



Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated **September 7, 2022** which reads as follows:*

“A.C. No. 13408 [Formerly CBD Case No. 18-5756] (*Emilio H. Antolin, Juanito H. Antolin, Rosalinda A. Delavin, Bernardo H. Antolin, and Rogelio H. Antolin v. Atty. Juan A. Abaya Jr.*). – This resolves a Verified Disbarment Complaint¹ filed by Emilio H. Antolin (Emilio), Juanito H. Antolin (Juanito), Rosalinda A. Delavin (Rosalinda), Bernardo H. Antolin (Bernardo) and Rogelio H. Antolin (Rogelio) (complainants, collectively), against Atty. Juan A. Abaya Jr. (respondent) for violation of A.M. No. 02-8-13-SC or the 2004 Rules on Notarial Practice (Notarial Rules) and the Code of Professional Responsibility (CPR).

Antecedents

Complainants alleged that they, along with their other siblings, and their late mother, Trinidad Antolin (Trinidad), were registered owners of a 2,316 square meter-property in Vigan, Ilocos Sur covered by Transfer Certificate of Title (TCT) No. 42896 (subject property). On 08 April 2017, Rogelio and his wife, Delilah, discovered that the title of the subject property was cancelled by virtue of a Deed of Absolute Sale² dated 29 December 2005 (subject deed) ostensibly executed by all of the owners in favor of Johnny Fabro (Fabro), and notarized by respondent.³

Complainants claimed that all the signatures in the subject deed, except those of their other siblings, Victorino H. Antolin (Victorino) and Alicia Antolin (Alicia), were forged. In support of their forgery claim, Rogelio had the subject deed examined by the crime laboratory of Candon, Ilocos Sur. The examination resulted in the finding that complainants’

¹ *Rollo*, pp. 2-6.

² *Id.* at 9-10.

³ *Id.* at 2.

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signature in the subject deed on one hand, and their specimen signatures, on the other, were written by two different persons.⁴

Claiming that respondent's notarization of the subject deed facilitated the transfer of the property without their consent, complainants prayed that respondent be held administratively liable. They averred that the subject deed was notarized even without their personal appearance as the supposed sellers of the subject property.⁵

Respondent, for his part, admitted notarizing the subject deed. He narrated that on 29 December 2005, Alicia, Victorino, and alleged witnesses, Alfredo Fabro Jr., and Marcelino Fabro, all of whom he personally knew, came to his office and requested notarization of the subject deed. After being satisfied by the declaration of Alicia and the others that they are the same persons or parties stated in the subject deed, and that the proceeds would be used for the expenses of their sick mother, respondent allegedly asked for identification cards. Alicia and the others allegedly gave their respective community tax certificates (CTCs). Respondent then instructed them to sign the document.⁶ However, while Alicia was signing the document, he left the room as he allegedly had a stomach disorder and had to suddenly go to a nearby house to relieve himself.⁷ When he got back, the subject deed was signed by the parties. He allegedly asked, and the parties affirmed their signatures appearing in the said document. He argued that he notarized the document in good faith, since he personally knew the four signatories, and because he believed that the proceeds of the sale would be used for the hospitalization and medical expenses of the sellers' mother.⁸

He further contended that complainants merely filed the instant complaint as an act of retaliation, since the complaint for falsification which they initiated against him, Victorino, Alicia, spouses Johnny and Dolores Fabro, and Alfredo Fabro, was dismissed. He claimed that complainants were merely harassing him since he acted as counsel of the defendants in that case.⁹

Report and Recommendation of the Integrated Bar of the Philippines

On 29 October 2019, the Investigating Commissioner issued a Report and Recommendation¹⁰ proposing that respondent's commission as notary public be revoked and that he be disqualified from being commissioned for a period of one year with a warning that a repetition of the same negligent act would be punished more severely.

⁴ Id. at 15-16.

⁵ Id. at 4.

⁶ Id. at 76.

