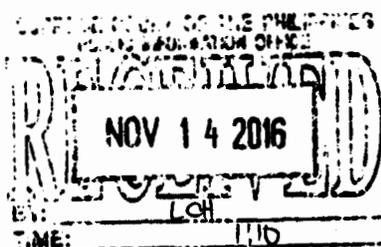




Republic of the Philippines
Supreme Court
Manila

CERTIFIED TRUE COPY
Wilfredo V. Lapitan
WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

NOV 11 2016



THIRD DIVISION

MANUEL B. BERNALDEZ,
Complainant,

A.C. No. 8698

Present:

VELASCO, JR., J.,
Chairperson,
PERALTA,
PEREZ,
REYES, and
JARDELEZA, JJ.

- versus -

ATTY. WILMA DONNA C.
ANQUILO-GARCIA,
Respondent.

Promulgated:

August 31, 2016

Wilfredo V. Lapitan

X-----X

RESOLUTION

REYES, J.:

For resolution is the complaint¹ dated August 2, 2010 filed by Manuel B. Bernaldez (complainant) charging respondent Atty. Wilma Donna C. Anquilo-Garcia (Atty. Anquilo-Garcia) with gross misconduct, deceit, violation of Lawyer's Oath, and abuse of authority as notary public.

Antecedent Facts

In his complaint, the complainant alleges that during the 2010 National and Local Elections, Atty. Anquilo-Garcia coerced and threatened registered voters in the Municipality of Biri, Northern Samar to sign blank and ready-made affidavits stating that they were illiterate/disabled voters when in fact, they were not and that they needed assistors in voting.²

¹ Rollo, pp. 17-19.

² Id. at 17.

A

According to the complainant, the scheme was employed by Atty. Anquilo-Garcia to ensure the victory of her husband, Jaime Garcia, Jr. (Garcia Jr.), who was running for Mayor in Biri, Northern Samar.³

Moreover, the complainant avers that the affiants never appeared before Atty. Anquilo-Garcia nor was it possible for her to go to Catarman, Northern Samar which is 50 kilometers away by land and sea from Biri, Northern Samar to execute the affidavits on the election day itself.⁴

On September 1, 2010, the Court issued a Resolution⁵ directing Atty. Anquilo-Garcia to submit her Comment within 10 days from receipt thereof.

In her comment,⁶ Atty. Anquilo-Garcia denied having prepared ready-made affidavits and contended that what she prepared and notarized were affidavits of affiants who sought her help and services as notary public so that they may be allowed to vote with assistors because of difficulty in reading and/or some physical disability.⁷

Moreover, she asserted that the affiants personally appeared before her on May 10, 2010 in Biri, Northern Samar and voluntarily executed the affidavits without being threatened, intimidated and paid. She alleged that the affidavits attached to the complaint were manufactured and/or falsified in order to suit the allegations of the complainant, her husband Garcia Jr.'s opposing candidate for the mayoralty. The same affidavits were also used as exhibits in the election protest filed by the complainant against Garcia Jr. before the Regional Trial Court (RTC) of Catarman, Northern Samar, docketed as Election Protest (E.P.) Case No. 38.⁸

In the Resolution⁹ dated December 6, 2010, the Court referred the instant case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within 90 days from receipt of the record.

On December 1, 2011, the IBP Commission on Bar Discipline (CBD) issued a notice requiring both parties to appear for a mandatory conference.¹⁰

³ Id.

⁴ Id.

⁵ Id. at 86.

⁶ Id. at 88-93.

⁷ Id. at 88.

⁸ Id. at 88-89.

⁹ Id. at 137.

¹⁰ Id. at 532.

Λ

On March 22, 2012, the IBP-CBD issued an Order¹¹ declaring the mandatory conference closed and terminated. Both parties were then required to file their respective verified position papers within a period of 10 days from receipt thereof.

On June 28, 2013, before the case was resolved, the complainant filed his Affidavit of Withdrawal¹² of the complaint stating that he is desisting from pursuing the instant disbarment case. He stated that the filing of the instant case was merely due to misapprehension of facts and misunderstanding of the incidents.

