

JULIAN T. BALBIN AND DOLORES E. BALBIN, COMPLAINANTS, VS. ATTY. MARIANO BARANDA, JR. RESPONDENT.

A.C. No. 12041. November 05, 2018

Ponente: PERLAS-BERNABE, J.

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PERLAS-BERNABE, J.:

This administrative case stemmed from a complaint[1] dated September 1, 2012 filed by Spouses Julian T. Balbin (Julian) and Dolores E. Balbin (Dolores; collectively, complainants) before the Integrated Bar of the Philippines (IBP) against respondent Atty. Mariano B. Baranda, Jr. (respondent) for violations of the Code of Professional Responsibility (CPR) and the Notarial Law.[2]

The Facts

Complainants alleged that in January 2003, they entered into a loan agreement with Rapu-Raponhon Lending Company[3] (RLC). To secure the loan, the latter's Manager, Charles M. Guanan (Charles), asked them to affix their signatures on two (2) blank documents, specifically a Deed of Real Estate Mortgage[4] and a Promissory Note,[5] both dated January 24, 2003 (subject documents). Respondent notarized the subject documents on January 29, 2003.[6] When complainants failed to pay the loan, RLC foreclosed the mortgage.[7] Aggrieved, they filed a case before the Regional Trial Court of Legazpi City, Branch 4 (RTC) for the annulment of the subject documents, claiming that they were made to sign the two (2) blank documents as security for the loan but they never received the loan proceeds.[8] However, in a Joint Decision[9] dated July 6, 2009, the RTC dismissed the case for failure of the complainants to substantiate their allegations.[10] While the civil case was pending on appeal,[11] complainants filed the present administrative case against respondent, faulting him for notarizing the subject documents without Dolores' presence, which he admitted in open court before the RTC, to wit:

Atty. [Joventino S.] Sardaña:

Q – Did you appear before a Notary Public at the time that this was acknowledged before a Notary Public?

Atty. Baranda:

Already answered, she did not.

Atty. Sardaña:

There was no answer yet.

Atty. Baranda:

We will admit that [Dolores] did not appear before a notary public.

Atty. Sardaña:

There is an admission from the defendant's counsel that the plaintiffs as signatories to this Real Estate Mortgage and Promissory Note did not appear before a Notary Public.

x x x x[12] (Emphasis supplied)

Complainants further suggested that respondent was in conflict of interest, and therefore, disqualified from notarizing the subject documents because respondent was the counsel of RLC, which was their counter-party in those documents.[13]

For his part, respondent admitted that Dolores was not present when he notarized the subject documents in the presence of Julian, Charles, and the two (2) other witnesses to the instruments.[14] He argued, however, that he was not in conflict of interest when he notarized the subject documents on January 29, 2003 because he was retained as RLC's counsel only on May 4, 2004, or after complainants filed the civil case against RLC.[15] He also added that there was no conflict of interest because complainants have never been his clients.[16]

The IBP's Report and Recommendation

In a Modified Report and Recommendation[17] dated June 20, 2013, the IBP Investigating Commissioner recommended that respondent be reprimanded for his carelessness and misdeclarations in the notarial certificates in the subject documents.[18] He noted that since Dolores was not present during the notarization, respondent should have indicated in the acknowledgment of the Deed of Real Estate Mortgage and the jurat of the Promissory Note that only Charles and Julian appeared before him and acknowledged their execution of those documents.[19] Nevertheless, the Investigating Commissioner found no merit in complainants' allegations that respondent was disqualified from notarizing the subject documents on the ground of conflict of interest.[20]

In a Resolution[21] dated August 9, 2014, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation with modification as to the penalty to be imposed upon respondent, to wit: (a) immediate revocation of his notarial commission; (b) disqualification from being commissioned as a notary public for two (2) years; and (c) suspension from the practice of law for three (3) months.[22]

Aggrieved, respondent moved for reconsideration[23] by expressing his sincere apology for his carelessness as a notary public and asking for compassion and understanding, noting that he is already seventy (70) years old and has been a notary public and in the practice of law since 1977.[24] In a Resolution[25] dated March 1, 2017, the IBP Board of Governors denied the motion and modified the period of suspension from the practice of law to six (6) months.[26]

The Issue Before the Court

The issue for the Court's resolution is whether or not respondent should be held administratively liable for the acts complained of.

The Court's Ruling

After a judicious perusal of the records, the Court concurs with the findings and recommendations of the IBP Board of Governors.

Settled is the rule that a notary public should not notarize a document unless the persons who signed it are the same persons who personally appeared before him to attest to its contents and truth.[27] The physical presence of the parties to the instrument is required to enable the notary public to verify the genuineness of their signatures therein and the due execution of the documents.[28] Pertinently, Section 1 of Act No. 2103 or the Notarial Law provides:

Section 1. x x x

(a)

The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country

to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

Under Section 2 (b), Rule IV of the prevailing 2004 Rules on Notarial Practice,[29] "[a] person shall not perform a notarial act if the person involved as signatory to the instrument or document x x x is not in the notary's presence personally at the time of the notarization[.]"[30]

In the present case, respondent explicitly admitted that he violated the foregoing requirement by notarizing the subject documents despite the fact that one of the parties-signatories thereto, Dolores, failed to personally appear before him. As such, he should be held administratively liable for his professional indiscretion. Notaries Public have been repeatedly reminded that they must be mindful of the significance of the notarial act when performing their duties. Notarization is not an empty, meaningless, or routinary act.[31] Rather, it converts a private document into a public one and renders it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public are mandated to observe with the utmost care the basic requirements in the performance of their duties.[32] In this light, lawyers commissioned as notaries public have been reminded that compliance with the Notarial Law is in line with their solemn oath under the CPR to obey the laws and to do no falsehood or consent to the doing of any.[33]

As regards the penalty to be imposed, recent jurisprudence shows that when a document is notarized despite the non-appearance of a party or an affiant before the notary public, the Court generally imposes the following penalties upon the latter: (a) immediate revocation of his notarial commission, if still existing; (b) disqualification from being appointed as a notary public for a period of two (2) years; and (c) suspension from the practice of law – the terms of which vary based on the circumstances of each case.[34] In *Ferguson v. Ramos*,[35] *Malvar v. Baleros*[36] and *Yumul-Espina v. Tabaquero*[37] the erring lawyers were suspended from the practice of law for six (6) months; while in *Orola v. Baribar*[38] *Sappayani v. Gasmen*,[39] and *Isenhardt v. Real*,[40] the suspensions imposed were for a period of one (1) year.

