

FIRST DIVISION

[A.C. No. 11131, March 13, 2019]

DENNIS M. MAGUSARA, PETITIONER, VS. ATTY. LOUIE A. RASTICA, RESPONDENT.

DECISION

JARDELEZA, J.:

This is a disbarment complaint^[1] filed by Dennis M. Magusara (complainant) on March 1, 2011 before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP-CBD) charging Atty. Louie A. Rastica (respondent) of violating Section 20(d), Rule 138 of the Rules of Court.^[2]

The Facts

On November 14, 2007, Yap-Siton Law Office filed a formal complaint before the Commission on Elections (COMELEC) on behalf of its client Ramie P. Fabillar (Ramie), charging complainant of committing an election offense punishable under Section 261, paragraph (e) of the Omnibus Election Code.^[3] Attached to the formal complaint are Ramie's ComplaintAffidavit,^[4] his medical certificate,^[5] a police blotter,^[6] and Wilson Fabillar's (Wilson) affidavit.^[7] Ramie's complaint-affidavit and Wilson's affidavit were subscribed and sworn to before respondent. On February 10, 2008, Ramie filed an Affidavit of Desistance^[8] before the COMELEC, claiming that he was surprised to find that there was a complaint for election offense against complainant supposedly filed by him. He narrated that he thought that what he signed was a complaint for grave coercion against complainant. Since the contents of the complaint-affidavit prepared by respondent were not translated to him in the local dialect, he did not understand its meaning when he signed the same. According to complainant, this alleged act of respondent violated Section 20(d),^[9] Rule 138 of the Rules of Court.

To support the present complaint, complainant attached several documents which appear to be pleadings and supporting documents he submitted before the IBP Negros Oriental Chapter in relation to a 2008 disbarment complaint he filed against respondent. Among these documents are: (1) two affidavits^[10] executed by Wilson dated December 7, 2007 and August 5, 2008, respectively, showing different signatures appearing above his name; (2) a manifestation^[11] dated February 21, 2011 where complainant reiterated his allegations in the 2008 disbarment complaint and accused IBP Negros Oriental Chapter of causing delay in the proceedings for releasing the resolution only after two years and six months from the filing of the complaint; and (3) two documents^[12] allegedly notarized by respondent despite the expiration of his notarial commission.

In his answer,^[13] respondent maintains that the allegations are baseless and the present complaint should be dismissed outright for lack of a certification of non-forum shopping. He claims that the present complaint was instituted by complainant as revenge for having been defeated by respondent's mother in the election for barangay chairperson. Respondent pointed out that the facts stated in the complaint-affidavit are similar to those which are declared in the police and barangay blotters attached therein, and to the complaint-affidavit^[14] filed before the Provincial Prosecutor's Office charging complainant of grave coercion. Aside from these, the facts and circumstances attested to by Ramie in his complaint-affidavit for the election offense were corroborated by Wilson's affidavit, which was subscribed and sworn to before Prosecutor Violeta Baldado. Moreover, Ramie graduated from high school and worked in Metro Manila. His education and work experience show that he is capable of managing his affairs; thus, he cannot disavow knowledge and understanding of the contents of his complaint-affidavit in the election offense. Lastly, the divergence in the affidavits of desistance Ramie executed shows the influence and deceitful intentions of complainant. In the affidavit of desistance dated February 4, 2008 Ramie filed in the grave coercion case, he said that he was "doubtful of [his] actuations that [he was] also a pardedicto and that being neighbor and friend, [he] absolutely withdraw the case."^[15] On the other hand, in the affidavit of desistance dated February 10, 2008 Ramie filed before the COMELEC, the reason he gave for desisting was "I was only made to sign the Complaint-Affidavit and the same was not translated to me, and the person who prepared the [same] is the son of Brgy. Chairman Lorna Rastica, Atty. Louie Rastica and the same was not translated x x x in local dialect so as I can understand."^[16] As clarification, he presented an affidavit executed by Ramie on August 5, 2008 where the latter stated that he fully understood the contents of the complaint-affidavit for the election offense.^[17]

