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## LEGAL ASPECTS OF CIVIL REGISTRATION IN THE PHILIPPINES

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## FOREWORD

How the lives of individual citizens are affected by the civil registration system is well documented by the three prominent Philippine attorneys who wrote the articles included in this Technical Paper. One of these attorneys, Rene L. Cayetano, was recently appointed by President Ramos as Chief Presidential Legal Counsel.

These papers were originally presented at the 3rd National Convention on Civil Registration held in Cebu City, Philippines, April 4-7, 1995 and sponsored by the Office of the Civil Registrar General, National Statistics Office.

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# IMPORTANCE OF CIVIL REGISTRY DOCUMENTS IN JUDICIAL PROCESSES<sup>1</sup>

by  
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## I. INTRODUCTION

This is a presentation of a student rather than an authority on the subject. It is a sincere and determined attempt to share the limited knowledge of the writer acquired through research on borrowed time and little experience regarding the designated topic entitled *Importance of Civil Registry Documents in Judicial Processes*. The overall objective of the presentation is, therefore, to share and at the same time learn from each other through a free exchange of insights and information. For this reason, a more comprehensive paper may subsequently be necessary.

## II. DEFINITION OF TERMS

To start right and to be on the same channel of communication a definition of terms is called for. These are terms that will be used and mentioned in this presentation particularly the following:

1. **Civil Registry** - the official record of all acts of civil life affecting the status of persons residing in a community or a country (the Philippines);
2. **Judicial Process** - the means by which the purposes of the law may be applied and executed as between private litigants or as between the State and an accused. This is part of the legal system contrasting with administrative process and covers all acts of the court from the beginning of an action or proceeding to the end (*Blair vs. Max Bass Secur. Bank* 44 N.D. 12, 176). In a more narrow sense, judicial process is the means of enforcing and carrying out the judgment of the court. Obviously, it is in the broad sense that this terms will be used in our discussion;
3. **Civil Registry Documents** - the certificates, application forms and certified true copies of legal instruments and court decrees concerning the acts and events affecting the civil status of persons which are presented before the Civil Registrar and are recorded in the Civil Register;
4. **Civil Status** - the state or condition of affairs of citizens or persons residing in a country. The principal elements that characterizes a person are: (a) their nationality; (b) their filiation which unites them to their parents and through them to a given family name; and (c) the different facts showing the beginning and the end of their civil personality and any modification thereof particularly birth, recognition, legitimation, adoption, marriage, legal separation and death (Prel. Statement Adm. Order No. 1 Series of 1993, NSO);

5. **Persons** - as used in the foregoing terms herein defined refers only to a natural human being or natural persons which comes into existence by birth as distinguished from juridical or artificial persons which come into existence and are created by operation of law;

6. **Civil Registry Books** - the books maintained, kept and preserved in a secured place by every Civil Registrar, where he shall properly enter the acts, events, legal instruments and judicial decrees concerning the civil status of persons. These books are: (a) Register of Births; (b) Register of Foundlings; (c) Register of Deaths; (d) Register of Marriages; (e) Register of Court Decrees/Orders; (f) Register of Legal Instruments; (g) Register of Applications for Marriage License. Also to be maintained by the Civil Registrar General only is the Register of the Solemnizing Officers issued with Certificate of Registration of Authority to Solemnize Marriage in accordance with Art. 7(2) of the Family Code (Rule 7 Adm. Ord. No. 1 Series of 1993)

## III. CIVIL-REGISTRY DOCUMENTS: KINDS OF

Specifically, the documents which should be registered in the various Civil Registry Books above enumerated are as follows:

### **A. Accomplished Certificates or Civil Registration Forms**

1. **Certificate of Live Birth** - the certificate accomplished by and upon the declaration of physician or midwife or in default thereof either parent of the newborn child which is registered in the Register of Births; containing the date and hour of birth, sex and nationality of the infant, names, citizenship and religion of parents, place where the infant was born and such other data as may be required;
2. **Certificate of Foundling** - or the certificate concerning a deserted or abandoned infant or a child found with parents, guardian, or relatives being unknown or a child committed in an orphanage or charitable or similar institution with unknown facts of birth and parentage which is recorded in the Register of Foundlings;
3. **Certificate of Death** - issued by the attending physician or in default thereof by the Mayor, Secretary of the Sangguniang Bayan or a councilor of the municipality where the death occurred which is registered in the Register of

<sup>1</sup> Presented during the 3rd National Convention on Civil Registration, Cebu Trade Hall, Cebu City, April 4-7, 1995.

Deaths, containing the date and place of death, full name, age, sex, occupation, profession, residence and status as regards marriage, nationality of the deceased and probable cause of death;

4. **Certificate of Fetal Death** - a certificate concerning any fetus having human features which dies after twenty-four (24) hours of existence completely disengaged from the maternal womb; also recorded in the Register of Deaths;

5. **Certificate of Marriage** - a certificate containing the full name and address of each of the contracting party their ages, date of the marriage, the names and addresses of the witnesses, the full name, address and relationship of the minor contracting parties or party of the person or persons who gave the consent to the marriage and the full name, title and address of the solemnizing officer signed, by the authorized solemnizing officer and registered in the Register of Marriages;

6. **Application for Marriage License** - jointly accomplished and filed by both parties and registered in the Register of Applications for Marriage License;

**B. Court decrees/orders recorded in the Register of Court Decrees/Orders are as follows:**

1. **Decree of Adoption** or the judicial decree issued by a Court of Competent Jurisdiction in a proceeding in rem in which the child's legal rights and duties toward his natural parents are terminated and similar rights and duties towards his adoptive parents are substituted;

2. **Judicial Rescission of Adoption** is the decree extinguishing all reciprocal rights and obligations between adopter and adopted arising from relationship of parent and child on the ground that the adopted has committed any act of disinheritance or has abandoned the home of the adopters during minority for at least one year or by some other acts has definitely repudiated the adoption;

3. **Annulment of validly celebrated marriage** or the court decision declaring the severance of the marriage bond suffering certain legal defect or defects such as lack of valid consent of one, or both parties, lack of the required parental consent of one or both parties, physical incapacity, incurable and serious sexually transmissible disease;

