> The petitioner's motion for a preliminary investigation is not more important than his application for release on bail, just as the conduct of such preliminary investigation is not more important than the hearing of the application for bail. The court's hearing of the application for bail should not be subordinated to the preliminary investigation of the charge. The hearing should not be suspended, but should be allowed to proceed for it will accomplish a double purpose. The parties will have an opportunity to show not only: (a) whether or not there is probable cause to believe that the petitioner killed Eldon Maguan, but more importantly (b) whether or not the evidence of his guilt is strong. The judge's determination that the evidence of his guilt is strong would naturally foreclose the need for a preliminary investigation to ascertain the probability of his guilt.[65]

While certainly valid, the suggested legal route would have provided a less controversial resolution of the controversy—one which would not have brought into the limelight established jurisprudential rules on the waiver of the right to a preliminary investigation. Had the Supreme Court skirted the issue of the waiver of the investigation altogether by directing instead the trial judge to hear the accused's application for bail, as there was an earlier refusal to do so, the settled rules on waiver could have remained undisturbed and intact. But that is not the case. There now stands a modification of a once sturdy doctrine relied on by both the bar and the bench for many years. Only time, therefore, will tell if this modified doctrine was correctly and judiciously formulated.

[65] 206 SCRA at 167.

A MANUAL FOR FILIPINO NOTARIES

ANNA LEAH T. CASTAÑEDA*

INTRODUCTION

One of the first horror stories a freshman will hear in the early months of law school is that he might, after five long years of pains-taking study (bar examinations included), just end up a notary public who mills around the corridors of the city hall and hunts for potential customers. He could also be like the notary public of Atty. Jacinto Jimenez's student days, who held office in a 1940 vintage car parked opposite the old Department of Foreign Affairs along Padre Faura.

The lowly notary public is indeed much maligned and much ridiculed. People often take his office for granted and ignore the legal formalities he performs in notarizing documents. It is common practice in this country for parties not to actually appear before a notary public. They just send a document which has already been signed to the notary for his certification or acknowledgement, knowing full well that the notary will certify that the parties *personally appeared* before him. Perhaps notaries are also to blame for the lack of due regard people accord their functions, for many of them are lax in exacting compliance with legal formalities in the execution of public documents.

This writer attempts to provide notaries public with an informative, practical, yet analytical overview of their responsibilities under Philippine law, as well as of the consequences of their failure to comply with their legal duties. This note contains a brief history of the office of notaries public, a compilation of the most important provisions of law applicable to notaries public as supplemented by Supreme Court circulars and decisions, and an analysis of the numerous provisions of law and cases involving the discipline of notaries public.

* *A.B. '89, Summa Cum Laude, J.D. '93*, with honors, Ateneo de Manila University. Managing Editor (1991-92) and Editor-in-Chief (1992-93), *Ateneo Law Journal*. The writer thanks Atty. Jacinto D. Jimenez, Rev. Artemio N. Ferrer, S.J., and Atty. Jose Jesus G. Laurel for their assistance in the research and editing of this article and for their helpful comments and advice.

I. History of the Office of the Notary Public

A notary public, by definition, is a public officer whose function is to administer oaths; to attest and certify, by his hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign jurisdictions; to take acknowledgements of deeds and other conveyances and certify the same; to perform certain official acts, chiefly in commercial matters, such as the protesting of notes and bills, the noting of foreign drafts and marine protests in cases of loss or damage.[1] The office of a notary public is of ancient origin[2] with roots both in common law and in civil law.[3] Its beginnings, however, may be traced all the way back to Ancient Rome.[4]

The notary public, as we know him today, is actually a fusion of two Roman officers—the *notarius* and the *tabularius*. Joseph Osmun Skinner, in his 1927 work *A Handbook for Notaries Public and Commissioners of Deeds of New York*, writes that the functions of the *notarius* actually bore little relation to that of the modern notary public, as the former was more akin to today's stenographer: "(t)he *notarius* was originally a slave or freedman who took notes of judicial proceedings in shorthand or cipher, particularly one who took notes in the Senate."[5] The functions of today's notary are closer to those of the Roman *tabularius*:

> His employment consisted in the drawing up of legal documents. In that he occupied to some extent the position that an attorney at law now fills. In the canon law the tabularius was a person of great importance; it was a maxim of that law that his evidence was worth that of two unskilled witnesses.[6]

In short, the modern notary kept the name of the *notarius* and the functions of the *tabularius*. This merger of offices occurred some time in the history of Western Europe, but "long before the modern notary was introduced into England as an officer with about the same powers and duties he now has."[7] This divergence in the paths of evolution

[1] See BLACK'S LAW DICTIONARY 956 (1979) and 66 C.J.S. 609.

[2] 58 Am Jur 2d 523.

[3] 66 C.J.S. 609.

[4] J.O. SKINNER, A HANDBOOK FOR NOTARIES PUBLIC COMMISSIONERS OF DEEDS OF NEW YORK 1 (2nd ed. 1927) [hereinafter SKINNER'S NOTARIES MANUAL].

[5] *Id.* at 2.

[6] *Id.*

[7] *Id.*

warrants a conclusion that there are differences between the civil law notary of Western Europe and the common law notary of England; although, both trace their origins to Rome during the republic. This perspective may be helpful in understanding the notary public in the Philippines.

The office of the notary public was introduced to the United States through England; thus, the American notary public belongs to the common law tradition. The notary public in the Philippines, however, traces his roots to the civil law tradition because of the Spanish conquest of the Philippine islands. In the early case of *Chiu Yuco v. Pore*,[8] it is interesting that the Supreme Court compared the new notarial law existing during the American occupation with Spanish notarial legislation which was in force prior to the American regime. Although the Filipino notary originally belonged to the civil law tradition, it would be reasonable to infer that he may have probably been influenced by his common law counterpart in the American notary. Thus, the Filipino notary cannot be considered strictly as either a civil law notary or as a common law notary.

II. The Office of the Notary Public

A. Commission

1. QUALIFICATIONS

The Philippine Notarial Law is found in Sections 231 to 252 and 2632 to 2633 of the Revised Administrative Code.[9] Sections 232 and 234 of the Notarial Law enumerates the qualifications of a notary public. A notary public must be a Filipino citizen, must be over 21 years of age, and should not have been convicted of any crime involving moral turpitude. The Notarial Law enumerates two other qualifications – one pertaining to the training required of a notary and another to the payment of certain dues. However, these must be considered modified by Supreme Court circulars and decisions.

[8] 20 Phil 385, 387 (1911). Also, the Supreme Court in *Panganiban v. Borromeo*, 38 Phil 367, 369 (1933) observed that "(t)o the office of the notary public there is attached such importance under present conditions as under the Spanish administration."

[9] ACT NO. 2711, REVISED ADMINISTRATIVE CODE, Chapter 11, Sec. 231-52, Sec. 2632-33 (10 March 1917, as amended in 29 August 1940) [hereinafter "THE NOTARIAL LAW"].

a. Training

The Notarial Law mentions the classes of persons qualified to be notaries: (1) those admitted to the practice of law; (2) those who have passed the studies of law in a reputable university; (3) a clerk or deputy clerk of court or one who has at some time held the position of clerk or deputy clerk of court for a period of not less than two years; (4) those qualified for the office of Notary Public under Spanish sovereignty; and (5) municipal judges as notaries public *de officio* in municipalities or municpal districts (a) where there are no persons with the necessary qualifications, or (b) where there are qualified persons but they refused appointment.

1) Non-lawyers as notaries

In 1974, the Supreme Court "resolved to direct all Judges of the Court of First Instance who are authorized to appoint notaries public, *to refrain from appointing non-lawyers*, subject, however, to the exception that in places where there are no lawyers, or there are not enough lawyers, the appointment of non-lawyers as notaries public may be allowed."[10] Circular No. 16 of 1985, however, directed appointing judges to altogether "refrain and desist from appointing and/or renewing the appointment of non-lawyers as notaries public" in view of "the unethical practices of notaries public who are non-lawyers."[11] The exception made for areas with no lawyers or not enough lawyers remains, but, in such cases, a non-lawyer who wishes to be commissioned as a notary public must apply directly with the Supreme Court, and such petitions will be decided on a case to case basis.[12]

2) Municipal Judges as notaries

Among the members of the bench, only municipal judges may act as notaries public. In *Borre v. Moya*, the Supreme Court held that the city judge of Davao was not empowered to act as notary *de officio*, because no provision of the Revised Administrative Code, the Judicial Law, and the Charter of Davao allowed him to act as such.[13]

[10] Supreme Court Memorandum Circular of 3 October 1974. (italics supplied)

[11] Supreme Court Circular No. 16, 12 November 1985.

