



Republic of the Philippines
Supreme Court

Manila

EN BANC

HEIRS OF PEDRO ALILANO
represented by **DAVID ALILANO,**
Complainants,

A.C. No. 10132

Present:

SERENO, C.J.,
CARPIO,*
VELASCO, JR.,
LEONARDO-DE CASTRO,
BRION,
PERALTA,
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA, JJ.

- versus -

ATTY. ROBERTO E. EXAMEN,
Respondent.

Promulgated:

March 24, 2015

X-----X

DECISION

VILLARAMA, JR., J.:

Before us is a complaint¹ for disbarment filed before the Integrated Bar of the Philippines (IBP) by the heirs of Pedro Alilano against Atty. Roberto E. Examen for misconduct and malpractice for falsifying documents and presenting these as evidence in court thus violating the Lawyer's Oath,²

* On leave.

¹ Docketed as CBD Case No. 03-1168. *Rollo*, pp. 2-11.

² Lawyer's Oath - I, _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to

Canons 1,³ 10⁴ and 19,⁵ and Rules 1.01,⁶ 1.02,⁷ 10.01,⁸ and 19.01⁹ of the Code of Professional Responsibility (CPR).

Pedro Alilano and his wife, Florentina, were the holders of Original Certificate of Title (OCT) No. P-23261 covering a 98,460 sq. m. parcel of land identified as Lot No. 1085 Pls-544-D located in Paitan, Esperanza, Sultan Kudarat. Pedro and Florentina died on March 6, 1985 and October 11, 1989, respectively.

It appears that on March 31, 1984 and September 12, 1984 Absolute Deeds of Sale¹⁰ were executed by the Spouses Alilano in favor of Ramon Examen and his wife, Edna. Both documents were notarized by respondent Atty. Roberto Examen, brother of the vendee. Sometime in September 1984, Spouses Examen obtained possession of the property.

On January 12, 2002, the heirs of Alilano filed a suit for recovery of possession before the Regional Trial Court of Sultan Kudarat against Edna Examen and Atty. Roberto Examen.¹¹ It was during this proceeding that Atty. Examen introduced into evidence the March 31, 1984 and September 12, 1984 Absolute Deeds of Sale.

On November 15, 2003,¹² the heirs of Alilano filed this complaint alleging that Atty. Examen, based on *Barretto v. Cabreza*,¹³ violated the notarial law when he notarized the absolute deeds of sale since a notary public is prohibited from notarizing a document when one of the parties is a relative by consanguinity within the fourth civil degree or affinity within the second civil degree. It is also alleged that Atty. Examen notarized the documents knowing that the *cedula* or residence certificate number used by Ramon Examen was not actually his but the residence certificate number of Florentina. Atty. Examen also falsely acknowledged that the two witnesses

my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

³ CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1, provides:

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

⁴ CODE OF PROFESSIONAL RESPONSIBILITY, Canon 10, provides:

Canon 10 - A lawyer owes candor, fairness and good faith to the court.

⁵ CODE OF PROFESSIONAL RESPONSIBILITY, Canon 19 provides:

Canon 19 - A lawyer shall represent his client with zeal within the bounds of the law.

⁶ CODE OF PROFESSIONAL RESPONSIBILITY, Rule 1.01 provides:

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

⁷ CODE OF PROFESSIONAL RESPONSIBILITY, Rule 1.02 provides:

Rule 1.02. - A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

⁸ CODE OF PROFESSIONAL RESPONSIBILITY, Rule 10.01 provides:

Rule 10.01. - A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.

⁹ CODE OF PROFESSIONAL RESPONSIBILITY, Rule 19.01 provides:

Rule 19.01. - A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

¹⁰ *Rollo*, pp. 12-13.

¹¹ Docketed as Civil Case No. 1013.

¹² Received by the IBP November 24, 2003.

¹³ 33 Phil. 112 (1916).

personally appeared before him when they did not. Lastly, it is alleged that despite knowing the infirmities of these documents, Atty. Examen introduced these documents into evidence violating his oath as a lawyer and the CPR.

