

EN BANC

[A.C. No. 11099, September 27, 2016]

**LILY FLORES-SALADO, MINDA FLORES LURA, AND FE V. FLORES,
COMPLAINANTS, VS. ATTY. ROMAN A. VILLANUEVA, JR.
RESPONDENT.**

DECISION

BERSAMIN, J.:

Disbarment proceedings based on falsification or forgery of public documents should not be the occasion to establish the falsification or forgery. Such bases should first be duly and competently established either in criminal or civil proceedings appropriate for that purpose.

The Case

We hereby consider and resolve the disbarment complaint lodged against Atty. Roman A. Villanueva, Jr. for allegedly falsifying a public document concerning realty, and for allegedly concealing his true age in order to secure his appointment as state prosecutor.

Antecedents

Lily Flores-Salado, Minda Flores-Lura, Anacrito Flores, Angel Flores, Jr., and Fe Flores presented their adverse claim^[1] on the parcel of land situated in Nasipit, Agusan del Norte and registered under Transfer Certificate of Title (TCT) No. 7919 of the Registry of Deeds of Agusan del Norte under the names of Spouses Roman Villanueva, Jr. and Rosario L. Alipao.^[2] The Register of Deeds annotated the adverse claim on January 23, 2007 as Entry No. 67251.^[3] On December 27, 2007, an affidavit of waiver/withdrawal, which appeared to have been signed by them,^[4] was also annotated on TCT No. 7919 as Entry No. 72573.^[5] On March 26, 2008, the Register of Deeds canceled TCT No. 7919,^[6] and issued two new TCTs in the name of the respondent.^[7]

On October 29, 2009, complainants Lily Flores-Salado, Minda Flores Lura, and Fe Flores lodged their complaint with the Integrated Bar of the Philippines (IBP) charging the respondent with gross dishonesty on the basis of their assertion therein that they had not signed the affidavit of waiver/withdrawal.^[8] They thereby further charged him with dishonesty for concealing his true age in order to secure his appointment in 2006 as a state prosecutor. They avered that he was disqualified for the position because he had already been 70 years old at the time of his appointment,^[9] having been born on June 26, 1936; that they submitted as proof: (1) the residence certificate issued in the name of "Isabelo Villanueva, Jr.," whom

they claimed was the respondent himself, stating June 26, 1936 as his birthdate;^[10] (2) the deed of extrajudicial partition of the estate of Roman Villanueva, Sr. showing that the respondent was 14 years old when he signed the document as "Isabelo Villanueva";^[11] (3) the certification issued by the Municipal Civil Registrar of Tupi, South Cotabato^[12] showing that he was 26 years old when he got married on December 24, 1961; and (4) the affidavits respectively executed by his siblings, Francisca V. Flores^[13] and Tarcela V. Sajulan.^[14]

The respondent denied the charges, and imputed ill-motives to the complainants in filing the disbarment complaint against him.^[15] He contended that the complainants did not present sufficient proof showing that he had falsified the affidavit of waiver/withdrawal; and asserted that the basis for the partition of the contested property had been the compromise agreement entered into by him and his siblings, including Francisca, the complainants' mother;^[16] and that he had been born on November 29, 1943, as indicated in his birth certificate.^[17]

IBP Report and Recommendation

After due hearing, Commissioner Victor C. Fernandez of the IBP Commission on Bar Discipline (IBP-CBD) submitted his report and recommendation^[18] finding the respondent liable for gross misconduct in relation to the forged the affidavit of waiver/withdrawal, and recommended his two-year suspension from the practice of law. Commissioner Fernandez dismissed the charge of dishonesty in relation to the respondent's age because his birth certificate prevailed over the documents submitted by the complainants.^[19]

On March 20, 2013, the IBP Board of Governors issued Resolution No. XX-2013-278^[20] adopting the report and recommendation of Commissioner Fernandez, viz.:

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RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and finding the recommendation fully supported by the evidence on record and the applicable laws and rules and considering that Respondent was guilty of gross misconduct when he falsified an Affidavit of Waiver/Withdrawal by reason of which TCT Nos. RT-8320 and 8381 in his name were issued, Atty. Roman A. Villanueva, Jr. is hereby **SUSPENDED from the practice of law for two (2) years.** However, the charge of falsifying his age to qualify as DOJ Prosecutor is hereby Dismissed for lack of merit.^[21] (Bold emphasis in the original)

The parties respectively sought reconsideration.^[22] On June 6, 2015, the IBP Board

of Governors denied the respondent's motion for reconsideration but granted that of the complainants, to wit:

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RESOLVED to DENY Respondent's Motion for Reconsideration, there being no cogent reason to reverse the findings and resolution subject of the motion, it being a mere reiteration of the matters which had already been threshed out and taken into consideration.

