Republic of the Philippines
Supreme Court
Manila

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MERCEDITA DE JESUS, Complainant,	**A.C. No. 6470**
	Present:
- versus -	SERENO, *CJ*, CARPIO, VELASCO, JR., LEONARDO-DE CASTRO, BRION, PERALTA, BERSAMIN, DEL CASTILLO, VILLARAMA, JR., PEREZ, MENDOZA, REYES, PERLAS-BERNABE, and LEONEN, *JJ.*
ATTY. JUVY MELL SANCHEZ-MALIT, Respondent.	Promulgated:
	JULY 08, 2014

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RESOLUTION

SERENO, *CJ:*

Before the Court is a disbarment complaint filed by Mercedita De Jesus (De Jesus) against respondent Atty. Juvy Mell Sanchez-Malit (Sanchez-Malit) on the following grounds: grave misconduct, dishonesty, malpractices, and unworthiness to become an officer of the Court.

THE FACTS OF THE CASE

In the Affidavit-Complaint[1] filed by complainant before the Office of the Bar Confidant on 23 June 2004, she alleged that on 1 March 2002, respondent had drafted and notarized a Real Estate Mortgage of a public market stall that falsely named the former as its absolute and registered

[1]*Rollo*, pp. 1-15.

owner. As a result, the mortgagee sued complainant for perjury and for collection of sum of money. She claimed that respondent was a consultant of the local government unit of Dinalupihan, Bataan, and was therefore aware that the market stall was government-owned.

Prior thereto, respondent had also notarized two contracts that caused complainant legal and financial problems. One contract was a lease agreement notarized by respondent sometime in September 1999 without the signature of the lessees. However, complainant only found out that the agreement had not been signed by the lessees when she lost her copy and she asked for another copy from respondent. The other contract was a sale agreement over a property covered by a Certificate of Land Ownership Award (CLOA) which complainant entered into with a certain Nicomedes Tala (Tala) on 17 February 1998. Respondent drafted and notarized said agreement, but did not advise complainant that the property was still covered by the period within which it could not be alienated.

In addition to the documents attached to her complaint, complainant subsequently submitted three Special Powers of Attorney (SPAs) notarized by respondent and an Affidavit of Irene Tolentino (Tolentino), complainant's secretary/treasurer. The SPAs were not signed by the principals named therein and bore only the signature of the named attorney-in-fact, Florina B. Limpioso (Limpioso). Tolentino's Affidavit corroborated complainant's allegations against respondent.[2]

On 4 August 2004, the Second Division of the Supreme Court issued a Resolution requiring respondent to submit her comment on the Complaint within ten (10) days from receipt of notice.[3]

In her Comment,[4] respondent explained that the mortgage contract was prepared in the presence of complainant and that the latter had read it before affixing her signature. However, complainant urgently needed the loan proceeds so the contract was hastily done. It was only copied from a similar file in respondent's computer, and the phrase "absolute and registered owner" was inadvertently left unedited. Still, it should not be a cause for disciplinary action, because complainant constructed the subject public market stall under a "Build Operate and Transfer" contract with the local government unit and, technically, she could be considered its owner. Besides, there had been a prior mortgage contract over the same property in which complainant was represented as the property's absolute owner, but she did not complain. Moreover, the cause of the perjury charge against complainant was not the representation of herself as owner of the mortgaged property, but her guarantee that it was free from all liens and encumbrances. The perjury charge was even dismissed, because the prosecutor found that complainant and her spouse had, indeed, paid the debt secured with the previous mortgage contract over the same market stall.

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[2]Id. at 14-29.
[3]Id. at 30.
[4]Id. at 33-69.

With respect to the lease agreement, respondent countered that the document attached to the Affidavit-Complaint was actually new. She gave the court's copy of the agreement to complainant to accommodate the latter's request for an extra copy. Thus, respondent prepared and notarized a new one, relying on complainant's assurance that the lessees would sign it and that it would be returned in lieu of the original copy for the court. Complainant, however, reneged on her promise.

As regards the purchase agreement of a property covered by a CLOA, respondent claimed that complainant was an experienced realty broker and, therefore, needed no advice on the repercussions of that transaction. Actually, when the purchase agreement was notarized, complainant did not present the CLOA, and so the agreement mentioned nothing about it. Rather, the agreement expressly stated that the property was the subject of a case pending before the Department of Agrarian Reform Adjudication Board (DARAB); complainant was thus notified of the status of the subject property. Finally, respondent maintained that the SPAs submitted by complainant as additional evidence were properly notarized. It can be easily gleaned from the documents that the attorney-in-fact personally appeared before respondent; hence, the notarization was limited to the former's participation in the execution of the document. Moreover, the acknowledgment clearly stated that the document must be notarized in the principal's place of residence.

