



Republic of the Philippines  
**Supreme Court**  
 Baguio City

SUPREME COURT OF THE PHILIPPINES  
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**EN BANC**

**ATTY. ANASTACIO T. MUNTUERTO, JR.;**  
**ATTY. RAMON JOSE G. DUYONGCO;**  
**ATTY. MARIO Y. CAVADA; and**  
**ATTY. CHAD RODOLFO M. MIEL,**  
 Complainants,

**A.C. No. 12289**

Present:

**BERSAMIN, C.J.,**  
**CARPIO,**  
**PERALTA,**  
**DEL CASTILLO,**  
**PERLAS-BERNABE,**  
**LEONEN,**  
**\*JARDELEZA,**  
**CAGUIOA,**  
**REYES, A., JR.**  
**GESMUNDO,**  
**\*\*REYES, J., JR.,**  
**\*\*\*HERNANDO,**  
**CARANDANG, and**  
**LAZARO-JAVIER, JJ.**

- versus -

**ATTY. GERARDO WILFREDO L. ALBERTO,**  
 Respondent.

Promulgated:

April 2, 2019

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**DECISION**

**BERSAMIN, C.J.:**

A lawyer who notarizes documents without a notarial commission, and assists and abets the unauthorized practice of law by a non-lawyer, deliberately violates the Lawyer's Oath and transgresses the canons of the *Code of Professional Responsibility*. He thereby manifests a lack of respect for the law and dishonesty, and deserves to be severely punished.

\* On official business.  
 \*\* On official leave.  
 \*\*\* On leave.

### Antecedents

We hereby consider and resolve the disbarment complaint filed by the complainants charging the respondent with falsification of public documents, and wilful and deliberate violations of his oath as a lawyer, and of the mandatory rules of the *Code of Professional Responsibility*.<sup>1</sup>

The complainants aver that the respondent was the counsel of record of Cristeto E. Dinopol, Jr., who had instituted an action for reconveyance and recovery of possession and damages against Singfil Hydro Builders in the Regional Trial Court (RTC), Branch 47, in Masbate City docketed as Civil Case No. 6835; that the respondent had attached to the complaint a supplemental agreement and an amended joint venture agreement separately acknowledged before him as a notary public for and in Cavite City; that he had antedated his notarizations; that, however, the Notarial Division of the RTC in Cavite City certified that it had “*no record of any Commission/Order appointing a certain Atty. Gerardo Wilfredo L. Alberto as Notary Public for the City of Cavite nor of any documents notarized by him, more specifically a document denominated as Supplemental & Amended Joint Venture Agreement*,”<sup>2</sup> that he had not indicated his MCLE<sup>3</sup> certificate of compliance number and the date of issue of such certificate;<sup>4</sup> that realizing that the complaint he had filed was fatally defective, he had his client sign and file the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint*, with the amended complaint attached; and that the respondent had further falsified the supposed secretary’s certificate to make it appear that he had been duly appointed as the acting corporate secretary of Singtrader JV Corporation, and that a resolution had been adopted by said corporation authorizing Cristeto E. Dinopol, Jr. as its representative relative to the filing of the necessary and proper actions.<sup>5</sup>

Upon receipt of the administrative complaint against the respondent, the Integrated Bar of the Philippines (IBP) directed him to file his answer. However, he did not comply, and for that reason he was declared in default.<sup>6</sup>

The IBP then conducted a mandatory conference on June 18, 2016, but the respondent did not attend the same despite notice. Furthermore, he did not file his position paper.<sup>7</sup>

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<sup>1</sup> *Rollo*, p. 435.

<sup>2</sup> *Id.* at 435-436.

<sup>3</sup> Mandatory Continuing Legal Education.

<sup>4</sup> *Rollo*, p. 436.

<sup>5</sup> *Id.* at 436-437.

<sup>6</sup> *Id.* at 437.

<sup>7</sup> *Id.* at 181.

### Findings and Recommendation of the IBP

In her Report and Recommendation dated January 31, 2017, IBP Investigating Commissioner Rebecca Villanueva-Maala found the charges against the respondent established, and recommended his suspension from the practice of law for five years, to wit:

**PREMISES CONSIDERED**, we respectfully recommend that respondent, **ATTY. GERARDO WILFREDO L. ALBERTO**, be **SUSPENDED** for a period of **FIVE (5) YEARS** from receipt hereof as a lawyer and as a member of the Bar.

**RESPECTFULLY SUBMITTED.**<sup>8</sup>

On November 27, 2017, the IBP Board of Governors adopted the findings and recommendation of IBP Investigation Commissioner Villanueva-Maala, viz.:

***RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, but modifying the recommended penalty to **SUSPENSION FROM THE PRACTICE OF LAW for five (5) years.*****

***RESOLVED FURTHER to recommend the imposition upon respondent of a **FINE of Five Thousand Pesos (P5,000.00) for disregarding the Orders of the Commission.*****<sup>9</sup>

The respondent did not appeal or move for reconsideration.

