

GRACE DELA CRUZ-SILLANO, COMPLAINANT, VS. ATTY. WILFREDO PAUL D. PANGAN, RESPONDENT.

A.C. No. 5851. November 25, 2008

Ponente: CARPIO MORALES, J.

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CARPIO MORALES, J.:

The Case

This is a complaint filed by Grace Dela Cruz-Sillano (complainant) against Atty. Wilfredo Paul D. Pangan (respondent) for disbarment for having conspired in forging a Special Power of Attorney.

The Facts

The facts in the Report and Recommendation of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) read as follows:

Respondent is accused of forging the signature of an affiant [Zenaida A. Dela Cruz] in a Special Power of Attorney (SPA). The affiant in this SPA is the mother of complainant. The SPA appears to have authorized a certain Ronaldo F. Apostol to "process, claim, receive and encash checks representing my (affiant's) benefits arising from my insurance policy with the Insular Life Assurance Company Ltd." Consequently, respondent also stands accused of notarizing a document in the absence of the affiant. Complainant specifically alleges: "That on March 15, 1999, Atty. Pangan conspiring and confederating with the other accused R.F. Apostol falsified and forged a document denominated as a Special Power of Attorney (by forging [sic] the signature of my deceased mother and notarizing the same), which empowered the accused Ronaldo F. Apostol to process, receive claim and encash check representing benefits arising from the insurance policy of my deceased mother Zenaida Apostol de la Cruz (of which I am the beneficiary). The accused successfully encash [sic] the check in the amount of P71,033.53 to my damage and prejudice."

The charge of forgery is premised on complainant's claim that when the SPA was notarized on 15 March 1999, the affiant therein was bedridden in the United States, who was sick with malignant cancer of the lungs, and that, in fact, the alleged affiant died on 27 May 1999 also in the United States. Complainant specifically alleges:

"The accused being both blood relatives were well aware that my deceased mother who resides in the U.S. of A has been bedridden for several months as she was diagnosed to be suffering from Malignant Cancer of the Lungs, prior to her death on May 27, 1999. Hence for obvious reasons, my deceased mother could not have on March 15, 1999 executed, prepared and signed the Special Power of Attorney and sworn to the same before Atty. Pangan. xxx"

In his comment Atty. Pangan claims that the "act of notarizing was done in accordance with law and practice." Moreover, respondent emphasized that:

"4. Respondent has no participation in the submission and processing of the insurance proceeds. Respondent Notary Public could not have made use of the alleged falsified document. He cannot be considered as having benefited from the falsified document as he was never a grantee nor a beneficiary [in] said document. He did

not benefit from the insurance proceeds. He never conspired with anyone in the commission of any crime much less has taken advantage of his position as notary public to defraud any person or entity."[1]

The IBP's Report and Recommendation

In a Report[2] dated 8 July 2005, IBP Commissioner for Bar Discipline Doroteo B. Aguila (Commissioner Aguila) found respondent guilty of notarizing the SPA in the absence of affiant. Commissioner Aguila found that respondent violated the Code of Professional Responsibility and recommended respondent's suspension from the practice of law for 30 days, and that he be barred from acting as notary public, if he is presently one, or from being given a commission to act as such, for a period of one year from the effectivity of the recommended penalty.

In a Resolution[3] dated 22 October 2005, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of Commissioner Aguila. The IBP Board of Governors suspended respondent from the practice of law for one year.

Respondent filed a motion for reconsideration dated 12 December 2005 before the IBP Board of Governors. In a Resolution dated 28 January 2006, the IBP Board of Governors resolved to deny respondent's motion for reconsideration since the Board had no jurisdiction to consider and resolve a matter already endorsed to this Court.

The Ruling of the Court

We sustain the findings of the IBP and adopt its recommendations. Respondent violated his oath as a lawyer and the Code of Professional Responsibility when he made it appear that Zenaida A. Dela Cruz personally appeared before him and executed a Special Power of Attorney in favor of Ronaldo Apostol.

Respondent Notarized a Special Power of Attorney in the Absence of the Affiant

Section 1 of Public Act No. 2103 or the Notarial Law provides:

Sec. 1. (a) The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

The Code of Professional Responsibility provides:

Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.

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

Moreover, Section 2(b) of Rule IV of the Rules on Notarial Practice of 2004 emphasizes the necessity of the affiant's personal appearance before the notary public:

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.

In the present case, respondent does not deny notarizing the questioned Special Power of Attorney. Moreover, instead of exculpating respondent, the affidavits presented by respondent prove that affiant was not in the personal presence of respondent at the time of the notarization.

Ronaldo F. Apostol, respondent's co-accused in the criminal complaint for estafa through falsification filed before the Regional Trial Court of Makati City, executed an affidavit absolving respondent from any wrongdoing.

- I was appointed by my Aunt Zenaida Apostol-Dela Cruz to process and claim her benefits arising from her insurance policy with the Insular Life Assurance Company, Ltd.;
- Pursuant to this authority I caused the preparation of a Special Power of Attorney authorizing me to process, claim, receive and encash said insurance policy;
- I proceeded to the law office of a distant relative - Atty. Wilfredo Paul D. Pangan to have the said Special Power of Attorney notarized;
- Atty. Pangan was, however, not present in their office so I asked the staff how I can facilitate the notarization of the said document;
- The staff told me that as long as the grantor will appear in their office they can vouch [sic] the due execution of the document and they will just include the documents among the "for signature" so that Atty. Pangan can sign them when he comes back from a hearing;
- I left the law office and fetch [sic] an aunt of mine. When I returned to the office, I told the staff that my aunt is too sick to alight from the car;
- Being a known relative of Atty. Pangan in the law office I was able to convince the staff that said aunt was indeed the one who executed the document;
- The following day I returned to the law office and the staff gave me the notarized Special Power of Attorney;
- That I have not paid for said notarization as I have been engaging the services of Atty. Pangan for free;
- When a feud between me and my cousin who is in the United States developed and their [sic] was a lack of communication between us, I was surprised that the matter of claiming the insurance policy was brought when almost everybody in our immediate family knew that I caused the claiming of the said insurance and hold it in trust until we can communicate with my cousin;
- In fairness to Atty. Pangan, he has nothing to do with whatever wrongdoings I have committed in the claiming of the insurance policy;
- The claiming was done in good faith as no one else in the immediate family can process the same;

x x x.[4] (Emphases added)

