

THIRD DIVISION

[A.C. No. 8698, August 31, 2016]

**MANUEL B. BERNALDEZ, COMPLAINANT, VS. ATTY. WILMA
DONNA C. ANQUILO-GARCIA, RESPONDENT.**

RESOLUTION

REYES, J.:

For resolution is the complaint^[1] dated August 2, 2010 filed by Manuel B. Bernaldez (complainant) charging respondent Atty. Wilma Donna C. Anquilo-Garcia (Atty. Anquilo-Garcia) with gross misconduct, deceit, violation of Lawyer's Oath, and abuse of authority as notary public.

Antecedent Facts

In his complaint, the complainant alleges that during the 2010 National and Local Elections, Atty. Anquilo-Garcia coerced and threatened registered voters in the Municipality of Biri, Northern Samar to sign blank and ready-made affidavits stating that they were illiterate/disabled voters when in fact, they were not and that they needed assistants in voting.^[2]

According to the complainant, the scheme was employed by Atty. Anquilo-Garcia to ensure the victory of her husband, Jaime Garcia, Jr. (Garcia Jr.), who was running for Mayor in Biri, Northern Samar.^[3]

Moreover, the complainant avers that the affiants never appeared before Atty. Anquilo-Garcia nor was it possible for her to go to Catarman, Northern Samar which is 50 kilometers away by land and sea from Biri, Northern Samar to execute the affidavits on the election day itself.^[4]

On September 1, 2010, the Court issued a Resolution^[5] directing Atty. Anquilo-Garcia to submit her Comment within 10 days from receipt thereof.

In her comment,^[6] Atty. Anquilo-Garcia denied having prepared ready-made affidavits and contended that what she prepared and notarized were affidavits of affiants who sought her help and services as notary public so that they may be allowed to vote with assistants because of difficulty in reading and/or some physical disability.^[7]

Moreover, she asserted that the affiants personally appeared before her on May 10, 2010 in Biri, Northern Samar and voluntarily executed the affidavits without being threatened, intimidated and paid. She alleged that the affidavits attached to the complaint were manufactured and/or falsified in order to suit the allegations of the complainant, her husband Garcia Jr.'s opposing candidate for the mayoralty. The

same affidavits were also used as exhibits in the election protest filed by the complainant against Garcia Jr. before the Regional Trial Court (RTC) of Catarman, Northern Samar, docketed as Election Protest (E.P.) Case No. 38.^[8]

In the Resolution^[9] dated December 6, 2010, the Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within 90 days from receipt of the record.

On December 1, 2011, the IBP Commission on Bar Discipline (CBD) issued a notice requiring both parties to appear for a mandatory conference.^[10]

On March 22, 2012, the IBP-CBD issued an Order^[11] declaring the mandatory conference closed and terminated. Both parties were then required to file their respective verified position papers within a period of 10 days from receipt thereof.

On June 28, 2013, before the case was resolved, the complainant filed his Affidavit of Withdrawal^[12] of the complaint stating that he is desisting from pursuing the instant disbarment case. He stated that the filing of the instant case was merely due to misapprehension of facts and misunderstanding of the incidents.

Resolutions of the IBP

On April 29, 2015, Commissioner Giovanne T. Lim (Commissioner Lim) issued his Report and Recommendation^[13] recommending that the instant case against Atty. Anquilo-Garcia be dismissed without prejudice. Commissioner Lim stated that since the alleged irregularities perpetrated by Atty. Anquilo-Garcia are the subject of the election protest filed by the complainant before the RTC and made subject of this disbarment case, it is premature to rule on the administrative liability of Atty. Anquilo-Garcia pending resolution of the election protest.^[14]

As to the withdrawal of the complaint, Commissioner Lim held that in disbarment cases, the desistance or withdrawal on the part of the complainant is not sufficient to terminate the administrative proceedings.

On June 20, 2015, the IBP Board of Governors issued a Notice of Resolution^[15] adopting and approving the Report and Recommendation of Commissioner Lim after finding the same to be supported by the evidence on record and applicable laws.

Ruling of the Court

To begin with, it must be stressed that administrative proceedings against lawyers are *sui generis* and they belong to a class of their own. They are neither civil nor criminal actions but rather investigations by the Court into the conduct of its officers.^[16] The instant administrative case is, thus, distinct from and may proceed independently of the election case. E.P. Case No. 38 refers to an election contest involving fraud or irregularities committed in the conduct of the elections, while the present disbarment case seeks to discipline Atty. Anquilo-Garcia as a lawyer for her alleged gross misconduct, deceit, violation of her oath as a lawyer, and abuse of authority as notary public. Thus, there is no need to await the final resolution of the election protest filed by the complainant before the instant disbarment case may be

acted upon.

Likewise, the fact that the complainant filed a withdrawal of the complaint during the pendency of this case is of no moment. In *Ventura v. Atty. Samson*,^[17] the Court held that the complainant's affidavit of desistance cannot have the effect of abating the administrative proceedings in view of the public service character of the practice of law and the nature of disbarment proceedings as a public interest concern.^[18]

The Court now resolves the substantive matters surrounding the case. "In administrative cases against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant."^[19] Here, the complainant failed to show by clear preponderance of evidence that Atty. Anquilo-Garcia coerced any registered voters in the Municipality of Biri, Northern Samar to sign the alleged blank and ready-made affidavits. Apparently, the affidavits presented by the complainant point to other persons responsible in the employment of force, intimidation or threat upon the voters in the Municipality.^[20]

With regard, however, to the charge of abuse of authority as notary public, the Court finds that the affidavits prepared by Atty. Anquilo-Garcia were notarized without the personal presence of the affiants, in violation of the notarial law which the Court cannot countenance.

The complaint clearly established that Atty. Anquilo-Garcia notarized the subject affidavits without having the affiants personally appear before her as required by law. The Court, likewise, finds no merit with her defense that the headings of the affidavits which indicated Municipality of Biri, and in some Catarman, Northern Samar as the place of execution were just simple and harmless clerical and typographical errors.

A cursory perusal of the affidavits of the concerned registered voters of the Municipality of Biri sufficiently shows that these affidavits were merely handed to them at the polling precincts on election day, bearing already the signature and notarial seal of Atty. Anquilo-Garcia.

Time and again, the Court has reminded lawyers commissioned as notaries public that the affiants must personally appear before them. Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice reads:

Section 2. Prohibitions

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.