4. **Declaration of Nullity of Marriage** which is the court decision declaring that the marriage is void and in-existent from the time of performance due to vital legal defects that cannot be ratified;

5. **Decree of Legal Separation** or the decision ordering the separation of the husband from his wife and their properties without severing the marriage ties;

6. **Order** terminating the legal separation proceedings or setting aside decree in case of reconciliation of the spouses;

7. **Change of Name** which is the court decision authorizing the change of name of a person upon showing of proper or reasonable cause or compelling reason justifying such change like changing the status of illegitimate child, or avoiding confusion, and others;

8. **Correction of Entry** which is a judicial order correcting or changing an entry in the Civil Register concerning the civil status of persons through a summary proceedings if the change involve clerical mistake or through adversarial proceedings if the correction involves substantial errors (Rep. vs. Sayo 188 SCRA 634);

9. **Civil Interdiction** - an accessory penalty imposed by the Court on a person convicted of a crime depriving him during the time of his sentence of the rights to parental authority or guardianship either as to person or property of any ward, of marital authority to manage or dispose of his property by any act or any conveyance;

10. **Declaration of Presumptive Death** is a judicial declaration after a summary proceeding of the presumptive death of a spouse who had been absent for four (4) years, or two (2) years in case of disappearance where there is danger of death under a well-founded belief that said absent spouse is already dead so that the present spouse can contract a subsequent marriage (Art. 41 Family Code);

11. **Judicial Determination of Reappearance** is the final order of the court on the fact and circumstances of reappearance of an absentee spouse who was previously declared as presumptively dead in case such reappearance is disputed (Art. 42 Family Code);

12. **Judicial Declaration of Absence** or the declaration by the Court that a person is absent for purposes of determining who will administer his or her property two (2) years having lapsed without any news about him or her or five (5) year in case he/she has left a person in charge of the administration of his property (Art. 389 Civil Code and Sec. 2, Rule 7 Revised Rules of Court);

13. **Compulsory Recognition of Illegitimate Child** - the court decree whereby the father or the mother is compelled to recognize a child as a natural child in cases provided by law (Arts. 283 & 284 Civil Code);

14. **Judicial Approval of Voluntary Recognition** is the judgment granting the necessary judicial approval of recognition of a minor natural child willingly and voluntarily made by the parent or parents concerned when such recognition does not take place in a record of birth or in a will (Art. 281 Civil Code);

15. **Appointment of Guardian** is the court decree appointing a general guardian for the person or estate or both, of a minor or incompetent who has no parent or lawful guardian (Rule 93 Rules of Court);

16. **Termination of Guardianship** is the final order or judgment terminating the appointment of a guardian who becomes insane or otherwise incapable of discharging his trust or unsuitable therefor or has wasted or mismanaged the estate or failed for thirty (30) days after it is due to render an account or when the ward has been declared incompetent (Rule 97 Secs. 1 & 2 Rules of Court);

17. **Judicial Determination of Filiation** is the determination in a judicial proceedings of the status of the legitimate or illegitimate child in relation to the father or mother;

18. **Naturalization Certificate** - the certificate issued by a court to a foreigner who is granted citizenship after proper hearing and determination that such foreigner has all the qualification and none of the disqualification specified by law (Sec. 10 CA 473) and has complied with all the requisites established;

19. **Cancellation of Naturalization Certificate** - the order to the court cancelling the naturalization certificate previously issued and registered in the Civil Register to a naturalized Filipino citizen who may be found to have violated the provisions of CA 473;

20. **Emancipation of Orphaned Minor** - the court approval of the agreement between an orphaned minor and the person exercising parental authority over him involving the entire surrender of the right to the care, custody and earnings of said minor as well as renunciation of parental duties.

**C. Legal instruments recorded in the Register of Legal Instruments as follows:**

1. **Affidavit of Reappearance** of the absent spouse who was previously declared by court as presumptively dead;

2. **Affidavit of Acknowledgment** of an illegitimate child by both parents or by the mother alone if the father refuses or **Affidavit of Admission of Paternity** executed by the father alone under the Family Code in case acknowledgment is not done in the Birth Certificate;

3. **Acquisition of Citizenship** or a sworn statement of an individual containing the fact of her acquisition of Philippine citizenship by means other than naturalization, election of Philippine citizenship or repatriation;

4. **Parental Authorization of Ratification of Artificial Insemination** or the written instrument executed and signed by the husband and the wife before the birth of the child who was conceived as a result of artificial

insemination of the wife with the sperm of the husband or that of a donor or both;

5. **Certificate of Legal Capacity to Contract Marriage** as required by Art. 21 of the Family Code when either or both of the contracting parties are citizens of a foreign country.

6. **Affidavit of Legitimation** or the joint sworn statement of the parents of the illegitimate child where they declare the fact of their not being disqualified to marry each other at the time when the child was conceived and the fact that they subsequently married each other after the child was born;

7. **Option to Elect Philippine Citizenship** or the statement signed and sworn to by those who were born before January 17, 1973 of Filipino mothers and of alien fathers choosing or electing Philippine citizenship upon reaching the age of majority;

8. **Partition and Distribution of Properties** of the spouses and delivery of the children's presumptive legitime;

9. **Marriage Settlement** or the contract entered into by a man and a woman who intend or plan to get married or any modification thereof signed by the parties and executed before the celebration of the marriage fixing the property regime that will govern their present and future properties during the marriage;

10. **Waiver of Rights, Interest, Share and Effects of the Absolute Community of Property** or the public instrument executed by either spouse expressing voluntarily relinquishment of his or her rights, interest, share and effects of the absolute continuity of property after a judicial separation takes place or after the marriage has been dissolved or annulled;

11. **Voluntary Emancipation of a Minor** which is an irrevocable agreement in a public instrument executed by the parents exercising parental authority and the minor at least eighteen (18) years of age involving the entire surrender of the right to care, custody and earnings of the minor as well as a renunciation of parental duties;

12. **Repatriation document** or the sworn statement of an individual who previously lost or renounced his or her Philippine citizenship and is now expressing his or her intention to regain Philippine citizenship and his willingness to renounce allegiance to his present citizenship.