Resolutions of the IBP

On April 29, 2015, Commissioner Giovanne T. Lim (Commissioner Lim) issued his Report and Recommendation¹³ recommending that the instant case against Atty. Anquilo-Garcia be dismissed without prejudice. Commissioner Lim stated that since the alleged irregularities perpetrated by Atty. Anquilo-Garcia are the subject of the election protest filed by the complainant before the RTC and made subject of this disbarment case, it is premature to rule on the administrative liability of Atty. Anquilo-Garcia pending resolution of the election protest.¹⁴

As to the withdrawal of the complaint, Commissioner Lim held that in disbarment cases, the desistance or withdrawal on the part of the complainant is not sufficient to terminate the administrative proceedings.

On June 20, 2015, the IBP Board of Governors issued a Notice of Resolution¹⁵ adopting and approving the Report and Recommendation of Commissioner Lim after finding the same to be supported by the evidence on record and applicable laws.

Ruling of the Court

To begin with, it must be stressed that administrative proceedings against lawyers are *sui generis* and they belong to a class of their own. They are neither civil nor criminal actions but rather investigations by the Court into the conduct of its officers.¹⁶ The instant administrative case is, thus, distinct from and may proceed independently of the election case. E.P. Case No. 38 refers to an election contest involving fraud or irregularities

¹¹ Id. at 573-574.

¹² Id. at 516-518.

¹³ Id. at 584-588.

¹⁴ Id. at 587.

¹⁵ Id. at 582-583.

¹⁶ *Sebastian v. Atty. Bajar*, 559 Phil. 211, 222 (2007).

N

committed in the conduct of the elections, while the present disbarment case seeks to discipline Atty. Anquilo-Garcia as a lawyer for her alleged gross misconduct, deceit, violation of her oath as a lawyer, and abuse of authority as notary public. Thus, there is no need to await the final resolution of the election protest filed by the complainant before the instant disbarment case may be acted upon.

Likewise, the fact that the complainant filed a withdrawal of the complaint during the pendency of this case is of no moment. In *Ventura v. Atty. Samson*,¹⁷ the Court held that the complainant's affidavit of desistance cannot have the effect of abating the administrative proceedings in view of the public service character of the practice of law and the nature of disbarment proceedings as a public interest concern.¹⁸

The Court now resolves the substantive matters surrounding the case.

“In administrative cases against lawyers, the quantum of proof required is clearly preponderant evidence and the burden of proof rests upon the complainant.”¹⁹ Here, the complainant failed to show by clear preponderance of evidence that Atty. Anquilo-Garcia coerced any registered voters in the Municipality of Biri, Northern Samar to sign the alleged blank and ready-made affidavits. Apparently, the affidavits presented by the complainant point to other persons responsible in the employment of force, intimidation or threat upon the voters in the Municipality.²⁰

With regard, however, to the charge of abuse of authority as notary public, the Court finds that the affidavits prepared by Atty. Anquilo-Garcia were notarized without the personal presence of the affiants, in violation of the notarial law which the Court cannot countenance.

The complaint clearly established that Atty. Anquilo-Garcia notarized the subject affidavits without having the affiants personally appear before her as required by law. The Court, likewise, finds no merit with her defense that the headings of the affidavits which indicated Municipality of Biri, and in some Catarman, Northern Samar as the place of execution were just simple and harmless clerical and typographical errors.

A cursory perusal of the affidavits of the concerned registered voters of the Municipality of Biri sufficiently shows that these affidavits were merely handed to them at the polling precincts on election day, bearing already the signature and notarial seal of Atty. Anquilo-Garcia.

¹⁷ 699 Phil. 404 (2012).

¹⁸ Id. at 417.

¹⁹ *Atty. Asa v. Atty. Castillo*, 532 Phil. 9, 21 (2006).

²⁰ *Rollo*, pp. 42, 45, 51, 54, 57.

1

Time and again, the Court has reminded lawyers commissioned as notaries public that the affiants must personally appear before them. Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice reads:

Section 2. Prohibitions –

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
- (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.

