

FIRST DIVISION

[A.C. NO. 6963, February 09, 2006]

VICTORINA BAUTISTA, COMPLAINANT, VS. ATTY. SERGIO E. BERNABE, RESPONDENT.

DECISION

YNARES-SANTIAGO, J.:

In a Complaint^[1] filed before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP) on November 16, 2004, complainant Victorina Bautista^[2] prays for the suspension or disbarment of respondent Atty. Sergio E. Bernabe for malpractice and unethical conduct in the performance of his duties as a notary public and a lawyer.

Complainant alleged that on January 3, 1998, respondent prepared and notarized a *Magkasanib na Salaysay*^[3] purportedly executed by Donato Salonga and complainant's mother, Basilia de la Cruz.^[4] Both affiants declared that a certain parcel of land in Bigte, Norzagaray, Bulacan, was being occupied by Rodolfo Lucas and his family for more than 30 years. Complainant claimed that her mother could not have executed the joint affidavit on January 3, 1998 because she has been dead since January 28, 1961.^[5]

In his Answer,^[6] respondent denied that he falsified the *Magkasanib na Salaysay*. He disclaimed any knowledge about Basilia's death. He alleged that before he notarized the document, he requested for Basilia's presence and in her absence, he allowed a certain Pronebo, allegedly a son-in-law of Basilia, to sign above the name of the latter as shown by the word "by" on top of the name of Basilia. Respondent maintained that there was no forgery since the signature appearing on top of Basilia's name was the signature of Pronebo.

On April 4, 2005, respondent filed a manifestation^[7] attaching thereto the affidavit of desistance^[8] of complainant which reads in part:

Ako na si, VICTORINA BAUTISTA CAPA, x x x matapos makapanumpa ng naaayon sa batas ay malaya at kusang loob na nagpapahayag ng mga sumusunod:

1. Na ako ang siyang tumatayong nagrereklamo laban kay Abogado, SERGIO EXQUIVEL BERNABE, sa isang kaso sa Tanggapan ng Integrated Bar of the Philippines na may Blg. CBD CASE NO. 04-1371;
2. Na ang nasabing habla ay hindi ko kagustuhan sapagkat iyon ay pinapirmahan lamang sa akin ni ELISEO OLOROSO at ng kanyang

Abogado na si Atty. MARCIAL MORFE MAGSINO at sa katunayan hindi ako nakaharap sa Notaryo Publiko na si Abogado CARLITOS C. VILLARIN;

3. Na ang pagpapapirma sa akin ay isang panlilinlang at ako ay ginawang kasangkapan para sirain ang magandang pangalan nitong si Abogado SERGIO ESQUIVEL BERNABE;
4. Na dahil sa ganitong pangyayari, aking hinihiling sa Tanggapan ng Integrated Bar of the Philippines (IBP) na ang reklamo ko laban sa nasabing Abogado SERGIO ESQUIVEL BERNABE ay mapawa[la]ng bisa.

In the report dated August 29, 2005, the Investigating Commissioner^[9] recommended that:

1. Atty. Sergio Esquibel Bernabe be *suspended* from the practice of the legal profession for one (1) month;
2. Any existing commission of Atty. Sergio Esquibel Bernabe as notary public, be revoked; and
3. Atty. Sergio Esquibel Bernabe be barred from being granted a notarial commission for a period of one (1) year.^[10]

In a resolution dated October 22, 2005, the Board of Governors of the IBP adopted and approved the recommendation of the Investigating Commissioner with modification that respondent be suspended from the practice of law for one year and his notarial commission be revoked and that he be disqualified for reappointment as notary public for two years.

We agree with the findings and recommendation of the IBP.

The records sufficiently established that Basilia was already dead when the joint affidavit was prepared on January 3, 1998. Respondent's alleged lack of knowledge of Basilia's death does not excuse him. It was his duty to require the personal appearance of the affiant before affixing his notarial seal and signature on the instrument.

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 presence of the parties to the deed will enable the notary public to verify the genuineness of the signature of the affiant.^[11]

Respondent's act of notarizing the *Magkasanib na Salaysay* in the absence of one of the affiants is in violation of Rule 1.01,^[12] Canon 1 of the Code of Professional Responsibility and the Notarial Law.^[13] By affixing his signature and notarial seal on the instrument, he led us to believe that Basilia personally appeared before him and attested to the truth and veracity of the contents of the affidavit when in fact it was a certain Pronebo who signed the document. Respondent's conduct is fraught with dangerous possibilities considering the conclusiveness on the due execution of