[12] Supreme Court Circular No. 16, 12 November 1985, citing *En Banc* Resolution in Administrative Matter 85-10-8812-RTC, dated 29 October 1985.

[13] *Borres v. Moya*, 100 SCRA 314, 321 (1980).

The Notarial Law also states that a municipal judge may act as notary public only in a *de officio* capacity. The Supreme Court originally interpreted this requirement to mean that a municipal judge may not engage in the regular activities of notaries public,[14] that is, "he should notarize only documents connected with the exercise of his official duties and that he should not compete with private law praticitioners or regular notaries in transacting legal conveyances."[15] Nonetheless, in *Opus v. Barnia*, the Supreme Court found "good and valid reasons not to limit the authority of a municipal judge as an *ex officio* notary public to the notarization of documents in connection with the performance of his official functions."[16]

One "good and valid reason" noted by the Court in the *Opus* case is that a municipal judge has "miscellaneous powers," such as the power to solemnize marriages, administer oaths, take depositions, the exercise of which could be facilitated by allowing the judge to act as notary even if the documents are not connected with the performance of his ordinary official functions. A second good reason is explained by the case of *Lapena v. Marcos*. This case expanded the power of municipal judge as *ex officio* notary to include, apart from the miscellaneous powers mentioned in the *Opus* case, *any* act performed by a *regular* notary public:

> The demands of public service also justify that the authority of the municipal judge as notary public *ex officio* should not be limited to notarizing documents connected only with the exercise of their official duties. They should be allowed to act and perform *any* service within the competency of a notary public. In our rural areas and communities, there are few regular notaries, and they do not keep regular officer hours. It would be more convenient and less expensive for the public, especially the common people to have ready access to the municipal judge at his official station instead of travelling to the provincial capital or to the big towns where most lawyers practice as regular notaries.[17]

However, even if a municipal judge may perform the functions of a regular notary, he may not collect the notarial fees for himself, for the law requires that "officers acting as notaries public *ex officio*

[14] *In Re: Pallugna*, 43 SCRA 446, 470 (1972).

[15] *Opus v. Barnia*, 114 SCRA 552, 556 (1982). See also *Borre v. Moya*, 100 SCRA 314, 321 (1980).

[16] *Id.*

[17] *Lapena v. Marcos*, 114 SCRA 572, 579 (1982).

shall charge for their services the fees prescribed by law and account therefor as *government funds*."[18] Municipal judges, however, were not allowed to collect any notarial fees at all, even in behalf of the municipality, when the Department of Local Government organized barrio associations and barrio cooperatives in 1973.[19]

b. Fees and Dues

Applicants for notarial commissions must show proof of payment of their privilege tax as well as their dues as members of the Integrated Bar of the Philippines (IBP). The applicant must state the IBP Chapter to which he belongs, the number of the corresponding IBP receipt of up-to-date payment of dues, and his respective License Numbers. Omission of these data will prevent the judge from acting upon the application.[20]

2. APPOINTMENT AND TERM

Notaries public are now appointed by the Executive Judges in multi-sala Regional Trial Courts in provinces and cities.[21] The term of office of a notary public shall end at the expiration of the two year period beginning on the first day of January of the year in which the appointment is made.[22]

3. JURISDICTION

Under the Notarial Law, the jurisdiction of a notary public in general used to be co-extensive with the province for which he was commissioned, and that of the notary public in the City of Manila, co-extensive with said city. Circular No. 8 of 1985, however, clarified further that a notary public may be commissioned for the same term only by one court within the Metro Manila region.[23] This means that a notary appointed by the Executive Judge of the Regional Trial Court

[18] *Id. citing* REVISED ADMINISTRATIVE CODE, Sec. 231-252, 2622-2633, and Rule 141, Sec. 6(h) and 9 of the REVISED RULES OF COURT. (italics supplied)

[19] Supreme Court Circular No. 2, 24 May 1973.

[20] Memorandum Circular No. 3, 17 February 1976.

[21] THE NOTARIAL LAW, Sec. 232.

[22] THE NOTARIAL LAW, Sec. 239.

[23] Supreme Court Circular No. 8, 22 April 1985.

of Manila, for example, may no longer be appointed by the Executive Judge of the Regional Trial Court of Makati even if both Manila and Makati fall within the National Capital Judicial Region. As a result, the notary's jurisdiction is now co-extensive, not with the jurisdiction of the entire judicial district, but with the jurisdiction of the appointing court.

Jurisdiction limits the territory within which a notary possesses authority to perform notarial acts. In the case of *Tecson v. Tecson*,[24] the Supreme Court ruled, first, that acknowledgements taken outside the territorial jurisdiction of the notary are void as if the person taking it were wholly without official character, and, second, that, as a consequence, the document remains a private document.

B. Powers of a Notary Public

1. POWERS

Section 241 of the Revised Administrative Act enumerates the following general powers of the notary public:

1) To administer all oaths and affirmations provided for by law,
   a) in all matters incident to his notarial office
   b) in the execution of
      (1) affidavits
      (2) depositions
      (3) other documents requiring an oath
2) To receive proof or acknowledgement of all writings relating to commerce, such as
   a) ships, vessels, or boats
      (1) bills of exchange
      (2) bottomries
      (3) mortgages
      (4) hypothecations

[24] 61 Phil 781 (1935).

b) charter parties or affreightments

c) letters of attorney

d) land or buildings, or an interest therein

(1) deeds

(2) mortgages

(3) transfers and assignments

e) such other writings as are commonly proved or acknowledged before notaries

3) to act as magistrate in the writing of affidavits or depositions;

4) to make declarations and certify the truth thereof under his seal of office, concerning all matters done by him by virtue of his office.

This enumeration is broad enough to cover more familiar acts requiring notarization under different and more specific provisions of law, such as the acknowledgement of wills under Article 806 of the New Civil Code. An important function of notaries not clearly mentioned in Section 241 but appearing in Section 246, however, is the making of protests. A protest is required in order to collect on a dishonored foreign bill of exchange under Sections 152 to 160 of the Negotiable Instruments Law.[25] The Code of Commerce also requires protest in certain cases, such as marine collisions.[26]

But what is a notary for and what does he do? Skinner describes the notary public as a public official, necessary both in the business and in the legal world, who is empowered to take oaths outside of court. He is appointed by the state in order to assist anyone who wants his assistance in proving that certain facts were sworn to. Since a notary public is a public official, his signature on documents evidencing these facts carries more weight than the signature of an ordinary man. Specifically, he is "authorized to put his name to certain documents to show that they are genuine."[27] Essentially, a notary performs

[25] ACT NO. 2031, THE NEGOTIABLE INSTRUMENTS LAW (2 June 1911).

[26] CODE OF COMMERCE, Art. 835.

[27] SKINNER'S NOTARIES MANUAL, *supra* note 4, at 17-18.

five functions: he attests, certifies, takes an acknowledgement, certifies to the same, and protests. Skinner describes the effects of these acts:

> When he "attests" he witnesses, or sees, as an officer, that a person named in the document swears before God or affirms that certain facts set forth in the document are true; when he "certifies" to that instrument he writes on the same instrument that the person named therein did appear before him on a certain day and at a certain place and did there swear before God or affirm that the facts stated therein are true. When he "takes an acknowledgement," the man named in a deed or other conveyance comes to him with the deed and tells him that he is the man named as grantor in the deed, and that he signed the deed and means to convey the property to the person named therein; when he "certifies the same," he writes on the deed these facts, that he knows the man named in the deed and that the said man did sign it and means to convey it. When he "protests," he writes down how and when he performed certain acts which he is called upon to perform as a public official.[28]

In other words, the acts of attestation and certification pertain to statements made or facts related by parties, the acts of taking acknowledgement and certifying the same pertain to conveyances made by parties, and the making of protests pertain to the performance of certain acts by notaries themselves which they are called upon to do under the law.