Lawyers commissioned as notaries public are reminded that their functions should not be trivialized and they must discharge their powers and duties which are impressed with public interest, with accuracy and fidelity. They must inform themselves of the facts they certify to; most importantly, they should not take part or allow themselves to be part of illegal transactions.²¹

Atty. Anquilo-Garcia's failure to perform her duty as a notary public undermines the integrity of a notary public and degrades the function of notarization. Thus, she should be liable for such negligence, not only as a notary public but also as a lawyer.²²

In *Gonzales v. Atty. Ramos*,²³ the Court imposed a penalty of suspension from the practice of law against respondent lawyer for a period of one (1) year and disqualified him from reappointment as notary public for two (2) years for notarizing a Deed of Sale without the presence of the affiants.

The same was adopted by the Court in the recent case of *Agbulos v. Atty. Viray*²⁴ wherein the notary public was meted out the same penalty for preparing an affidavit and notarizing it without the affiant's personal appearance.

²¹ *Maria v. Atty. Cortez*, 685 Phil. 331, 338-339 (2012).

²² *Dela Cruz-Sillano v. Atty. Pangan*, 592 Phil. 219, 228 (2008).

²³ 499 Phil. 345 (2005).

²⁴ 704 Phil. 1 (2013).

A

Under the facts and circumstances of the case and jurisprudence, Atty. Anquilo-Garcia's notarial commission should not only be suspended but she must also be suspended from the practice of law.²⁵

Considering, however, the absence of bad faith on the part of Atty. Anquilo-Garcia and that this is her first infraction after her long years of membership in the Bar, the Court finds that the less severe penalties of suspension for six (6) months in the practice of law and disqualification from reappointment as notary public for a period of one (1) year are proper under the circumstances.

WHEREFORE, premises considered, the Court **RESOLVES** to:

- (i) **NOTE** the Notice of Resolution No. XXI-2015-547 dated June 20, 2015 of the Integrated Bar of the Philippines Board of Governors adopting and approving the Report and Recommendation of the Investigating Commissioner, and dismissing the complaint against Atty. Wilma Donna C. Anquilo-Garcia without prejudice;
- (ii) **NOTE** the Letter dated April 14, 2016 of the Integrated Bar of the Philippines Commission on Bar Discipline transmitting the documents pertaining to this case;
- (iii) **REVOKE** the notarial commission of respondent Atty. Wilma Donna C. Anquilo-Garcia for breach of the 2004 Rules on Notarial Practice; and **DISQUALIFY** her from reappointment as notary public for a period of **ONE (1) YEAR**; and
- (iv) **SUSPEND** Atty. Wilma Donna C. Anquilo-Garcia from the practice of law for a period of **SIX (6) MONTHS** effective immediately for violation of the Code of Professional Responsibility. She is further **WARNED** that a repetition of the same or of similar acts shall be dealt with more severely.

Let copies of this Resolution be furnished to the Office of the Bar Confidant, to be appended to Atty. Wilma Donna C. Anquilo-Garcia's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and all courts in the country for their information and guidance.

²⁵ *Dela Cruz-Sillano v. Atty. Pangan*, supra note 22; *Bautista v. Atty. Bernabe*, 517 Phil. 236 (2006).

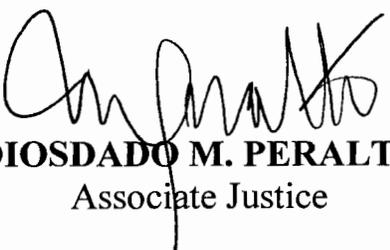
1

SO ORDERED.


BIENVENIDO L. REYES
Associate Justice

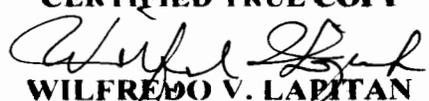
WE CONCUR:


PRESBITERO J. VELASCO, JR.
Associate Justice
Chairperson


DIOSDADO M. PERALTA
Associate Justice


JOSE PORTUGAL PEREZ
Associate Justice


FRANCIS H. JARDELEZA
Associate Justice

CERTIFIED TRUE COPY

WILFREDO V. LAPITAN
Division Clerk of Court
Third Division

NOV 11 2016