



Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

MELISSA ANGELA
FERNANDO,
Complainant,

C. A.C. No. 9338
[formerly CBD Case No. 13-3815]

-versus-

Present:
LEONEN, J., Chairperson,
LAZARO-JAVIER,
LOPEZ, M.,
LOPEZ, J., and
KHO, JR., JJ.

ATTY. ALEJANDRO JOSE C.
PALLUGNA,
Respondent.

Promulgated:

FEB 20 2023

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DECISION

LOPEZ, J., J.

This Court resolves a disbarment complaint¹ filed by Melissa Angela C. Fernando (*Fernando*) against Atty. Alejandro Jose C. Pallugna (*Atty. Pallugna*) for alleged violation of Sections 1 and 3, Rule 126 of the Rules of Criminal Procedure and Administrative Matter (*A.M.*) No. 02-8-13-SC, or the 2004 Rules on Notarial Practice.

The Antecedents

On January 10, 2012, Fernando filed a Petition with the Office of the Bar Confidant which prayed for the disbarment of Atty. Pallugna based on the following grounds: (1) violation of Sections 1 and 3, Rule 126 of the Rules of Criminal Procedure;² (2) orchestrating a robbery of a building;³ and (3) violation of Section 3, Rule IV of the 2004 Rules on Notarial Practice.⁴

¹ *Rollo*, p. 1-11.

² *Id.* at 3-7.

³ *Id.* at 7-8.

⁴ *Id.* at 8-9.

Fernando claimed that Atty. Pallugna violated Sections 1 and 3, Rule 126 of the Rules of Criminal Procedure when he: (1) implemented a search warrant despite not being a police officer;⁵ (2) ordered that the cellular phones of the persons arrested during the implementation of the search warrant be confiscated even when cellular phones were excluded from the list of items to be seized based on the warrant;⁶ and (3) abused his authority as a member of the legal profession when he threatened the arrest of individuals who refused to surrender their cellular phones.⁷

She expounded that at around 9:30 A.M. on October 28, 2011, police officers from the Philippine National Police-Cagayan de Oro implemented Search Warrant No. 2011-002⁸ at the office of Sprintcruisers Advertising Solutions (*Sprintcruisers*) located at #27, 11–30th Streets, Nazareth, Cagayan de Oro City.⁹ The said search warrant was issued by Branch 2, Municipal Trial Courts in Cities, Cagayan de Oro¹⁰ in connection with a criminal complaint filed by a Michael Turner, a client of Atty. Pallugna.¹¹ At the time the search warrant was implemented, several individuals were at the Sprintcruisers office for a Halloween party.¹²

Fernando, citing affidavits executed by certain individuals present at the Sprintcruisers office at the time of the police operation,¹³ claimed that during the conduct of the search by the police, Atty. Pallugna suddenly entered the office of Sprintcruisers and started threatening the individuals present there with imprisonment for violation of the Anti-Fencing Law.¹⁴ Atty. Pallugna supposedly instructed the police officers to seize the cellular phones of the people found inside the Sprintcruisers office, and he threatened them with warrantless arrest and imprisonment should they refuse to surrender their cellular phones.¹⁵

Fernando likewise alleged that Atty. Pallugna orchestrated the forcible entry at the Sprintcruisers office.¹⁶ She claimed that when some of the individuals that were brought by the police for questioning returned to the Sprintcruisers office at around 6:00 a.m. on October 29, 2011, they found that the door locks have been changed and their personal belongings were missing.¹⁷

⁵ *Id.* at 5–6.

⁶ *Id.* at 6.

⁷ *Id.* at 6–7.

⁸ *Id.* at 12.

⁹ *Id.* at 4.

¹⁰ *Id.* at 12.

¹¹ *Id.* at 112–113.

¹² *Id.* at 14.

¹³ *Id.* at 4–5.

¹⁴ *Id.* at 4.

¹⁵ *Id.*

¹⁶ *Id.* at 7.

¹⁷ *Id.* at 8.

Fernando explained that Atty. Pallugna's involvement in the robbery is evinced by the fact that on October 29, 2011, at around 1:00 P.M., Arthur Dela Llana (*Dela Llana*), the owner of the compound where the Sprintcruisers office was located, saw three unknown persons inside his compound.¹⁸ When confronted, the unknown individuals supposedly told Dela Llana that they were directed to produce master keys of the main door of the compound and the Sprintcruisers office so that a certain Michael can enter and search the premises.¹⁹ When Dela Llana's son went out of the compound, he saw Atty. Pallugna inside a white pick-up. When he tried to confront the lawyer, Atty. Pallugna supposedly fled the scene.²⁰

Finally, Fernando alleged that Atty. Pallugna violated Section 3(c), Rule IV of the 2004 Rules on Notarial Practice when he notarized a secretary's certificate executed by his brother, Glenn Pallugna (*Glenn*).²¹

On February 1, 2012, this Court, acting on Fernando's Petition, issued a Resolution²² requiring Atty. Pallugna to file his comment to the same.

