

LORNA C. BASAGAN, COMPLAINANT, VS. ATTY. DOMINGO P. ESPINA, RESPONDENT.

A.C. No. 8395. July 08, 2020

Ponente: GAERLAN, J.

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GAERLAN, J.:

The original document is the best evidence of the contents thereof. A photocopy must be disregarded, for it is unworthy of any probative value and inadmissible in evidence.[1]

The Case

This is an administrative case stemming from a Complaint[2] filed by Lorna C. Basagan (Basagan) against Atty. Domingo Espina (Atty. Espina) for violation of Rule IV, Section 3 (c)[3] of A.M. No. 02-8-13-SC,[4] praying that respondent be placed under immediate preventive suspension and be meted a disciplinary action if found guilty of the violation.[5]

The Antecedents

Basagan, in her Complaint, stated that she is a taxpayer and a resident of Barangay Tigbao, Libagon, Southern Leyte. Atty. Espina, on the other hand, is a resident of Barangay Jubas, Libagon, Southern Leyte, a former mayor of the Municipality of Libagon, husband of then incumbent Mayor Rizalina B. Espina (Mayor Espina), and a notary public.[6]

Basagan narrated that the Land Bank of the Philippines (Landbank) was granted a loan by the Overseas Economic Cooperation Fund (OECF Loan), now Japan Bank for International Cooperation (JBIC) in the amount of ₱6,072,000.00 for the implementation of the Local Government Units Support Credit Program.[7] The said loan was for onlending to qualified local government units to finance housing and health, water supply, flood control and sanitation, forestry, sewage and solid waste treatment, and sub-project preparation.[8] She alleged that on October 10, 2005, then Mayor Espina entered into a subsidiary loan agreement with the Landbank – Sogod Southern Leyte Branch in the amount of P19,045,600.00, under the OECF Loan for the development of Libagon Water System – Level III (Project).[9] In furtherance of the Project, Mayor Espina likewise entered into a Contract for Consultancy Services[10] with the POIEL Engineering and Management Services for the detailed engineering design and construction supervision of the Project.[11] The total lump sum fee for the consultancy services was P1,042,099.30.[12] Further, an Agreement[13] with Legacy Construction (Contractor) was also entered into by the Municipal Government of Libagon. In the said Agreement, it was agreed that the Contractor shall furnish the equipment, materials, labor, tools, transportation, including fuel, power, air, water, and any other means necessary to complete all works required to finish the Project for the amount of P18,598,000.00.[14]

Basagan claimed that the Project was reportedly anomalous and that a case was filed by the members of the Association of Barangay Councils of Libagon, Southern Leyte (Association) before the Ombudsman Visayas against Mayor Espina.[15] The Association approved a resolution dated September 25, 2008 urging the

Ombudsman and the Procurement Watch, Inc. to conduct fact finding investigation on the Project.[16] According to Basagan, what made the Project more anomalous was that the three contracts entered into by the Municipal Government of Libagon, signed by Mayor Espina, were all notarized by the respondent.[17]

In a Resolution issued by this Court dated October 7, 2009,[18] Atty. Espina was required to comment on the complaint within 10 days from receipt thereof. His failure to file a comment caused the issuance of another Resolution[19] dated July 11, 2011 which required him to show cause why he should not be disciplinarily dealt with or held in contempt of court for such failure and to comply to the earlier resolution. In his October 10, 2011 Manifestation and Compliance,[20] he stated that he has physically and actually been a resident of Cebu City for many years now but he has maintained Libagon, Southern Leyte as his domicile. As he is in his twilight years, he is conscious of necessities, such as easy access to medical facilities, which are readily available in urban centers like Cebu City.[21] He also stated that it was only on October 7, 2011, when he received the July 11, 2011 Resolution of this Court, that he came to learn that an action against him was filed by Basagan[22] and that there was an earlier Resolution issued by this Court requiring him to comment on the complaint. He prayed that he be furnished with a copy of the complaint to enable him to prepare and file his answer thereto.[23]

In a Resolution[24] dated December 7, 2011, this Court noted the said Manifestation and Compliance and considered the same as a satisfactory compliance with the July 11, 2011 Resolution.

Later, a Supplemental Manifestation[25] was submitted by Atty. Espina. He emphasized therein that he never received a copy of the complaint and that upon his investigation with the Philpost office in Libagon Southern Leyte, he found no record of any communication from this Court to him. However, he investigated further and a second book of the Philpost showed that in November 2009, a letter for him was received by someone who did not write his name legibly before affixing his signature.[26] There being no copy of the complaint in his possession, he still cannot make an intelligent comment thereto.