2. THE EFFECT OF NOTARIZATION

The effect of notarization, according to the case of *Joson v. Baltazar*, is as follows:

> Notarization of private document converts such document into a public one and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies, and the public at large must be able to rely upon the acknowledgement executed by a notary public and appended to a private instrument.[29]

Indeed, that notarial instruments are held to be public instruments is a rule which has long been recognized in this jurisdiction.[30]

[28] *Id.* at 18.

[29] *Joson v. Baltazar*, 194 SCRA 114, 119 (1991).

[30] *Kuenzle and Streiff v. Villanueva*, 41 Phil 611, 621 (1916) *citing Martinez v. Holliday, Wise & Co.*, 1 Phil 194; *Peterson v. Newberry*, 6 Phil 260; *Pena v. Mitchell*, 9 Phil 557; *Macke and Macke v. Rubert*, 11 Phil 480; *Quison v. Salud*, 12 Phil 109.

As public documents, notarial instruments constitute *prima facie* evidence of the facts which give rise to their execution and of the date of the said execution, but not of the truthfulness of the statements.[31] The reason for the former presumption is that the law assumes that "the act which the officer witnesses and certified to or the date written by him are not shown to be false,"[32] because it is confident that notaries public, as public officers, "will discharge their several trusts with accuracy and fidelity."[33] In short, notaries enjoy a presumption of regularity in the performance of their official functions. Senator Vicente J. Francisco justifies this presumption on practical grounds:

> Were there no exception for official documents, hosts of officials would be found devoting the greater part of their time to attending as witnesses in court or delivering their depositions before an officer.[34]

To prove that a notarized document either speaks falsely or has been irregularly executed, one must overcome this heavy presumption of regularity. In *Robinson v. Villafuerte*, the plaintiff assailed a special power of attorney for having been notarized in the absence of the notary, but the Supreme Court rejected his argument, because the plaintiff failed to adduce *"clear, strong, and irrefutable proof...* to prove that the said notaries could not have averred that the said person was actually in their presence."[35] The weight of the presumption of regularity given to notarial instruments and the degree of proof necessary to overthrow this presumption were discussed once more in the recent case of *Mariano v. Peñas*:

> As an officer of the Court, a lawyer is presumed to have performed his duty in accordance with his oath. *A recital in a public document, celebrated with all the legal formalities under the safeguard of a notarial certificate, is evidence against the parties, and a high degree of proof is necessary to overcome the legal presumption that such recital is true.* To overthrow a notarial certification, the *oral evidence must be clear, convincing, and should be sustained by proof of facts or circumstances connected with the execution of the instrument, which in themselves, tend to disclose a reasonable probability that the attack upon its genuineness or its efficacy is well-founded.*[36] (italics supplied)

[31] 2 V. FRANCISCO, THE REVISED RULES OF COURT 352 (1969).

[32] *Id.*

[33] *Id.* at 353.

[34] *Id.*

[35] *Robinson v. Villafuerte*, 18 Phil 171 (1911) (italics supplied).

3. EFFECT OF NOTARIZED DOCUMENTS IN FOREIGN JURISDICTIONS

The acts performed by notaries public are respected not only within their particular jurisdictions but also in other countries, because their office "exists and is recognized throughout the commercial world and has been said to be 'known to the law of nations.'"[37] Skinner quotes a Minnesotta judge who wrote that "(a) public notary is considered, not merely an officer of the country where he is admitted or appointed, but as a kind of international officer, whose official acts, performed in the state for which he is appointed, are recognized as authoritative the world over."[38] This practice by courts of taking judicial notice of the seals of notaries public seems to exist as a matter of comity among nations,[39] in the absence of a treaty.

C. Duties of a Notary Public

The law imposes upon the notary public two kinds of duties: the first pertains to the execution of formalities required by law and the second, to the verification of the capacity and identity of the parties, as well as the legality of the act executed.

1. FORMALITIES

Because a notarial document is entitled to full faith and credit upon its face, "notaries public must observe the utmost care to comply with the elementary formalities in the performance of their duties;"[40] otherwise, "the confidence of the public in the integrity of this form of conveyancing would be undermined."[41]

[36] *Mariano v. Peñas*, 206 SCRA 104, 107 (1992).

[37] SKINNER'S NOTARIES MANUAL, *supra* note 4, at 6.

[38] *Id.*

[39] See *Id.*

[40] *Realino v. Villamor*, 87 SCRA 318, 322 (1978).

[41] *Salomon v. Blanco*, 109 SCRA 79, 85 (1981).

a. Notarial Seal

Every notary public shall have a seal of office,[42] an impression of which appearing directly on the paper or parchment on which the writing is printed shall be as valid as if made on wax or wafer. The seal must possess the following features: first, it must be made of metal; second, there must be engraved on it the name of the province followed by the word "Philippines," the name of the notary public, and the words "notary public" across the center. Furthermore, the seal must be procured at the notary's expense and must be affixed to papers officially signed by the notary.

b. Notarial Register

The notary public shall keep a notarial register[43] as a record of all his official acts as a notary and shall supply a certified copy of such record or any part thereof to any person applying and paying the legal fees for it.[44]

1) Entries

Ordinarily, a notary public must record, in chronological order, the following data: the nature of the instrument, the person(s) executing/swearing, the witnesses, the notarial fees collected, a correct copy of the instrument, a description of the substance. There should be no blank lines in between entries. Moreover, the entries must be numbered consecutively, beginning with the number "one" in each calendar year. The number of the document and the corresponding pages of the register in which the document is entered must be stated in the documents notarized.

There are additional requirements for protests for drafts, bills of exchange, and promissory notes. The notary must indicate in the register a full and true record of all the proceedings and a note as to the following: whether demand was made, to whom, when, and where it was made ; whether the protestor presented the document; whether

[42] THE NOTARIAL LAW, Sec. 244.

[43] THE NOTARIAL LAW, Sec. 245.

[44] See *Villanueva v. de la Cruz*, 99 SCRA 137 (1980). This involved a notary public who was charged with failure to furnish copies of notarized documents to a person applying for them. The case was dismissed, however, because the charges were not established.

notices were given and to whom, when, and in what manner, or whether they were made, and to whom, when, and where directed.[45]

2) Weekly Certification

At the end of each week the notary shall certify in his register the number of the instruments executed, sworn to, acknowledged, or protested before him; or if none were, he shall make a certificate showing this fact.[46]

3) Forwarding of Entries to the Clerk of Court

Within the first ten days of the month next following, the notary public shall forward to and file with the clerk of the Regional Trial Court of the area over which he exercised jurisdiction (1) certified copies of each month's entries and any instrument acknowledged before him; or if no entry was made, a statement to that effect.[47]

4) Forwarding the Notarial Register

The register is forwarded in two instances: when the register is filled or within fifteen days after expiration of the commission, unless the notary is reappointed. The notary public addresses the register to the clerk of court, and the clerk of court fowards the register to the appointing judge who will then investigate any irregularities. If irregularities exist, the judge will recommend the case to a fiscal and defer forwarding the register to the National Library until termination of the case against the notary public.[48]

c. Taxes

1) Residence Certificate (now Community Tax Certificate)

The notary public must certify that parties to the notarized document either presented their proper residence certificates or are exempt from presenting such certificates. He must enter, as part of the certification, the number, place of issue, and date of the residence certificate.[49]

[45] THE NOTARIAL LAW, Sec. 246.

[46] The Notarial Law, Sec. 246.

[47] THE NOTARIAL LAW, Sec. 246.

[48] THE NOTARIAL LAW, Sec. 247.

[49] THE NOTARIAL LAW, Sec. 251.

