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SECOND DIVISION

[A.C. No. 11826. September 5, 2018]
(Formerly CBD Case No. 13-3801)

ROLANDO N. UY, *complainant, vs.* **ATTY. EDMUNDO J. APUHIN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARY PUBLIC; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED IT AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED THEREIN; SECTION 2 (B), RULE IV OF THE 2004 RULES ON NOTARIAL PRACTICE, VIOLATED IN CASE AT BAR.— [A] notary public should not notarize a document unless the persons who signed the same are the very same persons who executed it and personally appeared before him to attest to the contents and truth of what are stated therein. In fact, Section 2(b), Rule IV of the 2004 Rules on Notarial Practice clearly requires, among others, that: "[a] *person shall not perform a notarial act if the person involved as signatory to the instrument or document* x x x *is not in the notary's presence personally at the time of the notarization.*" The records disclose that Atty. Apuhin indeed failed to observe the above Rules in notarizing the *Joint Waiver.*

2. ID.; ID.; ID.; SECTIONS 12 (1) AND (2), RULE II OF THE 2004 RULES ON NOTARIAL PRACTICE REQUIRING THE PRESENTATION OF COMPETENT EVIDENCE OF COMPETENT IDENTITY, VIOLATED IN CASE AT BAR.— As well, the finding that Atty. Apuhin lacked due diligence in the performance of his duties as a notary public is fortified by his own statements in his *Counter-Affidavit.* In it, Atty. Apuhin argued not only that it was "beyond his obligation as such Notary Public to investigate the [identity of his] clients," but that he "rel[ied] [solely] on the representation[s] x x x made [to] him [in] his office." Such reliance on mere representations made by parties, without requiring the presentation of competent

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evidence of identity, clearly runs counter to the requirement of Sections 12(1) and (2), Rule II of the 2004 Rules on Notarial Practice, that evidence of competent identity must be: SEC. 12. x x x (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification. All told, the Court finds that the evidence adduced is sufficient to support the allegations against Atty. Apuhin.

R E S O L U T I O N

CAGUIOA, *J.*:

Before this Court is a complaint for disbarment[1] filed by Complainant Rolando N. Uy (Uy) against Respondent Atty. Edmundo J. Apuhin (Atty. Apuhin) based on the latter's alleged acts of false notarization of documents in violation of Administrative Matter No. 02-8-13-SC or the 2004 Rules on Notarial Practice.

The Factual Antecedents

Uy worked as an Overseas Filipino Worker in Taiwan between January 29, 2000 and March 16, 2008.[2] Together with his wife, Susan Magon-Uy, he owned a 600-square meter land[3] in Carmen, North Cotabato (subject property).[4] In his *Complaint-Affidavit,* Uy narrates that upon his return to the Philippines, he discovered

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[1] *Rollo,* pp. 3-4.

[2] *Id*. at 3, see also Certification from the Bureau of Immigration, *id*. at 12.

[3] *Id*. at 28.

[4] *Id*.

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that a *Joint Waiver of Rights, Interests and Ownership*[5] *(Joint Waiver)* covering the subject property had been ostensibly executed by him and his wife on **July 2, 2006.** In the *Joint Waiver,* it was made to appear that Uy and his wife had conveyed the property to their son, Rick Rosner Uy (Rick Uy).[6] Attached to the *Joint Waiver* was an application for a Building Permit at the Carmen Municipal Engineer's Office – Carmen, North Cotabato, also ostensibly signed by Uy and his wife.[7] The *Joint Waiver* was acknowledged before Atty. Apuhin per Doc. No. 216, Page No. 44, Book No. 29, series of 2006.[8]

On May 8, 2013, knowing that he and his wife were both in Taiwan when the *Joint Waiver* was executed and acknowledged before Atty. Apuhin on July 2, 2006, Uy filed an administrative complaint against Atty. Apuhin before the Integrated Bar of the Philippines – Commission on Bar Discipline (IBP-CBD), charging the latter with falsity in the conduct of his duties as a notary public,[9] and for violation of Sections 3[10] and 5[11] of

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[5] *Id.* at 25.

