

Republic of the Philippines
Supreme Court
Manila

EN BANC

**LUCRECIA Q. MAMUGAY, and
PERFECTO O. SALIGA, SR.,**
Complainants,

A.C. No. 11093 [Formerly
CBD Case No. 19-6044]

Present:

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

- versus -

Promulgated:

ATTY. ELMER DELA ROSA,
Respondent.

November 14, 2023


x-----x
DECISION

PER CURIAM:

Via a Joint Affidavit-Complaint,¹ Lucrecia Q. Mamugay (Mamugay) and Perfecto O. Saliga, Sr. (Saliga, Sr.) seek the disbarment of Atty. Elmer A.

* On official leave.
** On official business.
¹ *Rollo*, pp. 5-8.

Dela Rosa (Atty. Dela Rosa) for his alleged violations of the Code of Professional Responsibility (CPR) and the 2004 Rules on Notarial Practice.²

Mamugay and Saliga, Sr. avouched that they were among the original members of the Palalan CARP Farmers Multi-Purpose Cooperative, farmer-beneficiaries of an agricultural land having an aggregat  area of about 111.1484 hectares situated in Upper Palalan Lumbia, Cagayan de Oro City, covered by Transfer Certificates of Title (TCT) Nos. T-170 and T-929. Meanwhile, Atty. Dela Rosa was the cooperative's counsel.³

On December 22, 2015, the Department of Agrarian Reform (DAR) ordered the farmer-beneficiaries to attend a clarificatory conference, during which they discovered Atty. Dela Rosa's ploy to make it appear that their cooperative, under the chairmanship of a certain Lino D. Sahol, applied for the land use conversion of their property without their consent.⁴ Without their knowledge, Atty. Dela Rosa sold the subject property to one Diana G. Biron,⁵ as evidenced by the Deed of Absolute Sale⁶ dated August 7, 2009.

Atty. Dela Rosa, who was a commissioned notary public in Cagayan de Oro City, caused the notarization of a Special Power of Attorney,⁷ identified as Doc. No. 428, Page No. 86, Book No. 20, Series of 2010, which the farmer-beneficiaries supposedly executed in favor of Rolex T. Suplico (Suplico). Strikingly, two of the signatories to the special power of attorney – Alberto A. Ramos (Ramos) and Romana E. Palconit (Palconit) – were long deceased as of July 22, 2010, the date of notarization,⁸ as evidenced by their certificates of death.⁹ In particular, Ramos died on July 5, 1998 (12 years prior to the date of notarization) while Palconit died on October 12, 2004¹⁰ (six years prior to the date of notarization).

Mamugay and Saliga, Sr. further submitted a certification issued by Atty. Dick Carlo J. Cabanlas, the Assistant Clerk of Court of the Regional Trial Court (RTC) of Cagayan de Oro City, evincing that the special power of attorney was not reported to their office, in contravention of the Notarial Law.¹¹ Thence, Mamugay and Saliga, Sr. implored this Court to disbar Atty. Dela Rosa on account of his misconduct and numerous transgressions.

² *Id.* at 93.

³ *Id.* at 5, 9–10, 94.

⁴ *Id.* at 5–6.

⁵ *Id.* at 5, 94–95.

⁶ *Id.* at 11–13.

⁷ *Id.* at 17–24.

⁸ *Id.* at 24.

⁹ *Id.* at 25–27.

¹⁰ *Id.*

¹¹ *Id.* at 95.

Subsequently, the Court issued a Notice of Resolution¹² dated April 12, 2016, requiring Atty. Dela Rosa to comment on the complaint. Despite the several opportunities given him to do so, he did not comply.¹³ This impelled the Court to dispense with his comment and refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation.¹⁴

In due course, Investigating Commissioner Dr. Jose I. De La Rama, Jr. (Commissioner De La Rama) of the IBP found Atty. Dela Rosa liable for violating the CPR and the Notarial Law. Treating Atty. Dela Rosa's previous suspension in another disciplinary case as an aggravating circumstance,¹⁵ Commissioner De La Rama recommended the following penalties: *one*, immediate revocation of Atty. Dela Rosa's notarial commission; *two*, his disqualification from reappointment as a notary public for a period of two years; and *three*, his suspension from the practice of law for a period of three years.¹⁶

On September 1, 2022, the IBP Board of Governors (IBP Board) passed a Resolution,¹⁷ adopting and approving with modification the Report and Recommendation¹⁸ of Commissioner De La Rama in that a fine in the amount of PHP 20,000.00 was recommended to be imposed upon Atty. Dela Rosa for his repeated disobedience of the directives of the investigating commissioner, i.e., failure to file the (a) answer to the complaint; (b) mandatory conference brief; and (c) position paper as well his failure to attend the mandatory conference.¹⁹

The focal issue posited before this Court is whether Atty. Dela Rosa is guilty of violations of the Code of Professional Responsibility and the 2004 Rules on Notarial Practice as to warrant his disbarment from the practice of law.

