Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

FLORDELINA ASCAÑO,
Complainant,

- *versus* -

ATTY. MARIO V. PANEM,
Respondent.

A.C. No. 13287 [Formerly CBD No. 18-5753]

Present:

CAGUIOA, ***Acting C.J.,**** *Chairperson*
INTING,
GAERLAN,
DIMAAMPAO,** and
SINGH,** *JJ.*

Promulgated:

June 21, 2023

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DECISION

INTING, *J.*:

The Court resolves the administrative complaint[1] that Flordelina Ascaño (Ascaño) filed against respondent Atty. Mario V. Panem[2] (Atty. Panem) before the Integrated Bar of the Philippines (IBP) for alleged violations of Administrative Matter No. 02-8-13-SC, or the 2004 Rules on Notarial Practice (Notarial Rules), and the Code of Professional Responsibility (CPR).

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* Designated Acting Chief Justice per Special Order No. 2980 dated June 15, 2023.
** On official business.
** On official business.
1 *Rollo*, pp. 1-11.
2 Referred to as Atty. Roman Mario V. Panem in some parts of the *rollo*.

The Antecedents

In the complaint, Ascaño alleged that Atty. Panem notarized a Deed of Absolute Sale (Deed) in favor of Spouses Severino and Matilde Guillermo (Spouses Guillermo) involving a property she owned in Sto. Domingo, Ilocos Sur, without her presence as the supposed seller thereof. Ascaño recounted that when she confronted Atty. Panem about it, he volunteered to handle the case in order to get the property back from Spouses Guillermo. Initially, Ascaño accepted Atty. Panem's offer, but she later learned that the latter did not adhere to her narration of facts when he filed the action in court on her behalf.[3]

As a result, Ascaño filed the present administrative case against Atty. Panem for violation of the Notarial Rules when he: (1) notarized the Deed without the presence of one of the parties; (2) failed to ask for a competent evidence of identity before notarizing the document; and (3) failed to submit his notarial register for the period 2006-2007. She also charged Atty. Panem with representing conflicting interests in breach of the CPR.[4]

In his defense, Atty. Panem countered that Ascaño, who presented her community tax certificate as evidence of her identity, actually signed the Deed in his presence. He explained that his notarial register and all notarial documents were destroyed because his law office was flooded in July 2006. Finally, he argued that he was not guilty of representing conflicting interests considering that he only represented Ascaño in the civil action concerning the property in question.[5]

Report and Recommendation of the IBP

In the Report and Recommendation[6] dated June 28, 2019, the Investigating Commissioner found Atty. Panem guilty of violating the Notarial Rules and the CPR and recommended that he be disbarred from the practice of law.[7]

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3 *Rollo*, pp. 152-153.
4 Id. at 153-154.
5 Id. at 153-154.
6 Id. at 152-157. Penned by IBP Commissioner Jhimmy P. Santiago.
7 Id. at 157.

Then, in the Resolution No. CBD-2021-05-11[8] dated May 8, 2021, the IBP Board of Governors adopted the findings of the Investigating Commissioner, but it recommended the following penalties instead of disbarment: (a) suspension from the practice of law for two (2) years; (b) immediate revocation of notarial commission, if still subsisting; and (c) disqualification from reappointment as a notary public for two (2) years.

The Issue

The issue for the Court's resolution is whether Atty. Panem should be held administratively liable for his actions.

The Court's Ruling

After a careful review, the Court adopts and approves the findings and recommendations of the IBP with *modifications* as to the designation of the offenses committed by Atty. Panem and the penalty to be imposed upon him, in view of A.M. No. 22-09-01-SC, or the Code of Professional Responsibility and Accountability (CPRA), which *repealed* the CPR and took effect on May 29, 2023.[9]

To note, Section 1 of the General Provisions of the CPRA provides for the Code's applicability to *all* pending and future cases, except in instances where "in the opinion of the Supreme Court, its retroactive application would not be feasible or would work injustice, in which case, the procedure under which the cases were filed shall govern." Here, the Court deems the application of the CPRA, in conjunction with the Notarial Rules, to be proper in determining the administrative liabilities of Atty. Panem.

Section 1, Rule II of the Notarial Rules requires the affiant's personal appearance and the notary public's examination of his or her competent evidence of identity in relation to the notarization of a document, *viz.*:

> SEC. 1. *Acknowledgment.* – "Acknowledgment" refers to an act in which an individual on a single occasion:

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8 Id. at 150-151.

