



Republic of the Philippines  
 Supreme Court  
 Manila

FIRST DIVISION

ROBERTO P. MABINI,  
*Complainant,*

A.C. No. 9512

SUPREME COURT OF THE PHILIPPINES  
 PUBLIC INFORMATION OFFICE  
**RECORDED**  
 MAR 01 2018  
 BY: *LOH*  
 TIME: 3:00

Present:

- versus -

SERENO, *C.J., Chairperson,*  
 LEONARDO-DE CASTRO,  
 DEL CASTILLO,  
 JARDELEZA, *and*  
 TIJAM, *JJ.*

ATTY. VITTO A. KINTANAR,  
*Respondent.*

Promulgated:  
**FEB 05 2018**

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**DECISION**

**DEL CASTILLO, J.:**

Before the Court is an administrative Complaint<sup>1</sup> filed by Roberto P. Mabini (complainant) against Atty. Vitto A. Kintanar (respondent) for misconduct on the sole ground that he notarized a document executed by his wife, Evangeline C. Kintanar (Evangeline).

***Factual Antecedents***

In his Position Paper,<sup>2</sup> complainant stated, that sometime in November 2003, Regina Alamares (Regina) approached him and his wife, Mercedes M. Mabini (Mercedes), to sell her 3,317-square meter realty located in Daraga, Albay. Said property was identified as Lot No. 1959, and covered by Original Certificate of Title (OCT) No. 251 (1904). Regina made known to complainant and Mercedes that said title was lost but its duplicate certificate may be secured from the Register of Deeds (RD). Complainant and Mercedes nonetheless bought the property. Later, complainant filed a

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

<sup>2</sup> *Id.*, unpaginated.

*Mabini*

petition for issuance of second owner's duplicate copy of OCT 251 (1904), which the Regional Trial Court (RTC) granted. On March 2, 2005, the RD of Albay issued Transfer Certificate of Title No. T-133716 covering the property in the names of complainant and Mercedes over the property.

Complainant further averred that, in March 2012, however, respondent's wife, Evangeline, filed a complaint against him (complainant), among other persons, for reconveyance, annulment of title, damages with prayer for preliminary injunction or restraining order before the RTC of Legaspi City. Attached to said complaint was an Affidavit of Lost Owner's Duplicate Copy of Title<sup>3</sup> executed by Evangeline and notarized by respondent on April 25, 2002, and registered in his notarial book under Doc. No. 172, Page No. 35, Book No. 33, Series of 2002.

According to complainant, respondent knew that he (respondent) was not authorized to notarize a document of his wife, or any of his relative within the fourth civil degree, whether by affinity or consanguinity; thus, for having done so, respondent committed misconduct as a lawyer/Notary Public.

For his part, respondent countered that the subject Affidavit purportedly executed by his wife appeared to have been notarized on April 25, 2002; as such, it was governed by Revised Administrative Code of 1917, which did not prohibit a Notary Public from notarizing a document executed by one's spouse. He likewise stated that, granting for argument's sake that he indeed notarized said Affidavit, he did not violate the law as the document involved was a mere affidavit, not a bilateral document or contract.<sup>4</sup>

Because of his demise on July 24, 2013, complainant's spouse, Mercedes, substituted him as complainant in the case.<sup>5</sup> On October 26, 2013, Mercedes died. Her and complainant's children<sup>6</sup> substituted her in the case.<sup>7</sup>

<sup>3</sup> Id. at 2.

<sup>4</sup> See respondent's Mandatory Conference Brief, id., unpaginated.

<sup>5</sup> See Manifestation, Notice of Death and Substitution of Deceased Private Complainant with Motion for Resetting, id., unpaginated.

<sup>6</sup> Namely, Azucena M. Carimpong, Richard M. Mabini, Josephine M. Mata, Mary Jean M. Hallam, Remigia M. Bron, Susana M. Quismorio, Marlou M. Smith, and Rosalina M. Arevalo.

<sup>7</sup> See Manifestation and Substitution of Deceased Complainant, *rollo*, unpaginated.



*Report and Recommendation of the IBP Investigating Commissioner*

On August 25, 2015, Commissioner Almira A. Abella-Orfanel (Investigating Commissioner) found respondent guilty of misconduct and recommended his suspension from the practice of law for six months.<sup>8</sup> She opined that relatives by affinity are relatives by virtue of marriage. She stressed that “[i]f the law prohibits notarization of acts done by relatives by affinity, it is but logical that the law also prohibit[s] the notarization of the root cause of such relationship, the spouse. Without the spouse, said prohibition will not exist.”<sup>9</sup> She added that since the law treats spouses as one upon their marriage, it follows that the notarization of the spouse’s act is disallowed considering that a person cannot notarize his or her own act.

*Notice of Resolution of the IBP Board of Governors (IBP-BOG)*


In its Resolution No. XXII-2015-98, the IBP-BOG resolved to modify the recommendation of the Investigating Commissioner in that respondent was imposed a stiffer penalty of six months’ suspension from the practice of law; immediate revocation of his commission as Notary Public; and, a two-year disqualification as Notary Public.

**Issue**

Whether respondent committed misconduct by notarizing his wife’s affidavit of loss in 2002.

