



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

OCA CIRCULAR NO. 64-2003

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 DEFENDERS OFFICE AND THE INTEGRATED BAR OF THE PHILIPPINES

SUBJECT: SUSPENSION FROM THE PRACTICE OF LAW OF ATTY. CLETO L. EVANGELISTA, JR.

For the information and guidance of all concerned, quoted hereunder is the decision of the Court's First Division in Administrative Case No. 5957 entitled "Winnie Lucente, et al., vs. Atty. Cleto L. Evangelista, Jr.," dated February 4, 2003, to wit:

"In a sworn letter-complaint dated January 15, 1999 filed with the Integrated Bar of the Philippines (IBP) Commission on Bar Discipline, Winnie C. Lucente and Alicia G. Domingo charged Atty. Cleto L. Evangelista, Jr. with gross misconduct, deceit, malpractice and crimes involving moral turpitude for falsification of public documents.

Complainants alleged that respondent is the son of the late Atty. Cleto Evangelista, who during his lifetime notarized a Deed of Quitclaim executed on May 7, 1998 by Pedro, Juanito, Eufracia, Cresencia, Consuelo, Maria, all surnamed Tan, and one Sabina Mascarenas, in favor of Asuncion T. Yared and Cynthia Yared Estudillo, involving Lot No. 5514 located in Salvacion, Ormoc City; and a Deed of Absolute Sale executed on January 7, 1972 by Wenceslao Magallanes and Apolonia Tan in favor of Salvador Estudillo and Cynthia Yared Estudillo, involving Lot No. 1187-B located in Poblacion, Ormoc City. On January 30, 1990, respondent Atty. Cleto L. Evangelista, Jr. issued certified true copies of the said instruments. On the basis of the certified true copies of the subject deeds, the Register of Deeds of Ormoc City issued on February 2, 1990 Transfer Certificate of Title No. 23889 in favor of Asuncion T. Yared.

Respondent filed a motion to dismiss the complaint interposing *res adjudicata*, arguing that the allegations in the complaint raise the same issues as those in the criminal case for falsification of public documents filed against him before the Ormoc City Prosecution Office, docketed as *I.S. No. 98-178*. He also asserted that Civil Case No. B-1250 filed by complainants, among others, against Asuncion T. Yared, et al., which was pending before the Regional Trial Court, Baybay, Leyte, Branch 14, for *declaration of nullity of the quitclaim and deed of absolute sale covering TCT No. 23889*, raised a prejudicial question in the disbarment proceeding.

Respondent also contended that one Carmen Solidor together with Francisco Aves came to their law office, Evangelista Law Office in Ormoc City, Leyte, and asked him to certify true copies of the subject deeds. He acceded to the request considering that the documents were notarized by his late father as notary public. He alleged that he issued the assailed certification as a partner of the law office.¹

After investigation, the IBP Board of Governors, on April 7, 2000, recommended the reprimand of Atty. Cleto L. Evangelista with stern warning that a repetition of the same would be dealt with more severely. This recommendation was noted by this Court in a Resolution dated July 19, 2000. Dissatisfied, complainants filed the instant petition for review under Rule 45 of the Rules of Court.

In his Comment, respondent alleged that the petition failed to comply with Section 4, Rule 45, Rules of Court considering that (a) the petition did not indicate the correct and true date when petitioner received the IBP Board of Governors' Resolution; (b) petitioners did not attach to the petition certified true copy of said resolution; and (c) the certification against forum-shopping was executed by only one of the petitioners.

Respondent claims that petitioner Alicia Domingo received the Resolution of IBP Board of Governors on May 25, 2000. It appears, however, that, petitioners' counsel received the same Resolution on June 13, 2000. It is the receipt of counsel that the period to appeal is reckoned for purposes of determining the last day for filing of the petition for review.² Therefore, petitioners timely filed this motion for extension of time to file petition for review on June 22, 2000, which was granted. Petitioners, however, failed to attach a certified true

¹ Rollo, pp. 214-217

² *Tubiano v. Razo*, 335 SCRA 531 (2000)

copy of the assailed resolution. Moreover, only petitioner Winnie C. Lucente executed the certification against forum shopping.

