



Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FELIX C. MONTINOLA III, A.C. No. 10904 [Formerly
Complainant, CBD Case No. 16-5092]

Present:

- versus -

LEONEN, J., *Chairperson,*
HERNANDO,
INTING,
ROSARIO,* and
LOPEZ, J., *JJ.*

ATTY. JUAN T. RUBRICO,
ATTY. DAISY D.
MONTINOLA, and ATTY. Promulgated:
FILOMENO B. TAN, JR.,
Respondents. July 14, 2021

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DECISION

INTING, J.:

The instant administrative case stemmed from a Petition for Review¹ pursuant to Section 1(c), Rule XI of A.M. No. 02-8-13-SC, otherwise known as the “2004 Rules on Notarial Practice,” filed by Felix C. Montinola III (complainant) assailing the Resolution² dated November 21, 2014 and the Order³ dated February 16, 2015 issued by Executive Judge Anita Guanzon-Chua of the Regional Trial Court (RTC), Bacolod City, Negros Occidental in a complaint against respondents Atty. Juan T. Rubrico (Atty. Rubrico) for the permanent revocation of his notarial commission; and Atty. Daisy D. Montinola (Atty. Montinola) and Atty. Filomeno B. Tan, Jr. (Atty. Tan, Jr.) for other disciplinary actions.⁴

* Designated additional member per Special Order No. 2833 dated June 29, 2021.

¹ *Rollo*, Vol. I, pp. 13-31.

² *Id.* at 37-41.

³ *Id.* at 59-60.

⁴ Entitled: “Re: Petition/Complaint for the permanent Revocation of the Notarial Commission and the institution of other disciplinary actions for violation of the pertinent provisions of the Notarial

The Antecedents

Complainant is one of the surviving legal heirs of the late Felix Montinola, Sr. (Felix, Sr.). He received a Letter⁵ dated August 7, 2014 written by Atty. Tan, Jr. for and on behalf of his clients, the heirs of the late Felix, Sr.,⁶ asking him to either: (1) vacate the lot where his house is situated; or (2) buy the shares of his co-heirs at a price acceptable to both parties.⁷ Attached to the Letter was a Deed of Extrajudicial Settlement of Estate⁸ (subject deed) executed by the heirs of Felix, Sr., notarized on February 5, 2014 by Atty. Rubrico, with the following notarial particulars: Document No. 44, Page No. 9, Book XXXVII, Series of 2014.⁹

In response, complainant, in a Letter¹⁰ dated September 5, 2014, wrote that the subject deed was void *ab initio* because it was not signed by all the parties in interest.¹¹ Further, he demanded from Atty. Rubrico the issuance of a certification under oath pertaining to whether the subject deed was prepared by him; and if so, whether the 10 persons whose signatures appear to have been inscribed thereto were the ones who caused the preparation of the subject deed.¹²

On September 8, 2014, Atty. Rubrico issued a Certification¹³ that he was not the one who notarized the subject deed, *viz.*:

This is to certify that I have not notarized the
acknowledgments registered in my notarial book bearing Doc. Nos.

Law/2004 Rules of Notarial Practice against: Atty. Juan T. Rubrico (Atty. Rubrico), Atty. Filomeno B. Tan, Jr. (Atty. Tan) and Atty. Daisy D. Montinola (Atty. Montinola) (collectively, respondents), representing, Sandra M. Fermin, Rolando M. Fermin, Ma. Carminia Fermin Sta. Ana, Jose Victor M. Fermin, Ma. Consuelo Ledesma Junsay, Ma. Elena M. Balandra, Luisa M. Gomez, Gloria M. Trirogoff, Ma. Luz Montinola, and Jose Luis Vicente Montinola, for knowingly soliciting, coercing, or in any way influencing a notary public to commit official misconduct pursuant to Section 1 (c) of Rule XII (Special Provisions), 2004 Rules of Notarial Practice.:" *id.* at 37.

⁵ *Id.* at 86-87.