**Our Ruling**

It is a truism that the duties performed by a Notary Public are *not* just plain ministerial acts. They are so impressed with public interest and dictated by public policy. Such is the case since notarization makes a private document into a public one; and as a public document, it enjoys full credit on its face.<sup>10</sup> However, a lawyer cannot be held liable for a violation of his duties as Notary Public when the law in effect at the time of his complained act does not provide any prohibition to the same, as in the case at bench.



<sup>8</sup> See Report and Recommendation dated August 25, 2015, *id.*, unpaginated.

<sup>9</sup> See p. 3 of the Report and Recommendation dated August 25, 2015.

<sup>10</sup> *Spouses Chambon v. Atty. Ruiz*, A.C. No. 11478, September 5, 2017.

In *Heirs of Pedro Alilano v. Atty. Examen*,<sup>11</sup> the Court explicitly decreed that the Spanish Notarial Law of 1889 was repealed by the 1917 Revised Administrative Code. It added that it was only in 2004 that the Court passed the Revised Rules on Notarial Practice, to wit:

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 Practice was passed by the Supreme Court.

In *Kapunan, et al. v. Casilan and Court of Appeals*, the Court had the opportunity to state that enactment of the Revised Administrative Code repealed the Spanish Notarial Law of 1889. x x x<sup>12</sup>

In said case, respondent Atty. Examen was charged with violating the Notarial Law when he notarized in 1984 the absolute deed of sale executed by his brother and the latter's wife. The Court held that Atty. Examen was competent to notarize said document because the Revised Administrative Code did not prohibit a Notary Public from notarizing any document of a relative.<sup>13</sup>

Moreover, in *Aznar Brothers Realty Co. v. Court of Appeals*,<sup>14</sup> the Court reiterated that indeed the Spanish Notarial Law of 1889 was repealed by the Revised Administrative Code and its Chapter 11 governed notarial practice at the time the subject deed therein was notarized in 1964.<sup>15</sup>

Too, in *Ylaya v. Atty. Gacott*,<sup>16</sup> the Court made an express pronouncement that the subject documents therein notarized in 2000 and 2001 were not covered by the 2004 Rules on Notarial Practice, viz.:

We note that the respondent has not squarely addressed the issue of his relationship with Reynold, whom the complainant alleges to be the respondent's uncle because Reynold is married to the respondent's maternal aunt. However, this is of no moment as the respondent cannot be held liable for violating Section 3 (c), Rule IV of A.M. No. 02-8-13-SC because the Deed of Absolute Sale dated June 4, 2001 and the MOA dated April 19, 2000 were notarized by the respondent prior to the effectivity of A.M. No. 02-8-13-SC on July 6, 2004. The notarial law in

<sup>11</sup> 756 Phil. 608 (2015).

<sup>12</sup> Id. at 616.

<sup>13</sup> Id. at 612, 617.

<sup>14</sup> 384 Phil. 95 (2000).

<sup>15</sup> Id. at 112-113.

<sup>16</sup> 702 Phil. 390 (2013).



force in the years 2000-2001 was Chapter 11 of Act No. 2711 (the Revised Administrative Code of 1917) which did not contain the present prohibition against notarizing documents where the parties are related to the notary public within the 4th civil degree, by affinity or consanguinity. Thus, we must likewise dismiss the charge for violation of A.M. No. 02-8-13-SC.<sup>17</sup>

Considering the foregoing, there is indeed no basis to hold respondent liable for misconduct for notarizing his wife's Affidavit in 2002.

To recall, complainant alleged that respondent was guilty of misconduct because he notarized the affidavit of his wife on April 25, 2002. Nevertheless, at the time of such notarization, it was the 1917 Revised Administrative Code that covered notarial practice. As elucidated in *Alilano* and *Ylaya*, during the effectivity of said Code, a Notary Public was not disallowed from notarizing a document executed by a relative. Neither was there a prohibition for a Notary Public to notarize a document executed by his or her spouse.

As discussed, the 1917 Revised Administrative Code repealed the Spanish Notarial Law. In turn, the provisions anent notarial practice embodied in the Revised Administrative Code were superseded by the passage of the 2004 Rules on Notarial Practice. This only means that any prohibition enumerated in the 2004 Rules on Notarial Practice does not cover the acts made by a Notary Public earlier, including those executed in 2002.

All told, the Court holds that respondent did not violate any of his duties as Notary Public when he notarized the affidavit of his wife on April 25, 2002.

**WHEREFORE**, the Complaint against Atty. Vitto A. Kintanar is **DISMISSED** for lack of merit.

**SO ORDERED.**

  
MARIANO C. DEL CASTILLO  
Associate Justice

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<sup>17</sup> Id. at 414.

WE CONCUR:



**MARIA LOURDES P. A. SERENO**

*Chief Justice*

*Chairperson*

*Teresita Leonardo de Castro*  
**TERESITA J. LEONARDO-DE CASTRO**  
*Associate Justice*

*Francis H. Jardeleza*  
**FRANCIS H. JARDELEZA**  
*Associate Justice*

*Noel Gimenez Tijam*  
**NOEL GIMENEZ TIJAM**  
*Associate Justice*