In his defense, Atty. Examen pointed out that there was no longer any prohibition under the Revised Administrative Code for a notary public to notarize a document where one of the parties is related to him by consanguinity and affinity.¹⁴ With regard to the use of Florentina's residence certificate as Ramon's, Atty. Examen said that he was in good faith and that it was office practice that the secretary type details without him personally examining the output.¹⁵ In any event, he reasoned that the use of another's residence certificate is not a ground for disbarment and is barred by prescription based on IBP Resolution No. XVI-2004-13 dated January 26, 2004 where it was proposed that the Rules of Procedure of the Commission on Bar Discipline Integrated Bar of the Philippines, Section 1, Rule VIII, be revised to include a prescription period for professional misconduct: within two years from the date of the act.¹⁶

In its Report and Recommendation,¹⁷ the IBP Commission on Bar Discipline (CBD) found Atty. Examen liable for breach of the Notarial Law and introducing false Absolute Deeds of Sale before court proceedings. It stated that there was ample evidence to support the complainants' contention that the Spouses Alilano did not voluntarily and knowingly convey their property, i.e. denials under oath by attesting witnesses and NBI Report by Handwriting Expert Jennifer Dominguez stating that Pedro Alilano's signature in the September 1984 Absolute Deed of Sale was significantly different from the specimen signatures. It also noted that Ramon Examen's residence certificate number, date and place of issue were also falsified since the residence certificate actually belonged to Florentina Pueblo. It thus recommended that the penalty of disbarment be imposed.

The IBP Board of Governors (BOG) in its June 26, 2007 Resolution¹⁸ adopted the IBP CBD's report but modified the penalty to suspension from the practice of law for a period of two years and a suspension of Atty. Examen's Notarial Commission for a period of two years.

Atty. Examen moved for reconsideration. In its Notice of Resolution, the IBP BOG denied the motion for reconsideration. It also modified the penalty imposed to suspension from the practice of law for a period of one year and disqualification from re-appointment as Notary Public for a period of two years.¹⁹

¹⁴ *Rollo*, p. 189.

¹⁵ *Id.* at 199-201.

¹⁶ *Id.* at 583.

¹⁷ *Id.* at 677-682. Signed by Commissioner Lolita A. Quisumbing.

¹⁸ *Id.* at 676. Signed by Assistant National Secretary Tomas N. Prado.

¹⁹ *Id.* at 674.

We agree with the IBP that Atty. Examen is administratively liable and hereby impose a modified penalty.

In disbarment cases the only issue that is to be decided by the Court is whether the member of the bar is fit to be allowed the privileges as such or not.²⁰ It is not therefore the proper venue for the determination of whether there had been a proper conveyance of real property nor is it the proper proceeding to take up whether witnesses' signatures were in fact forged.

NO PRESCRIPTION OF ACTIONS FOR ACTS OF ERRING MEMBERS OF THE BAR

In *Frias v. Atty. Bautista-Lozada*,²¹ the Court *En Banc* opined that there can be no prescription in bar discipline cases. It pointed out this has been the policy since 1967 with the Court's ruling in *Calo, Jr. v. Degamo*²² and reiterated in *Heck v. Santos*²³ where we had the chance to state:

If the rule were otherwise, members of the bar would be emboldened to disregard the very oath they took as lawyers, prescinding from the fact that as long as no private complainant would immediately come forward, they stand a chance of being completely exonerated from whatever administrative liability they ought to answer for. It is the duty of this Court to protect the integrity of the practice of law as well as the administration of justice. *No matter how much time has elapsed from the time of the commission of the act complained of and the time of the institution of the complaint, erring members of the bench and bar cannot escape the disciplining arm of the Court.* This categorical pronouncement is aimed at unscrupulous members of the bench and bar, to deter them from committing acts which violate the Code of Professional Responsibility, the Code of Judicial Conduct, or the Lawyer's Oath. x x x

Thus, even the lapse of considerable time from the commission of the offending act to the institution of the administrative complaint will not erase the administrative culpability of a lawyer.... (Italics supplied)²⁴

We therefore ruled in *Frias*, that Rule VIII, Section 1 of the Rules of Procedure of the IBP CBD was void and had no legal effect for being *ultra vires* and thus null and void.²⁵

This ruling was reiterated in the more recent case of *Bengco v. Bernardo*,²⁶ where the Court stated that putting a prescriptive period on administrative cases involving members of the bar would only serve to embolden them to disregard the very oath they took as lawyers, prescinding from the fact that as long as no private complainant would immediately

²⁰ *Pimentel, Jr. v. Atty. Llorente*, 393 Phil. 544, 551 (2000).

²¹ 523 Phil. 17, 19 (2006).

²² 126 Phil. 802 (1967).

²³ 467 Phil. 798, 824-825 (2004).

²⁴ *Frias v. Atty. Bautista-Lozada*, supra note 21, at 19-20.

²⁵ Id. at 20.

²⁶ A.C. No. 6368, June 13, 2012, 672 SCRA 8, 17.

come forward, they stand a chance of being completely exonerated from whatever administrative liability they ought to answer for.

