

THIRD DIVISION

[A.C. No. 7169, March 11, 2019]

**SPOUSES RAY AND MARCELINA ZIALCITA, COMPLAINANTS, VS.
ATTY. ALLAN LATRAS, RESPONDENT.**

R E S O L U T I O N

PERALTA, J.:

The case stemmed from an administrative complaint^[1] for disbarment filed by spouses Ray and Marcelina Zialcita against Atty. Allan Latras for violation of the notarial law.

The spouses obtained a loan from a certain Ester Servacio to aid in the construction of their commercial building. As security for the loan, a Deed of Sale with Right to Repurchase, for a period of one year, over a commercial land and building, was executed by the spouses in favor of Servacio in the amount of P11 Million. The spouses alleged that Servacio and Atty. Latras fraudulently substituted the first page of the Deed of Sale with Right to Repurchase with a Deed of Absolute Sale for P2 Million. Furthermore, the spouses contended that Atty. Latras acted as legal counsel and notary public for Servacio, and notarized the deed of absolute sale without their knowledge and appearance in his office.

In his Comment, Atty. Latras denied having substituted the first page of the notarized document. He contended that the burden to prove the allegation of such fraud rests upon the complainants. To bolster his defense, he added that it was one of the spouses, Ray Zialcita, who asked for the dispensation of their appearance. He further contended that as long as there was the affirmation as to the contents and truth of what are stated in the document, then such notarization may be considered as substantial compliance with the requirements under the notarial law.

On July 19, 2013, the Commission on Bar Discipline of the Integrated Bar of the Philippines (*IBP*) found that insofar as the violation of the notarial law by Atty. Latras is concerned, there is no doubt that he did not act in accordance with the law. The Commission agreed with the spouses that the notarial act must be done in the presence of the parties personally appearing.

However, the complainants failed to show that Atty. Latras acted fraudulently nor was with connivance with anyone in notarizing the document; hence, the Commission recommended that mere reprimand is sufficient.^[2]

On September 27, 2014, a Resolution^[3] was passed by the IBP Board of Governors which reads:

RESOLVED to *ADOPT* and *APPROVE*, as it is hereby *ADOPTED* and *APPROVED*, with modification, the Report and Recommendation of the

Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and for violation of the 2004 Rules of Notarial Practice, Atty. Allan Latras' notarial commission if presently commissioned is immediately *REVOKED*.

FURTHER, he is ***DISQUALIFIED*** from being commissioned as Notary Public for two (2) years and ***SUSPENDED*** from the practice of law for six (6) months. (Emphases and italics supplied.)

Atty. Latras moved for reconsideration of the above resolution, but the same was denied.

The Court's Ruling

The Court upholds the findings and recommendation of the IBP Board of Governors.

The 2004 Rules on Notarial Practice emphasizes the necessity of the parties to personally appear before the notary public. Rule II, Section 1 and Rule IV, Section 2 (b) provide:

SECTION 1. Acknowledgment. - "Acknowledgment" refers to an act in which an individual on a single occasion:

(a) appears in person before the notary public and presents an integrally complete instrument or document;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity.

x x x x

SEC. 2. Prohibitions. — 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. (Emphasis supplied.)

In the instant case, it is undisputed that Atty. Latras notarized the subject document without the personal appearance of the spouses. In fact, in his Comment,^[4] he