In *A-One Feeds, Inc. vs. Court of Appeals*,³ we held:

Litigations should, as much as possible, be decided on the merits and not on technicality. Dismissal of appeals purely on technical grounds is frowned upon, and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice and thereby defeat their very aims. As has been the constant ruling of this Court, every party litigant should be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.⁴

The Rules must be so interpreted and applied as to achieve, not defeat, substantial justice as expeditiously as possible. Procedural rules should be liberally construed in order to promote their object and assist the parties in obtaining just, speedy and inexpensive determination of every action or proceeding. Where the rigid application of the rules would frustrate substantial justice, or bar the vindication of a legitimate grievance, the courts are justified in exempting a particular case from the operation of the rules.⁵

The appeal is impressed with merit. Records disclose that Atty. Cleto L. Evangelista, Jr. admitted having certified true copies of the Deed of Quitclaim executed on May 7, 1977 and the Deed of Absolute Sale executed on January 7, 1972. His late father, Atty. Cleto P. Evangelista, notarized the subject deeds.

Section 245 of the Administrative Code of 1917 reads:

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; and he shall supply a certified copy of such record, or any parts thereof, to any person applying for it and paying the legal fees therefor. x x x.

Sections 246 and 247 of the same Code also require the notary public to forward his notarial register to the Clerk of Court of the Court of First Instance (now Regional Trial Court) of the province or city wherein he exercises his office for safekeeping.

³ 100 SCRA 590 (1980)

⁴ *Ibid.*, at p. 594

⁵ 278 SCRA 610 (1997)

By certifying true copies of the subject deeds, Atty. Cleto L. Evangelista, Jr. engaged in an unlawful and deceitful conduct. He was not the notary public before whom said documents were acknowledged and he was neither the custodian of the original copies thereof. The Records Management and Archives Office, Manila, certified that there was no copy on file of the Deed of Quitclaim notarized by respondent's father.⁶ Rule 1.01 of Canon 1 of the Code of Professional Responsibility and Section 27, Rule 138 of the Rules of Court is broad enough to cover any form of misconduct of a lawyer in his professional and personal capacity.

In this connection, we have consistently held this 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.⁷ 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 the authenticity thereof.⁸ For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.⁹

Contrary to respondent's contentions, the complaint for disbarment does not suffer from serious procedural defects that warrant its outright dismissal. Complainants did not engage in forum shopping as defined in Administrative Circular No. 28-91 when they filed the instant case. Forum shopping applies only to judicial cases or proceedings, not to disbarment proceedings. Moreover, Civil Case No. B-1250 for *declaration of nullity of the quitclaim and deed of absolute sale covering TCT No. 23889* refers to the validity of the documents in question while the disbarment case refers to respondent's having certified true copies of said documents.

Neither does res adjudicata lie against the complainants. Similarly, the doctrine applies only to judicial or quasi-judicial proceedings and not to the exercise of the Court's administrative powers,¹⁰ as in this case. Neither can it be argued

⁶ Rollo, p. 9

⁷ *Nunga v. Viray*, 306 SCRA 487 (1999)

⁸ Sections 19 (b) and 23, Rule 132 of the Rules of Court

⁹ *Maligsa v. Cabanting*, 272 SCRA 408, 413 (1997); *Arrieta v. Llosa*, 282 SCRA 248, 252-253 (1997)

¹⁰ *Dinsay vs. Cioco*, 264 SCRA 703 (1996).

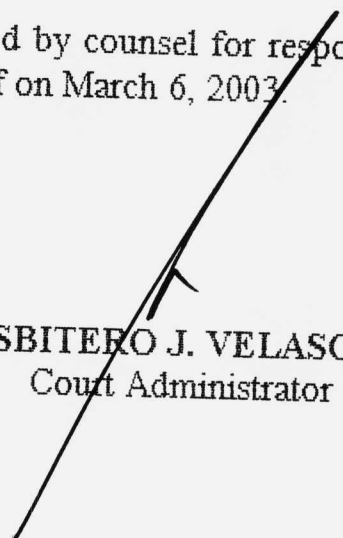
that the instant disbarment case has been adjudicated in the criminal case for falsification of public documents. Respondent was proceeded against as a private individual in said case. In the present disbarment action, Atty. Cleto L. Evangelista, Jr. is sought to be disciplined as a lawyer under the Court's plenary authority over members of the legal profession.

WHEREFORE, respondent Atty. Cleto L. Evangelista, Jr. is found guilty of gross misconduct. Consequently, he is ordered **SUSPENDED** from the practice of law for six (6) months effective immediately, with a warning that another infraction shall be dealt with more severely.

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Copies of this resolution were received by counsel for respondent on February 27, 2003 and by respondent himself on March 6, 2003.

May 29, 2003.


PRESBITERO J. VELASCO, JR.
Court Administrator

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