Atty. Examen's defense of prescription therefore is of no moment and deserves scant consideration.

**THE SPANISH NOTARIAL LAW OF
1889 WAS REPEALED BY THE
REVISED ADMINISTRATIVE CODE OF
1917**

Prior to 1917, governing law for notaries public in the Philippines was the Spanish Notarial Law of 1889. However, the law governing Notarial Practice is changed with the passage of the January 3, 1916 Revised Administrative Code, which took effect in 1917. In 2004, the Revised Rules on Notarial Practice²⁷ was passed by the Supreme Court.

In *Kapunan, et al. v. Casilan and Court of Appeals*,²⁸ the Court had the opportunity to state that enactment of the Revised Administrative Code repealed the Spanish Notarial Law of 1889. Thus:

It is petitioners' contention that Notary Public Mateo Canonoy, who was related to the parties in the donation within the fourth civil degree of affinity, was, under Articles 22 and 28 of the Spanish Notarial Law, incompetent and disqualified to authenticate the deed of donation executed by the Kapunan spouses in favor of their daughter Concepcion Kapunan Salcedo. Said deed of donation, according to petitioners, became a mere private instrument under Article 1223 of the old Civil Code, so that under the ruling laid down in the case of *Barretto vs. Cabreza* (33 Phil., 413), the donation was inefficacious. The appellate court, however, in the decision complained of held that the Spanish Notarial Law has been repealed with the enactment of Act No. 496. We find this ruling to be correct. In the case of *Philippine Sugar Estate vs. Poizart* (48 Phil., 536), cited in *Vda. de Estuart vs. Garcia* (Adm. Case No. 212, prom. February 15, 1957), this Court held that **"The old Spanish notarial law and system of conveyance was repealed in the Philippines and another and different notarial law and system became the law of the land with the enactment of Act No. 496."**²⁹ (Emphasis supplied)

In this case, the heirs of Alilano stated that Atty. Examen was prohibited to notarize the absolute deeds of sale since he was related by consanguinity within the fourth civil degree with the vendee, Ramon. The prohibition might have still applied had the applicable rule been the Spanish Notarial Law. However, following the Court's ruling in *Kapunan*, the law in force at the time of signing was the Revised Administrative Code, thus, the prohibition was removed. Atty. Examen was not incompetent to notarize the document even if one of the parties to the deed was a relative, his brother. As correctly observed by the IBP CBD:

²⁷ A.M. No. 02-8-13-SC.

²⁸ 109 Phil. 889 (1960).

²⁹ Id. at 892-893.

At the time of notarization, the prevailing law governing notarization was Sections 231-259, Chapter 11 of the Revised Administrative Code and there was no prohibition on a notary public from notarizing a document when one of the interested parties is related to the notary public within the fourth civil degree of consanguinity or second degree of affinity.³⁰

Note must be taken that under 2004 Rules on Notarial Practice, Rule IV, Section 3(c), a notary public is disqualified among others to perform the notarial act if he is related by affinity or consanguinity to a principal within the fourth civil degree, to wit:

SEC. 3. *Disqualifications.* – A notary public is disqualified from performing a notarial act if he:

x x x x

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

That Atty. Examen was not incompetent to act as a notary public in the present case does not mean that he can evade administrative liability under the CPR in conjunction with the provisions of the Notarial Law.

**NOTARIES PUBLIC MUST PERFORM
THEIR DUTIES DILIGENTLY AND
WITH UTMOST CARE**

In *Nunga v. Atty. Viray*,³¹ this Court stated:

...[N]otarization is **not an empty, meaningless, routinary act. It is invested with substantive public interest**, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. It must be underscored that the notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of the authenticity thereof. A notarial document is by law entitled to full faith and credit upon its face. For this reason, **notaries public must observe with utmost care the basic requirements in the performance of their duties.**³² (Emphasis supplied; citations omitted)

Thus under the prevailing law at the time of notarization it was the duty of the notary public to comply with the requirements of the Notarial Law. This includes the duty under Chapter 11, Section 251 of the Revised Administrative Code:

³⁰ *Rollo*, p. 680.

³¹ 366 Phil. 155 (1999).

³² *Id.* at 160-161.

SEC. 251. *Requirement as to notation of payment of cedula [residence] tax.* – Every contract, deed, or other document acknowledged before a notary public shall have certified thereon that the parties thereto have presented their proper cedula [residence] certificates or are exempt from the cedula [residence] tax, and there shall be entered by the notary public as a part of such certification the number, place of issue, and date of each cedula [residence] certificate as aforesaid.

