

EN BANC

**[A.C. No. 8723 [Formerly CBD Case No. 11-2974],
January 26, 2016]**

**GREGORY FABAY, COMPLAINANT, VS. ATTY. REX A. RESUENA,
RESPONDENT.**

D E C I S I O N

PER CURIAM:

Before us is a Complaint for Disbarment filed by Gregory Fabay (Fabay) against respondent Atty. Rex A. Resuena (*Atty. Resuena*), docketed as A.C. No. 8723 for Gross Misconduct due to the unauthorized notarization of documents relative to Civil Case No. 2001.^[1]

The facts are as follows:

On October 15, 2003, Virginia Perez, Marcella Perez, Amador Perez, Gloria Perez, Gracia Perez and Valentino Perez (*plaintiffs*) filed a complaint for ejectment/forcible entry against Gregory Fabay before the Municipal Trial Court of Pili, Camarines Sur with respondent Atty. Resuena as their counsel.

On the same date, October 15, 2003, Atty. Resuena notarized a special power of attorney (*SPA*) with plaintiffs as grantors, in favor of Apolo D. Perez. However, it appeared that it was only Remedios Perez who actually signed the SPA in behalf of Amador Perez, Valentino Perez, Gloria Perez and Gracia Perez. Said SPA was recorded in Atty. Resuena's notarial book as Doc. No. 126, Page 26, Book 1, Series of 2003.^[2]

The ejectment case was later on decided in favor of the client of Atty. Resuena, however, on appeal, the Regional Trial Court of Pili, Camarines Sur, Branch 32, ordered the case to be remanded to the court *a quo* to try the case on the merits.^[3] In its Decision^[4] dated August 4, 2005, the trial court noted that both Amador Perez and Valentino Perez have already died on September 7, 1988 and April 26, 1976, respectively.

Complainant Fabay alleged that Atty. Resuena violated the provisions of the Notarial Law by notarizing a special power of attorney notwithstanding the fact that two of the principals therein, Amador Perez and Valentino Perez were already dead long before the execution of the SPA. Complainant added that Atty. Resuena likewise notarized a complaint for ejectment in 2003 where Apolo Perez was made to appear as attorney-in-fact of Amador Perez and Valentino Perez when again the latter could not have possibly authorized him as they were already dead. Further, complainant averred that Atty. Resuena, as counsel of the plaintiffs, participated in the barangay conciliations which is prohibited under the law.

Thus, the instant complaint for disbarment for violation of the notarial law and for Atty. Resuena's misconduct as a lawyer.

On October 18, 2010, the Court resolved to require Atty. Resuena to file his comment relative to the complaint filed against him.^[5]

In compliance, Atty. Resuena submitted his Comment^[6] dated December 20, 2010 wherein he denied the allegations in the complaint and claimed that it was tainted with malice, considering that it was only filed with the Supreme Court on August 20, 2010 when in fact it was allegedly prepared last June 18, 2006.

Atty. Resuena explained that although it was just Remedios Perez who signed the SPA on behalf of Amador Perez, Valentino Perez, Gloria Perez and Gracia Perez, there was no misrepresentation since Remedios Perez is the spouse of Amador Perez and she was likewise previously authorized by the other co-owners, Gloria Perez and Gracia Perez, to represent them.^[7] Atty. Resuena, thus, prayed that the complaint against him be dismissed for lack of merit.

On January 19, 2011, the Court then resolved to refer the instant case to the Integrated Bar of the Philippines for investigation, report and recommendation/decision.^[8]

On June 16, 2011, a mandatory conference was conducted where complainant was assisted by his counsel Atty. Crispo Borja, Jr., while Atty. Resuena appeared for himself.

Atty. Resuena denied that he participated in the barangay conciliations and presented the certificate issued by the barangay captain showing that there was no record of his attendance during the confrontations of the parties before the barangay. He, however, did not deny that Amador Perez and Valentino Perez were already deceased at the time of the execution and notarization of the SPA, *albeit*, he argued that in the same SPA, Amador Perez and Valentino Perez were signed by or represented by Remedios Perez. He further insisted that in the acknowledgment portion of the SPA, the names of Amador Perez and Valentino Perez were not included as among the parties who have personally appeared before him. Thus, Atty. Resuena insisted that there was no misrepresentation done in the notarization of the SPA.

