Republic of the Philippines
Supreme Court
Baguio City

EN BANC

LAZARO G. JAVIER, JR.,
Complainant,

- versus -

ATTY. CARLOS P. RIVERA,
Respondent.

A.C. No. 7526

Present:

GESMUNDO, *C.J.*,
LEONEN,
CAGUIOA,
HERNANDO,*
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
GAERLAN,
ROSARIO,*
LOPEZ, J.,
DIMAAMPAO,
MARQUEZ,
KHO, JR., and
SINGH, *JJ.*

Promulgated:

April 25, 2023

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D E C I S I O N

***PER CURIAM*:**

This involves the Complaint-Affidavit[1] filed by complainant Lazaro G. Javier, Jr. (Javier) against respondent Atty. Carlos P. Rivera (Atty. Rivera) before the Office of the Bar Confidant (OBC) for performing notarial work

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* On Leave.
[1] *Rollo*, pp. 1-2.

without a notarial commission.

The Facts

Javier alleged that from 2005 to 2006, Atty. Rivera notarized eight documents[2] in Tuguegarao City, Cagayan. However, per the Certification,[3] dated February 12, 2007, issued by the Office of the Clerk of Court, Regional Trial Court, Tuguegarao City, Cagayan (OCC-RTC), Atty. Rivera did not have a notarial commission for the years 2005 to 2007. Attached to the Complaint are machine copies of the Certification and the documents[4] notarized by Atty. Rivera.

On June 27, 2007, the Court directed Atty. Rivera to file a Comment on the Complaint, within 10 days from notice.[5] Despite receipt of the Court's Resolution, Atty. Rivera did not file the required Comment. Thus, on January 30, 2008, the Court required him to show cause why he should not be disciplinarily dealt with or held in contempt for failing to comply with the Court's order and to submit the required Comment, both within 10 days from notice.[6]

By reason of Atty. Rivera's continued refusal to file a Comment, the Court imposed on him a fine of ₱1,000.00.[7] Atty. Rivera remained recalcitrant. Accordingly, the Court imposed on him an additional fine of ₱1,000.00. The Court also reiterated its directive for Atty. Rivera to file a Comment on the Complaint, within 10 days from notice, with a warning that non-compliance will result in his arrest and detention by the National Bureau of Investigation.[8]

Finally, on March 11, 2011, Atty. Rivera filed his Comment[9] together with a Compliance,[10] stating that he had paid the ₱2,000.00 fine. On May 30, 2011, the Court directed Javier to file a Reply.[11]

Due to Javier's failure to file his Reply within the prescribed period, the Court resolved to dispense with the same and referred the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and

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2 Id. at 4-29.
3 Id. at 3.
4 Id. at 4-29.
5 Id. at 30.
6 Id. at 31.
7 Id. at 32.
8 Id. at 35.
9 Id. at 38-39.
10 Id. at 36.
11 Id. at 40.

recommendation, within 90 days from notice.[12]

On November 14, 2018, the IBP Commission on Bar Discipline (Commission) issued a Notice of Mandatory Conference/Hearing,[13] setting the case for mandatory conference on January 7, 2019. Due to the parties' failure to appear during the scheduled setting, the mandatory conference was reset to February 27, 2019.[14] Again, none of the parties attended the re-scheduled mandatory conference. Thus, on February 27, 2019, the Commission terminated the mandatory conference and directed the parties to submit their respective verified position papers within 10 days from notice[15] but neither of the parties complied with the Commission's directive.[16]

The Report and Recommendation of the IBP

In his Report and Recommendation,[17] the Investigating Commissioner recommended the dismissal of the case for Javier's failure to prove the allegations in his Complaint. However, he recommended that Atty. Rivera be given a stern warning for non-compliance with the Commission's orders.

