

EN BANC

[A.M. No. RTJ-01-1657, February 23, 2004]

HEINZ R. HECK, COMPLAINANT, VS. JUDGE ANTHONY E. SANTOS, REGIONAL TRIAL COURT, BRANCH 19, CAGAYAN DE ORO CITY,^[1] RESPONDENT.

DECISION

CALLEJO, SR., J.:

May a retired judge charged with notarizing documents without the requisite notary commission *more than twenty years ago* be disciplined therefor? This is the novel issue presented for resolution before this Court.

The instant case arose when in a verified Letter-Complaint dated March 21, 2001 Heinz R. Heck prayed for the disbarment of Judge Anthony E. Santos, Regional Trial Court, Branch 19, Cagayan de Oro City.

The complainant alleged that prior to the respondent's appointment as RTC judge on April 11, 1989, he violated the notarial law, thus:

Judge Santos, based on ANNEX "A," was not duly commissioned as notary public until January 9, 1984 but still subscribed and forwarded (on a non-regular basis) notarized documents to the Clerk of Court VI starting January 1980 uncommissioned until the 9th of January 1984.

a) Judge Santos was commissioned further January 16th 1986 to December 31st 1987 and January 6th 1988 to December 31st 1989 but the records fail to show any entry at the Clerk of Court after December 31st 1985 until December 31st 1989.

b) Judge Santos failed to forward his Notarial Register after the expiration of his commission in December 1989.^[2]

...

WHEREFORE in light of the foregoing complainant pray[s] to order respondent:

1. To disbar Judge Anthony E. Santos and to prohibit him from all future public service.
2. To forfeit [the] retirement benefits of Judge Santos.
3. To prohibit Judge Santos from future practice of Law.
4. To file a criminal suit against Judge Santos.
5. To conduct a speedy investigation and not to grant/accept any delaying tactics from Judge Santos or any agency and or public

servants involved in this administrative case.

6. To pay all costs and related costs involved in this administrative case.

and prays for other relief in accordance with equity and fairness based on the premises.^[3]

The complainant submitted a certification from Clerk of Court, Atty. Beverly Sabio-Beja, Regional Trial Court, Misamis Oriental, which contained the following:

THIS CERTIFIES that upon verification from the records found and available in this office, the following data appear:

1. The name Atty. Anthony E. Santos is listed as a duly commissioned notary public in the following years:

- a. January 9, 1984 to December 31, 1985
- b. January 16, 1986 to December 31, 1987
- c. January 6, 1988 to December 31, 1989

2. Based on the records of transmittals of notarial reports, Atty. Anthony E. Santos submitted his notarial reports in the ff. years:

- a. January 1980 report - was submitted on Feb. 6, 1980
- b. February to April 1980 report - was submitted on June 6, 1980
- c. May to June 1980 report - was submitted on July 29, 1980
- d. July to October 1980 report - submitted but no date of submission
- e. November to December 1980-no entry
- f. January to February 1981 - no entry
- g. March to December 1981 - submitted but no date of submission
- h. January to December 1982 - submitted but no date of submission
- i. January to June 1983 - submitted on January 5, 1984
- j. July to December 1983 - no entry
- k. January to December 1984 - submitted on January 20, 1986
- l. January to December 1985 - submitted on January 20, 1986

4. Records fail to show any entry of transmittal of notarial documents under the name Atty. Anthony Santos after December 1985.

5. It is further certified that the last notarial commission issued to Atty. Anthony Santos was on January 6, 1988 until December 31, 1989.^[4]

In his Answer dated June 13, 2001, the respondent judge categorically denied the charges against him. He also submitted a certification^[5] from Clerk of Court, Atty. Sabio-Beja, to prove that there was no proper recording of the commissioned lawyers in the City of Cagayan de Oro as well as the submitted notarized documents/notarial register. The respondent further averred as follows:

That the complainant has never been privy to the documents notarized and submitted by the respondent before the Office of the Clerk of Court of the Regional Trial Court of Misamis Oriental, nor his rights prejudiced on account of the said notarized documents and therefore not the proper party to raise the said issues;

That the complainant was one of the defendants in Civil Case No. 94-334 entitled Vinas Kuranstalten Gesmbh et al. versus Lugait Aqua Marine Industries, Inc., and Heinz Heck, for Specific Performance & Sum of Money, filed before the Regional Trial Court, Branch 19, Cagayan de Oro City, wherein respondent is the Presiding Judge. The undersigned resolved the case in favor of the plaintiffs.^[6]

Pursuant to the report of the Office of the Court Administrator recommending the need to resort to a full-blown investigation to determine the veracity of the parties' assertions, the Court, in a Resolution dated September 10, 2001, resolved to: (a) treat the matter as a regular administrative complaint; and (b) refer the case to Associate Justice Edgardo P. Cruz of the Court of Appeals (CA) for investigation, report and recommendation.^[7]

