



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

OCA CIRCULAR NO. 30-2005

**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: INDEFINITE SUSPENSION OF ATTY.
NORBERTO M. MENDOZA FROM THE
PRACTICE OF LAW**

For the information and guidance of all concerned, quoted hereunder is the Decision of the Supreme Court En Banc dated October 19, 2004 in Administrative Case No. 5151 entitled "Pedro G. Tolentino vs. Atty. Norberto M. Mendoza", to wit:

Before us is a complaint filed by Pedro G. Tolentino, Romeo M. Laygo, Solomon M. Lumalang, Sr., Meliton D. Evangelista, Sr., and Nelson B. Melgar against Atty. Norberto M. Mendoza for Grossly Immoral Conduct and Gross Misconduct.

Complainants allege in their Affidavit-Complaint that respondent, a former Municipal Trial Court Judge, abandoned his legal wife, Felicitas V. Valderia in favor of his paramour, Marilyn dela Fuente, who is, in turn, married to one Ramon G. Marcos; respondent and Marilyn dela Fuente have been cohabiting openly and publicly as husband and wife in Brgy. Estrella, Naujan Oriental Mindoro; respondent had fathered two children by this paramour Marilyn dela Fuente; respondent and Marilyn dela Fuente declared in the birth certificates of their two daughters that they were married on May 12, 1986, making it appear that their two children are legitimate, while in respondent's Certificate of Candidacy filed with the COMELEC during the 1995 elections, respondent declared that his wife is Felicitas V. Valderia; in respondent's certificate of candidacy for 1998 elections, declared his civil status as separated; such declarations in the birth certificates of his children and his certificate of candidacy are acts constituting falsification of public documents; and respondent's acts betray his lack of good moral

character and constitute grounds for his removal as a member of the bar.

Respondent filed his Comment wherein he states that complainants, who are his political opponents in Naujan, Oriental Mindoro, are merely filing this case to exact revenge on him for his filing of criminal charges against them; complainants illegally produced copies of the birth certificates of Mara Charmina dela Fuente Mendoza and Myrra Khrisna Normina dela Fuente Mendoza, in violation of Rule 24, Administrative Order No. 1, series of 1993, thus such documents are inadmissible in evidence; respondent did not participate in the preparation and submission with the local civil registry of subject birth certificates; respondent never declared that he had two wives, as he has always declared that he is separated in fact from his wife, Felicitas V. Valderia; and complainants have this issue against him during elections and yet, the people of Naujan, Oriental Mindoro still elected him Mayor, Hence, Respondent has not offended the public's sense of morality.

The administrative case was referred to the Integrated Bar of the Philippines (hereinafter IBP) for investigation, report and recommendation. Thereafter, the Commission on Bar Discipline of the IBP conducted hearings.

Witnesses for complainants, Nelson B. Melgar and Romeo M. Laygo, submitted their affidavit as direct testimony and were subjected to cross-examination by respondent's counsel.

Witness for complainants, Nelson B. Melgar declares in his affidavit as follows: He knows respondent for they reside in Naujan, Oriental Mindoro. Respondent is known as practicing lawyer and former Municipal Trial Court Judge. Respondent has been cohabiting openly and publicly with Marilyn dela Fuente, representing themselves to be husband and wife, and from their cohabiting, they produced two children namely, Mara Khrisna Charmina dela Fuente Mendoza and Myrra Khrisna Normina dela Fuente Mendoza. Sometime in 1995, he (witness Melgar) received a letter from a concerned citizen, informing him that respondent was married to Felicitas Valderia of San Rafael, Bulacan, on January 16, 1980, but respondent abandoned his wife to cohabit with Marilyn dela Fuente. Attached to the letter was a photocopy of a Certification issued by the Civil Register attesting to the marriage between respondent and Felicitas Valderia. He also received information from concerned citizen that Marilyn dela Fuente is also legally married to one Ramon G. Marcos, as evidenced by a Certification from the Office of the Civil Register. Respondent stated in his Certificate of Candidacy filed with the COMELEC in 1995 that he is still legally married to Felicitas Valderia. In respondent's Certificate of Candidacy filed with the COMELEC in 1998, he declared his civil status as separated. Respondent has represented to all that he is married to Marylin dela Fuente, in the *Naujanews*, a local newspaper where respondent holds the position of Chairman of the Board of the