According to the Investigating Commissioner, Javier was not able to present sufficient and reliable evidence in support of his accusations. The Investigating Commissioner opined that no probative weight can be given to the machine copies of the Certificate issued by the OCC-RTC and the documents allegedly notarized by Atty. Rivera because they were not properly authenticated.

In its Resolution No. CBD-2021-06-29,[18] the IBP Board of Governors (BOG) resolved to reverse and set aside the Report and Recommendation of the Investigating Commissioner. Instead, it recommended that the notarial commission of Atty. Rivera be revoked, if subsisting, and that he be suspended from the practice of law for a period of one year and be disqualified from reappointment as a notary public for two years. In its Extended Resolution,[19] the BOG explained that the machine copies of the Certificate, proving that Atty. Rivera did not have the requisite notarial commission, and the documents notarized by Atty. Rivera constitute sufficient basis to discipline him considering that Atty. Rivera did not deny the existence and authenticity of the said documents in his Comment. As regards Atty. Rivera's disobedience to the Commission's orders, the BOG posited that a fine of

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12 Id. at 44.
13 Id. at 46.
14 Id. at 47.
15 Id. at 48.
16 Id. at 56.
17 Id. at 55-58.
18 Id. at 53-54.
19 Id. at 59-64.

₱10,000.00 would be proper.

The Issue

Was the evidence on record sufficient to prove the charges against Atty. Rivera?

The Ruling of the Court

The Court agrees with the findings of the IBP-BOG, except as to the recommended penalty.

Prefatorily, the Court has time and again emphasized the importance of notarization. In *Yusay-Cordero v. Amihan, Jr.*,[20] the Court held:

> Notarization ensures the authenticity and reliability of a document. It converts a private document into a public one, and renders the document admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. **Moreover, notarization is not an empty routine. On 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 a notary public. Corollarily, a lawyer who notarized a document without the required commission is guilty of violating the Lawyer's Oath and is deemed to engage in deliberate falsehood.**[21] (Emphasis supplied; citation omitted)

As held by the Court in *Nunga v. Atty. Viray*,[22] notarizing documents without a notarial commission amounts to a violation of the Lawyer's Oath and the Code of Professional Responsibility (CPR), thus:

> Where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, the offender may be subjected to disciplinary action. **For one, performing a notarial without such commission is a violation of the lawyer's oath to obey the laws, more specifically, the Notarial Law. Then, too, by making it appear that he is duly commissioned when he is not, he is, for all legal intents and purposes, indulging in deliberate falsehood, which the lawyer's oath similarly proscribes. These violations fall squarely within the prohibition of Rule 1.01 of Canon 1 of the Code of Professional Responsibility, which provides: "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."**
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> **By such misconduct as a notary public, the lawyer likewise**

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20 A.C. No. 12709, September 8, 2020, 950 SCRA 87.

21 Id. at 92.

22 366 Phil. 155 (1999). See also *Guerrero v. Giron*, A.C. No. 10928, December 9, 2020.

> **violates Canon 7 of the same Code, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.**[23] (Emphasis supplied)

Section 11, Rule III of A.M. No. 02-8-13-SC[24] or the 2004 Rules on Notarial Practice (Notarial Rules) provides that "a person commissioned as a notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years." Commission refers to "the grant of authority to perform notarial acts and to the written evidence of the authority."[25]

In this case, Javier averred that Atty. Rivera notarized eight documents from 2005 to 2006, without the requisite notarial commission. To prove his claim, Javier attached photocopies of the documents notarized by Atty. Rivera and a Certification from OCC-RTC, which stated that no notarial commission was issued to Atty. Rivera for the years 2005 to 2007.