9 Sections 2 and 3, General Provisions, Code of Professional Responsibility and Accountability (CPRA).

(a) *appears in person before the notary public and presents an integrally complete instrument or document*;

(b) is attested to be personally known to the notary public or identified by the notary public through competent evidence of identity as defined by these Rules; and

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

Moreover, Section 12, Rule II of the Notarial Rules[10] defines a "competent evidence of identity" as follows:

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

(a) *at least one current identification document issued by an official agency bearing the photograph and signature of the individual,* such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disabled Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification; *or*

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

Thus, a notary public is *prohibited* from notarizing a document *if* the person involved as a signatory thereto is: (i) not present at the time of

[10] As amended by A.M. No. 02-8-13-SC, February 19, 2008.

notarization; and/or (ii) not personally known to or otherwise identified by the notary public through a competent evidence of identity as defined above.[11]

In the case, Ascaño vehemently denied ever appearing before Atty. Panem during the questioned notarial act in Ilocos Sur, asserting that she was staying with her daughter in Bulacan at the time.[12] On this point, the Investigating Commissioner noted that Atty. Panem did not submit his notarial register in order to prove his defense that Ascaño actually appeared before him to have the Deed notarized. While Atty. Panem tried to explain that his notarial register was lost because of flooding in his law office in July 2006,[13] the Court simply cannot give any credence to this excuse because of the lack of sufficient evidence to support it.

Indeed, "[i]f the document or instrument does not appear in the notarial records and there is no copy of it therein, doubt is engendered that the document or instrument was not really notarized, so that it is not a public document and cannot bolster any claim made based on this document."[14]

Even assuming *arguendo* that Ascaño truly appeared before Atty. Panem, the record shows that the latter failed to require her to present a competent evidence of identity for the notarization of the contested Deed. In particular, the document shows that Ascaño supposedly presented her *community tax certificate* to Atty. Panem, which is *not* considered as a valid and competent evidence of identity as it does not bear the photograph and signature of the individual.[15]

It is also undisputed that Atty. Panem did not submit his notarial report and copies of all notarial documents for the period March 17, 2006 to December 31, 2007 per the Certification[16] dated December 5, 2017 from the Office of the Clerk of Court of the Regional Trial Court of Narvacan, Ilocos Sur. This, too, constitutes as a clear violation of Section 2, Rule VI of the Notarial Rules, *viz.*:

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11 See 2004 Rules on Notarial Practice, Rule IV, Section 2(b).
12 *Rollo*, pp. 109-110.
13 Id. at 45.
14 *Malvar v. Baleros*, 807 Phil. 16, 28 (2017), citing *Agagon v. Atty. Bustamante*, 565 Phil. 581, 587 (2007).
15 See *Ong v. Bijis*, A.C. No. 13054, November 23, 2021.
16 *Rollo*, p. 12.

> SEC. 2. *Entries in the Notarial Register.* - x x x x
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> x x x x
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> (h) *A certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court and shall be under the responsibility of such officer.* If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required. (Italics supplied.)

As earlier mentioned, the Court finds no merit in Atty. Panem's assertion that a strong typhoon in July 2006 caused the flooding in his law office, which, in turn, destroyed his notarial register and all notarial documents. Not only is this *unsubstantiated* by evidence, but also, it does not explain Atty. Panem's failure to comply with his duty to submit his notarial report for the months *prior to* and *after* the supposed calamity that hit Narvacan, Ilocus Sur in 2006.

In view of the above-mentioned violations of the Notarial Rules, the Court likewise holds Atty. Panem liable for breach of Section 2, Canon III of the CPRA,[17] *viz.*:

> CANON III
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> Fidelity pertains to a lawyer's duty to uphold the Constitution and the laws of the land, to assist in the administration of justice as an officer of the court, and to advance or defend a client's cause, with full devotion, genuine interest, and zeal in the pursuit of truth and justice.
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> x x x x
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> SECTION 2. *The responsible and accountable lawyer.* – A lawyer shall uphold the Constitution, obey the laws of the land, promote respect for laws and legal processes, safeguard human rights, and at all times advance the honor and integrity of the legal profession.

