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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.M. No. MTJ-14-1842. February 24, 2014]
(Formerly OCA IPI No. 12-2491-MTJ)

REX M. TUPAL, *complainant, vs.* **JUDGE REMEGIO V. ROJO, Branch 5, Municipal Trial Court in Cities (MTCC), Bacolod City, Negros Occidental,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; RESPONDENT JUDGE NOTARIZED AFFIDAVITS OF COHABITATION, WHICH WERE DOCUMENTS NOT CONNECTED TO WITH THE EXERCISE OF HIS OFFICIAL FUNCTIONS AND DUTIES AS SOLEMNIZING OFFICER; RESPONDENT ALSO NOTARIZED SAID AFFIDAVITS WITHOUT CERTIFYING THAT LAWYERS OR NOTARIES PUBLIC WERE LACKING IN HIS TERRITORIAL JURISDICTION IN VIOLATION OF CIRCULAR NO. 1-90 DATED FEBRUARY 26, 1990.— This court finds Judge Rojo guilty of violating the New Code of Judicial Conduct and of gross ignorance of the law. Judge Rojo violated Circular No. 1-90 and the 2004 Rules on Notarial Practice. Municipal trial court and municipal circuit trial court judges may act as notaries public. However, they may do so only in their *ex officio* capacities. They may notarize documents, contracts, and other conveyances only in the exercise of their official functions and duties. x x x They may also act as notaries public *ex officio*

Supreme Court E-Library

only if lawyers or notaries public are lacking in their courts' territorial jurisdiction. They must certify as to the lack of lawyers or notaries public when notarizing documents *ex officio*. x x x Judge Rojo notarized affidavits of cohabitation, which were documents not connected with the exercise of his official functions and duties as solemnizing officer. He also notarized affidavits of cohabitation without certifying that lawyers or notaries public were lacking in his court's territorial jurisdiction. Thus, Judge Rojo violated Circular No. 1-90.

2. **ID.; ID.; ID.; JUDGES CANNOT NOTARIZE THE AFFIDAVITS OF COHABITATION OF THE PARTIES WHOSE MARRIAGE THEY WILL SOLEMNIZE.—** Based on law and the Guidelines on the Solemnization of Marriage by the Members of the Judiciary, the person who notarizes the contracting parties' affidavit of cohabitation cannot be the judge who will solemnize the parties' marriage. As a solemnizing officer, the judge's only duty involving the affidavit of cohabitation is to examine whether the parties have indeed lived together for at least five years without legal impediment to marry. The Guidelines does not state that the judge can notarize the parties' affidavit of cohabitation. Thus, affidavits of cohabitation are documents not connected with the judge's official function and duty to solemnize marriages. Notarizing affidavits of cohabitation is inconsistent with the duty to examine the parties' requirements for marriage. If the solemnizing officer notarized the affidavit of cohabitation, he cannot objectively examine and review the affidavit's statements before performing the marriage ceremony. Should there be any irregularity or false statements in the affidavit of cohabitation he notarized, he cannot be expected to admit that he solemnized the marriage despite the irregularity or false allegation. Thus, judges cannot notarize the affidavits of cohabitation of the parties whose marriage they will solemnize. Affidavits of cohabitation are documents not connected with their official function and duty to solemnize marriages.

3. **ID.; ID.; ID.; A JUDGE CANNOT OBJECTIVELY EXAMINE A DOCUMENT HE HIMSELF NOTARIZED; ARTICLE 34 OF THE FAMILY CODE AND THE GUIDELINES ON THE SOLEMNIZATION OF MARRIAGES BY THE MEMBERS OF THE JUDICIARY ASSUME THAT "THE PERSON AUTHORIZED BY LAW TO ADMINISTER OATHS" WHO NOTARIZES THE AFFIDAVIT OF COHABITATION AND THE**

Supreme Court E-Library

"SOLEMNIZING OFFICER" WHO PERFORMS THE MARRIAGE CEREMONY ARE TWO DIFFERENT PERSONS.— Judge Rojo admitted that he notarized affidavits of cohabitation of parties "on the same day [he solemnized their marriages]." He notarized documents not connected with his official function and duty to solemnize marriages. Thus, Judge Rojo violated Circular No. 1-90. Judge Rojo argued that the Guidelines on the Solemnization of Marriage by the Members of the Judiciary does not expressly prohibit judges from notarizing affidavits of cohabitation. Thus, he cannot be prohibited from notarizing affidavits of cohabitation. To accept Judge Rojo's argument will render the solemnizing officer's duties to examine the affidavit of cohabitation and to issue a sworn statement that the requirements have been complied with redundant. As discussed, a judge cannot objectively examine a document he himself notarized. Article 34 of the Family Code and the Guidelines on the Solemnization of Marriage by the Members of the Judiciary assume that "the person authorized by law to administer oaths" who notarizes the affidavit of cohabitation and the "solemnizing officer" who performs the marriage ceremony are two different persons.

