

VICTORINA BAUTISTA, COMPLAINANT, VS. ATTY. SERGIO E. BERNABE, RESPONDENT.

A.C. NO. 6963. February 09, 2006

Ponente: YNARES-SANTIAGO, J.

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YNARES-SANTIAGO, J.:

In a Complaint[1] filed before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) on November 16, 2004, complainant Victorina Bautista[2] prays for the suspension or disbarment of respondent Atty. Sergio E. Bernabe for malpractice and unethical conduct in the performance of his duties as a notary public and a lawyer.

Complainant alleged that on January 3, 1998, respondent prepared and notarized a Magkasanib na Salaysay[3] purportedly executed by Donato Salonga and complainant's mother, Basilia de la Cruz.[4] Both affiants declared that a certain parcel of land in Bigte, Norzagaray, Bulacan, was being occupied by Rodolfo Lucas and his family for more than 30 years. Complainant claimed that her mother could not have executed the joint affidavit on January 3, 1998 because she has been dead since January 28, 1961.[5]

In his Answer,[6] respondent denied that he falsified the Magkasanib na Salaysay. He disclaimed any knowledge about Basilia's death. He alleged that before he notarized the document, he requested for Basilia's presence and in her absence, he allowed a certain Pronebo, allegedly a son-in-law of Basilia, to sign above the name of the latter as shown by the word "by" on top of the name of Basilia. Respondent maintained that there was no forgery since the signature appearing on top of Basilia's name was the signature of Pronebo.

On April 4, 2005, respondent filed a manifestation[7] attaching thereto the affidavit of desistance[8] of complainant which reads in part:

Ako na si, VICTORINA BAUTISTA CAPA, x x x matapos makapanumpa ng naaayon sa batas ay malaya at kusang loob na nagpapahayag ng mga sumusunod:

- Na ako ang siyang tumatayong nagrereklamo laban kay Abogado, SERGIO EXQUIVEL BERNABE, sa isang kaso sa Tanggapan ng Integrated Bar of the Philippines na may Blg. CBD CASE NO. 04-1371;
- Na ang nasabing habla ay hindi ko kagustuhan sapagkat iyon ay pinapirmahan lamang sa akin ni ELISEO OLOROSO at ng kanyang Abogado na si Atty. MARCIAL MORFE MAGSINO at sa katunayan hindi ako nakaharap sa Notary Publiko na si Abogado CARLITOS C. VILLARIN;
- Na ang pagpapapirma sa akin ay isang panlilinlang at ako ay ginawang kasangkapan para sirain ang magandang pangalan nitong si Abogado SERGIO ESQUIVEL BERNABE;
- Na dahil sa ganitong pangyayari, aking hinihiling sa Tanggapan ng Integrated Bar of the Philippines (IBP) na ang reklamo ko laban sa nasabing Abogado SERGIO ESQUIVEL BERNABE ay mapawa[la]ng bisa.

In the report dated August 29, 2005, the Investigating Commissioner[9] recommended that:

- Atty. Sergio Esquibel Bernabe be suspended from the practice of the legal profession for one (1) month;
- Any existing commission of Atty. Sergio Esquibel Bernabe as notary public, be revoked; and
- Atty. Sergio Esquibel Bernabe be barred from being granted a notarial commission for a period of one (1) year.[10]

In a resolution dated October 22, 2005, the Board of Governors of the IBP adopted and approved the recommendation of the Investigating Commissioner with modification that respondent be suspended from the practice of law for one year and his notarial commission be revoked and that he be disqualified for reappointment as notary public for two years.

We agree with the findings and recommendation of the IBP.

The records sufficiently established that Basilia was already dead when the joint affidavit was prepared on January 3, 1998. Respondent's alleged lack of knowledge of Basilia's death does not excuse him. It was his duty to require the personal appearance of the affiant before affixing his notarial seal and signature on the instrument.

