



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **February 20, 2023**, which reads as follows:*

“**A.C. No. 13459 [Formerly CBD No. 16-5057] (Spouses Virginia Libang Aldea and Atty. Ramon J. Aldea vs. Atty. Nelson A. Cunanan)**. – Before the Court is a Complaint for Disbarment¹ filed by Spouses Virginia Libang Aldea (Virginia) and Atty. Ramon J. Aldea (Atty. Aldea) (collectively, Spouses Aldea) against Atty. Nelson A. Cunanan (Atty. Cunanan) for violation of the Code of Professional Responsibility (CPR) and A.M. No. 02-8-13-SC,² or the 2004 Rules on Notarial Practice (the Notarial Rules).

Spouses Aldea alleged that Atty. Cunanan caused the preparation, notarization, and acknowledgment of the Special Power of Attorney³ (SPA) dated March 12, 2009, executed by Virginia, Rodolfo Libang (Rodolfo), Edna Libang (Edna), Leonida Libang Cabulao (Leonida), and Juan Libang (Juan), in favor of Edna’s husband Regalado De Pano (De Pano). The witnesses were Maria Liza Mallonga and Maria Regine S. Libang. The SPA pertained to the sale of Lot No. 621, a parcel of land located in Anahao, Limay, Bataan, covered by Transfer Certificate of Title No. T-5690 in the name of Spouses Dominador and Maura Libang, the parents of Virginia. According to Spouses Aldea, Atty. Cunanan acted with malice and/or negligence in notarizing the SPA because Virginia did not sign said document. In addition, Leonida was already dead on the date that she supposedly signed the SPA. Rodolfo could not have signed the SPA as well because both his arms were paralyzed after suffering from a cerebrovascular accident.⁴ The falsified SPA enabled De Pano to execute a Contract to Sell⁵ (CTS) dated March 12, 2009 in favor of Ofelia Delos Santos which Atty. Cunanan also notarized.⁶ Virginia lost her rights over Lot No. 621 through an Extrajudicial Settlement of Estate with Sale⁷ (EJS)

¹ *Rollo*, pp. 1-5.

² Approved on February 19, 2008.

³ *Rollo*, p. 6.

⁴ *Id.* at 118-119.

⁵ *Id.* at 9.

⁶ *Id.* at 3 and 9.

⁷ *Id.* at 10.

dated May 28, 2010 which she allegedly executed together with Leonida and Juan in favor of Enrico and Arlinda Datu. The EJS was notarized by Atty. Reynato C. Bagay (Atty. Bagay). Virginia had a cerebrovascular accident due to the acts of Atty. Cunanan.⁸

On August 5, 2016, Spouses Aldea filed the complaint before the Integrated Bar of the Philippines (IBP) against Atty. Cunanan for notarizing the SPA and the CTS.⁹ They pointed out that Atty. Cunanan was previously penalized by the Court in *Coronel v. Atty. Cunanan*.¹⁰

The IBP ordered Atty. Cunanan to file his Answer, but he did not do so.¹¹ Hence, the IBP declared him in default in its Order¹² dated May 31, 2017. Atty. Cunanan moved to set aside the order of default through a Motion to Lift Order of Default.¹³ He and Atty. Aldea attended the hearing on June 19, 2017.¹⁴ Thereafter, Spouses Aldea submitted a Deed of Extrajudicial Settlement of Real Estate with Waiver of Rights and Sale¹⁵ (Deed) dated March 12, 2009 purportedly executed by Rodolfo, Virginia, Leonida, Juan, and Edna dividing Lot No. 621 among themselves except for Rodolfo. The Deed was notarized by Atty. Cunanan. Spouses Aldea also submitted a Certification¹⁶ dated October 6, 2017 from the Office of the Clerk of Court (OCC) of the Regional Trial Court (RTC) of Bataan that Atty. Cunanan has not submitted his notarial books and notarial registers for the year 2009. They subsequently submitted another Certification¹⁷ dated October 6, 2017 from the OCC of the RTC of Bataan that based on the records, “Doc. 75; Page No. 16; Book No. CDCXVI; Series of 2010”¹⁸ refers to an Authorization notarized by Atty. Bagay and not to the EJS. Virginia died on April 29, 2018.¹⁹

Thereafter, a Mandatory Conference was set on November 8, 2019. Atty. Cunanan filed a Manifestation with Motion to Transfer Hearing.²⁰ He and Spouses Aldea filed their conference briefs.²¹ In his conference brief,²² Atty. Cunanan admitted that he was a notary public on the date that the SPA and CTS were notarized. However, he expressed his willingness to testify that his signatures in the documents were falsified.²³ Atty. Aldea appeared during the Mandatory Conference but Atty.