4. **ID.; ID.; ID.; AN AFFIDAVIT OF COHABITATION REMAINS A PRIVATE DOCUMENT UNTIL NOTARIZED.—** Judge Rojo argued that Circular No. 1-90 only prohibits municipal trial court judges from notarizing "private documents x x x [bearing] no direct relation to the performance of their functions as judges." Since a marriage license is a public document, its "counterpart," the affidavit of cohabitation, is also a public document. Thus, when he notarizes an affidavit of cohabitation, he notarizes a public document. He did not violate Circular No. 1-90. An affidavit of cohabitation remains a private document until notarized. Notarization converts a private document into a public document, "[rendering the document] admissible in court without further proof of its authenticity." The affidavit of cohabitation, even if it serves a "public purpose," remains a private document until notarized. Thus, when Judge Rojo notarized the affidavits of cohabitation, he notarized nine private documents. As discussed, affidavits of cohabitation are not connected with a judge's official duty to solemnize marriages. Judge Rojo violated Circular No. 1-90.

Supreme Court E-Library

5. ID.; ID.; ID.; CIRCULAR NO. 1-90's PURPOSE IS NOT LIMITED TO DOCUMENTS USED TO TRANSACT "LEGAL CONVEYANCING BUSINESS"; SO LONG AS A JUDGE NOTARIZES A DOCUMENT NOT CONNECTED WITH HIS OFFICIAL FUNCTIONS AND DUTIES, HE VIOLATES CIRCULAR 1-90.— Judge Rojo argued that Circular No. 1-90's purpose is to "eliminate competition between judges and private lawyers in transacting legal conveyancing business." He cited *Borre v. Judge Moya* where this court found City Judge Arcilla guilty of violating Circular No. 1-90 for notarizing a deed of sale. Judge Rojo argued that when he notarized the affidavits of cohabitation, he did "not compete with private law practitioners or regular notaries in transacting legal conveyancing business." Thus, he did not violate Circular No. 1-90. In *Borre,* Judge Arcilla notarized a deed of sale. This is the context in which this court stated that "[judges] should not compete with private [lawyers] or regular notaries in transacting legal conveyancing business." At any rate, Circular No. 1-90's purpose is not limited to documents used to transact "legal conveyancing business." So long as a judge notarizes a document not connected with his official functions and duties, he violates Circular No. 1-90.

6. ID.; ID.; ID.; THAT OTHER JUDGES HAVE NOTARIZED AFFIDAVITS OF COHABITATION OF PARTIES WHOSE MARRIAGES THEY SOLEMNIZED DOES NOT MAKE THE PRACTICE LEGAL; VIOLATIONS OF LAW ARE NOT EXCUSED BY PRACTICE TO THE CONTRARY.— Since Judge Rojo notarized affidavits of cohabitation, which were not connected with his official function and duty to solemnize marriages, he violated Circular No. 1-90. Also, Judge Rojo notarized affidavits of cohabitation without certifying that lawyers or notaries public are lacking in Bacolod City. Failure to certify that lawyers or notaries public are lacking in the municipality or circuit of the judge's court constitutes violation of Circular No. 1-90. That other judges have notarized affidavits of cohabitation of parties whose marriages they solemnized does not make the practice legal. Violations of laws are not excused by practice to the contrary. All told, Judge Rojo violated Circular No. 1-90.