RESOLVED FUTHER, to GRANT the Complainants' Motion for Reconsideration, considering Respondent's gross dishonesty by making himself younger when he applied as Public Prosecutor in the Department of Justice. Thus, Resolution No. XX-2013-278, dated March 20, 2013, is hereby **AFFIRMED with modification**, increasing the penalty imposed on Atty. Roman A. Villanueva, Jr. to **Suspension from the practice of law for three (3) years.**^[23] (Bold emphasis in the original)

Issue

Should the respondent be suspended from the practice of law for gross misconduct and gross dishonesty?

Ruling of the Court

We reverse the findings and recommendation of the IBP Board of Governors considering that the charges were not competently substantiated.

I

**Falsification must be proved in the
appropriate criminal or civil proceeding,
not in the disbarment proceeding**

The complainants support their allegations of falsification by presenting the affidavit of waiver/withdrawal itself and its annotation on TCT No. 7919; and by denying their having signed the same. However, such proof was inadequate to establish that the respondent had been the author of the alleged falsification of the affidavit of waiver/withdrawal.

We emphasize that allegations of falsification or forgery must be competently proved because falsification or forgery cannot be presumed.^[24] As such, the allegations should first be established and determined in appropriate proceedings,^[25] like in criminal or civil cases, for it is only by such proceedings that the last word on the falsity or forgery can be uttered by a court of law with the legal competence to do so. A disbarment proceeding is not the occasion to determine the issue of falsification or forgery simply because the sole issue to be addressed and determined therein is whether or not the respondent attorney is still fit to continue

to be an officer of the court in the dispensation of justice.^[26] Accordingly, we decline to rule herein whether or not the respondent had committed the supposed falsification of the affidavit of waiver/withdrawal in the absence of the prior determination thereof in the appropriate proceeding.

Moreover, the complainants have hereby challenged the due execution and authenticity of the affidavit of waiver/withdrawal, a notarized document.^[27] In view of this, the complainants' mere denial of having signed the affidavit of waiver/withdrawal did not suffice to overcome the positive value of it as a notarized document.^[28] It is settled that notarization converts a private document into a public document, whereby the document becomes entitled to full faith and credit upon its face.^[29] The notarized document then has in its favor the presumption of regularity, and to overcome the presumed regularity of its execution, whoever alleges the contrary should present evidence that is clear, convincing and more than merely preponderant.^[30]

II

The birth certificate is the best evidence of the respondent's date of birth

The complainants have also charged the respondent with dishonesty for having concealed his true age in order to secure his appointment as a state prosecutor. They have presented in support of the charge the residence certificate issued in the name of one "Isabelo Villanueva, Jr."; an extrajudicial settlement signed by one "Isabelo Villanueva"; the certificate issued by the Local Civil Registrar of Tupi, South Cotabato showing that the respondent was 26 years old when he got married in 1961; and the affidavits of the respondent's two siblings.

In contrast, the respondent submitted his certificate of birth that indicated his birthdate as "November 29, 1943."

Still, the complainants doubted the veracity of the respondent's birth certificate on the ground of its having been belatedly registered at his own instance.

The Court nonetheless finds for the respondent.

Firstly, as previously emphasized, the allegation of the falsity of the affidavit of waiver/withdrawal should first be determined in the appropriate criminal or civil proceeding, not in this proceeding for disbarment. Consequently, we desist from definitively ruling on the weight of the evidence presented by the complainants.

Secondly, a birth certificate consists of entries related to the fact of birth in public records, and is made in the performance of duty by the local civil registrar as a public officer.^[31] It is thus treated as the *prima facie* evidence of the fact of one's birth, and can be rebutted only by clear and convincing evidence to the contrary.^[32] As such, the birth certificate submitted by the respondent was decisive on the date of his birth in the absence of clearer and more convincing contrary evidence.

Thirdly, the veracity of the respondent's birth certificate cannot be successfully assailed on the basis alone of its being belatedly entered in the local civil registry.