Here, the Court finds that suspension from the practice of law for six (6) months would suffice, considering respondent's prompt admission of his error, his expression of sincere apology for his carelessness, the fact that he is already in the twilight years of his life, and complainants' admission that Dolores placed her signatures on the subject documents, thereby raising no dispute on the due execution thereof.[41]

Finally, the Court agrees with the IBP that respondent was not disqualified from notarizing the subject documents by the mere fact that he subsequently became counsel of RLC, which was one of the signatories thereon. No such prohibition appears in both the Notarial Law and its present iteration.[42]

WHEREFORE, the Court finds respondent Atty. Mariano B. Baranda, Jr. GUILTY of violating the Notarial Law and the Code of Professional Responsibility. Accordingly, effective immediately, the Court hereby SUSPENDS him from the practice of law for six (6) months; REVOKES his incumbent commission as a notary public, if any; and PROHIBITS him from being commissioned as a notary public for two (2) years. He is WARNED that a repetition of the same offense or similar acts in the future shall be dealt with more severely. He is DIRECTED to report to this Court the date of his receipt of this Resolution to enable it to determine when his suspension from the practice of law, the revocation of his notarial commission, and his disqualification from being commissioned as notary public shall take effect.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal

record as an attorney, the Integrated Bar of the Philippines for its information and guidance, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio, (Chairperson), Caguioa, and A. Reyes, Jr., JJ., concur.
J. Reyes, Jr. J.,[*] on official leave.

[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018; on official leave.

[1] Rollo, pp. 2-8.

[2] Act No. 2103, entitled "AN ACT PROVIDING FOR THE ACKNOWLEDGMENT AND AUTHENTICATION OF INSTRUMENTS AND DOCUMENTS WITHOUT THE PHILIPPINE ISLANDS," enacted on January 26, 1912.

[3] Also referred to as "Rapo-Raponhon Co." in some parts of the rollo.

[4] Id. at 35 and 38.

[5] Id. at 36 and 39.

[6] Id. at 36, 37 and 39.

[7] See Respondent's Position Paper; id. at 139.

[8] See RTC Joint Decision dated July 6, 2009; id. at 42-43.

[9] Id. at 41-52. Penned by Judge Edgar L. Armes.

[10] See id. at 47-49 and 52.

[11] See Complaint; id. at 4. See also Answer; id. at 68-69.

[12] See TSN dated December 3, 2007; id. at 30.

[13] See id. at 5-6.

[14] See id. at 71.

[15] See id. at 71-72. See also id. at 185.

[16] Id. at 72 and 185.

[17] Id. at 183-187. Signed by Commissioner Jose Alfonso M. Gomos.

[18] Id. at 187.

[19] See id. at 186-187.

[20] See id. at 187.

[21] See Notice of Resolution in Resolution No. XXI-2014-446 signed by National Secretary Nasser A. Marohomsalic; id. at 165 (including dorsal portion).

[22] Id.

[23] See motion for reconsideration dated March 24, 2015; *id.* at 171-172.

[24] *Id.* at 171.

[25] See Notice of Resolution in Resolution No. XXII-2017-885 signed by Assistant National Secretary Camille Bianca M. Gatmaitan-Santos; *id.* at 179-180.

[26] *Id.* at 179.

[27] See *Coquia v. Laforteza*, A.C. No. 9364, February 8, 2017. See also *Linco v. Lacebal*, 675 Phil 160, 167 (2011).

[28] See *Almario v. Llera-Agno*, A.C. No. 10689, January 8, 2018. See also *Isenhardt v. Real*, 682 Phil 19, 24 (2012).

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

[30] Emphasis and underscoring supplied.

[31] See *Orola v. Baribar*, A.C. No. 6927, March 14, 2018, citing *Sappayani v. Gasmen*, 768 Phil. 1, 8 (2015).

[32] *Mariano v. Echanez*, 785 Phil. 923, 927-928 (2016).

[33] See *Orola v. Baribar*, A.C. No. 6927, March 14, 2018, citing *Agbulos v. Viray*, 704 Phil. 1, 9 (2013).

[34] See *id.*, citing *Sappayani v. Gasmen*, *supra* note 31.

[35] A.C. No. 9209, April 18, 2017, 823 SCRA 59.

[36] A.C. No. 11346, March 8, 2017, 820 SCRA 620.

[37] 795 Phil. 653 (2016).

[38] See A.C. No. 6927, March 14, 2018.

[39] *Supra* note 31.

[40] *Supra* note 28.

[41] See Modified Report and Recommendation of the IBP; *rollo*, pp. 186-187.

[42] Section 3, Rule IV of the 2004 Rules on Notarial Practice provides:

Section 3. Disqualifications. – A notary public is disqualified from performing a notarial act if he:

(a) is a party to the instrument or document that is to be notarized;

(b) will receive, as a direct or indirect result, any commission, fee, advantage, right, title, interest, cash, property, or other consideration, except as provided by these Rules and by law; or

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

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