Further, Atty. Espina narrated the supposed background for the action against him. He attached a copy of the Evaluation Report[27] of the Office of the Ombudsman-Visayas dismissing the complaint for oppression filed by Basagan against Mayor Espina which stemmed from the latter's suspension of the former from public office. To further prove his asseveration, he cited Executive Order No. 8 s. 2003[28] issued by Mayor Espina which dismissed Basagan from being a Barangay Captain. To counter Atty. Espina's claims, Basagan filed her Comments to Manifestation and Compliance and to Supplemental Manifestation[29] and averred that the first notice from this Court was actually received by Atty. Espina's secretary Pamela Bautista-Salada.[30]

On February 10, 2012, another Manifestation[31] was filed by Atty. Espina which highlighted the address of his residence in Cebu City. He also stated therein that he visited the Philpost in Libagon in February 2012 and learned that there was a letter from Basagan but was not delivered to him by the post office personnel for more than a month or so, and pursuant to their policy, the letter was returned to Basagan.[32]

On April 3, 2012, another Manifestation and Motion[33] was received by this Court from Atty. Espina. He stated that he still has not received a copy of the complaint. Consequently, he has no knowledge of the act he was charged of and corollarily, he cannot comment thereon.

On August 1, 2012, this Court issued a Resolution[34] noting the manifestations; directing Basagan to furnish Atty. Espina with a copy of the complaint and its annexes and to report her compliance therewith; and requiring Atty. Espina to comment on the complaint within 15 days from receipt of a copy thereof.[35]

On April 20, 2015, a Resolution was issued by this Court requiring Basagan to show cause why she failed to submit a proof of service on Atty. Espina of a copy of her Complaint and to comply to the August 1, 2012

Resolution. On September 21, 2015, a Manifestation[36] from Basagan was received by this Court stating that she could no longer furnish this Court with any proof of service since all the records of the case were among those soaked during the typhoon Yolanda and that as gesture of good human relations, she and the respondent have already patched up their differences, however, she leaves the matter to this Court.[37]

In the August 24, 2016 Resolution[38] of this Court, the complaint was referred to the Office of the Bar Confidant for appropriate action.[39] Upon the Bar Confidant's recommendation and considering that the case has been pending before this Court for more than seven years, the filing of a comment by the respondent was dispensed with and the case was referred to the Integrated Bar of the Philippines (IBP) for thorough investigation, report, and recommendation.[40]

The Report and Recommendation of the IBP

On December 10, 2018, Investigating Commissioner Gina H. Mirano-Jesena of the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) issued her Report and Recommendation.[41] She found that Atty. Espina committed serious error in notarizing the Subsidiary Loan Agreement, the Contract for Consultancy Services, and the Project Agreement signed by his wife as the Mayor of Libagon, Southern Leyte against Rule IV, Section 3(c) of A.M. No. 02-8-13-SC which stated that "a notary public is disqualified from performing a notarial act if he: x x x (c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree." Thus, she recommended:

In view of the foregoing premises, the undersigned Investigating Commissioner respectfully recommends that Atty. Domingo P. Espina be suspended from the practice of law for a period of one (1) year and suspended from being commissioned as notary public for a period of two (2) years.

RESPECTFULLY SUBMITTED.[42]

The IBP-Board of Governors Resolution

On February 15, 2019, the Board of Governors of the IBP passed a Resolution[43] adopting the findings of the Investigating Commissioner, thus:

CBD Case No. 18-5511
(Adm. Case No. 8395)
Lorna C. Basagan vs.
Atty. Domingo P. Espina

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, with modification, to impose upon the Respondent the penalty of SIX (6) MONTHS SUSPENSION FROM THE PRACTICE OF LAW and TWO (2) YEARS DISQUALIFICATION to hold commission as Notary Public, and if currently so engaged, be immediately decommissioned as such.[44]

The Court's Ruling

The practice of law is a privilege burdened with conditions[45] and is reserved only for those who adhere to rigid standards of mental fitness, maintain the highest degree of morality, faithfully comply with the rules of the legal profession, and regularly pay membership fees to the IBP to remain as a member of good standing of the bar.[46]

