



Republic of the Philippines  
Supreme Court  
Office of the Court Administrator  
Manila

OCA CIRCULAR NO. 143-2004

**TO : THE COURT OF APPEALS, SANDIGANBAYAN, COURT OF TAX APPEALS, REGIONAL TRIAL COURTS, SHARI'A DISTRICT COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS, MUNICIPAL CIRCUIT TRIAL COURTS, SHARI'A CIRCUIT COURTS, THE OFFICE OF THE STATE PROSECUTOR, PUBLIC ATTORNEY'S OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES**

**SUBJECT : SUSPENSION FROM THE PRACTICE OF LAW FOR SIX (6) MONTHS AND DISQUALIFICATION FROM BEING COMMISSIONED AS NOTARY PUBLIC FOR TWO (2) YEARS OF ATTY. MARIO J. MONTALVAN**

For the information and guidance of all concerned, quoted hereunder is the Decision of the Second Division dated May 25, 2004 in Administrative Case No. 4370 entitled "Douglas G. Zaballero vs. Atty. Mario J. Montalvan", to wit:

"Because of the credence which all civilized nations attach to the attestation and authentication of notaries to facilitate commercial intercourse, <sup>1</sup> faithful observance and utmost respect for its legal solemnities [are] sacrosanct and, failing therein, one must bear commensurate consequences.<sup>2</sup>

On January 17, 1995, the Bar Confidant received a verified *Complaint* from Douglas G. Zaballero praying for the disbarment of Atty. Mario J. Montalvan, Notary Public for the City of Oroquieta, for alleged negligence and incompetence in notarizing documents.<sup>3</sup>

Complainant alleges that respondent notarized three (3) documents sometime from 1989 to 1992, purportedly executed, either as a vendor or a donor, by complainant's father Eulalio Zaballero. These documents are: a *Deed Confirming a Previous Verbal Donation of Land* dated November 6, 1989 and notarized on November 10, 1989 with Quirino Zaballero as donee; a *Deed Confirming a Previous Verbal Sale of Portion of Land* dated October 17, 1991 and notarized on June 9, 1992 in favor of Luis Zaballero, as

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<sup>1</sup> John's American Notary and Commission of Deeds Manual by Edward Mills John, 6<sup>th</sup> ed. By Frederick H. Campbell, Chicago, Gallagher & Company, 1951 citing *Kirskey v. Bates*, 7 Port. (Ala.) 529.

<sup>2</sup> *Maligsa v. Cabanting*, 338 Phil. 412 (1997).

<sup>3</sup> Rollo p. 4.

vendee; and *Deed of Absolute Sale of a Portion of Land* dated February 26, 1990 notarized on February 26, 1990 with James Zaballero, as vendee. Complainant faults respondent for notarizing said documents despite the fact that they were falsified.

According to complainant, the residence certificates of Eulalio Zaballero were fake. Residence Certificate No. 13994501 dated April 18, 1989, which was used in the *Deed Confirming a Previous Verbal Donation of Land* dated November 6, 1989, was not personally secured by him. Also, the supposed date of issuance on February 8, 1990 of Residence Certificate No. 15648548 which was used in the *Deed Confirming a Previous Verbal Sale of Portion of Land* dated October 17, 1991, was a Saturday. Residence Certificate No. 15648548 issued on February 8, 1989, used in the *Deed Confirming a Previous Verbal Donation of Land* dated November 6, 1989 could not have been obtained by complainant's father because he was then confined at the Cebu Doctors Hospital, where he stayed until February 10, 1989.

The complainant further asserts Eulalio Zaballero could not have appeared before respondent because he was already very sick and suffering from a serious eye defect. More significantly, he died on May 31, 1992; hence, he could not have appeared to acknowledge the *Deed Confirming a Previous Verbal Sale of Portion of Land* dated October 17, 1991 on June 9, 1992. Finally, the defects and superimpositions are evident.

