



SUPREME COURT OF THE PHILIPPINES
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Republic of the Philippines
Supreme Court
Manila

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Third Division

MAR 30 2017

THIRD DIVISION

DR. BASILIO MALVAR,
Complainant,

A.C. No. 11346

Present:

VELASCO, JR., J.,
Chairperson,
BERSAMIN,
REYES,
JARDELEZA, and
CAGUIOA,* JJ.

- versus -

ATTY. CORA JANE P. BALEROS,
Respondent.

Promulgated:

March 8, 2017

Wilfredo W. Lapid

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DECISION

REYES, J.:

Before the Court is a complaint for disbarment¹ filed on June 30, 2014 by Dr. Basilio Malvar (complainant) against Atty. Cora Jane P. Baleros (respondent) for acts amounting to grave misconduct consisting of falsification of public document, violation of Administrative Matter No. 02-8-13-SC or the 2004 Rules on Notarial Practice (Notarial Rules) and the Code of Professional Responsibility (CPR).

* Designated Fifth Member of the Third Division per Special Order No. 2417 dated January 4, 2017.

¹ Rollo, pp. 2-5.

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Antecedent Facts

The complainant is the owner of a parcel of land located in Barangay Pagudpud, San Fernando City, La Union.² On January 7, 2011, the complainant executed a Deed of Absolute Sale³ in favor of Leah Mallari (Mallari) over the said lot for the amount of Five Hundred Thousand Pesos (P500,000.00). This transaction was acknowledged by the children of the complainant through a document denominated as Confirmation of Sale.⁴

The process of conveying the title of the lot in the name of Mallari spawned the legal tussle between the parties. According to the complainant, an agreement was made between him and Mallari wherein he undertook to facilitate the steps in order to have the title of the lot transferred under Mallari's name.⁵ However, without his knowledge and consent, Mallari who was not able to withstand the delay in the delivery of the title of the land sold to her allegedly filed an Application for Certification of Alienable and Disposable Land⁶ as a preliminary step for the segregation and titling of the same before the Community Environment and Natural Resources Office of the Department of Environment and Natural Resources (DENR), San Fernando City, La Union using the complainant's name and signing the said application.⁷ A civil case for collection of sum of money was instituted by Mallari before the Municipal Trial Court (MTC) of Aringay, La Union seeking reimbursement for the expenses she incurred by reason of the transfer and titling of the property she purchased.⁸ A compromise agreement⁹ was forged between the parties which failed because two out of the four checks issued by the complainant were unfunded.¹⁰ This prompted Mallari to file a criminal case for violation of Batas Pambansa Bilang 22, otherwise known as The Bouncing Checks Law, against the complainant before the MTC of Aringay, La Union.¹¹

Ultimately, a criminal case for falsification of public document against Mallari was filed before the Office of the Prosecutor and now pending before the Municipal Trial Court in Cities (MTCC) of San Fernando City, La Union, Branch 1.¹² The complainant alleged that it was through the conspiracy of Mallari and the respondent that the crime charged was consummated.¹³

² Id. at 118.
³ Id. at 25-26.
⁴ Id. at 27.
⁵ Id. at 127.
⁶ Id. at 92.
⁷ Id. at 118.
⁸ Id. at 55.
⁹ Id. at 102-103.
¹⁰ Id. at 55-56.
¹¹ Id. at 56.
¹² Id. at 118.
¹³ Id. at 119.

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Notwithstanding the Office of the Prosecutor's determination that the evidence presented was insufficient to establish conspiracy between Mallari and the respondent, thereby dropping the latter's name from the indictment, the complainant remained unfazed and thus, initiated the present petition for disbarment seeking the imposition of disciplinary sanction against the respondent.¹⁴ The complainant claimed that the respondent, by notarizing the assailed Application for Certification of Alienable and Disposable Land, made it appear that he executed the same when the truth of the matter was he never went to the office of the respondent for he was in Manila at the time of the alleged notarization and was busy performing his duties as a doctor.¹⁵

On August 19, 2014, the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) issued a Notice of Mandatory Conference¹⁶ requiring both parties to appear before it on November 18, 2014. However, the scheduled mandatory conference was reset to December 2, 2014¹⁷ where the complainant personally appeared while the respondent was represented by her attorney-in-fact and counsel.¹⁸

The complainant buttressed in his position paper that the respondent consummated the crime of falsification of public document as delineated under Article 171 of the Revised Penal Code and thus, the presumption of regularity in the notarization of the contested document has been overthrown and cannot work in her favor.¹⁹ He recapped that he never appeared before the respondent to have the subject document notarized.²⁰ The complainant stressed that the respondent made a mockery of the Notarial Rules by notarizing the Application for Certification of Alienable and Disposable Land in his absence.

