through Atty. Zaide.

Finally, the investigating commissioner noted that Atty. Zaide used intemperate, offensive, and abusive language when he called Gimeno a "notorious extortionist" in one of his pleadings.[22]

For violating the Notarial Practice Rules, Commissioner Magpayo recommended that Atty. Zaide be suspended for three months, and for another six months for employing abusive and insulting language.[23]

The IBP Board of Governors' Findings

In its November 19, 2011 resolution, the IBP Board of Governors (Board) opined that the evidence on record fully supports the findings of the investigating commissioner. However, the Board modified the recommended penalty and imposed instead the penalty of one year suspension from the practice of law, revocation of notarial commission, if existing, and two years suspension from being commissioned as a notary public.[24]

Atty. Zaide sought for the reconsideration[25] of the Board's November 19, 2011 resolution but this was also denied in its subsequent June 21, 2013 resolution.[26]

The Court's Ruling

The Court agrees with the IBP Board of Governors' findings and recommended penalty, and accordingly confirms them.

For an orderly disposition of the case, we shall discuss each of the main issues that the parties identified.

Violation of the Notarial Practice Rules

a. Usurpation of a notarial office

As the investigating commissioner found, Gimeno did not present any concrete evidence to show that Atty. Zaide notarized the March 29, 2002 partial extrajudicial partition prior to his admission to the Bar and receipt of his notarial commission.

It appears that this document originally carried the name of one Atty. Elpedio Cabasan, as notary public. Atty. Zaide's signature and notarial stamp that bears his name, roll number,, PTR number, IBP number, and the expiration date of his notarial commission, were merely superimposed over Atty. Cabasan's typewritten name.

Notably, Atty. Zaide admitted that the details stamped on the document are his true information. However, he denied that he personally stamped and signed the document. In fact, this document never appeared in his notarial register and was never included in his notarial report for the year 2002. He contended that Gimeno falsified his signature and used his notarial stamp to make it appear that he was the one who notarized it.

This Court notes that at the time the document was purportedly notarized, Atty. Zaide's details as a lawyer and as a notary public had not yet existed. He was admitted to the Bar only on May 2, 2002; thus, he could not have obtained and used the exact figures pertaining to his roll number, PTR number, IBP number and the expiration date of his notarial commission, prior to this date, particularly on March 29, 2002.

This circumstance, coupled with the absence of any evidence supporting Gimeno's claim such as a witness to the alleged fictitious notarization, leads us to the conclusion that Atty. Zaide could not have notarized the document before his Bar admission and receipt of his notarial commission.

We can only conclude that his professional details, which were only generated after his Bar admission, were stamped on the March 29, 2002 document. How this happened is not clear from the evidence before us.

b. Maintaining different notarial registers in separate notarial offices

We find that Atty. Zaide violated the Notarial Practice Rules by maintaining different notarial registers in several offices. Because of this practice, the following notarized documents had been irregularly numbered and entered:

Document[27]

Date

Doc. No.

Page

Book

Year

Special Power of Attorney

6/20/05

273

55

18

2005

Secretary's Certificate

10/28/05

226

46

18

2005

Affidavit of Quitclaim

10/31/05

272

55

18

2005

Affidavit of Loss

4/17/06

54

11

25

2006

Affidavit of Two Disinterested Persons

4/17/06

310

61

25

2006

Petition for Issuance of Owner's Duplicate copy

4/17/06

72

15

25

2006

Affidavit of Parental Consent

4/19/06

461

93

23

2006

Confirmation of Sale

4/21/06

283

56

25

2006

Deed of Absolute Sale

4/27/06

304

60

25

2006

Section I(a), Rule VI of the Notarial Practice Rules provides that "a notary public shall keep, maintain, protect and provide for lawful inspection as provided in these Rules, a chronological official notarial register of notarial acts consisting of a permanently bound book with numbered pages." The same section further provides that "a notary public shall keep only one active notarial register at any given time." [28] On this basis, Atty. Zaide's act of simultaneously keeping several active notarial registers is a blatant violation of Section 1, Rule VI.

The Notarial Practice Rules strictly requires a notary public to maintain only one active notarial register and ensure that the entries in it are chronologically arranged. The "one active notarial register" rule is in place to deter a notary public from assigning several notarial registers to different offices manned by assistants who perform notarial services on his behalf.

Since a notarial commission is personal to each lawyer, the notary public must also personally administer the notarial acts [29] that the law authorizes him to execute. This important duty is vested with public interest. Thus,

no other person, other than the notary public, should perform it.

On the other hand, entries in a notarial register need to be in chronological sequence in order to address and prevent the rampant practice of leaving blank spaces in the notarial register to allow the antedating of notarizations.

In these lights, we cannot accept Atty. Zaide's explanation that he needed to maintain several active notarial registers in separate offices so he could accommodate the increasing number of his clients requiring his notarial services.

This Court stresses that a notary public should not trivialize his functions as his powers and duties are impressed with public interest.[30] A notary public's office is not merely an income-generating venture. It is a public duty that each lawyer who has been privileged to receive a notarial commission must faithfully and conscientiously perform.

Atty. Zaide should have been acutely aware of the requirements of his notarial commission. His flagrant violation of Section 1, Rule VI of the Notarial Practice Rules is not merely a simple and excusable negligence. It amounts to a clear violation of Canon 1 of the Code of Professional Responsibility, which provides that "a lawyer [should] uphold the constitution, obey the laws of the land and promote respect for law and legal processes."

Representing conflicting interests

The investigating commissioner properly noted that Atty. Zaide should not be held liable for representing conflicting clients' interests.