In his Letters dated December 10, 2001 and February 1, 2002, the complainant requested that the hearing be held at Cagayan de Oro City. Justice Cruz initially denied the request but upon the complainant's insistence, the matter was forwarded to the Court, which favorably acted thereon in a Resolution dated July 8, 2002.^[8] The complainant presented his evidence in Cagayan de Oro City before retired Court of Appeals Justice Romulo S. Quimbo.^[9]

In a Sealed Report dated August 14, 2003, Investigating Justice Edgardo P. Cruz made the following recommendation:

It is recommended that [i] respondent (who retired on May 22, 2002) be found guilty of violation of the Notarial Law by (a) notarizing documents without commission; (b) tardiness in submission of notarial reports; and (c) non-forwarding of his notarial register to the Clerk of Court upon expiration of his commission; and [ii] that for these infractions, he be suspended from the practice of law and barred from being commissioned as notary public, both for one year, and his present commission, if any, be revoked.^[10]

According to the Investigating Justice, the respondent did not adduce evidence in his defense, while the complainant presented documentary evidence to support the charges:

It is noteworthy that in his answer, respondent did not claim that he was commissioned as notary public for the years 1980 to 1983 nor deny the accuracy of the first certification. He merely alleged that "there was no proper recording of the commissioned lawyers in the City of Cagayan de Oro nor of the submitted Notarized Documents/Notarial Register." And, as already observed, he presented no evidence, particularly on his appointment as notary public for 1980 to 1983 (assuming he was so commissioned) and submission of notarial reports and notarial register.

On the other hand, the second certification shows that "there were only two Record Books available in the notarial section" of the RTC of Misamis Oriental (Cagayan de Oro City); and that the "(f)irst book titled Petitions for Notarial Commission contains items on the Name, Date Commission was issued and Expiration of Commission of the notary public. First entry appearing was made on December 1982."

If respondent was commissioned in 1980 to 1983, then the "first book" would disclose so (at least, for the years 1982 and 1983). However, he did not present said book. Neither did he present a certification from the Clerk of Court, RTC of Misamis Oriental, or documents from his files showing that he was commissioned in 1980 to 1983. Similarly, he did not submit a certificate of appointment for all those years. Under Section 238 of the Notarial Law, such certificate must be prepared and forwarded by the Clerk of Court, RTC, to the Office of the Solicitor General, together with the oath of office of the notary public.^[11]

Thus, the Investigating Justice concluded, based on the evidence presented by the complainant, that the respondent notarized documents in 1980 and 1983 without being commissioned as a notary public therefor, considering that his earliest commission of record was on January 9, 1984.^[12]

The Procedural Issues

Before the Court passes upon the merits of the instant complaint, a brief backgrounder.

On the Applicability of Resolution A.M. No. 02- 9-02-SC

On September 17, 2002, we issued Resolution A.M. No. 02-9-02-SC,^[13] to wit:

Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and the court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.

In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinary sanctioned as a member of the Bar. Judgment in both respects may be incorporated in one decision or resolution.

Before the Court approved this resolution, administrative and disbarment cases against members of the bar who were likewise members of the court were treated

separately. Thus, pursuant to the new rule, administrative cases against erring justices of the CA and the Sandiganbayan, judges, and lawyers in the government service may be automatically treated as disbarment cases. The Resolution, which took effect on October 1, 2002, also provides that it shall supplement Rule 140 of the Rules of Court, and shall apply to administrative cases already filed where the respondents *have not yet been required to comment* on the complaints.

Clearly, the instant case is not covered by the foregoing resolution, since the respondent filed his Answer/Comment on June 13, 2001.

*The Procedure To Be Followed
In Disbarment Cases Involving
A Retired Judge For Acts
Committed While He Was Still
A Practicing Lawyer*

The undisputed facts are as follows: (1) the respondent is a retired judge; (2) the complainant prays for his disbarment; and (3) the acts constituting the ground for disbarment were committed when the respondent was still a practicing *lawyer*, before his appointment to the judiciary. Thus, the respondent is being charged not for acts committed as a judge; he is charged, as a member of the bar, with notarizing documents without the requisite notarial commission therefor.

Section 1, Rule 139-B of the Rules of Court on Disbarment and Discipline of Attorneys provides:

Section 1. Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon verified complaint of any person. The complaint shall state clearly, and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against erring attorneys including those in the government service: *Provided, however*, That all charges against Justices of the Court of Tax Appeals and lower courts, even if lawyers are jointly charged with them, shall be filed with the Supreme Court: *Provided, further*, That charges filed against Justices and Judges before the IBP, including those filed prior to their appointment to the Judiciary, shall be immediately forwarded to the Supreme Court for disposition and adjudication.^[14]

The investigation may thereafter commence either before the Integrated Bar of the Philippines (IBP), in accordance with Sections 2 to Sections 12 of Rule 139-B, or before the Supreme Court in accordance with Sections 13 and 14, thus:

Section 13. *Supreme Court Investigators*. — In proceedings initiated *motu proprio* by the Supreme Court or in other proceedings when the interest of justice so requires, the Supreme Court may refer the case for