The Court, however, disagrees with the IBP that Atty. Panem is guilty of representing conflicting interests in violation of Section 13,[18] Canon III of the CPRA. After all, "lawyers are deemed to represent

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17 See *O'Brien v. Villero*, A.C. No. 13599 (Notice), March 6, 2023.

18 Section 13, paragraph 1, Canon III of the CPRA provides that "[a] lawyer shall not represent conflicting interests except by written informed consent of all concerned given after a full disclosure of the facts."

conflicting interests when, in behalf of one client, it is their duty to contend for that which duty to another client requires them to oppose."[19] Essentially, this proscription applies to a situation where opposing parties are the lawyer's present and/or former clients. Here, Atty. Panem is correct that he cannot be held administratively liable for violation of Section 13 because he only represented Ascaño in the civil action and no one else.

This is not to say that Atty. Panem is without any administrative liability in this regard. The records show that in the complaint[20] for reconveyance that he prepared for Ascaño, Atty. Panem made it appear that the latter had signed the Deed in his presence before he notarized the document.[21] Despite Ascaño's demands, Atty. Panem did not amend the complaint in order to adhere to his client's narration of facts. As such, Ascaño was constrained to hire another counsel who, in turn, filed an amended complaint[22] on her behalf.

More than that, Atty. Panem clearly acted for his own selfish interests by stating in the pleading that Ascaño personally appeared before him to have the Deed notarized. As the Investigating Commissioner aptly observed, Atty. Panem only offered to represent Ascaño in the civil action to recover the property because he was aware of the mistake he made when he notarized the document in the absence of the seller. Indeed, Atty. Panem's dishonest conduct is evinced by the fact that he changed the narrative against his client's wishes in an obvious attempt to clear himself of any wrongdoing.

By knowingly making untruthful statements in a pleading filed in court, Atty. Panem clearly violated Section 2, paragraphs 2 and 3 and Section 6, Canon III as well as Section 1, Canon IV of the CPRA, which provide:

CANON III

SECTION 2. *The responsible and accountable lawyer.* – x x x

As an officer of the court, a lawyer shall uphold the rule of law and conscientiously assist in the speedy and efficient administration of justice.

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19 *Parungao v. Lacuanan*, A.C. No. 12071, March 11, 2020. See also CPRA, Canon III, Section 13, paragraph 2.

20 *Rollo*, pp. 71-76.

21 Id. at 73.

22 Id. at 24-30.

> As an advocate, a lawyer shall represent the client with fidelity and zeal within the bounds of law and the CPRA.
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> SECTION 6. *Fiduciary duty of a lawyer.* – A lawyer shall be mindful of the trust and confidence reposed by the client. x x x
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> CANON IV
>
> A lawyer professionally handling a client's cause shall, to the best of his or her ability, observe competence, diligence, commitment, and skill consistent with the fiduciary nature of the lawyer-client relationship, regardless of the nature of the legal matter or issues involved, and whether for a fee or *pro bono*.
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> SECTION 1. *Competent, efficient and conscientious service.* – A lawyer shall provide legal service that is competent, efficient, and conscientious. A lawyer shall be thorough in research, preparation, and application of the legal knowledge and skills necessary for an engagement.

Moreover, Atty. Panem likewise breached his duties under the Revised Lawyer's Oath to promote the rule of law and a regime of truth and justice and to do no falsehood both in and out of court.

The Proper Penalties

It is settled that a notary public who violates the Notarial Rules is meted out with the following penalties: *one*, revocation of notarial commission, if existing; *two*, disqualification from being commissioned as a notary public; and *three*, suspension from the practice of law. Notably, the period of suspension *varies* depending on the circumstances of each case.[23]

Under Section 33(b) and (p), Canon VI of the CPRA, *making untruthful statements* and *violating the Notarial Rules in bad faith*, with the exception of reportorial requirements, are both considered as *serious offenses* and sanctioned under Section 37 (a) of the same Canon as follows:

> SECTION 37. *Sanctions.* –
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> (a) If the respondent is found guilty of a serious offense, any of the following sanctions, or a combination thereof, shall be imposed:

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[23] *Ong v. Bijis*, supra note 15.

(1) Disbarment;

(2) Suspension from the practice of law for a period exceeding six (6) months;

(3) Revocation of notarial commission and disqualification as notary public for not less than two (2) years; or

(4) A fine exceeding Php100,000.00.

