

EN BANC

[A.C. No. 6470, July 08, 2014]

**MERCEDITA DE JESUS, COMPLAINANT, VS. ATTY. JUVY MELL
SANCHEZ-MALIT, RESPONDENT.**

R E S O L U T I O N

SERENO, C.J.:

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 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.

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 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.

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.

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 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:

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.

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.