2) Documentary Stamp Taxes

Section 201 of the National Internal Revenue Code imposes an additional duty on the notary public: "No notary public or other officer authorized to administer oaths shall add his *jurat* or acknowledgement to any document subject to documentary stamp tax unless the proper documentary stamps are affixed thereto and cancelled."[50]

d. Date of Commission's Expiry

A notary must affix to all acknowledgements taken and certified by him according to law, a statement of the date on which his commission will expire.[51]

e. Notarial Fees

Section 252 states that "(n)o fees, except as such as is expressly prescribed and allowed by law, shall be collected or received for any service rendered by a notary public." This schedule of fees was provided for in Rule 141, Section 9 of the Rules of Court, but this has since then been amended.[52]

2. SUBSTANTIAL DUTIES

Apart from complying with legal formalities, a notary public, according to the Supreme Court in *Soto v. Lacre*, has three more duties: first, he must ascertain the identity of the party signing; second, he must ensure that the act is voluntary; and third, he must verify the capacity of the parties.[53] To ascertain the identity of a party, a notary public in the United States either must have personal knowledge of the party or must be satisfied of his identity "through precaution."[54]

Also, the Supreme Court seems to require notaries, as lawyers, to look into the validity of the acts or statements which they will

[50] EXECUTIVE ORDER No. 273, THE REVISED NATIONAL INTERNAL REVENUE CODE, as amended, Sec. 201 (1977).

[51] THE NOTARIAL LAW, Sec. 250.

[52] See Supreme Circular No. 10, 18 May 1988, which increased the amount of notarial fees, and IBP Memorandum Circular No. 001-87, 2 September 1987, which published a table of fees that may be charged by notaries public.

[53] *Soto v. Lacre*, 77 SCRA 453, 457 (1977).

[54] 66 C.J.S. 625.

verify:[55] "(i)t is for the notary to inform himself of the facts to which he intends to certify and to take part in no illegal enterprise,"[56] because "(t)here is no question that the role of the notary public is, among others, to guard against any illegal or immoral arrangements."[57]

III. THE LIABILITIES OF A NOTARY PUBLIC

The failure of a notary public, either through fault or negligence, to observe his notarial duties with diligence will subject him to liability as a notary, as a public officer in general, and as a member of the bar. The rationale behind the vigilance employed by the courts in disciplining notaries public is that "(n)otarization is not an empty routine; to the contrary, it engages public interest in a substantial degree, and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative officers generally"[58] who rely upon their certification or acknowledgement.

The succeeding portion will discuss only the possible criminal, civil, and administrative liabilities of a notary public as a notary in particular—and not as a public officer in general—as well as his liabilities as a member of the Bar.

A. Criminal and Civil Liability

1. CRIMINAL LIABILITY

As a public officer, a notary public is subject to laws governing the actuations of public officers in general. Notaries public are, however, specifically mentioned as being subject to criminal liability for the crime of falsification under Article 171 of the Revised Penal Code.[59] Article 171 may be violated by a public officer, employee, notary public, or ecclesiastical minister who, by taking advantage of his official position, commits the following acts:

[55] See *Asuncion v. Court of Appeals*, 150 SCRA 353, 363 (1987).

[56] *Panganiban v. Borromeo*, 58 Phil 367, 369 (1933).

[57] Cabrillas, *The Notarial Act*, 87 SCRA 324 (1933).

[58] *Joson v. Baltazar, supra.* at 119.

[59] ACT No. 3815, THE REVISED PENAL CODE, as amended (1 January 1932).

(1) counterfeiting or imitating any handwriting, signature, or rubric;

(2) causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;

(3) attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;

(4) making untruthful statements in a narration of facts;

(5) altering true dates;

(6) making any alternation or intercalation in a genuine document which changes its meaning;

(7) issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or

(8) intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

Notaries have been sued under Article 171 together with private parties for executing fake documents. In *U.S. v. Capule*,[60] both the party who drew up the document and the notary public were jointly charged with falsification, but while the party was convicted, the case against the notary became moot because he died. In *People v. Tan Bomping*,[61] a notary and a certain Tan Bomping were similarly charged under Art. 171. Tan Bomping was convicted for executing a simulated conveyance, through ante-dated deeds of sale, over eight parcels of land in order to prevent the attachment of the properties in a civil case. But the notary was exonerated, because he became suspicious of the dates and compelled Tan Bomping to state under oath that the dates were true.

An example of a case in which a notary was actually convicted of falsification was *Paras v. Vailoces*.[62] In that case, Notary Public Vailoces was charged with and found guilty of notarizing a false will. His conviction eventually led to his disbarment. The Supreme Court explained that a notary's criminal conviction does not preclude disbarment proceedings against him, because

[60] 24 Phil 12 (1913).

[61] 48 Phil 877 (1926).

[62] 1 SCRA 954 (1961).

> (t)he disbarment of an attorney does not partake of a criminal proceeding. Rather, it is intended to protect the court and the public from the misconduct of the officers of the court...[and its purpose is] to protect the administration of justice by requiring that those who exercise this important function shall be competent, honorable, and reliable; men in whom courts and clients may repose confidence.[63]

Neither is a criminal conviction a prerequisite to disbarment proceedings, because *prima facie* violations of Article 171, whether in cases filed against the notary directly[64] or even in separate cases in which his anomalies are discovered,[65] have been held as sufficient bases for the judge to issue recommendations to investigate the conduct of the notary for the purpose of disciplining him.

The administrative liability of a notary will be discussed in further detail in the next two sections. Suffice at this point to say that violations of criminal statutes, such as Article 171 of the Revised Penal Code, may subject a notary public not only to criminal liability but also to administrative liability.

2. CIVIL LIABILITY

In the United States, a notary public may be held civilly "responsible to all persons who have been defrauded of money in consequence of reliance upon the genuineness of any document executed by the notary in the performance of his official duties and, in some circumstances, even where such reliance is absent."[66] It is imperative, however, that the plaintiff prove the following: first, that the notary defaulted in his duties through negligence, malice, or corruption; second, that the plaintiff was injured and damaged as a result of such failure; and third, that such failure was the proximate cause of the loss and injury which he sustained.[67] The liability of the notary must be premised on

[63] *Id.* at 957.

[64] See *In Re: Mangibas*, 25 SCRA 590 (1968) and *In Re: Brillantes*, 76 SCRA 1 (1977).

[65] See, for example, *U.S. v. Kilayko*, 34 Phil 796 (1914), where in the course of a *criminal case for estafa* against Kilayko, one of the parties to a contract, Notary Public Jose Evangelista admitted during testimony that he had taken acknowledgements in the absence of the persons executing the contract. The Court recommended that the Attorney General investigate the notary's conduct with a view to disciplining him. Also, see *de la Cruz v. Capinpin*, 38 Phil 492 (1918), where, in the course of a *civil case* to annul a contract, the Court found that the notaries' acts contributed to the fraud perpetrated on the complainants and thus recommended that the two notaries be likewise investigated.

[66] 58 Am Jur 2d 556.

[67] 58 Am Jur 2d 557.

negligence, malice, or corruption, because the notary is neither a guarantor nor an insurer.[68] Contributory negligence on the part of an injured person, however, "may defeat his right to recover against a notary public for the making of a false certificate of acknowledgement."[69] A notary public may also be held civilly liable, even without proof that his default was the proximate cause of the damage, through an action against his bond based on breach of contract.[70] Unlike the Filipino notary public, the American notary public is required to post a bond to guarantee the faithful discharge of his duties.[71]

There seems to be no parallel doctrine in Philippine law specifically imposing direct civil liability upon a notary public, whether on tort or on contract, for damages caused to people as a result of his default in the performance of his notarial duties. Neither is there any decision explicitly stating that general principles of tort or contract are specifically applicable to errant notaries public; although, the Supreme Court did state in *Soto v. Lacre* that it is indeed necessary to adduce and to prove negligence, malice, or corruption on the part of the notary to hold him liable for his notarial acts.[72]

What the Supreme Court has done in cases where it discovered that the misconduct of the notary public was due to negligence, malice, or corruption and directly resulted in fraud or damage to the parties to the document was not to order him to pay damages but to discipline him administratively. In *In Re: Rusiana*[73] and *Sabayle v. Tandayag*,[74] notaries were disbarred for preparing and notarizing falsified deeds which they used to defraud parties. In the case of *Ramirez v. Ner*, Notary Jaime Ner was reprimanded and admonished but was not held civilly liable for damages; although, the Court recognized that the irregularity afforded the defendants the opportunity to consummate and to give a semblance of legality to an illegal scheme.[75] Likewise, a municipal judge was fined one month's salary but not made to pay damages even when the Court found that

[68] 58 Am Jur 2d 556.

[69] 58 Am Jur 2d 563.

