

FIRST DIVISION

[A.M. No. RTJ-15-2406 [Formerly OCA IPI No. 11-3638-RTJ], February 18, 2015]

BENITO B. NATE, COMPLAINANT, VS. JUDGE LELU P. CONTRERAS, BRANCH 43, REGIONAL TRIAL COURT, VIRAC, CATANDUANES (THEN CLERK OF COURT, RTC-IRIGA CITY), RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This administrative case concerns allegations that respondent Judge Lelu P. Contreras committed three counts of grave misconduct while she was still holding the position Clerk of Court VI of the Regional Trial Court in Iriga City, Camarines Sur (RTC–Iriga City). According to the complaint, respondent allegedly notarized an administrative complaint; certified a document (a labor complaint) as a true copy of the original; and appeared as counsel for her father in a hearing before the Integrated Bar of the Philippines (IBP). Clerks of court are indeed authorized to act as *ex officio* notaries public under the Administrative Code of 1987 in relation to the 2002 Revised Manual for Clerks of Court.^[1] On the other hand, the Code of Conduct and Ethical Standards for Public Officials and Employees^[2] prohibit public officials and employees from engaging in the private practice of their profession. The 2004 Code of Conduct for Court Personnel^[3] and the 2004 Rules on Notarial Practice^[4] were not yet in force when respondent committed the purported offenses.

The Case

Complainant Atty. Benito B. Nate calls the attention of this Court to the supposed grave misconduct of respondent Contreras while she was still clerk of court and *ex officio* provincial sheriff of RTC–Iriga City. According to him, there were three instances in which respondent abused her authority.

First, respondent Contreras allegedly notarized an administrative complaint that was prepared by her own father and filed with this Court sometime in June 2003.^[5] Complainant Nate stresses that respondent could not have legally notarized a document. He points out that Section 3, Rule 4 of the 2004 Rules of Notarial Practice disqualifies notaries from performing a notarial act if they are related to the principal within the fourth civil degree of consanguinity or affinity. Furthermore, he argues that respondent acted beyond her authority when she notarized in Iriga City a document that was signed in the Municipality of Buhi, which was outside that city. We note that complainant was the subject of the administrative complaint filed by respondent’s father.

Next, complainant Nate claims that respondent certified a document as a true copy of the original, and that her sister-in-law later on used the certified document in a

labor case then pending with the National Labor Relations Commission in Naga City. [6] He points out that respondent, as an *ex officio* notary public, was empowered to authenticate only those documents that were in her custody. Since the document – an amended labor complaint – was not a document pending before the RTC–Iriga City, respondent allegedly went beyond her authority when she authenticated it.

Finally, purportedly without this Court’s prior written authority, respondent Contreras appeared as her father’s counsel before the Commission on Bar Discipline of the IBP. [7] Complainant Nate alleges that respondent herself admitted during the proceedings before the IBP that she had not yet obtained a written authority.

Respondent Contreras admits to all of these allegations. However, she maintains that her actions were allowed under the Manual for Clerks of Court. As regards the *first act*, she stresses that as *ex officio* notary public, she was authorized to administer oaths and notarize documents so long as no private document was involved. She then argues that the administrative complaint against a lawyer, which was eventually filed with this Court, was not considered a private document. In fact, it was her ministerial duty as clerk of court to sign the *jurat* portion of the complaint regardless of her relationship with the principal. Furthermore, she explains that the municipality of Buhi was within the territorial jurisdiction of the RTC–Iriga City.

With respect to the *second act*, she explains that the Manual for Clerks of Court allowed her to authenticate copies of documents, especially since the RTC in Iriga City did not have human resource management officers. Furthermore, she stresses that the power of clerks of court to authenticate documents as true copies of the original is not limited to copies of documents that are in their custody. Rather, she argues that a clerk of court may certify the authenticity of the copies so long as they are shown to be faithful reproductions of the original after a presentation and comparison of the documents.

Regarding the *last act*, respondent Contreras points out that the intended first hearing before the IBP was suspended, precisely because she informed the hearing officer that she had not yet received authority to appear as counsel for her father. She clarifies that the proceedings pushed through only when she was able to present her written authority [8] from this Court.