### Issue

Did the respondent violate the Lawyer's Oath and the *Code of Professional Responsibility*: (a) by notarizing documents without having been issued a notarial commission; (b) by allowing a non-lawyer to sign a motion filed in court; and (c) by failing to indicate his MCLE compliance number in the complaint filed in connection with a pending case?

### Ruling of the Court

We **ADOPT** with **MODIFICATION** the findings and recommendation of the IBP Board of Governors.

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<sup>8</sup> Id. at 437.

<sup>9</sup> Id. at 433.

## I

The respondent notarized the supplemental agreement and the amended joint venture agreement attached to the complaint he filed in Civil Case No. 6835.<sup>10</sup> According to the findings by IBP Investigating Commissioner Villanueva-Maala, he held no notarial commission when he notarized the documents. Such lack of the notarial commission was confirmed by the certification issued by the Office of the Clerk of Court of the RTC in Cavite City to the effect that said office had no record of any commission appointing the respondent a notary public for and in the City of Cavite.<sup>11</sup>

The respondent should be subjected to strong disciplinary action for notarizing the documents without authorization or commission to do so.

To start with, the act of the respondent constituted a blatant violation of the injunction of the Lawyer's Oath to obey the laws. The law thereby violated is the 2004 *Rules on Notarial Practice*, which expressly defines a notary public as "any person commissioned to perform official acts under the [2004 *Rules on Notarial Practice*]." <sup>12</sup> The commission, which is the grant of authority to perform notarial acts,<sup>13</sup> is issued upon due application by the Executive Judge of the province or city where the applicant is to have a regular place of work or business after a summary hearing conducted by the Executive Judge following the publication of the notice of summary hearing in a newspaper of general circulation in said province or city, and after posting of the notice of summary hearing in a conspicuous place in the offices of the Executive Judge and of the Clerk of Court.<sup>14</sup> Clearly, the exercise of the authority to notarize cannot simply be done by anyone.

The significance of the office of the notary public cannot be taken for granted. The notarial act is invested with public interest, such that only those who are qualified or authorized may act and serve as notaries public.<sup>15</sup> The Court has expounded on the character of the office of the notary public in *Bernardo Vda. de Rosales v. Ramos*,<sup>16</sup> stating thusly:

The principal function of a notary public is to authenticate documents. When a notary public certifies to the due execution and delivery of the document under his hand and seal he gives the document

<sup>10</sup> Id. at 353.

<sup>11</sup> Id. at 404.

<sup>12</sup> Rule II of the 2004 *Rules on Notarial Practice* provides:

Sec. 9. *Notary Public and Notary*. - "Notary Public" and "Notary" refer to any person commissioned to perform official acts under these Rules.

<sup>13</sup> Section 3, Rule II, of the 2004 *Rules on Notarial Practice*.

<sup>14</sup> See Section 18, Rule II; Sections 1, 2, 3, 4, 5, 6, and 7, Rule III, all of the 2004 *Rules on Notarial Practice*.

<sup>15</sup> *Maligsa v. Cabanting*, A.M. No. 4539, May 14, 1997, 272 SCRA 408.

<sup>16</sup> A.C. No. 5645, July 2, 2002, 383 SCRA 498.

the force of evidence. Indeed, one of the purposes of requiring documents to be acknowledged before a notary public, in addition to the solemnity which should surround the execution and delivery of documents, is to authorize such documents to be given without further proof of their execution and delivery. Where the notary public is a lawyer, a graver responsibility is placed upon him by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. Failing in this, he must accept the consequences of his unwarranted actions.

And, secondly, the respondent, by making it appear that he had been duly commissioned to act as notary public, thereby vested the documents with evidentiary value. Yet, because of the absence of a notarial commission in his favor, he foisted a deliberate falsehood on the trial court. He became guilty of dishonesty. He also trivialized the solemnity of notarizing the documents. Such effrontery transgressed the prohibition against unlawful, dishonest, immoral or deceitful conduct on his part as an attorney made explicit in Rule 1.01 of Canon 1 of the *Code of Professional Responsibility*, to wit: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."<sup>17</sup>

## II

The resolution issued in Bar Matter No. 1922,<sup>18</sup> as amended, required the respondent to disclose in all the pleadings, motions and other papers he filed in court of information on his compliance with the MCLE program of the Supreme Court. The resolution reads as follows:

In the Resolution of the Court *En Banc* dated January 14, 2014 in the above-cited administrative matter, the Court RESOLVED, upon the recommendation of the MCLE Governing Board, to:

(a) AMEND the June 3, 2008 resolution by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "*Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action*"; and

(b) PRESCRIBE the following rules for non-disclosure of current MCLE compliance/exemption number in the pleadings:

(i) The lawyer shall be imposed a fine of ₱2,000.00 for the first offense, ₱3,000.00 for the second offense and ₱4,000.00 for the third offense;

<sup>17</sup> *Nunga v. Viray*, A.C. No. 4758, April 30, 1999, 306 SCRA 487, 491-492.