**IV. USES OF CIVIL REGISTRY DOCUMENTS**

The civil registry documents have a plenitude of uses in every phase of a person's life from the moment civil personality starts upon birth until it is extinguished by death.

Pursuant to our topic, this discussion is narrowed down to and concentrated on the utilization of these documents in judicial proceedings involving actions or suits filed in court, whether civil or criminal.

#### **A. Civil Cases**

Since these documents pertain to the civil status of persons, they are material and useful in cases where such civil status may be involved or is the subject of the judicial inquiry. Generally, it can be safely stated that the different civil registry documents are important and useful in civil actions or special proceedings connected with marriage, legal separation, rights and obligations between husband and wife, property relations between husband and wife, family relation, adoption, support, parental authority, succession and even in some extra-contractual obligations like liabilities for quasi-delicts.

Specifically and by way of illustration only, the following civil suits or special proceedings require the corresponding civil registry documents, as follows:

1. In action for declaration of nullity of marriage, the following are necessary: the birth certificates of either or both contracting parties to establish the required marrying age or the lack of it; the authority of the solemnizing officer as well as the application for marriage license to establish presence or lack of formal requisites. So too in bigamous marriages where the first marriage certificate is essential to declare the nullity of the second marriage;

2. In actions for annulment of marriages, the best proof of the marriage to be annulled is the marriage certificate;

3. In actions for legal separation custody and support the marriage certificate is necessary to prove husband-wife relationship and the birth certificate is required to prove filiation. The court decree of compulsory recognition, judicial approval of voluntary recognition, affidavit of acknowledgment, affidavit of legitimation and decree of adoption may also be used in actions for support;

4. In actions between husband and wife involving administration, enjoyment or disposition of community property, the marriage certificate may be necessary to establish properties acquired during the marriage and belonging to the community. So too are actions enforceable against the community property.

5. In action for recognition and support filed by the child, the record of birth appearing in the Civil Registry primarily establishes the filiation of legitimate or illegitimate children. Affidavit of acknowledgment or legitimation are also utilized;

6. In cases of adoption, the age of the adopted and the adopter is necessary not only to determine who can be adopted or who can adopt but also to determine whose

written consent is necessary to make the adoption valid (Arts. 183 and 188 Family Code). So the birth certificate or the record of birth in the Civil Registry is necessary and important;

7. In legal or intestate succession, the right to inheritance is based on the relationship by or consanguinity or affinity so the civil registry documents establishing the marriage and blood relationship as well as the death of the decedent are vital and important;

8. In case of substitute or special parental authority of foundlings, abandoned, neglected or abused child given in a summary proceedings to heads of orphanage or other charitable institutions, the certificate of foundling is important;

9. In actions for damages arising from tort or quasi-delicts, the birth certificate is necessary to establish liability of parents;

10. Other civil proceedings requiring use of civil registry documents are Petitions for Guardianship, Naturalization, Change or Correction of Entry in the Civil Register.

#### **B. Criminal Cases**

In certain criminal prosecutions, the civil registry documents may also be used as evidence. These criminal proceedings refers especially to crimes against persons, crimes against personal liberty, crimes against chastity and crimes against civil status of persons like:

1. Parricide in which a person kills his father, mother, child, whether legal or illegitimate, or any of his ascendants or descendants or his spouse (Art. 246 RPC). The relationship between the victim and the offender is what qualifies the killing as parricide and this relationship is established by the pertinent civil registry documents;

2. In Art. 247 of the Revised Penal Code, any legally married person who having surprised his spouse in the act of committing sexual intercourse shall kill any or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury shall be penalized only with destierro, or if the physical injury is not serious, shall be exempt from punishment. This also applies to parents with respect to their daughter under eighteen years and their seducer while the daughters are living with their parents. Here the proof of relationship between the victim and the offender is vital and such proof is supplied by the civil registry documents such as the marriage certificate or birth certificate;

3. In infanticide and abortion (Arts. 255 & 258 RPC), relationship of the victim to the offender is likewise material in the imposition of penalties. The penalty is reduced if infanticide or killing a child less than three (3) days of

age is committed by the mother to conceal dishonor or by the maternal grandparents or any of them, so the birth certificate is necessary to establish such relationship;

4. In kidnapping of minors, inducing a minor to abandon his home, or exploitation of child labor (Arts. 270, 271 & 278 RPC), abandoning a minor, exploitation of minor (Arts. 276 & 278 RPC), the age of the victim which is established by the birth certificate is an essential element;

5. In adultery or concubinage, husband-wife relationship is an essential element of the crime and this is established by the marriage certificate;

6. One of the ways of committing rape is having sexual intercourse with a woman under twelve (12) years of age, so the birth certificate is necessary to establish the age;

7. In crimes of seduction, qualified or simple (Arts. 337 & 378 RPC), the age of the offended party should be over twelve (12) but under eighteen (18) years and this is best established again by the birth certificate. So is this true in the case of consented abduction where the abducted should be over 12 and under 18 years of age (Art. 343 RPC);

8. In simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child with intent to cause such child to lose its civil status (Art. 374 RPC), the civil registry document and the civil registry book play an important role;

9. In bigamy (Art. 349 RPC), it is essential that the offender is legally married or at least the marriage is voidable and has not been legally dissolved or that the presumption of death is not yet applicable, so the marriage certificate, both of the first and second marriages, the judicial declaration of presumptive death or the decree of annulment of marriage are useful documents for either prosecution or defense;

10. In premature marriages (Art. 351 RPC) of a widow marrying within 301 days from the date of death of her husband, the death certificate and the marriage certificate of the second marriage are important in establishing the crime.

Since the civil registry documents are considered public documents, they can also be used in the prosecution of crimes not against the person but against the document itself particularly crimes against public interest like falsifications committed under Article 172 in relation to Article 171 of the Revised Penal Code. The civil registry document falsified will, therefore, be used as evidence.