In her Position Paper,²¹ the respondent refuted the allegations against her by narrating that Benny Telles, the complainant and his sons came to her office to have the subject document notarized and that she is certain as to the identity of the complainant.²² Moreover, she argued that the charges filed against her were all part of the complainant's scheme to avoid his obligations to Mallari as the buyer of his lot.²³

¹⁴ Id.
¹⁵ Id. at 120-121.
¹⁶ Id. at 30.
¹⁷ Id. at 31.
¹⁸ Id. at 33.
¹⁹ Id. at 119.
²⁰ Id. at 120.
²¹ Id. at 54-62.
²² Id. at 58.
²³ Id. at 94.



Ruling of the IBP

On June 15, 2015, Commissioner Maria Angela Esquivel (Commissioner Esquivel) found that the respondent was negligent in the performance of her duties as a notary public and violated the Notarial Rules, thereby recommending disciplinary imposition against her. The pertinent portion of the Report and Recommendation²⁴ reads:

WHEREFORE, in view of the foregoing, it is hereby recommended that the Respondent's commission as a notary public be revoked; that she be disqualified for being a notary public for two (2) years with a stern warning that a repetition of similar offense shall be dealt with more severely.²⁵

In a Resolution²⁶ dated June 20, 2015, the IBP Board of Governors adopted and approved Commissioner Esquivel's report and recommendation with modification, to wit:

*RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", for failure of Respondent to observe due diligence in the performance of her duties and obligations as a Notary Public specifically Rule VI, Section 2 of the Notarial Law. Thus, [the respondent's] notarial commission, if presently commissioned, is immediately **REVOKED**. Furthermore, [she] is **DISQUALIFIED from being commissioned as a Notary Public for two (2) years and SUSPENDED from the practice of law for six (6) months.**²⁷ (Emphasis and italics in the original)*

The Issues

Whether administrative liability should attach to the respondent by reason of the following acts alleged to have been committed by her:

1. Falsification of the Application for Certification of Alienable and Disposable Land;
2. Notarization of the aforesaid document in the absence of the complainant; and
3. Double Entries in the Notarial Registry.

²⁴ Id. at 162-174.

²⁵ Id. at 173.

²⁶ Id. at 160-161.

²⁷ Id. at 160.

Ruling of the Court

After a close scrutiny of the facts of the case, the Court finds no compelling reason to deviate from the resolution of the IBP Board of Governors.

With regard to the imputation of falsification of public document, the Court shall not inquire into the merits of the said criminal case pending adjudication before the MTCC and make a ruling on the matter. Commissioner Esquivel correctly declined to resolve the falsification case pending resolution before the regular court to which jurisdiction properly pertains. Though disbarment proceedings are *sui generis* as they belong to a class of their own and are distinct from that of civil or criminal actions, it is judicious for an administrative body like IBP-CBD not to pre-empt the course of action of the regular courts in order to avert contradictory findings.²⁸

The Court concurs with the conclusion of Commissioner Esquivel that the respondent violated several provisions of the Notarial Rules. The complainant insists that the Application for Certification of Alienable and Disposable Land was notarized sans his presence. An affidavit requiring a *jurat* which the respondent admittedly signed and notarized on August 18, 2010 forms part of the subject document. The *jurat* is that end part of the affidavit in which the notary certifies that the instrument is sworn to before her, thus, making the notarial certification essential.²⁹ The unsubstantiated claim of the respondent that the complainant appeared before her and signed the contested document in her presence cannot prevail over the evidence supplied by the complainant pointing that it was highly improbable if not impossible for him to appear before the respondent on the date so alleged that the subject document was notarized. The complainant furnished in his Sworn Judicial Affidavit submitted before the court patients' record cards showing that he attended to a number of them on August 18, 2010 in De Los Santos Medical Center, E. Rodriguez, Sr. Avenue, Quezon City.³⁰