Supreme Court E-Library

7. ID.; ID.; ID.; RESPONDENT JUDGE VIOLATED THE 2004 RULES ON NOTARIAL PRACTICE BY NOT STATING THAT THE PARTIES WERE PERSONALLY KNOWN TO HIM OR THAT THE PARTIES PRESENTED THEIR COMPETENT EVIDENCE OF IDENTITY.— Judge Rojo also violated the 2004 Rules on Notarial Practice. Rule IV, Section 2, paragraph (b) of the 2004 Rules on Notarial Practice prohibits a notary public from notarizing documents if the signatory is not personally known to him. Otherwise, the notary public must require the signatory to present a competent evidence of identity. x x x A competent evidence of identity guarantees that the person appearing before the notary public is the signatory to the instrument or document to be notarized. If the notary public does not personally know the signatory, he must require the signatory to present a competent evidence of identity. In all the nine affidavits of cohabitation Judge Rojo notarized, he only stated that the parties subscribed and swore to their affidavits before him. Judge Rojo did not state that the parties were personally known to him or that the parties presented their competent pieces of evidence of identity. Thus, Judge Rojo violated the 2004 Rules on Notarial Practice. Judge Rojo argued that he personally knew the parties to the affidavits of cohabitation. They personally appeared before him to subscribe to their affidavits of cohabitation. He also interviewed them on their qualifications to contract marriage. Thus, the parties to the affidavit of cohabitation need not present their competent pieces of evidence of identity. That the parties appeared before Judge Rojo and that he interviewed them do not make the parties personally known to him. The parties are supposed to appear in person to subscribe to their affidavits. To personally know the parties, the notary public must at least be acquainted with them. Interviewing the contracting parties does not make the parties personally known to the notary public.

8. ID.; ID.; ID.; VIOLATING BASIC LEGAL PRINCIPLES AND PROCEDURE IS GROSS IGNORANCE OF THE LAW.— For violating Circular No. 1-90 and the 2004 Rules on Notarial Practice nine times, Judge Rojo is guilty of gross ignorance of the law. Judge Rojo argued that he notarized the affidavits of cohabitation in good faith. He cited *Santos v. Judge How* where this court held that "[g]ood faith and absence of malice, corrupt motives or improper considerations x x x" were defenses against gross

Supreme Court E-Library

ignorance of the law charges. His good faith in notarizing affidavits of cohabitation should not hold him administratively liable. However, this court also held in *Santos* that "good faith in situations of fallible discretion [inheres] only within the parameters of tolerable judgment x x x." Good faith "does not apply where the issues are so simple and the applicable legal principles evident and basic as to be beyond possible margins of error." Circular No. 1-90 requires judges to certify that lawyers or notaries public are lacking in their courts' territorial jurisdiction before notarizing documents. The 2004 Rules on Notarial Practice requires notaries public to personally know the signatory to the document they will notarize or require the signatory to present a competent evidence of identity. These are basic legal principles and procedure Judge Rojo violated. Failure to comply with these basic requirements nine times is not good faith. Under the New Code of Judicial Conduct on integrity, "[j]udges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer." If the law involved is basic, ignorance constitutes "lack of integrity." Violating basic legal principles and procedure nine times is gross ignorance of the law.

R E S O L U T I O N

LEONEN, *J.*:

Municipal trial court judges cannot notarize affidavits of cohabitation of parties whose marriage they will solemnize.

Rex M. Tupal filed with the Office of the Court Administrator a complaint against Judge Remegio V. Rojo for violating the Code of Judicial Conduct and for gross ignorance of the law.[1]

Judge Remegio V. Rojo presides Municipal Trial Court in Cities, Branch 5, Bacolod City, Negros Occidental. Judge Rojo allegedly solemnized marriages without the required marriage license. He instead notarized affidavits of cohabitation[2] and

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[1] *Rollo*, pp. 3-20, letter of complaint with complaint-affidavit notarized on May 24, 2012.

[2] FAMILY CODE, Art. 34 states:

Art. 34. No license shall be necessary for the marriage of a man and a

Supreme Court E-Library

issued them to the contracting parties.[3] He notarized these affidavits on the day of the parties' marriage.[4] These "package marriages" are allegedly common in Bacolod City.[5]

Rex annexed to his complaint-affidavit nine affidavits of cohabitation all notarized by Judge Rojo. All affidavits were notarized on the day of the contracting parties' marriages.[6] The affidavits contained the following jurat:

> SUBSCRIBED AND SWORN to before me this [date] at Bacolod City, Philippines.
>
> (sgd.)
> HON. REMEGIO V. ROJO
> Judge[7]

For notarizing affidavits of cohabitation of parties whose marriage he solemnized, Judge Rojo allegedly violated Circular No. 1-90 dated February 26, 1990.[8] Circular No. 1-90 allows municipal trial court judges to act as notaries public *ex officio* and notarize documents only if connected with their official functions and duties. Rex argues that affidavits of cohabitation are not connected with a judge's official functions and duties as solemnizing officer.[9] Thus, Judge Rojo cannot notarize *ex*

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woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

[3] *Rollo*, p. 6.