The Court is mindful that in a previous case, it dismissed a disbarment complaint against a lawyer on the basis of the Best Evidence Rule. In *Basagan v. Espina*,[26] the Court absolved the lawyer of the charges of performing notarial acts without a notarial commission because the evidence attached to the complaint were mere photocopies, to wit:

> **Although a disbarment proceeding may not be akin to a criminal prosecution, if the entire body of proof consists mainly of the documentary evidence, and the content of which will prove either the falsity or veracity of the charge for disbarment, then the documents themselves, as submitted into evidence, must comply with the Best Evidence Rule under Rule 130 of the Rules of Court, save for an established ground that would merit exception.** Sections 3 and 4 of Rule 130 specifically provide:
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> > Sec. 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:
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> > (a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;
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> > (b) When the original is in the custody or under the control of the party against whom the evidence is offered, and the latter fails to produce it after reasonable notice;
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> > (c) When the original consists of numerous accounts or

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23 Id. at 161.
24 Promulgated on July 6, 2004.
25 Id., Rule II, Sec. 3.
26 A.C. No. 8395, July 8, 2020, 942 SCRA 32.

other documents which cannot be examined in court without great loss of time and the fact sought to be established from them is only the general result of the whole; and

(d) When the original is a public record in the custody of a public officer or is recorded in a public office.

Sec. 4. *Original of document.* —

(a) The original of a document is one the contents of which are the subject of inquiry.

(b) When a document is in two or more copies executed at or about the same time, with identical contents, all such copies are equally regarded as originals.

(c) When an entry is repeated in the regular course of business, one being copied from another at or near the time of the transaction, all the entries are likewise equally regarded as originals.

In this case, a perusal of the documents on which the complaint is anchored divulges that the photocopies are not at the least certified true copies, neither were they testified on by any witness who is in a position to establish the authenticity of the document. Neither was the source of the document shown for the participation of the complainant in its execution. This fact gives rise to the query, where did these documents come from?

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Here, Basagan clearly failed to adduce substantial and admissible evidence to prove her case. **The original documents should have been presented to comply with the Best Evidence Rule. Basagan likewise failed to show proof as to the reasons for the unavailability of the original copy. She could have proven the contents of the documents following the provisions of Section 5, Rule 130 of the Rules of Court.**[27] (Emphasis supplied; citations omitted)

However, the foregoing finds no application in this case considering that Atty. Rivera, in his Comment, never denied notarizing the documents attached to the Complaint-Affidavit. He also did not deny Javier's allegation that he did not have a notarial commission for the years 2005 to 2006. Neither did he question the authenticity of the documents attached to the Complaint. Instead, he merely stated that Javier's motive in filing the present complaint was to use it as leverage against the administrative cases that Atty. Rivera's client filed against Javier.[28]

Moreover, it is settled that a proper and timely objection is necessary to set the Best Evidence Rule, now more aptly called the Original Document

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27 Id. at 44-46.

28 *Rollo*, pp. 38-38-A.

Rule, in motion. Evidence not objected to is deemed admitted and may be validly considered by the Court in arriving at its judgment.[29] Since Atty. Rivera failed to question the admissibility of the photocopies attached to the Complaint-Affidavit, the Court is not precluded from according probative value to the documents, which sufficiently established that Atty. Rivera performed notarial acts without a notarial commission.

By notarizing documents without a notarial commission, Atty. Rivera violated not only his oath to obey the issuances of the Court, particularly the Notarial Rules, but also Canons 1[30] and 7[31] of the CPR and the Notarial Act, a substantive law.[32] All told, the Court finds no reason to depart from the findings of the IBP-BOG.

The Court now proceeds to discuss the appropriate penalty that should be imposed on Atty. Rivera.

The Court notes that Atty. Rivera has been previously sanctioned by the Court for unprofessional conduct. In *Cruz-Villanueva v. Atty. Rivera*,[33] which was decided in 2006, Atty. Rivera was suspended from the practice of law for a period of one year for a similar offense, *i.e.*, notarizing documents without a notarial commission. He was also barred from being commissioned as a notary public for one year and his present commission, if any, was revoked.

