



REPUBLIC OF THE PHILIPPINES
SUPREME COURT
Manila

SECOND DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Second Division, issued a Resolution dated **August 22, 2022** which reads as follows:*

“A.C. No. 11042 [Formerly CBD Case No. 17-5292] – (Efren D. Gamboa, complainant v. Atty. Winifred L. Cruz, respondent). – This is a complaint for violations of Section 27, Rule 138¹ of the Rules of Court, Rule 7.03² of the Code of Professional Responsibility, and the 2004 Rules on Notarial Practice (Notarial Rules) that Efren Gamboa (complainant) filed against respondent Atty. Winifred L. Cruz (Atty. Cruz).

Complainant averred that on May 16, 1996, he and Evelyn Gamboa (Evelyn) got married. Atty. Cruz was allegedly one of their principal sponsors during their wedding, as evidenced by the Marriage Certificate issued by the Local Civil Registrar of Pozorrubio, Pangasinan.³

On January 12, 2005, Evelyn obtained a ₱421,000.00 loan from Spouses Leonardo Saplan and Cristina Saplan (Spouses Saplan).⁴ As security, Evelyn executed a Deed of Real Estate Mortgage in favor of Spouses Saplan covering a property in Cablong, Pozorrubio, Pangasinan under Transfer Certificate of Title No. 253889 (TCT No. 253889) under the name of Evelyn.⁵ In both TCT No. 253889 and the real estate mortgage, Evelyn’s status was indicated as “single” although she was married. The mortgage deed was notarized by respondent, *viz.*:⁶

¹ Sec. 27. Attorneys removed or suspended by Supreme Court on what grounds. - A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

² Rule 7.03 - A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

³ *Rollo*, p. 2.

⁴ *Id.* at 105.

⁵ *Id.* at 31.

⁶ *Id.* at 33.

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x x x x

On this 12th of January 2005 personally appeared before me the above-named mortgagor with **CTC No. 12618627** issued on 12 January 2005 at Pozorrubio, Pangasinan who is **known to me** to be the same person whose signature is affixed to the within (*sic*) and she acknowledged to me that the same is her voluntary act and deed. (Emphasis supplied)

x x x x

He had no knowledge of the loan and mortgage because he was working abroad as a seafarer at that time. He only discovered about the transactions after Evelyn died on March 1, 2006.⁷

Despite knowing full well that Evelyn was married, Atty. Cruz notarized the real estate mortgage without complainant's consent. Atty. Cruz, therefore, breached the Notarial Rules against executing "a certificate containing information known or believed by the notary to be false,"⁸ Rule 7.03 of the Code of Professional Responsibility or the lawyer's duty not to engage in conduct that adversely reflects on one's fitness to practice law,⁹ and the Lawyer's Oath. Hence, he should be disbarred.

In his Comment,¹⁰ Atty. Cruz countered that complainant failed to sufficiently establish that he personally knew him or his deceased wife Evelyn. He denied having stood as a principal sponsor during the purported wedding on May 16, 1996. There was nothing in the Marriage Certificate showing that he participated in the wedding ceremony. While the other principal sponsors were able to affix their signatures to the certificate, there was no signature above his typewritten name. This validates his claim that he was not aware of the marriage between Evelyn and complainant.¹¹

At the time Atty. Cruz notarized the subject document, Evelyn represented herself as "single." TCT No. 253889 itself bore her "single" civil status.¹² TCT No. 253889 also bore an annotation that Evelyn had previously mortgaged the property to the Rural Bank of Pozorrubio, Inc. In the annotation of mortgage, she was also indicated to be "single."¹³ In the absence of any instance that would excite suspicion, he was limited to asking questions and examining the entries in the documents presented before him.¹⁴

Spouses Saplan were Atty. Cruz's clients in a certain civil case filed on January 28, 2008 involving the cancellation and declaration of nullity of

⁷ *Id.* at 2.

⁸ *Id.* at 98.

⁹ *Id.* at 99.

¹⁰ *Id.* at 18-24.