An exchange of pleadings ensued after respondent submitted her Comment. After her rejoinder, complainant filed an Urgent *Ex-Parte* Motion for Submission of Additional Evidence.[5] Attached thereto were copies of documents notarized by respondent, including the following: (1) an Extra Judicial Deed of Partition which referred to the SPAs naming Limpioso as attorney-in-fact; (2) five SPAs that lacked the signatures of either the principal or the attorney-in-fact; (3) two deeds of sale with incomplete signatures of the parties thereto; (4) an unsigned Sworn Statement; (5) a lease contract that lacked the signature of the lessor; (6) five unsigned Affidavits; (7) an unsigned insurance claim form (Annual Declaration by the Heirs); (8) an unsigned Invitation Letter to a potential investor in Japan; (9) an unsigned Bank Certification; and (10) an unsigned Consent to Adoption.

After the mandatory conference and hearing, the parties submitted their respective Position Papers.[6] Notably, respondent's Position Paper did not tackle the additional documents attached to complainant's Urgent *Ex Parte* Motion.

THE FINDINGS OF THE IBP

In his 15 February 2008 Report, IBP Investigating Commissioner Leland R. Villadolid, Jr. recommended the immediate revocation of the Notarial Commission of respondent and her disqualification as notary public

[5]Id. at 142-196.
[6]Id. at 256-285; 286-356.

for two years for her violation of her oath as such by notarizing documents without the signatures of the parties who had purportedly appeared before her. He accepted respondent's explanations with respect to the lease agreement, sale contract, and the three SPAs pertaining to Limpioso. However, he found that the inaccurate crafting of the real estate mortgage contract was a sufficient basis to hold respondent liable for violation of Canon 18[7] and Rule 18.03[8] of the **Code of Professional Responsibility**. Thus, he also recommended that she be suspended from the practice of law for six months.[9]

The IBP Board of Governors, in its Resolution No. XVIII-2008-245 dated 22 May 2008, unanimously adopted and approved the Report and Recommendation of the Investigating Commissioner, with the modification that respondent be suspended from the practice of law for one year.[10]

Respondent filed her first Motion for Reconsideration[11] and Second Motion for Reconsideration.[12] She maintained that the additional documents submitted by complainant were inadmissible, as they were obtained without observing the procedural requisites under Section 4, Rule VI of Adm. No. 02-08-13 SC (2004 Rules on Notarial Practice).[13] Moreover, the Urgent *Ex Parte* Motion of complainant was actually a supplemental pleading, which was prohibited under the rules of procedure of the Committee on Bar Discipline; besides, she was not the proper party to question those documents. Hence, the investigating commissioner should have expunged the documents from the records, instead of giving them due course. Respondent also prayed that mitigating circumstances be considered, specifically the following: absence of prior disciplinary record; absence of dishonest or selfish motive; personal and emotional problems; timely good-faith effort to make restitution or to rectify the consequences of her misconduct; full and free disclosure to the disciplinary board or cooperative attitude toward the proceedings; character or reputation; remorse; and remoteness of prior offenses.

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[7] Canon 18 — A lawyer shall serve his client with competence and diligence.

[8] Rule 18.03. — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

[9] Id. at 381.

[10] Id. at 365.

[11] Id. at 382-413.

[12] Id. at 495-572.

[13] SECTION 4. *Inspection, Copying and Disposal.* — (a) In the notary's presence, any person may inspect an entry in the notarial register, during regular business hours, provided:

(1) the person's identity is personally known to the notary public or proven through competent evidence of identity as defined in these Rules;

(2) the person affixes a signature and thumb or other mark or other recognized identifier, in the notarial register in a separate, dated entry;

(3) the person specifies the month, year, type of instrument or document, and name of the principal in the notarial act or acts sought; and

(4) the person is shown only the entry or entries specified by him.

(b) The notarial register may be examined by a law enforcement officer in the course of an official investigation or by virtue of a court order.

(c) If the notary public has a reasonable ground to believe that a person has a criminal intent or wrongful motive in requesting information from the notarial register, the notary shall deny access to any entry or entries therein.

The IBP Board of Governors, in its Resolution No. XX-2012-119 dated 10 March 2012, denied respondent's motion for reconsideration for lack of substantial reason to justify a reversal of the IBP's findings.[14]

Pursuant to Rule 139-B of the Rules of Court, Director for Bar Discipline Pura Angelica Y. Santiago – through a letter addressed to then acting Chief Justice Antonio T. Carpio – transmitted the documents pertaining to the disbarment Complaint against respondent.[15]

THE COURT'S RULING

After carefully reviewing the merits of the complaint against respondent and the parties' submissions in this case, the Court hereby modifies the findings of the IBP.