The Office of the Court Administrator (OCA) agrees with complainant as regards the first and the second acts. The OCA reiterates that as clerk of court and *ex officio* notary, respondent Contreras may notarize documents or administer oaths only when these are related to the exercise of her official functions. It then explains that there was no connection between her official functions and the administrative complaint of her father or the labor complaint of her sister-in-law. On the other hand, with regard to the third act, the OCA is of the view that respondent did not commit any irregularity, since she was authorized by this Court to represent her father in the administrative case he had filed.

The Issues

Whether Contreras is administratively liable for the following acts:

1. Affixing her signature to the *jurat* portion of the administrative complaint prepared by her father
2. Authenticating documents as genuine copies of the original labor complaint
3. Appearing as counsel before the IBP on behalf of her father

The Ruling

Clerks of court are authorized to act as *ex officio* notaries public under Sections 41^[9] and 42^[10] of the Administrative Code of 1987 in relation to Section D(1),^[11] Chapter VI of the 2002 Revised Manual for Clerks of Court.

Historically, justices of the peace courts, judges of municipal courts, and clerks of courts – as public officers and by virtue of their respective offices – were authorized to perform any act within the competency of regular notaries public.^[12] This meant that they had the power –

to administer **all oaths and affirmations** provided for by law, in all matters incident to his notarial office, and **in the execution of affidavits, depositions, and other documents requiring an oath**, and to receive the proof or acknowledgment of all writings relating to commerce or navigation x x x, **and such other writings as are commonly proved or acknowledged before notaries**; to act as a magistrate, in the writing of affidavits or depositions, and to **make declarations and certify the truth thereof under his seal of office, concerning all matters done by him by virtue of his office.**^[13]
(Emphases supplied)

One of the main reasons why these public officers were allowed to perform *any* notarial act was that there were still rural areas in the country that did not have regular notaries public.^[14] While some areas had notaries, not all of them kept regular office hours.^[15] Thus, residents of these communities had to travel to the provincial capital or to larger towns where they could find lawyers who also practiced as notaries.^[16] Consequently, in the interest of public service and in order for the people to have a more convenient and less expensive option, these public officers were appointed *ex officio* notaries public with the authority to perform any act within the competency of regular notaries public.^[17] As such, their services and the notarial fees they charged were for the account of the government.^[18]

As more lawyers and regular notaries public populated far-flung areas, the need for *ex officio* notaries public diminished as did their power. Thus, ever since this clarification was made by the Court in the 1980 case *Borre v. Moya*,^[19] the power of *ex officio* notaries public have been limited to notarial acts connected to the exercise of their official functions and duties.^[20] This means that since the promulgation of that ruling, they have no longer had the authority to notarize documents that do not bear any relation to the performance of their official functions, such as contracts and other acts of conveyance,^[21] affidavits,^[22] certificates of candidacy,^[23] special powers of attorney,^[24] pleadings,^[25] sworn applications for business permits,^[26] or other similar instruments. To repeat, the notarization of documents that have no

relation to the performance of their official functions is now considered to be beyond the scope of their authority as notaries public *ex officio*.^[27] Any one of them who does so would be committing an unauthorized notarial act,^[28] which amounts to engaging in the unauthorized practice of law^[29] and abuse of authority.^[30]

Consequently, the empowerment of *ex officio* notaries public to perform acts within the competency of regular notaries public – such as acknowledgments, oaths and affirmations,

jurats, signature witnessing, copy certifications, and other acts authorized under the 2004 Rules on Notarial Practice^[31] – is now more of an exception rather than a general rule. They may perform notarial acts on such documents that bear no relation to their official functions and duties only if (1) a certification is included in the notarized documents attesting to the lack of any other lawyer or notary public in the municipality or circuit; and (2) all notarial fees charged will be for the account of the government and turned over to the municipal treasurer.^[32]

To delve deeper into the question of what constitutes an action “connected to the exercise of their official functions and duties” as *ex officio* notaries public, clerks of court in particular may refer to the 2002 Revised Manual for Clerks of Court. Under the manual,^[33] they have general administrative supervision over court personnel. As officers of the court, they serve as custodians of court funds and revenues, records, properties, and premises. Thus, they generally act as its treasurer, accountant, guard, and physical plant manager. In other words, they take charge of the administrative aspects of the court’s business and chronicle its will and directions, aside from performing their more obvious function of attending court sessions. Further, they keep the records and the seal, issue processes, enter judgments and orders, and give – upon request – certified copies of the court’s records.