[6] *Id.*

[7] *Id.* at 45.

[8] *Id.* at 25, 45.

[9] *Id.* at 4.

[10] SEC. 3. *Disqualifications.* — A notary public is disqualified from performing a notarial act if he:

(a) is a party to the instrument or document that is to be notarized;
(b) will receive, as a direct or indirect result, any commission, fee, advantage, right, title, interest, cash, property, or other consideration, except as provided by these Rules and by law; or
(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

[11] SEC. 5. *False or Incomplete Certificate.* — A notary public shall not:

(a) execute a certificate containing information known or believed by the notary to be false.
(b) affix an official signature or seal on a notarial certificate that is incomplete.

Rule IV of the 2004 Rules on Notarial Practice and of the Lawyers' Oath.[12]

Further, Uy alleges that his ownership rights over his land were prejudiced by Atty. Apuhin's false notarization of the *Joint Waiver,* considering that he was compelled to litigate to protect his rights *(i.e.,* Uy needed to institute Civil Case No. 12-05 for *Specific Performance, Quieting of Title, Declaration of Trust, Preliminary Injunction and Accounting* and criminal case for *Falsification of Public Documents,* against his son and his sister, the property's caretaker).[13]

In an *Order*[14] dated May 10, 2013, the IBP-CBD, in CBD Case No. 13-3801, ordered Atty. Apuhin to submit his answer to the complaint.

On June 28, 2013, Atty. Apuhin submitted his *Counter-Affidavit.*[15] In it, he claimed that as a notary public, it was not his task to inquire into the whereabouts of his "clients" and that, insofar as the July 2, 2006 acknowledgement of the *Joint Waiver* was concerned, he merely "[believed] the representation of the parties [that they were] members of the same family" when the *Joint Waiver* was presented to him for notarization.[16] Atty. Apuhin further avers that he could not remember or memorize the face of all his clients, more so as to whether parties have signed the documents personally.[17] Finally, he alleges that the *Joint Waiver* "turned out to be x x x harmless" considering that it was only used by Rick Uy to obtain a Building Permit and the ownership of the property had not been transferred.[18]

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[12] *Rollo,* p. 45.

[13] *Id.* at 3.

[14] *Id.* at 8.

[15] *Id.* at 9-11.

[16] *Id.* at 9.

[17] *Id.* at 9-10.

[18] *Id.* at 11.

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On October 9, 2013, the IBP-CBD[19] directed Uy and Atty. Apuhin to attend the mandatory conference. When the parties failed to appear, the IBP-CBD rescheduled the mandatory conference to December 6, 2013,[20] and later to December 15, 2013.[21]

The Report and Recommendation of the IBP-CBD

In a *Report and Recommendation*[22] dated June 11, 2014 the IBP-CBD recommended that Atty. Apuhin be disqualified from his commission as a notary public for one (1) year and suspended from the practice of law, also for one (1) year,[23] *viz.*:

> Hence, considering the foregoing, it is respectfully recommended that disbarment proceedings against the herein respondent [Atty. Apuhin] be upheld. Furthermore, it appeared *(sic)* that this is the first time respondent counsel committed said violation and considering that he is in his senior years (records show that he is 62 years of age)[,] it is recommended that the notarial commission of herein respondent be revoked, with the disqualification to be commissioned as notary public for one (1) year and the penalty of suspension from law practice be meted for the same period.
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> Respectfully submitted.[24]

As basis for its recommendation, the IBP-CBD found that Atty. Apuhin violated Section 2(b)(1) & (2), Rule IV of the 2004 Rules on Notarial Practice, which in turn provide:

> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

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[19] Through Commissioner Suzette A. Mamon, see *id*. at 15.

[20] *Rollo,* p. 22.

[21] *Id*. at 36.