A *jurat* as sketched in jurisprudence lays emphasis on the paramount requirements of the physical presence of the affiant as well as his act of signing the document before the notary public.³¹ The respondent indeed transgressed Section 2(b) of Rule IV of the Notarial Rules by affixing her official signature and seal on the notarial certificate of the affidavit contained in the Application for Certification of Alienable and Disposable Land in the absence of the complainant and for failing to ascertain the identity of the affiant. The thrust of the said provision reads:

²⁸ *Tan v. IBP Commission on Bar Discipline*, 532 Phil. 605, 612 (2006).

²⁹ *Bides-Ulaso v. Atty. Noe-Lacsamana*, 617 Phil. 1, 16 (2009).

³⁰ *Rollo*, pp. 153-157.

³¹ *Bides-Ulaso v. Atty. Noe-Lacsamana*, supra note 29.

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SEC. 2. Prohibitions.

x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document—

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary through competent evidence of identity as defined by these Rules.

The physical presence of the affiant ensures the proper execution of the duty of the notary public under the law to determine whether the former's signature was voluntarily affixed.³² Aside from forbidding notarization without the personal presence of the affiant, the Notarial Rules demands the submission of competent evidence of identity such as an identification card with photograph and signature which requirement can be dispensed with provided that the notary public personally knows the affiant. Competent evidence of identity under Section 12 of Rule II of the Notarial Rules is defined as follows:

Sec. 12. *Competent Evidence of Identity.* – The phrase “competent evidence of identity” refers to the identification of an individual based on:

- a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or
- b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

Granting that the complainant was present before the notary public at the time of the notarization of the contested document on August 18, 2010, the respondent remained unjustified in not requiring him to show a competent proof of his identification. She could have escaped administrative liability on this score if she was able to demonstrate that she personally knows the complainant. On the basis of the very definition of a *jurat* under Section 6 of Rule II of the Notarial Rules, case law echoes that the non-presentation of the affiant's competent proof of identification is

³² *Anudon v. Cefra*, A.C. No. 5482, February 10, 2015, 750 SCRA 231, 241.

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permitted if the notary public personally knows the former.³³ A '*jurat*' refers to an act in which an individual on a single occasion: (a) appears in person before the notary public and presents an instrument or document; (b) is **personally known to the notary public or identified by the notary public through competent evidence of identity**; (c) signs the instrument or document in the presence of the notary; and (d) takes an oath or affirmation before the notary public as to such instrument or document.³⁴

Further, the respondent displayed lack of diligence by the non-observance of the obligations imposed upon her under Section 2 of Rule VI of the Notarial Rules, to wit:

SEC. 2. Entries in the Notarial Register.

(a) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:

- (1) the entry number and page number;
- (2) the date and time of day of the notarial act;
- (3) the type of notarial act;
- (4) the title or description of the instrument, document or proceeding;
- (5) the name and address of each principal;
- (6) the competent evidence of identity as defined by the Rules if the signatory is not personally known to the notary;
- (7) the name and address of each credible witness swearing to or affirming the person's identity;
- (8) the fee charged for the notarial act;
- (9) the address where the notarization was performed if not in the notary's regular place of business; and
- (10) any other circumstance the notary public may deem of significance or relevance.

x x x x

(e) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.

x x x x (Emphasis ours)

The same notarial details were assigned by the respondent to two distinct documents. In an order of the MTCC where the criminal case for falsification of document was pending, Clerk of Court Atty. Raquel Estigoy-Andres (Atty. Estigoy-Andres) was directed to transmit the original document of the Application for Certification of Alienable and Disposable

³³ *Jandoquile v. Atty. Revilla, Jr.*, 708 Phil. 337, 341 (2013).