[4] *Id.*

[5] *Id.* at 9.

[6] *Id.* at 21-40, complaint-affidavit, Annexes "A", "B", "C", "D", "E", "F", "G", "H", "I", and "J".

[7] *Id.*

[8] POWER OF THE MUNICIPAL TRIAL COURT JUDGES AND MUNICIPAL CIRCUIT TRIAL COURT JUDGES TO ACT AS NOTARIES PUBLIC *EX OFFICIO*

[9] *Rollo*, p. 6.

Supreme Court E-Library

officio affidavits of cohabitation of parties whose marriage he solemnized.

Also, according to Rex, Judge Rojo allegedly violated the 2004 Rules on Notarial Practice. Judge Rojo notarized affidavits of cohabitation without affixing his judicial seal on the affidavits. He also did not require the parties to present their competent pieces of evidence of identity as required by law. These omissions allegedly constituted gross ignorance of the law as notarial rules "[are] x x x simple and elementary to ignore."[10]

Judge Rojo commented on the complaint.[11] He argued that Rex was only harassing him. Rex is the father of Frialyn Tupal. Frialyn has a pending perjury case in Branch 5 for allegedly making false statements in her affidavit of cohabitation. Rex only filed a complaint against Judge Rojo to delay Frialyn's case.[12]

Judge Rojo did not deny notarizing the affidavits of cohabitation. He argued that notarizing affidavits of cohabitation was connected with his official functions and duties as a judge.[13] The Guidelines on the Solemnization of Marriage by the Members of the Judiciary[14] does not prohibit judges from notarizing affidavits of cohabitation of parties whose marriage they will solemnize.[15] Thus, Judge Rojo did not violate Circular No. 1-90.

Judge Rojo also argued that he did not violate the 2004 Rules on Notarial Practice. He is a judge, not a notary public. Thus, he was not required to affix a notarial seal on the affidavits he notarized.[16]

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[10] *Id.* at 7.

[11] This comment was dated July 23, 2012.

[12] *Rollo*, p. 52.

[13] *Id.* at 79, 84, and 92-93.

[14] ADMINISTRATIVE ORDER NO. 125-2007.

[15] *Rollo*, pp. 92-93.

[16] *Id.* at 62.

Supreme Court E-Library

Also, Judge Rojo argued that he need not notarize the affidavits with the parties presenting their competent pieces of evidence of identity. Since he interviewed the parties as to the contents of their affidavits, he personally knew them to be the same persons who executed the affidavit.[17] The parties' identities are "unquestionable."[18]

Judge Rojo alleged that other judges in Bacolod City and Talisay City also notarized affidavits of cohabitation of parties whose marriage they solemnized.[19] He pleaded "not to make him [complainant Tupal's] doormat, punching bag and chopping block"[20] since other judges also notarized affidavits of cohabitation.

In its report dated July 30, 2013, the Office of the Court Administrator found that Judge Rojo violated Circular No. 1-90. The Office of the Court Administrator recommended that Judge Rojo be fined ₱9,000.00 and sternly warned that repeating the same offense will be dealt with more severely.

The Office of the Court Administrator ruled that affidavits of cohabitation are documents not connected with municipal trial court judges' official functions and duties. Under the Guidelines on the Solemnization of Marriage by the Members of the Judiciary,[21] a judge's duty is to personally examine the allegations in the affidavit of cohabitation before performing the marriage ceremony.[22] Nothing in the Guidelines authorizes judges to notarize affidavits of cohabitation of parties whose marriage they will solemnize.

Since Judge Rojo notarized without authority nine affidavits of cohabitation, the Office of the Court Administrator

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[17] *Id.* at 94-95.

[18] *Id.* at 95.

[19] *Id.* at 87.

[20] *Id.* at 90.

[21] ADMINISTRATIVE ORDER NO. 125-2007.

[22] ADMINISTRATIVE ORDER NO. 125-2007, Sec. 5.

