



Republic of the Philippines
Supreme Court
Manila

BY: YSD
TIME: 1:16

THIRD DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, Third Division, issued a Resolution dated **October 16, 2019**, which reads as follows:*

“A.C. No. 12178 [*Formerly* CBD Case No. 16-5012] (*Eraclio S. Santos v. Atty. Cenon J. Navarro*). - Before the Court is a complaint for disbarment filed with the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP) by herein complainant Eraclio S. Santos against herein respondent Atty. Cenon J. Navarro on grounds of alleged breach of the Rules of Court, the Code of Professional Responsibility, and the Notarial Law.

Complainant alleges in his Complaint-Affidavit¹ that: he is one of the six (6) children and compulsory heirs of the spouses Jose Santos, Sr. (*Jose, Sr.*) and Anastacia Santos (*Anastacia*); upon Jose, Sr. and Anastacia’s death in 1998, they left to their compulsory heirs a 17,569-square-meter parcel of land, denominated as Lot 4178, located in Barangay Sta. Peregrina, Pulilan, Bulacan, which, at that time, was still registered in the name of their grandfather, Luciano Santos; during his lifetime, Jose, Sr. entered into an agreement or “*Kasunduan*”² with one Librada Tiongson (*Librada*), who was a tenant and was in possession of the above-described property, wherein it was agreed that Librada will return possession of the subject parcel of land and, in exchange, Jose, Sr. will give her a 7,500-square-meter portion of the said land as disturbance compensation; the *Kasunduan* was notarized by one Atty. Renan R. Castillo on November 28, 1996; on August 13, 2007, complainant and his siblings executed a *Kasulatan ng Pagmamana ng Lupa*³ adjudicating to themselves the subject lot as well as a Deed of Assignment,⁴ transferring and conveying to Librada 7,500 square meters of the said property; in turn, Librada executed a *Sinumpaang Salaysay*,⁵ accepting the assignment in her favor; all of these three documents were notarized by herein respondent; on July 1, 2016, complainant received notice that a Complaint for Judicial Partition⁶ was filed against him by a certain Victoria

¹ Rollo, pp. 2-10.
² Annex “B” to Affidavit-Complaint, *id.* at 12-13.
³ Annex “C” to Affidavit-Complaint, *id.* at 14-15.
⁴ Annex “D” to Affidavit-Complaint, *id.* at 16-17.
⁵ Annex “D-1” to Affidavit-Complaint, *id.* at 18.
⁶ Annex “F-3” to Affidavit-Complaint, *id.* at 25-39.

Aviguetero (*Victoria*) who engaged the services of respondent as her counsel; he came to know, later, that, in November 2012, Victoria, together with a certain Trinidad Coronel, bought from Librada the portion of Lot 4178, which was previously conveyed to the latter; however, instead of 7,500 square meters, the deed of sale executed by Librada indicated that the property she sold had an area of 8,784.5 square meters; the *Kasulatan ng Tuluyang Bilihan ng Lupa*⁷ between Victoria and Librada was notarized by herein respondent; respondent violated the Code of Professional Responsibility when he acted with deceit and gross misconduct by notarizing the deed of sale between Victoria and Librada when he knew, for a fact, that Librada's property only consists of 7,500 square meters; respondent is, likewise, guilty of representing conflicting interests when he agreed to represent Victoria in filing her Complaint for Judicial Partition against complainant; and, respondent is also guilty of violating the Notarial Law for having notarized a document indicating therein that complainant signed the said document before him when, in fact, he was not present and did not sign the document.

In his Answer,⁸ respondent contended that there was no attorney-client relationship between him and complainant, and that the latter had never divulged any privileged information to him; the documents attached to the Complaint merely show that some of them were notarized by respondent; notarization is never a proof of attorney-client relationship; the animosity between complainant and respondent started when the latter served as Victoria's counsel in her Complaint for Judicial Partition filed against herein complainant who had arrogated portions of the subject property belonging to Victoria; Victoria's Complaint sought to correct the area of the property previously assigned to Librada which she sold to Victoria; based on the affidavits of herein complainant's siblings, the actual area of the parcel of land which their father really intended to give to Librada as disturbance compensation was one-half of Lot 4178, which is equivalent to 8,784.5 square meters and not 7,500 square meters; and, the instant complaint is a mere form of harassment and retaliation on the part of complainant against respondent and that the same should be dismissed as it is not anchored on any factual or legal basis.

On August 24, 2016, the IBP Commissioner⁹ assigned to investigate the case issued a Notice of Mandatory Conference/Hearing¹⁰ requiring the parties to appear before the CBD.

After the hearing held on September 28, 2016, the IBP Commissioner issued an Order¹¹ directing the parties to file their verified position papers.