In its Report and Recommendation, the IBP-CBD found Atty. Resuena to have violated the provisions of the notarial law. The pertinent portion thereof reads as thus:

A close scrutiny of the evidence submitted would show that respondent notarized a Special Power of Attorney on October 15, 2003 wherein the supposed principals were Virginia Perez, Marcella Perez, Amador Perez, Gloria Perez, Gracia Perez, Valentino Perez, the purpose of which, was to authorize Apolo D. Perez to represent them to sue and be sued in any administrative or judicial tribunal in connection with any suit that may arise out of any and all transactions in their properties covered by TCT No. RT-1118 (14380), 38735, 38737. **In the said document, the**

signatures of Amado Perez, Gloria Perez, Gracia Perez and Valentino Perez were signed as "BY: REMEDIOS PEREZ". Remedios Perez is the spouse of Amador Perez and the mother of [Apolo] Perez.

Evaluating the Special Power of Attorney, two of the parties, namely, Amador Perez and Valentino Perez were already dead during the execution of the Special Power of Attorney. Amador Perez died sometime in September 7, 1988, while Valentino Perez died in April 26, 1976. Despite this fact, respondent allowed them to be represented by Remedios Perez in the signing of the Special Power of Attorney without the proper authority provided for by law.

On the other hand, the other parties in the Special Power of Attorney, GRACIA PEREZ and GLORIA PEREZ were both residing in the United States of America. **While the respondent alleged that there was a previous authority to sign the Special Power of Attorney, no proof was presented by the respondent to that effect. They also were signed as "BY REMEDIOS PEREZ".**^[9]

The IBP-CBD, thus, recommended that his notarial commission be revoked and that he be disqualified to be commissioned as notary public for one (1) year.

In Notice of Resolution No. XX-2013-591 dated May 10, 2013, the IBP-Board of Governors adopted and approved *in toto* the Report and Recommendation of the IBP-CBD.

On September 9, 2013, complainant moved for reconsideration of Resolution No. XX-2013-591 and prayed that the same be set aside and instead the penalty of suspension be imposed against Atty. Resuena as an erring member of the bar and not merely as a notary public.

On May 3, 2014, the IBP Board of Governors, in its Resolution No. XXI-2014-293,^[10] denied complainant's motion for reconsideration, thus affirming Resolution No. XX-2013-591 but modified the penalty imposed to two (2) years disqualification from notarial practice.

We concur with the findings of the IBP except as to the penalty.

Time and again, we have held that 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.^[11]

For this reason, notaries public must observe with 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. 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.^[12]

Section 2 (b) of Rule IV of the 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public:

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.

In the instant case, it is undisputed that Atty. Resuena violated not only the notarial law but also his oath as a lawyer when he notarized the subject SPA without all the affiant's personal appearance. As found by the IBP-CBD, the purpose of the SPA was to authorize a certain Apolo D. Perez to represent the principals "to sue and be sued in any administrative or judicial tribunal in connection with any suit that may arise out of their properties." It is, thus, appalling that Atty. Resuena permitted Remedios Perez to sign on behalf of Amador Perez and Valentino Perez knowing fully well that the two were already dead at that time and more so when he justified that the latter's names were nevertheless not included in the acknowledgment *albeit* they are signatories of the SPA. Equally deplorable is the fact that Remedios was likewise allowed to sign on behalf of Gracia Perez and Gloria Perez, who were said to be residing abroad. Worse, he deliberately allowed the use of the subject SPA in an ejectment case that was filed in court. In effect, Atty. Resuena, in notarizing the SPA, contented himself with Remedios' representation of four of the six principals of the SPA, doing away with the actual physical appearance of all the parties. There is no question then that Atty. Resuena ignored the basics of notarial procedure and actually displayed his clear ignorance of the importance of the office of a notary public. Not only did he violate the notarial law, he also did so without thinking of the possible damage that might result from its non-observance.

We cannot overemphasize that a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.