⁶ Namely: Atty. Montinola, Sandra M. Fermin, Rolando M. Fermin, Ma. Carminia Fermin Sta. Ana, Jose Victor M. Fermin, Ma. Consuelo Ledesma Junsay, Ma. Elena M. Balandra, Luisa M. Gomez, Gloria Trirogoff, Ma. Luz Montinola and Jose Luis Vicente Montinola, *id.* at 143.

⁷ *Id.* at 87.

⁸ *Id.* at 143-147.

⁹ *Id.* at 147.

¹⁰ *Id.* at 93-98.

¹¹ *Id.* at 94.

¹² *Id.* at 97.

¹³ *Id.* at 99.

43 and 44; Page 9; Book XXXVII thereof both Series of 2014, certified true copy of which is hereto attached as Annex "A".¹⁴

Atty. Rubrico explained that it was his previous secretary who forged his signature to make it appear that he notarized and recorded the subject deed. But two days later, Atty. Rubrico retracted everything that was stated in his Certification, and admitted that he notarized the subject deed without the presence of all the signatories as an accommodation to Atty. Montinola.¹⁵

This prompted complainant to file a Petition¹⁶ for the revocation of Atty. Rubrico's notarial license and a disciplinary action against the other respondents before the Office of the Executive Judge, RTC, Bacolod City. In the Petition, he asserted that: (1) Atty. Rubrico violated the Notarial Law when he notarized the subject deed without the presence of all the signatories thereto;¹⁷ and (2) Atty. Tan, Atty. Montinola, and the heirs of Felix, Sr. violated Section 1(c),¹⁸ Rule XII of the 2004 Rules on Notarial Practice.¹⁹

Subsequently, respondents filed their respective Answers²⁰ to the Complaint.

The Ruling of the RTC

In the assailed Resolution²¹ dated November 21, 2014, the RTC found that Atty. Rubrico, based on his own admission, violated the 2004 Rules on Notarial Practice when he notarized the subject deed despite the following: (1) the absence of the signatories at the time of notarization; and (2) the fact that the signatories were not personally known by him, nor were they identified by him through competent evidence of identity as defined by the 2004 Rules on Notarial Practice.²²

¹⁴ *Id.*

¹⁵ *Id.* at 103-105.

¹⁶ *Id.* at 71-84.

¹⁷ *Id.* at 82

¹⁸ Section 1, Rule XII of the 2004 Rules on Notarial Practice provides:

Section 1. Punishable Acts. - The Executive Judge shall cause the prosecution of any person who: x x x x.

(c) knowingly solicits, coerces, or in any way influences a notary public to commit official misconduct.

¹⁹ *Id.* at 83-84.

²⁰ *Rollo*, Vol. I, pp. 110-111, 121-127, 138-141.

²¹ *Id.* at 37-41.

²² *Id.* at 38-39.

However, it ruled that there was no solicitation on the part of Atty. Montinola and the heirs of Felix, Sr., considering that the subject deed was merely submitted to Atty. Rubrico for his signature.²³

Accordingly, the RTC ordered the revocation of Atty. Rubrico's notarial commission and reminded Atty. Montinola to be more circumspect in her dealings with fellow members of the Bar. In addition, it also prohibited Atty. Rubrico from being commissioned as a notary public for three months following the expiration period of his notarial commission.²⁴

Nonetheless, the RTC dismissed the case against Atty. Tan and the heirs of Felix, Sr. for lack of legal and factual basis.²⁵

The dispositive portion of the assailed Resolution reads:

WHEREFORE, in view of the foregoing, the notarial commission of Atty. Juan T. Rubrico is hereby REVOKED. He is also prohibited from being commissioned as notary public for three (3) months following the expiration of the period of his notarial commission.

Atty. Daisy D. Montinola is reminded to be more circumspect in her dealings with her fellow members of the bar.

The case against Atty. Filomeno B. Tan, Jr. and the rest of the respondents are hereby "DISMISSED" for being without factual and legal basis.