³⁴ *Id.*

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Land which was notarized by the respondent.³⁵ A similar order was issued by the MTCC requiring the DENR for the production of the impugned document.³⁶ The DENR issued a certification that despite diligent efforts they could not locate the said document but which they were certain was received by their office.³⁷ Meanwhile, upon Atty. Estigoy-Andres' certification,³⁸ it was discovered that as per the respondent's notarial register submitted to the Office of the Clerk of Court, Document No. 288, Page No. 59, Book No. LXXIII, Series of 2010 does not pertain to the Application for Certification of Alienable and Disposable Land but to a notarized document denominated as Joint Affidavit of Adjoining Owners³⁹ executed by Ricardo Sibayan and Cecilia Flores. Undoubtedly, the document entitled Application for Certification of Alienable and Disposable Land nowhere appears in the respondent's notarial register. The respondent further exposed herself to administrative culpability when she regretfully offered plain oversight as an excuse for the non-inclusion of the challenged document in her notarial register and by stating that it is her office staff who usually fills it up.

To reiterate, the respondent admitted having signed and notarized the Application for Certification of Alienable and Disposable Land but based from the foregoing, she indubitably failed to record the assailed document in her notarial book. It is axiomatic that notarization is not an empty, meaningless or routinary act. It is through the act of notarization that a private document is converted into a public one, making it admissible in evidence without need of preliminary proof of authenticity and due execution.⁴⁰ "If the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document."⁴¹ The respondent's delegation of her notarial function of recording entries in her notarial register to her staff is a clear contravention of the explicit provision of the Notarial Rules dictating that such duty be fulfilled by her and not somebody else. This likewise violates Canon 9, Rule 9.01 of the CPR which provides that:

A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

³⁵ *Rollo*, p. 40.

³⁶ *Id.*

³⁷ *Id.* at 44.

³⁸ *Id.* at 42.

³⁹ *Id.* at 43.

⁴⁰ *Agagon v. Atty. Bustamante*, 565 Phil. 581, 587 (2007).

⁴¹ *Bernardo v. Atty. Ramos*, 433 Phil. 8, 16 (2002).

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In addition to the above charges, Commissioner Esquivel noted that the respondent failed to retain an original copy in her records and to submit the duplicate copy of the document to the Clerk of Court. However, in a previous case, the Court ruled that the requirement stated under Section 2(h) of Rule VI of the Notarial Rules applies only to an instrument acknowledged before the notary public and not to the present document which contains a *jurat*.⁴² “A *jurat* is a distinct creature from an acknowledgment.”⁴³ It is that part of an affidavit in which the notary certifies that before him or her, the document was subscribed and sworn to by the executor; while an acknowledgment is the act of one who has executed a deed in going before some competent officer or court and declaring it to be his act or deed.⁴⁴ Hence, no liability can be ascribed to the respondent relative to such ground.

The Court finds unacceptable the respondent’s defiance of the Notarial Rules. Under the circumstances, the respondent should be made liable not only as a notary public who failed to discharge her duties as such but also as a lawyer who exhibited utter disregard to the integrity and dignity owing to the legal profession. The acts committed by the respondent go beyond being mere lapses in the fulfilment of her duties under the Notarial Rules, they comprehend a parallel breach of the CPR particularly Canon 9, Rule 9.01, Canon 1, Rule 1.01 which provides that “a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct” and the Lawyer’s Oath which amplifies the undertaking to do no falsehood and adhere to laws and the legal system being one of their primordial tasks as officers of the court. Given the evidentiary value accorded to notarized documents, the failure of the notary public to record the document in her notarial register corresponds to falsely making it appear that the document was notarized when, in fact, it was not.⁴⁵ It cannot be overemphasized that notaries public are urged to observe with utmost care and utmost fidelity the basic requirements in the performance of their duties; otherwise, the confidence of the public in the integrity of notarized deeds will be undermined.⁴⁶

In a number of cases, the Court has subjected lawyers who were remiss in their duties as notaries public to disciplinary sanction. Failure to enter the notarial acts in one’s notarial register, notarizing a document without the personal presence of the affiants and the failure to properly identify the person who signed the questioned document constitute dereliction of a notary public’s duties which warrants the

⁴² *Atty. Benigno T. Bartolome v. Atty. Christopher A. Basilio*, A.C. No. 10783, October 14, 2015.

⁴³ *Tigno v. Sps. Aquino*, 486 Phil. 254, 264 (2004).

⁴⁴ *In-N-Out Burger, Inc., v. Sehwan, Incorporated and/or Benita’s Frites, Inc.*, 595 Phil. 1119, 1139 (2008).

⁴⁵ See Court Third Division Resolution dated February 8, 2010 in A.C. No. 8062 entitled *Gregorio Z. Robles v. Atty. Isagani M. Jungco*.

