

SECOND DIVISION

[A.C. No. 9495, March 02, 2020]

**CESAR C. CASTRO, COMPLAINANT, vs. ATTY. ENRICO G. BARIN,
RESPONDENT.**

R E S O L U T I O N

DELOS SANTOS, J.:

For resolution is a Sworn Affidavit^[1] 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. Calmiong (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 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 Resolution^[2] requiring Atty. Barin to submit his Comment within 10 days from notice.

In compliance, Atty. Barin submitted his Comment^[3] 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 Resolution^[5] 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 notice^[6] requiring both parties to appear for a mandatory conference.

On 6 September 2013, the IBP-CBD issued an Order^[7] 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.

IBP Report and Recommendation

After hearing, the IBP-CBD issued a Report and Recommendation^[8] 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.

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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.

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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]