

SECOND DIVISION

[A.C. No. 12196, September 03, 2018]

PABLITO L. MIRANDA, JR., COMPLAINANT, VS. ATTY. JOSE B. ALVAREZ, SR., RESPONDENT.

DECISION

PERLAS-BERNABE, J.:

This is an administrative case against respondent Atty. Jose B. Alvarez, Sr. (respondent) for disbarment and perpetual disqualification as a notary public on the grounds of gross negligence and grave misconduct, as well as violation of the 2004 Rules on Notarial Practice^[1] (Notarial Rules).

The Facts

On January 16, 2012, complainant Pablito L. Miranda, Jr. (complainant) filed a Complaint-Affidavit^[2] before the Integrated Bar of the Philippines (IBP) – Commission on Bar Discipline, averring that respondent notarized certain documents during the year 2010 notwithstanding that his notarial commission for and within the jurisdiction of San Pedro, Laguna had already expired way back in December 31, 2005 and has yet to be renewed before the Regional Trial Court (RTC) of San Pedro, Laguna (RTC-San Pedro) where he resides and conducts his notarial businesses.^[3]

In support thereof, complainant listed the following addresses, all located in San Pedro, Laguna, where respondent allegedly maintained his notarial offices: (a) Alvarez & Alvarez Law Office at Room 202, 2nd Floor, Fil-Em Building, A. Luna St., Poblacion; (b) Golden Peso Enterprises and Loan Center at Macaria Ave., Pacita Complex; and (c) Pacita Arcade/Commercial Complex in Pacita Complex.^[4] He also presented pictures of respondent's offices in San Pedro, Laguna,^[5] and documents to prove that respondent notarized: (1) a 2010 Application for Business Permit^[6] of one Ronald Castasus Amante (Amante), which, coincidentally, also did not have a valid proof of identification and bore a fictitious address; and (2) a Special Power of Attorney^[7] (SPA), executed by Amante on December 7, 2010.^[8] Likewise, complainant submitted a copy of: (1) Certification No. 11-0067^[9] dated October 5, 2011 (October 5, 2011 Certification) issued by Catherin B. Beran-Baraoidan,^[10] Clerk of Court VI (COC Beran-Baraoidan) of the RTC-San Pedro, stating that respondent was commissioned as a notary public for San Pedro, Laguna from 1998 to 2005; and (2) Certification No. 11-0053^[11] dated September 21, 2011 (September 21, 2011 Certification) issued by COC Beran-Baraoidan, stating that "*no document entitled [SPA] x x x executed by [Amante] x x x notarized by [respondent] for the year 2010, is submitted before this Office.*"^[12]

Furthermore, complainant claimed that respondent failed to comply with his duties under the Notarial Rules, particularly: (a) to register one (1) notarial office only; (b) to keep only one (1) active notarial register at any given time; (c) to file monthly notarial books, reports, and copies of the documents notarized in any given month; and (d) to surrender his notarial register and seal upon expiration of his commission.^[13]

Also, complainant alleged that respondent authorized unlicensed persons to do notarial acts for him using his signatures, stamps, offices, and notarial register, and that he further violated Section 12, Rule II of the Notarial Rules regarding competent evidence of identity by making untruthful statements in a narration of facts, and causing it to appear that persons have participated in an act or proceeding when they did not in fact so participate.^[14] Because of these acts, complainant asserted that respondent committed grave violations of the Notarial Rules.^[15]

In his Answer^[16] dated March 7, 2012, respondent asserted that he was a duly commissioned notary public in 2010 in Biñan, Laguna, as shown by the attached Certification of Notarial Commission No. 2009-21^[17] issued by Presiding Judge Marino E. Rubia of the RTC of Biñan, Laguna, Branch 24 (RTC-Biñan).^[18]

In compliance with the IBP's Order,^[19] complainant submitted his Position Paper,^[20] additionally pointing out that in 1993, respondent notarized a Joint Affidavit^[21] despite the absence of a notarial commission therefor,^[22] as well as an Affidavit for Death Benefit Claim^[23] in April 10, 2012 after his notarial commission for and within Biñan, Laguna had already expired.^[24]