[22] *Id*. at 44-50.

[23] *Id*. at 50.

[24] *Id*. at 92.

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(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.

Accordingly, the IBP-CBD ruled that a notary public should not notarize a document unless the person who signed it is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated in that document.[25] Thus, without the personal appearance of the person signing the document, the notary public would have no way of verifying the signature of the acknowledging party and of ascertaining that the document is indeed the party's act or deed.[26]

In Atty. Apuhin's case, the IBP-CBD found that he failed to exercise the due diligence required of a good father of a family in not determining the true identity of the persons who allegedly signed the *Joint Waiver.*[27] The IBP-CBD likewise observed that, having been a practicing lawyer and a notary public for 35 years, Atty. Apuhin should have known and discerned the import of the documents presented before him *(i.e.,* acts involving the alienation of property).[28]

Findings of the IBP Board of Governors

On January 6, 2015, the IBP Board of Governors issued a *Resolution* in CBD Case No. 13-3801 and **adopted and approved with modification,** the Report and Recommendation of the IBP-CBD, *viz.*:

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[25] *Id.* at 47.

[26] *Id.*

[27] *Id.* at 48.

[28] *Id.* at 92.

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***RESOLVED** to **ADOPT** and **APPROVE,** as it is hereby **ADOPTED** and **APPROVED, with modification,** the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", finding the recommendation to be fully supported by the evidence on record and applicable laws and Respondent's violation of Rule II Section 12[29] (1) and (2) and Rule IV Section 2[30] (b)(1) & (2) of the 2004 Rules on Notarial Practice. Thus, [Atty. Apuhin's] notarial commission, if presently commissioned, is immediately **REVOKED.** Furthermore, he is **DISQUALIFIED** from being commissioned as a Notary Public for two (2) years and is **SUSPENDED** from the practice of law for six (6) months.*[31] (Additional emphasis supplied and italics in the original)

Subsequently, in a *Resolution* dated January 26, 2017, the IBP Board of Governors denied Atty. Apuhin's motion for reconsideration,[32] there being no new reason or argument adduced to reverse the previous findings and decision of the Board of Governors.[33]

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[29] SEC. 12. *Competent Evidence of Identity.* — The phrase "competent evidence of identity" refers to the identification of an individual based on:

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

[30] SEC. 2. x x x

x x x x x 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.

[31] *Rollo,* p. 84.

[32] *Id.* at 64-65.

[33] *Id.* at 82.

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The Court's Ruling

After a judicious examination of the records and submission of the parties, the Court upholds and adopts the findings and recommendation of the IBP Board of Governors in CBD Case No. 13-3801.

At the outset, it does not escape the Court's attention that on its face, the *Joint Waiver* shows that it was allegedly signed and executed by Uy and his wife on **July 2, 2006.** Mere reference to the record reveals that Uy was in fact in Taiwan — as evinced by a Certification[34] from the Bureau of Immigration — the day that Atty. Apuhin notarized the *Joint Waiver* in his office in North Cotabato, Philippines.

Suffice it to state that the notarization of a document is vested with substantive public interest.[35] Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.[36] Consequently, acknowledgment of a document *(i.e.,* the act of a person who executed a deed, of going before a competent officer to declare the same to be his act or deed)[37] must be done in accordance with the requirements of the 2004 Rules on Notarial Practice.

Specifically, Section 1, Rule II of the 2004 Rules on Notarial Practice requires that, in the acknowledgment of documents, an individual:

> SECTION 1. x x x
> (a) *appears in person* before the notary public and presents an integrally complete instrument or document;
> (b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

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[34] Dated January 8, 2013, *id.* at 5.

[35] *Fabay v. Atty. Resuena,* 779 Phil. 151, 158 (2016).

[36] *Id.*, citing *Bernardo v. Atty. Ramos,* 433 Phil. 8, 15-16 (2002).

[37] *Malvar v. Baleros,* March 8, 2017, 819 SCRA 620, 634.