Before going into the substance of the charges against respondent, the Court shall first dispose of some procedural matters raised by respondent.

Respondent argues that the additional documents submitted in evidence by complainant are inadmissible for having been obtained in violation of Section 4, Rule VI of the 2004 Rules on Notarial Practice. A comparable argument was raised in *Tolentino v. Mendoza*,[16] in which the respondent therein opposed the admission of the birth certificates of his illegitimate children as evidence of his grossly immoral conduct, because those documents were obtained in violation Rule 24, Administrative Order No. 1, Series of 1993.[17] Rejecting his argument, the Court reasoned as follows:

> Section 3, Rule 128 of the Revised Rules on Evidence provides that "evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules." There could be no dispute that the subject birth certificates are relevant to the issue. The only question, therefore, is whether the law or the rules provide for the inadmissibility of said birth certificates allegedly for having been obtained in violation of Rule 24, Administrative Order No. 1, series of 1993.
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> Note that Rule 24, Administrative Order No. 1, series of 1993 only provides for sanctions against persons violating the rule on confidentiality of birth records, but nowhere does it state that procurement of birth records in violation of said rule would render said records inadmissible in

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[14] *Rollo*, p. 575.

[15] Id. at 573-592.

[16] 483 Phil. 546 (2004).

[17] Rule 24.*Non-Disclosure of Birth Records*. —
(1) The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:
a. the concerned person himself, or any person authorized by him;
b. the court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and
c. in case of the person's death, the nearest of kin.
(2)Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding five hundred pesos, or both in the discretion of the court. (Article 7, P.D. 603)

> evidence. On the other hand, the Revised Rules of Evidence only provides for the exclusion of evidence if it is obtained as a result of illegal searches and seizures. It should be emphasized, however, that said rule against unreasonable searches and seizures is meant only to protect a person from interference by the government or the state. In *People vs. Hipol*, we explained that:
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> > The Constitutional proscription enshrined in the Bill of Rights does not concern itself with the relation between a private individual and another individual. It governs the relationship between the individual and the State and its agents. The Bill of Rights only tempers governmental power and protects the individual against any aggression and unwarranted interference by any department of government and its agencies. Accordingly, it cannot be extended to the acts complained of in this case. The alleged "warrantless search" made by Roque, a co-employee of appellant at the treasurer's office, can hardly fall within the ambit of the constitutional proscription on unwarranted searches and seizures.
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> > Consequently, in this case where complainants, as private individuals, obtained the subject birth records as evidence against respondent, the protection against unreasonable searches and seizures does not apply.
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> Since both Rule 24, Administrative Order No. 1, series of 1993 and the Revised Rules on Evidence do not provide for the exclusion from evidence of the birth certificates in question, said public documents are, therefore, admissible and should be properly taken into consideration in the resolution of this administrative case against respondent.[18]

Similarly, the 2004 Rules on Notarial Law contain no provision declaring the inadmissibility of documents obtained in violation thereof. Thus, the IBP correctly considered in evidence the other notarized documents submitted by complainant as additional evidence.

Respondent's argument that the Urgent *Ex-Parte* Motion of complainant constitutes a supplemental pleading must fail as well. As its very name denotes, a supplemental pleading only serves to bolster or adds something to the primary pleading. Its usual office is to set up new facts which justify, enlarge or change the kind of relief with respect to the same subject matter as the controversy referred to in the original complaint.[19] Accordingly, it cannot be said that the Urgent *Ex-Parte* Motion filed by complainant was a supplemental pleading. One of her charges against respondent is that the latter notarized incomplete documents, as shown by the SPAs and lease agreement attached to the Affidavit-Complaint. Complainant is not legally barred from submitting additional evidence to strengthen the basis of her complaint.

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[18] *Tolentino v. Mendoza*, supra note 16, at 557-558.

[19] *Planters Development Bank v. LZK Holdings and Development Corp.*, 496 Phil. 263 (2005).

Going now into the substance of the charges against respondent, the Court finds that she committed misconduct and grievously violated her oath as a notary public.