Editorial Staff, respondent was reported by said newspaper as husband to Marylin dela Fuente and the father of Mara Khrisna and Myrra Khrisna Normina.

On cross-examination, witness Melgar testified as follows: He was the former mayor of Naudjan and he and respondent belong to warring political parties. It was not respondent who told him about the alleged immoral conduct subject of the present case. Although he received the letter of a concerned citizen regarding the immoral conduct of respondent as far back as 1995, he did not immediately file a case for disbarment against respondent. It was only after respondent filed a criminal case for falsification against him that he decided to file an administrative case against respondent.¹

On re-direct examination, witness Melgar testified that there were people who were against the open relationship between respondent and Marilyn dela Fuente as respondent had publicly introducing the latter as his wife despite the fact that they are both still legally married to other persons, and so someone unknown to him just handed to their maid copies of the birth certificate of Mara Khrisna Charmina and Myrra Khrisna Normina.²

The affidavit of Mr. Romeo M. Laygo, which was adopted as his direct testimony, is practically identical to that of witness Melgar. On cross-examination, witness Laygo testified that he was not the one who procured the certified true copies of the birth certificates of Mara Khrisna Charmina dela Fuente Mendoza and Myrra Khrisna Normina dela Fuente Mendoza, as somebody just gave said documents to Nelson Melgar. He was municipal councilor in 1995 when the letter of concerned citizen regarding respondent's immorality was sent to Melgar, but he did not take any action against respondent at the time.³

Complainants then formally offered documentary evidence consisting of photocopies which were admitted by respondent's counsel to be faithful reproduction of the originals of certifies true copies thereof, to wit: a letter of one Luis Bermudez informing Nelson Melgar of respondent's immoral acts,⁴ the Certification of the Local Civil Registrar of San Rafael, Bulacan, attesting to the celebration of the marriage between respondent and one Felicitas Valderia,⁵ the Birth Certificate of Mara Khrisna Charmina dela Fuente Mendoza,⁶ the Birth Certificate of Myrra Khrisna Normina dela Fuente Mendoza,⁷ the Certificate of Candidacy of respondent dated March 9, 1995,⁸ the Certificate of Candidacy of respondent dated March 25, 1998,⁹ Certification issued by the Civil Registrar of

¹ TSN of June 10, 2002, pp. 4-14

² *Id.* at pp. 15-16

³ TSN of August 12, 2002, pp. 16-20

⁴ Exhibits "C" to "C-2," Rollo, pp. 34-36

⁵ Exhibit "C-3," Rollo, p. 37.

⁶ Exhibit "D," Rollo, p. 7.

⁷ Exhibit "D-1," Rollo, p. 8.

⁸ Exhibit "E," Rollo, p. 38

⁹ Exhibit "F," Rollo, p. 39.

Naujan, Oriental Mindoro dated October 27, 1998, attesting to the marriage celebrated between Marilyn dela Fuente and Ramon Marcos,¹⁰ and the editorial page of the *Naujannews* (February-March 1999 issue),¹¹ wherein it was stated that respondent has two daughters with his wife, Marilyn dela Fuente.

Respondent, on the other hand, opted not to present any evidence and merely submitted a memorandum expounding on his argument that the testimonies of complainant's witnesses are mere hearsay, thus, said testimonies and their documentary evidence have no probative weight.