[70] 58 Am Jur 2d 563.

[71] 66 C.J.S. 611.

[72] *Soto v. Lacre*, *supra*. at 457.

[73] 105 Phil 1328 (1959).

[74] 158 SCRA 497 (1988).

[75] *Ramirez v. Ner*, 21 SCRA 207, 210 (1967).

> [h]ad it not been for the notarized deed in question, the property involved herein could not have possibly been registered in Araceli's name, *which registration was made easier thru respondent's ill-advised act of notarizing said deed without requiring the supposed deponents to personally appear before him and attest to the truth of the contents of said document* which is one of the basic requirements of an acknowledgement.[76] (italics supplied)

B. Administrative Liablity under the Notarial Law

The offenses against the Notarial Law are listed in Sections 249 of the Revised Administrative Code and consist mostly of the failure of a notary public to comply with his duties under Sections 246 to 248. Because notaries have been quite lax in complying with the requirements for proper submission of copies of documents to the clerk of court and of the notarial registers to the judges, the Supreme Court noted that many irregularities, such as the ante-dating of notarized documents, have occurred. To more effectively prevent irregularities, the Supreme Court, through Executive Circular No. 6 of 1976,[77] called on judges to comply more faithfully with their duties under Section 248 of the Revised Administrative Code to supervise notaries public within their jurisdiction and to keep themselves informed of the manner in which notaries perform their duties. The faithfulness by which a notary complies with his duties under the Notarial Law is a major factor to be considered in his reappointment, because the Supreme Court has directed judges to "consult, confer with, and make verifications from the clerk of court concerned before reappointing, or renewing commissions of, notaries public."[78] In fact, the official written recommendation of the clerk of court must now be submitted to the judge. In addition, the Supreme Court has exhorted judges to enforce more strictly[79] Section 249 of the Notarial Law.

1. NOTARIAL REGISTER

If a notary fails to keep a notarial register,[80] to make proper entries in his notarial register regarding his notarial acts in the manner

[76] *Salomon v. Blanco*, *supra*. at 85.

[77] Supreme Court Executive Circular No. 6, 25 June 1976.

[78] Supreme Court Supervisory Circular No. 19, 17 July 1976, at 3-4.

[79] Supreme Court Executive Circular No. 6, 25 June 1976.

[80] THE NOTARIAL LAW, Sec. 249 (a).

required by law,[81] to send a copy of the entries to the proper clerk of court within the first ten days of the month next following,[82] and to forward his notarial register, when filled, to the proper clerk of court,[83] his commission may be revoked. These same infractions may also subject the notary to summary dismissal from office and a fine of ₱ 100.00 under Sections 2633 of the Revised Administrative Code.

2. DATE OF EXPIRATION

A notary who does not affix the date of the expiration of his commission to acknowlegements, as required by law, risks having his commission revoked.[84] For certifying documents after the expiration of his authority, a notary public may be fined ₱ 1,000.00 or be imprisoned for a period not exceeding one year.[85]

3. RESIDENCE AND DOCUMENTARY STAMP TAXES

a. Residence Certificate

Failure to make the proper notation regarding residence certificates is a ground for revocation of a notarial commission.[86] A notary who does not certify to the payment of the residence tax may be summarily dismissed from office and fined ₱ 100.00 under Section 2633 of the Revised Administrative Code.

b. Documentary Stamp Taxes

For failing to affix or cancel documentary stamps, a notary may be fined ₱ 20.00 to ₱ 300.00.[87]

4. MISCELLANEOUS OFFENSES

Other grounds for revocation of a notarial commission include failure to make a report, within a reasonable time, to the proper Regional Trial Court judge concerning the performance of his duties, as may

[81] THE NOTARIAL LAW, Sec. 249 (b).

[82] THE NOTARIAL LAW, Sec. 249 (c).

[83] THE NOTARIAL LAW, Sec. 249 (e).

[84] THE NOTARIAL LAW, Sec. 249 (d).

[85] THE NOTARIAL LAW, Sec. 2632.

[86] THE NOTARIAL LAW, Sec. 249 (g).

[87] THE NOTARIAL LAW, Sec. 239.

be required by such judge, and, as a catch-all, "any other dereliction or act which shall appear to the judge to constitute good cause for removal."[88] The Supreme Court has imposed a fine on a notary who overcharged notarial fees.[89]

C. Administrative Liability as a Member of the Bar

The administrative liability of a notary public is two-fold. On the one hand, an errant notary public may be taken to task under the provisions of the Notarial Law discussed. On the other hand, he may also be disciplined as a lawyer for wrongful acts committed as a notary public. In the leading case of *Panganiban v. Borromeo*, the Supreme Court laid down the principle that

> there can be no question as to the right of the court to discipline an attorney who, in his capacity as notary public, has been guilty of misconduct...We are led to hold that *a member of the bar who performs an act as a notary public of disgraceful and immoral character may be held to account by the court even to the extent of disbarment.*[90] (italics supplied)

The most common offenses for which notaries public have been subjected to disciplinary sanctions are falsification, the drafting of contracts against public policy, and notarizing after the expiration of their commissions or despite certain disqualifications.

1. FALSIFICATION

Falsification refers to the crime of falsification as it is defined in Article 171 of the Revised Penal Code. The acts constituting falsification may give rise not only to criminal liability but also to administrative liability, whether or not a criminal case has actually been filed. The acts of falsification most often committed by notaries involve violations of paragraphs 2, 3, 5, and 6 of Article 171 of the Revised Penal Code.

a. "Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate" (Art. 171, par.2)

[88] THE NOTARIAL LAW, Sec. 249 (f) and (h).

[89] See *Ibabao v. Villa*, 104 SCRA 325 (1981), which involved a judge who charged payment for notarial services when he wasn't supposed to exact any fees and who set excessive bail.

[90] *Panganiban v. Borromeo, supra.* at 369.

1) Forged signatures

This writer subsumed the act of forging signatures under paragraph 2 of Article 171 of the Revised Penal Code, because in such a situation, a party is made to appear as if he had signed an instrument when he, in fact, did not.

In two cases, the Supreme Court admonished notaries who notarized a document with forged signatures. The notary in *Cailing v. Espinosa* notarized a document which was signed and brought to him by an impostor. The Court did not think he was negligent for not taking pains to ascertain the identity of the person who ratified the deed before him. The Court recognized that the notary was "merely the victim of an imposition."[91] Similarly, in *Santos v. Villafuerte*, Eduardo Villafuerte was admonished, because the signature which was supposed to be a forgery was actually genuine.[92] But the notary in *Lopez v. Casaclang* was reprimanded and warned to be more careful, even if there was no forgery, because he failed to indicate that the person who had signed in the name of a party to a general power of attorney had been actually authorized by the party.[93]

In a later case, *Tejada v. Hernando*, notary public Harold Hernando was suspended for notarizing two deeds with falsified signatures. The reason for the heavier penalty was that Hernando was a two-time offender.[94] He was the same notary public in *Vda. de Guerrero v. Hernando* who was severely censured and suspended for one year, because he misrepresented that the party executing the document had exhibited his residence certificate.[95] The Supreme Court ruled:

> The imposition of that severer penalty on respondent is now in order for the commission of a more blatant anomaly. He has miserably failed to live up to the standards expected of a member of the Bar. His actuations amount to gross misconduct and dishonesty, in violation of his lawyer's oath and the fundamental ethics of his profession.[96]

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[91] *Cailing v. Espinosa*, 103 Phil 1165 (1958).

[92] *Santos v. Villafuerte*, 43 SCRA 326 (1972).

[93] *Lopez v. Casaclang*, 24 SCRA 731, 735 (1968).

[94] *Tejada v. Hernando*, 208 SCRA 517 (1992).

[95] *Vda. de Guerrero v. Hernando*, 68 SCRA 76, 79 (1975).

[96] *Tejada v. Hernando, supra.*

2) False or Non-Existent Transactions

The Supreme Court has been strictest in cases involving the execution of fake transactions.