Upon judicious rumination, this Court adopts the findings of the IBP Investigating Commissioner and the Board of Governors but modifies the penalty to be imposed upon Atty. Dela Rosa.

At the incipience, Atty. Dela Rosa's repeated failure without any valid reason to comply with the Court's Resolutions dated April 12, 2016,²⁰

¹² *Id.* at 30.

¹³ *Id.* at 30, 33, 42.

¹⁴ *Id.* at 62, 66.

¹⁵ *See Sps. Concepcion v. Atty. Dela Rosa*, 752 Phil. 485 (2015) [Per J. Perlas-Bernabe, *En Banc*].

¹⁶ *Rollo*, p. 104.

¹⁷ *Id.*

¹⁸ *Id.* at 93-104.

¹⁹ *Id.*

²⁰ *Id.* at 30.

December 4, 2017,²¹ and August 13, 2018,²² requiring him to comment on the complaint lends credence to the allegations therein and manifests his tacit admission of the said avowals.²³ Quite tellingly, his disregard of the orders issued by this Court and the IBP, is not only irresponsible, but also constitutes utter disrespect for the Judiciary and his fellow lawyers. Such conduct is absolutely unbecoming of a lawyer, because lawyers are particularly called upon to obey Court orders and processes and are expected to stand foremost in complying with orders from the duly constituted authorities.²⁴

In sooth, Atty. Dela Rosa's stiff-necked recalcitrance is, by itself, punishable under the new Code of Professional Responsibility and Accountability,²⁵ which was unanimously approved by the Court and made applicable to pending cases.²⁶ In no uncertain terms, Canon VI, Section 34(c)²⁷ classifies *willful and deliberate disobedience of the orders of the Supreme Court and the IBP* as a less serious offense and penalizes the same with any or a combination of the following sanctions:

- (1) Suspension from the practice of law for a period within the range of one (1) month to six (6) months, or revocation of notarial commission and disqualification as notary public for less than two (2) years;
- (2) A fine within the range of [PHP] 35,000.00 to [PHP] 100,000.00.²⁸

Anent the merits of the complaint, the Court finds that the serious allegations of misconduct against Atty. Dela Rosa were sufficiently established.

It bears stressing that membership in the legal profession is a privilege that is bestowed upon individuals who are not only learned in law, but also known to possess good moral character. Lawyers should act and comport

²¹ *Id.* at 33.

²² *Id.* at 42.

²³ See *Unity Fishing Development Corporation v. Atty. Macalino*, 487 Phil. 234, 243 (2004) [Per J. Garcia, Third Division].

²⁴ *Pesto v. Atty. Millo*, 706 Phil. 286, 294 (2013) [Per J. Bersamin, First Division].

²⁵ A.M. No. 22-09-01-SC, May 14, 2023.

²⁶ GENERAL PROVISIONS

SECTION 1. *Transitory provision.* – *The CPRA shall be applied to all pending and future cases*, except to the extent that 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. (Emphasis supplied).

²⁷ SECTION 34. *Less Serious Offenses.* – Less serious offenses include:

.....

(c) Violation of Supreme Court rules and issuances in relation to Bar Matters and administrative disciplinary proceedings, including willful and deliberate disobedience of the orders of the Supreme Court and the IBP.

²⁸ CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY (2023), Canon VI, sec. 37(b) (1)(2).

themselves with honesty and integrity in a manner beyond reproach, in order to promote the public's faith in the legal profession. To declare that lawyers must at all times uphold and respect the law is to state the obvious, but such a statement can never be overemphasized. Since of all classes and professions, lawyers are most sacredly bound to uphold the law, it is then imperative that they live by the law.²⁹ Indeed, that is the primordial precept of the CPR—

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

Rule 1.01. – A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct[.]

.....

The foregoing provisions are further expounded by the Code of Professional Responsibility and Accountability, which provide:

CANON II PROPRIETY

.....