Supreme Court E-Library

recommended a fine of ₱1,000.00 per affidavit of cohabitation notarized.[23]

The issue is whether Judge Rojo is guilty of violating the New Code of Judicial Conduct and of gross ignorance of the law.

This court finds Judge Rojo guilty of violating the New Code of Judicial Conduct and of gross ignorance of the law. Judge Rojo violated Circular No. 1-90 and the 2004 Rules on Notarial Practice.

Municipal trial court and municipal circuit trial court judges may act as notaries public. However, they may do so only in their *ex officio* capacities. They may notarize documents, contracts, and other conveyances only in the exercise of their official functions and duties. Circular No. 1-90 dated February 26, 1990 provides:

> Municipal trial court (MTC) and municipal circuit trial court (MCTC) judges are empowered to perform the function of notaries public *ex officio* under Section 76 of Republic Act No. 296, as amended (otherwise known as the Judiciary Act of 1948) and Section 242 of the Revised Administrative Code. But the Court hereby lays down the following qualifications on the scope of this power:
>
> MTC and MCTC judges may act as notaries public *ex officio* in the notarization of documents connected only with the exercise of their official functions and duties x x x. They may not, as notaries public *ex officio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law (Canon 5 and Rule 5.07).

They may also act as notaries public *ex officio* only if lawyers or notaries public are lacking in their courts' territorial jurisdiction. They must certify as to the lack of lawyers or notaries public when notarizing documents *ex officio*:

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[23] *Rollo*, p. 456, Office of the Court Administrator's report, citing *Simon v. Judge Aragon*, 491 Phil. 9, 14-15 (2005) [Per *J.* Ynares-Santiago, First Division].

Supreme Court E-Library

However, the Court, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public *ex officio*, perform any act within the competency of a regular notary public, provided that: (1) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (*Lapena, Jr. vs. Marcos*, Adm. Matter No. 1969-MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.[24]

Judge Rojo notarized affidavits of cohabitation, which were documents not connected with the exercise of his official functions and duties as solemnizing officer. He also notarized affidavits of cohabitation without certifying that lawyers or notaries public were lacking in his court's territorial jurisdiction. Thus, Judge Rojo violated Circular No. 1-90.

Before performing the marriage ceremony, the judge must personally interview the contracting parties and examine the requirements they submitted.[25] The parties must have complied with all the essential and formal requisites of marriage. Among these formal requisites is a marriage license.[26]

A marriage license is issued by the local civil registrar to parties who have all the qualifications and none of the legal disqualifications to contract marriage.[27] Before performing the marriage ceremony, the judge must personally examine the marriage license presented.[28]

If the contracting parties have cohabited as husband and wife for at least five years and have no legal impediment to marry, they are exempt from the marriage license requirement.[29]

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[24] Circular No. 1-90 dated February 26, 1990.

[25] ADMINISTRATIVE ORDER NO. 125-2007, Sec. 4.

[26] ADMINISTRATIVE ORDER NO. 125-2007, Sec. 4.

[27] FAMILY CODE, Art. 9.

[28] ADMINISTRATIVE ORDER NO. 125-2007, Sec. 4.

[29] FAMILY CODE, Art. 34.

Supreme Court E-Library

Instead, the parties must present an affidavit of cohabitation sworn to before any person authorized by law to administer oaths.[30] The judge, as solemnizing officer, must personally examine the affidavit of cohabitation as to the parties having lived together as husband and wife for at least five years and the absence of any legal impediment to marry each other.[31] The judge must also execute a sworn statement that he personally ascertained the parties' qualifications to marry and found no legal impediment to the marriage.[32] Article 34 of the Family Code of the Philippines provides:

> Art. 34. No license shall be necessary for the marriage of a man and a woman who have lived together as husband and wife for at least five years and without any legal impediment to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The solemnizing officer shall also state under oath that he ascertained the qualifications of the contracting parties and found no legal impediment to the marriage.

Section 5 of the Guidelines on the Solemnization of Marriage by the Members of the Judiciary also provides:

> Sec. 5. Other duties of solemnizing officer before the solemnization of the marriage in legal ratification of cohabitation. — In the case of a marriage effecting legal ratification of cohabitation, the solemnizing officer shall (a) personally interview the contracting parties to determine their qualifications to marry; (b) personally examine the affidavit of the contracting parties as to the fact of having lived together as husband and wife for at least five [5] years and the absence of any legal impediments to marry each other; and (c) execute a sworn statement showing compliance with (a) and (b) and that the solemnizing officer found no legal impediment to the marriage.

