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SECOND DIVISION

[A.C. No. 9364 [Formerly CBD Case No. 13-36960], February 08, 2017]

FLORDELIZA E. COQUIA, COMPLAINANT, VS. ATTY. EMMANUEL E. LAFORTEZA, RESPONDENT.

D E C I S I O N

PERALTA, J.:

Before us is a Petition for Disbarment dated February 6, 2012 filed by Flordeliza E. Coquia[1] (*Coquia*) against respondent Atty. Emmanuel E. Laforteza (*Atty. Laforteza*), docketed as A.C. No. 9364, for Conduct Unbecoming of a Lawyer due to the unauthorized notarization of documents relative to Civil Case No. 18943.[2]

Atty. Laforteza was a former Clerk of Court of Regional Trial Court (RTC), Branch 68, Lingayen, Pangasinan, having assumed office in November 17, 2004 until January 31, 2011.[3] On February 1, 2011, Arty. Laforteza transferred to the Department of Justice.[4]

In her Complaint, Coquia alleged that on January 7, 2009, while in office as clerk of court, Atty. Laforteza conspired with Clemente Solis (*Clemente*) to falsify two (2) documents, to wit: (1) *an Agreement between Clemente Solis and Flordeliza Coquia*,[5] and the (2) *Payment Agreement executed by Flordeliza Coquia*, and subsequently notarized the said documents. Coquia claimed that the documents were forged to make it appear that on the said date, she subscribed and sworn to the said documents before Atty. Laforteza when in truth and in fact on the said date and time, she was attending to her classes at the Centro Escolar University in Manila as evidenced by the certified true copy of the Centro Escolar University Faculty Daily Time Record for the period of December 16, 2008 to January 14, 2009.[6]

Coquia asserted that under the law, Atty. Laforteza is not authorized to administer oath on documents not related to his functions and duties as Clerk of Court of RTC, Branch 68, Lingayen, Pangasinan. Thus, the instant complaint for disbarment for conduct unbecoming of a lawyer.

On January 12, 2012, the Office of the Bar Confidant referred the complaint to Atty. Cristina B. Layusa, Deputy Clerk of Court and Bar Confidant, Office of the Bar Confidant, Supreme Court, for appropriate action.[7]

On March 19, 2012, the Court resolved to require Atty. Laforteza to comment on the complaint against him.[8]

In compliance, Atty. Laforteza submitted his Comment[9] dated July 2, 2012 where he denied the allegations in the complaint. Atty. Laforteza recalled that on January

7, 2009, while attending to his work, fellow court employee, Luzviminda Solis (*Luzviminda*), wife of Clemente, with other persons, came to him. He claimed that Luzviminda introduced said persons to him as the same parties to the subject documents. Luzviminda requested him to subscribe the subject documents as proof of their transaction considering that they are blood relatives. Atty. Laforteza claimed that he hesitated at first and even directed them to seek the services of a notary public but they insisted for his assistance and accommodation. Thus, in response to the exigency of the situation and thinking in all good faith that it would also serve the parties' interest having arrived at a settlement, Atty. Laforteza opted to perform the subscription of the *jurat*. He, however, insisted that at that time of subscription, after propounding some questions, he was actually convinced that the persons who came to him are the same parties to the said subject documents.[10]

Atty. Laforteza likewise denied that there was conspiracy or connivance between him and the Solis'. He pointed out that other than the subject documents and Coquia's bare allegation of conspiracy, no evidence was presented to substantiate the same. Atty. Laforteza lamented that he was also a victim of the circumstances with his reliance to the representations made before him. He invoked the presumption of regularity and extended his apology to this Court should his act as a subscribing officer be deemed improper.[11]

In a Joint-Affidavit[12] dated July 2, 2012 of Clemente and Luzviminda, both denied to have connived or conspired with Atty. Laforteza in the preparation and execution of the subject documents. They narrated that Atty. Laforteza in fact initially refused to grant their request to notarize the subject documents but they were able to convince him to assist them in the interest of justice. Clemente insisted that he was one of the signatories in the said documents and that he has personal knowledge that the signature of Coquia inscribed in the same documents are her true signatures having seen her affixed her signatures.[13]

On October 11, 2012, the Court resolved to refer the instant case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.[14]

During the mandatory conference, both parties agreed that Atty. Laforteza is authorized to administer oaths. However, as to the requirement to establish the identity of the parties, Atty. Laforteza admitted that he does not personally know both Coquia and Clemente, and he merely relied on Luzviminda and Lorna Viray, who are known to him as fellow court employees, to establish the identities of the parties. He likewise admitted that Coquia did not sign the documents in his presence and that someone present on the said date allegedly owned the signature of Coquia as hers.[15]

In its Report and Recommendation[16] dated December 18, 2013, the IBP-Commission on Bar Discipline (*CBD*) recommended that the instant complaint be dismissed for lack of sufficient evidence.

