

FIRST DIVISION

[A.C. No. 9269, March 13, 2019]

AZUCENA C. TABAO, PETITIONER, VS. ATTY. ALEXANDER R. LACABA, RESPONDENT.

D E C I S I O N

JARDELEZA, J.:

This administrative case stemmed from a letter^[1] filed by Azucena C. Tabao (complainant) before the Court, charging Atty. Alexander R. Lacaba of violating the 2004 Rules on Notarial Practice (Rules on Notarial Practice).^[2]

The Facts

Complainant, with her siblings, charged Jester Q. Repulda, Edmund C. Elcarte, Noel Vincent P. Cinco (Noel), Paul Michael P. Cinco (Paul), Marlin B. Cinco (Marlin), and Marie Janice P. Cinco (Marie) of perjury. According to complainant, Atty. Alexander R. Lacaba (Atty. Lacaba) notarized the two-page Counter-Affidavit^[3] executed by Noel, Paul, Marlin, and Marie without the personal appearance of Marlin and Marie. A perusal of this Counter-Affidavit, which was filed during the preliminary investigation before the Office of the Provincial Prosecutor of Tacloban City, Leyte, readily shows that somebody else signed for Marlin and Marie. The signatures above their names read Rosalina Aloha B. Cinco (Rosalina) and Felicita P. Cinco (Felicita), respectively. More, it is impossible for Marlin and Marie to have personally appeared before Atty. Lacaba since during the execution of the Counter-Affidavit, Marlin was in Dubai working, while Marie was in Cebu City. Aside from non-compliance with the requirements of personal appearance and attestation of the affiants, Atty. Lacaba also failed to indicate the document number, page number, book number, and corresponding series year of his notarial register in the Counter-Affidavit, as required by notarial laws.^[4]

In his compliance,^[5] Atty. Lacaba did not deny complainant's charges. As defense, however, he claimed that the Investigating Prosecutor in the perjury case was informed before the filing of the Counter-Affidavit that two of the affiants were "physically absent" but could be contacted through telephone and video call via internet. According to him, the Investigating Prosecutor offered no objection to the same. He notarized the Counter-Affidavit by contacting Marlin and Marie by video call using the laptop of Felicitas, the mother of Marie, Noel, and Paul, in his office in Sta. Fe, Leyte. He narrated that he contacted Marie first and that during the video call, he "could see her in the monitor of the laptop and after reading to her the contents of the subject counter-affidavit and asked her if she understood the contents read to her, the latter affirmed, and voluntarily and knowingly AUTHORIZED her mother [Felicitas] to sign for and in her behalf."^[6] He then made the video call with Marlin, and in the same manner, Marlin authorized her mother,

Rosalina, to sign for and in her behalf. Citing the Rules on Electronic Evidence, he alleged that the video call conversation can be considered a "substitute of personal presence of a person while physically absent from the place of the other party." Further, the circumstances of Marlin and Marie fall under the "physical inability" contemplated under Section 1(c),^[7] Rule IV of the Rules on Notarial Practice. He, nonetheless, admits that not all elements required by the said provision were present in this case. Atty. Lacaba maintained that he was in good faith.^[8]

On July 29, 2013, the Court referred the matter to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.^[9]

Both parties filed their respective position papers and reiterated their claims.^[10] Atty. Lacaba added that during the preliminary investigation, complainant never questioned the representation of Rosalina and Felicitas even though she was furnished with a copy of the Counter-Affidavit. The law on agency in the Civil Code does not prohibit a party from appointing an agent to execute a counter-affidavit for purposes of preliminary investigation. The submission of a counter-affidavit is not even compulsory under the Rules on Criminal Procedure, hence a respondent may delegate its execution to an agent who must appear in person before the notary public who will administer the oath.^[11]

Report and Recommendation of the IBP

In his Report and Recommendation^[12] dated June 15, 2015, Investigating Commissioner Rodolfo R. Zaballa, Jr. (Investigating Commissioner Zaballa) found Atty. Lacaba guilty of violating Rule 1.01, Canon 1 of the Code of Professional Responsibility and Rules IV and VI of the Rules on Notarial Practice on the following grounds: 1) Atty. Lacaba never denied having notarized the Counter-Affidavit despite the absence of two of the affiants; 2) Rosalina and Felicitas were not appointed representatives of Marlin and Marie, respectively, in accordance with the provisions of Title X of the Civil Code, thus, they cannot sign for and in behalf of the latter; and 3) the Rules on Electronic Evidence finds no application in the circumstances surrounding the case. He recommended that Atty. Lacaba be suspended for a period of three months, that his notarial commission, if any, be revoked, and that he be prohibited from being commissioned as a notary public for a period of two years.^[13]

On April 29, 2016, the IBP Board of Governors, in Resolution No. XXII-2016-292,^[14] resolved to adopt the findings of fact and recommendation of Investigating Commissioner Zaballa but increased the period of suspension from the practice of law to six months. It, thus, directed the Director of the Commission on Bar Discipline to prepare an extended resolution explaining the Board's action.

In an Extended Resolution, the IBP Board of Governors, through Commission on Bar Discipline Director Ramon S. Esguerra, explained the increase of the period of suspension from three to six months. Citing several cases, it expounded on the importance of notarization^[15] and the rule that notaries public should not notarize a document without the personal appearance of the person who executed the same.^[16] Atty. Lacaba never denied the charges against him; he merely posited that the requirement of personal appearance was satisfied through the video call with Marlin

and Marie and the physical presence of their representatives, Rosalina and Felicitas, who signed the Counter-Affidavit. According to the IBP Board of Governors, Atty. Lacaba's contentions cannot be given credit because in the similar case of *Bon v. Ziga*,^[17] the Court rejected the defense of substantial compliance to the requirement of personal appearance of the affiant, *i.e.*, speaking with the affiants over the telephone to secure their affirmation that their signatures were genuine.^[18] In addition, there is no legal basis to support his argument that the Rules on Criminal Procedure do not prohibit the execution of a counter-affidavit by a representative. On his failure to indicate in the Counter-Affidavit the document number, page number, book number, and the corresponding series year of his notarial register, such is a clear violation of Section 2(e), Rule VI of the Rules on Notarial Practice as these formalities are mandatory and cannot be simply neglected considering the degree of importance and evidentiary weight attached to notarized documents.^[19] Clearly, Atty. Lacaba cannot escape liability for violating notarial laws. It applied the penalty meted by the Court in *Bon*, considering the analogous circumstances in the cases. Thus, the IBP Board of Governor recommended the suspension of Atty. Lacaba from the practice of law for six months, his disqualification from being commissioned as notary public for two years, and the revocation of his notarial commission, if there be any.^[20]

The Ruling of the Court

The Court upholds the findings of the IBP Board of Governors.

There is no dispute that Atty. Lacaba violated the Rules on Notarial Practice. Both in his Compliance and Position Paper, he never disputed the fact that he notarized the Counter-Affidavit without the personal appearance of all the affiants. He also did not address his failure to indicate in the Counter-Affidavit the document number, page number, book number, and the corresponding series year of his notarial register. He merely offered good faith and substantial compliance as defenses. Section 2(b), Rule IV and Section 2(e), Rule VI of the Rules on Notarial Practice are clear:

Rule IV

x x x x

Sec. 2. Prohibitions. - x x x

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 public through competent evidence of identity as defined by these Rules.

x x x x