⁴⁶ *Lee v. Atty. Tambago*, 568 Phil. 363, 375 (2008).

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revocation of a lawyer's commission as a notary public.⁴⁷ Upholding the role of notaries public in deterring illegal or immoral arrangements, the Court in the case of *Dizon v. Atty. Cabucana, Jr.*⁴⁸ prohibited the respondent for a period of two (2) years from being commissioned as a notary public for notarizing a compromise agreement without the presence of all the parties. In the case of *Atty. Benigno T. Bartolome v. Atty. Christopher A. Basilio*,⁴⁹ which factual milieu is similar to the present case, the Court meted out against therein respondent the penalty of revocation of notarial commission and disqualification for two (2) years from being appointed as a notary public and suspension for six (6) months from the practice of law due to various infringement of the Notarial Rules such as failure to record a notarized document in his notarial register and notarizing a document without the physical presence of the affiant.

Following jurisprudential precedents and as a reminder to notaries public that their solemn duties which are imbued with public interest are not to be taken lightly, the Court deems it proper to revoke the notarial register of the respondent if still existing and to disqualify her from appointment as a notary public for two (2) years. She is also suspended from the practice of law for six (6) months. Contrary to the complainant's proposition to have the respondent disbarred, the Court is of the belief that her acts do not merit such a grave penalty and the sanctions so imposed suffice. The Court held in an array of cases that "removal from the Bar should not really be decreed when any punishment less severe – reprimand, temporary suspension or fine – would accomplish the end desired."⁵⁰

WHEREFORE, respondent Atty. Cora Jane P. Baleros is **GUILTY** of violating the 2004 Rules on Notarial Practice, the Code of Professional Responsibility and the Lawyer's Oath. Her notarial commission, if still existing, is hereby **REVOKED**, and she is hereby **DISQUALIFIED** from reappointment as Notary Public for a period of two (2) years. She is likewise **SUSPENDED** from the practice of law for six (6) months effective immediately. Further, she is **WARNED** that a repetition of the same or similar acts in the future shall be dealt with more severely.

⁴⁷ *Agadan, et al. v. Atty. Kilaan*, 720 Phil. 625, 634 (2013).

⁴⁸ 729 Phil. 109 (2014).


⁴⁹ A.C. No. 10783, October 14, 2015.

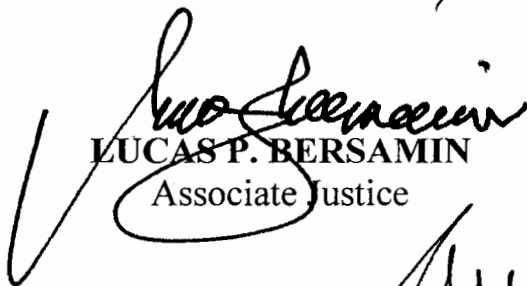
⁵⁰ *Maria v. Atty. Cortez*, 685 Phil. 331, 339 (2012).

SO ORDERED.

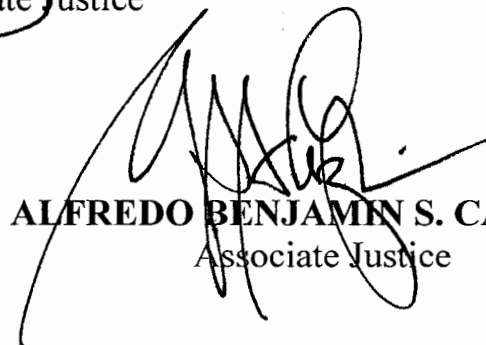

BIENVENIDO L. REYES
 Associate Justice

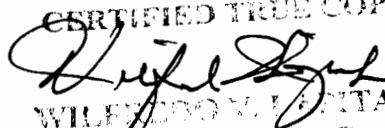
WE CONCUR:


PRESBITERO J. VELASCO, JR.
 Associate Justice
 Chairperson


LUCAS P. BERSAMIN
 Associate Justice


FRANCIS H. JARDELEZA
 Associate Justice


ALFREDO BENJAMIN S. CAGUIOA
 Associate Justice

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WILFREDO M. LANTANA
 Division Clerk of Court
 The Court

MAR 30 2017