On February 27, 2004, the Board of Governors of the IBP passed Resolution No. XVI-2004-123, reading as follows:

RESOLVED to ADOPT and APPROVED, as it is hereby ADOPTED and APPROVED the Report and Recommendation of the Investigating Commissioner of the above-entitled case, herein made part of this Resolution as Annex "A"; and, finding the recommendation fully supported by the evidence on record and applicable laws and rules, and considering respondent's violation of Rule 1.01 of the Code of Professional Responsibility, Atty. Norberto M. Mendoza is hereby **SUSPENDED INDEFINITELY** from the practice of law until he submits satisfactory proof that he is no longer cohabiting with a woman who is not his wife and has abandoned such immoral course of conduct.

Portion of the report and recommendation of the IBP Commission on Bar Discipline, upon which the above-quoted Resolution was based, read as follows:

FINDINGS:

The evidence of complainants to support their charge of immorality consists in a) the testimonies of Nelson Melgar and Romeo Laygo given by way of affidavits executed under oath and affirmed before the Commission and b) their documentary evidence consisting of their Exhibits "A" to "H".

Respondent filed his comment through counsel and did not formally present or offer any evidence. Respondent opted not to present his evidence anymore because according to him "there is none to rebut vis-à-vis the evidence presented by the private complainants." Respondent instead submitted a memorandum through counsel to argue his position. As can be seen from the comment and memorandum submitted, respondent's counsel argues that complaint is politically motivated since complainants are political rivals of respondent and that the birth certificates Exhibits "D-1" which were offered to show that respondent sired the children namely Mara Khrisna Charmina dela Fuente Mendoza and Myrra Khrisna Normina dela Fuente Mendoza out of his cohabiting with

¹⁰ Exhibit "H," Rollo, p. 41.

¹¹ Exhibit "G," Rollo, p. 40.

Marilyn dela Fuente are inadmissible because they were allegedly secured in violation of Administrative Order No. 1, Series of 1993. The rest of the Exhibits are either hearsay or self-serving according to respondent.

The witnesses who are also two of the complainants herein, on the other hand, categorically state in their affidavits [Exhibits "A" and "B"] particularly in paragraph 2 that "Respondent has been cohabiting openly and publicly with Marilyn dela Fuente, representing themselves to be husband and wife." In paragraph 10 of said affidavits the witnesses also categorically state that "respondent has even represented to all and sundry that Marilyn dela Fuente is his wife." These categorical statements made under oath by complainants are not hearsay and remain un-rebutted. Respondent chose not to rebut them.

Exhibit "E," the Certificate of Candidacy executed by respondent shows that respondent is married to one, Felicita V. Valderia. As shown by Exhibit "H", a marriage certificate, Marilyn dela Fuente is married to one, Ramon G. Marcos. Duly certified true copies of said exhibits have been represented by complainants.

With respect to Exhibit "D" and "D-1", we believe that they are competent and relevant evidence and admissible in this proceedings. The exclusionary rule which bars admission of illegally obtained evidence applies more appropriately to evidence obtained as a result of illegal searches and seizures. The instant case cannot be analogous to an illegal search and seizure. A person who violates Rule 24 of Administrative Order No. 1 Series of 1993 as cited by respondent risks the penalty of imprisonment or payment of a fine but it does not make the document so issued inadmissible as evidence specially in proceedings like the present case. Exhibit "D" and "D-1" which are duly certified birth certificates are therefore competent evidence to show paternity of said children by respondent in the absence of any evidence to contrary.