For his part, respondent simply reiterated his defense that he was a duly commissioned notary public in 2010 in Biñan, Laguna.^[25]

The IBP's Report and Recommendation

In a Report and Recommendation^[26] dated April 19, 2013, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for violating the Notarial Rules,^[27] the Code of Professional Responsibility (CPR), and the Lawyer's Oath, and accordingly, recommended that respondent's notarial commission, if existing, be revoked, that he be barred perpetually as a notary public, and that he be suspended from the practice of law for a period of two (2) years from notice, with a warning that any infraction of the canons or provisions of law in the future shall be dealt with more severely.^[28]

In particular, the IBP-IC found that: (a) respondent's three (3) notarial offices, including his residence, are all within the jurisdiction of San Pedro, Laguna, whereas his notarial commission existing in 2010 was not issued by the RTC-San Pedro but by the RTC-Biñan; (b) respondent notarized an Affidavit of Death Benefit Claim and Amante's Application for Business Permit in his notarial offices in San Pedro, Laguna which is outside his notarial jurisdiction; and (c) respondent notarized the Application for Business Permit even though it bore a fictitious address and lacked

details regarding the signatory's competent evidence of identity, thus causing it to appear that persons have participated in an act or proceeding when they did not in fact so participate. To the IBP-IC, these facts, taken together, clearly show that respondent violated his oath of office and his duty as a lawyer, and committed unethical behavior as a notary public, for which he should be held administratively liable.^[29]

In a Resolution^[30] dated May 11, 2013 (1st Resolution), the IBP Board of Governors adopted and approved the above report and recommendation of the IBP-IC with modification, reducing the recommended penalty of suspension to one (1) year, instead of two (2) years.

Dissatisfied, respondent filed a motion for reconsideration,^[31] arguing that he maintains only one (1) notarial office which is located at 888 Lucky Gem. Bldg., Brgy. San Antonio, Biñan, Laguna, where he, together with one Atty. Edgardo Salandanan (Atty. Salandanan) as Senior Partner, has been holding office and conducting all his notarial works for several years. He added that the office in San Pedro, Laguna is managed and owned by his son, Atty. Jose L. Alvarez, Jr.^[32] In his Comment,^[33] complainant reiterated his allegations against respondent and insisted that the latter be disbarred.

In a Resolution^[34] dated May 4, 2014 (2nd Resolution), the IBP Board of Governors partially granted respondent's motion, and accordingly, modified the 1st Resolution by deleting the penalty of suspension *"considering that [r]espondent's violation relates to the Notarial Law."*^[35]

This time it was complainant who moved for reconsideration,^[36] seeking, respondent's disbarment. Notably, in his motion, complainant further pointed out that, as per the Certification^[37] dated May 7, 2015 issued by the Office of the Bar Confidant (OBC), respondent *"has been suspended from the practice of law for five (5) months x x x effective upon receipt of the Resolution of the Court dated December 04, 2000 in G.R. No. 126025 x x x and re-docketed as an Administrative Case No. 9723 x x x. Said Resolution was received by the respondent on January 09, 2001"* and *"[t]o date, the said order of suspension has not yet been lifted by the Court."*

Complying with the IBP Board of Governors' Order^[38] to comment, respondent merely insisted that he is a full-fledged lawyer with Roll No. 20776, and that complainant filed this administrative case simply to extort money from him.^[39]

The IBP Board of Governors denied complainant's motion in a Resolution^[40] dated August 31, 2017.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent administratively liable.

The Court's Ruling

I.

Time and again, the Court has held "[t]hat notarization of a document is not an empty act or routine. **It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.** Notarization converts a private document into a public document, thus, making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies[,], and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. For this reason, notaries public must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined."^[41]

The basic requirements a notary public must observe in the performance of his duties are presently laid down in the 2004 Rules on Notarial Practice. The failure to observe the requirements and/or comply with the duties prescribed therein shall constitute grounds for the revocation of the notarial commission of, as well as the imposition of the appropriate administrative sanction/s against, the erring notary public.^[42]

In this case, the Court finds that respondent committed the following violations of the Notarial Rules:

First, respondent performed notarial acts without the proper notarial commission therefor.