Laila N. Mesiano and Manolito F. Farnal, members of the staff of respondent's law office, also executed a joint affidavit in ostensible support for respondent.

- Among our duties is to prepare notarial documents for signature of our two (2) notaries public, Atty. Tiburcio A. Edaño, Jr. and Atty. Wilfredo Paul D. Pangan;
- The two are very strict in requiring the personal appearance of signatories to documents especially in documents requiring acknowledgments;
- Even those documents which were left by clients for notaries and those which we brought to them while they were having hearing in the nearby Hall of Justice were notarized only if we will vouch [sic] that the said

client indeed personally appeared in our office and executed the said document;

- This practice in notarizing documents are relaxed only in cases where mere jurat were required;

x x x.[5]

Respondent's comment gives us an insight as to how the present administrative complaint arose:

- If there was fraud, it may not have even been committed in the execution of the Special Power of Attorney nor in the processing of the claim but in the way the insurance proceeds was shared. Will complainant question the execution of the alleged document had the grantee turned over to her the insurance proceed [sic]? If respondent has conspired with said grantee in the commission of the fraudulent act, he would not have notarized the document and let other notary public do the notarizing.

- Respondent has always accommodated his relatives in their legal problems for free. The imputation upon him of any wrong doings in his practice as notary public is only a result of the existing feud between the heirs of the deceased and her relatives.[6]

In his defense, respondent objected to the evidence presented against him thus:

All the exhibits were not properly identified and their execution were not proven by the complainant.

In fact the original nor a certified true copy of the questioned Special Power of Attorney was never presented. The complainant never appeared to identify her complaint affidavit. The Certificate of Death is a mere xerox copy. The alleged record of the criminal case allegedly filed were mere xerox copies and the alleged passport was not properly identified by the issuing authority.

In view if the foregoing, it is respectfully submitted that the said exhibits are inadmissible in evidence.

The purpose for which the said exhibits was [sic] being offered is likewise being objected to.

The records of the criminal case does [sic] not prove that the accused have committed the crime charged. They are presumed innocent until proven otherwise.

The death certificate of the alleged signatory does not show that she could not have signed the alleged document as the face of the questioned document showed that it was executed before the alleged passing of the signatory.

The passport does not readily show that the signatory could not have signed the said document nor will it conclusively tell that the signatory could not have signed the said document.

The hospital records does [sic] not show that the signatory could not have possibly executed the said document.

The check voucher does not show that the herein respondent was not a party thereto.

The questioned Special Power of Attorney alone does not prove that the signature appearing thereon in [sic] not the signature of the signatory.[7]

The complaint before us is an administrative case where a fact is deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept to justify a conclusion.[8] Aside from his lame objections, respondent does not categorically deny notarizing the questioned Special Power of Attorney in the absence of the affiant. The seriousness of respondent's omission is not lessened by his claim that he "has always accommodated his relatives in their legal problems for free."

The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents

without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[9]

Notarization is not an empty, meaningless, routinary act. On the contrary, it is invested with substantial public interest, such that only those who are qualified or authorized may act as notaries public. Notarization of a private document converts the document into a public one making 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 must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

As a lawyer commissioned to be a notary public, respondent is mandated to discharge his sacred duties which are dictated by public policy and, as such, impressed with public interest. Faithful observance and utmost respect of the legal solemnity of an oath in an acknowledgment or jurat is sacrosanct.[10]

Respondent's failure to perform his duty as a notary public resulted not only in damaging complainant's rights but also in undermining the integrity of a notary public and in degrading the function of notarization. Hence, respondent should be liable for such negligence, not only as a notary public but also as a lawyer.[11] Respondent must accept the consequences of his professional indiscretion. Thus, under the facts and circumstances of the case, respondent's notarial commission should not only be suspended but respondent must also be suspended from the practice of law.

WHEREFORE, the Court finds respondent Atty. Wilfredo Paul D. Pangan GUILTY of violating the Code of Professional Responsibility. Accordingly, the Court SUSPENDS him from the practice of law for one year; REVOKES his incumbent notarial commission, if any; and PROHIBITS him from being commissioned as a notary public for one year, effective immediately, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

SO ORDERED.

Puno, C.J., (Chairperson), Corona, Azcuna and Tinga[*], JJ., concur.

[*] As replacement of Justice Teresita J. Leonardo-De Castro who is on official leave per Special Order No. 539.

[1] Rollo, pp. 80-81.

[2] Id. at 80-83.

[3] Id. at 77.

[4] Id. at 66.

[5] Id. at 65.

[6] Id. at 19-20.

[7] Id. at 85.

[8] Sec. 5, Rule 133, Rules of Court.

[9] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 16 (2002).

[10] *Arrieta v. Llosa*, 346 Phil. 932, 937-938 (1997).

[11] *Follosco v. Atty. Mateo*, 466 Phil. 305, 313 (2004).

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