

FEDERICO D. RICAFORT, COMPLAINANT, VS. ATTY. EDDIE R. BANSIL, RESPONDENT.

A.C. No. 6298. May 27, 2004

Ponente: AUSTRIA-MARTINEZ, J.

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AUSTRIA-MARTINEZ, J.:

On March 17, 2003, Atty. Federico D. Ricafort filed with the Integrated Bar of the Philippines (IBP), a verified complaint against respondent Atty. Eddie R. Bansil for misconduct and for violation of the Constitution on the right of the people to information on matters of public concern and R.A. No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees. The case, docketed as CBD Case No. 03-1071, was referred by the Commission on Bar Discipline to Investigating Commissioner Rebecca Villanueva-Maala for investigation, report and recommendation.

The factual and procedural antecedents are summarized by the Investigating Commissioner as follows:

Complainant alleged that respondent has been commissioned as a Notary Public for Guagua, Pampanga, with the obligation to submit his notarial book and documents every month and each time he applies for a re-commission to the Clerk of Court of the Regional Trial Court of Guagua, Pampanga.

According to the RTC Clerk of Court of Guagua, Atty. Jorge Bacani ('Atty. Bacani'), respondent submitted his notarial book and documents but the same were returned to him for safekeeping considering that there was no space in the Office of the Clerk of Court to accommodate the notarial books and documents. However, they are required to bring them to the Clerk of Court when needed for inspection/verification of documents upon request.

Complainant has requested the Clerk of Court, Atty. Bacani, to send word to respondent that he wanted to verify some documents purportedly notarized by respondent particularly the documents contained in Notarial Book No XV, Series of 2002 and to bring the same to the Office of the Clerk of Court. The request was made to respondent on several occasions, the last of which was on 20 May 2003. Atty. Bacani repeatedly called up respondent regarding the request of complainant but respondent repeatedly failed and refused to heed the request.

On 20 February 2003, complainant sent a formal letter reiterating his request to examine respondent's Notarial Book XV, Series of 2002 for verification purposes at the office of the clerk of court on 28 February 2003. However, despite the fact that respondent received the said letter on 3 March 2003, respondent still failed and refused the request without any justifiable reason and did not even responded (sic) to the said letter. Hence, this complaint.

In his Answer, respondent states that there was no failure and refusal to heed the request, and the reason of inability to bring for verification the said Notarial Book CXV, Series of 2002 is the fact of lost (sic) thereof attributable to heavy flooding from July 6 to 20, 2002.

The letter-request was lately shown to him by a member of his household, however, complainant did not mention any particular document or he could have readily extended the desired help for verification or

certification. Respondent contends that he is ready and willing to be of help to complainant if shown the particular document necessitating verification and/or certification.

Complainant claims that how can respondent help verify the genuineness or veracity of the documents notarized by him, if respondent alleged that the same were lost in a flood. Complainant avers that the certification issued as to the existence of flood in Guagua, Pampanga in 6 to 20 July 2002 deals only with the flood in the town proper and did not say that the house of respondent in San Antonio, Guagua, was hit by the flood. The streets were flooded but not the house of respondent which is situated on a higher ground. The town of Guagua, Pampanga has been perennially flooded during rainy season for which reason respondent who had to bring his notarial books at his house in San Antonio, Guagua, could have guarded the same against such contingency. A Notary Public should always place his books and documents in a safe place at his residence, otherwise this could aggravate the suspicion that he was grossly negligent in keeping his books which are public documents and destruction of public documents is punishable by law.

At the hearing held on 4 June 2003 only complainant appeared. Respondent's notice for the reason of his absence was belatedly received by the office. Parties were directed to submit their Position Paper and thereafter the case was submitted for report and recommendation.

In her Report and Recommendation submitted to the IBP Board of Governors, Commissioner Villanueva-Maala found the respondent administratively liable for his failure to attend to the request of complainant to look into his notarial book and recommended that respondent be suspended from the practice of law for a period of one year.

In its resolution dated October 25, 2003, the IBP Board of Governors adopted the findings of Commissioner Villanueva-Maala but reduced the recommended penalty to a mere reprimand; and referred the same to this Court.

Except for the penalty recommended, the Court agrees with the findings of the IBP Board of Governors that respondent should be held administratively liable for not attending to complainant's request to look into his notarial book.

Before delving into the main issue of the case, we deem it proper to discuss two preliminary matters.

First, it is noted that at the hearing scheduled on June 4, 2003, only the complainant appeared.[1] As a matter of procedure, the Investigating Commissioner should have proceeded with the investigation *ex parte* pursuant to the provisions of Section 8, Rule 139-B of the Rules of Court.[2] The Investigating Commissioner should have required the complainant to present evidence to substantiate his allegations. However, instead of proceeding with the hearing, the Investigating Commissioner issued an order requiring both parties to submit their respective memoranda within 15 days from the date of issuance of the order, with respect to the complainant, and within 15 days from notice with respect to respondent. Despite due receipt of the said order on June 18, 2003, respondent failed to submit the required memorandum. The Investigating Commissioner's Report and Recommendation was dated September 16, 2003 while the resolution of the IBP Board of Governors adopting and approving said Report and Recommendation was passed on October 25, 2003. The records of the case do not show that from June 18, 2003 until October 25, 2003, respondent had taken any action or that he submitted the required memorandum. Consequently, he is deemed to have waived not only his right to file said memorandum but also the right to a hearing.

