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FIRST DIVISION

[A.C. No. 5688. June 4, 2009]

FELIPE E. ABELLA, *complainant, vs.* **ATTY. ASTERIA E. CRUZABRA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; REPUBLIC ACT NO. 6713 (THE CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES; GOVERNMENT EMPLOYEES IN THE EXECUTIVE DEPARTMENT; ALLOWED TO ENGAGE DIRECTLY IN THE PRIVATE PRACTICE OF THEIR PROFESSION PROVIDED THERE IS A WRITTEN PERMISSION FROM THE DEPARTMENT HEAD. — Section 7(b)(2) of RA 6713 provides: Section 7. *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful: x x x (b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not: x x x (2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or x x x Memorandum Circular No. 17 of the Executive Department allows government employees to engage directly in the private practice of their profession provided there is a written permission from the Department head. It provides: The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides: "Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without **a written permission from the head of Department;** Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities

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require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the other officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors", Subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission. It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the DOJ. Respondent's superior, the Register of Deeds, cannot issue any authorization because he is not the head of the Department. And even assuming that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.

2. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; UNAUTHORIZED PRIVATE PRACTICE OF PROFESSION; CLASSIFIED AS LIGHT OFFENSE PUNISHABLE BY REPRIMAND. — Under the Uniform Rules on Administrative Cases in the Civil Service, engaging in the private practice of profession, when unauthorized, is classified as a light offense punishable by reprimand.

APPEARANCES OF COUNSEL

Nestor S. Romulo for complainant.

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R E S O L U T I O N

CARPIO, *J.*:

Felipe E. Abella (complainant) filed a complaint for violation of Canon 1 of the Code of Professional Responsibility and Section 7(b)(2) of Republic Act No. 6713[1] (RA 6713) or the Code of Conduct and Ethical Standards for Public Officials and Employees against Atty. Asteria E. Cruzabra (respondent). In his affidavit-complaint[2] dated 8 May 2002, complainant charged respondent with engaging in private practice while employed in the government service.

Complainant alleged that respondent was admitted to the Philippine Bar on 30 May 1986 and was appointed as Deputy Register of Deeds of General Santos City on 11 August 1987.[3] Complainant asserted that as Deputy Register of Deeds, respondent filed a petition for commission as a notary public and was commissioned on 29 February 1988 without obtaining prior authority from the Secretary of the Department of Justice (DOJ).[4] Complainant claimed that respondent has notarized some 3,000 documents.[5] Complainant pointed out that respondent only stopped notarizing documents when she was reprimanded by the Chief of the Investigation Division of the Land Registration Authority.[6]

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[1] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and For Other Purposes, 20 February 1989.

[2] *Rollo*, pp. 1-2.

[3] *Id.* at 438.

[4] *Id.* at 439.

[5] *Id.* at 440.

[6] *Id.* at 439.

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Complainant contended that respondent could not justify her act by pretending to be in good faith because even non-lawyers are not excused from ignorance of the law. Complainant branded as incredible respondent's claim that she was merely motivated by public service in notarizing 3,000 documents. Complainant pointed out that respondent spent money to buy the Notarial Register Books and spent hours going over the documents subscribed before her, thereby prejudicing her efficiency and performance as Deputy Register of Deeds. Complainant believed that even if respondent had obtained authority from the DOJ, respondent would still be guilty of violating Section 7(b)(2) of RA 6713 because her practice as a notary public conflicts with her official functions.[7]

In her Comment, respondent admitted that she was a notary public from 29 February 1988 to 31 December 1989.[8] Respondent stated that she was authorized by her superior, the Register of Deeds, to act as a notary public. Respondent pointed out that the Register of Deeds, Atty. Pelagio T. Tolosa, also subscribed petitions and documents that were required to be registered.[9] Respondent explained that the Register of Deeds imposed the following conditions for her application as a notary public:

xxx xxx xxx

4. That the application for commission was on the condition that respondent cannot charge fees for documents required by the Office to be presented and under oath.[10]

Respondent contended that when she filed her petition for commission as a notary public, the requirement of approval from the DOJ Secretary was still the subject of a pending query by one of the Registrars and this fact was not known to respondent.[11] Respondent maintained that she had no intention

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[7] *Id.* at 440-441.

[8] *Id.* at 487.

[9] *Id.* at 44.

[10] *Id.* at 45.

[11] *Id.* at 487.

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to violate any rule of law. Respondent, as a new lawyer relying on the competence of her superior, admitted that an honest mistake may have been committed but such mistake was committed without willfulness, malice or corruption.[12]

Respondent argued that she was not engaged in illegal practice as a notary public because she was duly commissioned by the court.[13] Respondent denied that she violated Section 7(b)(2) of RA 6713 because she was authorized by her superior to act as a notary public. Respondent reasoned that her being a notary public complemented her functions as Deputy Register of Deeds because respondent could immediately have documents notarized instead of the registrants going out of the office to look for a notary public. Respondent added that she did not charge fees for the documents required by the office to be presented under oath.[14]

Respondent insisted that contrary to complainant's claims, she only notarized 135 documents as certified by the Clerk of Court of the 11th Judicial Region, General Santos City.[15]

In her Report and Recommendation (Report) dated 25 January 2005, Investigating Commissioner Lydia A. Navarro recommended to the IBP Board of Governors the dismissal of the complaint against respondent for lack of merit. The Report reads in part:

> However, the fact that she applied for commission as Notary Public without securing the approval of the proper authority although she was allowed to do so by her superior officer, was not her own undoing for having relied on the ample authority of her superior officer, respondent being a neophyte in the law profession for having newly passed the bar a year after at that time.
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> Records further showed that after having been reprimanded by Atty. Flestado for said mistake which was done in good faith respondent ceased and desisted to perform notarial work since then

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[12] *Id.* at 47.

