

## MARISA BACATAN WILLIAMS AND ORLANDO VERAR RIAN, JR. PETITIONERS, VS. ATTY. RODRIGO ICAO, RESPONDENT.

*A.C. No. 6882. December 24, 2008*

Ponente: CARPIO MORALES, J.

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### CARPIO MORALES, J.:

Maria Bacatan Williams and Orlando Verar Rian, Jr. (petitioners) administratively charge Atty. Rodrigo Icao (respondent) for violation of the Notarial Law and for unlawful, dishonest, immoral, and deceitful conduct unbecoming of an attorney.[1]

In their Joint-Complaint-Affidavit for Disbarment,[2] petitioners allege that on May 23, 2002, respondent notarized a Declaration of Heirship and Partition[3] (the document) making it appear that three of its signatories - Lucia Briones, Ramon Verar, and Martin Umbac - signed it in his presence when in truth they did not. In support of their allegation, they gave the following details, quoted verbatim:

Proof that Attorney Icao was not present when the DECLARATION was actually signed came to light on June 3, 2003 during the trial in Criminal Case No. 3051 held at MCTC Bacong, Negros Oriental when, in his sworn testimony, Francisco B. Ventolero, one of the six signers, said that he was the one to carry the document from one signer to the next to get their signatures. x x x

Additional support that the document was not signed in attendance with Attorney Icao is found where the participants declared they signed the document on 14 January 2002 in Bacong as opposed to the acknowledgment where Attorney Icao declares that they signed the document on 23 May 2002 in Dumaguete City.

It is also apparent that Lucia Briones did not sign with Attorney Icao in attendance since her Community Tax Certificate was not recorded, nor was any notation made as to how she was identified. In addition, her printed signature (L. Briones) on page #2 is quite different from her written signature (Felicidad Briones) on page #1 and #3 suggesting further that the signing was not attended by Attorney Icao. In addition, it is commonly known amongst the participants that Lucia Briones lived in Cotabato for 20+ years before she died in 2004. It was equally known that she was deathly sick in 2002 which explains why Francisco B. Ventolero had to take the document to Cotabato for her signature.

The style of the signatures of Francisco and Desiderio Ventolero also appear not to be under the guidance of a legal expert since the family name of "Ventolero" is used on page #2 while the family name of "Briones" is used on page #1 and #3. An attorney would never knowingly allow such an inconsistency in a legal document. Bouncing back and forth from one family name to another and from a written signature on page #2 to thumbmarks on page #1 and #3 also seem to be highly irregular for a document supposedly signed in front of a lawyer.[4] (Underscoring supplied)

Petitioners additionally charge respondent to have conspired with Atty. Rudy T. Enriquez (Atty. Enriquez), one of the signatories to, in the falsification, of the document.[5]

In his Comment,[6] respondent, admitting that the document was not executed in his presence, claims that before he notarized it, the parties thereto appeared before him and he ascertained their identities as well as of those of their witnesses; that he explained to them the contents of the document which they acknowledged to be true and correct; that all the parties acknowledged before him that the signatures appearing thereon were theirs and that they executed the same freely and voluntarily; that he did not find in the document anything contrary to law, morals and public policy since at the time of the notarization, the signatories were accompanied by their counsel, Atty. Enriquez; that he did not require the presentation of other documents to support the document as he was not privy to its preparation; and that petitioners' complaint had already prescribed under Section 1, Rule VIII of the Rules of Procedure of the Commission on Bar Discipline (CBD) of the IBP under which a complaint for disbarment, suspension or discipline of attorneys prescribes in two years from the date of the professional misconduct.

Respondent attached to his Comment a Joint Affidavit[7] of Ramon Ventolero Verar, Martin Umbac, and Desiderio Briones Ventolero, who are among the signatories to the document, in which they attested to having appeared before respondent to acknowledge as theirs the signatures they had previously affixed thereon.

The Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation.[8] While a mandatory conference/hearing was set on April 24, 2007,[9] petitioners requested that the case be resolved on the basis of the parties' position papers.[10]

In his Report and Recommendation,[11] IBP Commissioner Edmund T. Espina (Espina), brushing aside respondent's defense of prescription, citing *Calo v. Degamo*[12] which held that disbarment proceedings do not prescribe, found respondent guilty of violation of the Notarial Law.

Espina thereupon recommended that respondent be reprimanded, with warning that similar acts in the future would merit severe penalty.

The IBP Board of Governors, by Resolution of December 14, 2007, resolved to dismiss the case, viz:

RESOLVED to AMEND, as it is hereby AMENDED, the Recommendation of the Investigating Commissioner, and APPROVE the DISMISSAL of the above-entitled case for lack of merit.[13] (*Italics and emphasis in the original*)

Petitioners filed a Motion for Reconsideration,[14] averring that:

The Commission on Bar Discipline [sic] must have made an error by dismissing this case for "lack of merit" considering that Commissioner Espina stated on page #7 of his report and recommendation that, "The manner on which all the parties signed the document is highly irregular and questionable." Furthermore, on page #8 the Commissioner added, "Sad to say, respondent miserably failed to refute the allegations against him[15] (*Italics and underscoring in the original*),

which motion the IBP forwarded to the Court.

The Court finds for petitioners.