¹¹ *Id.* at 143.

¹² *Id.* at 21.

¹³ *Id.* at 144.

¹⁴ *Id.* at 130.

documents against complainant. After Evelyn's death, complainant executed a Deed of Self-Adjudication indicating that he was the lone heir of Evelyn in order to obtain exclusive ownership of the property despite having two (2) children.¹⁵ Also, while the original owner's copy of TCT No. 253889 was still in the possession of Spouses Saplan, complainant was able to cause the cancellation of TCT No. 253889, and the subsequent issuance of a new TCT under his name.¹⁶ Thereafter, complainant sold the property to his relatives named Spouses Nestor and Apolinaria Gamboa.¹⁷ Thus, it was only in 2008 when he learned about the identities and personal circumstances of complainant and Evelyn.¹⁸ The administrative case was only meant to exact revenge for being the counsel of Spouses Saplan in a civil case filed against complainant.

The Report and Recommendation of the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD)

In its Report and Recommendation¹⁹ dated January 29, 2020, the IBP-CBD dismissed the complaint for lack of merit. Complainant allegedly failed to adduce sufficient proof that Atty. Cruz had knowledge of Evelyn's civil status as married prior to notarizing the subject deed. The absence of Atty. Cruz's signature as a witness to the purported wedding bolstered his contention that he was not aware of complainant's and Evelyn's marriage.

Too, TCT No. 253889 relied upon by Atty. Cruz when he notarized the real estate mortgage that showed the civil status of Evelyn as "single".²⁰ Even prior to the execution of the subject mortgage in favor of Spouses Saplan on January 12, 2005, Evelyn also represented herself as "single" when she entered into mortgages in favor of the Rural Bank of Pozorrubio, Inc. As annotated in TCT No. 253889, *viz.*:

ENTRY NO. 971923 DEED OF MORTGAGE EXECUTED BY EVELYN M. GAMBOA-SINGLE IN FAVOR OF RB OF POZORRUBIO INC., THE PARCEL/PARCELS OF LAND DESCRIBED IN THIS TITLE IS MORTGAGED IN THE AMOUNT OF P50,000.00 SUBJECT TO ALL THE CONDITIONS STIPULATED IN SAID MORTGAGE, RATIFIED BEFORE THE NOTARY PUBLIC S.M. SEVILLEJA ON 3-19-2001, DOC NO. 200 PAGE NO. 41 BOOK NO. 73, SERIES OF 2001. LINGAYEN, PANGASINAN, 3-23-2001;

ENTRY NO. 989065 DEED OF MORTGAGE EXECUTED BY EVELYN M. GAMBOA-SINGLE IN FAVOR OF RB OF POZORRUBIO INC., THE PARCEL/PARCELS OF LAND DESCRIBED IN THIS TITLE IS MORTGAGED IN THE AMOUNT OF P300,000.00 SUBJECT TO ALL

¹⁵ *Id.* at 23.

¹⁶ *Id.* at 128.

¹⁷ *Id.*

¹⁸ *Id.* at 18.

¹⁹ *Id.* at 160–167.

²⁰ *Id.* at 146.

*THE CONDITIONS STIPULATED IN SAID MORTGAGE, RATIFIED BEFORE NOTARY PUBLIC S.M. SEVILLEJA ON 10-26-01, DOC. NO. 90 PAGE NO. 19 BOOK NO. 76, SERIES OF 2001. LINGAYEN, PANGASINAN, 1-8-2002.*²¹

Complainant, thus, failed to substantiate his claims that would merit administrative liability against Atty. Cruz.²²

Resolutions of the Integrated Bar of the Philippines – Board of Governors (IBP-BOG)

Under Resolution No. CBD-2020-06-15 dated June 13, 2020, the IBP-BOG approved and adopted the recommendation, *viz.*:²³

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 to **DISMISS** the case, after finding the recommendation to be fully supported by the evidence on record and the applicable laws and rules.

