



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

CESAR C. CASTRO,
Complainant,

A.C. No. 9495

Present:

- versus -

PERLAS-BERNABE, J.,
Chairperson,
REYES, A., JR.,
HERNANDO,
INTING, and
DELOS SANTOS, JJ.

ATTY. ENRICO G. BARIN,
Respondent.

Promulgated:

02 MAR 2020

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RESOLUTION

DELOS SANTOS, J.:

For resolution is a Sworn Affidavit¹ for disbarment dated 5 June 2012 filed by Cesar C. Castro (complainant) against Atty. Enrico G. Barin (Atty. Barin) charging the latter with violation of the 2004 Rules on Notarial Practice (2004 Notarial Rules) for his act of preparing and notarizing an affidavit of desistance without the complainant's personal appearance.

Factual Background

In his Complaint-Affidavit, complainant narrates that he filed a criminal complaint for Estafa/Swindling against one Perlita G. Calamiong (Ms. Calamiong) docketed as NPS No. 111-17-INV-111-00963 before the Office of the City Prosecutor, Tarlac City, Tarlac (OCP-Tarlac City). During its pendency, complainant went to the OCP-Tarlac City to inquire on

¹ Rollo, p. 1.

the status of his complaint, and was surprised when he was furnished a copy of a motion to withdraw information with an attached affidavit of desistance allegedly notarized by Atty. Barin, counsel of Ms. Calamiong. Complainant denies that he prepared and/or signed both the motion to withdraw and the affidavit of desistance, and alleges forgery on the part of Ms. Calamiong and Atty. Barin. Further, he claims that he did not personally appear before Atty. Barin for the notarization of the affidavit of desistance. Hence, he prays for the disbarment of Atty. Barin.

On 26 September 2012, the Court issued a Resolution² requiring Atty. Barin to submit his Comment within 10 days from notice.

In compliance, Atty. Barin submitted his Comment³ dated 19 November 2012 and refutes complainant's allegation that he falsified the motion to withdraw and the affidavit of desistance. He admits that Ms. Calamiong is a client of his law office and that she sought his advice with regard to the Estafa case filed against her by herein complainant.

He explains that on 15 June 2012, complainant accompanied by Ms. Calamiong, went to his office to personally subscribe on the affidavit of desistance. Atty. Barin further states that complainant presented his Senior Citizen card, and that he required the latter to present additional proof of identification, to which he presented his Philippine passport. After signing the above-mentioned documents, Atty. Barin advised Ms. Calamiong to submit the same to the OCP-Tarlac City, to which she acceded. He asserts that he did not falsify the signature of herein complainant and that complainant personally appeared before him to acknowledge the documents. Thus, he prays for the dismissal of the instant case.⁴

In a Resolution⁵ dated 30 January 2013, the Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within 90 days from receipt of the record.

On 5 August 2013, the IBP-Commission on Bar Discipline (IBP-CBD) issued a notice⁶ requiring both parties to appear for a mandatory conference.

On 6 September 2013, the IBP-CBD issued an Order⁷ declaring the mandatory conference closed and terminated. Both parties were then required to file their respective verified position papers within a period of 10 days from receipt thereof.

² Id. at 15-16.

³ Id. at 21-30.

⁴ Id. at 26.

⁵ Id. at 59-60.

⁶ Id. at 63.

⁷ Id. at 62.

IBP Report and Recommendation

After hearing, the IBP-CBD issued a Report and Recommendation⁸ dated 12 January 2015, through Investigating Commissioner Ricardo M. Espina (Commissioner Espina), finding Atty. Barin liable for violation of Rule 15.01, Canon 15, Code of Professional Responsibility, and recommended the penalty of reprimand. Commissioner Espina held:

What we find highly irregular, however, is respondent's act of notarizing complainant's affidavit of desistance. This act violates Rule 112, Section 3, Rules of Criminal Procedure. The ensuing *conflict of interest* caused by respondent's act of notarizing complainant's affidavit resulted, by extension, to a violation of Canon 15, Rule 15.01, Code of Professional Responsibility.

x x x x

It is clear that the parties' affidavits in the preliminary investigation stage must be subscribed and sworn to before a prosecutor. It is only when there is no available prosecutor that a notary public can take over the responsibility of the investigating prosecutor. Respondent failed to follow this Rule. Worse, his act of notarizing the affidavit of the adverse party (e.g. complainant Castro) and submitting the document to the prosecutor's office benefit his client, Ms. Calamiong, resulted in conflict of interest. This can't be a case of a fresh lawyer's error considering that respondent was admitted to the Bar way back in May 1991.

x x x x

WHEREFORE, it is hereby recommended that Respondent Atty. Enrico G. Barin be REPRIMANDED for violation of Canon 15, Rule 15.01, Code of Professional Responsibility, with the WARNING that similar actions in the future will be dealt with appropriately.

