

SECOND DIVISION

[A.C. No. 9917, January 14, 2019]

NORBERTO S. COLLANTES, COMPLAINANT, V. ATTY. ANSELMO B. MABUTI, RESPONDENT.

RESOLUTION

PERLAS-BERNABE, J.:

This administrative case stemmed from a complaint affidavit,^[1] executed on May 10, 2013, filed by complainant Norberto S. Collantes (complainant) before the Office of the Bar Confidant, Supreme Court, against respondent Atty. Anselmo B. Mabuti (respondent) for violation of the 2004 Rules on Notarial Practice (Notarial Rules)^[2] and of his duties as a lawyer.^[3]

The Facts

Complainant alleged that on October 10, 2009, respondent notarized a document entitled "Memorandum of Agreement"^[4] in the City of Manila. Upon verification, however, he discovered that respondent was not commissioned as a notary public in the City of Manila for the years 2008- 2009. In support thereof, complainant attached a Certification^[5] dated February 27, 2012 issued by the Notarial Section of the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Manila attesting to the same.

In his Comment^[6] dated January 15, 2014, respondent denied the allegations and claimed that the signature in the "Memorandum of Agreement" is not his. Respondent questioned complainant's motives for filing the present case against him, claiming that the latter has pending cases for *Estafa* filed against him.^[7] Finally, he prayed for the dismissal of the complaint on the ground of double jeopardy.^[8] In this regard, he pointed out that the present case is based on the same cause of action subject of an earlier complaint, filed by a certain Mina S. Bertillo before the Integrated Bar of the Philippines (IBP), docketed as CBD Case No. 11-3036, for which he was disqualified from being commissioned as a notary public for two (2) years.^[9] In support thereof, he attached a copy of the Commissioner's Report^[10] dated August 3, 2012 and the IBP Board of Governor's Resolution^[11] dated March 21, 2013 in CBD Case No. 11-3036.

The complaint was thereafter referred to the IBP for investigation, report, and recommendation.^[12]

The IBP's Report and Recommendation

In a Report and Recommendation^[13] dated December 7, 2016, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for

failure to comply with the Notarial Rules, and accordingly, recommended that he be suspended from the practice of law for a period of two (2) years.

The IBP-IC found the evidence convincing that respondent was indeed not commissioned as a notary public at the time the subject "Memorandum of Agreement" was notarized.^[14] Corollary thereto, the IBP-IC brushed aside respondent's claim of double jeopardy, pointing out that the present administrative action concerns an act that is entirely different from the act for which he was found guilty of violation of the Notarial Rules in CBD Case No. 11-3036, *i.e.*, for notarizing a letter dated December 28, 2010 when he was likewise not commissioned as a notary public.

In a Resolution^[15] dated August 31, 2017, the IBP Board of Governors adopted the above findings and recommendation with modification, increasing the recommended penalty to: (a) perpetual disqualification from being commissioned as a Notary Public since this is respondent's second offense; (b) revocation of his notarial commission, if subsisting; and (c) suspension for two (2) years from the practice of law.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent liable for violation of the 2004 Notarial Rules.

The Court's Ruling

The Court affirms the findings and adopts with modification the recommendations of the IBP Board of Governors.

The Court has emphatically stressed that notarization is not an empty, meaningless, routinary act. Notarization by a notary public converts a private document into a public document making it admissible in evidence without further proof of its authenticity.^[16] A notarial document is, by law, entitled to full faith and credit,^[17] and as such, notaries public are obligated to observe with utmost care the basic requirements in the performance of their duties.^[18]

For these reasons, notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.^[19] As a corollary to the protection of that interest, those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general.^[20] The requirements for the issuance of a commission as a notary public must not be treated as a mere casual formality.^[21] Where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, an act which the Court has characterized as reprehensible, constituting as it does, not only malpractice, but also the crime of falsification of public documents, the offender may be subjected to disciplinary action.^[22] Jurisprudence provides that without a commission, a lawyer is unauthorized to perform any of the notarial acts.^[23] A lawyer who performs a notarial act without such commission violates the lawyer's oath to obey the laws, more specifically, the Notarial Rules.^[24]

In this case, the IBP found that respondent notarized the subject document, "Memorandum of Agreement," without being commissioned as a notary public at the time of notarization. This fact has been duly certified to by none other than the Notarial Section of the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Manila.^[25] Thus, by knowingly performing notarial acts at the time when he was not authorized to do so, respondent clearly violated the Notarial Rules and in consequence, should be held administratively liable.

It should be emphasized that respondent's transgressions of the Notarial Rules also have a bearing on his standing as a lawyer.^[26] In *Virtusio v. Virtusio*,^[27] the Court observed that "[a] lawyer who notarizes a document without a proper commission violates his lawyer's oath to obey the law. He makes it appear that he is commissioned when he is not. He thus indulges in deliberate falsehood that the lawyer's oath forbids. This violation falls squarely under Rule 1.01 of Canon 1 of the Code of Professional Responsibility and Canon 7 as well,"^[28] to wit:

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

CANON 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

Notably, while the Court agrees with the IBP's findings as regards respondent's administrative liability, the Court, however, cannot adopt the recommendation of the IBP Board of Governors to increase the penalty against respondent to "[p]erpetual [d]isqualification from being commissioned as [a] [n]otary [p]ublic"^[29] in view of an alleged earlier infraction for which he was found guilty of violating the Notarial Rules by the IBP in CBD Case No. 11-3036. After an examination of respondent's personal record as a member of the Bar, it has been ascertained that the resolution of the IBP in the said case has yet to be forwarded to the Court for its approval. As case law explains, the "[f]actual findings and recommendations of the [IBP] Commission on Bar Discipline and the Board of Governors x x x are recommendatory, subject to review by the Court."^[30] In *Torres v. Dalangin*:^[31]

It is the Supreme Court, not the IBP, which has the constitutionally mandated duty to discipline lawyers. The factual findings of the IBP can only be recommendatory. Its recommended penalties are also, by their nature, recommendatory.^[32]

Thus, pending approval by the Court, the findings and resolution in CBD Case No. 11-3036 are only recommendatory, and hence (1) fail to establish the fact that respondent has already been held liable for a prior offense, and (2) cannot consequently serve to aggravate the penalty in this case.

In fine, consistent with prevailing jurisprudence,^[33] respondent is meted with the following: (a) suspension from the practice of law for one (1) year; (b) immediate revocation of his notarial commission, if any; and (c) disqualification from being commissioned as a notary public for a period of one (1) year only.