Complainant's motion for reconsideration was denied under Resolution No. CBD-XXV-2022-01-13 dated January 22, 2022.²⁴

Our Ruling

It is the Supreme Court, not the IBP, which has the constitutionally mandated duty to discipline lawyers.²⁵ The IBP's factual findings, legal conclusions, and proposed penalty are only recommendatory.²⁶ It is the Court, and no other, which ultimately resolves the case on the merits.

In this regard, the Court deviates from the recommendation of the IBP and finds Atty. Cruz administratively liable for violation of the Notarial Rules, Code of Professional Responsibility, and the Lawyer's Oath.

The importance attached to the act of notarization cannot be overemphasized. In *Santiago v. Rafanan*,²⁷ we explained:

. . . **Notarization is not an empty, meaningless, routinary act.** It is invested with substantive public interest, such that only those who are

²¹ *Id.* at 146–147.

²² *Id.* at 148.

²³ *Id.* at 140.

²⁴ *Id.* at 156.

²⁵ See *Bernardino v. Santos*, 754 Phil. 52, 70 (2015).

²⁶ *Id.* at 71.

²⁷ 483 Phil. 94, 104 (2004).

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, which are dictated by public policy and are impressed with public interest.** (Emphasis supplied)

Since the act of notarization is impressed with public interest,²⁸ a notary public must observe with utmost care the basic requirements in the performance of his duties to preserve the confidence of the public in the integrity of the notarial system.²⁹

A notary public is proscribed from performing a notarial act, *sans* compliance with the two (2)-fold requirement under Section 2(b), Rule IV³⁰ of the 2004 Notarial Rules, *viz.*:

SEC. 2. Prohibitions. — (a) 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.** (Emphases supplied)

The required personal appearance and competent evidence of identity allows the notary public to verify the identity of the principal himself or herself and determine whether the instrument, deed, or document is his or her voluntary act.³¹

Section 12, Rule II of the 2004 Notarial Rules defines “competent evidence of identity,” *viz.*:

²⁸ *Salazar v. Siccuan*, A.C. No. 11640 (Notice), July 19, 2017.

²⁹ See *Bartolome v. Basilio*, 771 Phil. 1, 5 (2015).

³⁰ Powers and Limitations of Notaries Public.

³¹ *Ladrera v. Osorio*, A.C. No. 10315, January 22, 2020.

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**; 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. (Emphasis and underscoring supplied)

Section 12, Rule II of the 2004 Notarial Rules is subsequently amended per *En Banc* Resolution dated February 19, 2008, thus:

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; 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; 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.

In *Ong v. Bijis*,³² the Court pronounced that a community tax certificate or a *cedula* is disregarded as a valid and competent evidence of identity because **it does not bear the photograph and signature of the individual**, which the 2004 Notarial Rules deem to be the more appropriate and competent means by which notaries public can ascertain the person's identity. In that case, Atty. Bijis notarized in 2006 a special power of attorney and real estate mortgage. The parties presented a community tax certificate as proof of identity. It appeared though that the registered owners of property

³² A.C. No. 13054, November 23, 2021.

subject of the mortgage already passed away in 1984, 1993, and 1994. The Court, thus, found Atty. Bijis administratively liable when he merely relied on the residence certificate of the parties instead of asking from the signatories their photograph and signature bearing identification documents required under the 2004 Notarial Rules.

In *Dandoy v. Edayan*,³³ Atty. Edayan notarized on October 17, 2006 a Special Power of Attorney and a Deed of Extrajudicial Settlement of Estate but he merely accepted a community tax certificate as proof of identity of the signatories. The Court categorically declared that a community tax certificate is not a valid and competent evidence of identity as it does not bear the photograph and signature of the persons appearing before notaries as required under the 2004 Notarial Rules. The Court elucidated, thus:

In this case, respondent, as duly found by the IBP, was **remiss in the faithful observance of his duties as a notary public when he failed to confirm the identity of the person claiming to be Jacinto through the competent evidence of identity required by the 2004 Notarial Rules.** Jurisprudence provides that **a community tax certificate or *cedula* is no longer considered as a valid and competent evidence of identity** not only because it is not included in the list of competent evidence of identity under the Rules; but more so, **it does not bear the photograph and signature of the persons appearing before them**, which the Rules deem as the more appropriate and competent means by which notaries public can ascertain the person's identity. Records show that Jacinto passed away on July 13, 1999, and therefore, clearly could not have appeared before respondent to sign and execute the two (2) documents. **Had respondent been more circumspect in performing his duties as notary public and asked for the photograph-and-signature-bearing identification document required by the 2004 Notarial Rules, he would have immediately discovered that the person before him was not the person whom he purports to be.** (Emphases supplied, citation omitted)

The Court in *Dionisio, Jr. v. Padernal*³⁴ emphasized that reliance on community tax certificates alone is **already** a punishable indiscretion by a notary public.

Here, by his own admission, Atty. Cruz emphatically denies being personally acquainted with Evelyn prior to the notarization of the real estate mortgage on January 12, 2005. He asserted that he only knew of Evelyn and complainant, as well as their personal circumstances in 2008 when he became the counsel of Spouses Saplan in a civil case against complainant. This being the case, it was incumbent upon Atty. Cruz to be more circumspect in verifying Evelyn's identity through competent evidence. Pursuant to Section 12, Rule II of the 2004 Notarial Rules, the "competent evidence of identity" required refers to the identification of an individual based on **at least one**

³³ A.C. No. 12084 (Resolution), June 6, 2018.

³⁴ A.C. No. 12673, March 15, 2022.

current identification document issued by an official agency bearing the photograph and signature of the individual.

Surely, a community tax certificate cannot be considered competent evidence of identity as it does not bear the photograph and signature of its owner.³⁵ As such, Atty. Cruz could not have properly verified whether the person who appeared before him was in fact Evelyn, or whether she was indeed single or married. Had Atty. Cruz asked for Evelyn's photograph and signature bearing identification documents required by the 2004 Notarial Rules, he would have immediately discovered that Evelyn's status was not "single" as she represented herself to be.

Atty. Cruz's obligation to observe and respect the legal solemnity of the act of notarization is more pronounced because he belongs to the legal profession. As a lawyer, he must abide by his solemn oath to uphold the integrity and dignity of the legal profession at all times. He is expected to refrain from doing any act or omission calculated to lessen the trust and confidence reposed by the public in the integrity of the legal profession.³⁶

Indubitably, Atty. Cruz's inattention and recklessness in performing his notarial duties had resulted not only in damage to those directly affected by the notarized document, but also in undermining the integrity of the office of a notary public and degrading the function of notarization.³⁷ His inattention and recklessness, therefore, constituted a violation not only of the 2004 Notarial Rules but also a transgression of Canon 1 in connection with Rule 1.01³⁸ of the Code of Professional Responsibility which requires lawyers to obey the laws of the land, and promote respect for law and legal processes,³⁹ as well as the Lawyer's Oath which likewise commands him to *obey the laws*. He should, thus, be held liable for such negligence not only as a notary public but also as a lawyer.⁴⁰

In another vein, complainant's imputation that Atty. Cruz knew of the false entry in the real estate mortgage and TCT No. 253889 pertaining to Evelyn's civil status cannot be accepted as gospel truth due to the wide chasm between accusations and proof here.⁴¹ As it was, records show that Evelyn represented herself in her several mortgage transactions as single, and TCT No. 253889 conformed with her status as such. Atty. Cruz merely relied on such representation, albeit he failed to exact due diligence in ascertaining the true identity and the personal circumstances of Evelyn as required under the 2004 Notarial Rules.

³⁵ *Lopez v. Mata*, A.C. No. 9334, July 28, 2020.

³⁶ See *Orola v. Baribar*, 828 Phil. 1, 8 (2018).

³⁷ *Agbulos v. Atty. Viray*, 704 Phil. 1, 8 (2013) (citations omitted).

³⁸ Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

³⁹ *Pitogo v. Suello*, 756 Phil. 124, 133 (2015).