⁸ Id. at 3.

⁹ Id. at 1 and 116.

¹⁰ 766 Phil. 332 (2015).

¹¹ See Order dated August 5, 2016 of the Integrated Bar of the Philippines – Commission on Bar Discipline; *rollo*, p. 11.

¹² Id. at 19.

¹³ Id. at 20-21.

¹⁴ Id. at 28-29.

¹⁵ Id. at 49-50.

¹⁶ Id. at 48.

¹⁷ Id. at 62.

¹⁸ Id.

¹⁹ Id. at 110.

²⁰ Id. at 65-68.

²¹ Id. at 117.

²² Id. at 70-72.

²³ Id. at 71.

Cunanan did not. The IBP subsequently ordered the parties to file their respective position papers. Only Atty. Aldea complied with the order.²⁴

Report and Recommendation of the Investigating Commissioner

In his Report and Recommendation²⁵ dated February 11, 2020, Commissioner Jose Alfonso M. Gomos (Investigating Commissioner) opined:

It is thus respectfully recommended that respondent be suspended from the practice of law for one (1) year, and that his Notarial Commission, if subsisting, be immediately revoked, and that he be disqualified from being commissioned as notary public for three (3) years.

It is also recommended that the respondent be sternly warned that a repetition of the same or similar breach of the Notarial Law shall be dealt with more severely.²⁶ (*Italics in the original.*)

The Investigating Commissioner held that it is uncontroverted that Leonida was already deceased while Rodolfo was paralyzed in his left and right arm when the SPA and the Deed were executed. Virginia denied signing both documents. Further, the Investigating Commissioner observed that the community tax certificates (CTCs) that the parties to the SPA presented are not competent evidence of identity under the law. As for the Deed, the Investigating Commissioner found no proof that Atty. Cunanan required the parties to present competent evidence of their identity. Anent the CTS, the Investigating Commissioner stated that there were no witnesses to the instrument and there is no indication of competent proof of identity of the parties. To worsen matters, the RTC certified that Atty. Cunanan did not submit his notarial books and notarial registers for 2009, in violation of Section 2 (h), Rule VI of the Notarial Rules.²⁷

The IBP Board of Governors adopted the Investigating Commissioner's recommendation with modification in its Resolution No. CBD-2020-06-06²⁸ dated June 13, 2020:

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 penalty to IMMEDIATE REVOCATION of the notarial commission of Atty. Nelson A. Cunanan if subsisting, DISQUALIFICATION from being appointed as notary public for two (2) years and SUSPENSION from the practice of law for one (1)

²⁴ Id. at 87-98.

²⁵ Id. at 116-123.

²⁶ Id. at 123.

²⁷ Id. at 121-123.

²⁸ Id. at 115.

*year. In addition, for failing to file Answer, failing to appear in the Mandatory Conference and failing to submit Position Paper, despite notice, respondent is hereby recommended to pay a FINE of Fifteen Thousand Pesos (P15,000.00).*²⁹ (Emphases and italics in the original.)

Atty. Cunanan filed a Motion for Reconsideration³⁰ which Atty. Aldea opposed.³¹ The IBP Board of Governors issued Resolution No. CBD-XXV-2021-11-21³² dated December 3, 2021, which provides:

*RESOLVED, to PARTIALLY GRANT, as it is hereby PARTIALLY GRANTED, the Motion for Reconsideration filed by the Respondent Atty. Nelson A. Cunanan in the instant case, and to recommend instead the imposition upon him of the reduced penalty of – i) **SUSPENSION from the practice of law of Six (6) Months**, ii) **IMMEDIATE REVOCATION of his notarial commission, if subsisting, and iii) DISQUALIFICATION from being commissioned as a Notary Public for Two (2) years, with a STERN WARNING that a subsequent similar infraction shall be dealt with more severely, after taking into consideration the facts of the case and the prevailing pandemic.***

*RESOLVED FURTHER to recommend the imposition upon the Respondent of a FINE of P5,000.00 each for failure to – i) answer the complaint, ii) attend the mandatory conference, and iii) file his position paper, or a total of **P15,000.00.***³³ (Emphases and italics in the original.)