⁷ Id. at 77.

⁸ Id. at 78-79.

⁹ Id. at 31-32.

¹⁰ Id. at 186-193. Penned by Commissioner Marissa V. Manalo

Meanwhile, the Integrated Bar of the Philippines-Board of Governors (IBP-BOG), in a Resolution¹¹ dated 12 June 2021, agreed with the factual findings of the Investigating Commissioner, but modified the recommended penalties. The IBP Resolution reads:

RESOLUTION NO. CBD- 2021-06-38
CBD Case No. 18-5756
Emilio H. Antolin, et. al., vs.
Atty. Juan A. Abaya, Jr.

RESOLVED to APPROVE and ADOPT, as it is hereby APPROVED and ADOPTED the Report and Recommendation of the Investigating Commissioner in the above-entitled case, for being fully supported by the evidence on record and the applicable laws and rules, with modification on the recommended penalty for Atty. Juan A. Abaya Jr. from immediate revocation of the notarial commission if subsisting and disqualification from reappointment as notary public for one year with warning to (1) IMMEDIATE REVOCATION OF HIS NOTARIAL COMMISSION IF SUBSISTING, (2) DISQUALIFICATION FROM REAPPOINTMENT AS NOTARY PUBLIC FOR TWO (2) YEARS AND; (3) SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS, for violation of the rules on notarial practice.

The IBP also denied respondent's motion for reconsideration of the 12 June 2021 resolution.¹²

Issue

The sole issue here is whether respondent should be held administratively liable based on the allegations in the complaint.

Ruling of the Court

Maintaining public confidence in the authenticity and integrity of notarized documents is the policy that animates the rules on notarization, as well as the imposition of penalties for violations thereof. The notarization by a notary public converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. A notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his or her duties.¹³

Consistent with the said policy is the well-settled and elementary duty of a notary public to ascertain the identity of the signatories of a document. The notary public must ensure that the parties appearing in the document are the same persons who executed it, that they signed freely and voluntarily, and that the provisions embodied in the instrument express their true

¹¹ Id. at 185.

¹² Id. at 184.

¹³ *Guerrero v. Giron*, A.C. No. 10928, 09 December 2020.

agreement. These may not be achieved unless the parties are physically present before the notary public.¹⁴ The importance of the personal appearance of the contracting parties before the notary public is further reflected in the Notarial Rules, *viz.*:

RULE II
DEFINITIONS

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 [or her] for the purposes stated in the instrument or document, declares that he [or she] has executed the instrument or document as his [or her] free and voluntary act and deed, and, if he [or she] acts in a particular representative capacity, that he [or she] has the authority to sign in that capacity.

x x x x

RULE IV
POWERS AND LIMITATIONS OF NOTARIES PUBLIC

x x x x

SECTION 2. *Prohibitions.* — x x x

x 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)

¹⁴ *Heirs of Torrices v. Galano*, A.C. No. 11870, 07 July 2020.

To properly ascertain identity, the Rules on Notarial Practice, prior to the amendment in 2008,¹⁵ state that:

SECTION 12. *Competent Evidence of Identity.* — The phrase “competent evidence of identity” refers to the identification of an individual based on:

- (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or
- (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

Based from the foregoing, respondent has indeed been negligent in the performance of his notarial duties. The subject deed was not signed in his presence. Respondent himself admitted that he was not in the room when Alicia and the other signatories actually affixed their signatures. His excuse on his supposed stomach disorder is too flimsy and self-serving to merit consideration. If respondent had not been feeling well on that day, he could have asked the parties to reschedule the signing on another day. He could have likewise asked the parties to delay the signing until after his restroom break. Indeed, it is the duty of notaries public to demand that the document presented to them for notarization be signed in their presence, precisely to guard against illegal deeds.¹⁶

