

FIRST DIVISION

[A.C. No. 5851, November 25, 2008]

**GRACE DELA CRUZ-SILLANO, COMPLAINANT, VS. ATTY.
WILFREDO PAUL D. PANGAN, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

The Case

This is a complaint filed by Grace Dela Cruz-Sillano (complainant) against Atty. Wilfredo Paul D. Pangan (respondent) for disbarment for having conspired in forging a Special Power of Attorney.

The Facts

The facts in the Report and Recommendation of the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) read as follows:

Respondent is accused of forging the signature of an affiant [Zenaida A. Dela Cruz] in a Special Power of Attorney (SPA). The affiant in this SPA is the mother of complainant. The SPA appears to have authorized a certain Ronaldo F. Apostol to "process, claim, receive and encash checks representing my (affiant's) benefits arising from my insurance policy with the Insular Life Assurance Company Ltd." Consequently, respondent also stands accused of notarizing a document in the absence of the affiant. Complainant specifically alleges:

"That on March 15, 1999, Atty. Pangan conspiring and confederating with the other accused R.F. Apostol falsified and forged a document denominated as a Special Power of Attorney (by forging [sic] the signature of my deceased mother and notarizing the same), which empowered the accused Ronaldo F. Apostol to process, receive claim and encash check representing benefits arising from the insurance policy of my deceased mother Zenaida Apostol de la Cruz (of which I am the beneficiary). The accused successfully encash [sic] the check in the amount of P71,033.53 to my damage and prejudice."

The charge of forgery is premised on complainant's claim that when the SPA was notarized on 15 March 1999, the affiant therein was bedridden in the United States, who was sick with malignant cancer of the lungs, and that, in fact, the alleged affiant died on 27 May 1999 also in the United States. Complainant specifically alleges:

"The accused being both blood relatives were well aware that my deceased mother who resides in the U.S. of A has been bedridden for several months as she was diagnosed to be suffering from Malignant Cancer of the Lungs, prior to her death on May 27, 1999. Hence for obvious reasons, my deceased mother could not have on March 15, 1999 executed, prepared and signed the Special Power of Attorney and sworn to the same before Atty. Pangan. xxx"

In his comment Atty. Pangan claims that the "act of notarizing was done in accordance with law and practice." Moreover, respondent emphasized that:

"4. Respondent has no participation in the submission and processing of the insurance proceeds. Respondent Notary Public could not have made use of the alleged falsified document. He cannot be considered as having benefited from the falsified document as he was never a grantee nor a beneficiary [in] said document. He did not benefit from the insurance proceeds. He never conspired with anyone in the commission of any crime much less has taken advantage of his position as notary public to defraud any person or entity."^[1]

The IBP's Report and Recommendation

In a Report^[2] dated 8 July 2005, IBP Commissioner for Bar Discipline Doroteo B. Aguila (Commissioner Aguila) found respondent guilty of notarizing the SPA in the absence of affiant. Commissioner Aguila found that respondent violated the Code of Professional Responsibility and recommended respondent's suspension from the practice of law for 30 days, and that he be barred from acting as notary public, if he is presently one, or from being given a commission to act as such, for a period of one year from the effectivity of the recommended penalty.

In a Resolution^[3] dated 22 October 2005, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of Commissioner Aguila. The IBP Board of Governors suspended respondent from the practice of law for one year.

Respondent filed a motion for reconsideration dated 12 December 2005 before the IBP Board of Governors. In a Resolution dated 28 January 2006, the IBP Board of Governors resolved to deny respondent's motion for reconsideration since the Board had no jurisdiction to consider and resolve a matter already endorsed to this Court.

The Ruling of the Court

We sustain the findings of the IBP and adopt its recommendations. Respondent violated his oath as a lawyer and the Code of Professional Responsibility when he made it appear that Zenaida A. Dela Cruz personally appeared before him and executed a Special Power of Attorney in favor of Ronaldo Apostol.

***Respondent Notarized a Special Power of Attorney
in the Absence of the Affiant***

Section 1 of Public Act No. 2103 or the Notarial Law provides:

Sec. 1. (a) The acknowledgement shall be before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, acknowledged that the same is his free act and deed. The certificate shall be made under the official seal, if he is required by law to keep a seal, and if not, his certificate shall so state.

The Code of Professional Responsibility provides:

Canon 1. A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.

Rule 1.01. A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

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

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 present case, respondent does not deny notarizing the questioned Special Power of Attorney. Moreover, instead of exculpating respondent, the affidavits presented by respondent prove that affiant was not in the personal presence of respondent at the time of the notarization.

Ronaldo F. Apostol, respondent's co-accused in the criminal complaint for estafa through falsification filed before the Regional Trial Court of Makati City, executed an affidavit absolving respondent from any wrongdoing.

1. I was appointed by my Aunt Zenaida Apostol-Dela Cruz to process and claim her benefits arising from her insurance policy with the Insular Life Assurance Company, Ltd.;
2. Pursuant to this authority I caused the preparation of a Special Power of Attorney authorizing me to process, claim, receive and encash said insurance policy;

3. I proceeded to the law office of a distant relative - Atty. Wilfredo Paul D. Pangan to have the said Special Power of Attorney notarized;
4. Atty. Pangan was, however, not present in their office so I asked the staff how I can facilitate the notarization of the said document;
5. **The staff told me that as long as the grantor will appear in their office they can vouched [sic] the due execution of the document and they will just include the documents among the "for signature" so that Atty. Pangan can sign them when he comes back from a hearing;**
6. I left the law office and fetch [sic] an aunt of mine. When I returned to the office, I told the staff that my aunt is too sick to alight from the car;
7. Being a known relative of Atty. Pangan in the law office **I was able to convince the staff that said aunt was indeed the one who executed the document;**
8. **The following day I returned to the law office and the staff gave me the notarized Special Power of Attorney;**
9. That I have not paid for said notarization as I have been engaging the services of Atty. Pangan for free;
10. When a feud between me and my cousin who is in the United States developed and their [sic] was a lack of communication between us, I was surprised that the matter of claiming the insurance policy was brought when almost everybody in our immediate family knew that I caused the claiming of the said insurance and hold it in trust until we can communicate with my cousin;
11. In fairness to Atty. Pangan, he has nothing to do with whatever wrongdoings I have committed in the claiming of the insurance policy;
12. The claiming was done in good faith as no one else in the immediate family can process the same;

x x x.^[4] (Emphases added)

Laila N. Mesiano and Manolito F. Farnal, members of the staff of respondent's law office, also executed a joint affidavit in ostensible support for respondent.

2. Among our duties is to prepare notarial documents for signature of our two (2) notaries public, Atty. Tiburcio A. Edaño, Jr. and Atty. Wilfredo Paul D. Pangan;
3. The two are very strict in requiring the personal appearance of signatories to documents especially in documents requiring