

SECOND DIVISION

[A.C. No. 4179, November 11, 2004]

**ALICE GOKIOCO, COMPLAINANT, VS. ATTY. RAFAEL P. MATEO,
RESPONDENT.**

R E S O L U T I O N

AUSTRIA-MARTINEZ, J.:

Before this Court is a complaint filed by Alice Gokioco against Atty. Rafael P. Mateo for falsification of a 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 complaint 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 the 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 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 had 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 the 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 the 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 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 the 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 the 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]

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:

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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]