Issue

Whether Atty. Cunanan violated the CPR and the Notarial Rules.

The Court's Ruling

The Court modifies the findings of the IBP.

It is a fundamental principle that the complainant bears the burden of proof by substantial evidence in disbarment cases.³⁴ After all, lawyers are presumed to be innocent of the charges against them unless the contrary is proved.³⁵ In *Goopio v. Atty. Maglalang*,³⁶ the Court clarified that the Best Evidence Rule under Section 3,³⁷ Rule 130 of the Rules of

²⁹ Id.

³⁰ Id. at 124-129.

³¹ Id. at 135-137.

³² Id. at 142-143.

³³ Id.

³⁴ See *Asuncion v. Salvado*, A.C. No. 13242, July 5, 2022 and *Bihag v. Era*, A.C. No. 12880, November 23, 2021.

³⁵ *Asuncion v. Salvado*, id.

³⁶ 837 Phil. 564 (2018).

³⁷ Section 3 under the Revised Rules on Evidence provides:

Sec. 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

Court must be complied with “if the entire body of proof consists mainly of the documentary evidence, and the content of which will prove either the falsity or veracity of the charge for disbarment.”³⁸ Spouses Aldea’s complaint rests on the SPA, the CTS, and the Deed, that were all supposedly acknowledged before Atty. Cunanan. Atty. Cunanan alleged that his signature in the documents were forged.³⁹ Hence, the presentation of the original SPA, the CTS, and the Deed, was imperative.

Spouses Aldea did not present the original copies of the SPA, the CTS, and the Deed, before these were admitted as evidence in Criminal Case No. 16970 entitled *People of the Philippines v. Regalado De Pano and Edna Libang De Pano* pending before Branch 93, RTC, Balanga City, Bataan.⁴⁰ It was not shown that the Investigating Commissioner had the opportunity to examine if the photocopies submitted by Spouses Aldea were a faithful reproduction of the original documents. Spouses Aldea did not give any justification for their failure to do so or provide any applicable exception under the law for not presenting the original. Consequently, the Court cannot hold Atty. Cunanan liable for allegedly notarizing the SPA, the CTS, and the Deed, without properly verifying the identity of its parties.

Nonetheless, Atty. Cunanan is not without fault. Based on the original Certification⁴¹ dated October 6, 2017 of the OCC of the RTC of Bataan, Atty. Cunanan failed to submit his notarial registers for the year 2009, the same year that he notarized the SPA, the CTS, and the Deed. This is a violation of Section 2(h),⁴² Rule VI of the Notarial Rules which

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

The amended provision under A.M. No. 19-08-15-SC (October 8, 2019) now states:

SECTION 3. *Original Document Must be Produced; Exceptions.* — When the subject of inquiry is the contents of a document, writing, recording, photograph or other record, no evidence is admissible other than the original document itself, except in the following cases:

(a) When the original is lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice, or the original cannot be obtained by local judicial processes or procedures;

(c) When the original consists of numerous accounts or other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole;

(d) When the original is a public record in the custody of a public officer or is recorded in a public office; and

(e) When the original is not closely-related to a controlling issue.

³⁸ *Goopio v. Maglalang*, supra. See also *Tecson-Ilagan v. Angeles*, A.C. No. 11690, July 6, 2022.

³⁹ *Rollo*, p. 71.

⁴⁰ *Id.* at 90.

⁴¹ *Id.* at 48.

⁴² Section 2(h), Rule VI of the 2004 Rules on Notarial Practice provides:

SEC. 2. *Entries in the Notarial Register.* —

x x x x

requires the notary public to forward to the Clerk of Court within the first 10 days of the following month a certified copy of the previous month's entries and a duplicate original copy of any instrument acknowledged before the notary public. Atty. Cunanan did not refute the Certification of the RTC.