The important role a notary public performs cannot be overemphasized. The Court has repeatedly stressed that notarization is not an empty, meaningless routinary act, but one invested with substantive public interest. Notarization converts a private document into a public document, making it admissible in evidence without further proof of its authenticity. Thus, a notarized document is, by law, entitled to full faith and credit upon its face. It is for this reason that a notary public must observe with utmost care the basic requirements in the performance of his notarial duties; otherwise, the public's confidence in the integrity of a notarized document would be undermined.[20]

Where the notary public admittedly has personal knowledge of a false statement or information contained in the instrument to be notarized, yet proceeds to affix the notarial seal on it, the Court must not hesitate to discipline the notary public accordingly as the circumstances of the case may dictate. Otherwise, the integrity and sanctity of the notarization process may be undermined, and public confidence in notarial documents diminished. [21] In this case, respondent fully knew that complainant was not the owner of the mortgaged market stall. That complainant comprehended the provisions of the real estate mortgage contract does not make respondent any less guilty. If at all, it only heightens the latter's liability for tolerating a wrongful act. Clearly, respondent's conduct amounted to a breach of Canon 1[22] and Rules 1.01[23] and 1.02[24] of the Code of Professional Responsibility.

Respondent's explanation about the unsigned lease agreement executed by complainant sometime in September 1999[25] is incredulous. If, indeed, her file copy of the agreement bore the lessees' signatures, she could have given complainant a certified photocopy thereof. It even appears that said lease agreement is not a rarity in respondent's practice as a notary public. Records show that on various occasions from 2002 to 2004, respondent has notarized 22 documents that were either unsigned or lacking signatures of the parties. Technically, each document maybe a ground for disciplinary action, for it is the duty of a notarial officer to demand that a document be signed in his or her presence.[26]

A notary public should not notarize a document unless the persons who signed it are the very same ones who executed it and who personally

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[20]*Lustestica v. Bernabe*, A.C. No. 6258 24 August 2010, 628 SCRA 613.
[21]*Heirs of the Late Spouses Lucas and Francisca Villanueva v. Atty. Salud P. Beradio*, 541 Phil. 17 (2007).
[22]CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.
[23]Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
[24]Rule 1.02 — A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.
[25]*Rollo*, p. 8; Annex "C" of the Affidavit-Complaint.
[26] *Realino v. Villamor*, 176 Phil. 632 (1978).

appeared before the said notary public to attest to the contents and truth of what are stated therein.[27] Thus, in acknowledging that the parties personally came and appeared before her, respondent also violated Rule 10.01[28] of the Code of Professional Responsibility and her oath as a lawyer that she shall do no falsehood.[29]

Certainly, respondent is unfit to continue enjoying the solemn office of a notary public. In several instances, the Court did not hesitate to disbar lawyers who were found to be utterly oblivious to the solemnity of their oath as notaries public.[30] Even so, the rule is that disbarment is meted out only in clear cases of misconduct that seriously affect the standing and character of the lawyer as an officer of the court and the Court will not disbar a lawyer where a lesser penalty will suffice to accomplish the desired end.[31] The blatant disregard by respondent of her basic duties as a notary public warrants the less severe punishment of suspension from the practice of law and perpetual disqualification to be commissioned as a notary public.

WHEREFORE, respondent Atty. Juvy Mell Sanchez-Malit is found guilty of violating Canon 1 and Rules 1.01, 1.02, and 10.01 of the Code of Professional Responsibility as well as her oath as notary public. Hence, she is **SUSPENDED** from the practice of law for **ONE YEAR** effective immediately. Her notarial commission, if still existing, is **IMMEDIATELY REVOKED** and she is hereby **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public.

Let copies of this Resolution be entered into the personal records of respondent as a member of the bar and furnished to the Bar Confidant, the Integrated Bar of the Philippines, and the Court Administrator for circulation to all courts of the country for their information and guidance.

No costs.

SO ORDERED.

MARIA LOURDES P. A. SERENO
Chief Justice, Chairperson

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[27] *Cabanilla v. Cristal-Tenorio*, 461 Phil. 1 (2003).
[28] Rule 10.01 – A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead or allow the Court to be misled by any artifice.
[29] *Fulgencio v. Atty. Martin*, 451 Phil. 275 (2003).
[30] See *Lustestica v. Bernabe,* supra note 19; *Peña v. Paterno*, A.C. No. 4191, 10 June 2013, 698 SCRA 1.
[31] *Bantolo v. Castillon,Jr.*, 514 Phil. 628 (2005).

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice

PRESBITERO J. VELASCO, JR.
Associate Justice

TERESITA J. LEONARDO-DE CASTRO
Associate Justice

ARTURO D. BRION
Associate Justice

DIOSDADO M. PERALTA
Associate Justice

LUCAS P. BERSAMIN
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

MARTIN S. VILLARAMA, JR.
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

BIENVENIDO L. REYES
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

MARVIC MARIO VICTOR F. LEONEN
Associate Justice