In his *Comment*, respondent claims that he had nothing to do with the issuance of Eulalio Zaballero's residence certificate. The personnel from the City Treasurer's Office are the ones tasked and responsible therefor. Moreover, complainant's mere allegation that Eulalio Zaballero did not personally secure his residence certificates cannot overcome the presumption of regularity of its issuance, respondent avers.

According to respondent, Eulalio Zaballero, accompanied by one whom the respondent believed to be Eulalio's son, appeared before him on October 17, 1991. Eulalio showed him a prepared document captioned *Deed of Confirmation of Previous Verbal Sale of Land* for notarization. Other than the space allotted for the residence certificate, the document was complete. It was duly signed and acknowledged by Eulalio's to be his free and voluntary act. When respondent asked for Eulalio's residence certificate, he failed to present one. Eulalio said that he would just go to the City Hall and procure a residence certificate. He never returned.

Approximately eight (8) months later, on June 9, 1992, a representative of Eulalio Zaballero, accompanied by one whom respondent believed to be his son, appeared before him. They showed respondent the document brought by Eulalio Zaballero on October 17, 1991, still unnotarized. Knowing that it was the same document, respondent notarized it. No one informed respondent that

Eulalio Zaballero has already passed away. Otherwise, respondent alleges, he would not have notarized the subject document.

Respondent expresses deep regrets and sadness about the incident. Claiming that he was misled, he stresses that Eulalio Zaballero acknowledged his signature and voluntarily executed the document on October 17, 1991, but it was not notarized on said date because he did not have his residence certificate. Seeking compassion and understanding for his conduct, respondent blames it on his alleged busy workload as he notarized twenty-three (23) other documents on that day.

On May 29, 1995, the Court issued a resolution referring the case to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation within ninety (90) days from notice. After eight (8) years and a series of resolutions from the Court addressed to the IBP, the last of which is dated July 9, 2003, the latter finally submitted its report on July 24, 2003.

IBP Investigating Commissioner Manuel A. Tiuseco (Tiuseco) found that respondent failed to comply with his calling as a lawyer and a notary public and recommended that he be suspended for a period of three months.

On June 21, 2003, the IBP Board of Governors adopted and approved the Report and Recommendation of the Investigating Commissioner, but modified the recommended penalty, as follows:

[W]ith modification as to penalty to conform to evidence, and considering that the respondent has not been true to his calling as a lawyer and notary public by taking lightly his duty and obligation in giving effect to public documents that need[s] his participation as notary public thereby causing harm and injury to complainant, Atty. Mario J. Montalvan's Commission as Notary Public is hereby REVOKED and he is hereby DISQUALIFIED from being appointed as Notary Public for two (2) years from receipt of notice.<sup>4</sup>

As culled from the evidence, Eulalio Zaballero died on May 31, 1992. However, respondent notarized the document in question which purportedly contains the signature of Eulalio Zaballero on June 9, 1992, or a little more than a week after his death. Part of the document is a notarial acknowledgment where respondent declared that Eulalio Zaballero appeared before him and acknowledged that the instrument was his free and voluntary act, but the facts was that he was already dead at that time. Clearly, respondent 'made an untruthful statement, thus violating Rule 10.01 of the Code of Professional Responsibility and his oath as a lawyer, which unconditionally requires him not to do or declare any falsehood.'<sup>5</sup>

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<sup>4</sup> Resolution No. XV-2003-352, Board of Governors of the Integrated Bar of the Philippines, June 21, 2003.

<sup>5</sup> Fulgencio v. Martin, A.C. No. 3223, May 29, 2003; Gonzaga v. Realubin, 312 Phil. 381 (1996).

Notarization is not an empty, meaningless and routine act. It is invested with such substantial public interest, that only those who are qualified or authorized may act as notaries public. Notarization of a private document converts the document into a public one, making it admissible in court without further proof of its authenticity.<sup>6</sup> Indeed, it creates real rights.<sup>7</sup>

Notaries public, therefore, should not authenticate documents unless the persons who signed thereon are the very same persons who executed and personally appeared before them to attest to the contents and truth of what are stated therein.<sup>8</sup> Notaries public must observe with utmost fidelity the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of notarized deeds would be undermined.