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 presence of the parties to the deed will enable the notary public to verify the genuineness of the signature of the affiant.[11]

Respondent's act of notarizing the Magkasanib na Salaysay in the absence of one of the affiants is in violation of Rule 1.01,[12] Canon 1 of the Code of Professional Responsibility and the Notarial Law.[13] By affixing his signature and notarial seal on the instrument, he led us to believe that Basilia personally appeared before him and attested to the truth and veracity of the contents of the affidavit when in fact it was a certain Pronebo who signed the document. Respondent's conduct is fraught with dangerous possibilities considering the conclusiveness on the due execution of a document that our courts and the public accord on notarized documents. Respondent has clearly failed to exercise utmost diligence in the performance of his function as a notary public and to comply with the mandates of the law.[14]

Respondent was also remiss in his duty when he allowed Pronebo to sign in behalf of Basilia. A member of the bar who performs an act as 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. The acts of the affiants cannot be delegated to anyone for what are stated therein are facts of which they have personal knowledge. They should swear to the document personally and not through any representative. Otherwise, their representative's name should appear in the said documents as the one who executed the same. That is the only time the representative can affix his signature and personally appear before the notary public for notarization of the said document. Simply put, the party or parties who executed the instrument must be the ones to personally appear before the notary public to acknowledge the document.[15]

Complainant's desistance or withdrawal of the complaint does not exonerate respondent or put an end to the administrative proceedings. A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been proven. This rule is premised on the nature of disciplinary proceedings. A proceeding for suspension or disbarment is not a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministrations of persons unfit to practice

in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.[16]

We find the penalty recommended by the IBP to be in full accord with recent jurisprudence. In *Gonzales v. Ramos*,[17] respondent lawyer was found guilty of notarizing the document despite the non-appearance of one of the signatories. As a result, his notarial commission was revoked and he was disqualified from reappointment for a period of two years. In addition, he was suspended from the practice of law for one year.

Finally, it has not escaped our notice that in paragraph 2[18] of complainant's affidavit of desistance, she alluded that Atty. Carlitos C. Villarin notarized her Sinumpaang Salaysay[19] dated November 12, 2004 which was attached to the complaint filed with the Commission on Bar Discipline of the IBP, without requiring her to personally appear before him in violation of the Notarial Law. This allegation must likewise be investigated.

WHEREFORE, for breach of the Notarial Law and Code of Professional Responsibility, the notarial commission of respondent Atty. Sergio E. Bernabe, is REVOKED. He is DISQUALIFIED from reappointment as Notary Public for a period of two years. He is also SUSPENDED from the practice of law for a period of one year, effective immediately. He is further WARNED that a repetition of the same or of similar acts shall be dealt with more severely. He is DIRECTED to report the date of receipt of this Decision in order to determine when his suspension shall take effect.

The Commission on Bar Discipline of the Integrated Bar of the Philippines is DIRECTED to investigate the allegation that Atty. Carlitos C. Villarin notarized the Sinumpaang Salaysay of Victorina Bautista dated November 12, 2004 without requiring the latter's personal appearance.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts all over the country. Let a copy of this Decision likewise be attached to the personal records of the respondent.

SO ORDERED.

Panganiban, C.J., (Chairperson), Austria-Martinez, Callejo, Sr., and Chico-Nazario, JJ., concur.

[1] Rollo, pp. 1-2.

[2] Referred to as Victorina Bautista Kapa and Victorina Bautista Capa in other parts of the records.

[3] Rollo, p. 6.

[4] Referred to as Basilia de la Cruz Bautista and Basilia B. Cruz in other parts of the records. See also Affidavit of Victorina Bautista, rollo, p. 7.

[5] See Annex "A," rollo, p. 5.

[6] Rollo, pp. 18-20.

[7] Id. at 31-32.

[8] Id. at 33.

[9] Commissioner Doroteo B. Aguila.

[10] Report and Recommendation, p. 4.

[11] *Gonzales v. Ramos*, A.C. No. 6649, June 21, 2005, 460 SCRA 352, 357.

[12] A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[13] See *Social Security Commission v. Corral*, A.C. No. 6249, October 14, 2004, 440 SCRA 291, 295.

[14] *Gonzales v. Ramos*, *supra* at 358-359.

[15] *Bon v. Ziga*, Adm. Case No. 5436, May 27, 2004, 429 SCRA 177, 185.

[16] *Rayos-Ombac v. Rayos*, 349 Phil. 7, 15 [1998].

[17] *Supra* note 11 at 359.

[18] See rollo, p. 33. Paragraph 2 of complainant's affidavit of desistance reads:

Na ang nasabing habla ay hindi ko kagustuhan sapagkat iyon ay pinapirmahan lamang sa akin ni ELISEO OLOROSO at ng kanyang Abogado na si Atty. MARCIAL MORFE MAGSINO at sa katunayan hindi ako nakaharap sa Notaryo Publiko na si Abogado CARLITOS C. VILLARIN[.] (Emphasis added)

[19] Rollo, pp. 3-4.

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