Further, respondent was remiss in verifying the identities of the signatories. He stated that he personally knew Alicia and three other signatories, but failed to explain how he knew them. This Court cannot simply accept his unsubstantiated allegation. He likewise erred when he accepted the CTCs as proof of the signatories’ identities. A *cedula* or CTC, contrary to the prevailing notarial rules at that time, does not bear the photograph and signature of the individual. Hence, respondent should have been more circumspect in ascertaining their identities.¹⁷

Verily, respondent’s carelessness facilitated the simulated conveyance

¹⁵ Section 12 reads:

Sec. 12. *Competent Evidence of Identity.* — The phrase ‘competent evidence of identity’ refers to the identification of an individual based on:

- (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver’s license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter’s ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, PhilHealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman’s book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification[.]”]

¹⁶ See *Ong v. Bijis*, A.C. No. 13054, 23 November 2021.

¹⁷ *Id.*

of the subject property. By affixing his notarial seal on the instrument, he converted the Deed of Absolute Sale from a private document into a public document. In doing so, respondent, in effect, proclaimed to the world that (1) all the parties therein personally appeared before him; (2) they are all personally known to him; (3) they were the same persons who executed the instruments; (4) he inquired into the voluntariness of execution of the instrument; and (5) they acknowledged personally before him that they voluntarily and freely executed the same.¹⁸ Instead of safeguarding against illegal, immoral and spurious transactions, respondent as the notary public, assisted in its consummation. On this note, it is at once apparent that respondent's neglect as a notary public is concurrently a violation of his oath and the CPR.¹⁹ Rule 1.01, Canon 1 of the CPR provides:

CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

x x x x

In this case, respondent's errors not only caused harm to complainants, but added to distrust in the use and relevance of notarization, and has furthered the lessening of confidence in the integrity of profession. Thus, the dismissal of the falsification case does not negate respondent's liability. Indeed, the crux of the instant controversy is respondent's liability for his breach of his duties as a notary public.²⁰

Jurisprudence has set the rule that a notary public who fails to discharge his or her duties as such is meted the following penalties: (1) revocation of notarial commission; (2) disqualification from being commissioned as notary public; and (3) suspension from the practice of law — the terms of which vary based on the circumstances of each case.²¹

Subject to the Court's exercise of sound judicial discretion, recent jurisprudence has specified the imposable penalties to erring notaries public to revocation of his or her notarial commission and disqualification from being commissioned as a notary public for a period of two years. In addition, he or she may also be suspended from the practice of law for a period of six months for notarizing a document without the appearance of the parties.²² Finding that the IBP-BOG's recommended penalties are consistent with recent case law, this Court affirms the same.

WHEREFORE, respondent Atty. Juan Abaya, Jr. is hereby found **GUILTY** of violating the 2004 Rules on Notarial Practice and Rule 1.01 and

¹⁸ *Dela Cruz v. Zabala*, 485 Phil. 83, 88-89 (2004).

¹⁹ *Re: Ely F. Azarraga*, A.C. No. 12798, 03 February 2021.

²⁰ *See Spouses Aldea v. Bagay*, A.C. No. 12733, 14 October 2020.

²¹ *Re: John Mark Tamaño*, A.C. No. 12274, 07 October 2020.

²² *Ong v. Bijis*, A.C. No. 13054, 23 November 2021.


Canon 1 of the Code of Professional Responsibility. Accordingly, he is **SUSPENDED** from the practice of law for six months from the receipt of this Resolution and his notarial commission, if any, is **REVOKED**. Respondent is **PROHIBITED** from being commissioned as a notary public for two years, effective immediately. He is further **STERNLY WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Finally, respondent is **DIRECTED** to report to this Court the date of his receipt of this Resolution to enable it to determine when his suspension from the practice of law shall take effect.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be appended to the records of respondent Atty. Juan Abaya, Jr.; the Integrated Bar of the Philippines for dissemination to all its chapters; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

SO ORDERED.”

By authority of the Court:


LIBRADA C. BUENA
Division Clerk of Court m.l.u/b

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

70-II

OCT 13 2022

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