By and large the evidence of complainants consisting of the testimonies of witnesses Nelson Melgar and Romeo Laygo, and corroborated by documentary exhibits will show that indeed respondent has been cohabiting publicly with a certain Marilyn dela Fuente who is not his wife and that out of said cohabitation respondent sired two children. These facts we repeat have not been denied by respondent under oath since he chose to just argue on the basis of the improper motivations and the inadmissibility, hearsay and self-serving nature of the documents presented. Complainants have presented evidence sufficient enough to convince us that indeed respondent has been cohabiting publicly with a person who is not his wife. The evidence taken together will support the fact respondent is not of good moral character. The respondent chose not to deny under oath the grave and serious allegation made against him is to our mind his undoing and his silence has not helped his position before the Commission. As between the document and positive statement of complaints, made under oath and the arguments and comments of respondent submitted

through his lawyer, which were not verified under oath by respondent himself, we are inclined and so give weight to the evidence of complainants. The direct and forthright testimonies and statement of Nelson Melgar and Romeo Laygo that respondent was openly cohabiting with Marilyn dela Fuente is not hearsay. The witnesses may have admitted that respondent Mendoza did not tell them a certain Marilyn dela Fuente was his paramour (for why would respondent admit that to complainants) but the witnesses did state clearly in their affidavit under oath that respondent was cohabiting with Marilyn dela Fuente who is not his wife. Again their categorical statement taken together with the other documents, are enough to convince us and conclude that respondent is not of good moral character.

Members of the Bar have been repeatedly reminded that possession of good moral character is a continuing condition for membership in the Bar in good standing. The continued possession of good moral character is a requisite condition for remaining in the practice of law [*Mortel vs. Aspiras* 100 Phil. 586 (1956); *Cordova vs. Cordova* 179 SCRA 680 (1989); *People vs. Tuanda* 181 SCRA 682 (1990)]. The moral delinquency that affects the fitness of a member of the bar to continue as such includes conduct that outrages the generally accepted moral standards of the community, conduct for instance, which makes "mockery of the inviolable social institution of marriage" [*Mijares vs. Villaluz* 274 SCRA 1 (1997)].

In the instant case respondent has disregarded and made a mockery of the fundamental institution of marriage. Respondent in fact even so stated Exhibit "F" that he is separated from his wife. This fact and statement without any further explanation from respondent only contributes to the blot in his moral character which good moral character we repeat is a continuing condition for a member to remain in good standing. Under Rule 1.01 of the Code of Professional Responsibility, a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. Respondent has violated this rule against engaging in immoral conduct.

We agree, as cited by the respondent, with pronouncement made in *Santos vs. Dischoso*, 84 SCRA 622 (1978) that courts should not be used by private persons particularly disgruntled opponents to vent their rancor on member of the Bar through unjust and unfounded accusations. However, in the instant case the charges can hardly be considered as unfounded or unjust based on the evidence presented. The evidence presented shows that respondent no longer possess (sic) that good moral character necessary as a condition for him to remain a member of the Bar in good standing. He is therefore not entitled to continue to engage in the practice of law.

We find such report and recommendation of the IBP to be fully supported by pleading and evidence on record, hence approve and adopt the same.

The evidence presented by complainants reach that quantum of evidence required in administrative proceedings which is only substantial evidence, or that amount of relevant evidence that reasonable mind might accept as adequate to support a conviction.¹²

Witness Melgar's testimony that respondent had been publicly introducing Marilyn dela Fuente as his wife is corroborated by contents of an article in the *Naujanews*, introducing respondent as one of Naujan's public servants, and stating therein that respondent has been blessed with two beautiful children with his wife, Marilyn dela Fuente.¹³ It should be noted that said publication is under the control of respondent, he being the Chairman of the Board thereof. Thus, it could be reasonably concluded that if he contested the truth of the contents of subject article in the *Naujanews*, or if he did not wish to publicly present Marilyn dela Fuente as his wife, he could have easily ordered that the damning portion of said article to be edited out.