⁷ *Rollo*, p. 44.

⁸ *Id.* at 61-70.

⁹ Commissioner Rebecca Villanueva-Maala.

¹⁰ *Rollo*, p. 125.

¹¹ *Id.* at 135.

After complainant and respondent filed their respective position papers, the IBP Commissioner issued her Report and Recommendation¹² finding “no clear, convincing and satisfactory proof to warrant disciplinary action against respondent.” Hence, the IBP Commissioner recommended the dismissal of the complaint against respondent on the ground that it lacked merit.

In its Resolution No. XXII-2017-1076¹³ dated May 27, 2017, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the IBP Investigating Commissioner.

The Court finds no cogent reason to depart from the findings and recommendations of the IBP.

After a review of the evidence and arguments presented by both parties, it becomes apparent that the instant complaint is brought about by an underlying controversy between complainant and Victoria, who acquired the portion of the property which was conveyed to Librada. Both complainant and respondent have presented lengthy arguments to support their respective positions with respect to this dispute. However, the Court, in the present case, is not concerned with this conflict. The only issue that needs to be resolved at present is whether respondent, after having previously notarized documents executed by complainant involving the property which is subject of the present complaint, is guilty of violating the CPR and the Notarial Rules in notarizing the deed of sale of the same property between Librada and Victoria, and in subsequently serving as the counsel of Victoria in her complaint for judicial partition of the said property against herein complainant.

The pivotal question is whether or not an attorney-client relationship ever existed between respondent and complainant, and if so, in the course of such engagement, whether respondent obtained information which should have prevented him from representing Victoria whose interest conflicts with that of herein complainant.

The Court rules in the negative.

At the outset, this Court finds it proper to reiterate its previous discussion as to when an attorney-client relationship is created and the nature thereof. Thus, this Court has held that “if a person, in respect to his business affairs or troubles of any kind, consults with an attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as

¹² *Id.* at 247-250.

¹³ See Notice of Resolution, *id.* at 246.

established.”¹⁴ To constitute an attorney-client relationship, it is not essential that the client employed the attorney professionally on any previous occasion.¹⁵ It is not necessary that any retainer be paid, promised, or charged; neither is it material that the attorney consulted did not afterward handle the case for which his service had been sought.¹⁶ Likewise, a lawyer-client relationship exists notwithstanding the close personal relationship between the lawyer and the complainant or the non-payment of the former's fees.¹⁷ In other words, to establish the relation, it is sufficient that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession.¹⁸

This Court's elucidation in the case of *Mercado v. Atty. Vitriolo*¹⁹ is also instructive, to wit:

In engaging the services of an attorney, the client reposes on him special powers of trust and confidence. Their relationship is strictly personal and highly confidential and fiduciary. The relation is of such delicate, exacting and confidential nature that is required by necessity and public interest. Only by such confidentiality and protection will a person be encouraged to repose his confidence in an attorney. The hypothesis is that abstinence from seeking legal advice in a good cause is an evil which is fatal to the administration of justice. Thus, the preservation and protection of that relation will encourage a client to entrust his legal problems to an attorney, which is of paramount importance to the administration of justice. x x x.²⁰

Moreover, in relation to the above discussion, this Court, in *Quiambao v. Bamba*,²¹ explained the application of the rule on conflict of interest in this wise:

In broad terms, lawyers are deemed to represent conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose. Developments in jurisprudence have particularized various tests to determine whether a lawyer's conduct lies within this proscription. One test is whether a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client. Thus, if a lawyer's argument for one client has to be opposed by that same lawyer in arguing for the other client, there is a violation of the rule.

Another test of inconsistency of interests is whether the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty. Still another test is whether the lawyer would be called upon in the new relation

¹⁴ *Spouses Rabanal v. Atty. Tugade*, 432 Phil. 1064, 1069 (2002); *Hadjula v. Atty. Madianda*, 553 Phil. 221, 227 (2007).

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Rabanal v. Tugade*, *supra* note 8, at 1068.

¹⁹ 498 Phil. 49 (2005).

²⁰ *Id.* at 57. (Citations omitted)

²¹ 505 Phil. 126 (2005).

to use against a former client any confidential information acquired through their connection or previous employment.

The proscription against representation of conflicting interest applies to a situation where the opposing parties are present clients in the same action or in an unrelated action. It is of no moment that the lawyer would not be called upon to contend for one client that which the lawyer has to oppose for the other client, or that there would be no occasion to use the confidential information acquired from one to the disadvantage of the other as the two actions are wholly unrelated. It is enough that the opposing parties in one case, one of whom would lose the suit, are present clients and the nature or conditions of the lawyer's respective retainers with each of them would affect the performance of the duty of undivided fidelity to both clients.²²

From the foregoing, it is obvious that the rule on conflict of interests presupposes a lawyer-client relationship.²³ The purpose of the rule is precisely to protect the fiduciary nature of the ties between an attorney and his client.²⁴ Conversely, a lawyer may not be precluded from accepting and representing other clients on the ground of conflict of interests, if the lawyer-client relationship does not exist in favor of a party in the first place.²⁵

Applying the above discussions to the present case, it is clear that no attorney-client relationship ever existed between respondent and complainant.