Under Chapter 11, Section 249 of the Revised Administrative Code provided a list of the grounds for disqualification:

SEC. 249. *Grounds for revocation of commission.* – The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:

X X X X

(f) The failure of the notary to make the proper notation regarding cedula certificates.

X X X X

In *Soriano v. Atty. Basco*,³³ the Court stated that notaries public are required to follow formalities as these are mandatory and cannot be simply neglected. Thus, the Notarial Law requires them to certify that a party to the instrument acknowledged before him has presented the proper residence certificate (or exemption from the residence certificate) and to enter its number, place of issue and date as part of the certification. Failure to perform his duties results in the revocation of a notary's commission. The Court said:

As a lawyer commissioned as a notary public, respondent is **mandated to discharge with fidelity the sacred duties appertaining to his office, such duties being dictated by public policy and impressed with public interest.** Faithful observance and utmost respect for the legal solemnity of an oath in an acknowledgment are sacrosanct. He cannot simply disregard the requirements and solemnities of the Notarial Law.³⁴ (Emphasis supplied)

Here, based on the submission of the complainants, it is clear that the residence certificate number used by Ramon Examen and as notarized by Atty. Examen in both Absolute Deeds of Sale was not in fact the residence certificate of Ramon but Florentina's residence certificate number.³⁵ Atty. Examen interposes that he was in good faith in that it was office practice to have his secretary type up the details of the documents and requirements without him checking the correctness of same.

³³ 507 Phil. 410, 414-415 (2005).

³⁴ Id. at 416.

³⁵ *Rollo*, pp. 12-14.

A notary public must discharge his powers and duties, which are impressed with public interest, with accuracy and fidelity.³⁶ Good faith cannot be a mitigating circumstance in situations since the duty to function as a notary public is personal. We note that the error could have been prevented had Atty. Examen diligently performed his functions: personally checked the correctness of the documents. To say that it was his secretary's fault reflects disregard and unfitness to discharge the functions of a notary public for it is he who personally acknowledges the document. He was behooved under Section 251, Chapter 11 of the Revised Administrative Code to check if the proper *cedulas* were presented and inspect if the documents to be acknowledged by him reflected the correct details. This Court cannot stress enough that notarization is not a routinary act. It is imbued with substantive public interest owing to the public character of his duties³⁷.

Atty. Examen posits that the failure of a notary to make the proper notation of *cedulas* can only be a ground for disqualification and not the proper subject for a disbarment proceeding. We disagree.

In violating the provisions of the Notarial Law, Atty. Examen also transgressed the his oath as a lawyer, provisions of the CPR and Section 27, Rule 138 of the Rules of Court which provides:

SEC. 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor.* – A member of the bar may be disbarred 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 wilful disobedience of any lawful order of a superior court, or for corruptly and 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.

By his negligent act of not checking the work of his secretary and merely perfunctorily notarizing documents, it cannot be said that he upheld legal processes thus violating Canon 1 of the CPR. Neither can it be said that he promoted confidence in the legal system. If anything, his acts serve to undermine the functions of a diligent lawyer. He thus ran afoul Rule 1.02 of the CPR. We cannot stress enough that as a lawyer, respondent is expected at all times to uphold the integrity and dignity of the legal

³⁶ *Gonzales v. Atty. Ramos*, 499 Phil. 345, 350 (2005).

³⁷ Under Section 241 of the Revised Administrative Code, notary public has the following powers:

SEC. 241. *Powers of notary public.* – Every notary public shall have power to administer all oaths and affirmations provided for by law, in all matters incident to his notarial office, and in the execution of affidavits, depositions, and other documents requiring an oath, and to receive the proof or acknowledgment of all writings relating to commerce or navigation, such as bills of sale bottomries, mortgages, and hypothecations of ships, vessels, or boats, charter parties of affreightments, letters of attorney, deeds, mortgages, transfers and assignments of land or buildings, or an interest therein, and such other writings as are commonly proved or acknowledged before notaries; to act as a magistrate, in the writing of affidavits or depositions, and to make declarations and certify the truth thereof under his seal of office, concerning all matters done by him by virtue of his office.

profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the integrity of the legal profession.³⁸ A lawyer's mandate includes thoroughly going over documents presented to them typed or transcribed by their secretaries.³⁹