Based on law and the Guidelines on the Solemnization of Marriage by the Members of the Judiciary, the person who

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[30] FAMILY CODE, Art. 34.

[31] FAMILY CODE, Art. 34; ADMINISTRATIVE ORDER NO. 125-2007, Sec. 5.

[32] FAMILY CODE, Art. 34; ADMINISTRATIVE ORDER NO. 125-2007, Sec. 5.

Supreme Court E-Library

notarizes the contracting parties' affidavit of cohabitation cannot be the judge who will solemnize the parties' marriage.

As a solemnizing officer, the judge's only duty involving the affidavit of cohabitation is to examine whether the parties have indeed lived together for at least five years without legal impediment to marry. The Guidelines does not state that the judge can notarize the parties' affidavit of cohabitation.

Thus, affidavits of cohabitation are documents not connected with the judge's official function and duty to solemnize marriages. Notarizing affidavits of cohabitation is inconsistent with the duty to examine the parties' requirements for marriage. If the solemnizing officer notarized the affidavit of cohabitation, he cannot objectively examine and review the affidavit's statements before performing the marriage ceremony. Should there be any irregularity or false statements in the affidavit of cohabitation he notarized, he cannot be expected to admit that he solemnized the marriage despite the irregularity or false allegation.

Thus, judges cannot notarize the affidavits of cohabitation of the parties whose marriage they will solemnize. Affidavits of cohabitation are documents not connected with their official function and duty to solemnize marriages.

Judge Rojo admitted that he notarized affidavits of cohabitation of parties "on the same day [he solemnized their marriages]."[33] He notarized documents not connected with his official function and duty to solemnize marriages. Thus, Judge Rojo violated Circular No. 1-90.

Judge Rojo argued that the Guidelines on the Solemnization of Marriage by the Members of the Judiciary does not expressly prohibit judges from notarizing affidavits of cohabitation. Thus, he cannot be prohibited from notarizing affidavits of cohabitation.

To accept Judge Rojo's argument will render the solemnizing officer's duties to examine the affidavit of cohabitation and to issue a sworn statement that the requirements have been complied with redundant. As discussed, a judge cannot objectively examine

[33] *Rollo*, p. 94.

Supreme Court E-Library

a document he himself notarized. Article 34 of the Family Code and the Guidelines on the Solemnization of Marriage by the Members of the Judiciary assume that "the person authorized by law to administer oaths" who notarizes the affidavit of cohabitation and the "solemnizing officer" who performs the marriage ceremony are two different persons.

Judge Rojo argued that Circular No. 1-90 only prohibits municipal trial court judges from notarizing "private documents x x x [bearing] no direct relation to the performance of their functions as judges."[34] Since a marriage license is a public document, its "counterpart," the affidavit of cohabitation, is also a public document. Thus, when he notarizes an affidavit of cohabitation, he notarizes a public document. He did not violate Circular No. 1-90.

An affidavit of cohabitation remains a private document until notarized. Notarization converts a private document into a public document, "[rendering the document] admissible in court without further proof of its authenticity."[35] The affidavit of cohabitation, even if it serves a "public purpose," remains a private document until notarized.

Thus, when Judge Rojo notarized the affidavits of cohabitation, he notarized nine private documents. As discussed, affidavits of cohabitation are not connected with a judge's official duty to solemnize marriages. Judge Rojo violated Circular No. 1-90.

Judge Rojo argued that Circular No. 1-90's purpose is to "eliminate competition between judges and private lawyers in transacting legal conveyancing business."[36] He cited *Borre v. Judge Moya*[37] where this court found City Judge Arcilla guilty

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[34] Circular No. 1-90 dated February 26, 1990.

[35] *Tigno v. Sps. Aquino*, 486 Phil. 254, 267 (2004) [Per *J.* Tinga, Second Division]; *Mayor Quiñones v. Judge Lopez, Jr.*, 449 Phil. 1, 6 (2003) [Per *J.* Vitug, First Division], citing *Coronado v. Atty. Felongo*, 398 Phil. 496, 502 (2000) [Per *J.* Puno, First Division].

[36] *Rollo*, p. 92.