RESPECTFULLY SUBMITTED.⁹

Acting on the Report, the IBP Board of Governors issued Resolution No. XXI-2015-285¹⁰ dated April 18, 2015, adopting the findings and recommendation of Commissioner Espina 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", considering Respondent's violation of Canon 15 and Rule 15.01 of the Code of Professional Responsibility. Hence, Atty. Enrico G. Barin is hereby **SUSPENDED from the practice of law for three (3) months**.

⁸ Id. at 101-104.

⁹ Id. at 103-104.

¹⁰ Id. at 117.

Aggrieved, Atty. Barin filed a verified Motion for Reconsideration,¹¹ which was denied by the IBP Board of Governors in Resolution No. XXII-2016-630¹² dated 29 November 2016.

Issue

Whether Atty. Barin violated the Lawyer's Oath, the Code of Professional Responsibility and the 2004 Rules on Notarial Practice, for his acts of notarizing an affidavit of desistance without complainant's personal appearance.

The Court's Ruling

After a careful evaluation of the records of the case, the Court resolves to adopt the findings of the IBP-CBD, except as to the imposable penalty.

In administrative cases for disbarment or suspension against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant. In the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.¹³

In the instant case, We find that complainant failed to prove by clear and preponderant evidence that his signature in the affidavit of desistance was forged or falsified by Atty. Barin. We cannot give evidentiary weight to mere assumption in the absence of any evidence to support such claim. Mere suspicion and speculation is not enough.

However, the Court finds Atty. Barin's act of notarizing complainant's affidavit of desistance violative of Rule 15.01, Canon 15 of the Code of Professional Responsibility which reads:

Canon 15 - A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

Rule 15.01 - A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.

¹¹ Id. at 105-108.

¹² Id. at 115.

¹³ *Coquia v. Atty. Laforteza*, 805 Phil. 400, 408 (2017).

The concept of conflict of interest was discussed in *Hornilla v. Atty. Salunat*,¹⁴ to wit:


There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used.

Based on the records, there exists a conflict of interest. Atty. Barin admits that he is the counsel of Ms. Calamiong in the Estafa case filed by herein complainant. His act of notarizing the affidavit of desistance of complainant, which was later submitted to the investigating prosecutor, is a clear violation of the above-cited Rule. Atty. Barin cannot represent both parties in the same case, as the counsel for the accused and the complainant. The affidavit of complainant should have been subscribed and sworn to before the investigating prosecutor to give the latter an opportunity to determine the veracity of its contents and voluntariness of its execution. Considering that this is Atty. Barin's first offense, the penalty of suspension of two (2) months from the practice of law is appropriate.

WHEREFORE, the Court finds Atty. Enrico G. Barin guilty of violating Rule 15.01 of Canon 15 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for two (2) months, effective immediately upon receipt of this Resolution, with **WARNING** that a repetition of the same or similar acts will be dealt with more severely.

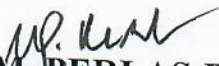
Let copies of this Resolution be furnished to the Office of the Bar Confidant, to be appended to Atty. Enrico G. Barin's personal record as attorney. Likewise, let copies of this Resolution be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator for dissemination to all courts in the country for their information and guidance.


SO ORDERED.

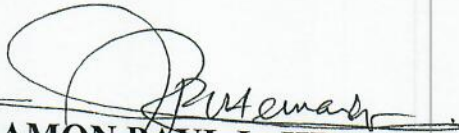

EDGARDO L. DELOS SANTOS
Associate Justice


¹⁴ 453 Phil. 108, 111 (2003).

WE CONCUR:


ESTELA M. PERLAS-BERNABE
Senior Associate Justice
Chairperson


ANDRES B. REYES, JR.
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice


HENRI JEAN PAUL B. INTING
Associate Justice