With regard to respondent's argument that the credibility of witnesses for the complainants is tainted by the fact they are motivated by revenge for respondent's filing of criminal cases against them, we opine that even if witnesses Melgar and Laygo are so motivated, the credibility of their testimonies cannot be discounted as they are fully supported and corroborated by documentary evidence which speaks for themselves. The birth certificates of Mara Khrisna Charmina dela Fuente Mendoza and Myrra Khrisna Normina dela Fuente Mendoza born June 16, 1988 and May 22, 1990, respectively, to Norberto M. Mendoza and Marilyn dela Fuente; and Certification from the Office of the Local Registrar of Bulacan attesting to the existence in its records of an entry of a marriage between respondent and one Felicitas Valderia celebrated on January 16, 1980, are public documents and are *prima facie* evidence of the facts contained therein, as provided for under Article 410¹⁴ of the Civil Code of the Philippines.

Respondent mistakenly argues that the birth certificates of Mara Khrisna Charmina dela Fuente Mendoza and Myrra Khrisna Normina dela Fuente Mendoza born on June 16, 1998 and May 22, 1990, respectively, to Norberto M. Mendoza and Marilyn dela Fuente; are inadmissible in evidence for having been obtained in violation of Rule 24, Administrative Order No. 1, series of 1993, which provides as follows:

¹² *Office of the Court Administrator vs. Morante* A.M. No. P-02-1555, April 16, 2004.

¹³ The pertinent portion of the article written in the vernacular is reproduced as follows:

Supagkat ang kanyang hangarin na maglingkod sa bayan ng Naujan ay wagas at dalisay kung kaya't siya as pinalad na manalo bilang pumumbayan noong halalan ng 1998.

Si mayor Bert Mendoza ay naninirahan sa Barangay Estrella at biniyayaan ng dalawang magagandang anak na sina Cham-Cham at Chin-Chin sa kaniyang may-bahay na si Marilyn dela Fuente.

¹⁴ Art 410. The books making up the civil register and all documents relating thereto shall be considered public documents and shall be *prima facie* evidence of the facts therein contained.

Rule 24. Non-Disclosure of Birth Records.-

(1) The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

a. the concerned person himself, or any person authorized by him

b. the court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth;

c. in case of the person's death, the nearest of kin.

(2) Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding five hundred pesos, or both in the discretion of the court. (Article 7. P.D. 603)

Section 3, Rule 128 of the Revised Rules on Evidence provides that "evidence is admissible when it is relevant to the issue and is not excluded by the law or these rules." There could be no dispute that the subject birth certificates are relevant to the issue. The only question, therefore, is whether the law or the rules provide for the inadmissibility of said birth certificates allegedly for having been obtained in violation of Rule 24, Administrative Order No. 1, series of 1993.

Note that Rule 24, Administrative Order No. 1, series of 1993 only provides for sanctions against persons violating the rule on confidentiality of birth records, but nowhere does it state that procurement of birth records in violation of said rule would render said records inadmissible in evidence. On the other hand, the Revised Rules of Evidence only provides for the exclusion of evidence if it is obtained as a result of illegal searches and seizures. It should be emphasized, however, that said rule against unreasonable searches and seizures is meant only to protect a person from interference by the government or the state.¹⁵ In the *People vs. Hipol*,¹⁶ we explained that:

The Constitutional proscription enshrined in the Bill of Rights does not concern itself with the relation between a private individual and the State and its agents. The Bill of Rights only tempers governmental power and protects the individual against any aggression and unwarranted interference by any department of government and its agencies. Accordingly, it cannot be extended to the acts complained of in this case. The alleged "warrantless search" made by Roque, a co-employee of appellant at the treasurer's office, can hardly fall within the ambit of the constitutional proscription on unwarranted searches and seizures.

¹⁵ *Villámueva vs. Querubin*, 48 SCRA 345, 350 (1972).

¹⁶ 407 SCRA 179, 185 (2003)

Consequently, in this case where complainants, as private individuals, obtained the subject birth records as evidence against respondent, the protection against unreasonable searches and seizures does not apply.

Since both Rule 24, Administrative Order No. 1, series of 1993 and the Revised Rules on Evidence do not provide for the exclusion from evidence of birth certificates in question, said public documents are, therefore, admissible and should be properly taken into consideration in the resolution of this administrative case against respondent.