<sup>18</sup> *Re: Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption.*

(ii) In addition to the fine, counsel may be listed as a delinquent member of the Bar pursuant to Section 2, Rule 13 of Bar Matter No. 850 and its implementing rules and regulations; and

(iii) The non-compliant lawyer shall be discharged from the case and the client/s shall be allowed to secure the services of a new counsel with the concomitant right to demand the return of fees already paid to the non-compliant lawyer.

However, the respondent did not disclose his MCLE certificate of compliance number and the date of issue of the certificate in the complaint he filed in Civil Case No. 6835 of the RTC in Masbate City. Such non-disclosure was a flagrant disobedience to the aforementioned terms of the resolution issued in Bar Matter No. 1922.

It is good to mention that the respondent seemed to be a repeat violator of the requirement for disclosure under the resolution issued in Bar Matter No. 1922. He had been observed to have been guilty of the same omission in A.C. No. 12131,<sup>19</sup> where the Court noted his having defied the order for him to submit his MCLE compliance, to wit:

With regard to the case docketed as SEC-MC13-138 pending before RTC Mandaluyong City, Branch 211, complainant also appeared as counsel for and signed the pleadings without a certificate of compliance for MCLE IV. Also, in its order dated August 19, 2014, the RTC directed complainant to show cause for his failure to comply with the directives of the court for him to submit his MCLE compliance. Up to the present, complainant has yet to comply with the order of the court.

### III

The respondent was also liable for the charge of assisting and abetting the unauthorized practice of law by a non-lawyer because he had a non-lawyer sign and file the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint* despite him being the counsel of record of the plaintiff in Civil Case No. 6835. He thereby patently breached both the letter and spirit of Rule 9.01, Canon 9 of the *Code*, which states:

Rule 9.01 — A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

The preparation and signing of any pleading, motion or other paper to be submitted in court in connection with any pending matter constitute legal work within the context of the practice of law. Verily, pursuant to Section 3,

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<sup>19</sup> *Atty. Gerardo Wilfredo L. Alberto v. Atty. Mario Y. Cavada*, A.C. No. 12131, June 13, 2018.

Rule 7 of the *Rules of Court*, the signature on the pleading, motion or other paper serves as a certification that the signing attorney “has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.” Such formal assurance cannot be undertaken and given except by a regular member of the Philippine Bar in good standing. It is also necessary to stress that the high responsibility for conducting the litigation pertains only to the enrolled attorney of the party in whose behalf the pleading, motion or other paper is submitted in court. He may delegate the signing of the pleading, motion or other paper to another lawyer, but not to a non-lawyer.<sup>20</sup>

In *Cambaliza v. Cristal-Tenorio*,<sup>21</sup> the Court, holding that the lawyer’s duty to prevent, or, at the very least, not to assist in the unauthorized practice of law is founded on public interest and policy, pointed out that:

x x x Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. The purpose is to protect the public, the court, the client, and the bar from the incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the Court. It devolves upon a lawyer to see that this purpose is attained. Thus, the canons and ethics of the profession enjoin him not to permit the professional services or his name to be used in aid of, or to make possible the unauthorized practice of law by, any agency, personal or corporate. And, the law makes it a misbehavior on his part, subject to disciplinary action, to aid a layman in the unauthorized practice of law.<sup>22</sup>

In fine, the responsibility of signing the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint* was personal to the respondent as the attorney of record. That he delegated it to a non-lawyer was an abdication of the responsibility that subjected him to sanction.

#### IV

We next consider the penalty with which to sanction the respondent.

The Court has held lawyers administratively liable for notarizing documents without having been issued their notarial commissions. In *Nunga v. Viray*,<sup>23</sup> the Court suspended a lawyer for three years for notarizing an

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<sup>20</sup> *Tapay v. Bancolo*, A.C. No. 9604, March 20, 2013, 694 SCRA 1, 9-10.

<sup>21</sup> 478 Phil. 378.

<sup>22</sup> *Id.* at 389.