However, in a Notice of Resolution No. XXI-2014-818 dated October 11, 2014, the IBP-Board of Governors resolved to reversed and set aside the Report and Recommendation of the IBP-CBD, and instead reprimanded and cautioned Atty. Laforteza to be careful in performing his duties as subscribing officer.[17]

We concur with the findings of the IBP-Board of Governors, except as to the 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.[18] In the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.[19]

In the instant case, We find that Coquia failed to present clear and preponderant evidence to show that Atty. Laforteza had direct and instrumental participation, or was in connivance with the Solis1 in the preparation of the subject documents. While it may be assumed that Atty. Laforteza had a hand in the preparation of the subject documents, We cannot give evidentiary weight to such a supposition in the absence of any evidence to support it. The Court does not thus give credence to charges based on mere suspicion and speculation.[20]

As to the allegation of unauthorized notarization:

As early as the case of *Borre v. Moya*,[21] this Court had already clarified that the power of *ex officio* notaries public have been limited to notarial acts connected to the exercise of their official functions and duties.

Consequently, the empowerment of *ex officio* notaries public to perform acts within the competency of regular notaries public - such as acknowledgments, oaths and affirmations, jurats, signature witnessing, copy certifications, and other acts authorized under the 2004 Rules on Notarial Practice - is now more of an exception rather than a general rule. They may perform notarial acts on such documents that bear no relation to their official functions and duties only if (1) a certification is included in the notarized documents attesting to the lack of any other lawyer or notary public in the municipality or circuit; and (2) all notarial fees charged will be for the account of the government and turned over to the municipal treasurer. No compliance with these two requirements are present in this case.

In the instant case, it is undisputed that Atty. Laforteza notarized and administered oaths in documents that had no relation to his official function. The subject documents, to wit: (1) *an Agreement between Clemente Solis and Flordeliza Coquia*, [22] and the (2) *Payment Agreement executed by Flordeliza Coquia*, are both private documents which are unrelated to Atty. Laforteza's official functions. The civil case from where the subject documents originated is not even raffled in Branch 68 where Atty. Laforteza was assigned. While Atty. Laforteza serve as notary public *ex officio* and, thus, may notarize documents or administer oaths, he should not in his *ex-officio* capacity take part in the execution of private documents bearing no relation at all to his official functions.

Under the provisions of Section 41[23] (as amended by Section 2 of R. A. No. 6733[24]) and Section 242[25] of the Revised Administrative Code, in relation to Sections G,[26] M[27] and N,[28] Chapter VIII of the Manual for Clerks of Court, Clerks of Court are notaries public *ex officio*, and may thus notarize documents or administer oaths but only when the matter is related to the exercise of their official

functions.[29] In *Exec. Judge Astorga v. Solas*,[30] the Court ruled that clerks of court should not, in their *ex-officio* capacity, take part in the execution of private documents bearing no relation at all to their official functions. Notarization of documents that have no relation to the performance of their official functions is now considered to be beyond the scope of their authority as notaries public *ex officio*. Any one of them who does so would be committing an unauthorized notarial act, which amounts to engaging in the unauthorized practice of law and abuse of authority.

As to the Violation of Notarial Law:

We likewise agree and adopt the findings of the IBP-Board of Governors which found Atty. Laforteza to have violated the Notarial Law.

In this case, it is undisputed that Atty. Laforteza failed to comply with the rules of notarial law. He admitted that he notarized a *pre-signed* subject document presented to him. He also admitted his failure to personally verify the identity of all parties who purportedly signed the subject documents and who, as he claimed, appeared before him on January 7, 2009 as he merely relied upon the assurance of Luzviminda that her companions are the actual signatories to the said documents. In ascertaining the identities of the parties, Atty. Laforteza contented himself after propounding several questions only despite the Rules' clear requirement of presentation of competent evidence of identity such as an identification card with photograph and signature. Such failure to verify the identities of the parties was further shown by the fact that the pertinent identification details of the parties to the subject documents, as proof of their identity, were lacking in the subject documents' acknowledgment portion. Atty. Laforteza even affixed his signature in an incomplete notarial certificate. From the foregoing, it can be clearly concluded that there was a failure on the part of Atty. Laforteza to exercise the due diligence required of him as a notary public *ex-officio*.

Notarization of documents ensures the authenticity and reliability of a document. Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. 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. Notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative offices generally.[31]

Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[32]

The 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public Rule II, Section 1 states: