IGNACIO J. SALMINGO, COMPLAINANT, VS. ATTY. RODNEY K. RUBICA, RESPONDENT.

A.C. NO. 6573. July 09, 2007

Ponente: CARPIO MORALES, J.

Read online (full-text search, related cases, audio case brief): https://batas.org/library/a-c-no-6573/

CARPIO MORALES, J.:

The following facts spawned the filing of the administrative complaint at bar, for disbarment against Atty. Rodney K. Rubica (respondent), by herein complainant Ignacio J. Salmingo which he transmitted to the Chief Justice by letter of September 27, 2004.

Respondent filed on January 9, 2003 before the Regional Trial Court (RTC) of Negros Occidental a complaint for declaration of nullity of his marriage with Liza Jane Estaño[1] (Liza Jane).

The complaint was docketed as Civil Case No. 2243-40.

The summons for Liza Jane at her given address at Blk. 25, Lot 36 Josefina St., Eroreco Subdivision, Bacolod City[2] was returned unserved as allegedly no one could be found there.[3] Respondent thereupon filed a Motion for Leave of Court to Effect Service of Summons by Publication,[4] which was granted.[5]

Summons was thus published in the Visayan Post, a weekly newspaper of general circulation in Negros Occidental.[6]

Nothing was heard from Liza Jane, however; hence, respondent presented evidence ex parte[7] before Branch 40 of the Silay RTC, without the participation of the City Prosecutor.[8]

By Decision[9] dated May 23, 2003, the trial court declared the marriage between respondent and Liza Jane null and void, as the evidence showed that there was a previous valid and existing marriage between Liza Jane and one Rene Jose T. Mojica.[10] The judgment was entered as final on July 17, 2003.[11]

In his present complaint,[12] the complainant alleges that in prosecuting the annulment case, respondent deliberately concealed Liza Jane's address so that she could not be served with summons, thus enabling him to present evidence ex parte;[13] that respondent caused the publication of summons only in a newspaper of local circulation;[14] that respondent did not serve a copy of his petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor;[15] and that he did not cause the registration of the decree of nullity in the Civil Registry.[16]

> Complainant thus prayed:
>
> WHEREFORE, PREMISES CONSIDERED, it is respectfully prayed of this Court that:
>
> - An order be issued directing:
>
> - The setting aside [of] the Decision in Civil Case No. 2253-40;
>
> - The reopening of the case in a separate sala where the City Prosecutor shall represent the State;

> - Deleting the name of Rodney K. Rubica from the Roll of Attorneys and ordering him to pay for the Cost of Retrial.
>
> - For other relief and remedies just and equitable under the premises.[17] (Underscoring supplied)

Respondent denied knowing Liza Jane's real address.[18]He denied too having failed to comply with the procedural requirements in the declaration of nullity case.[19] He in fact questioned complainant's standing to contest the decision of the trial court in the said case.[20]

This Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.[21]

The IBP investigating commissioner recommended that respondent be suspended for three months for gross misconduct.[22] The IBP Board of Governors resolved to dismiss the case, however, for lack of sufficient evidence.[23]

This Court upholds the resolution of the IBP Board of Governors.

It is settled that:

> x x x In view of the nature and consequences of a disciplinary proceeding, observance of due process, as in other JUDICIAL determinations, is imperative along with a presumption of innocence in favor of the lawyer. Consequently, the burden of proof is on the complainant to overcome such presumption and establish his charges by clear preponderance of evidence.[24] (Underscoring supplied)

To prove that respondent knew Liza Jane's true whereabouts all along, complainant alleged that respondent had been sending allowances to Liza Jane and their children at her residence.[25] Respondent countered, however, that he had been sending allowances by depositing the same in a bank in Bacolod City through an automated teller machine (ATM) account, which deposit could be withdrawn at any ATM machine within the Philippines.[26] This complainant failed to controvert.

On respondent's alleged non-compliance with the following provisions of the Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages which took effect on March 15, 2003:[27]

> x x x x
>
> Sec. 5. Contents and form of petition. — x x x
>
> (4) It shall be filed in six copies. The petitioner shall serve a copy of the petition on the Office of the Solicitor General and the Office of the City or Provincial Prosecutor, within five days from the date of its filing and submit to the court proof of such service within the same period.
>
> Failure to comply with any of the preceding requirements may be a ground for immediate dismissal of the petition.
>
> x x x x
>
> Sec. 6. Summons.— The service of summons shall be governed by Rule 14 of the Rules of Court and by the following rules:
>
> (1) Where the respondent cannot be located at his given address or his whereabouts are unknown and cannot be ascertained by diligent inquiry, service of summons may, by leave of court, be effected upon him by publication once a week for two consecutive weeks in a newspaper of general circulation in the Philippines and in such places as the court may order. In addition, a copy of the summons shall be served on the respondent at his last known address by registered mail or any other means the court may deem sufficient.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

> Sec. 8. Answer. x x x
>
> (3) Where no answer is filed or if the answer does not tender an issue, the court shall order the public prosecutor to investigate whether collusion exists between the parties. x x x Sec. 19. Decision
>
> x x x x
>
> (2) The parties, including the Solicitor General and the public prosecutor, shall be served with copies of the decision personally or by registered mail. If the respondent summoned by publication failed to appear in the action, the dispositive part of the decision shall be published once in a newspaper of general circulation.
>
> x x x x
>
> Sec. 23. Registration and publication of the decree; decree as best evidence. — (a) The prevailing party shall cause the registration of the Decree in the Civil Registry where the marriage was registered, the Civil Registry of the place where the Family Court is situated, and in the National Census and Statistics Office. He shall report to the court compliance with this requirement within thirty days from receipt of the copy of the Decree.
>
> (b) In case service of summons was made by publication, the parties shall cause the publication of the Decree once in a newspaper of general circulation.
>
> (c) The registered Decree shall be the best evidence to prove the declaration of absolute nullity or annulment of marriage and shall serve as notice to third persons concerning the properties of petitioner and respondent as well as the properties or presumptive legitimes delivered to their common children. (Emphasis supplied; italics in the original)

The requirements in the above-cited Rule that the petitioner should serve copies of the petition on the Office of the Solicitor General and that of the Public Prosecutor; that service of summons by publication on a respondent whose whereabouts are unknown be in a newspaper of general circulation in the Philippines; and that the prevailing party cause the registration and publication of the decree took effect only May 15, 2003, after respondent filed the declaration of nullity case on January 9, 2003.

At the time respondent filed his petition for declaration of the nullity of marriage, what applied was the Rules of Court under which he was not required to file his petition in six copies and to serve copies on the Office of the Solicitor General and that of the City or Provincial Prosecutor. Neither was he required to cause the registration and publication of the decree of nullity.

Respondent did comply with the procedure in the Rules of Court on service by publication on a respondent whose whereabouts are unknown, which procedure requires only "publication in a newspaper of general circulation and in such places and for such time as the court may order,"[28] as opposed to "a newspaper of general circulation in the Philippines and in such places as the court may order" required by the above-quoted Section 6 (1) of the Rule On Declaration Of Absolute Nullity Of Void Marriages And Annulment Of Voidable Marriages.

The requirement that the trial court order the prosecutor to investigate whether collusion exists in case the defendant in the declaration of nullity case files no answer is addressed to the said court, not to the parties to the case nor to their counsel, absent any showing of respondent's involvement in the lapse in the prescribed procedure, he cannot be faulted therefor.

Respecting complainant's claim that respondent did not cause the registration of the decree of nullity of the marriage, he offered no proof, in accordance with Section 28, Rule 132 of the Rules of Court, which states:

> SEC. 28. Proof of lack of record. A written statement signed by an officer having custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records

> of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry. (Underscoring supplied),

in support thereof.

As for complainant's prayer for the setting aside of the decision in Civil Case No. 2243-40 and the reopening of the case, the same may not be considered, not in the present case anyway. He is, parenthetically, not even a real party in interest to the said case. His invocation of the State's interest in protecting the sanctity of marriage[29] does not give him the standing to question the decision. By law, it is the prosecuting attorney or fiscal or the Solicitor General who represents the interest of the State in proceedings for the annulment or declaration of nullity of marriage.[30]

WHEREFORE, the petition is DENIED. The dismissal of the complaint by the Integrated Bar of the Philippines is upheld.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Carpio, Austria-Martinez, Corona, Azcuna, Tinga, Chico-Nazario, Garcia, Velasco, Jr., and Nachura, JJ., concur.
Quisumbing, J., on official leave.
Sandoval-Gutierrez, J., on leave.

---

[1] Sometimes spelled "Estano." Rollo, pp. 5, 8-10.

[2] Id. at 8, 14.

[3] Id. at 15.

[4] Id. at 16-17.

[5] Id. at 18.

[6] Id. at 19-27, 327.

[7] Id. at 30-33.

[8] Id. at 37.

[9] Id. at 30-35.

[10] Id. at 33.

[11] Id. at 36.

[12] Id. at 5-7.

[13] Id. at 6-7.

[14] Id. at 156.

[15] Id. at 7, 61.

[16] Id. at 156.

[17] Id. at 7.

[18] Id. at 100-102.

[19] Id. at 100-102, 167-171.

[20] Id. at 103, 167.

[21] Id. at 106.

[22] Id. at 393.

[23] Id.at 386.

[24] Marcelo v. Javier, Sr., Adm. Case No. 3248, September 18, 1992, 214 SCRA 1, 15.

[25] Rollo, p. 60.

[26] Id. at 114.

[27] A.M. No. 02-11-10-SC. Salmingo's allegations are in rollo, pp. 152-153, 156, 158.

[28] RULES OF COURT, Rule 14, Section 14. Vide rollo, p. 327.

[29] Rollo, pp. 7, 60, 157-158.

[30] Vide Administrative Code of 1987, Book IV, Title III, Chapter 12, Section 35; Family Code, Article 48; A.M. No. 02-11-20-SC, Sections 5(4), 5(18), 8(3), 9(1)-(3), 13(b), 18, 19 (2)-(3), 20 (2); Republic v. Iyoy, G.R. No. 152577, September 21, 2005, 470 SCRA 508, 528-531.

Bar review courses, mock exams and a study planner that keeps you on pace - batas.org

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at https://batas.org

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.