Certainly, the practice of law is so delicately imbued with public interest that it is both a power and a duty of this Court to control and regulate it in order to protect and promote the public welfare.[47] Beyond question, any breach by a lawyer of any of these standards makes him unworthy of the trust and confidence which the courts and clients must repose in him, and renders him unfit to continue in the exercise of his professional privilege.[48]

Both disbarment and suspension demonstrably operationalize this intent to protect the courts and the public from members of the bar who have become unfit and unworthy to be part of the esteemed and noble profession.[49]

However, in consideration of the gravity of the consequences of the disbarment or suspension of a member of the bar, the Court has consistently held that a lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant to satisfactorily prove the allegations in his/her complaint through substantial evidence.[50] A complainant's failure to dispense the same standard of proof does not oblige respondents to prove their exception or defense,[51] and requires no other conclusion than that which stays the hand of the Court from meting out a disbarment or suspension order.[52]

With all evidence presented and claims considered, the Court now deviates from the findings and recommendations of the IBP Board of Governors.

The factual findings and recommendations of the CBD and the Board of Governors of the IBP are recommendatory.[53] The Court is neither bound by its findings, much less, obliged to accept the same as a matter of course because as the tribunal which has the final say on the proper sanctions to be imposed on errant members of both bench and bar, the Court has the prerogative of making its own findings and rendering judgment on the basis thereof rather than that of the IBP, OSG, or any lower court to whom an administrative complaint has been referred for investigation and report.[54]

Based on the evidence presented by the complainant, this Court is certain that she failed to discharge her duty to present evidence on the facts in issue necessary to establish her claim by the amount of evidence required by law.[55]

To begin with, Basagan, to prove her asseveration that Atty. Espina violated the 2004 Rules on Notarial Practice, appended to her complaint photocopies, not the original, of the Subsidiary Loan Agreement,[56] Contract for Consultancy Services,[57] Project Agreement,[58] and letters[59] between Tito E. Calooy, Jr. (Calooy) and Romulo Endico.

Apart from the photocopies of documents she presented, Basagan also submitted the Affidavit[60] of Calooy. Upon perusal of the said document, this Court learned that the second page of the three-page Affidavit was likewise a photocopy. What makes it more dubious is the fact that the signature of the affiant was not original. The erasures on the details of the proof of identity of Calooy are not just noticeable but exceptionally remarkable.[61]

Although a disbarment proceeding may not be akin to a criminal prosecution, if the entire body of proof consists mainly of the documentary evidence, and the content of which will prove either the falsity or veracity of the charge for disbarment, then the documents themselves, as submitted into evidence, must comply with the Best Evidence Rule under Rule 130 of the Rules of Court, save for an established ground that would merit exception.[62] Sections 3 and 4 of Rule 130 specifically provide:

Sec. 3. Original document must be produced; exceptions. — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a)

When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b)

When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c)

When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d)

When the original is a public record in the custody of a public officer or is recorded in a public office.

Sec. 4. Original of document. —

(a)

The original of a document is one the contents of which are the subject of inquiry.

(b)

When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

(c)

When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.

In this case, a perusal of the documents on which the complaint is anchored divulges that the photocopies are not at the least certified true copies, neither were they testified on by any witness who is in a position to establish the authenticity of the document.[63] Neither was the source of the document shown for the participation of the complainant in its execution.[64] This fact gives rise to the query, where did these documents come from?[65]

To foster her claims, Basagan attached the Affidavit of Dolores Cahucom (Cahucom) who claimed that she has direct knowledge that Atty. Espina notarized the subject documents.[66] Unfortunately, Cahucom merely expressed a general statement. She failed to give specific details as to how she acquired such "direct knowledge" that Atty. Espina notarized the documents. The absence of specific details on how she acquired her "direct knowledge" makes her statements inadequate to equate it as personal knowledge of the facts to be accorded probative value.

Here, Basagan clearly failed to adduce substantial and admissible evidence to prove her case. The original documents should have been presented to comply with the Best Evidence Rule. Basagan likewise failed to show proof as to the reasons for the unavailability of the original copy. She could have proven the contents of the documents following the provisions of Section 5, Rule 130 of the Rules of Court.[67]

The necessary import and rationale behind the requirement under the Best Evidence Rule is the avoidance of the dangers of mistransmissions and inaccuracies of the content of the documents. This is squarely true in the present disbarment complaint, with a main charge that turns on the very accuracy, completeness, and authenticity of the documents submitted into evidence.[68] It is therefore non sequitur to surmise that this crucial preference for the original may be done away with or applied liberally in this case.[69]

Elementary is the rule that photocopies of documents have no probative value and are inadmissible in evidence.[70] Likewise, unsubstantiated general statements are unavailing and simply cannot suffice. Hence, there is no substantial evidence to prove the alleged violation complained of.

