

THIRD DIVISION

[A.C. No. 9417, November 18, 2020]

JOHN PAUL KIENER, COMPLAINANT, VS. ATTY. RICARDO R. AMORES, RESPONDENT.

DECISION

HERNANDO, J.:

This administrative case arose from two identical Complaints^[1] filed by complainant John Paul Kiener (**John Paul**) before the Office of the Bar Confidant^[2] (**OBC**) and the Office of the Court Administrator^[3] (**OCA**) praying for the imposition of disciplinary sanctions^[4] against respondent Atty. Ricardo R. Amores (**Atty. Amores**). The OCA referred the Complaint filed before it to the OBC.^[5]

The Factual Antecedents:

In his Complaint, John Paul alleges that Atty. Amores committed an act that is in violation of the 2004 Rules on Notarial Practice^[6] (**Rules on Notarial Practice**) and Canons 1, 10, and 19 of the Code of Professional Responsibility (**CPR**).^[7]

John Paul was the accused in a criminal case for Estafa entitled *People of the Philippines v. John Paul Kiener*,^[8] pending before the Municipal Trial Court in Lapu-Lapu City, Cebu.^[9] Atty. Amores was the private prosecutor on behalf of private complainant Pado's Divecamp Resort Corporation (**Corporation**).^[10] He was also a commissioned notary public at that time.^[11] Irene Medalla (**Irene**), the Corporate Secretary of the Corporation, executed a Secretary's Certificate on July 18, 2007.^[12] The Secretary's Certificate authorized Cho Chang Je, the Chairman of the Board of Directors of the Corporation, to file a criminal case (referring to the above mentioned criminal case) on behalf of the Corporation against John Paul. Atty. Amores was the one who notarized the Secretary's Certificate.^[13] The Secretary's Certificate was attached to the Complaint-Affidavit filed in the criminal case.^[14]

John Paul claims that the Secretary's Certificate was defective and improperly notarized.^[15] He alleges that Atty. Amores as notary public failed to indicate the serial number of his notarial commission in the notarial certificate, and that Irene's signature appears to have been printed or scanned (digital copy) into the document.^[16] He asserts that because of the use of a printed signature, Irene could not have been physically present before Atty. Amores when the document was signed and notarized.^[17] John Paul claims that this act constitutes a violation of the requirement of physical presence of the signatory in the performance of a notarial act as provided in Rule IV, Section 2 of the Rules on Notarial Practice.^[18] Further, he claims that this act likewise constitutes a violation of Rule 1.01,^[19] Canon 1, Rule

10.01,^[20] Canon 10, and Rule 19.01,^[21] Canon 19, of the CPR.^[22]

On August 16, 2012, Atty. Amores filed a *Motion for Extension of Time to File Comment with Motion for Consolidation of Instant Case with Administrative Case No. 9055*.^[23]

In his Comment,^[24] Atty. Amores claims that Irene signed the Secretary's Certificate in his presence.^[25] He counters that the use of a printed or scanned signature does not in itself constitute a violation of the Rules on Notarial Practice.^[26] He farther claims that it is common practice for the signatory to sign only one copy and to reproduce the originally signed copy to the desired number of copies before notarization.^[27] Moreover, John Paul's allegations are matters that could be raised by way of defense in the criminal case instead of being used for the filing of an administrative case against him.^[28] He also claims that the instant case is a personal attack and a form of harassment given that there is another pending administrative case against him.^[29]

On June 19, 2013, this Court, upon the recommendation of the OBC, ordered the consolidation of the instant administrative case with Administrative Case No. 9055 (**A.C. No. 9055**), which was already referred to the Integrated Bar of the Philippines (**IBP**).^[30] The instant case was likewise referred to the IBP for investigation, report and recommendation.^[31]

A.C. No. 9055, entitled *John Paul Kiener and Julie S. Kiener v. Atty. Ricardo D. Amores*, involves a Complaint charging Atty. Amores with violation of the CPR when he committed acts of Gross Negligence or Misconduct in belatedly entering his appearance, failing to attend hearings, submitting pleadings beyond the reglementary period, and falsely representing to the lower court that there was an on-going amicable settlement among the parties in a case.^[32] The IBP recommended that Atty. Amores be suspended from the practice of law for six months with warning that repetition of the same act shall be dealt with more severely.^[33]