⁴⁰ *Supra* note 31.

⁴¹ See *Sps. Boyboy v. Yabut, Jr.*, 449 Phil. 664, 676 (2003).

Proper penalties

In various cases, the Court has ordered the revocation of the notary public's notarial commission and suspension from the practice of law for his or her failure to faithfully discharge the duties of his or her office.

In *Agaton v. Sugui*,⁴² the Court imposed the penalty of suspension of six (6) months from the practice of law, revocation of commission as notary public, and disqualification from being commissioned as notary public for two (2) years against Atty. Sugui for notarizing a document using only a community tax certificate as evidence of identity in violation of the 2004 Notarial Rules.

In *Ong v. Bijis*,⁴³ the Court found that Atty. Bijis violated the Notarial Rules and Canon 1 in relation to Rule 1.01 of the Code of Professional Responsibility when he merely relied on the community tax certificate of the signatories of the document he notarized instead of a photograph-and-signature-bearing identification documents required by the 2004 Notarial Rules. He was suspended from the practice of law for six (6) months, his notarial commission got revoked, and he was prohibited from being commissioned as notary public for two (2) years.

The Court pronounced in *Llemit v. Tagaloguin*⁴⁴ that Atty. Tagaloguin breached the 2004 Notarial Rules, Canon 1 and Rule 1.01 of the Code of Professional Responsibility when he relied on a mere community tax certificate, thus, failed to identify through competent evidence of identity the signatories of the deeds of real estate mortgage he notarized. He was suspended for six (6) months from the practice of law, his notarial commission revoked, and he was prohibited from being commissioned as notary public for two (2) years.

Here, Atty. Cruz's act of notarizing the subject real estate mortgage without competent evidence of identity of complainant's wife Evelyn warrants the revocation of his notarial commission conformably with Section 1, Rule XI of the 2004 Notarial Rules, thus:

SECTION 1. Revocation and Administrative Sanctions. — (a) The Executive Judge shall revoke a notarial commission for any ground on which an application for a commission may be denied.

(b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

X X X X

⁴² *Agaton v. Sugui*, A.C. No. 10592 (Notice), April 3, 2019.

⁴³ A.C. No. 13054, November 23, 2021.

⁴⁴ A.C. No. 12459, September 9, 2020.

(8) fails to identify a principal on the basis of personal knowledge or competent evidence;

x x x x

(10) knowingly performs or fails to perform any other act prohibited or mandated by these Rules[.]

Consistent with jurisprudence, Atty. Cruz's disqualification from being commissioned as notary public for two (2) years is proper.

Further, for his notarial indiscretion, neglect in the performance of his sacred duties as notary public, and violations of Canon 1, Rule 1.01 of the Code of Professional Responsibility, and the Lawyer's Oath, Atty. Cruz should be suspended from the practice of law for six (6) months.

FOR THESE REASONS, Atty. Winifred L. Cruz is found **GUILTY** of violations of the 2004 Rules on Notarial Practice; Canon 1, Rule 1.01 of the Code of Professional Responsibility; and the Lawyer's Oath. He is **SUSPENDED** from the practice of law for **six (6) months** and his Notarial Commission is **REVOKED** with **PROHIBITION** from being commissioned as a notary public for **two (2) years**, effective immediately. He is **STERNLY WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

Let a copy of this Resolution be (1) entered into the personal records of Atty. Winifred L. Cruz with the Office of the Bar Confidant; (2) furnished to all chapters of the Integrated Bar of the Philippines; and (3) circulated by the Court Administrator to all the courts in the country for their information and guidance.

This Resolution takes effect immediately. Atty. Winifred L. Cruz is required to submit to the Office of the Bar Confidant the exact date when he shall have received this Resolution within five (5) days from notice.

SO ORDERED."

By authority of the Court:

TERESITA AQUINO TUAZON
Division Clerk of Court

By:



MA. CONSOLACION GAMINDE-CRUZADA
Deputy Division Clerk of Court

02 FEB 2025

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