## V. PROBATIVE VALUE OF CIVIL REGISTRY DOCUMENTS

### **A. *Prima Facie* Primary Evidence**

According to the Civil Code (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. *Prima facie* evidence is evidence which on its face is presumed to be true and correct until the presumption has been overcome by evidence which clearly rebuts or contradicts it.

Furthermore pursuant to Rules of Court, while the original of the writing is supposed to be the best evidence of the contents thereof, a certified copy of the civil registry document will suffice as the best evidence of its contents in lieu of the original considering that the original has been recorded in an existing record (Rule 130 Sec. 2[d]).

### **B. Requirements**

As can be clearly perceived from the Civil code provision, the documents must be registered in the pertinent civil registry books to qualify as *prima facie* evidence. Registration endows the document with that high probative value because in the registration, the registrar sees to it that: (a) the appropriate form is used; (b) the form is properly and completely filled up; (c) the entries are correct; and (d) proper attachments are submitted. In case the entries are found incomplete or incorrect the civil registrar shall require the person concerned to fill up the document completely or to correct the entries, as the case may be (Rule 9 NSO Adm. Ord. #1, Series of 1993).

It would appear however, that the registration of the document in the Civil Registry Books does not operate as constructive notice to all persons similar to the effect of registration of instruments affecting registered lands in the Register of Deeds.

In the case of *Sermonia vs. Court of Appeals* (233 SCRA 155), the accused who was charged bigamy asked the Court to dismiss the case because the second marriage contract was duly registered with the Office of the Civil Registrar in 1975, while the corresponding information for bigamy was filed only in 1992 which is beyond the 15-year prescriptive period. The accused contended that from the time of registration in the Civil Registry of the second marriage in 1975, the offended party already had constructive notice of the said second marriage so that prescriptive period started to run from then on. In rejecting this contention, the Supreme Court said: "*To compute the prescriptive period for the offense of bigamy from registration thereof would amount to almost absolving the of-*

*fenders thereof for liability therefor. While the celebration of the bigamous marriage may be said to be open and made of public record by its registration, the offender however is not truthful as he conceals from the officiating authority and those concerned the existence of his previous subsisting marriage. He does not reveal to them that he is still a married person. He likewise conceals from his legitimate spouse his bigamous marriage. And for these, he contracts the bigamous marriage in a place where he is not known to be still a married person. And such a place may be anywhere, under which circumstance, the discovery of the bigamous marriage is rendered quite difficult and would take time. It is therefore reasonable that the prescriptive period for the crime of bigamy should be counted only from the day on which the said crime was discovered by the offended party, the authorities or their agency (sic)."*

It also goes without saying that by its very nature of being a *prima facie* evidence, the contents of the civil registry documents must not be false. If the contents are found to be false, then the document loses its probative value. Thus, in one case (Crisolo vs. Macadaeg, 94 Phil. 862) involving a birth certificate, the document filed with the Local Civil Registrar of Iloilo and signed by the midwife as informant states that Maria Erlinda had been born in Iloilo on February 5, 1945, the legitimate daughter of Marieta and Pedro. This was used by the mother in asking for support from Pedro. It would have been *prima facie* evidence that Maria Erlinda was the legitimate daughter under Art. 410 of the Civil Code. In her complaint however, Marieta alleged that Maria Erlinda was not a legitimate daughter but the natural daughter of Pedro. Having alleged and admitted this, the Supreme Court declared that Marieta herself *"completely destroyed the certificate's worth as evidence"*.

Besides, the Supreme Court further, declared that the said certificate cannot even be used as proof of bastard father

and child relationship between Pedro and Maria Erlinda. Because according to the Supreme Court, if the information given had been that Maria Erlinda was an illegitimate daughter, the certificate would not have been recorded because Sec. 5 of Act 3753 provides that *"in case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only by the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child or to give therein any information by which the father could be identified."*

So according to the Supreme Court, *to give the document probative value in court would be to approve evasion or circumvention of the above indicated requirement, not to mention the violation of the specific prohibition against the revelation on the certificate of the name of the father without his consent.*

To recapitulate, therefore, civil registry documents have probative value as *prima facie* evidence provided: (1) they are duly registered in the civil registry books; (2) they are completely and correctly accomplished pursuant to the requirements of Act No. 3753; (3) they do not contain false entries or information.

## VI. CONCLUSION

There is no doubt that Civil Registry Documents are important in judicial processes. They are considered as public documents and *prima facie* evidence of the facts contained therein. They are valuable aids not only in expediting the tedious proceedings of evidence presentation but also necessary and useful tools in the quest for truth and justice. The integrity of these documents must be maintained so that their great probative value can at all times be preserved. And this is the primary duty of all the Local Civil Registrars and the civil registry personnel.

# A BRIEF ESSAY ON CORRECTION OF CIVIL ENTRIES<sup>2</sup>

by  
Atty. Rene L. Cayetano<sup>3</sup>

## I. Introduction

One would think that with seemingly clear and unambiguous provisions of the various laws on entries of certain events in the civil registrar offices, registration of these events will be a cake walk. But this is not the case as no less than the three (3) divisions of the Supreme Court have, on various occasions have given out decisions that appear contradictory. This uncertain state of our law on entries and/or correction of entries has prevailed for several years.

Reduce to its simplest terms, the controversies about entries of certain events in the civil registry office concern the issue of whether the entry sought to be recorded (or corrected) is either *clerical* (i.e. harmless or innocuous) or *substantial* (i.e. involving matters that require full blown litigation). Specifically, the continuing issue revolves around the "*appropriate civil proceeding*" required in case of substantial entries or correction of entries. With respect to the so-called clerical errors, it is pretty well settled that the nature of proceeding is "*summary*" under Rule 108 of the Rules of Court.

In the recent case of *Zapanta vs. Civil Registrar of the City of Davao*, (infra), the Supreme Court ruled that Rule 108 is the "*appropriate proceeding*" with respect to substantial errors. Hopefully, any doubt as the proper and appropriate proceeding has been finally laid to rest.

## II. Relevant Laws

A. Act No. 3753 entitled the "Civil Registry Law"

B. Civil Code of the Philippines

1) Article 407

Acts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register.