Second, the complaint against respondent is in connection with the discharge of his functions as a notary public, and not as an elected barangay chairman. Thus, the Code of Conduct and Ethical Standards for Public Officials and Employees invoked by complainant will not apply to the present administrative complaint against respondent. Respondent, as a lawyer and a notary public, is covered by the Code of Professional Responsibility and Code of Professional Ethics.

Coming to the main issue in the instant case, despite absence of reception of evidence, as required by Sec. 8, Rule 139-B, Rules of Court, we find the following admissions made by the respondent in his Answer to the complaint, to wit:

(1)

He has been commissioned as a Notary Public for Guagua, Pampanga with obligation to submit his notarial book and documents every month and each time he applies for a commission to the Clerk of Court, Regional Trial Court of Guagua, Pampanga;[3]

(2)

His notarial books covering 2001-2002 were presented before the Clerk of Court for the renewal of his notarial commission for the succeeding year but was returned to him after verification because of limited working space in the office of the Clerk of Court which is shared by Branch 53, RTC, Guagua, Pampanga;[4]

(3) He was notified by Clerk of Court Bacani regarding the request of complainant to examine some notarized documents in his notarial book;[5]

sufficient to hold him liable for violating the Code of Professional Responsibility.

Respondent likewise admitted in his Answer that he received complainant's letter-request dated February 20, 2003. However, he claims that said letter-request was belatedly shown to him by a member of his household. We find this a lame excuse. Granting that complainant's letter-request was belatedly shown to respondent, elementary rules of courtesy still dictate that respondent should have, at the least, responded to complainant's request to look at his notarial book. This is expected from respondent especially when the one requesting is a colleague in the same profession. Moreover, respondent admitted that Clerk of Court Bacani had earlier notified him of the request of complainant. Respondent simply ignored the requests of both complainant and Clerk of Court Bacani.

Even if the subject notarial book was, as claimed by him, indeed lost by reason of flooding in his place of residence, although there is no evidence to prove this belated self-serving assertion, respondent could have easily written a letter or called up Clerk of Court Bacani to inform him of such loss so that the complainant may be informed thereof in due time.

Respondent further contends that he could have easily helped complainant had the latter personally gone to see him and showed him the particular document that needed to be verified. Respondent's contention and inaction smacks of arrogance and dereliction of his duty to bring the notarial books and documents to the Clerk of Court upon request of the latter. Worse, it speaks of his failure to live up to the exacting standards of conduct demanded from each and every member of the legal profession as mandated by the Code of Professional Responsibility and the Code of Professional Ethics.

Canon 8 of the Code of Professional Responsibility provides that a lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues and shall avoid harassing tactics against opposing counsel. Canon 22 of the Canons of Professional Ethics provides that the conduct of a lawyer before the court and with other lawyers should be characterized by candor and fairness. Indeed, the obligations of a member of the bar include the observance of honorable, candid and courteous dealing with other lawyers, fidelity to known and recognized customs and practices of the profession, and performance of duties to the Integrated Bar of the Philippines.[6]

Thus, respondent is guilty of unprofessional conduct. Unprofessional conduct in an attorney is that which violates the rules or ethical code of his profession or which is unbecoming a member of that profession.[7]

Under the circumstances, a mere reprimand is not sufficient. We deem it proper to impose on respondent a fine in the amount of P5,000.00 not only for his unprofessional conduct but also because his unjustified failure to heed complainant's request or to inform complainant or the Clerk of Court that the subject notarial books were lost in the flood, forced the latter to go to the extent of filing the instant administrative case thereby wasting the time and resources not only of the complainant and the IBP, but also of the Court.

WHEREFORE, we find respondent Atty. Eddie R. Bansil GUILTY OF UNPROFESSIONAL CONDUCT and FINED in the amount of Five Thousand Pesos (P5,000.00), with a warning that a commission of the same or similar acts in the future will be dealt with more severely.

Once again, the Integrated Bar of the Philippines is admonished to see to it that Section 8, Rule 139-B of the Rules of Court is observed by its Investigating Commissioners.

SO ORDERED.

Quisumbing, (Acting Chairman), Callejo, Sr., and Tinga, JJ., concur.
Puno, (Chairman), J., on official leave.

[1] Respondent filed by registered mail an Urgent Ex-Parte Motion for Postponement on June 2, 2003, which was received by the IBP only on June 16, 2003.

[2] Sec. 8. Investigation. – Upon joinder of issues or upon failure of the respondent to answer, the Investigator shall, with deliberate speed, proceed with the investigation of the case. He shall have the power to issue subpoenas and administer oaths. The respondent shall be given full opportunity to defend himself, to present witness on his behalf, and be heard by himself and counsel. However, if upon reasonable notice, the respondent fails to appear, the investigation shall proceed ex parte. (Emphasis supplied)

[3] Paragraph 2, Answer, p. 8, Rollo.

[4] Id., Annex "1", p. 11, Rollo.

[5] Paragraph 3, Answer, p. 5, Rollo.

[6] Legal Ethics, Agpalo, Fourth Edition, 1989, p. 92.

[7] Tan Tek Beng vs. David, 126 SCRA 389, 393 (1983).

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