SECTION 1. *Proper Conduct.* – A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.

.....

CANON III FIDELITY

.....

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.

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.

As an advocate, a lawyer shall represent the client with fidelity and zeal within the bounds of the law and the CPRA[.]

Here, by selling the awarded property sans Mamugay and Saliga, Sr.'s consent, Atty. Dela Rosa undisputedly failed to serve his clients with full competence, and to attend to their cause with zeal, care, and utmost devotion,³⁰ in complete disregard of his duties enshrined in the Code of Professional Responsibility and Accountability:

²⁹ See *Maniquiz v. Atty. Emelo*, 818 Phil. 753, 759 (2017) [Per J. Peralta, *En Banc*].

³⁰ See *San Gabriel v. Atty. Sempio*, 850 Phil. 533, 539 (2019) [Per J. Perlas-Bernabe, *En Banc*].

**CANON III
FIDELITY**

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.

....

SECTION 6. *Fiduciary Duty of a Lawyer.* – A lawyer shall be mindful of the trust and confidence reposed by the client.

To this end, a lawyer shall not abuse or exploit the relationship with a client[.]

The Court also takes judicial notice that Atty. Dela Rosa employed similar schemes in the other administrative cases filed against him, i.e., *Palalan CARP Farmers Multi-Purpose Coop v. Atty. Dela Rosa*³¹ and *Jumalon v. Atty. Dela Rosa*.³² In *Palalan*, the Court *En Banc* ruled—

Respondent had proven himself disloyal to his client – exploitative, untrustworthy, and a double-dealer. The client's land had been sold. The client did not know who the buyer was. Respondent acted to protect the buyer's interest, and in all likelihood, his as well. The client did not know and still does not know how much was actually paid for the land. Money flowed from an account set-up by Respondent himself and although under the Cooperative's name, Respondent alone had access to it. The cash proceeds of the sale have not been accounted for to this date.

A lawyer is prohibited from acting or continuing to act for a client where there is a conflict of interest, except when there is a written consent of all concerned after a full disclosure of the facts. Here, there was no consent to speak of at all. Instead of halting his legal representation of the Cooperative to avoid conflict of interest, he stubbornly continued to engage therein, i.e., his seeming obsession to sell the land in question. He even managed to secure alleged General Assembly Resolutions to validate his objective of selling the land.³³

By the same token, in *Jumalon*, the Court *En Banc* found that Atty. Dela Rosa committed gross misconduct in this wise—

Apart from taking it upon himself to recognize Wilson's disposition, respondent sold the awarded property to an undisclosed buyer, *sans* Wilson's nor his heirs' consent; and remitted the proceeds thereof to Eugene and his successors-in-interest. As mentioned, Wilson's heirs are still the lawful owners of the awarded parcel of land and should have received the

³¹ 859 Phil. 52 (2019) [*Per Curiam, En Banc*].

³² A.C. No. 9288, January 31, 2023 [*Per Curiam, En Banc*].

³³ *Palalan CARP Farmers Multipurpose Cooperative v. Atty. De la Rosa*, 859 Phil. 52, 66 (2019) [*Per Curiam, En Banc*].

sale proceeds of their land.

In effect, respondent left Wilson and his heirs groping in the dark the whole time about the status of their property and only for them to later on discover that the only piece of land they owned was already in another person's name[.]³⁴

Further, Atty. Dela Rosa's misconduct did not end with his disposition of Mamugay and Saliga, Sr.'s property without their consent. By notarizing on July 22, 2010, a Special Power of Attorney³⁵ supposedly executed by two deceased affiants, Ramos and Palconit, who, in fact, died on July 5, 1998 and October 12, 2004 respectively, Atty. Dela Rosa undermined the confidence of the public on notarial documents and committed another serious breach of the sacred obligation imposed upon him by Canon II, Section 1 of the CPRA, *viz.*:

SECTION 1. *Proper Conduct.* – A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.