In *Madria v. Atty. Rivera* (*Madria*),[34] which was decided in 2017, Atty. Rivera was disbarred by the Court for simulating court documents. The Court considered the previous disbarment complaint against Atty. Rivera, which showed "his predisposition to beguile other persons into believing in the documents that he had falsified or simulated."[35] The dispositive portion of the Court's Decision in *Madria* reads:

> **WHEREFORE**, the Court **FINDS** and **HOLDS Atty. CARLOS P. RIVERA** guilty of **GRAVE MISCONDUCT** and **VIOLATION OF THE LAWYER'S OATH**; and, **ACCORDINGLY**, **ORDERS** his **DISBARMENT**. Let his name be **STRICKEN** from **the ROLL OF ATTORNEYS.**
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> This decision is **IMMEDIATELY EXECUTORY**.
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> Let copies of this decision be furnished to: (a) the **OFFICE OF**

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29 *Spouses Tapayan v. Martinez*, 804 Phil. 523, 534 (2017).

30 CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law of and legal processes.

31 CANON 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

32 *Guerrero v. Atty. Giron*, A.C. No. 10928, December 9, 2020.

33 537 Phil. 409 (2006).

34 806 Phil. 774 (2017).

35 Id. at 784.

> **THE COURT ADMINISTRATOR** for dissemination to all courts throughout the country for their information and guidance; (b) the **INTEGRATED BAR OF THE PHILIPPINES**; (c) the **OFFICE OF THE BAR CONFIDANT** for appending to the respondent's personal record as a member of the Bar; and (d) the **OFFICE OF THE PROSECUTOR GENERAL, DEPARTMENT OF JUSTICE** for possible criminal prosecution of the respondent.
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> **SO ORDERED**.[36] (Emphasis in the original)

In *Manzano v. Rivera*,[37] which was decided in 2020, the penalty of suspension from the practice of law for three years and perpetual disqualification from being commissioned as a notary public was imposed on Atty. Rivera for falsifying documents and notarizing a document without a notarial commission.[38]

The settled rule, as pronounced in *Judge Dumlao, Jr. v. Atty. Camacho*,[39] is that once a lawyer is disbarred, there is no penalty that could be imposed on him regarding his privilege to practice law, as there is no double or multiple disbarment in this jurisdiction. However, if the infraction committed is different from the previous infraction for which the lawyer has been disbarred, the Court deems it proper to impose the corresponding penalty for purposes of recording it in the respondent's personal file in the OBC:

> Nevertheless, there were instances when the Court gave the corresponding penalty against a lawyer, who was previously disbarred, for the sole purpose of recording it in his or her personal file in the OBC.
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> In *Sanchez v. Atty. Torres*, the lawyer therein was previously disbarred. However, considering that the issues and the infraction committed therein were different from his previous infraction, the Court deemed it proper to give the corresponding penalty of suspension for two (2) years from the practice of law for purposes of recording it in his personal file in the OBC.
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> Likewise, in *Paras v. Paras*, the Court ruled that the penalty of suspension or disbarment can no longer be imposed on a lawyer who had been previously disbarred. Nevertheless, it resolved the issue of the lawyer's administrative liability with a suspension of six (6) months from the practice of law for recording purposes in the lawyer's personal file in the OBC.
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> Accordingly, in those cases, **the purpose of giving the penalty against the disbarred lawyer was only for purposes of recording. The Court shall be fully informed by his personal record in the OBC that aside from his disbarment, he also committed other infractions that would have merited the imposition of penalties were it not for his disbarment. These factors shall be taken into consideration should the**

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36 Id. at 785-786.
37 A.C. No. 12173, November 3, 2020, 959 SCRA 199.
38 Id. at 210.
39 839 Phil. 509 (2018).