Notaries have been disbarred for notarizing fake wills, fake powers of attorney, and fake deeds of sale. The case of *Paras v. Vailoces*,[97] in which a notary acknowledged a false will, has already been discussed above. In the case of *In Re: Rusiana*, Carlos Rusiana was disbarred for executing a fake power of attorney which allowed him to collect the money value of leaves due to another person. Rusiana used a false residence certificate and also assigned a number to the power of attorney which actually corresponded to a contract in his notarial book. The latter offense may be considered a violation of paragraph 7 of Article 171, that is, issuing a document different from the original. Because of his blatant acts, Rusiana "has exhibited such a frame of mind and observed such a norm of conduct as is unworthy of a member of the legal profession."[98] Another notary was disbarred for preparing and notarizing a simulated deed of sale, because he shared in the ill-gotten profits derived from defrauding the victim through such transaction.[99] However, a disbarred lawyer-notary is not precluded from applying for reinstatement, as in the case of Quinciano D. Vailoces who was disbarred in *Paras v. Vailoces*.[100]

The notaries in *Robinson v. Villafuerte*,[101] *Santos v. Villafuerte*,[102] and *Lampanog v. Villarojo*[103] were all accused of preparing fake documents but were merely admonished or exonerated, because the charges against them were mercy not proven. The plaintiffs failed to overcome presumption of regularity in the performance of duties afforded to notaries as public officers. In *Montoya v. Arayata*,[104] the notary public was exonerated for notarizing a document even through the party who supposedly executed the deed was dead, because he relied on the assurance of a fellow lawyer that the man who appeared before him was really the party concerned.

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[97] *Supra.*

[98] *In Re: Rusiana, supra.*

[99] *Sabayle v. Tandayag, supra.*

[100] *In Re: Vailoces*, 117 SCRA 1 (1982).

[101] *Supra.*

[102] *Supra.*

[103] 55 SCRA 304 (1974).

[104] 61 Phil 320 (1935).

3) The Absentee Cases: No Affiants, Parties, or Witnesses

Although it is the duty of a notarial officer to demand that a document be signed in his presence,[105] it is common for notaries to certify or acknowledge documents even if the parties executing the instruments do not appear before them. The "absentee cases" are of two kinds. In the first kind, the notary notarizes the signed instrument which were not actually executed in his presence; in the second kind, the notary sends notarized instruments in blank for parties to fill up.

N.B.I. v. Morada,[106] *Ramirez v. Ner*,[107] *Lopez v. Casaclang*,[108] *In Re: Mangibas*,[109] are examples of the first kind of absentee cases. In all four cases, the notaries were merely admonished for certifying or acknowledging documents despite the absence of the affiant or of the parties. The Supreme Court decided that such an act was not serious enough to warrant suspension or disbarment,[110] but that their acts merely suggested negligence or a "lack of caution, not culpable malpractice or immorality."[111] The notary in *Ocampo v. Cuba* was also exonerated even if he notarized a document already signed and in which the signature was alleged to be a forgery. The Supreme Court found that he had acted in good faith, for he asked the parties to acknowledge and exhibit their residence certificates, and he charged no fees.[112]

The Supreme Court, however, has been stricter in absentee cases where the infranction is compounded with other offenses. In *Guzman-Sarmiento v. Villalon*, Godofredo de Leon was suspended for three months for notarizing a document which had been previously signed by Severino Sarmiento while in his sickbed *and* for stating in the acknowledgement that the wife of Severino had appeared before him and presented her residence certificate. It was actually the daughter who had appeared, because the wife was out of the country.[113]

[105] *Realino v. Villamor, supra* at 322.

[106] 2 SCRA 827 (1961). In this case, the document was an affidavit.

[107] *Supra.*

[108] *Supra.*

[109] 25 SCRA 590 (1968).

[110] *Supra.* at 735.

[111] *Supra.* at 210.

[112] *Ocampo v. Cuba*, 131 SCRA 280 (1984).

[113] *Guzman-Sarmiento v. Villalon*, 111 SCRA 160, 164 (1982).

Likewise, the Supreme Court is stricter when municipal judges commit the same irregularity. The judges in *Evalla v. Mago*[114] and *Salomon v. Blanco*[115] were suspended for fifteen days and fined one month's salary, respectively, because "(t)he act of a notary in administering an oath in the affiant's absence, while not amounting to gross misconduct, is censurable. In the case of a municipal judge, a higher degree of ethical standard should be observed."[116]

In the second kind of absentee cases, Notary Public Madarang was reprimanded for sending five blank sheets already notarized to his client for the latter to convert into deeds of mortgage.[117] But Notary Public Villamor was merely reprimanded and admonished to be more careful although he had notarized an unsigned document, because

> (i)t appears that *good faith characterized the act of the respondent* in affixing his signature and his notarial seal on the unisgned document in question. *The complainant had obviously taken advantage of the oversight of the respondent and the trust that the latter had reposed on one he thought to be his friend* in order to settle the murder charge against his son.[118] (italics supplied)

4) Lack of Residence Certificate

Misrepresenting that a party exhibited a residence certificate when the party actually brought no residence certificate or showed an irregular one is another common offense committed by a notary.

The worst penalty imposed by the Supreme Court for this offense is that of suspension. Harold Hernando was severly censured and suspended for one year for misrepresenting that a residence certificate had been shown to him. He was not able to prove his defense that the only reason why he allowed the omission was because a certain Mateo Reyes assured him that he had the residence certificate at home but failed to bring it.[119] On the other hand, Godofredo de Leon was suspended for three months for falsely stating that a certain Mrs.

[114] 76 SCRA 122 (1977).

[115] *Supra.*

[116] *Evalla v. Mago, supra.* at 124.

[117] 61 Phil 713 (1935). Madarang was also suspended pending his return of certain funds to the complainant.

[118] *Realino v. Villamor, supra.* at 321-22.

[119] *Vda. de Guerrero v. Hernando, supra.*

Sarmiento appeared and executed a deed of sale before him, and exhibited her residence certificate to him when, in truth, it was her daughter who signed the deed of sale and who exhibited her own residence certificate. The suspension was limited to three months because of his old age.[120] But Carlos Rusiana was disbarred for allowing the use of a false residence certificate, because this act coincided with preparing a false transaction which he used to collect sums due to another person.[121]

In *Salomon v. Blanco*, a judge was fined one month's salary for notarizing two documents when no residence certificates were presented to him. The Supreme Court pointed out that the irregular notarization made it possible for the party to falsely register the property in her name.[122]

The Supreme Court has, however, been lenient when good faith attended the irregularity. Francisco E. Rodrigo, Jr. was merely admonished to be more careful although he falsely stated that the testator had exhibited his residence certificate to him. In fact, Rodrigo copied the data to be supplied by the residence certificate from an income tax return. The Court was forgiving in this case, because of the following reasons: first, the testator was a family friend of and thus well-known to Rodrigo; second, Rodrigo could rely on the notarized income tax return for the correct residence certificate data; and third, Rodrigo readily admitted the truth. In light of the good faith, the Court deemed admonition to be sufficient.[123] In *Santos v. Villafuerte*, the notary was admonished even when an irregular residence certificate was presented to him, because the party was ill and advanced in years and did not have the time to get a new residence certificate. The Court felt that it was better for Villafuerte to use the old residence certificate rather than purchase a new one from the municipal treasurer without the actual purchaser being present.[124]

b. "Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them" (Art. 171, par. 3)

[120] *Guzman-Sarmiento v. Villalon, supra.*

[121] *In Re: Rusiana, supra.*

[122] *Salomon v. Blanco, supra.* at 85.

[123] *Samonte v. Rodrigo, Jr.*, 36 SCRA 283, 286 (1970).