On the technical issue of prescription, *Frias v. Bautista-Lozada*,[16] holds that that prescription does not lie in administrative proceedings against lawyers.

x x x As early as 1967, we have held that the defense of prescription does not lie in administrative proceedings against lawyers. And in the 2004 case of *Heck v. Santos*,[17] we declared that an administrative complaint against a member of the bar does not prescribe.

x x x x

The CBD-IBP derives its authority to take cognizance of administrative proceedings against lawyers from this Court which has the inherent power to regulate, supervise and control the practice of law in the Philippines. Hence, in the exercise of its delegated power to entertain administrative complaints against lawyers, the CBD-IBP should be guided by the doctrines and principles laid down by this Court.

Regrettably, Rule VIII, Section 1 of the Rules of Procedure of the CBD-IBP which provides for a prescriptive period for the filing of administrative complaints against lawyers runs afoul of the settled ruling of this Court. It should therefore be struck down as void and of no legal effect for being ultra vires.[18]

On the merits. The document does not bear the residence certificate number of Lucia Briones, one of the signatories. In notarizing it without recording Lucia's residence certificate, respondent violated the Notarial Law then effective[19] which required the notary public to certify that a party to the instrument which was acknowledged before him had presented the proper residence certificate (or exemption from the residence certificate) and to enter its number, place and date of issue as part of the certification.[20] This formality is mandatory and cannot be neglected, failure to comply with which results in the revocation of a notary's commission.[21]

By respondent's admission, the signatories to the document did not personally sign it in his presence. He, however, claims that they appeared before him and confirmed their identities and acknowledged that the signatures appearing thereon were theirs. If indeed the heirs-signatories and their witnesses had personally appeared before respondent, it is beyond comprehension why he did not ask them to affix their signatures in his presence. By such omission, he failed to heed his duty as a notary public to demand that the document for notarization be signed in his presence.[22]

More. The document contained false statements. Thus, it listed the signatories' counsel, Atty. Enriquez, as one of the six heirs of Aurea Briones, albeit he is merely the legal counsel of the heirs.[23] The Joint Affidavit respondent attached to his Comment stating that there were five, not six, heirs should have readily alerted him of such falsity.

Still more. The document states that Aurea Briones Ventolero died ab intestato during the Second World War. The death certificate of the deceased on file at the Civil Registry states, however, that she died on July 12, 1998.[24] And the document states that the six signatories are heirs of Aurea Briones, whereas in the Joint Affidavit attached to respondent's Comment, the three signatories-affiants claim that they are, as well as of the deceased Aurea Briones' husband Ciriaco Ventolero, heirs of Aurea Briones.

Records show that Atty. Enriquez had in fact been previously suspended from the practice of law for two years for his complicity in executing the same document.[25]

In notarizing a document containing false statements, respondent failed to discharge his duty to inform himself of the facts to which he intended to certify and to take part in no illegal enterprise.[26]

It bears recalling that notarization is not an empty, meaningless, routinary act.[27] It is invested with substantive public interest, such that only those who are qualified or authorized may act as notary public.[28] As a notarial document is by law entitled to full faith and credit upon its face, notaries public must observe with utmost care the basic requirements in the performance of their duties, lest the confidence of the public in the integrity of the document will be undermined.[29]

No concrete evidence being appreciated from the records in support of the charge of complicity in the falsification of the document, the same must fail.

WHEREFORE, the petition is GRANTED. Atty. Rodrigo Icao is SUSPENDED from the practice of law and from

his commission as a notary public for a period of one year, effective immediately, with warning that a commission of the same or similar acts in the future shall be dealt with more severely.

Let copies of this Resolution be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines.

**SO ORDERED.**

Quisumbing, (Chairperson), Tinga, Velasco, Jr., and Brion, JJ., concur

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[1] Rollo, p. 1.

[2] Id. at 2-5.

[3] Id. at 6-8.

[4] Id. at 2-3.

[5] Id. at 4-5.

[6] Id. at 39-42.

[7] Id., unnumbered page between pp. 42-43.

[8] Id. at 58.

[9] IBP records, p. 9.

[10] Id. at 13.

[11] Id. at 50-58.

[12] 126 Phil. 802, 805-806 (1967).

[13] IBP records, pp. 49.

[14] Id. at 60.

[15] Ibid.

[16] A.C. No. 6656, May 4, 2006, 489 SCRA 345.

[17] 467 Phil. 798 (2004).

[18] *Frias v. Bautista-Lozada*, A.C. No. 6656, May 4, 2006, 489 SCRA 345, 347-348.

[19] Under Section 13 of the 2004 Rules of Notarial Practice, a residence certificate is no longer considered a competent proof of the affiant's identity.

[20] Vide Section 249, Revised Administrative Code; *Soriano v. Basco*, A.C. No. 6648, September 21, 2005, 470 SCRA 423, 429.

[21] Ibid.

[22] Vide *Traya, Jr. v. Villamor*, 466 Phil. 919, 923 (2004). Italics in the original.

[23] Rollo, pp. 6-7.

[24] Id. at 55.

[25] IBP records, pp. 19-24.

[26] Vide Pañganiban v. Borromeo, 58 Phil. 367, 369 (1933).

[27] Vide Soriano v. Basco, A.C. No. 6648, September 21, 2005, 470 SCRA 423, 430.

[28] Vide ibid.

[29] Ibid.

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