



Republic of the Philippines
Supreme Court
Office of the Court Administrator
Manila

OCA CIRCULAR NO. 29-2005

**TO: THE COURT OF APPEALS,
SANDIGANBAYAN, COURT OF TAX
APPEALS, REGIONAL TRIAL COURTS,
SHARI'A DISTRICT COURTS,
METROPOLITAN TRIAL COURTS,
MUNICIPAL TRIAL COURTS IN CITIES,
MUNICIPAL TRIAL COURTS, MUNICIPAL
CIRCUIT TRIAL COURTS, SHARI'A
CIRCUIT COURTS, THE OFFICE OF THE
STATE PROSECUTOR, PUBLIC
ATTORNEY'S OFFICE AND THE
INTEGRATED BAR OF THE PHILIPPINES**

**SUBJECT: SUSPENSION FROM THE PRACTICE OF
LAW FOR TWO (2) YEARS AND BARRED
PERMANENTLY FROM BEING
COMMISSIONED AS NOTARY PUBLIC OF
ATTY. HEHERSON ALNOR G.
SIMPLICIANO**

For the information and guidance of all concerned, quoted hereunder is the Decision of the Court En Banc dated November 18, 2004 in Administrative Case No. 6492, entitled "Mellanio L. Zoreta vs. Atty. Heherson Alnor G. Simpliciano", to wit:

"This is a complaint for disbarment filed against Atty. Heherson Alnor G. Simpliciano for allegedly notarizing several documents during the year 2002 after his commission as notary public had expired.

Complainant Melanio L. Zoreta alleged that on 02 August 2001, he filed before Branch 4 of the Regional Trial Court of Antipolo City, a complaint for Breach of Contract and Damages against Security Pacific Assurance Corporation (SPAC) dated 22 June 2001 due to the latter's failure to honor SPAC's Commercial Vehicle Policy No. 94286, where respondent Atty. Heherson Alnor G. Simpliciano was the latter's counsel. In said cases, respondent who was not a duly commissioned Notary Public in 2002 per Certifications¹ issued by the Clerk of Court of

¹ Rollo, p. 78.

Quezon City Mercedes S. Gatmaytan, performed acts of notarization, as evidenced by the following documents, viz:

1. Verification² executed by Aurora C. Galvez, President of defendant SPAC, subscribed and sworn to before Atty. Heherson Alnor G. Simpliciano on February 18, 2002 as alleged notary public, in Quezon City and attached to defendants' Very Urgent Motion (1) To Lift the Order of Default; and (2) To defer Plaintiffs Presentation of Evidence Ex-Parte dated February 18, 2002;
2. Affidavits of Merit³ signed by Aurora Galvez attached to the pleading mentioned in par. 1 hereof, likewise notarized by Atty. Heherson Alnor G. Simpliciano as alleged "Notary Public" in Quezon City, on February 18, 2002;
3. The Affidavit of Service⁴ signed by a certain Renee L. Ramos, a Legal Assistant in Simpliciano and Capela Law Office, and subscribed and sworn to before Atty. Heherson Alnor G. Simpliciano on February 19, 2002 as alleged "Notary Public" in Quezon City. Said Affidavit of Service was attached to the pleading mentioned in Par. 1 hereof;
4. The Affidavit of Service⁵ of one Nestor Abayon, another Legal Assistant of Simpliciano and Capela Law Office, subscribed and sworn to before Atty. Heherson Alnor G. Simpliciano on 01 April 2002 at Quezon City, as "Notary Public." This Affidavit of Service was attached to defendants' Motion (1) For Reconsideration of the Order dated 05 March 2002; and (2) To allow defendants to Present Defensive Evidence dated 27 March 2002.
5. The Verification and Certification Against Forum Shopping⁶ signed this time by a certain Celso N. Sarto, as affiant, "notarized" on 16 August 2002 by Atty. Heherson Alnor G. Simpliciano. This Verification and Certification Against Forum Shopping was attached to defendant's Motion for Extension of Time To File Petition Under Rule 65 before the Court of Appeals;
6. The Affidavit of Service⁷ signed by a certain Joseph B. Aganan, another Legal Assistant in Simpliciano and Capela Law Office subscribed and sworn to

² Rollo, pp. 15-24.

³ Rollo, pp. 25-27.

⁴ Rollo, p. 28

⁵ Rollo, p. 37.

⁶ Rollo, pp. 43-44.

⁷ Rollo, p. 45.

before Atty. Heherson Alnor G. Simpliciano as "Notary Public" on 16 August 2002. This Affidavit of Service signed by Aganan was also attached to that Motion For Extension of Time To File Petition under Rule 65 before the Court of Appeals;

7. Verification and Certification Against Forum Shopping⁸ executed by one Celso N. Sarto, alleged Executive Vice President and Claims Manager of defendant SPAC and "notarized" by Atty. Heherson Alnor G. Simpliciano on 19 August 2002, attached to the Petition for *Certiorari* and Prohibition, etc., filed before the Court of Appeals; and
8. Affidavit of Service⁹ signed by a certain Joseph B. Aganan, Legal Assistant of Simpliciano and Capela Law Office, subscribed and sworn to before Atty. Heherson Alnor G. Simpliciano on 19 August 2002, as alleged "Notary Public" for Quezon City with notarized commission to expire by December 31, 2002.

On 23 April 2003, the Integrated Bar of the Philippines (IBP) of Pasig required respondent Atty. Simpliciano to submit his answer within fifteen (15) days from receipt of the Order.¹⁰

On 26 May 2003, counsel of respondent filed an *ex-parte* motion¹¹ for extension of time to file answer.

On 30 June 2003, petitioner filed a motion¹² to resolve the complaint after the extension requested by respondent ended on 30 May 2003, and almost a month had lapsed from 30 May 2003, with no comment or pleading filed by respondent.

On 17 July 2003, Commissioner Lydia A. Navarro issued an order,¹³ giving respondent a last chance to file his answer, otherwise the case shall be deemed submitted for resolution. Respondent failed to do so.

Commissioner Lydia A. Navarro submitted her report and recommendation¹⁴ dated 12 February 2004, pertinent portions of which read:

A careful examination and evaluation of the evidence submitted by the petitioner showed that respondent notarized up to Document No. 590, Page

⁸ Rollo, p. 75.
⁹ Rollo, p. 77.
¹⁰ Rollo, p. 82.
¹¹ Rollo, pp. 83-86.
¹² Rollo, pp. 88-89.
¹³ Rollo, p. 92.
¹⁴ Rollo, pp. 96-102

118, Book No. II, Series of 2002 and his commission expires December 31, 2002 which referred to the Affidavit of Service signed and executed by Joseph B. Aganan Legal Assistant of Simpliciano and Capela Law Office subscribed and sworn to before Notary Public Heherson Alnor G. Simpliciano whose commission expires December 31, 2002.

All the other documents aforementioned were entered in Book II of respondent's alleged notarial book which reflected that his commission expires on December 31, 2002 as notary public.

However, the Clerk of Court of Quezon City in her certification dated October 4, 2002 stated that as per records on file with their office respondent was not duly commissioned notary public for and in Quezon City for the year 2002.

Another certification issued by the Clerk of Court of RTC Quezon City dated April 15, 2003 showed that as per records on file with their office respondent was commissioned notary public for and in Quezon City from January 14, 2000 to December 31, 2001 and for the year 2002 and 2003 he did not apply for notarial commission for Quezon City.

It is evident from the foregoing that when respondent notarized the aforementioned documents, he was not commissioned as notary public, which was in violation of the Notarial Law; for having notarized the 590 documents after the expiration of his commission as notary public without having renewed said commission amounting to gross misconduct as a member of the legal profession.

Wherefore, in view of the foregoing the Undersigned respectfully recommends the revocation of respondent's commission as notary public permanently if he is commissioned as such at present and his suspension from the practice of law for a period of three (3) months from receipt hereof furnishing the IBP Chapter where he is a registered member a copy hereof for implementation should this recommendation be approved by the Honorable members of the Board of Governors.¹⁵

Per Resolution No. XVI-2004-236 dated 16 April 2004, the Board of Governors modified the report and recommendation of Commissioner Navarro of suspension of three (3) months to a suspension of six (6) months.¹⁶

¹⁵ Rollo, 100-102.

¹⁶ Rollo, p. 95

We concur in the finding of the Investigating Commissioner that respondent Atty. Simpliciano did not have commission as notary public in 2002 when he notarized the assailed documents as evidenced by the two (2) certifications issued by the Clerk of Court of the Regional Trial Court of Quezon City dated 04 October 2002.¹⁷ Records also show, and as confirmed by IBP Commissioner Navarro, that as of 02 August 2002, respondent had already notarized a total of 590 documents.¹⁸ The evidence presented by complainant conclusively establishes the misconduct imputed to respondent.

The eight (8) notarized documents for the year 2002 submitted by complainant, consisting of affidavits of merit, certifications and verifications against non-forum shopping, and affidavits of service, were used and presented in the Regional Trial Court of Antipolo City, Branch 74, in Civil Case # 01-6240, and in respondent's petition for *certiorari* filed in the Court of Appeals.

Against the evidence presented by complainant, respondent did not even attempt to present any evidence. His counsel filed an *ex-parte* motion for extension to file answer, which was granted, but no answer was forthcoming. Still, Hearing Commissioner Lydia A. Navarro gave respondent a last chance to file his answer; which was again unheeded. Thus respondent was unable to rebut complainant's evidence that he was not so commissioned for the year in question. His lack of interest and indifference in presenting his defense to the charge and the evidence against him can only mean he has no strong and valid defense to offer. Conclusively, respondent Atty. Simpliciano is not a duly commissioned Notary Public for and in Quezon City for the year 2002.

At the threshold, it is worth stressing that the practice of law is not a right but a privilege bestowed by the State on those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege.¹⁹ Membership in the bar is a privilege burdened with conditions. A lawyer has the privilege and right to practice law only during good behavior and can only be deprived of it for misconduct ascertained and declared by judgment of the court after opportunity to be heard has been afforded him. Without invading any constitutional privilege or right, an attorney's right to practice law may be resolved by a proceeding to suspend him, based on conduct rendering him unfit to hold a license or to exercise the duties and responsibilities of an attorney. It must be understood that the purpose of suspending or disbaring him as

¹⁷ Rollo, pp. 78-80.

¹⁸ Rollo, p. 101.

¹⁹ *Bongalonta v. Castillo*, CBD Case No. 176, 20 January 1995, 240 SCRA 310.

an attorney is to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to an office of attorney, and thus to protect the public and those charged with the administration of justice, rather than to punish an attorney.²⁰ Elaborating on this, we said in *Maligsa v. Cabanting*²¹ that “[t]he bar should maintain a high standard of legal proficiency as well as of honesty and fair dealing. A lawyer brings honor to the legal profession by faithfully performing his duties to society, to the bar, to the courts and to his clients. To this end a member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.”²² Towards this end, an attorney may be disbarred, or suspended for any violation of his oath or of his duties as an attorney and counselor, which include statutory grounds enumerated in Section 27, Rule 138 of the Rules of Court, all of these being broad enough to cover practically any misconduct of a lawyer in his professional or private capacity.²³

Apropos to the case at bar, it has been emphatically stressed that notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. The protection of that interest necessarily requires that those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. It must be underscored that the notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of authenticity. A notarial document is by law entitled to full faith and credit upon its face. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.²⁴

The requirements for the issuance of a commission as notary public must not be treated as a mere casual formality. The Court has characterized a lawyer’s act of notarizing documents without the requisite commission therefore as “reprehensible, constituting as it does not only malpractice but also the crime of falsification of public documents.”²⁵ For such reprehensible conduct, the Court has sanctioned erring lawyers by suspension

²⁰ *Marcelo v. Javier, Sr.*, A.C. No. 3248, 18 September 1992, 214 SCRA 1.

²¹ A.C. No. 4539, 14 May 1997, 272 SCRA 408.

²² *Id.* At 413

²³ *Ibid.*

²⁴ *Ibid.*; *Arrieta V. Llosa*, A.C. No. 4369, 28 November 1997, 282 SCRA 248, cited in *Nunga v. Viray*, A.C. No. 4758, 30 April 1999, 306 SCRA 487.

²⁵ *Buensuceso v. Barrera*, A.C. No. 3727, 11 December 1992, 216 SCRA 309, 312.

from the practice of law, revocation of the notarial commission and disqualification from acting as such, and even disbarment.²⁶

In the case of *Nunga v. Viray*,²⁷ the Court had occasion to state that 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."

By such misconduct as a notary public, the lawyer likewise violates Canon 7 of the same Code, which directs every lawyer to uphold at all times the integrity and dignity of the legal profession.

On different occasions, this Court had disbarred or suspended lawyers for notarizing documents with an expired commission:

1. In *Flores v. Lozada*,²⁸ the court disbarred a lawyer who notarized six documents such as the extrajudicial partition of an estate, deed of sale with right of repurchase, and four (4) deeds of absolute sale – all involving unregistered lands, after his commission as Notary Public expired;
2. In *Joson v. Baltazar*,²⁹ the court suspended the lawyer for three (3) months since only one (1) instance of unauthorized notarization of a deed of sale was involved.
3. In *Nunga v. Viray*,³⁰ the court suspended the lawyer for three (3) years when he notarized an absolute deed of sale of the buyer minor, who was his son and, at the same time, he was a stockholder and legal counsel of the vendor bank, and when he entered in his notarial registry an annotation of the cancellation of the loan in favor of a certain bank, at a time when he was not commissioned as a

²⁶ Heinz R. Heck v. Judge Anthony E. Santos, Regional Trial Court, Branch 19, Cagayan de Oro City, A.M. No. RTJ-01-1657, 23 February 2004.

²⁷ *Supra*.

²⁸ A.C. No. 546, 18 December 1967, 21 SCRA 1267.

²⁹ A.C. No. 575, 14 February 1991, 194 SCRA 114.

³⁰ *Supra*.

Notary Public. What aggravated respondent's unlawful notarization was the fact that the transaction involved was in favor of his son, who was then only eighteen years old and, therefore, a minor.

4. In *Buensuceso v. Barrera*,³¹ the lawyer was suspended for one (1) year when he notarized five (5) documents such as a complaint for ejectment, affidavit, supplemental affidavit, a deed of sale and a contract to sell, after his commission as Notary Public expired.

Needless to state, respondent cannot escape from disciplinary action in his capacity as a notary public and as a member of the Philippine Bar. However the penalty recommended by the Board of Governors of the IBP must be increased. Respondent must be barred from being commissioned as a notary public permanently and suspended from the practice of law for two (2) years.


WHEREFORE, this Court hereby adopts the findings of Investigating Commissioner Lydia A. Navarro, which the Board of Governors of the Integrated Bar of the Philippines adopted and approved, but hereby MODIFIES the penalty recommended by the Board of Governors. As modified, respondent ATTY. HEHERSON ALNOR G. SIMPLICIANO is hereby BARRED PERMANENTLY from being commissioned as Notary Public. He is furthermore SUSPENDED from the practice of law for two (2) years, effective upon receipt of a copy of this Decision.

Let copies of this Decision be furnished all the courts of the land through the Court Administrator as well as the Integrated Bar of the Philippines, the Office of the Bar Confidant, and recorded in the personal files of respondent himself.

SO ORDERED.”

Copy of the decision was received by respondent on 7 December 2004.

31 March 2005.


PRESBITERO J. VELASCO, JR.
Court Administrator

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³¹

Supra.