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(c) represents to the notary public that the signature on the instrument or document was voluntarily affixed by him for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity that he has the authority to sign in a particular representative capacity, that he has the authority to sign in that capacity. (Italics and underscoring supplied)

Thus, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed it and personally appeared before him to attest to the contents and truth of what are stated therein.[38] In fact, Section 2(b), Rule IV of the 2004 Rules on Notarial Practice clearly requires, among others, that: "[a] *person shall not perform a notarial act if the person involved as signatory to the instrument or document* x x x *is not in the notary's presence personally at the time of the notarization.*"[39]

The records disclose that Atty. Apuhin indeed failed to observe the above Rules in notarizing the *Joint Waiver.*

As well, the finding that Atty. Apuhin lacked due diligence in the performance of his duties as a notary public is fortified by his own statements in his *Counter-Affidavit.* In it, Atty. Apuhin argued not only that it was "beyond his obligation as such Notary Public to investigate the [identity of his] clients," but that he "rel[ied] [solely] on the representation[s] x x x made [to] him [in] his office."[40]

Such reliance on mere representations made by parties, without requiring the presentation of competent evidence of identity, clearly runs counter to the requirement of Sections 12(1) and (2), Rule II of the 2004 Rules on Notarial Practice, that evidence of competent identity must be:

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[38] See *Fabay v. Resuena, supra* note 35.

[39] Italics supplied.

[40] *Rollo,* p. 9.

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SEC. 12. x x x

(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

All told, the Court finds that the evidence adduced is sufficient to support the allegations against Atty. Apuhin.

Guided by jurisprudential precedents[41] and to serve as a reminder to notaries public to observe with utmost care the basic requirements in the performance of their duties,[42] the Court deems it proper that the notarial commission of Atty. Apuhin be revoked, if still existing, and to disqualify him from appointment as a notary public for two (2) years. He is also suspended from the practice of law for six (6) months. Contrary, however, to complainant's position that Atty. Apuhin should be disbarred, the Court believes that disbarment is too severe a penalty and that the sanctions herein imposed already suffice. Removal from the Bar should not be decreed when any punishment less severe — reprimand, temporary suspension or fine — would accomplish the end desired.[43]

WHEREFORE, the Court finds Atty. Edmundo J. Apuhin **LIABLE** for violation of Section 12(1) & (2), Rule II and Section 2(b)(1) & (2), Rule IV of the 2004 Rules on Notarial Practice. Atty. Edmundo J. Apuhin's notarial commission, if

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[41] See *Malvar v. Baleros, supra* note 37, at 635-636, citing *Dizon v. Atty. Cabucana, Jr.,* 729 Phil. 109 (2014) and *Atty. Bartolome v. Atty. Basilio,* 771 Phil. 1 (2015).

[42] *Fabay v. Atty. Resuena, supra* note 35.

[43] *Malvar v. Baleros, supra* note 37, at 636.

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presently commissioned, is hereby **REVOKED.** Further, he is **DISQUALIFIED** from being commissioned as a Notary Public for **two (2) years** and is **SUSPENDED from the practice of law for six (6) months** effective immediately upon receipt of this Resolution.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

SECOND DIVISION

[A.M. No. P-17-3627. September 5, 2018]

ERLINDA A. FOSTER, *complainant, vs.* **RODOLFO T. SANTOS, JR., Sheriff III, Municipal Trial Court in Cities, Branch 2, Laoag City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; SHERIFF; A SHERIFF'S DUTY TO ENFORCE THE WRIT OF EXECUTION IS MANDATORY AND PURELY MINISTERIAL; CASE AT BAR.— A sheriff's duty to enforce the writ of execution is mandatory and purely ministerial. As an agent of the law whose primary duty is to execute the final orders and judgments of the court, a sheriff has the ministerial duty to enforce the writ of execution promptly and expeditiously to ensure that the

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[*] Designated additional member per Special Order No. 2587 dated August 28, 2018.