Under the Notarial Rules, "a person commissioned as a notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made. Commission either means the grant of authority to perform notarial [acts] or the written evidence of authority."^[43]

"Without a commission, a lawyer is unauthorized to perform any of the notarial acts. A lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities."^[44] Moreover, it should be emphasized that "[u]nder the rule, only persons who are commissioned as notary public may perform notarial acts **within the territorial jurisdiction of the court which granted the commission.**"^[45]

In this case, it was established that respondent notarized a Joint Affidavit^[46] in **1993** and an Application for Business Permit,^[47] as well as the SPA^[48] of Amante, in **2010**, all in **San Pedro, Laguna**. However, as per the October 5, 2011 Certification^[49] issued by COC Beran-Baraoidan of the RTC-San Pedro, respondent was commissioned as a notary public for and within San Pedro, Laguna only from **1998 to 2005**, and that the said commission has not been renewed in 2010 and therefore, already expired.

Furthermore, it was shown that although respondent has been issued a notarial commission by the RTC-Biñan (which was valid from **January 1, 2010 until December 31, 2011**), he: **(a)** conducted business as a notary public during such time not only in his Biñan, Laguna law office (which he shared with a certain Atty. Salandanan) but also in his other law offices in San Pedro, Laguna, and thus, performed notarial acts beyond the territorial jurisdiction of the said commissioning court; and **(b)** notarized an Affidavit for Death Benefit Claim^[50] in **Biñan, Laguna** on **April 10, 2012**, during which time the said commission had already expired.

Second, respondent notarized a document that is bereft of any details regarding the identity of the signatory.

Under the Notarial Rules, "a notary public should not notarize a document unless the signatory to the document is in the notary's presence personally at the time of the notarization, and personally known to the notary public or otherwise identified through competent evidence of identity. At the time of notarization, the signatory shall sign or affix with a thumb or mark the notary public's notarial register. The purpose of these requirements is to enable the notary public to verify the genuineness of the signature and to ascertain that the document is the signatory's free act and deed. If the signatory is not acting of his or her own free will, a notary public is mandated to refuse to perform a notarial act."^[51]

In *Gaddi v. Velasco*,^[52] the Court ruled that a notary public who notarizes a document despite the missing details anent the signatory's competent evidence of identity not only fails in his duty to ascertain the signatory's identity but also improperly notarizes an incomplete notarial certificate, viz.:

In the present case, contrary to [Atty.] Velasco's claim that Gaddi appeared before him and presented two identification cards as proof of her identity, the notarial certificate, in rubber stamp, itself indicates: "SUBSCRIBE AND SWORN TO BEFORE ME THIS APR 22, 2010 x x x AT MAKATI CITY. AFFIANT EXHIBITING TO ME HIS/HER C.T.C. NO. _____ ISSUED AT/ON _____." **The unfilled spaces clearly establish that Velasco had been remiss in his duty of ascertaining the identity of the signatory to the document.** Velasco did not comply with the most basic function that a notary public must do, that is, to require the presence of Gaddi; otherwise, he could have ascertained that the handwritten admission was executed involuntarily and refused to notarize the document. **Furthermore, Velasco affixed his signature in an incomplete notarial certificate.** x x x^[53] (Emphases supplied)

Similar to this case, the *jurat* of the 2010 Application for Business Permit which respondent notarized did not bear the details of the competent evidence of identity of its principal-signatory. While this application appears to be a ready-made form issued by the Municipality of San Pedro, Laguna, this fact alone cannot justify respondent's non-compliance with his duties under the Notarial Rules.

And third, respondent failed to forward to the Clerk of Court (COC) of the commissioning court a certified copy of each month's entries and a duplicate original