2) Article 408

The following shall be entered in the civil register:

(1) Births; (2) marriages; (3) deaths; (4) legal separations; (5) annulments of marriage; (6) judgments declaring marriages void from the beginning; (7) legitimations; (8) adoptions; (9) acknowledgments of natural children; (10) naturalization; (11) loss, or (12) recovery of citizenship; (13) civil interdiction; (14) judicial determination of filia-

tion; (15) voluntary emancipation of a minor; and (16) changes of names.

3) Article 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.

4) Article 411

Every civil registrar shall be civilly responsible for any authorized alteration made in any civil register, to any person suffering damage thereby. However, the civil registrar may exempt himself from such liabilities if he proves that he has taken every reasonable precaution to prevent unlawful alteration.

5) Article 412

No entry in a civil register shall be changed or corrected, without a judicial order.

D. Rule 108, Rules of Court

Sec. 1. *Who may file petition.* - Any person interested in any act event order or decree concerning the civil status of persons which has been recorded in the civil register, may file a verified petition for the cancellation or correction of any entry relating thereto, with the Court of First Instance of the province where the corresponding civil registry is located.

Sec. 2. *Entries subject to cancellation or correction.* - Upon good and valid grounds, the following entries in the civil register may be cancelled or corrected: (a) births; (b) marriages; (c) deaths; (d) legal separations; (e) judgments of annulments of marriage; (f) judgements declaring marriages void from the beginning; (g) legitimations; (h) adoptions; (i) acknowledgments of natural children; (j) naturalization; (k) election, loss, recovery of citizenship; (l) civil interdiction; (m) judicial determination of filiation; (n) voluntary emancipation of a minor; and (o) changes of name.

<sup>1</sup> Presented during the 3rd National Convention on Civil Registration, Cebu Trade Hall, Cebu City.

<sup>2</sup> Founding partner of PECABAR Law Offices; Radio host of "*Companero y Companera*"; Newspaper columnist (Manila Standard & People's Tonight). (Assisted by Atty. Emelyn Corpus Martinez of PECABAR Law Offices.)

Sec. 3. *Parties.* When cancellation or correction of an entry in the civil register is sought, the civil registrar and all persons who have or claim any interest which would be affected thereby shall be made parties to the proceeding.

Sec. 4. *Notice and publication.* - Upon the filing of the petition, the court shall, by an order, fix the time and place for the hearing of the same, and cause the reasonable notice thereof to be given to the persons names in the petition. The court shall also cause the order to be published once a week for three (3) consecutive weeks in a newspaper of general circulations in the province.

Sec. 5. *Opposition.* - The civil registrar and any person having or claiming any interest under the entry whose cancellation or correction is sought may, within fifteen (15) days from notice of the petition, or from the last date of publication of such notice, file his opposition thereto.

Sec. 6. *Expediting proceedings.* - The court in which the proceedings is brought may make orders expediting the proceedings, and may also grant preliminary injunction for the preservation of the rights of the parties pending such proceedings.

Sec. 7. *Order.*-After hearing, the court may either dismiss the petition or issue an order granting the cancellation or correction prayed for. In either case, a certified copy of the judgment shall be served upon the civil registrar concerned who shall annotate the same in his record.

E. RULE 58, OCRG Administrative Order No. 1 (Implementing Rules and Regulations of Act 3753 and Other laws on Civil Registration)

Rule 58. Correction of Entry. - (1) No entry in the civil register shall be changed or corrected without judicial order.

(2) The correction of clerical error of a harmless and innocuous nature shall be made only upon the order of competent court, example, a) name which is clearly misspelled; b) occupation of parents; c) insertion of additional name; and, any other entries.

(3) The entry appearing in the register shall remain and the corrected entry shall be indicated in the remarks column of the register.

(4) When the interested party requests a copy of his/her record, a certified true copy or a certified transcription bearing the annotation, "*Correction of Entry*" giving reference to the entry number in the Register of Court Decrees shall be issued. The certified transcription to be issued shall bear the correction as ordered by the court.

### III. *Appropriate Proceedings on Correction of Civil Entries*

The following cases illustrate the chaotic, nay uncertain state of the procedural law on correction of civil entries.

#### A. *Early Cases*

In the 1954 case of *Ty Kong Tin vs. Republic* (94 Phil 321), the Supreme Court held that:

FACTS: This case involves a petition by a Filipino of a Chinese descent who is even licensed to practice law in the Philippines, to have the entries in the birth certificates of his children corrected as they stated that his citizenship was Chinese.

RULING: "The issue that became the center of controversy revolved around the interpretation of the provision of Art. 412 of the New Civil Code under which the petition under consideration was filed. X ... x ... x. The bone of contention was the extent or the scope of the matters that may be changed or corrected as contemplated in said legal provision. *After a mature deliberation, the opinion was reached that what was contemplated therein are mere corrections of mistakes that are clerical in nature and not those which may affect the civil status or the nationality or citizenship of the persons involved. If the purpose of the petition is merely to correct a clerical error then the court may issue an order in order that the error or mistake may be corrected. If it refers to substantial change, which affects the status or citizenship of a party, the matter should be threshed out in a proper action depending upon the nature of the issue involved Such action can be found at random in our substantive and remedial laws the implementation of which will naturally depend upon the factors and circumstances that might arise affecting the interested parties. This opinion is predicated upon the theory that the procedure contemplated in Article 412 is summary in nature which cannot cover cases involving controversial issues.*" [pp. 323-324].

In the 1971 case of *Chua Wee et. al vs. Republic of the Philippines* (38 SCRA 409), the Supreme Court held:

FACTS: This case is a petition to correct the birth certificates of four children of the petitioners with respect to their Filipino nationality [which was allegedly made to appear as Chinese] and to change their status from legitimate to illegitimate, since petitioners are not married to each other. The mother is Filipino while the father is Chinese.

RULING: "Article 412 of the New Civil Code is the only substantial law covering the alteration or correction of entries in the civil register which alteration or correction can only be effected through a judicial order.