What respondent did was to simply notarize the Extrajudicial Settlement of Estate and the Deed of Assignment executed by complainant and his siblings, as well as Librada's *Simumpaang Salaysay* and the *Kasulatan ng Bilihang Tuluyan ng Lupa*²⁶ executed by Librada in favor of Victoria. No evidence was presented to show that, prior to or even after the execution of these documents, complainant sought the professional advice of respondent with respect to anything which might be related to the property subject of the said documents. Neither was it shown that respondent was the one who recommended that the said deeds be executed. Evidence as well as the allegations of complainant show that respondent's participation was limited to notarizing the subject documents.

Hence, in the absence of an attorney-client relationship between respondent and complainant, the rule on conflict of interest will not apply.

Complainant, nonetheless, insists that respondent is guilty of deceit and gross misconduct in proceeding to notarize the deed of sale between Librada and Victoria, despite knowledge of the fact that the area of the property sold by Librada was more than what has been assigned to her.

²² *Id.* at 134-135. (Citations omitted)

²³ *Jimenez v. Atty. Francisco*, 749 Phil. 551, 570 (2014).

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Rollo*, p. 43.

It is true that notaries public must inform themselves of the facts which they intend to certify and to take no part in illegal transactions.²⁷ They must guard against any illegal or immoral arrangements.²⁸ Thus, where the notary public admittedly has personal knowledge of a false statement or information contained in the instrument to be notarized, yet proceeds to affix the notarial seal on it, the Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate.²⁹ Otherwise, the integrity and sanctity of the notarization process may be undermined, and public confidence in notarial documents diminished.³⁰

In the instant case, however, there is no evidence of respondent's actual knowledge of the discrepancy in the descriptive details of the documents he had notarized. While respondent may have a recollection of the identities of herein complainant and Librada, he should not reasonably be expected to commit to memory every detail of all the documents which he had notarized. It should be noted that the Deed of Assignment, made by complainant and his co-heirs of the subject property in favor of Librada, was notarized by respondent on August 13, 2007, while the *Kasulatan ng Bilihang Tuluyan ng Lupa* executed by Librada in favor of Victoria was notarized more than five years after on November 10, 2012. On the other hand, Victoria's Complaint for Judicial Partition against herein complainant was filed much later in June 2016. Hence, in the period of more than five years between respondent's notarization of the subject Deed of Assignment and the *Kasulatan ng Bilihang Tuluyan ng Lupa*, it is fair to suppose that numerous documents have been notarized by respondent, and he is not expected to recall the particulars of each of them. Even granting that respondent had knowledge of the disparity in the areas covered by the properties subject of the documents which he previously notarized, such fact does not prevent him from representing Victoria in her Complaint filed against herein complainant, because, as discussed above, respondent is not guilty of representing conflicting interests, as no attorney-client relationship ever existed between him and complainant. It is settled that in the absence of cogent proof, bare allegations of misconduct, as in the present case, cannot prevail over the presumption of regularity in respondent's performance of his official functions as a notary public.³¹

Finally, complainant alleges that respondent notarized a document wherein the latter supposedly made it appear that it was executed by the former, when, in fact, he was not present and did not sign the document. Suffice it to say, however, that complainant failed to present any form of evidence to prove his allegation. Not even the document, which respondent allegedly notarized, was submitted. Hence, this contention, like complainant's other arguments, deserves no consideration.

²⁷ *Iringan v. Atty. Gumangan*, A.C. No. 8574, August 16, 2017, 837 SCRA 198, 218.

²⁸ *Id.*

²⁹ *De Jesus v. Atty. Sanchez-Malit*, 738 Phil. 480, 492 (2014).

³⁰ *Id.*

³¹ *Coquia v. Atty. Laforteza*, 805 Phil. 400, 408 (2017).

WHEREFORE, the Court **ADOPTS** and **APPROVES** the Resolution of the Board of Governors of the Integrated Bar of the Philippines, dated May 27, 2017. The complaint against respondent **Atty. Cenon J. Navarro** is **DISMISSED** for lack of merit.

SO ORDERED." (*Leonen, J., on wellness leave*)

Very truly yours,

Mis D C Batt
MISAELO DOMINGO C. BATTUNG III
Deputy Division Clerk of Court
9/11/19

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