In relation thereto, Sections 39 and 40, Canon VI of the CPRA provides:

SECTION 39. *Manner of imposition.* – If one (1) or more aggravating circumstances and no mitigating circumstances are present, *the Supreme Court may impose the penalties of suspension or fine for a period or amount not exceeding double of the maximum prescribed under this Rule.* The Supreme Court may, in its discretion, impose the penalty of disbarment depending on the number and gravity of the aggravating circumstances.

If one (1) or more mitigating circumstances and no aggravating circumstances are present, the Supreme Court may impose the penalties of suspension or fine for a period or amount not less than half of the minimum prescribed under the CPRA.

If there are both aggravating and mitigating circumstances present, the Supreme Court may offset each other. (Italics supplied.)

SECTION 40. *Penalty for multiple offenses.* –

If the respondent is found liable for more than one (1) offense arising from separate acts or omissions in a single administrative proceeding, *the Court shall impose separate penalties for each offense.* Should the aggregate of the imposed penalties exceed five (5) years of suspension from the practice of law or ₱1,000,000.00 in fines, the respondent may, in the discretion of the Supreme Court, be meted with the penalty of disbarment.

If a single act or omission gives rise to more than one (1) offense, the respondent shall still be found liable for all such offenses, but shall, nonetheless, only be meted with the appropriate penalty for the most serious offense. (Italics supplied.)

Notably, in *Ong v. Bijis*,[24] the Court found the respondent lawyer administratively liable for notarizing a document without the presence of

[24] Id.

the affiants and, at the same time, failing to require the parties who actually appeared before him to provide a competent evidence of their identities. Consequently, the Court revoked his notarial commission, disqualified him from being commissioned as a notary public for two (2) years, and suspended him from the practice of law for six (6) months.

Then, in *Lopez v. Mata, et al.*,[25] the Court held that one of the respondent lawyers failed to comply with his duty as a notary public to submit his notarial report as the Notarial Rules mandated for which he was sanctioned with: (a) suspension from the practice of law for (6) six months; (b) revocation of his incumbent notarial commission; and (c) disqualification from being commissioned as a notary public for two (2) years.

Given the factual milieu of the case as well as Atty. Panem's *apparent lack of remorse* for his actions, he is hereby meted out with the following penalties for *each offense* he committed pursuant to the above-mentioned provisions of the CPRA:

(a) For violating the Notarial Rules in bad faith, which is bolstered by his feeble attempts to cover it up after the fact, the Court suspends Atty. Panem from the practice of law for a period of one (1) year, revokes his notarial commission, *if existing*, and disqualifies him from being commissioned as a notary public for two (2) years; and

(b) For making untruthful statements, the Court imposes against Atty. Panem a fine in the amount of ₱100,000.50.

WHEREFORE, the Court finds respondent Atty. Mario V. Panem **GUILTY** of violating A.M. No. 02-8-13-SC, or the 2004 Rules on Notarial Practice, A.M. No. 22-09-01-SC, or the Code of Professional Responsibility and Accountability, and the Revised Lawyer's Oath. Accordingly, the Court imposes the following sanctions against him:

(a) Suspension from the practice of law for a period of one (1) year, revocation of notarial commission, *if existing*, and disqualification from being commissioned as a notary public for

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[25] A.C. No. 9334, July 28, 2020.

a period of two (2) years, effective immediately, for violation of the 2006 Rules on Notarial Practice; and

(b) A fine in the amount of ₱100,000.50 for making untruthful statements in a pleading filed in court.

The Court likewise **STERNLY WARNS** respondent Atty. Mario V. Panem that a repetition of the same or similar offense shall be dealt with more severely.

The suspension from the practice of law shall take effect immediately upon receipt of respondent Atty. Mario V. Panem of this Decision. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Decision be furnished to the Office of the Bar Confidant to be appended to the personal record of respondent Atty. Mario V. Panem as an attorney; the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

HENRI JEAN PAUL B. INTING
Associate Justice

WE CONCUR:

ALFREDO BENJAMIN S. CAGUIOA
Acting Chief Justice
Chairperson

SAMUEL H. GAERLAN
Associate Justice

(On official business)
JAPAR B. DIMAAMPAO
Associate Justice

(On official business)
MARIA FILOMENA D. SINGH
Associate Justice