"The uniform and emphatic construction of Article 412 of the New Civil Code before and after Rule 108 of the Revised Rules of Court which took effect on January 1,

1964, until the last case of *Tan Pong vs. Republic*, is that changes or corrections authorized under said Article 412, which envisions a summary Procedure therefor, relates only to harmless and innocuous alterations such as misspellings or errors that are visible to the eyes or obvious to the understanding and that changes in the citizenship of a person or in his status from legitimate to illegitimate or from married to not married are substantial as well as controversial, which can only be established in an appropriate adversary proceedings as a remedy for the adjudication or real and justiciable controversies involving actual conflict of rights the final determination of which depends upon the resolution of the issues of nationality, paternity, filiation or legitimacy of the marital status for which existing substantive and procedural laws as well as other rules of court amply provide.

"From the time the New Civil Code took effect on August 30, 1950 until the promulgation of the Revised Rules of Court on January 1, 1964, there was no law nor rule of court prescribing the procedure to secure judicial authorization to effect the desired innocuous rectifications or alteration in the civil register pursuant to Article 412 of the New Civil Code. Rule 108 of the Revised Rules of Court now provides for such a procedure which should be limited solely to the implementation of Article 412, the substantive law on the matter of correcting entries in the civil register. Rule 108, like all other provisions of the Rules of Court, was promulgated by the Supreme Court pursuant to its rule-making authority under Sec. 13, Art. VIII of the Constitution, which directs that such rules of court "shall not diminish or increase or modify substantive rights." If Rule 108 were to be extended beyond innocuous or harmless changes or corrections of errors which are visible to the eye or obvious to the understanding, so as to comprehend substantial and controversial alterations concerning citizenship, legitimacy of paternity or filiation, or legitimacy of marriage, Rule 108 would thereby become unconstitutional for it would be increasing or modifying substantive rights, which changes are not authorized under Art. 412 of the New Civil Code.

"X...x...x.

"It is therefore evident from the *Reyes* case that Rule 108 merely implements Article 412 of the New Civil Code and prescribed the judicial procedure before the proper court can direct the correction of innocuous mistakes in the entries in the civil register, to better ascertain the correctness, accuracy or truth of the harmless alterations sought." [414-415]

**THERE WERE, HOWEVER, APPARENT DEVIATIONS/AMPLIFICATIONS FROM THESE RULINGS AS MAY BE GLEANED FROM THE FOLLOWING CASES:**

*In Kumala Salim Wing v. Abubakar 102 SCRA 523 (1981)*, the Supreme Court held:

FACTS: The correction sought here was to change the entry of the sex from "M" to "F" in the birth certificate of the minor female.

RULING: "Nor would it be the first time that a procedure, of this character did suffice for the correction of an error in the records of Civil Registrar. In *Malicden vs. Republic* [1964], this Court ruled that testimonial evidence may override an erroneous entry. Thereafter, in *Alioso vs. Lastimoso* [1965], this court ruled that an unauthorized false entry may be cancelled by the Court through an action of this nature. *Matias vs. Republic* [1969], the opinion being penned by then Acting Chief Justice J.B.L. Reyes, is even more in point." Thus: "Granting that the supplying of a name that was left in blank in the original recording of the birth does not constitute, as contended by the Solicitor General a rectification of a mere clerical error, it is well to observe that the doctrine of the case of *Ty King Tin vs. Republic 94 Phil 321*, and subsequent adjudications predicated thereon, forbade only the entering of material corrections or amendments in the record of birth by virtue of a judgment in a summary action against the Civil Registrar. *In the case of the petitioner herein, however, the proceedings were not summary, considering the publication of the petition made by order of the court in order to give notice to any person that might be interested, including direct service on the Solicitor General himself.*" [528-529]

*In Republic v. Macli-ing, et al., 135 SCRA 367 (1985)*, the Supreme Court observed:

FACTS: In this case, the father wanted to correct the birth certificates of his sons. In one birth certificate, the father's name is being corrected from "*Esteban Sy*" to "*Sy Piao*" while in another birth certificate, the son's name is being corrected from "*Noe*" to "*Joe*".

RULING: "In the case of *Ty Kong Tin vs. Republic, 94 Phil. 321 (1954)*, as well as subsequent cases predicated thereon, we forbade only the entering of material corrections in the record of birth by virtue of a judgment in a summary action. The proceedings below, although filed under Rule 108 of the Rules of Court, were not summary. The Petition was published by order of the lower court once a week for three consecutive weeks in a newspaper of general circulation in accordance with law. The Solicitor General was served with the copy of the Petition as well as the notices of hearings. He filed his opposition to the Petition. The Local Civil Registrar of the City of Baguio was likewise duly served a copy of the Petition. A Fiscal was always in attendance at the hearings in representation of the Solicitor General. He participated actively in the proceedings, particularly, in the cross examination of witnesses. And, notwithstanding that all interested persons were cited to appear to show cause why the petition should not be granted, no one appeared to oppose except the State through the Solicitor General. But nei-

ther did the State present evidence in support of its opposition" [p. 371].

Finally, in the 1986 case of *Republic vs. Valencia, et al.* (141 SCRA 462), the Supreme Court EN BANC held:

FACTS: In this case, the petitioner wish to correct the following in her children's birth certificates: citizenship from Chinese to Filipino; status from legitimate to illegitimate; and mother's status from married to single.

RULING: "It is undoubtedly true that if the subject matter of a petition is not for correction of clerical error of a harmless and innocuous nature but one involving nationality or citizenship, which is indisputably substantial as well as controverted, affirmative relief cannot be granted in a proceedings summary in nature. However, it is also true that a fight in law may be enforced and a wrong may be remedied as long as the appropriate remedy is used. This court adheres to the principle that even substantial errors in the civil registry may be corrected and the true facts established provided the parties aggrieved by the error avail themselves of the appropriate proceedings. As a matter of fact the opposition of the Solicitor General dated February 20, 1970 while questioning the use of Article 412 of the Civil Code in relation to Rule 108 of the Revised Rules of Court admits that the "entries sought to be corrected should be threshed out in an appropriate proceeding."