SO RESOLVED.²⁶

Still not contented with the revocation of the notarial commission of Atty. Rubrico, complainant moved for reconsideration,²⁷ but the RTC denied the motion in its Order²⁸ dated February 16, 2015.

Hence, the Petition docketed as G.R. No. 216894 before the Court.

²³ *Id.* at 39-40.

²⁴ *Id.* at 40.

²⁵ *Id.* at 41.

²⁶ *Id.* at 40-41.

²⁷ See Motion for Reconsideration/Reinvestigation dated January 20, 2015. *id.* at 42-56.

²⁸ *Id.* at 59-60.

On August 5, 2015, the Court resolved to treat the Petition as an administrative complaint and redocketed the case as A.C. No. 10904.²⁹ Thereafter, the Court referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.³⁰

Respondents' Version

In his defense, Atty. Rubrico explained that he has had longstanding personal and professional ties with the members of the Rendon Calvez Santizo Law Office which used to occupy the office next to his in Plaza Mart Bldg., Araneta St., Bacolod City; and that Atty. Montinola was a frequent visitor of his office as she was close to a certain Atty. Rendon and cousin to the latter's former partner, the late Atty. Puaki Ferrer.³¹

He narrated that on February 4, 2014, a certain Elfa Ruth Bolero (Bolero), the secretary of the Rendon Calvez Santizo Law Office, called to say that Atty. Montinola was requesting for the notarization of the subject deed. The next day, Atty. Rubrico asked Bolero if the document was duly authenticated. After the latter's assurance that the document had indeed been authenticated, he notarized the deed because of his trust towards a fellow lawyer and as an accommodation to the law office which he considered as a neighbor and friend.³²

For her part, Atty. Montinola alleged that she is one of the surviving legal heirs of the late Felix, Sr. along with complainant and their other co-heirs. She claimed that she and the other co-heirs have decided to sell the subject lot and divide the proceeds among themselves, but complainant, who is living in and is making beneficial use of the property, refused to discuss the matter. Thus, Atty. Montinola and her co-heirs engaged the services of Atty. Tan, who, in turn, sent a demand letter to complainant.³³

Atty. Montinola further alleged that (1) there was no intent to deprive the complainant of his rights and interest over the property;

²⁹ See Court Resolution dated August 5, 2015, *id.* at 151-152.

³⁰ See Court Resolution dated July 11, 2016, *id.* at 371.

³¹ *Rollo*, Vol. II, p. 777.

³² *Id.*

³³ *Id.*

(2) she and her co-heirs only wanted to confront him with their collective decision; (3) the subject deed was an authentic document as it had been willingly and voluntarily signed by her co-heirs; (4) it was never used for any purpose in any proceeding; and (5) it only served as an attachment to the demand letter to demonstrate their collective action.³⁴

On the other hand, Atty. Tan, Jr. asserted that (1) he had nothing to do with the preparation of the subject deed; (2) he was merely engaged by Atty. Montinola, on her behalf and as attorney-in-fact of her co-heirs, to prepare a letter demanding that complainant either vacate the property comprising of the estate of the late Felix, Sr. or buy out the shares of his co-heirs; and (3) the subject deed was only handed to him by Atty. Montinola to serve as an attachment to the letter.³⁵

The Report and Recommendation of the IBP

In his Report and Recommendation,³⁶ the Investigating Commissioner found that Atty. Rubrico had notarized the subject deed without requiring the presence of the signatories thereto. Nevertheless, he found that no fraudulent intent can be inferred from the subject deed because it even specifically named complainant as one of the heirs.³⁷

Citing *Angeles, et al. v. Atty. Ibañez*,³⁸ the Investigating Commissioner recommended that Atty. Rubrico be suspended from the practice of law for a period of one (1) year, and Atty. Montinola be reprimanded, with a warning that a similar transgression in the future would be dealt with more harshly.³⁹ As to Atty. Tan, Jr., the Investigating Commissioner recommended the dismissal of the complaint because the act complained of against him, *i.e.*, writing a demand letter, did not constitute an activity which is aimed as a defiance of the law or at lessening confidence in the legal system.⁴⁰

³⁴ *Id.* at 778.