On April 2, 2012, Atty. Pallugna filed his Comment²³ wherein he alleged that: (1) the disbarment case against him should be dismissed considering that the complaint was based on pure hearsay;²⁴ (2) he was a friend of Dela Llana and he did not orchestrate the alleged robbery of the Sprintcruisers office;²⁵ (3) he did not violate any rule or law when he pointed out to the police present during the implementation of the search warrant that they should confiscate the cellular phones of individuals arrested during the search for safety considerations; (4) it was the police who confiscated the cellular phones of the people arrested during the implementation of the search warrant and not him;²⁶ and (5) he notarized a secretary's certificate executed by his brother but he did not violate Section 3, Rule IV of the 2004 Rules on Notarial Practice when he did so considering that his brother at that time was acting on behalf of a corporation and not in his individual capacity.²⁷

On December 5, 2012, this Court issued a Resolution²⁸ which referred the instant case to the Integrated Bar of the Philippines for its appropriate action.

¹⁸ *Id.* at 7.

¹⁹ *Id.*

²⁰ *Id.* at 7–8.

²¹ *Id.* at 8–9.

²² *Id.* at 25.

²³ *Id.* at 29–37.

²⁴ *Id.* at 29–30.

²⁵ *Id.* at 30.

²⁶ *Id.* at 31–34.

²⁷ *Id.* at 34–36.

²⁸ *Id.* at 74.

On October 9, 2013, the Integrated Bar of the Philippines—Commission on Bar Discipline (*Commission on Bar Discipline*) issued a Notice of Mandatory Conference/Hearing²⁹ to Fernando and Atty. Pallugna which initially set the mandatory conference on November 21, 2013. On March 7, 2014, Atty. Pallugna filed his Pre-Trial Brief.³⁰

After several cancellations, the mandatory conference pushed through on July 1, 2014.³¹ However, only Atty. Pallugna attended despite due notice to Fernando.³² The Commission on Bar Discipline thereafter directed the parties to submit their respective position papers.³³

On August 4, 2014, Atty. Pallugna filed his Position Paper.³⁴ In his Position Paper, Atty. Pallugna reiterated arguments he previously raised in his Comment. On the other hand, Fernando failed to submit her position paper despite due notice.³⁵

On September 12, 2016, the investigating commissioner issued a Report and Recommendation³⁶ wherein she opined that Atty. Pallugna violated (1) Sections 1 and 3 of Rule 126 when he ordered the police who were implementing the search warrant to confiscate the cellular phones of individuals despite knowing that cellular phones were not indicated as one of the items to be seized in the search warrant,³⁷ and (2) the 2004 Rules on Notarial Practice when he notarized a document executed by his brother.³⁸ The investigating commissioner however noted that Fernando failed to substantiate her claim that Atty. Pallugna orchestrated the robbery of the Sprintcruisers office as she offered no evidence in support of the same.³⁹ The investigating commissioner, aware that Atty. Pallugna had been previously subjected to disciplinary action by this Court, recommended that he be suspended from the practice of law for two years.⁴⁰

On June 17, 2017, the Integrated Bar of the Philippines-Board of Governors (*Board of Governors*) resolved to modify the Report and Recommendation of the Investigating Commissioner,⁴¹ to wit:

RESOLVED to *ADOPT the findings of fact and recommendation of the Investigating Commissioner with modification of the penalty by*

²⁹ *Id.* at 76.

³⁰ *Id.* at 95–97.

³¹ *Id.* at 111.

³² *Id.*

³³ *Id.*

³⁴ *Id.* at 112–118.

³⁵ *Id.* at 149.

³⁶ *Id.* at 148–153.

³⁷ *Id.* at 141–152.

³⁸ *Id.* at 152–153.

³⁹ *Id.* at 152.

⁴⁰ *Id.* at 153.

⁴¹ *Id.* at 147.

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imposing SUSPENSION from the practice of law for six (6) months, DISQUALIFICATION from being commissioned as a notary public for two (2) years and the immediate REVOCATION of the respondent's current notarial commission, in addition to the recommended penalty of suspension of two (2) years from the practice of law. (Emphases in the original)

Atty. Pallugna moved for reconsideration⁴² of the Resolution of the Board of Governors, but the same was denied in a Resolution⁴³ dated January 26, 2020, viz.:

RESOLVED to DENY, as it is hereby DENIED, the Motion for Reconsideration filed by respondent, there being no new reason and/or new arguments adduced to reverse the Resolution dated June 17, 2017 of the Board of Governors. (Emphases in the original)

Issue

Whether or not the Board of Governors correctly found Atty. Pallugna liable for violation of Sections 1 and 3, Rule 126 of the Rules of Criminal Procedure and the 2004 Rules on Notarial Practice.