"What is meant by *appropriate adversary proceeding*? Black's Law Dictionary defines adversary proceeding as follows:

"One having opposing parties; contested, as distinguished from an ex parte application, one to which the party seeking relief has given legal warning to the other party, and afforded the latter an opportunity to contest it. Excludes an adoption proceedings (Platt. Maganini, 187 p. 716, 718, 1 10 Was. 39).

"X ... x ... X..

"Provided the trial court conducted proceedings where all relevant facts have been fully and property developed, where opposing counsel have been given opportunity to demolish the opposite party's case, and where the evidence has been thoroughly weighed and considered, the suit or proceeding is *appropriate*".

"X ... x ... X..

"If all these procedural requirements [Secs. 3 to 5 of Rule 108] have been followed, a petition for correction and/or cancellation of entries in the record of birth even if filed and conducted under Rule 108 of the Revised Rules of Court can no longer be described as *summary*. There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having

or claiming any interest in the entries sought to be canceled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings."

"X ... x ... X.

"To follow the petitioner's argument that Rule 108 is not an appropriate proceeding without any way intimating what is the correct proceeding or if such a proceeding exists at all, would result in manifest injustice." [pp. 468 - 476].

#### B. *Divergent Views*

The *Valencia* ruling was reiterated in *Lim vs. Zosa* (146 SCRA 366, EN BANC), *Republic vs. Flojo* (152 SCRA 550, SECOND DIVISION) and *Republic vs. Bautista* (155 SCRA 1, THIRD DIVISION). In the latter case, the Supreme Court held:

"In light of the foregoing which show compliance with Sections 2, 4 and 5 of Rule 108, the proceedings undertaken in the lower court in Special Proceedings No. 2191-P were unmistakably adversary, thus removing the initial apprehension of the State that *if entries in the civil registrar could be corrected ...x...x...x... through a mere summary proceeding and not through an appropriate action wherein all parties who may be affected by the entries are notified or represented, we would set wide open the door to fraud or other mischief, the consequence of which might be detrimental and far-reaching.*

However, in *Republic vs. Belmonte* (February 26, 1988, 158 SCRA 173) and *Labayo-Rowe vs. Republic* (December 8, 1988, 168 SCRA 294), in decisions rendered by the FIRST DIVISION, the Supreme Court tends to revert to the old ruling of *Ty Kong Tin*.

In subsequent case, however, *Republic vs. CFI Camarines Sur* (31 May 1988, 161 SCRA 681) a decision rendered by the SECOND DIVISION; *Republic vs. Sayo* (20 August 1990, 188 SCRA 634), a decision rendered by the THIRD DIVISIONS, and *Republic vs. Court of Appeals, et. al.* (20 July 1992, 211 SCRA 657), a decision rendered by the FIRST DIVISION, the *Valencia* ruling was reiterated.

#### IV. *Final Word: ZAPANTA DOCTRINE*

Whatever divergent views that might have been generated by the apparent conflicting decisions of the various divisions of the Court, may have been laid to rest by the recent case of *Zapanta vs. Civil Registrar of the City of Davao*, September 26, 1994. The facts are as follows:

Gliceria S. Zapanta, widow of *Florencio B. Zapanta*, filed in court for the correction of her husband's death certificate which was recorded in the Local Registrar of Davao City. She stated that the name indicated in the death

certificate was "*Flaviano Castro Zapanta*" which is not her late husband's name. Except for the name, all circumstances relating to the death certificate of Florencio B. Zapanta were correctly reflected in the death certificate.

The City Fiscal of Davao City contested the petition on the ground that it does not seek, a mere correction of clerical error, but of a substantial one. In support of his argument, the City Fiscal cited the leading case of *Ty Kong Tin vs. Republic*. The trial court subsequently dismissed the petition. On certiorari the Supreme Court speaking through Justice Vitug of the Third Division, held that the trial court erred in dismissing the petition.

In support of its decision, the Court noted the various decisions on the issue of what constitutes *appropriate proceedings*:

"The general perception, following *Ty Kong Tin vs. Republic* and cases contemporary and closely subsequent to it, was that the judicial proceeding under Art. 412 of the Civil Code, implemented by Rule 108 of the Rules of Court could only justify the correction of innocuous or clerical errors apparent on the face of the record and capable of being corrected by mere reference to it, such as misspellings and obvious mistakes. Starting, however, with the case of *Republic vs. Hon. Macli-ing*, the Court, through Justice Melencio-Herrera, explained:

"It is true that the change from *Esteban Sy* to *Sy Piao* would necessarily affect the identity of the father. In that sense, it can be said to be substantial. However, we find indubitable evidence to support the correction prayed for. In the Alien Certificate of Registration of the father, his name appears as *Sy Piao*. The same is true in his Immigrant Certificate of Residence. X...x...x. The school records of Oscar Sy both in high school and at St. Louis University in Baguio, recorded the name of his father as *Sy Piao* ...xxx."

"In the case of *Ty Kong Tin vs. Republic*, 94 Phil. 321 (1954), as well as subsequent cases predicated thereon, we forbade only the entering of material corrections in the record of birth by virtue of a judgment in a summary action. The proceedings below, although filed under Rule 108 of the Rules of Court were not summary."

The Court noted that in the case of *Republic v. Valencia*, the Court discussed lengthily the meaning of the phrase *appropriate proceeding* that would justify the correction of nonclerical errors.

In essence, the Court declared that in spite of the previous ruling, Rule 108 of the Revised Rules of Court is the "*appropriate proceeding*" for as long as the following procedures were adopted:

"Thus, the persons who must be made parties to a proceeding concerning the cancellation or correction of an entry in the civil register are - (1) the civil registrar, and (2) all persons who have or claim any interest which would be affected thereby. Upon the filing of the petition, it becomes the duty of the court to - (1) issue an order fixing the time and place for the hearing of the petition, and (2) cause the order for hearing to be published once a week for three (3) consecutive weeks in a newspaper of general circulation in the province. The following are likewise entitled to oppose the petition: - (1) the civil registrar, and (2) any person any interest under the entry whose cancellation or correction is sought.