³⁵ *Id.*

³⁶ *Id.* at 775-780; penned by Investigating Commissioner Rico A. Limpingo.

³⁷ *Id.* at 779-780.

³⁸ 596 Phil. 99, 110 (2009).

³⁹ *Rollo*, Vol. II, p. 780.

⁴⁰ *Id.* at 779.

Consequently, the IBP Board of Governors issued a Resolution⁴¹ dated May 28, 2019 adopting the findings and recommendation of the Investigating Commissioner, with modification, to wit:

RESOLVED to ADOPT the findings of fact and recommendation of the Investigating Commissioner, with modification, to impose upon Respondent [Atty.] Juan T. Rubrico the penalty of SUSPENSION from the practice of law six (6) months [*sic*];

RESOLVED FURTHER that Respondent Atty. Daisy D. Montinola be STERNLY WARNED that a similar transgression shall be dealt with more severely; and

RESOLVED FINALLY to DISMISS the case against Respondent [Atty.] Filomeno B. Tan, Jr..⁴²

Hence, pursuant to Section 12(b) and (c),⁴³ Rule 139-B of the Rules of Court, as amended,⁴⁴ the Resolution of the IBP Board of Governors and the entire records of the case, were transmitted to the Court for final action.⁴⁵

The Court's Ruling

The Court adopts the findings and recommendation of the IBP Board of Governors.

Needless to state, the act of notarization is impressed with substantive public interest for it converts a private document into a public document and makes it admissible in evidence without further proof of its authenticity.⁴⁶ For this reason, the Court has always

⁴¹ *Id.* at 772-773.

⁴² *Id.* at 772.

⁴³ Section 12(b) and (c), Rule 139-B of the Rules of Court provides:

SEC. 12. *Review and decision by the Board of Governors.*

x x x x

(b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. x x x.

(c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from the issuance of the resolution

x x x x

⁴⁴ Bar Matter No. 1645, approved on October 13, 2015.

⁴⁵ *Rollo*, Vol. II, p. 770.

⁴⁶ See *Roa-Buenafe v. Lirazan*, A.C. No. 9361, March 20, 2019.

reminded lawyers commissioned as notaries public to *always* observe the basic requirements in the performance of their notarial duties. Otherwise, “the public’s confidence in the integrity of a notarized document would be undermined.”⁴⁷

In the case, Atty. Rubrico admitted that he did not require the presence of the signatories when he notarized the subject deed. Instead, he “*confirmed from Ms. Bolero if the document was duly authenticated, and after being assured that it was, he notarized it because of his trust in a fellow lawyer and as accommodation to the law office which he considers as a neighbor and friend.*”⁴⁸

Section 1 of Act No. 2103⁴⁹ provides that:

SECTION 1. x x x x.

(a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

Section 2, Rule IV of the 2004 Rules on Notarial Practice provides:

SEC. 2. *Prohibitions.* — (a) x 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

⁴⁷ *Id.* citing *Triol v. Atty. Agcaoili*, 834 Phil. 154, 158 (2018).

⁴⁸ *Rollo*, Vol. II, p. 777.

⁴⁹ Entitled “An Act Providing for the Acknowledgment and Authentication of Instruments and Documents without the Philippine Islands.” approved on January 26, 1912.

(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.

