

THIRD DIVISION

[A.C. No. 6252, October 05, 2004]

**JONAR SANTIAGO, COMPLAINANT, VS. ATTY. EDISON V.
RAFANAN, RESPONDENT.**

DECISION

PANGANIBAN, J.:

Notaries public are expected to exert utmost care in the performance of their duties, which are impressed with public interest. They are enjoined to comply faithfully with the solemnities and requirements of the Notarial Law. This Court will not hesitate to mete out appropriate sanctions to those who violate it or neglect observance thereof.

The Case and the Facts

Before us is a verified Complaint^[1] filed by Jonar Santiago, an employee of the Bureau of Jail Management and Penology (BJMP), for the disbarment of Atty. Edison V. Rafanan. The Complaint was filed with the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) on January 16, 2001. It charged Atty. Rafanan with deceit; malpractice or other gross misconduct in office under Section 27 of Rule 138^[2] of the Rules of Court; and violation of Canons 1.01, 1.02 and 1.03^[3], Canon 5^[4], and Canons 12.07^[5] and 12.08 of the Code of Professional Responsibility (CPR).

In his Report, IBP Investigating Commissioner Leland R. Villadolid Jr. summarized the allegations of the complainant in this wise:

"x x x. In his Letter-Complaint, Complainant alleged, among others, that Respondent in notarizing several documents on different dates failed and/or refused to: a) make the proper notation regarding the cedula or community tax certificate of the affiants; b) enter the details of the notarized documents in the notarial register; and c) make and execute the certification and enter his PTR and IBP numbers in the documents he had notarized, all in violation of the notarial provisions of the Revised Administrative Code.

"Complainant likewise alleged that Respondent executed an Affidavit in favor of his client and offered the same as evidence in the case wherein he was actively representing his client. Finally, Complainant alleges that on a certain date, Respondent accompanied by several persons waited for Complainant after the hearing and after confronting the latter disarmed him of his sidearm and thereafter uttered insulting words and veiled threats."^[6]

On March 23, 2001, pursuant to the January 19, 2001 Order of the CBD,^[7] Atty. Rafanan filed his verified Answer.^[8] He admitted having administered the oath to the affiants whose Affidavits were attached to the verified Complaint. He believed, however, that the non-notation of their Residence Certificates in the Affidavits and the Counter-affidavits was allowed.

He opined that the notation of residence certificates applied only to documents acknowledged by a notary public and was not mandatory for affidavits related to cases pending before courts and other government offices. He pointed out that in the latter, the affidavits, which were sworn to before government prosecutors, did not have to indicate the residence certificates of the affiants. Neither did other notaries public in Nueva Ecija -- some of whom were older practitioners -- indicate the affiants' residence certificates on the documents they notarized, or have entries in their notarial register for these documents.

As to his alleged failure to comply with the certification required by Section 3 of Rule 112^[9] of the Rules of Criminal Procedure, respondent explained that as counsel of the affiants, he had the option to comply or not with the certification. To nullify the Affidavits, it was complainant who was duty-bound to bring the said noncompliance to the attention of the prosecutor conducting the preliminary investigation.

As to his alleged violation of Rule 12.08 of the CPR, respondent argued that lawyers could testify on behalf of their clients "on substantial matters, in cases where [their] testimony is essential to the ends of justice." Complainant charged respondent's clients with attempted murder. Respondent averred that since they were in his house when the alleged crime occurred, "his testimony is very essential to the ends of justice."

Respondent alleged that it was complainant who had threatened and harassed his clients after the hearing of their case by the provincial prosecutor on January 4, 2001. Respondent requested the assistance of the Cabanatuan City Police the following day, January 5, 2001, which was the next scheduled hearing, to avoid a repetition of the incident and to allay the fears of his clients. In support of his allegations, he submitted Certifications^[10] from the Cabanatuan City Police and the Joint Affidavit^[11] of the two police officers who had assisted them.

Lastly, he contended that the case had been initiated for no other purpose than to harass him, because he was the counsel of Barangay Captain Ernesto Ramos in the cases filed by the latter before the ombudsman and the BJMP against complainant.

After receipt of respondent's Answer, the CBD, through Commissioner Tyrone R. Cimafranca, set the case for hearing on June 5, 2001, at two o'clock in the afternoon. Notices^[12] of the hearing were sent to the parties by registered mail. On the scheduled date and time of the hearing, only complainant appeared. Respondent was unable to do so, apparently because he had received the Notice only on June 8, 2001.^[13] The hearing was reset to July 3, 2001 at two o'clock in the afternoon.

On the same day, June 5, 2001, complainant filed his Reply^[14] to the verified Answer of respondent. The latter's Rejoinder was received by the CBD on July 13, 2001.^[15] It also received complainant's Letter-Request^[16] to dispense with the

hearings. Accordingly, it granted that request in its Order^[17] dated July 24, 2001, issued through Commissioner Cimafranca. It thereby directed the parties to submit their respective memoranda within fifteen days from receipt of the Order, after which the case was to be deemed submitted for resolution.

The CBD received complainant's Memorandum^[18] on September 26, 2001. Respondent did not file any.

The IBP's Recommendation

On September 27, 2003, the IBP Board of Governors issued Resolution No. XVI-2003-172^[19] approving and adopting the Investigating Commissioner's Report that respondent had violated specific requirements of the Notarial Law on the execution of a certification, the entry of such certification in the notarial register, and the indication of the affiant's residence certificate. The IBP Board of Governors found his excuse for the violations unacceptable. It modified, however, the recommendation^[20] of the investigating commissioner by increasing the fine to "P3,000 with a warning that any repetition of the violation will be dealt with a heavier penalty."