[124] *Santos v. Villafuerte, supra.*

The notary public in *Sevilla v. Zulueta* acknowledged a deed of sale which stated that the land being sold was free from any encumbrance when it was subject to an existing mortgage. The Supreme Court merely admonished the notary, because the creditor-mortgagee consented to the sale anyway.[125]

In *Soto v. Lacre*, Ruben Lacre notarized a special power of attorney stating that the party was of legal age when his residence certificate showed that he was under eighteen years of age. Lacre was exonerated, because he had not been negligent in verifying the capacity of the principal. It was enough that he was convinced of the principal's age by his appearance. The Court held that "if respondent is to be held accountable at all, it must be on the ground of negligence, malice, or corruption, which have not been adduced in this case."[126]

c. "Altering True Dates" (Art. 171, par. 5)

In *People v. Tan Bomping*, a party ante-dated deeds of sale to transfer his properties which were being attached. The notary was not punished, even if he acknowledged that the deeds were ante-dated, because he was careful enough to require Tan Bomping to swear that the dates were true.[127]

Mariano v. Peñas was an administrative case filed against a judge which was dismissed, even if it was alleged that the deeds of sale he notarized as a lawyer were ante-dated, because the ante-dating was not proven.[128]

d. "Making any alteration or intercalation in a genuine document which changes its meaning" (Art. 171, par. 6)

The prosecution in *In Re: Fule*[129] was able to prove that Octavio D. Fule altered and notarized trust receipts changing the status of a certain Mr. Ongsip from witness to party. The Supreme Court dismissed the case and merely admonished Fule, because there really was no falsification. The alterations were made with the knowledge and

[125] *Sevilla v. Zulueta*, Adm. Case No. 31, 28 March 1955, *cited in* Cabrillas, *The Notarial Act*, 87 SCRA 324, 331(1978).

[126] *Soto v. Lacre, supra.*

[127] *People v. Tan Bomping, supra.*

[128] *Mariano v. Peñas, supra.* at 107.

[129] *In Re: Fule*, 152 SCRA 293 (1987).

consent of Mr. Ongsip. Moreover, the Court held that failure of Fule to enter in his notarial register the name of the party who executed, swore to, or acknowledged the receipts did not warrant disciplinary sanctions but amounted only to neglect.[130]

In *Julian v. Respicio-Salenda*, the notary public made it possible for a party to the deed to alter the amount agreed upon because of the careless way she notarized the document. Respicio-Salenda called the attention of her clients, the Julian spouses, to the absence of a statement of consideration in the deed of sale. The lawyer-notary ascertained the true intention of the spouses and explained to the spouses the possible consequences of signing a deed which did not explicitly state the amount agreed upon (₱ 10,000). The Julians signed the incomplete deed anyway, and Respicio-Salenda also notarized the deed. Problems arose when the other party to the contract, Mr. Wellington Reyes, wrote ₱36,000 instead of the ₱ 10,000 agreed upon. The Supreme Court reprimanded Respicio-Salenda for her negligence, not as a lawyer, but as a notary public:

> We take note, however, of Atty. Respicio-Salenda's admission that she too signed, as notary, the Deed of Absolute Sale despite the incompleteness thereof. Admittedly, she did take the precaution of explaining the contents of the Deed of Absolute Sale to the Julian spouses and ascertaining from them the exact terms of their agreement with Atty. Tuy and Wellington Reyes before notarizing the same. *She should, however, have awaited the insertion of the purchase price of the subject property before proceeding to the notarization of the instrument.*[131] (italics supplied)

2. DEFECTIVE AND ILLEGAL CONTRACTS

a. *Defective Contracts*

Notaries public must ascertain whether the deed they are notarizing was executed voluntarily. There are two case which discuss the liability of a notary for acknowledging defective contracts. Unfortunately, the rulings are not very instructive. In *De la Cruz v. Capinpin*, the Supreme Court recommended that Lorenzo Dionisio and Ramon Balino be investigated, because it seemed that they notarized deeds in which the consent of de la Cruz was vitiated.[132] In *Velasco v. Paulino*, Corazon Paulino was accused of notarizing a document despite indications that the consent of Lorenzo Velasco might have been vitiated. Lorenzo thumbmarked a deed of sale while afflicted with brain tumor, prostatic cancer, speech disturbance, and aphasia. The disbarment case was dismissed, because the charges were not proven. Besides, Paulino seemed to have been caught in the cross-fire of a bitter and protracted fight between the heirs of Velasco.[133]

[130] *Id.* at 298.

[131] *Julian v. Respicio-Salenda*, 155 SCRA 95 (1987).

b. *Illegal Contracts*

Most of the cases involving illegal documents prepared or notarized by notaries public pertain to the relationships of spouses. Article 1 of the Family Code provides that because marriage is the foundation of the family and an inviolable social institution, its nature, consequences, and incidents are governed by law and not subject to stipulation.[134] But it seems Filipinos never learn, for there are at least eight cases involving affidavits or agreements executed by spouses who attempt to circumvent the law by stipulating on their marital relations.

Eugenio de Lara was disbarred for preparing and notarizing a contract by which Petronila Trias and Cirilo San Pedro bound themselves to marry each other after the death of the wife of Cirilo. But what really aggravated his case was his act of lying to the court. The prosecution proved that he had drawn up the document. His false testimony was a violation of the lawyer's oath to do no falsehood; thus, for this reason, he was removed as a notary public and disbarred.[135]

The Supreme Court was more lenient in other cases involving similar contracts. In *In Re: Santiago*, Santiago advised the preparation of and actually drafted and notarized a document allowing a man to formally separate from his wife and to remarry. He was only suspended for one year, because he tried to correct his acts.[136] In *Miranda v. Fuentes*, Fuentes was sued for drafting and notarizing a document

[132] *de la Cruz v. Capinpin*, 38 Phil 492, 498 (1918).

[133] *Velasco v. Paulino*, 141 SCRA 1, 4 (1986).

[134] EXECUTIVE ORDER NO. 209, THE FAMILY CODE OF THE PHILIPPINES, ART. 1 (7 August 1988). An exception is made for marriage settlements.

[135] *In Re: de Lara*, 27 Phil 176 (1914).

[136] *In Re: Santiago*, 70 Phil 66 (1940).

in which a couple agreed to separate and allowed each other "to live his own life" without being answerable to each other. Fuentes was reprimanded and admonished, because "the language used does not necessarily mean that the contracting parties had authorized each other to do immoral acts or to live maritally with some other man or woman, without the other having any right to complain."[137] The doubt was resolved in favor of the notary public. Besides, it seemed to the Court that Fuentes was being harassed by the complainant. However, Judge Mendoza was severely censured for preparing and notarizing a contract which extra-judicially dissolved a conjugal partnership and through which the spouses agreed to waive their right to prosecute one another for infidelity. The Court was rather lenient, because the judge was unaware that the law he studied for his bar examinations in 1948 had been changed and that it was now prohibited for spouses to agree to their separation and to the extra-judicial dissolution of their conjugal properties. This circumstance, together with his apparent good faith and honest desire to terminate the marital conflict, worked to reduce the penalty imposed on him. Nonetheless, the Supreme Court stated that "he deserves severe censure for his mistake in preparing and notarizing the aforementioned immoral and illegal agreement."[138]

There are also many cases in which notaries merely notarize, but do not actually draft, the illegal documents. Normally, the penalty imposed is severe censure. In *Panganiban v. Borromeo*,[139] a landmark case on the discipline of notaries as members of the bar, Elias Borromeo was severely censured for notarizing a contract by which spouses allowed each other to take on lovers. Notary Public Momongan was similarly censured for ratifying a document of "legal separation" in which the Biton spouses agreed to separate, renounced their rights and obligations, and authorized each other to remarry without fear of legal action from each other.[140] Notary Public Isidro Dunca was severly censured and admonished for notarizing an affidavit in which Adoracion Acuña stated that she was determined to marry a man who was already married. His penalty was light, because the Supreme Court learned that Dunca and Teodoro David, the lawyer who prepared the affidavit, commited the "immoral acts charged not for monetary

[137] *Miranda v. Fuentes*, 16 SCRA 802, 806 (1966).

[138] *Salnova v. Mendoza*, 64 SCRA 69, 73 (1976).

[139] *Supra.*

[140] *Biton v. Momongan*, 62 Phil 7 (1935).

considerations, but only out of pure generosity."[141] Judge Gapusan was likewise severely censured for notarizing a contract between spouses extra-judicially liquidating their conjugal properties and allowing each other to marry without fear of prosecution for adultery or concubinage.[142]

Notary Public Velayo, however, was merely reprimanded for notarizing a "contract of separation" by which spouses de Leon settled the issue of child custody and their property relations and allowed each other to remarry. He merited a penalty lighter than severe censure. Although he was negligent in affixing his signature to the affidavit, he relied in good faith on the lawyer who drafted the document.[143] Special note must, however, be taken of *In Re: Bucana* where the Supreme Court suspended a notary for six months. Although Rufilo D. Bucana initially refused to notarize an agreement between a couple allowing each other to remarry, he inadvertently notarized it anyway, because his secretary left the agreement on his desk. His negligence justified the imposition of a more severe penalty.[144] That the notary did not draft an illegal contract is no excuse. As shown above, the Supreme Court has consistently punished notaries who notarized documents which encourage separation of spouses or extra-judicial partition of the conjugal properties, because such documents subvert the institutions of marriage and the family.[145] Although the task of the notary is principally to ascertain the identity and the voluntariness of the parties, "it is nevertheless incumbent upon him at least to guard against having anything to do with an illegal or immoral arrangement."[146]

3. OTHER OFFENSES

a. Expired Commission

Notaries have been either disbarred or suspended for performing notarial acts despite the expiration of their notarial commissions.