[37] 188 Phil. 362 (1980) [Per *J.* Aquino, Second Division].

Supreme Court E-Library

of violating Circular No. 1-90 for notarizing a deed of sale. Judge Rojo argued that when he notarized the affidavits of cohabitation, he did "not compete with private law practitioners or regular notaries in transacting legal conveyancing business."[38] Thus, he did not violate Circular No. 1-90.

In *Borre*, Judge Arcilla notarized a deed of sale. This is the context in which this court stated that "[judges] should not compete with private [lawyers] or regular notaries in transacting legal conveyancing business."[39]

At any rate, Circular No. 1-90's purpose is not limited to documents used to transact "legal conveyancing business." So long as a judge notarizes a document not connected with his official functions and duties, he violates Circular No. 1-90.

Thus, in *Mayor Quiñones v. Judge Lopez, Jr.*,[40] this court fined Judge Lopez for notarizing a certificate of candidacy. In *Ellert v. Judge Galapon, Jr.*,[41] this court fined Judge Galapon for notarizing the verification page of an answer filed with the Department of Agrarian Reform Adjudication Board. The documents involved in these cases were not used to transact "legal conveyancing business." Nevertheless, this court found Judge Lopez and Judge Galapon guilty of violating Circular No. 1-90.

Since Judge Rojo notarized affidavits of cohabitation, which were not connected with his official function and duty to solemnize marriages, he violated Circular No. 1-90.

Also, Judge Rojo notarized affidavits of cohabitation without certifying that lawyers or notaries public are lacking in Bacolod City. Failure to certify that lawyers or notaries public are lacking in the municipality or circuit of the judge's court constitutes violation of Circular No. 1-90.[42]

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[38] *Id.* at 369.

[39] *Id.*

[40] 449 Phil. 1 (2003) [Per *J.* Vitug, First Division].

[41] 391 Phil. 456 (2000) [Per *J.* Buena, Second Division].

[42] *Fuentes v. Judge Buno*, 582 Phil. 20, 27-28 (2008) [Per *J.* Leonardo-

Supreme Court E-Library

That other judges have notarized affidavits of cohabitation of parties whose marriages they solemnized does not make the practice legal. Violations of laws are not excused by practice to the contrary.[43]

All told, Judge Rojo violated Circular No. 1-90.

Judge Rojo also violated the 2004 Rules on Notarial Practice. Rule IV, Section 2, paragraph (b) of the 2004 Rules on Notarial Practice prohibits a notary public from notarizing documents if the signatory is not personally known to him. Otherwise, the notary public must require the signatory to present a competent evidence of identity:

> SEC. 2. Prohibitions. – 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.

A competent evidence of identity guarantees that the person appearing before the notary public is the signatory to the instrument or document to be notarized. If the notary public does not personally know the signatory, he must require the signatory to present a competent evidence of identity.

In all the nine affidavits of cohabitation Judge Rojo notarized, he only stated that the parties subscribed and swore to their

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de Castro, First Division]; *Simon v. Judge Aragon*, 491 Phil. 9, 13-14 (2005) [Per *J.* Ynares-Santiago, First Division]; *Mayor Quiñones v. Judge Lopez, Jr.*, 449 Phil. 1, 5 (2003) [Per *J.* Vitug, First Division]; *Gravela v. Judge Villanueva*, 444 Phil. 109, 115 (2003) [Per *J.* Quisumbing, Second Division]; *Barbarona v. Judge Canda,* 409 Phil. 1, 12-13 (2001) [Per *J.* Mendoza, Second Division]; *Ellert v. Judge Galapon, Jr.*, 391 Phil. 456, 464 (2000) [Per *J.* Buena, Second Division]; *Doughlas v. Judge Lopez, Jr.*, 382 Phil. 8, 14 (2000) [Per *J.* Kapunan, First Division]; *Guillen v. Judge Nicolas*, 360 Phil. 1, 13 (1998) [Per *C.J.* Davide, Jr., First Division].

[43] CIVIL CODE, Art. 7.

Supreme Court E-Library

affidavits before him. Judge Rojo did not state that the parties were personally known to him or that the parties presented their competent pieces of evidence of identity. Thus, Judge Rojo violated the 2004 Rules on Notarial Practice.