The Court has consistently held that an attorney enjoys the legal presumption that he/she is innocent of charges against him/her until the contrary is proved, and that as an officer of the court, he/she is presumed to have performed his duties in accordance with his/her oath.[71]

WHEREFORE, the disbarment complaint against Atty. Domingo P. Espina is DISMISSED for lack of merit. Let a copy of this Decision be attached to his records.

SO ORDERED.

Leonen, (Chairperson), Carandang, and Zalameda, JJ., concur.
Gesmundo, J., on official leave.

[1] See *Sps. Dioso v. Sps. Cardeño*, 481 Phil. 53, 63 (2004).

[2] *Rollo*, pp. 2-6.

[3] Sec. 3. Disqualifications. – A notary public is disqualified from performing a notarial act if he:

x x x x

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree. (Emphasis ours)

[4] 2004 Rules on Notarial Practice.

[5] *Rollo*, p. 5.

[6] *Id.* at 2.

[7] *Id.* at 18.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 32-46.

[11] *Id.* at 33.

[12] *Id.* at 36.

[13] *Id.* at 47-53.

[14] *Id.* at 47.

[15] *Id.* at 3.

[16] *Id.*

[17] *Id.* at 4.

[18] *Id.* at 54.

[19] *Id.* at 55.

[20] *Id.* at 56-63.

[21] Id. at 56.

[22] Id. at 57-58.

[23] Id. at 62.

[24] Id. at 72.

[25] Id. at 73-76.

[26] Id. at 73-74.

[27] Id. at 77-78.

[28] Id. at 80.

[29] Id. at 82-83.

[30] Id. at 82.

[31] Id. at 87.

[32] Id.

[33] Id. at 91-93.

[34] Id. at 107-108.

[35] Id. at 107.

[36] Id. at 115-116.

[37] Id.

[38] Id. at 123.

[39] Id.

[40] Id. at 124.

[41] Id. at 142-146.

[42] Id at 146.

[43] Id. at 140-141.

[44] Id. at 140.

[45] *Goopio v. Maglalang*, A.C. No. 10555, July 31, 2018, 875 SCRA 85, 96.

[46] Id.

[47] See *Judge Pantanosas, Jr. v. Atty. Pamatong*, 787 Phil. 86 (2016).

[48] *Goopio v. Maglalang*, *supra* at 96-97.

[49] Id. at 97.

[50] Id.

[51] Re: Letter of Lucena Ofendo Reyes Alleging Illicit activities of a certain Atty. Cajayon involving cases in the

Court of Appeals, Cagayan de Oro City, 810 Phil. 369, 374 (2017).

[52] Goopio v. Maglalang, *supra* note 33 at 97.

[53] Torres v. Dalangin, A.C. No. 10758, December 5, 2017, 847 SCRA 472, 492.

[54] Dumadag v. Atty. Lumaya, 390 Phil. 1, 7-8 (2000).

[55] Republic v. Sandiganbayan (1st Div.), et al., 663 Phil. 212, 319 (2011).

[56] Rollo, pp. 18-31.

[57] *Id.* at 32-46.

[58] *Id.* at 47-53.

[59] *Id.* at 10-16.

[60] *Id.* at 7-9.

[61] *Id.* at 8.

[62] Goopio v. Maglalang, *supra* note 33 at 98-99.

[63] Concepcion v. Atty. Fandiño, Jr., 389 Phil. 474, 481 (2000).

[64] *Id.*

[65] *Id.*

[66] Rollo, p. 17.

[67] Sec. 5. When original document is unavailable. – When the original document has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated.

[68] Goopio v. Maglalang, *supra* note 33 at 99.

[69] *Id.*

[70] *Id.* at 103, citing *Intestate Estate of the Late Don Mariano San Pedro y Esteban v. CA*, 333 Phil. 597, 625 (1996).

[71] *Gradiola v. Atty. Deles*, A.C. No. 10267, June 18, 2018 citing *Aba v. Atty. De Guzman, Jr.*, 678 Phil. 588, 601 (2011).

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