Rule 15.03, Canon 15 of the Code of Professional Responsibility provides:

Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

In *Aninon v. Sabitsana*,[31] the Court laid down the tests to determine if a lawyer is guilty of representing conflicting interests between and among his clients.

One of these tests is whether the acceptance of a new relation would prevent the full discharge of a lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.[32]

Another test is whether a lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.[33]

Applying these tests, we find no conflict of interest when Atty. Zaide appeared against Gimeno, his former law firm's client.

The lawyer-client relationship between Atty. Zaide and Gimeno ceased when Atty. Zaide left ZMZ. Moreover, the case where Gimeno engaged ZMZ's services is an entirely different subject matter and is not in any way connected to the complaint that Somontan filed against Gimeno with the Ombudsman.

The prior case where Gimeno hired ZMZ and where Atty. Zaide represented her family pertained to the annulment of a land title. Somontan was never a party to this case since this only involved Gimeno's relatives. On the other hand, the case where Atty. Zaide appeared against Gimeno involved Somontan's Ombudsman complaint against Gimeno for her alleged mishandling of the funds that Somontan entrusted to her, and for Gimeno's alleged corruption as an examiner in the Register of Deeds of Iligan City. Clearly, the annulment of title case and the Ombudsman case are totally unrelated.

There was also no double-dealing on the part of Atty. Zaide because at the time Somontan engaged his services, he had already left ZMZ. More importantly, nothing in the record shows that Atty. Zaide used against Gimeno any confidential information which he acquired while he was still their counsel in the annulment of title case.

Under these circumstances, Atty. Zaide should not be held liable for violating the prohibition against the representation of conflicting interests.

Use of intemperate, offensive and abusive language in professional dealings

The prohibition on the use of intemperate, offensive and abusive language in a lawyer's professional dealings, whether with the courts, his clients, or any other person, is based on the following canons and rules of the Code of Professional Responsibility:

Canon 8 - A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

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

Canon 11 - A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts. (emphasis supplied)

As shown in the record, Atty. Zaide, in the reply that he drafted in the Ombudsman case, called Gimeno a "notorious extortionist." [34] And in another case, Gimeno observed that Atty. Zaide used the following demeaning and immoderate language in presenting his comment against his opposing counsel:

Her declaration in Public put a shame, DISGRACE, INDIGNITY AND HUMILIATION in the whole Justice System, and the Department of Justice in particular, where the taxpayers paid for her salary over her incompetence and poor performance as a prosecutor... This is a clear manifestation that the Public prosecutor suffers serious mental incompetence as regard her mandate as an Assistant City Prosecutor. [35] (emphasis supplied)

This clearly confirms Atty. Zaide's lack of restraint in the use and choice of his words — a conduct unbecoming of an officer of the court.

While a lawyer is entitled to present his case with vigor and courage, such enthusiasm does not justify the use of offensive and abusive language. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, and illuminating but not offensive. [36]

On many occasions, the Court has reminded the members of the Bar to abstain from any offensive personality and to refrain from any act prejudicial to the honor or reputation of a party or a witness. In keeping with the dignity of the legal profession, a lawyer's language even in his pleadings, must be dignified. [37]

WHEREFORE, premises considered, the Court resolves to ADOPT the recommended penalty of the Board of Governors of the Integrated Bar of the Philippines. Atty. Paul Centillas Zaide is found GUILTY of violating the 2004 Rules on Notarial Practice and for using intemperate, offensive and, abusive language in violation of Rule 8.01, Canon 8 and Rule 11.03, Canon 11 of the Code of Professional Responsibility. His notarial commission, if existing, is hereby REVOKED, and he is declared DISQUALIFIED from being commissioned as a notary public for a period of two (2) years. He is also SUSPENDED for one (1) year from the practice of law.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Mendoza, and Leonen, JJ., concur.

[1] Rollo, p. 493; issued on November 19, 2011.

[2] A.M. No. 02-8-13-SC, July 6, 2004.

[3] Rollo, pp. 3-9.

[4] The respondent was admitted to the Bar on May 2, 2002.

[5] The respondent received his notarial commission on May 9, 2002.

[6] Rollo, pp. 3-4.

[7]Id. at 4.

[8] Anti-Graft and Corrupt Practices Act.

[9] Rollo, pp. 5-7.

[10] Id. at 5.

[11]Id. at 509.

[12] Id. at 66-81.

[13] Id. at 67-68.

[14] Id. at 69.

[15] Id. at 71-72.

[16] Id.

[17] Id. at 494.

[18] Id. at 494-513.

[19] Id. at 508.

[20] Id. at 501-502.

[21] Id. at 503-504.

[22] Id. at 511-512.

[23] Id. at 512.

[24] Id. at 493.

[25] Id. at 514-523.

[26] Id. at 531-532.

[27] Rollo, pp. 507-508.

[28] Section 1 (b), 2004 Rules on Notarial Practice.

[29] Under Section 1, Rule IV of the Notarial Practice Rules, a notary public is empowered to perform the following notarial acts:

1. acknowledgments;
2. oaths and affirmations;
3. jurats;
4. signature witnessings;
5. copy certifications; and
6. any other act authorized by these Rules;

[30] *Maria v. Cortes*, A.C. No. 7880, April 11, 2012, 669 SCRA 87, 93.

[31] A.C. No. 5098, April 11, 2012, 669 SCRA 76.

[32] *Id.* at 82.

[33] *Id.*

[34] *Rollo*, p. 40.

[35] *Id.* at 509.

[36] *Saberon v. Larong*, 574 Phil. 510, 517 (2008).

[37] *Id.*

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