The other charges -- violation of Section 27 of Rule 138 of the Rules of Court; and Canons 1.01 to 1.03, 12.07 and 12.08 of the CPR --were dismissed for insufficiency of evidence.

The Court's Ruling

We agree with the Resolution of the IBP Board of Governors.

Respondent's Administrative Liability

Violation of the Notarial Law

The Notarial Law is explicit on the obligations and duties of notaries public. They are required to certify that the party to every document acknowledged before them has presented the proper residence certificate (or exemption from the residence tax); and to enter its number, place of issue and date as part of such certification.^[21] They are also required to maintain and keep a notarial register; to enter therein all instruments notarized by them; and to "give to each instrument executed, sworn to, or acknowledged before [them] a number corresponding to the one in [their] register [and to state therein] the page or pages of [their] register, on which the same is recorded."^[22] Failure to perform these duties would result in the revocation of their commission as notaries public.^[23]

These formalities are mandatory and cannot be simply neglected, considering the degree of importance and evidentiary weight attached to notarized documents. Notaries public entering into their commissions are presumed to be aware of these elementary requirements.

In *Vda. de Rosales v. Ramos*,^[24] the Court explained the value and meaning of notarization as follows:

"The importance attached to the act of notarization cannot be overemphasized. Notarization is not an empty, meaningless, routine act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument."

For this reason, notaries public should not take for granted the solemn duties pertaining to their office. Slipshod methods in their performance of the notarial act are never to be countenanced. They are expected to exert utmost care in the performance of their duties,^[25] which are dictated by public policy and are impressed with public interest.

It is clear from the pleadings before us -- and respondent has readily admitted -- that he violated the Notarial Law by failing to enter in the documents notations of the residence certificate, as well as the entry number and the pages of the notarial registry.

Respondent believes, however, that noncompliance with those requirements is not mandatory for affidavits relative to cases pending before the courts and government agencies. He points to similar practices of older notaries in Nueva Ecija.

We cannot give credence to, much less honor, his claim. His belief that the requirements do not apply to affidavits is patently irrelevant. No law dispenses with these formalities. Au contraire, the Notarial Law makes no qualification or exception. It is appalling and inexcusable that he did away with the basics of notarial procedure allegedly because others were doing so. Being swayed by the bad example of others is not an acceptable justification for breaking the law.

We note further that the documents attached to the verified Complaint are the Joint Counter-Affidavit of respondent's clients Ernesto Ramos and Rey Geronimo, as well as their witnesses' Affidavits relative to Criminal Case No. 69-2000 for attempted murder, filed by complainant's brother against the aforementioned clients. These documents became the basis of the present Complaint.

As correctly pointed out by the investigating commissioner, Section 3 of Rule 112 of the Rules of Criminal Procedure expressly requires respondent as notary -- in the absence of any fiscal, state prosecutor or government official authorized to administer the oath -- to "certify that he has personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits." Respondent failed to do so with respect to the subject Affidavits and Counter-Affidavits in the belief that -- as counsel for the affiants -- he was not required to comply with the certification requirement.

It must be emphasized that the primary duty of lawyers is to obey the laws of the land and promote respect for the law and legal processes.^[26] They are expected to be in the forefront in the observance and maintenance of the rule of law. This duty carries with it the obligation to be well-informed of the existing laws and to keep

abreast with legal developments, recent enactments and jurisprudence.^[27] It is imperative that they be conversant with basic legal principles. Unless they faithfully comply with such duty, they may not be able to discharge competently and diligently their obligations as members of the bar. Worse, they may become susceptible to committing mistakes.

Where notaries public are lawyers, a graver responsibility is placed upon them by reason of their solemn oath to obey the laws.^[28] No custom or age-old practice provides sufficient excuse or justification for their failure to adhere to the provisions of the law. In this case, the excuse given by respondent exhibited his clear ignorance of the Notarial Law, the Rules of Criminal Procedure, and the importance of his office as a notary public.

Nonetheless, we do not agree with complainant's plea to disbar respondent from the practice of law. The power to disbar must be exercised with great caution.^[29] Disbarment will be imposed as a penalty only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the court and a member of the bar. Where any lesser penalty can accomplish the end desired, disbarment should not be decreed.^[30] Considering the nature of the infraction and the absence of deceit on the part of respondent, we believe that the penalty recommended by the IBP Board of Governors is a sufficient disciplinary measure in this case.

Lawyer as Witness for Client

Complainant further faults respondent for executing before Prosecutor Leonardo Padolina an affidavit corroborating the defense of alibi proffered by respondent's clients, allegedly in violation of Rule 12.08 of the CPR: "A lawyer shall avoid testifying in behalf of his client."

Rule 12.08 of Canon 12 of the CPR states:

"Rule 12.08 – A lawyer shall avoid testifying in behalf of his client, except:

- a) on formal matters, such as the mailing, authentication or custody of an instrument and the like;
- b) on substantial matters, in cases where his testimony is essential to the ends of justice, in which event he must, during his testimony, entrust the trial of the case to another counsel."

Parenthetically, under the law, a lawyer is not disqualified from being a witness,^[31] except only in certain cases pertaining to privileged communication arising from an attorney-client relationship.^[32]

The reason behind such rule is the difficulty posed upon lawyers by the task of dissociating their relation to their clients as witnesses from that as advocates. Witnesses are expected to tell the facts as they recall them. In contradistinction, advocates are partisans -- those who actively plead and defend the cause of others. It is difficult to distinguish the fairness and impartiality of a disinterested witness