Respondent's rationalization of the events surrounding the notarization of the *Deed Confirming a Previous Verbal Sale of Portion of Land* dated October 17, 1991 is preposterous. Worse, it reflects his utter disregard of his duties, as a notary public, to comply with the required legal formalities in the execution of documents.

Respondent was initially asked to notarize the subject document on October 17, 1991. He alleged that the act was not completed for failure of Eulalio Zaballero to present his residence certificate. Eight (8) months after, the same document was presented to him, this time without Eulalio Zaballero. The circumstances should have put him on guard. Verily, the fact that Eulalio Zaballero previously appeared before him in person does not justify, for instead it should have deterred him from proceeding with, the notarization of the document in question.

Worse, apart from resorting to prevarications respondent was inconsistent with himself. In the notarial acknowledgement, he attested that the party to the deed appeared before him on June 9, 1992 which is the date of acknowledgement. In his comment,<sup>9</sup> he stated that the party appeared before him on a different date, October 17, 1991, which is the date of the document. Of course, the party could not have appeared before him on June 9, 1992 because the party died on May 31, 1992.

Respondent, however, cannot be put to task for the alleged use of fake residence certificates and forged signatures. The records

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<sup>6</sup> Ocampo v. Yrreverre, A.C. No. 5480, September 29, 2003; Coronado v. Felongco, A.C. No. 2611, November 15, 2000, 344 SCRA 565; Arrieta v. Llosa, 346 Phil. 932 (1997).

<sup>7</sup> The execution of the public instrument presumably transfers the ownership from the vendor to the vendee who may thereafter exercise the rights of an owner over the same, Naval v. Enriquez, 3 Phil. 669 (1904); Uy Piaoco v. McMicking, 10 Phil. 286 (1908); Buencamino v. Viceo, 13 Phil. 97 (1909); Yap Unki v. Chua Jamco, 14 Phil. 602 (1909).

<sup>8</sup> Fulgencio v. Martin, A.C. No. 3223, May 29, 2003; Vda. De Rosales v. Atty. Ramos, A.C. No. 5645, July 2, 2002, 383 SCRA 498.

<sup>9</sup> Rollo p. 19.

and the evidence adduced at the hearing simply do not bear out the charge.

The remorseful attitude of respondent and his claim that he is a wheelchair-bound invalid and depends solely on notarial service for his income,<sup>10</sup> though deserving of commiseration, are of no consequence. Still and all, the IBP's recommendation to revoke respondent's notarial commission and disqualify him from securing the same commission for two (2) years, if heeded, would not suffice to punish respondent for his offense. In the case of *Ocampo v. Yrreverre*,<sup>11</sup> where a similarly contrite respondent was found guilty of breach of the notarial law for notarizing a document in the absence of the party-signatory, the Court did not only revoke his notarial commission for a period of two (2) years, but also suspended him from the practice of law for a period of six (6) months.

WHEREFORE, in view of the foregoing, the notarial commission of respondent Atty. Mario J. Montalvan, if still existing, is REVOKED and he is DISQUALIFIED from being commissioned as notary public for a period of two (2) years. He is also SUSPENDED from the practice of law for six (6) months effective immediately, with a WARNING that the repetition of a similar violation will be dealt with even more severely. He is further DIRECTED to report the date of his receipt of this Decision to the Court within five (5) days from such receipt.

Let a copy of this decision be entered in the personal records of respondent as a member of the Bar, and copies furnished the Bar Confidant, the Integrated Bar of the Philippines, and the Court Administrator for circulation to all courts in the country.

SO ORDERED."

Copy of the decision was received by counsel for the respondent on June 9, 2004, as shown by Registry Return Receipt No. 51615.

23 November 2004.

**PRESBITERO J. VELASCO, JR.**  
Court Administrator

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<sup>10</sup> Motion for Reconsideration submitted to the IBP Commission on Bar Discipline, Board of Governors, Pasay City, and received by the Office of the Court Administrator January 15, 2004.

<sup>11</sup> *Supra*, note 6.