This Court's Ruling

We adopt the findings and recommendation of the Board of Governors but with modification as to the penalty to be imposed on Atty. Pallugna.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, i.e., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion.⁴⁴ Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint.⁴⁵ Settled is the rule that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.⁴⁶

Here, Atty. Pallugna himself admitted it was his "observation" that impelled the police to confiscate the cellular phones of individuals present at the Sprintcruisers office during the implementation of the search warrant.⁴⁷ Relevantly, cellular phones were not included in the items to be seized per Search Warrant No. 2011-02.⁴⁸ We cannot give any credence to Atty. Pallugna's claim that he only recommended the seizure of cellular phones in

⁴² *Id.* at 154–159.

⁴³ *Id.* at 170.

⁴⁴ *Torres v. Dalangin*, 822 Phil. 80, 100 (2017) [Per J. Reyes, Jr., *En Banc*].

⁴⁵ *Rico v. Salutan*, 827 Phil. 1, 6 (2018) [Per J. Peralta, Second Division].

⁴⁶ *Id.*

⁴⁷ *Rollo*, p. 31.

⁴⁸ *Id.* at 12.

consideration of the safety of the police officers as the individuals inside the Spritcruisers office were “calling their cohorts and other thieves who were not yet arrested and they were calling for reinforcements from their cohorts”⁴⁹ and that “the thieves were many and the police officers were few and when the band of thieves will increase in numbers as they were calling for reinforcements the policemen would be in grave danger.”⁵⁰ There is nothing in the records of the instant case that will tend to support Atty. Pallugna’s claim as there is no evidence that the police officers were already outnumbered or that the supposed “thieves” were in fact armed, or that they in fact were able to call for reinforcements or that the individuals found inside the Sprintcruisers office were in any way belligerent that would support a conclusion that the police were in fact in grave danger.

Clearly, in an attempt further the interest of his client, Atty. Pallugna persuaded the police officers to go beyond what was stated in the search warrant which violated the Lawyer’s Oath and Code of Professional Responsibility (*CPR*). Relevantly, Canon 1 of the *CPR* requires that “[a] lawyer [to] uphold the Constitution, obey the laws of the land and promote respect for law and legal processes” while Canon 19 states that “a lawyer shall represent his client with zeal within the bounds of the law.” It must be emphasized that a lawyer’s duty is not to his client but to the administration of justice; to that end, his client’s success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics.⁵¹

As to Atty. Pallugna’s violation of notarial rules, Section 3(c), Rule IV of the 2004 Rules on Notarial Practice provides that a notary is disqualified from performing a notarial act if he is a relative by affinity or consanguinity of the principal within the fourth civil degree, to wit:

SEC. 3. Disqualifications. - A notary public is disqualified from performing a notarial act if he:

....

- (c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

We note that Atty. Pallugna admitted that he notarized a secretary’s certificate in which his brother, Glenn, was the affiant. However, Atty. Pallugna claims that when Glenn executed it, the latter was acting on behalf of a corporation and not in his personal capacity.⁵² The same is clearly bereft of any merit and, as correctly observed by the Investigating Commissioner in

⁴⁹ *Id.* at 31.

⁵⁰ *Id.*

⁵¹ *Dumlao, Jr. v. Camacho*, 839 Phil. 509, 522–523 (2018) [Per. J. Gesmundo, *En Banc*].

⁵² *Rollo*, pp. 34–36.

her Report and Recommendation,⁵³ betrays Atty. Pallugna's gross ignorance of notarial rules.

Relevantly, Section 2, Rule II of the 2004 Rules on Notarial Practice defines the term "principal" as referring to "a person appearing before the notary public whose act is the subject of notarization." Here, it was Glenn who personally appeared before the notary public who happens to be his brother, Atty. Pallugna. Likewise, it is Glenn's act as corporate secretary which is the subject of notarization. Thus, We hold that Glenn is a principal under the 2004 Rules on Notarial Practice. Considering the foregoing, Atty. Pallugna's act of notarizing the secretary's certificate despite his brother being the principal constitutes a violation of Section 3(c), Rule IV of the 2004 Rules on Notarial Practice.