Pertinently, Rule IV, Section 2(b) of the 2004 Rules on Notarial Practice³⁶ provides—

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document –

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

The notarial acknowledgment of Atty. Dela Rosa declared that the signatories during the Palalan CARP Farmers Multi-Purpose Cooperative General Assembly, including Ramos and Palconit, “personally appeared” before him and acknowledged that the special power of attorney or instrument was “their free and voluntary act and deed.”³⁷ Patently, Atty. Dela Rosa lied or intentionally perpetuated an untruthful statement. It has been oft-repeatedly enunciated that “notarization is not an empty, meaningless, [and] routinary act.”³⁸ It converts a private document into a public one and makes it admissible in evidence without need of preliminary proof of authenticity and due execution.³⁹ Therefore, Atty. Dela Rosa's assertion of falsehood in a public document contravened one of the most cherished tenets of the legal

³⁴ *Jumalon v. Atty. Dela Rosa*, A.C. No. 9288, January 31, 2023 [*Per Curiam, En Banc*].

³⁵ *Rollo*, pp. 17–24.

³⁶ A.M. No. 02-8-13-SC, July 6, 2004.

³⁷ *Id.* at 24.

³⁸ *See Judge Santillan v. Atty. Solilapsi*, A.C. No. 12552, December 5, 2022 [*Per J. Inting, Third Division*].

³⁹ *See Ladreña v. Atty. Osorio*, 869 Phil. 1, 13 (2020) [*Per J. Lazaro-Javier, First Division*].

profession and potentially cast suspicion on the truthfulness of every notarial act.⁴⁰

Finally, as aptly observed by Mamugay and Saliga, Sr., Atty. Dela Rosa failed to comply with Section 2(h), Rule VI of the 2004 Rules on Notarial Practice, which provides—

(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.

Having spun an intricate web of lies through a series of unethical acts, Atty. Dela Rosa not only violated the Lawyer's Oath, but also transgressed many provisions of the CPRA. In particular, his actions may be treated as *serious* offenses under Canon VI, Section 33(b) and (p) of the CPRA, which pertain to “[s]erious dishonesty, fraud, or deceit, including falsification of documents and making untruthful statements,” and “[v]iolation of the notarial rules, except reportorial requirements, when attended by bad faith,” respectively. A disgrace to the legal profession, he deserves no less than the ultimate penalty of disbarment.

Under Rule 138, Section 27 of the Rules of Court, a lawyer may be disbarred or suspended from the practice of law for deceitful acts or other gross misconduct, as follows:

SECTION. 27. Disbarment or suspension of attorneys by Supreme Court; grounds therefor. – A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court for any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.

All the same, the Court notes that respondent was previously admonished in the following cases: *Sps. Concepcion v. Atty. Dela Rosa*,⁴¹ in which he was suspended from the practice of law for three years; *Palalan*,⁴²

⁴⁰ See *Sicat v. Atty. Ariola, Jr.*, 496 Phil. 7, 11–12 (2005) [Per Curiam, En Banc].

⁴¹ 752 Phil. 485 (2015) [Per J. Perlas-Bernabe, En Banc].

⁴² 859 Phil. 52 (2019) [Per Curiam, En Banc].

where he was disbarred for gross misconduct; and *Jumalon*⁴³ where, in view of his earlier disbarment and being a repeat offender, he was adjudged ineligible for judicial clemency.

In the case *Re: Order Dated October 27, 2016 issued by Branch 137, Regional Trial Court, Makati in Criminal Case No. 14-765 v. Atty. Frances E. Ramon*,⁴⁴ the Court held that the penalty of suspension or disbarment can no longer be imposed upon a previously disbarred lawyer, except for recording purposes.⁴⁵ Accordingly, although Atty. Dela Rosa was previously disbarred and adjudged by the Court as ineligible for judicial clemency, the Court still deems it proper to impose upon him the ultimate penalty of disbarment, for the sole purpose of recording it in his personal file in the Office of the Bar Confidant, pursuant to Canon VI, Section 42 of the CPRA.⁴⁶

The foregoing notwithstanding, Atty. Dela Rosa may nevertheless be meted the penalty of fine in the amount of PHP 35,000.00⁴⁷ owing to his utter disregard of the directives of this Court and the IBP, such penalty being unaffected by the fact of his previous disbarment.

ACCORDINGLY, respondent Atty. Elmer A. Dela Rosa is:

1. Declared **GUILTY** of violating Canon II, Section 1 and Canon III, Sections 2 and 6 of the Code of Professional Responsibility and Accountability;
2. Declared **GUILTY** of violating Rule IV, Section 2(b), and Rule VI, Section 2(h) of the 2004 Rules on Notarial Practice;
3. Ordered **DISBARRED** from the practice of law. Nevertheless, considering that he was previously disbarred and adjudged ineligible for judicial clemency, his penalty in the present case is only for the sole purpose of recording it in his personal file in the Office of the Bar Confidant;

⁴³ A.C. No. 9288, January 31, 2023 [*Per Curiam, En Banc*].

⁴⁴ 882 Phil. 45, 50 (2020) [*Per Curiam, En Banc*].

⁴⁵ *Id.* at 46.

⁴⁶ SECTION 42. *Penalty When the Respondent Has Been Previously Disbarred.* — When the respondent has been previously disbarred and is subsequently found guilty of a new charge, the Court may impose a fine or order the disbarred lawyer to return the money or property to the client, when proper. If the new charge deserves the penalty of a disbarment or suspension from the practice of law, it shall not be imposed but the penalty shall be recorded in the personal file of the disbarred lawyer in the Office of the Bar Confidant or other office designated for the purpose. In the event that the disbarred lawyer applies for judicial clemency, the penalty so recorded shall be considered in the resolution of the same.

⁴⁷ CODE OF PROFESSIONAL RESPONSIBILITY AND ACCOUNTABILITY (2023), Canon VI, sec. 37(b).


4. Declared **PERMANENTLY DISQUALIFIED** from reappointment as a notary public; and
5. Ordered to **PAY A FINE** in the amount of PHP 35,000.00 for his repeated disobedience of the directives of the Court and the order of the Integrated Bar of the Philippines in the instant administrative proceedings.

This Decision is **IMMEDIATELY EXECUTORY**.

Let copies of this Decision be furnished the Office of the Bar Confidant, to be appended to the personal record of respondent Atty. Elmer A. Dela Rosa as an attorney; the IBP National Office and the local chapter to which he belongs, for their information and guidance; and the Office of the Court Administrator, for dissemination to all the courts in the country.


SO ORDERED.

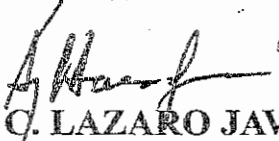
WE CONCUR:


ALEXANDER G. GESMUNDO
Chief Justice


MARVIC M.V.F. LEONEN
Associate Justice

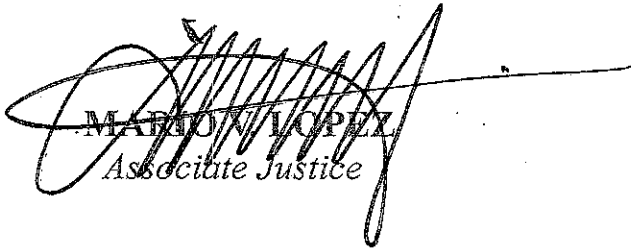

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice


RAMON PAUL L. HERNANDO
Associate Justice

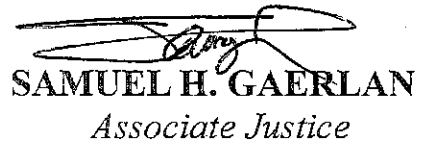

AMY C. LAZARO JAVIER
Associate Justice

On official leave
HENRI JEAN PAUL B. INTING
Associate Justice


RODIL V. ZALAMEDA
Associate Justice



MABION LOPEZ
Associate Justice




SAMUEL H. GAERLAN
Associate Justice



RICARDO R. ROSARIO
Associate Justice



JHOSEP Y. LOPEZ
Associate Justice



JAPAR B. DIMAAMPAO
Associate Justice

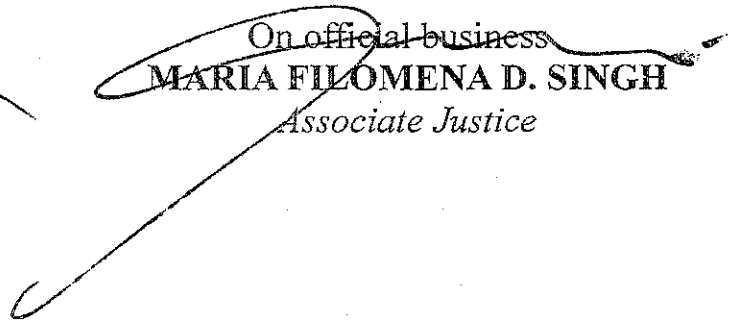


JOSE MIDAS P. MARQUEZ
Associate Justice



ANTONIO T. KHO, JR.
Associate Justice

On official business



MARIA FILOMENA D. SINGH
Associate Justice