<sup>23</sup> *Supra*, note 17.

instrument without a commission. In *Zoreta v. Simpliciano*,<sup>24</sup> the lawyer was suspended from the practice of law for two years, and permanently barred from being commissioned as a notary public for notarizing several documents after the expiration of his commission. In *Mariano v. Echaney*,<sup>25</sup> the Court suspended the erring lawyer from the practice of law for two years and permanently barred him from being commissioned as a notary public for performing notarial acts without a valid notarial commission.

The respondent's act of having the representative of his corporate client sign the so-called *Motion for Prior Leave of Court to Admit the Herein Attached Amended Complaint* submitted to the RTC could be equated to the censurable act in *Tapay v. Bancolo*,<sup>26</sup> where the lawyer had allowed a non-lawyer to sign a pleading filed in court. The offending lawyer was suspended from the practice of law for one year.

In addition, the respondent's failure to comply with the directives of the IBP to do certain acts in relation to the investigation of the administrative charge brought against him – specifically, that he did not file his answer, and his verified position paper despite being required to do so – exhibited defiance towards the IBP's directives. Such defiance should not be overlooked, but ought to be treated as an aggravating circumstance of his liability in this case. This treatment would constantly remind him that the IBP, as the investigator designated by the Court itself to investigate the charge brought against him, was discharging a public duty in the Court's name and stead, and should be respected in its discharge of the duty.

In view of all the foregoing, the Court deems it to be just and proper to adopt the IBP Board of Governors' recommendation to suspend the respondent from the practice of law for a period of five years effective upon receipt of this decision, and to bar him permanently from being commissioned as notary public in the Philippines.

**WHEREFORE**, the Court **SUSPENDS** respondent **ATTY. GERARDO WILFREDO L. ALBERTO** from the practice of law for five (5) years effective upon receipt of this decision; **PERMANENTLY BARS** him from being commissioned as Notary Public in the Philippines effective upon his receipt of this decision; and **STERNLY WARNS** him that a stiffer penalty will be imposed should he commit a similar offense hereafter.

Let this decision be attached to the records of **ATTY. GERARDO WILFREDO L. ALBERTO** in the Office of the Bar Confidant and the

<sup>24</sup> A.C. No. 6492, November 18, 2004, 443 SCRA 1.

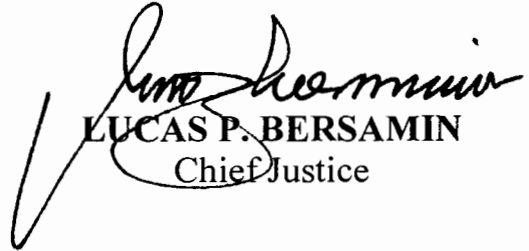
<sup>25</sup> A.C. No. 10373, May 31, 2016, 791 SCRA 509.

<sup>26</sup> Supra, note 20.





Integrated Bar of the Philippines; and be furnished to the Office of the Court Administrator for proper dissemination to all courts throughout the country.


**SO ORDERED.**

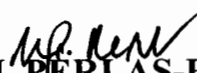
  
**LUCAS P. BERSAMIN**  
Chief Justice

**WE CONCUR:**

  
**ANTONIO T. CARPIO**  
Associate Justice

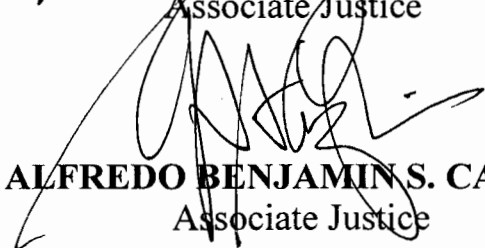
  
**DIOSDADO M. PERALTA**  
Associate Justice

  
**MARIANO C. DEL CASTILLO**  
Associate Justice

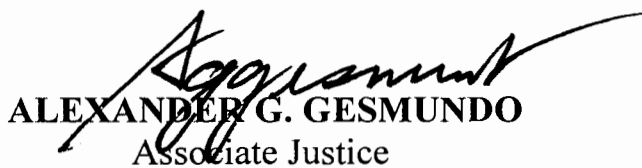
  
**ESTELA M. PERLAS-BERNABE**  
Associate Justice

  
**MARVIC M.V.F. LEONEN**  
Associate Justice

**(On Official Business)**  
**FRANCIS H. JARDELEZA**  
Associate Justice

  
**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

  
**ANDRES B. REYES, JR.**  
Associate Justice

  
**ALEXANDER G. GESMUNDO**  
Associate Justice

**(On Official Leave)**  
**JOSE C. REYES, JR.**  
Associate Justice

**(On Leave)**  
**RAMON PAUL L. HERNANDO**  
Associate Justice

  
**ROSMARI D. CARANDANG**  
Associate Justice

  
**AMY C. LAZARO-JAVIER**  
Associate Justice