According to the manual, below are the general functions and duties of a Clerk of Court VI in a multiple-sala court:

D. GENERAL FUNCTIONS AND DUTIES OF CLERKS OF COURT AND OTHER COURT PERSONNEL

1. CLERKS OF COURT

1.1. Office of the Clerk of Court of a Multiple Sala Court

1.1.1. Clerk of Court

- 1.1.1.1. is the administrative officer of the Court under the supervision of the Executive Judge;
- 1.1.1.2. has control and supervision over his personnel, all properties and supplies in his office;
- 1.1.1.3. acts on applications for leave of absence and signs daily time records of his staff, as well as the security and janitorial service personnel;
- 1.1.1.4. determines docket fees;
- 1.1.1.5. assists in the raffle of cases to the branches and judicial notices/summons to accredited publishers;

- 1.1.1.6. issues clearances in appropriate cases;
- 1.1.1.7. acts as *ex-officio* notary public;
- 1.1.1.8. acts as *ex-officio* sheriff;
- 1.1.1.9. represents the Court in administrative dealings with the local government units and other agencies; and
- 1.1.1.10. performs and discharges such duties as may be assigned by the Executive Judge.

Proceeding now to the first act complained about, we agree with the OCA findings that respondent's act of affixing her signature to the jurat portion of the administrative complaint prepared by her father had no direct relation to her work as the then clerk of court of RTC-Iriga City. Under Rule 139-B of the Rules of Court, the proceedings involving the disbarment and discipline of attorneys shall be conducted before the IBP.^[34] This means that clerks of court are not among the touchpoints in the regular procedure pertaining to complaints against an attorney. Neither may a pleading in a case involving lawyers be filed with the RTC.

Respondent defends her actions by arguing that she was guided by the test of whether or not the instrument she notarized was considered a private document. While we agree with her that *ex officio* notaries public are not authorized to perform a notarial act in relation to private documents, the applicable test is not based merely on the nature of the transaction as private, but also on the relationship between the document and the official functions and duties of the *ex officio* notary public.^[35] For clerks of court, a failsafe guideline for determining the coverage of their authority as *ex officio* notaries public is to refer to the functions and duties of their position as outlined in the 2002 Revised Manual for Clerks of Court.

We apply the same legal reasoning to the second act of respondent being complained about; that is, her certification of a copy of her sister-in-law's labor complaint. Respondent herself admits that the document was filed before the National Labor Relations Commission in Naga City, not the RTC-Iriga City. Thus, in the regular course of her duties, she would not have come across, encountered, or been in custody of the document. While we agree with her that clerks of court are allowed to perform the notarial act of copy certification, this act must still be connected to the exercise of their official functions and duties – meaning to say, it must be done in connection with public documents and records that are, by virtue of their position, in their custody.

With regard to the third act, we reiterate that the primary employment of court personnel must be their full-time position in the judiciary,^[36] which is the chief concern requiring their dutiful attention. Nevertheless, we recognize that the Code of Conduct and Ethical Standards for Public Officials and Employees does allow for limited exceptions. Section 7(b)^[37] thereof in relation to Rule X, Section 1(c)^[38] of its implementing rules, provides that public officials and employees are prohibited from engaging in the private practice of their profession unless authorized by the Constitution, law, or regulation; and under the condition that their practice will not conflict or tend to conflict with their official functions.

Thus, pursuant to the Court's administrative supervision over all court personnel,^[39] we have on a number of occasions, but on a case-by-case basis,^[40] granted^[41]