Atty. Cunanan's noncompliance with the Notarial Rules is a violation of Rule 1.01, Canon 1 of the CPR which provides:

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

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

Aside from the foregoing, Atty. Cunanan was likewise remiss in complying with the orders of the IBP. The IBP faulted Atty. Cunanan for failing to file his answer and position paper as well as for not attending the mandatory conference. Atty. Cunanan was able to establish that he did not receive a copy of the Order⁴³ dated August 5, 2016 ordering him to file an answer.⁴⁴ He moved to have the order of default lifted,⁴⁵ but the IBP did not rule on the matter. Even so, Atty. Cunanan could have attempted to submit his answer subject to the approval of the IBP. Anent the Mandatory Conference on November 8, 2019, the IBP is correct in penalizing Atty. Cunanan for his non-attendance. When the IBP did not grant his prayer to have the Mandatory Conference rescheduled, he should have exerted effort to attend it. In addition, Atty. Cunanan did not file a position paper which the IBP required in its Order⁴⁶ dated November 8, 2019. Instead of assuming that he no longer needed to file a position paper because Spouses Aldea merely relied on "photocopied documents from unverified sources,"⁴⁷ he should have pointed this out in his position paper.

As for the proper penalty, it has been recently declared by the Court that the proper penalties for violation of the Notarial Rules are: (a) suspension from the practice of law for one (1) year; (b) immediate revocation of his notarial commission, if any; and (c) disqualification from being commissioned as notary public for a period of two (2) years.⁴⁸ It is noteworthy that Atty. Bagay was penalized by the Court for notarizing

(h) A certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required.

⁴³ *Rollo*, p. 11.

⁴⁴ *Id.* at 30-36.

⁴⁵ *Id.* at 20-21.

⁴⁶ *Id.* at 85-86.

⁴⁷ *Id.* at 127.

⁴⁸ *Dionisio, Jr. v. Padernal*, A.C. No. 12673, March 15, 2022 and *Sanchez v. Inton*, A.C. No. 12455, November 5, 2019.

the EJS in *Spouses Aldea v. Bagay*.⁴⁹ In light of him being previously sanctioned for notarizing 18 documents through his secretary while he was abroad, the Court suspended him from the practice of law for two (2) years, revoked his notarial commission, and permanently barred him from being commissioned as a notary public.⁵⁰

Similarly, Atty. Cunanan was suspended by the Court for one year in *Coronel v. Cunanan*⁵¹ for proposing a method to transfer title contrary to law and for not communicating with his client after receiving money and documents from the latter.⁵² Taking into consideration his previous infraction and his present one, the Court finds that Atty. Cunanan's period of suspension of six (6) months is sufficient. He should likewise suffer from the immediate revocation of his notarial commission and disqualification from being commissioned as notary public for two (2) years. The IBP is also correct in imposing a fine upon Atty. Cunanan for his noncompliance with its orders, though the amount must be reduced to ₱5,000.00 to conform to recent jurisprudence.⁵³

WHEREFORE, the Court finds respondent Atty. Nelson A. Cunanan **GUILTY** of violating the 2004 Rules on Notarial Practice and Canon 1, Rule 1.01 of the Code of Professional Responsibility. The Court hereby imposes the following penalties upon him: **SUSPENSION** from the practice of law for six (6) months, **REVOCAION** of his notarial commission, and **PROHIBITION** from being commissioned as a notary public for two (2) years, effective immediately. Respondent Atty. Nelson A. Cunanan is also ordered to pay a **FINE** of ₱5,000.00 for disobedience to the orders of the Integrated Bar of the Philippines, within ten days from receipt of this Resolution. He is **WARNED** that a repetition of the same or similar offense shall be dealt with more severely.

Respondent Atty. Nelson A. Cunanan is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished to the Office of the Bar Confidant to be appended to the personal records of respondent Atty. Nelson A. Cunanan, and to the Office of the Court Administrator and the Integrated Bar of the Philippines for their information and guidance.

⁴⁹ *Spouses Aldea v. Bagay*, A.C. No. 12733, October 14, 2020.

⁵⁰ *Id.*

⁵¹ A.C. No. 6738, August 12, 2015.

⁵² *Id.*

⁵³ *Gubaton v. Castillon*, A.C. No. 10936 (Notice), November 15, 2021; *Quitazol v. Capela*, A.C. No. 12072 (Resolution), December 9, 2020; and *In Re: Order Dated October 27, 2016 Issued by Branch 137, Regional Trial Court, Makati in Criminal Case No. 14-765 v. Ramon*, A.C. No. 12456, September 8, 2020.

SO ORDERED.”

By authority of the Court:

Misael
MISAELO DOMINGO C. BATTUNG III
Division Clerk of Court

JOY 5.19.23

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