As to the applicable penalty, We are guided by our ruling in *Ramirez v. Serrano*⁵⁴ where We imposed a three-month suspension from the practice of law against the erring lawyer whom We found guilty of violating the Lawyer's Oath and Canons 1 and 19 of the Code of Professional Responsibility.⁵⁵ On the other hand, in *Sanchez v. Inton*,⁵⁶ We held that a lawyer who violates the Notarial Rules must be meted with, among others, a one-year suspension from the practice of law.⁵⁷ The same notwithstanding and in view of Atty. Pallugna's previous suspension in *Ramos v. Pallugna*,⁵⁸ We deem it proper to impose a longer penalty of suspension against him.⁵⁹

However, We note that Atty. Pallugna had already been disbarred in 2021. In *Philippine Island Kids International Foundation, Inc. (PIKFI) v. Pallugna*,⁶⁰ this Court removed Atty. Pallugna's name from the Roll of Attorneys after it was proven that he violated Canon 10, Rule 10.01, Rule 10.03, Canon 12, Rule 12.07, Canon 15, Rule 15.07, Canon 19, and Rule 19.01 of the CPR.⁶¹

With respect to the imposition of penalties against an already disbarred lawyer, We held in *Valmonte v. Quesada, Jr.*:⁶²

However, considering that the Court had already imposed upon respondent the ultimate penalty of disbarment for his gross misconduct and willful disobedience of the lawful orders of the court in an earlier complaint

⁵³ *Id.* at 153.

⁵⁴ A.C. No. 11979, July 27, 2022, p. 11 [Unsigned Resolution, First Division].

⁵⁵ *Id.* at 11. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

⁵⁶ A.C. No. 12455, November 5, 2019 [Per. J. Perlas-Bernabe, *En Banc*].

⁵⁷ *Id.* at p. 8. This pinpoint citation refers to the copy uploaded in the Supreme Court website.

⁵⁸ 484 Phil. 184 (2004) [Per J. Callejo, Sr., Second Division].

⁵⁹ *Gimena v. Sabio*, 793 Phil. 644, 654–655 (2016) [Per J. Jardeleza, *En Banc*].

⁶⁰ A.C. No. 11653, November 23, 2021 [Per Curiam, *En Banc*].

⁶¹ *Id.* at 11–14. This pinpoint citation refers to the copy of the Decision uploaded in the Supreme Court website.

⁶² A.C. No. 12487, December 4, 2019 [Per J. Hernando, Second Division].

for disbarment filed against him in *Zarcilla v. Quesada, Jr.*, the penalty of additional six months suspension from the practice of law can no longer be imposed upon him. The reason is obvious: “[o]nce a lawyer is disbarred, there is no penalty that could be imposed regarding his privilege to practice law.”

But while the Court can no longer impose the penalty upon the disbarred lawyer, it can still give the corresponding penalty only for the sole purpose of recording it in his personal file with the Office of the Bar Confidant (OBC), which should be taken into consideration in the event that the disbarred lawyer subsequently files a petition to lift his disbarment.

In addition, the Court may also impose a fine upon a disbarred lawyer found to have committed an offense prior to his/her disbarment as the Court does not lose its exclusive jurisdiction over other offenses committed by a disbarred lawyer while he/she was still a member of the Law Profession. In fact, by imposing a fine, the Court is able “to assert its authority and competence to discipline all acts and actuations committed by the members of the Legal Profession.”

All told, the Court finds respondent guilty of unauthorized practice of law. And although he has already been disbarred, the Court, nevertheless, deems it proper to give the corresponding penalty of six months suspension from the practice of law for the sole purpose of recording it in his personal file in the OBC. The Court, likewise, considers it necessary to impose upon respondent a penalty of fine in the amount of PhP 40,000.00.⁶³

Thus, aside from his suspension from the practice of law for two years, We deem it likewise proper to impose a fine of PHP 50,000.00 against Atty. Pallugna.

FOR THESE REASONS, this Court finds Atty. Alejandro Jose Pallugna **GUILTY** of violation of the Lawyer’s Oath and Canons 1 and 19 of the Code of Professional Responsibility and he is hereby **SUSPENDED** from the practice of law for a period of two years. However, considering that he has already been disbarred, this penalty can no longer be imposed but nevertheless should be considered in the event that he should apply for the lifting of his disbarment. He is also **ORDERED TO PAY** a **FINE** in the amount of PHP 50,000.00.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be entered into the records of Atty. Alejandro Jose Pallugna. Copies shall likewise be furnished to the Integrated Bar of the Philippines and the Office of the Court Administrator, which shall circulate the same to all courts in the country for their information and guidance.


SO ORDERED.

⁶³ *Id.* at 3–4. This pinpoint citation refers to the copy uploaded in the Supreme Court website.




JHOSEP Y. LOPEZ
Associate Justice

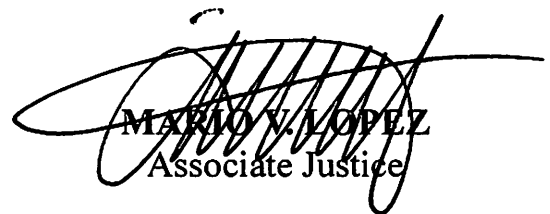
WE CONCUR:



MARVIC M.V.F. LEONEN
Senior Associate Justice



AMY C. LAZARO-JAVIER
Associate Justice



MARIO V. LOPEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice