



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

OCA CIRCULAR NO. 36-2005

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 SIX (6) MONTHS AND DISQUALIFICATION FROM REAPPOINTMENT AS NOTARY PUBLIC FOR TWO (2) YEARS OF ATTY. RAFAEL P. MATEO

For the information and guidance of all concerned, quoted hereunder is the Resolution of the Second Division dated November 11, 2004 in Administrative Case No. 4179 entitled "Alice Gokioco vs. Atty. Rafael P. Mateo", to wit:

"Before this Court is a complaint filed by Alice Gokioco against Atty. Rafael P. Mateo for falsification of public document.

On January 24, 1992, Alice Gokioco filed an Affidavit-Complaint with this Court alleging that : during the pre-trial conference of civil case "Sps Eustaquio Gokioco and See Chua-Gokioco vs. Jennifer Gokioco, Sps. Mariano Gokioco and Alice Gokioco," they discovered that the complainant in said case was subscribed and sworn to by See Chua-Gokioco before herein respondent on November 10, 1992; See Chua-Gokioco however, died on October 7, 1992 as evidenced by the death certificate issued by the local civil registrar; respondent, a long time counsel for the family, notarized and filed the said complaint, fully aware of the death of See Chua-Gokioco; this constitutes a violation of the Revised Penal Code, the Notarial Law, the lawyer's oath and the Code of Professional Responsibility (CPR) and warrants respondent's disbarment and/or suspension from the practice of law.¹

In his comment, Atty. Rafael Mateo denies that he is a long time counsel of the Gokioco family and explains, as follows: He only transacted with them in 1976 and again in 1992; his law office prepared the complaint for Gokioco spouses on September 22, 1992; thereafter, he called See Chua-Gokioco and her son Francisco to come to his office in Tanay for the reading and verification of the complaint; respondent forgot, however, the exact date when this was

¹ Rollo, pp. 1-2.

done which could be anywhere between September 22, 1992 and October 7, 1992, the date of her death; from the time Mrs. Gokioco left his office in Tanay up to the time he filed the complaint in court, he was not aware that Mrs. Gokioco has already died; his office has no telephone and is about 70 kilometers from the residence of the Gokioco family in Caloocan; he notarized and filed the complaint on November 10, 1992 without any personal knowledge of the fact of death of Mrs. Gokioco;² and the death of Mrs. Gokioco was brought to the attention of the court only during the pre-trial conference on May 18, 1993 which ordered Eustaquio to amend the complaint.

On June 27, 1994, the Court issued a resolution referring the instant case to the Integrated Bar of the Philippines (IBP) for its investigation, report and recommendation.³

After several hearings, Commissioner Elpidio G. Soriano III of the IBP submitted his report dated November 10, 2003, portions of which read as follows:

In this case, the respondent failed to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law. The respondent should have entered the fact of See Chua-Gokioco's verification on the date when the latter actually verified her complaint in the respondent's presence, as opposed to the date when he filed the complaint.

In addition to failing to obey the pertinent portions of the notarial law quoted above, the respondent also violated his lawyer's oath to, *inter alia*, do no falsehood or consent to the doing of the same

The respondent admits that although See Chua-Gokioco signed and subscribed the civil complaint at an earlier date, the said respondent only entered the fact of the signing and subscribing of the said complaint much later, that is, on the date of filing of the said civil complaint.

The respondent reasons that he delayed the filing of the civil complaint against the herein complainant and her family because he wanted to make sure that the parties had the opportunity to amicably settle the issues raised in the civil complaint.

It would have been a simple matter for the respondent to exercise a little circumspection by ascertaining from Eustaquio and See Chua-Gokioco if any settlement was agreed on between Eustaquio and See Chua-Gokioco on one hand, and herein complainant and her family upon the other, prior to the institution of the civil complaint in question. In doing so, the respondent would have found out that See Chua-Gokioco had died.

The respondent's arguments to the effect that his office was 70 kilometers away from his clients' residence and that his office did not have a telephone are of no

² *Id.*, pp. 14-16

³ *id.*, p 49

moment. The respondent had the duty to determine whether or not to file the civil complaint in question and he should have exhausted all possible means to communicate with his clients.

Furthermore, the respondent's act of making it appear that See Chua-Gokioco verified the civil complaint on the date of its filing, when in fact she did not, means that the respondent effectively notarized a document when the affiant was absent. In other words, the affiant did not sign or subscribe to the said civil complaint in the presence of the notary public on the date stated in the civil complaint, because on the date stated the affiant was dead or otherwise absent.

...

There is no question therefore that respondent is liable for his misconduct as follows:

- (1) the respondent neglected or otherwise failed to enter in his notarial register the true date when See Chua-Gokioco signed the verification portion of the civil complaint against Alice Gokioco, her husband Mariano Gokioco, and their daughter Jennifer Gokioco.
- (2) the respondent neglected or otherwise failed to contact his clients prior to the filing of the said civil complaint in order to ascertain if his clients wanted to proceed with the filing of the same; and,
- (3) the respondent violated his lawyer's oath to obey the laws and do no falsehood when he made it appear that See Chua-Gokioco personally signed and executed the civil complaint in question on the date stated in the said civil complaint in his presence, when in fact she was already dead on the said date or was otherwise not physically present.

The undersigned commissioner, however, is of opinion that the respondent's misconduct while serious, is not so gross as to merit disbarment or suspension. From the record, it appears that the Presiding Judge of RTC, Rizal, Branch 79, rather than citing the respondent's misconduct ordered the civil complaint amended.

The damage that was caused to the legal system, to the respondent's clients; to Alice Gokioco, her husband Mariano Gokioco, and their daughter Jennifer Gokioco because of the respondent's misconduct was minimal or was otherwise contained by the amendment of the civil complaint in question.

Furthermore, the damage that may have been caused by the respondent's misconduct is mitigated by the fact that the respondent had no dishonest or selfish motive in notarizing the civil complaint despite the fact that the affiant was absent on the date of its alleged notarization.⁴

⁴ Rollo, pp. 189-191

He then recommended that:

...respondent be reprimanded and warned that any future misconduct on his part will warrant the imposition of a greater penalty.⁵

On February 27, 2004, the Board of Governors of the IBP passed a resolution as follows:

RESOLUTION NO. XVI-2004-50
Adm. Case No. 4179
Alice Gokioco vs.
Atty. Rafael P. Mateo

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, the Report and Recommendation of the Investigating Commissioner of the above-entitled case... and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering that respondent had no dishonest or selfish motive in notarizing the civil complaint despite the fact that the affiant was absent on the date of its alleged notarization, Atty. Rafael P. Mateo is hereby REPRIMANDED and WARNED that any future misconduct on his part will warrant the imposition of a greater penalty,⁶

While we agree with the findings of the IBP, we find that the penalty of reprimand is not commensurate to misconduct committed by respondent.

Respondent violated his oath as a lawyer and the CPR when he made it appear that the complaint of Gokioco was verified by See Chua on November 10, 1992.

The verification of the civil case submitted to the trial court states, "SUBSCRIBED AND SWORN TO THIS November 10, 1992, in Tanay, Rizal."⁷ The death certificate submitted by complainant states however that See Chua-Gokioco died on October 7, 1992.

Rule 10.01 of the CPR holds that:

A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the court to be misled by any artifice.

The Notarial Law, as provided for in Title IV, Chapter II, Revised Administrative Code, also states that:

Sec. 245. *Notarial Register* – Every notary public shall keep a register to be known as the notarial register, wherein record shall be made of all his official acts as notary...

⁵ *id.*, p 191

⁶ Rollo, p 185

⁷ *id.*, p 3.

Sec. 246. *Matters to be entered therein.* The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledging the instrument, the witnesses, if any to the signature, the date of execution, oath, or acknowledgement of the instrument, the fees collected by him for his services as notary in connection therewith, and when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in the said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. The notary shall give to each instrument executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument the pages of his register on which the same is recorded. No blank line be left between entries. (Emphasis supplied)

It cannot be stressed enough that notaries public should be truthful in carrying out their functions. They must observe with the highest degree of care the basic requirement in the performance of their duties in order to preserve the confidence of the public in the integrity of the notarial system. Courts, agencies and the public at large must be able to rely upon the acknowledgement executed by notaries public appended to instruments.⁸ Their functions should not be trivialized and they must discharge their powers and duties which are impressed with the public interest, with accuracy and fidelity.⁹ With the eroding faith of the public in the integrity of public documents, this Court will exhort all the more the notaries public to be more circumspect in the discharge of their duties,¹⁰

Indeed, faithful observance and the utmost respect of the legal solemnity of the oath in an acknowledgment or jurat is sacrosanct.¹¹ The act of notarization is invested with substantive public interest such that only those who are qualified or authorized may perform the duties of notaries public.¹²

This responsibility is more pronounced when the notary public is a lawyer. A graver responsibility is placed upon him by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any.¹³ He is mandated to the sacred duties appertaining to his office, such duties, being dictated by public policy and impressed with public interest. Failing in his duties, he must bear the commensurate consequences.¹⁴

Sec. 249 of the Notarial Law provides for grounds for the revocation of the notarial commission, thus:

⁸ Vda. De Rosales vs. Ramos, A.C. No. 5645, July 2, 2002, 383 SCRA 498, 50-505

⁹ Vda. De Bernardo vs. Restauero, A.C. No. 3849, June 25, 2003, 404 SCRA 599.

¹⁰ Follosco vs. Atty. Mateo, A.C. No. 6186, February 3, 2004.

¹¹ *Ibid.*

¹² Vda de Rosales vs. Ramos, A.C. No. 5645, July 2, 2002, 383 SCRA 498, 504-505.

¹³ *Id.* P. 506

¹⁴ Fulgencio vs. Atty. Martin, A.C. No. 3223, May 29, 2003, 403 SCRA 216.

Sec. 249. Grounds for revocation of commission. ---
The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for revocation of his commission:

- (a) The failure of the notary to keep a notarial register,
- (b) **The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law.**
- (c) The failure of the notary to send the copy of the entries to the proper clerk of Court of First Instance within the first ten days of the month next following.
- (d) The failure of the notary to affix to acknowledgements the date of expiration of his commission as required by law.
- (e) The failure of notary to forward his notarial register, when filled, to the proper clerk of court.
- (f) The failure of the notary to make the proper notation regarding cedula certificates.
- (g) The failure of notary to make report, within a reasonable time, to the proper judge of first instance concerning the performance of his duties, as may be required by such judge.
- (h) Any other dereliction or act which shall appear to the judge to constitute good cause for removal. (Emphasis supplied)

While we agree with the observation of the IBP that there was no proof that respondent had any dishonest or selfish motive in notarizing the civil complaint despite the fact that affiant was absent on the date of its alleged notarization, we do not agree however that Atty. Mateo's conduct deserves a mere reprimand.

To exculpate himself, respondent claims that he entered the fact of signing and subscribing of See Chua-Gokioco of the complaint on a later date, that is the date of its actual filing, because he was hoping that the parties, which come from the same family, would amicably settle the issues raised in the complaint.

We are not persuaded. The jurat must truthfully reflect all the information stated therein since the courts and the public rely on such representation. There is also no rule stating that the verification be subscribed and sworn to at exactly the same day as the filing of the complaint. Worth noting also is the fact that respondent did not raise such explanation in his comment before this Court dated February 25, 1994,¹⁵ the earliest opportunity he had to put up such defense, but merely stated the same during the IBP hearing on August 10, 1999.¹⁶

In *Coronado vs. Felongco*,¹⁷ respondent lawyer was found guilty of misconduct and suspended from his commission as notary

¹⁵ Rollo, pp. 13-16.

¹⁶ *Id.*, p. 103

¹⁷ A.C. No. 2611, November 15, 2000, 344 SCRA 565.

public for a period of two months for notarizing a deed, not knowing that the affiant, who went to his office personally and signed the document days before, had already died at the time he notarized said document. The lack of ill intent on his part and the fact that it was his first offense merely mitigated his liability.¹⁸

Based on the foregoing, it is clear that respondent is guilty of misconduct for which he must be suspended.

We note that this is not the first administrative case filed against respondent lawyer concerning his commission as a notary public. In *Follosco vs. Mateo*,¹⁹ promulgated by this Court on February 3, 2004, respondent was suspended from the practice of law for three months and his notarial commission revoked for one year for notarizing documents without the personal appearance of the affiants. The penalty was only reduced to prohibition against his commission as notary public to six months and his period of suspension from the practice of law deemed already served, thru this Court's Resolution on June 9, 2004, based on humanitarian reasons and equity which respondent raised in his motion for reconsideration.

Considering that this is not the first offense committed by respondent in the exercise of his duties as a notary public, we hold that respondent, in the present case, should be suspended from the practice of law for six months and prohibited from being commissioned as a notary public for two years.


WHEREFORE, Atty. Rafael P. Mateo is **SUSPENDED** from the practice of law for six (6) months; his incumbent notarial commission, if any is **REVOKED**; and he is prohibited anew from being commissioned as a notary public for two (2) years, immediately, with a **stern warning** that repetition of the same or similar conduct in the future will be dealt with more severely.

Let a copy of this Resolution be attached to the personal records of Atty. Rafael P. Mateo in the Office of the Bar Confidant and copies thereof be furnished the courts and the Integrated Bar of the Philippines.

SO ORDERED."

Copy of the decision was received by respondent on December 8, 2004, as shown by Registry Return Receipt No. 63397.

31 March 2005.


PRESBITERO J. VELASCO, JR.
Court Administrator

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¹⁸ Id., p. 569.

¹⁹ A.C. No. 6186