[13] *Id.* at 486-487.

[14] *Id.* at 487.

[15] *Id*.

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up to the present as could be gleaned from the Certification issued by Clerk of Court VI Atty. Elmer D. Lastimosa of the 11th Judicial Region General Santos City; dated December 23, 2004 that 135 documents have been notarized by the respondent from February 29, 1988 to December 31, 1989 and there was no record of any notarized documents from January 19, 1990 to December 21, 1991.[16]

In a Resolution dated 12 March 2005, the IBP Board of Governors, in adopting and approving the Report, dismissed the case for lack of merit.

Complainant claims that in dismissing the complaint for "lack of merit" despite respondent's admission that she acted as a notary public for two years, the IBP Board of Governors committed a serious error amounting to lack of jurisdiction or authority.[17]

Section 7(b)(2) of RA 6713 provides:

Section 7. *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

xxx xxx xxx

(b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not:

xxx xxx xxx

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

xxx xxx xxx

[16] *Id.* at 431-432.

[17] *Id.* at 430.

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Memorandum Circular No. 17[18] of the Executive Department allows government employees to engage directly in the private practice of their profession provided there is a written permission from the Department head. It provides:

> The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides:
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> > "Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without **a written permission from the head of Department**; Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not impair in any way the efficiency of the other officer or employee: And provided, finally, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors",
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> Subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission. (Boldfacing supplied)

It is clear that when respondent filed her petition for commission as a notary public, she did not obtain a written permission from the Secretary of the DOJ. Respondent's superior, the Register of Deeds, cannot issue any authorization because

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[18] Revoking Memorandum Circular No. 1025 dated 25 November 1977 "Prohibiting Any Government Official and Employee From Accepting Private Employment in Any Capacity Without Prior Authority of The Office of the President." Issued on 4 September 1986.

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he is not the head of the Department. And even assuming that the Register of Deeds authorized her, respondent failed to present any proof of that written permission. Respondent cannot feign ignorance or good faith because respondent filed her petition for commission as a notary public after Memorandum Circular No. 17 was issued in 1986.

In *Yumol, Jr. v. Ferrer Sr.*,[19] we suspended a lawyer employed in the Commission on Human Rights (CHR) for failing to obtain a written authority and approval with a duly approved leave of absence from the CHR. We explained:

> Crystal clear from the foregoing is the fact that private practice of law by CHR lawyers is not a matter of right. Although the Commission allows CHR lawyers to engage in private practice, a written request and approval thereof, with a duly approved leave of absence for that matter are indispensable. In the case at bar, the record is bereft of any such written request or duly approved leave of absence. No written authority nor approval of the practice and approved leave of absence by the CHR was ever presented by respondent. Thus, he cannot engage in private practice.
>
> As to respondent's act of notarizing documents, records show that he applied for commission as notary public on 14 November 2000, before the Regional Trial Court (RTC) of San Fernando, Pampanga, Branch 42. This was granted by RTC Executive Judge Pedro M. Sunga, Jr., on 01 December 2000. However, the CHR authorized respondent to act as notary public only on 29 October 2001. Considering the acts of notarization are within the ambit of the term "practice of law," for which a prior written request and approval by the CHR to engage into it are required, the crucial period to be considered is the approval of the CHR on 29 October 2001 and not the approval of the RTC on 04 December 2000.[20]

In *Muring, Jr. v. Gatcho*,[21] we suspended a lawyer for having filed petitions for commission as a notary public while employed as a court attorney. We held:

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[19] A.C. No. 6585, 21 April 2005, 456 SCRA 475.

[20] *Id.* at 488-489.

[21] A.M. No. CA-05-19-P, 31 August 2006, 500 SCRA 330.

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Atty. Gatcho should have known that as a government lawyer, he was prohibited from engaging in notarial practice, or in any form of private legal practice for that matter. Atty. Gatcho cannot now feign ignorance or good faith, as he did not seek to exculpate himself by providing an explanation for his error. Atty. Gatcho's filing of the petition for commission, while not an actual engagement in the practice of law, appears as a furtive attempt to evade the prohibition.[22]

Under the Uniform Rules on Administrative Cases in the Civil Service, engaging in the private practice of profession, when unauthorized, is classified as a light offense punishable by reprimand.[23]

WHEREFORE, we find Atty. Asteria E. Cruzabra guilty of engaging in notarial practice without the written authority from the Secretary of the Department of Justice, and accordingly we *REPRIMAND* her. She is warned that a repetition of the same or similar act in the future shall merit a more severe sanction.

SO ORDERED.

Puno, C.J. (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

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[22] *Id.* at 348-349.

[23] Section 52, Rule IV. Resolution No. 991936 of the Civil Service Commission, effective 26 September 1999.