The Court notes that A.C. No. 9055 has already been resolved even though consolidated with the instant case. In a Resolution^[34] dated June 8, 2016 of the First Division of this Court, Atty. Amores was found guilty of Gross Misconduct, Inexcusable Negligence, Gross Incompetence, and Gross Neglect of Duty as a lawyer. He was suspended from the practice of law for six months, with warning that repetition of the same act shall be dealt with more severely.^[35] He was subsequently held in contempt, where he paid a fine of P5,000.00, for his failure to immediately obey the order of his suspension from practice of law as mandated in the said Resolution.^[36] Eventually, in a subsequent Resolution dated July 11, 2018, the Court lifted the order of his suspension and allowed Atty. Amores to resume his practice of law effective immediately.^[37]

Report and Recommendation of the IBP:

Reverting to the instant case, Investigating Commissioner Erwin L. Aguilera recommended the revocation of Atty. Amores's appointment as Notary Public and his

disqualification from reappointment as such for a period of two years.^[38] He found that Atty. Amores failed to ascertain the genuineness of Irene's signature when he notarized the document and that there was no evidence to show that Irene was physically present.^[39]

However, in Resolution^[40] No. XX1-2015-332 dated April 19, 2019, the IBP Board of Governors (BOG) reversed and set aside the Investigating Commissioner's Report and Recommendation, and resolved to dismiss the administrative case. The Resolution states:

RESOLVED to REVERSE, as it is hereby REVERSED and SET ASIDE, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and considering that the Secretary's Certificate was personally signed by Irene Medalla and she was present during its notarization, the case against Respondent is hereby DISMISSED.^[41]

In its Extended Resolution,^[42] the IBP BOG ruled that Irene indeed appeared before Atty. Amores.^[43] As notary public, Atty. Amores carries with him the presumption that he has performed his duties as required.^[44] This presumption of regularity was not overcome by John Paul.^[45] Nothing on record shows that Irene was not or could not be physically present at that time.^[46] Moreover, John Paul had no personal knowledge of the events to support his allegations.^[47]

John Paul filed a Motion for Reconsideration^[48] but this was subsequently denied by the IBP BOG in a Resolution dated June 17, 2019.^[49]

Our Ruling

The Court disagrees with the IBP. Atty. Amores should be held administratively liable for violating the Rules on Notarial Practice when he notarized a document without the presence of the signatory and failed to indicate his commission number in the notarial certificate.

It is settled that "notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined."^[50] Atty. Amores is, therefore, bound to strictly comply with these notarial rules.

A notary public is empowered to perform a variety of notarial acts, one of which is a *jurat*. Atty. Amores performed a *jurat* when he notarized the Secretary's Certificate with Irene signing as the Corporate Secretary. Rule II, Section 6 of the Rules on Notarial Practice defines a *jurat* as:

Section 6. *Jurat*. — "*Jurat*" refers to an act in which an individual on a single occasion:

- (a) appears in person before the notary public and presents an instrument or document;
- (b) is personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules;
- (c) signs the instrument or document in the presence of the notary; and
- (d) takes an oath or affirmation before the notary public as to such instrument or document.

This provision requires that the signatory, or the affiant in some cases, physically appears before the notary public and signs the document in his presence. Rule IV, Section 2 of the same rules further provides:

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.

This provision bolsters the requirement of physical appearance as it prohibits the notary public from performing a notarial act if the signatory is not in his/her presence at the time of the notarization.

In *Prospero v. Delos Santos*,^[51] the Court emphasized that "a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed."

To repeat, Atty. Amores failed to observe the requirement of physical presence when he notarized the Secretary's Certificate. Upon examination of the document, and as admitted by Atty. Amores himself, Irene's signature in the Secretary's Certificate attached to the complaint-affidavit in the criminal case was merely printed. In short, it was not an actual handwritten signature of Irene. Atty. Amores's defense that Irene physically signed one copy that was subsequently reproduced then notarized, does not convince this Court. Atty. Amores did not present any proof that Irene was indeed physically in his presence upon the signing and notarization of the document. It goes without saying that Irene had signed the document elsewhere, scanned it, and then sent it electronically to Atty. Amores for the latter to print, reproduce, notarize, and use for the designated purpose. If indeed Irene had personally appeared before him, he should have asked her right then and there to affix her signature to each and every copy of the document, not just to one copy.

It is also worth mentioning that Atty. Amores failed to indicate the serial number of his notarial commission in the concluding part of the notarial certificate of the Secretary's Certificate as required by the rules.^[52]