> **disbarred lawyer subsequently file a petition to lift his disbarment.**[40]
> (Emphasis supplied; citations omitted)

The subject of this case is Atty. Rivera's notarization of documents without a notarial commission. This is different from the previous infraction that caused his disbarment, *i.e.*, simulation of court documents. Hence, the Court finds that while Atty. Rivera has been previously disbarred, it is still proper to impose the corresponding penalty on him for the sole purpose of recording it in his personal file in the OBC.

The Court also notes Atty. Rivera's brazen disregard for the proceedings before the IBP, including this Court. He repeatedly refused to file his Comment even under penalties imposed by this Court. It took a warning of arrest and detention for Atty. Rivera to finally heed the Court's orders. He was similarly disobedient to the IBP. He failed to attend the mandatory conferences and file his verified position paper. Atty. Rivera's defiance of the Court's and the IBP's directives should not be overlooked, but ought to be treated as an aggravating circumstance of his liability in this case.[41]

In *Villaflores-Puza v. Atty. Arellano*,[42] the Court suspended a lawyer for three years and permanently disqualified him from being commissioned as a notary public for performing a notarial act without a commission and failing to comply with the lawful directives of the IBP in relation to the administrative case.[43] However, the Court notes that Atty. Rivera has been previously sanctioned not once, but thrice. Hence, he should suffer a more severe penalty.

Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but are rather investigations by the Court into the conduct of one of its officers. Public interest is their primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proven themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.[44]

Atty. Rivera's repeated reprehensible conduct of notarizing documents

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40 Id. at 527-528.
41 *Muntuerto, et. al. v. Atty. Alberto*, 850 Phil. 1139, 1150-1151 (2019).
42 811 Phil. 313 (2017).
43 Id. at 316.
44 *Judge Contreras v. Atty. Venida*, A.C. No. 5190, July 26, 2022.

without a notarial commission even despite a prior sanction justifies the penalty of disbarment. To emphasize, this is not Atty. Rivera's first ethical infraction of the same nature. He has been previously disciplined for performing notarial acts without the requisite authority on two other occasions. The Court cannot turn a blind eye to Atty. Rivera's repeated and brazen disregard of the provisions of the Notarial Rules, the Notarial Act, the Lawyer's Oath, and the CPR, which demonstrates his indifference to the values lawyers ought to live by for their continued membership in the Bar.

In view of the foregoing, the Court deems it proper to impose on Atty. Rivera the penalty of disbarment. It bears to stress that disbarment can no longer be imposed on a lawyer whose name has been stricken off the roll of attorneys except for recording purposes. Once a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law. Nevertheless, the corresponding penalty should be adjudged for recording purposes in Atty. Rivera's personal file with the OBC, which should be taken into consideration in the event that he subsequently files a petition for reinstatement.

WHEREFORE, for violating the Lawyer's Oath and Rule 1.01, Canon 1 and Canon 7 of the Code of Professional Responsibility, Atty. Carlos P. Rivera is **DISBARRED.**

However, considering that he has already been previously disbarred, this penalty can no longer be imposed. Nevertheless, the penalty should be considered in the event that he should apply for reinstatement.

Let a copy of this Decision be furnished to the Office of the Bar Confidant to be entered into the records of Atty. Carlos P. Rivera. Copies shall likewise be furnished to the Integrated Bar of the Philippines for its information and guidance and the Office of the Court Administrator for circulation to all courts concerned.

The Notice of Resolution, dated June 12, 2021, of the Integrated Bar of the Philippines Board of Governors transmitted by letter, dated July 12, 2022, together with the case record is **NOTED.**

SO ORDERED.

WE CONCUR:

ALEXANDER G. GESMUNDO
Chief Justice

MARVIC M.V.F. LEONEN
Senior Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

(On Leave)
RAMON PAUL L. HERNANDO
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

(On Leave)
RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice

JAPAR B. DIMAAMPAO
Associate Justice

JOSE MIDAS P. MARQUEZ
Associate Justice

ANTONIO T. KHO, JR.
Associate Justice

MARIA FILOMENA D. SINGH
Associate Justice