Judge Rojo argued that he personally knew the parties to the affidavits of cohabitation. They personally appeared before him to subscribe to their affidavits of cohabitation. He also interviewed them on their qualifications to contract marriage. Thus, the parties to the affidavit of cohabitation need not present their competent pieces of evidence of identity.[44]

That the parties appeared before Judge Rojo and that he interviewed them do not make the parties personally known to him. The parties are supposed to appear in person to subscribe to their affidavits. To personally know the parties, the notary public must at least be acquainted with them.[45] Interviewing the contracting parties does not make the parties personally known to the notary public.

For violating Circular No. 1-90 and the 2004 Rules on Notarial Practice nine times, Judge Rojo is guilty of gross ignorance of the law.

Judge Rojo argued that he notarized the affidavits of cohabitation in good faith. He cited *Santos v. Judge How*[46] where this court held that "[g]ood faith and absence of malice, corrupt motives or improper considerations x x x"[47] were defenses against gross ignorance of the law charges. His good faith in notarizing affidavits of cohabitation should not hold him administratively liable.

However, this court also held in *Santos* that "good faith in situations of fallible discretion [inheres] only within the parameters

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[44] *Rollo*, pp. 94-95.

[45] *Lustestica v. Atty. Bernabe*, A.C. No. 6258, August 24, 2010, 628 SCRA 613, 623-624 [*Per Curiam, En Banc]*.

[46] 542 Phil. 22 (2007) [Per *J.* Austria-Martinez, Third Division].

[47] *Id.* at 36.

Supreme Court E-Library

of tolerable judgment x x x."[48] Good faith "does not apply where the issues are so simple and the applicable legal principles evident and basic as to be beyond possible margins of error."[49]

Circular No. 1-90 requires judges to certify that lawyers or notaries public are lacking in their courts' territorial jurisdiction before notarizing documents. The 2004 Rules on Notarial Practice requires notaries public to personally know the signatory to the document they will notarize or require the signatory to present a competent evidence of identity. These are basic legal principles and procedure Judge Rojo violated. Failure to comply with these basic requirements nine times is not good faith.

Under the New Code of Judicial Conduct on integrity,[50] "[j]udges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer."[51] If the law involved is basic, ignorance constitutes "lack of integrity."[52] Violating basic legal principles and procedure nine times is gross ignorance of the law.

This court may impose the following sanctions for gross ignorance of the law or procedure, it being a serious charge:[53]

a. dismissal from the service with forfeiture of benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations;[54]

b. suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months;[55] or

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[48] *Id.*

[49] *Id.*

[50] A.M. No. 03-05-01-SC, Canon 2.

[51] A.M. No. 03-05-01-SC, Canon 2, Sec. 1.

[52] *Office of the Court Administrator v. Judge Necessario*, A.M. No. MTJ-07-1691, April 2, 2013, 694 SCRA 348, 378 [*Per Curiam, En Banc*].

[53] RULES OF COURT, Rule 140, Sec. 8 (9).

[54] RULES OF COURT, Rule 140, Sec. 11 (A) (1).

[55] RULES OF COURT, Rule 140, Sec. 11 (A) (2).

Supreme Court E-Library

c. A fine of more than ₱20,000.00 but not exceeding 40,000.00.[56]

This court does not condone violations of law. Judges have been dismissed from the service for gross ignorance of the law. However, Judge Rojo may have been misled by other judges' practice of notarizing affidavits of cohabitation in Bacolod City and Talisay City. Thus, this court finds suspension from office without salary and other benefits for six (6) months sufficient sanction.

Trial court judges are advised to strictly comply with the requirements of the law. They should act with caution with respect to affidavits of cohabitation. Similar breach of the ethical requirements as in this case will be dealt with strictly.

WHEREFORE, Judge Remegio V. Rojo, Presiding Judge of the Municipal Trial Court in Cities, Branch 5, Bacolod City, Negros Occidental is **SUSPENDED FROM OFFICE** without salary and other benefits for **SIX (6) MONTHS.** His suspension is effective upon service on him of a copy of this resolution.

SERVE copies of this resolution to all municipal trial courts in Bacolod City and Talisay City.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Mendoza, JJ.,* concur.

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[56] RULES OF COURT, Rule 140, Sec. 11 (A) (3).

[*] Associate Justice Lucas P. Bersamin was designated as Acting Member of the Third Division, vice Associate Justice Roberto A. Abad, per Special Order No. 1640 dated February 19, 2014.