On June 22, 2011, complainant filed his preliminary conference brief, where aside from violation of Section 20(d), Rule 138 of the Rules of Court, he included as issue the alleged notarization of respondent without authority.^[18]

On September 9, 2011, complainant filed before the IBP-CBD a verified complaint "in compliance" with the order of the Investigation Commissioner during the August 19, 2011 hearing. In this verified complaint, complainant accused respondent of violating notarial laws and rules. Notably, the description of the two documents allegedly notarized without authority is similar to the two documents presented in the 2008 disbarment complaint filed before the IBP Negros Oriental Chapter.^[19]

During the scheduled clarificatory hearing, only respondent appeared.^[20] Both parties failed to submit position papers.

In his Report and Recommendation dated November 14, 2012, Investigating Commissioner Oliver A. Cachapero (Commissioner Cachapero) recommended the dismissal of the complaint against respondent for lack of merit. He noted that Ramie graduated from high school, where the English language is the medium of instruction. As such, he "must have been equipped with the basic learning of the said language and must have fair understanding of the same whether written or spoken."^[21] It is, thus, incredible that he was aware of the contents of the complaint-affidavit in the grave coercion case he executed and filed which is written

in the English language, yet not have any knowledge of the contents of a similar complaint for election offense he filed against complainant. Further, Ramie in his affidavit^[22] dated August 5, 2008 has already clarified that he understood the contents of the complaint-affidavit for election offense. There is, thus, no sufficient evidence showing respondent's supposed breach of his ethical duties.^[23] No discussion was made regarding the alleged notarization of documents without authority.

The IBP Board of Governors adopted and approved the recommendation to dismiss the complaint in Resolution No. XX-2013-250.^[24] Complainant, however, filed a motion for reconsideration, alleging that the IBP Board of Governors erred in not taking into consideration the fact that respondent engaged in notarial practice without authority.^[25]

On May 3, 2014, the IBP Board of Governors issued Resolution No. XXI-2014-245^[26] where it resolved to grant complainant's motion for reconsideration. The Board of Governors found that respondent notarized two documents prior to the approval of his notarial commission. Accordingly, it disqualified respondent from being commissioned as a notary public for a period of two years and ordered the revocation of his notarial commission, if existing.

Respondent filed a motion for reconsideration.^[27] He claims that he was not given the chance to be heard and defend himself because: (1) the issue on the notarization of documents without authority was not part of the original complaint; and (2) no investigation was ever held to give him an opportunity to verify the authenticity of the alleged documents notarized without authority.^[28]

The Court's Ruling

We do not agree with the IBP Board of Governors.

At the outset, we note, through complainant's own submissions, that he filed two complaints against respondent. The first is the 2008 disbarment complaint for violation of the rules on notarial practice filed before the IBP Negros Oriental Chapter. The second is the present complaint for violation of Section 20(d), Rule 138 of the Rules of Court filed before the IBP-CBD.

We agree with Commissioner Cachapero's finding that there was no substantial evidence to prove that respondent violated Section 20(d), Rule 138 of the Rules of Court. Respondent's narration of facts and the documentary evidence he presented, especially the affidavit of Ramie clarifying that he understood the contents of the subject complaint-affidavit, substantiated his claim of innocence.

We also agree with the Commissioner Cachapero in excluding the allegation that respondent engaged in notarial practice despite the expiration of his notarial commission in his resolution of the complaint. A review of complainant's pleadings shows that this issue, along with the documents submitted to support the charge (specifically the compromise agreement between the Municipal Treasurer of Bindoy, Negros Oriental and Felix Villanueva, Jr. and the verification executed by Kristie Marie E. Fernandez),^[29] were already subject of an earlier investigation by the IBP