

EN BANC

[A.C. NO. 4595, February 06, 2004]

**OCTAVIO J. TRAYA, JR., COMPLAINANT, VS. ATTY. FRANCISCO
M. VILLAMOR, RESPONDENT.**

D E C I S I O N

CARPIO MORALES, J.:

In a sworn letter dated May 22, 1996 addressed to then Chief Justice Andres A. Narvasa, complainant, Octavio J. Traya, Jr., Municipal Mayor of Abuyog, Leyte, brought attention to an affidavit purportedly executed by one Rolando de la Cruz which was spurious but which was nevertheless notarized by Atty. Francisco M. Villamor, respondent herein, who, it was informed, had previously been reprimanded and admonished by the Supreme Court in *Realino v. Villamor*^[1] in connection with the discharge of his notarial duties.

From the record of this case, it is gathered that one Engineer Cynthia de la Cruz Catalya filed an application for building permit in connection with the renovation of a building situated on a lot owned by her brother Rolando C. de la Cruz (de la Cruz). One of the documents required in the processing of the application was an affidavit to be executed by the lot owner. Since de la Cruz was a resident abroad, an affidavit was prepared wherein it was made to appear that he was a resident of Loyonsawang, Abuyog, Leyte; that he was the owner of the lot whereon the building subject of the application for the issuance of a building permit was situated; and that he was executing the affidavit "to attest to the veracity of the abovementioned facts thereby certifying (*sic*) the requirements of the Housing and Land Use Regulatory Board relative to the application for Locational Clearance/Certificate of Zoning Compliance."

Respondent notarized the purported affidavit of de la Cruz who was residing abroad; hence, the letter-complaint of complainant.

Acting on the letter-complaint, this Court required respondent to comment thereon.

In respondent's comment denominated as "Answer," he proffered the following explanation:

In the afternoon, at more or less 2:00 P.M. of Jan. 29, 1996, a Chinese mestizo appeared in the law office of herein respondent. After a customary courtesy, he made known his purpose, stating that he wanted his affidavit (Annex "A") notarized, which was being handed simultaneously to the herein respondent. Respondent after briefly perusing the same, asked who Rolando de la Cruz was, and the chinese mestizo, declared that he was the one. Then respondent asked if the signature over the space for the affiant was his, and he affirmed the

same as his. Then respondent asked for the production of his Res. Certificate, but he said, he did not bother to bring the same along with him anymore as, he has already indicated his Serial number, in the jurat portion together with the date of issue and place of issue. Finally, respondent asked him if he understood the written contents of his affidavit, and he affirmed that he did (*sic*) understand because, he was applying for a clearance with the Municipal Planning and Development Coordinator for the renovation/repair of the second floor of his building. And respondent having become fully satisfied already with all the pertinent matters relevant to the affidavit to be notarized, without any more much ado, notarized the same.^[2] (Underscoring supplied)

The case was referred to the Integrated Bar of the Philippines (IBP) for investigation and report. The IBP Committee on Bar Discipline noted that the "main defense" of respondent was that complainant filed the case against him because he (respondent) filed cases against complainant before the Ombudsman.

Resolving in the affirmative the issue of whether respondent "violated the legal ethics of a notary public," Commissioner Wifredo E. J. E. Reyes of the IBP Committee on Bar Discipline, by Report and Recommendation dated April 26, 2002, recommended that respondent's commission as notary public be suspended for one (1) year.

By Resolution No. XV-2002-409, the IBP Board of Governors resolved to adopt and approve, with modification, the Report and Recommendation of the Investigating Commissioner, it finding that respondent failed to observe the proper procedure in determining if a person appearing before him is the same person who executed the document presented for notarization.

The IBP Board accordingly resolved to suspend respondent as notary public and disqualify him from appointment as notary public for one (1) year from receipt of notice of decision.

In the earlier mentioned case of *Realino v. Villamor*^[3] of which herein respondent was the respondent, this Court stressed its repeated pronouncement that it is the duty of the notarial officer to demand that the document presented to him for notarization should be **signed in his presence**, for "[a] notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe utmost care in complying with the elementary formalities in the performance of their duties."^[4]

By respondent's admission, the affidavit was already signed by the purported affiant at the time it was presented to him for notarization. Respondent thus failed to heed his duty as a notary public to demand that the document for notarization be **signed in his presence**.

Also by respondent's admission, when the affidavit was brought to him, it **already** bore the Residence Certificate Number of the "affiant" which residence certificate number turned out to be that of de la Cruz's brother in law, Benjamin Catalya, husband of his sister Engineer Cynthia de la Cruz Catalya. Where a lawyer as a notary makes it appear in the acknowledgment or jurat of a contract that the affiant