Thus, a document should not be notarized unless the persons who are executing it are the very same ones who are *personally* appearing before the notary public.⁵⁰ Their physical presence is necessary to enable the notary public to verify the genuineness of their signatures and to ascertain that the document is the parties' free act and deed.⁵¹

In notarizing a document without the presence of the signatories, the Court, in *Angeles, et al. v. Atty. Ibañez*,⁵² not only revoked the notarial commission of the respondent therein, but also suspended him from the practice of law. Similarly, in *Gonzales v. Atty. Bañares*,⁵³ and in *Spouses Zialcita v. Atty. Latras*,⁵⁴ the Court revoked the respondent lawyer's notarial commission, and suspended him from the practice of law for six (6) months for having failed to exercise the due diligence required of him as a notary public when he notarized the document without the presence of the signatories.

In accordance with the foregoing rulings, the Court finds Atty. Rubrico administratively liable for notarizing the subject deed despite the absence of the signatories therein. The reason that he trusted and accommodated a fellow lawyer, in this case, Atty. Montinola, does not justify his failure to comply with the 2004 Rules on Notarial Practice.

On the other hand, while there is no finding of malice on the part of Atty. Montinola, that by itself does not exculpate her from any responsibility.⁵⁵ As a member of the Bar, she is expected to know that the subject deed cannot be notarized without the presence of all the signatories. Notwithstanding her good faith, she must be warned to be more careful and circumspect in all her dealings with fellow members of the Bar in the future.

⁵⁰ See *Gonzales v. Atty. Bañares*, 833 Phil. 578, 584 (2018).

⁵¹ *Angeles, et al. v. Atty. Ibañez*, supra note 38 at 109, citing *Bernardo v. Atty. Ramos*, 433 Phil. 8, 16 (2002).

⁵² *Id.*

⁵³ *Gonzales v. Atty. Bañares*, supra.

⁵⁴ A.C. No. 7169, March 11, 2019.

⁵⁵ *Vega v. Atty. Jurado*, A.C. No. 12247, October 14, 2020.

As to Atty. Tan, Jr., the RTC and the IBP correctly dismissed the Complaint against him for lack of merit. The mere fact that Atty. Tan, Jr. wrote and sent a demand letter to complainant, for and on behalf of Atty. Montinola, cannot by any stretch of the imagination be considered as a violation of the 2004 Rules on Notarial Practice.

As the Court pronounced in *Armilla-Calderon v. Atty. Lapore*,⁵⁶ “[t]ime and again, the Court has reminded that it will not hesitate to mete out proper disciplinary punishment upon lawyers who are shown to have failed to live up to their sworn duties. In the same vein, however, it will not hesitate to extend its protective arm when the accusation against them is not indubitably proven.”⁵⁷

WHEREFORE, the Court **SUSPENDS** respondent Atty. Juan T. Rubrico from the practice of law for a period of three (3) months, **REVOKES** his notarial commission, if presently commissioned, and **DISQUALIFIES** him from being commissioned as a notary public for a period of two (2) years, all effective upon his receipt of this Decision. The Court further **WARNS** him that a repetition of the same or similar offense shall be dealt with more severely.

The Court likewise **STERNLY WARNS** respondent Atty. Daisy D. Montinola that a similar transgression on her part shall be dealt with more severely, but **DISMISSES** the complaint against respondent Atty. Filomeno B. Tan, Jr. for lack of merit.

Respondent Atty. Juan T. Rubrico is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, and furnish copies to all courts and quasi-judicial bodies where he has entered his appearance as counsel.


Let copies of this Decision be included in the personal records of respondent Atty. Juan T. Rubrico and entered in his file in the Office of the Bar Confidant. Further, let copies of this Decision be disseminated to all lower courts by the Office of the Court Administrator, as well as to the Integrated Bar of the Philippines, for their information and guidance.

⁵⁶ A.C. No. 10619, September 2, 2020.

⁵⁷ *Id.*, citing *Anacin, et al. v. Atty. Salonga*, A.C. No. 8764 (Notice), January 8, 2020.




SO ORDERED.


HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:


MARVIC M.V.F. LEONEN
Associate Justice
Chairperson


~~**RAMON PAUL E. HERNANDO**~~
Associate Justice


RICARDO R. ROSARIO
Associate Justice


JHOSEP LOPEZ
Associate Justice