

**AZUCENA CINCO TABAO AND JESUSA CINCO ACOSTA,
COMPLAINANTS, VS. JUDGE ENRIQUE C. ASIS, REGIONAL TRIAL
COURT, BR. 10, ABUYOG, LEYTE, RESPONDENT.**

A.M. No. RTJ-95-1330. January 30, 1996

Ponente: BELLOSILLO, J.

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BELLOSILLO, J.:

This is a complaint filed by the sisters Azucena Cinco Tabao and Jesusa Cinco Acosta against Judge Enrique C. Asis charging him with (a) gross irregularity in the performance of his duties as MTCC Judge of Tacloban City, Br. 1; (b) violation of Supreme Court circulars and regulations; and (c) abuse of authority and conduct unbecoming of a judge.[1]

Complainants charge that while acting as MTCC Judge of Tacloban City respondent notarized a Special Power of Attorney purportedly executed in behalf of their aunt Mariquita M. Cinco-Jocson, now deceased. The Special Power of Attorney enabled another aunt, Cirila Cinco-Caintic, sister of Mariquita M. Cinco-Jocson, to sell Lot 19-D situated in Quezon City and registered in her name under Transfer Certificate of Title No. 21184 for P1,000,000.00 who at the time of the sale was confined at St. Paul's Hospital, Tacloban City.

In his comment, respondent Judge admitted that he notarized the Special Power of Attorney but only "as a gesture of christian charity and brotherly love for people in need[2] considering that the proceeds of the sale would be used to defray the medical expenses of Mariquita M. Cinco-Jocson. Respondent further alleged that he did not receive payment therefor.

However, an examination of the Special Power of Attorney[3] and the Affidavit of Consciousness[4] executed respectively by Mariquita M. Cinco and Dr. Belen Chiquillo Diamante, Internist-Cardiologist, negates respondent's professed "christian charity and brotherly love for people in need" since those documents were already notarized on 3 June 1992 by Notary Public Flaviano V. Caintic while respondent notarized them on 23 July 1992. Clearly, therefore, there was no need for respondent to further notarize the documents. What for, it may be asked. Respondent Judge should know, if he does not, that a notarized document executed by a party alone -and not by two (2) or more parties executing the document in different places - does not need to be notarized twice. But why these two (2) documents were notarized by respondent judge after they were notarized by Notary Public Flaviano V. Caintic one (1) month and twenty (20) days after they were first notarized by Caintic puzzles us no end, and only respondent can explain this satisfactorily but which he did not. We can only surmise his reasons, but none of which, unfortunately, we can justify. Why he had to do it taxes credulity and defies logic and reason. Consequently, Deputy Court Administrator Bernardo P. Abesamis recommends that respondent Judge Enrique C. Asis be fined in an amount equivalent to his one (1) month salary, and notes without action the prayer for annulment of the assailed Special Power of Attorney as it does not fall within the purview of this proceeding.

Section 35, Rule 138, of the Revised Rules of Court as well as Canon 5, Rule 5.07 of the Code of Judicial

Conduct provides that no judge or other official or employee of the superior courts shall engage in private practice as a member of the bar or give professional advice to clients. Specifically, Sec. 35 of Rule 138 was promulgated pursuant to the constitutional power of the Court to regulate the practice of law. It is based on sound reasons of public policy, for there is no question that the rights, duties, privileges and functions of the office of an attorney-at-law are so inherently incompatible with the high official functions, duties, powers, discretions and privileges of a judge of the Regional Trial Court. This rule makes it obligatory upon the judicial officers concerned to give their full time and attention to their judicial duties, prevent them from extending special favors for their own private interests and assure the public of impartiality in the performance of their functions. These objectives are dictated by a sense of moral decency and the desire to promote public interest.[5]

Moreover, Sec. N, Chapter VIII, of the Manual for Clerks of Court provides that officers authorized to administer oaths, with the exception of notaries public, municipal judges and clerks of court, are not obliged to administer oaths or execute certificates save in matters of official business; and with the exception of notaries public, the officer performing the service in those matters shall charge no fee, unless specifically authorized by law.[6] In short, municipal judges can administer oaths or execute certificates only on matters related to their official functions. Thus they cannot notarize private documents such as the Special Power of Attorney and the Affidavit of Consciousness involved in the case before us.

As found by Deputy Court Administrator Bernardo P. Abesamis, respondent Judge not only notarized documents executed by private individuals concerning private interests but even acted as private counsel "to safeguard the interest of Ms. Mariquita M. Cinco-Jocson" upon request of Cirila Cinco Caintic.[7] That he acted in the spirit of "christian charity" is not a valid excuse for acting as private counsel and notary public, and that complainants were motivated with vengeance and personal gain is immaterial.

Municipal judges may not engage in notarial work except as notaries public ex-officio, in which case they may only notarize documents connected with the exercise of their official functions. They may not, as such notaries public ex-officio, undertake the preparation and acknowledgement of private documents, contracts and other acts of conveyance, which bear no relation to the performance of their functions as judges, except in far-flung municipalities which have neither lawyers nor notaries public, in which case, MTC and MCTC judges assigned to those municipalities or circuits may, in their capacity as notaries public ex-officio, perform any act within the competence of a regular notary public provided that (a) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer, and (b) a certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.[8] Incidentally, the City of Tacloban abounds with notaries public, so that respondent Judge cannot qualify as an exception.

ACCORDINGLY, as recommended, respondent JUDGE ENRIQUE C. ASIS is found administratively liable as charged and is consequently FINED TEN THOUSAND PESOS (P10,000.00) with a warning that the commission of the same or similar act will warrant a more severe sanction.

SO ORDERED.

Padilla (Chairman), Vitug, Kapunan, and Hermosisima, Jr., JJ., concur.

[1] Sworn letter-complaint of complainants Azucena Cinco Tabao and Jesusa Cinco Acosta, Rollo, p. 6.

[2] Comment, p. 2.

[3] Id., p. 4.

[4] Id., p. 6.

[5] See *Omico Mining and Industrial Corporation v. Vallejos*, No. L-38974, 25 March 1975, 63 SCRA 286.

[6] Sec. M. Chapter VIII of the Manual for Clerks of Court provides: Officers Authorized to Administer Oath. - 1. The following officers have general authority to administer oaths.' President; Vice-President; Members and Secretaries of both Houses of the Congress; Members of the Judiciary; Secretaries of Departments,' Provincial governors and lieutenant-governors; city mayors; municipal mayors; bureau directors; regional directors; clerks of court; registers of deeds; other civilian officers in public service of the government of the Philippines whose appointments are vested in the President and are subject to confirmation by the Commission on Appointments; all other constitutional officers; and notaries public.

2. Oaths may also be administered by any officer whose duties, as defined by law or regulation, require presentation to him of any statement under oath.

[7] See Memorandum of DCA Bernardo P. Abesamis dated 20 September 1995, approved by Court Administrator Ernani Cruz Paño, Rollo, pp. 1-2.

[8] *Balayon, Jr. v. Ocampo*, Adm. Matter No. MTJ-91-619, 29 January 1993, 218 SCRA 23.

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