

EN BANC

[A.C. No. 12289, April 02, 2019]

ATTY. ANASTACIO T. MUNTUERTO, JR.; ATTY. RAMON JOSE G. DUYONGCO; ATTY. MARIO Y. CAVADA; AND ATTY. CHAD RODOLFO M. MIEL, COMPLAINANTS, V. ATTY. GERARDO WILFREDO L. ALBERTO, RESPONDENT.

DECISION

BERSAMIN, C.J.:

A lawyer who notarizes documents without a notarial commission, and assists and abets the unauthorized practice of law by a non-lawyer, deliberately violates the Lawyer's Oath and transgresses the canons of the *Code of Professional Responsibility*. He thereby manifests a lack of respect for the law and dishonesty, and deserves to be severely punished.

Antecedents

We hereby consider and resolve the disbarment complaint filed by the complainants charging the respondent with falsification of public documents, and willful and deliberate violations of his oath as a lawyer, and of the mandatory rules of the *Code of Professional Responsibility*.^[1]

The complainants aver that the respondent was the counsel of record of Cristeto E. Dinopol, Jr., who had instituted an action for reconveyance and recovery of possession and damages against Singfil Hydro Builders in the Regional Trial Court (RTC), Branch 47, in Masbate City docketed as Civil Case No. 6835; that the respondent had attached to the complaint a supplemental agreement and an amended joint venture agreement separately acknowledged before him as a notary public for and in Cavite City; that he had antedated his notarizations; that, however, the Notarial Division of the RTC in Cavite City certified that it had "*no record of any Commission/Order appointing a certain Atty. Gerardo Wilfredo L. Alberto as Notary Public for the City of Cavite nor of any documents notarized by him, more specifically a document denominated as Supplemental & Amended Joint Venture Agreement;*"^[2] that he had not indicated his MCLE^[3] certificate of compliance number and the date of issue of such certificate;^[4] that realizing that the complaint he had filed was fatally defective, he had his client sign and file the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint*, with the amended complaint attached; and that the respondent had further falsified the supposed secretary's certificate to make it appear that he had been duly appointed as the acting corporate secretary of Singtrader JV Corporation, and that a resolution had been adopted by said corporation authorizing Cristeto E. Dinopol, Jr. as its representative relative to the filing of the necessary and proper actions.^[5]

Upon receipt of the administrative complaint against the respondent, the Integrated Bar of the Philippines (IBP) directed him to file his answer. However, he did not

comply, and for that reason he was declared in default.^[6]

The IBP then conducted a mandatory conference on June 18, 2016, but the respondent did not attend the same despite notice. Furthermore, he did not file his position paper.^[7]

Findings and Recommendation of the IBP

In her Report and Recommendation dated January 31, 2017, IBP Investigating Commissioner Rebecca Villanueva-Maala found the charges against the respondent established, and recommended his suspension from the practice of law for five years, to wit:

PREMISES CONSIDERED, we respectfully recommend that respondent, **ATTY. GERARDO WILFREDO L. ALBERTO**, be **SUSPENDED** for a period of **FIVE (5) YEARS** from receipt hereof as a lawyer and as a member of the Bar.

RESPECTFULLY SUBMITTED.^[8]

On November 27, 2017, the IBP Board of Governors adopted the findings and recommendation of IBP Investigation Commissioner Villanueva-Maala, viz.:

RESOLVED to **ADOPT** the findings of fact and recommendation of the Investigating Commissioner, but modifying the recommended penalty to **SUSPENSION FROM THE PRACTICE OF LAW** for five (5) years.

RESOLVED FURTHER to recommend the imposition upon respondent of a **FINE** of Five Thousand Pesos (P5,000.00) for disregarding the Orders of the Commission.^[9]

The respondent did not appeal or move for reconsideration.

Issue

Did the respondent violate the Lawyer's Oath and the *Code of Professional Responsibility*: (a) by notarizing documents without having been issued a notarial commission; (b) by allowing a non-lawyer to sign a motion filed in court; and (c) by failing to indicate his MCLE compliance number in the complaint filed in connection with a pending case?

Ruling of the Court

We **ADOPT** with **MODIFICATION** the findings and recommendation of the IBP Board of Governors.