The Court notes that the case between the parties is not the first that reached this Court. In *Edna Examen and Roberto Examen v. Heirs of Pedro Alilano and Florentina Pueblo*,⁴⁰ Atty. Examen and his sister-in-law questioned via a petition for certiorari⁴¹ the propriety of three Court of Appeals' Resolutions relating to a case involving Lot No. 1085 Pls-544-D this time with respect to its fruits. There the Court of Appeals (CA) after giving Atty. Examen 90 days to file his appellant's brief, denied a second motion for extension of time merely on the basis of a flimsy reason that he had misplaced some of the transcript of the witnesses' testimonies. The CA did not find the reason of misplaced transcript as good and sufficient cause to grant the extension pursuant to Section 12,⁴² Rule 44 of the Revised Rules of Court. It stated that it was a "flimsy and lame excuse to unnecessarily delay the proceedings."⁴³ The CA was of the opinion that defendant-appellant's, herein respondent, motion was "a mockery of the procedural rules."⁴⁴ This Court denied the petition for various procedural defects.⁴⁵

With respect to the penalty imposed, given that Atty. Examen not only failed to uphold his duty as a notary public but also failed to uphold his lawyer's oath and ran afoul the provisions of the CPR, the Court deems it proper to suspend Atty. Examen from the practice of law for a period of two years following this Court's decision in *Caalim-Verzonilla v. Pascua*.⁴⁶

WHEREFORE, respondent Atty. Roberto E. Examen is hereby **SUSPENDED** from the practice of law for **TWO (2) YEARS**. In addition, his present notarial commission, if any, is hereby **REVOKED**, and he is **DISQUALIFIED** from reappointment as a notary public for a period of two (2) years from finality of this Decision. He is further **WARNED** that any similar act or infraction in the future shall be dealt with more severely.

Let copies of this Decision be furnished to the Office of the Bar Confidant to be appended to respondent's personal record as an attorney, the

³⁸ *Caalim-Verzonilla v. Pascua*, A.C. No. 6655, October 11, 2011, 658 SCRA 762, 771-772.

³⁹ *Adez Realty, Incorporated v. Court of Appeals*, G.R. No. 100643, October 30, 1992, 215 SCRA 301, 305.

⁴⁰ Docketed as G.R. No. 179896.

⁴¹ Under Rule 65 of the Revised Rules of Court.

⁴² REVISED RULES OF COURT, Rule 44, Section 12 provides:

SEC. 12. *Extension of time for filing briefs.* - Extension of time for the filing of briefs will not be allowed, except for good and sufficient cause, and only if the motion for extension is filed before the expiration of the time sought to be extended.

⁴³ *Rollo* (G.R. No. 179896), pp. 93 and 96.


⁴⁴ *Id.* at 93.

⁴⁵ *Id.* at 113-114. Dismissed for violation of Section 3, Rule 46, Section 1 and 4, Rule 65 and Sections 4 and 5, Rule 7 of the Revised Rules of Court and no showing of grave abuse of discretion.

⁴⁶ *Supra* note 38, at 774.


Integrated Bar of the Philippines, the Department of Justice and all courts in the country for their information and guidance.

SO ORDERED.



MARTIN S. VILLARAMA, JR.
Associate Justice

WE CONCUR:



MARIA LOURDES P. A. SERENO
Chief Justice

(On leave)
ANTONIO T. CARPIO
Associate Justice



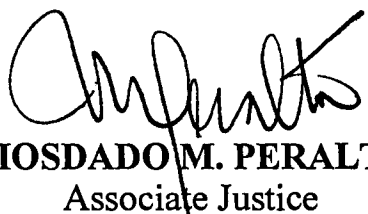
PRESBITERO J. VELASCO, JR.
Associate Justice



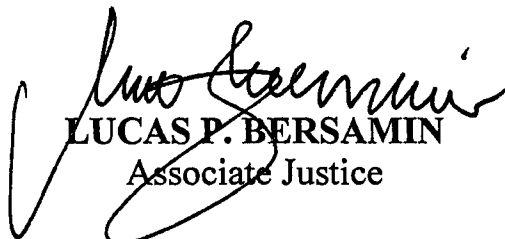
TERESITA J. LEONARDO-DE CASTRO
Associate Justice



ARTURO D. BRION
Associate Justice



DIOSDADO M. PERALTA
Associate Justice



LUCAS P. BERSAMIN
Associate Justice




MARIANO C. DEL CASTILLO
Associate Justice




JOSE PORTUGAL PEREZ
Associate Justice




JOSE CATRAL MENDOZA
Associate Justice



BIENVENIDO L. REYES
Associate Justice


ESTELA M. PERLAS-BERNABE
Associate Justice


MARVIC M.V.F. LEONEN
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