Notary Public Flores was disbarred, because, in addition to notarizing with an expired commission, he also failed to turn over his notarial register after his term. Worse, he lied to the Supreme Court:

[141] *Acuña v. Dunca*, 2 SCRA 289, 292 (1961).

[142] *Albano v. Gapusan*, 71 SCRA 26 (1976)

[143] *Balimon v. de Leon*, 94 Phil 277, 281 (1954).

[144] *In Re: Bucana*, 72 SCRA 14 (1976).

[145] *Albano v. Gapusan, supra.*

[146] *Balimon v. de Leon, supra.* at 281.

> The respondent's reprehensible conduct, constituting as it does not only malpractice but also the commission, in six separate and distinct occasions, of the crime of falsification of public document, justifies his disbarment. His excuse, contained in his answer to the complaint of the Solicitor General, can hardly be reconciled with his first answer in which he stoutly denied having no commission to act as a notary public...and even expressed mock surprise "why it had been reported that he had none." This facile resort to contradictory denials cannot be regarded as anything better than trifling with the Court, and makes the respondent undeserving of the mercy which, he so fervently prays, justice should be tempered with.[147]

Notary Public Brillantes was disbarred. Apart from notarizing with an expired commission, he also presented to the Court "spurious and falsified evidence of his alleged commission. Instead of admitting his misdeeds and asking for leniency, the respondent chose to sow even more falsehood."[148] This was considered a violation of the attorney's oath to do no falsehood.

In two later cases, the Supreme Court imposed the penalty of suspension. Gloria Baltazar was suspended for three months, because she was negligent in following up her application for renewal. As a result, her commission was never renewed: "(t)he Court is, therefore, unable to accept her plea of good faith on the basis of her claimed belief that her commission would, as a matter of course, be approved upon the filing of her petition for renewal of her commission."[149] Also, Joselito Barrera was suspended for one year, because it took him twelve years to realize that his commission had expired. He negligently relied on his secretary to have his commission renewed:

> His effort to shift responsibility from his shoulders to those of his hapless secretary do [sic] not strike the Court as the kind of diligence properly required of a member of the Bar in performing his duties as notary public. We consider that respondent Atty. Barrera's behavior constituted a violation of law and gross misconduct on his part.[150]

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[147] *Flores v. Lozada*, 21 SCRA 1267, 1270 (1967).

[148] *In Re: Brillantes*, 76 SCRA 1 (1977).

[149] *Joson v. Baltazar*, *supra*. at 118.

[150] *Buensuseso v. Barrera*, 216 SCRA 309, 311 (1992).

b. Disqualifications

If a notary is related to one of the parties to a notarized document, his notarial acts will not automatically be nullified. In *Racca v. Viloria*, the Supreme Court ruled: "(t)he mere fact that a notary public, before whom an ordinary contract is executed and delivered, is a relative of some of the parties is not sufficient."[151] Indeed, the Court required that fraud and collusion first be proved to justify declaring the contract as void.

May a notary public sign as witness to the deed which he is notarizing? In *Mahilum v. Court of Appeals*, the Supreme Court allowed a notary before whom a deed of sale was acknowledged to sign as a witness to the deed and to take the witness stand.[152] But in a later case, *Cruz v. Villasor*, a notary was prohibited from signing as an acknowledging witness to a will. The Court explained thus:

> The notary public before whom the will was acknowledged cannot be considered a third witness since he cannot acknowledge before himself his having signed the will...This cannot be done because he cannot split his personality into two so that one will appear before the other to acknowledge his participation in the making of the will. To permit such a situation to obtain would be sanctioning sheer absurdity.[153]

The Court, while acknowledging the ruling in the *Mahilum* case, nonetheless distinguished it from the facts in *Cruz*, for the notaries in the former case "merely acted as instrumental, subscribing, and attesting witnesses, and not as *acknowledging* witnesses."[154]

The rationale behind prohibiting notaries from acting as acknowledging witnesses is that such a practice will defeat the function of notaries of guarding against illegal or immoral arrangements:

> For then, he would be interested in sustaining the validity of the will as it directly involves himself and the validity of his own act. It would place him in an inconsistent position and the very purpose of the acknowledgement, which is to minimize fraud, would be thwarted.[155]

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[151] *Racca v. Viloria*, 26 Phil 120 (1913).

[152] *Mahilum v. Court of Appeals*, 17 SCRA 482 (1966).

[153] *Cruz v. Villasor*, 54 SCRA 32, 33-34 (1973).

[154] *Id.* at 34.

[155] *Id.*

CONCLUSION

The notarial act is a solemn one fraught with serious consequences. As a natural and logical effect, the commission of acts which flout the safeguards imposed by the law on the notarial act is met with severe penalties for the notary. The safeguards are not empty ceremonies, for they are meant to guard against fraud and guarantee to the courts, to administrative agencies, and to the public at large that documents upon which the signature and seal of the notary appear may be relied upon.

People are prone to take notarial formalities for granted. This note has attempted to show that the commission of irregularities has resulted in the imposition upon the notary public of penalties like imprisonment, fines, removal from notarial office, admonition, reprimand, severe censure, suspension, and even disbarment. The notary public is subject to criminal and administrative liability. It seems the Supreme Court relies heavily on its power of supervision over notaries as lawyers to discipline them for acts they commit as notaries. As administrative proceedings, cases for disbarment or malpractice are easier to establish and more quickly decided than criminal cases. The cases show that even if the criminal case against the notary for the same acts has not yet been filed or decided, the Supreme Court may punish and has punished the lawyer-notary administratively.

If a notary public is sued in an ordinary criminal case, he may, of course, avail of the usual defenses in criminal cases. The writer has given greater emphasis, however, to administrative cases against notaries as members of the bar. These cases seem to be more common than the criminal cases; they will also hurt the laywer-notary much more than the mere revocation of his commission. Consequently, this writer has examined the possible defenses which a lawyer-notary may avail of should he find himself in this predicament.

A lawyer-notary has in his favor two lines of defenses: first, the presumption of regularity in the performance of his notarial duties; and second, good faith and diligence. If the presumption is overturned and the commission of irregularites is proven, the notary may still prove that he acted in good faith and with due diligence in the performance of his notarial duties. Good faith may be exempting or mitigating, but its converse, bad faith, is very definitely aggravating. Good faith, on the one hand, has been shown in the following instances: that the notary readily admitted his fault or was candid with the Court; that

he did the acts because he was prevailed upon by the parties; that he committed a wrongdoing out of generosity or a sincere desire to help; that he did not fully realize the implications of the agreement; that he relied on the assurances of a party or a fellow lawyer; that the injured party filed the case merely to harass the notary or that the notary was merely caught in the cross-fire of a fight between the parties. Bad faith, on the other hand, was demonstrated especially in cases where the notary either lied to the Court, presented false evidence in his defense, or took advantage of his position to defraud a party.

Diligence has been mitigating, but negligence is never exempting. Negligence, however, is a lesser evil compared to bad faith. Negligence, on the one hand, has been punished by penalties ranging from admonition, at best, to six month's suspension, at worst. Bad faith, on the other hand, has consistently resulted in disbarment.

Perhaps the office of the notary public is a victim of its own success. Notarized documents have become so much a part of business and legal transactions that the formalities attendant to them have become additional words to type, or some other thing to be done to a document after drafting. By studying the Philippine Notarial Law and paying particular attention to the liabilities to which a Filipino notary public is subject under Philippine law, this writer has attempted to reemphasize the importance of an office too often disparaged.