I

The respondent notarized the supplemental agreement and the amended joint venture agreement attached to the complaint he filed in Civil Case No. 6835.^[10] According to the findings by IBP Investigating Commissioner Villanueva-Maala, he held no notarial commission when he notarized the documents. Such lack of the notarial commission was confirmed by the certification issued by the Office of the Clerk of Court of the RTC in Cavite City to the effect that said office had no record of

any commission appointing the respondent a notary public for and in the City of Cavite.^[11]

The respondent should be subjected to strong disciplinary action for notarizing the documents without authorization or commission to do so.

To start with, the act of the respondent constituted a blatant violation of the injunction of the Lawyer's Oath to obey the laws. The law thereby violated is the 2004 *Rules on Notarial Practice*, which expressly defines a notary public as "any person commissioned to perform official acts under the [2004 *Rules on Notarial Practice*]."^[12] The commission, which is the grant of authority to perform notarial acts,^[13] is issued upon due application by the Executive Judge of the province or city where the applicant is to have a regular place of work or business after a summary hearing conducted by the Executive Judge following the publication of the notice of summary hearing in a newspaper of general circulation in said province or city, and after posting of the notice of summary hearing in a conspicuous place in the offices of the Executive Judge and of the Clerk of Court.^[14] Clearly, the exercise of the authority to notarize cannot simply be done by anyone.

The significance of the office of the notary public cannot be taken for granted. The notarial act is invested with public interest, such that only those who are qualified or authorized may act and serve as notaries public.^[15] The Court has expounded on the character of the office of the notary public in *Bernardo Vda. de Rosales v. Ramos*,^[16] stating thusly:

The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of the document under his hand and seal he gives the document the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. Where the notary public is a lawyer, a graver responsibility is placed upon him by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. Failing in this, he must accept the consequences of his unwarranted actions.

And, secondly, the respondent, by making it appear that he had been duly commissioned to act as notary public, thereby vested the documents with evidentiary value. Yet, because of the absence of a notarial commission in his favor, he foisted a deliberate falsehood on the trial court. He became guilty of dishonesty. He also trivialized the solemnity of notarizing the documents. Such effrontery transgressed the prohibition against unlawful, dishonest, immoral or deceitful conduct on his part as an attorney made explicit in Rule 1.01 of Canon 1 of the *Code of Professional Responsibility*, to wit: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."^[17]

II

The resolution issued in Bar Matter No. 1922,^[18] as amended, required the respondent to disclose in all the pleadings, motions and other papers he filed in

court of information on his compliance with the MCLE program of the Supreme Court. The resolution reads as follows:

In the Resolution of the Court *En Banc* dated January 14, 2014 in the above-cited administrative matter, the Court RESOLVED, upon the recommendation of the MCLE Governing Board, to:

(a) AMEND the June 3, 2008 resolution by repealing the phrase "*Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records*" and replacing it with "*Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action*"; and

(b) PRESCRIBE the following rules for non-disclosure of current MCLE compliance/exemption number in the pleadings:

(i) The lawyer shall be imposed a fine of P2,000.00 for the first offense, P3,000.00 for the second offense and P4,000.00 for the third offense;

(ii) In addition to the fine, counsel may be listed as a delinquent member of the Bar pursuant to Section 2, Rule 13 of Bar Matter No. 850 and its implementing rules and regulations; and

(iii) The non-compliant lawyer shall be discharged from the case and the client/s shall be allowed to secure the services of a new counsel with the concomitant right to demand the return of fees already paid to the non-compliant lawyer.

However, the respondent did not disclose his MCLE certificate of compliance number and the date of issue of the certificate in the complaint he filed in Civil Case No. 6835 of the RTC in Masbate City. Such non-disclosure was a flagrant disobedience to the aforequoted terms of the resolution issued in Bar Matter No. 1922.

It is good to mention that the respondent seemed to be a repeat violator of the requirement for disclosure under the resolution issued in Bar Matter No. 1922. He had been observed to have been guilty of the same omission in A.C. No. 12131,^[19] where the Court noted his having defied the order for him to submit his MCLE compliance, to wit:

With regard to the case docketed as SEC-MC13-138 pending before RTC Mandaluyong City, Branch 211, complainant also appeared as counsel for and signed the pleadings without a certificate of compliance for MCLE IV. Also, in its order dated August 19, 2014, the RTC directed complainant to show cause for his failure to comply with the directives of the court for him to submit his MCLE compliance. Up to the present, complainant has yet to comply with the order of the court.

III

The respondent was also liable for the charge of assisting and abetting the unauthorized practice of law by a non-lawyer because he had a non-lawyer sign and file the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint* despite him being the counsel of record of the plaintiff in Civil