Verily, the facts stated in the birth certificates of Mara Khrisna Charmina dela Fuente Mendoza and Myrra Khrisna Normina dela Fuente Mendoza and respondent's Certificate of Candidacy dated March 9, 1995 wherein respondent himself declared he was married to Felicitas Valderia, were never denied nor rebutted by respondent. Hence, said public documents sufficiently prove that he fathered two children by Marilyn dela Fuente despite the fact that he was still legally married to Felicitas Valderia at the time.

In Bar Matter No. 1154,¹⁷ good moral character was defined thus:

good moral character is what a person really is, as distinguish from good reputation or from the opinion generally entertained of him, the same estimate in which he is held by the public in the place where he is known. Moral character is not a subjective term but one which correspond to objective reality. The standard of personal and professional integrity is not satisfied by such conduct as it merely enables a person to escape the penalty of criminal law.

In *Zaguirre vs. Castillo*,¹⁸ we reiterated the definition of immoral conduct, to wit:

that conduct which is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable member of the community. Furthermore, such conduct must not only be immoral, but grossly immoral. That is, it must be so corrupt as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.

In the above-quoted case, we pointed out that a member of the Bar and officer of the court is not only required to refrain from adulterous relationship or the keeping of mistresses but must also behave himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards and, thus, ruled that

¹⁷ *In The Matter Of The Disqualification Of Bar Examinee Haron S. Meling In The 2002 Bar Examinations And For Disciplinary Action As Member Of The Philippine Shari'a Bar*, June 8, 2004

¹⁸ 398 SCRA 658, 662 (2003), citing *Narag vs. Narag*, 291 SCRA 451, 464 (1998).

siring a child with a woman other than his wife is a conduct way below the standards of morality required of every lawyer.¹⁹

We must rule in the same wise in this case before us. The fact that respondent continues to publicly and openly cohabit with a woman who is not his legal wife, thus, siring children by her, shows his lack of good moral character. Respondent should keep in mind that the requirement of good moral character is not only a condition precedent to admission to the Philippine Bar but is also a continuing requirement to maintain one's good standing in the legal profession.²⁰ In *Aldovino vs. Pujalte, Jr.*,²¹ we emphasized that:

This Court has been exacting in its demand for integrity and good moral character of members of the Bar. They are expected at all times to uphold the integrity and dignity of the legal profession and refrain from any act or omission which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession. Membership in the legal profession is a privilege. And whenever it is made to appear that an attorney is no longer worthy of the trust and confidence of the public, it becomes not only the right but also the duty of this Court, which made him one of its officers and gave him the privilege of ministering within its Bar, to withdraw then privilege.

WHEREFORE, respondent Atty. Norberto M. Mendoza is hereby found **GUILTY** of immorality, in violation of Rule 1.01 of the Code of Professional Responsibility. He is **SUSPENDED INDEFINITELY** from the practice of law until he submits satisfactory proof that he has abandoned his immoral course of conduct.

Let copy of this resolution be served personally on respondent at this last known address and entered in his record as attorney. Let the IBP, the Bar Confidant, and the Court Administrator be furnished also a copy of this resolution for their information and guidance as well as for circularization to all courts in the country.

SO ORDERED.”

Counsel for respondent received a copy of the resolution on 17 November 2004 as shown by Registry Return Receipt No. 55535 and respondent did not file any motion for reconsideration.

35 April 2005.

PRESBITERO J. VELASCO, JR.
Court Administrator

TCB/Isd/Circular2005/ atty.mendozasusp.

¹⁹ *Id.* at p. 663.

²⁰ In Re: Suspension From The Practice Of Law In The Territory Of Guam Of Atty. Leon G. Maquera, Bar Matter No. 793, July 30, 2004.

²¹ A.C. No. 5082, February 17, 2004