"If all these procedural requirements have been forced, a petition for correction and/or cancellation of entries in the he record of birth even if filed and conducted under Rule 108 of the Revised Rules of Court can no longer be described as 'summary'. There can be no doubt that when an opposition to the petition is filed either by the Civil Registrar or any person having or claiming any interest in the entries sought to be cancelled and/or corrected and the opposition is actively prosecuted, the proceedings thereon become adversary proceedings."

In concluding that Rule 108 is the *appropriate proceeding*, the Court noted that the petition has been published and that the trial court should therefore consider the petition as an adversary proceeding in order to give an opportunity for all parties concerned their day in court.

#### *Concern and Recommendations*

Is the *Zapanta* the last word on the issue? Hopefully, as there is an urgent need to *stabilize* the procedural aspects of correction of civil entries in order to avoid lengthy litigation that clog our courts.

Assuming *Zapanta* is the final word on the issue of what constitutes the *proper proceedings* on substantial entries or correction of civil entries, perhaps our lawmakers should now consider amending existing relevant laws to allow local civil registrars, with prior authorization from the Civil Registrar General, to perform *administrative correction of civil entries that involve purely clerical, harmless and innocuous errors*.

Such an amendment would encourage the ordinary citizens to correct these types of errors as it would not involve costly and lengthy litigations. To safeguard the integrity of such administrative procedure, publication of the applications for administrative rectification of clerical errors may be required, without prejudice to written notices to parties concerned and without further prejudice to the Office of the Solicitor General to initiate any court action should he decides that the errors are not clerical in nature.

# PROVISIONS OF THE FAMILY CODE CONCERNING CIVIL REGISTRATION<sup>1</sup>

by  
Atty. Rene A.V. Saguisag<sup>2</sup>

Friends:

I feel like I am bringing coals to Newcastle since you are really the frontline-on-the-ground-hands-on experts on the subject of

## PROVISIONS OF THE FAMILY CODE CONCERNING CIVIL REGISTRATION

I learned a great deal from the edifying monographs for instance of your very own Mr. Carlito B. Lalicon. Civil Registrations Without Tears, I can say of his illuminating output.

Justice Eduardo Caguioa used to tell us about the Spanish jurist who came and was told that the Commissioner's concerned came up with the 1950 Civil Code in six months. He said: *I admire their courage.*

You have to admire me for being here before you at all. I think this is the revenge of Butch Africa whom I bother from time to time with queries and requests of all sorts, mainly from attorneys with clients in the United States who may need this or that document from die National Statistics Office. I always find the response very prompt, professional and efficient with a sense that a public servant is there to help and serve the particle of sovereignty that is the citizen.

One thing I had to accept when I left public office in 1992 was that I needed to learn and unlearn a lot of materials concerning developments in the law during the time I was in government when much of what I heard tended to subtract from the sum of human knowledge.

If I am anything at all, I am a human rights lawyer or advocate. You must then forgive or understand me for injecting a human rights orientation or flavor to this paper. I am also a sport buff and this angle will also surface here, to humanize what may be a dreary lecture.

My piece will also intersect with those others, on the judicial and legislative processes, and cross-fertilization of ideas is to be encouraged. Indeed, had I been assigned the topic of correction of judicial entries, I could do worse than merely read the edifying decision in the recent case of *Zapanta v. Local Civil Registrar of the City of Davao*<sup>3</sup>. There, *ponente* Jose Vitug, a distinguished and wide-respected scholar, said:

Article 407 of the Civil Code provides that *(a)cts, events and judicial decrees concerning the civil status of per-*

*sons shall be recorded in the Civil Register.* The civil status referred to pertains to one's birth, marriage, death, legal separation, annulment of marriage, judgment declaring the nullity of marriage, legitimation, adoption, acknowledgment of natural children, naturalization, loss or recovery of citizenship, civil interdiction, judicial determination of filiation, voluntary emancipation of a minor and change of name (Art. 420 Civil Code).

We will come back to this enumeration.

### **Introduction**

On July 6, 1987, President Corazon C. Aquino issued Executive Order No. 209 promulgate the Family Code of the Philippines (hereafter, FCP).

It took effect on August 3, 1988, one year after publication in a newspaper of general circulation.<sup>4</sup>

The FCP *shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.* (Art. 256)

The preamble of E.O. 209 states the reasons for the adoption of the Family Code. The three WHEREAS clauses enumerate these reasons.

Almost four (4) decades had passed since the adoption of the Civil Code (August 30, 1950), and *experience under said Code as well as pervasive changes and developments have necessitated revision of its provisions on marriage and family relations to bring them closer to Filipino customs, values and ideals and reflect contemporary trends and conditions.*

In addition, *there is need to implement policies embodied in the new Constitution that strengthen marriage and the family as basic social institutions.*

Finally, it is necessary *to ensure equality between men and women.*<sup>5</sup>

### Certain Family Code Provisions

What are these *pervasive changes and developments* reflective of *contemporary trends and conditions* which af-

<sup>1</sup> Presented during the 3rd National Convention on Civil Registration, Cebu City, April 4-7, 1995

<sup>2</sup> MABINI Lawyer & Former Senator

<sup>3</sup> G.R. No. 55380, Sept. 26, 1994

<sup>4</sup> Memorandum Circular No. 85 dated Nov. 7, 1988.

fecting civil registration under the FCP? (I do not mean to walk you through provisions with which you are far more familiar than I, as you deal with these matters we lawyers only occasionally handle, with all we have to do on a variety of matters.)

The FCP further amended the basic law on civil registration under Act No. 3753 (which took effect on February 27, 1931) by increasing the number of registrable acts, events and judicial decrees, from seventeen (17) to twenty-one (21). A brief background is in order.

Under Section 1 of Act No. 3753, a civil registrar was established for recording the civil status of persons documenting the following ten (10) acts and events: 1) births; 2) deaths; 3) marriages; 4) annulments of marriages; 5) divorces; 6) legitimations; 7) adoptions; 8) acknowledgments of natural children; 9) naturalization; and 10) changes of name.

In 1950, the Civil Code amended the said Section by increasing the number of registrable acts and events, from ten (10) to seventeen (17), and eliminating the provision on "divorces."

Under Article 408 of the Civil Code, the following shall be entered in the civil register: 1) births; 2) marriages; 3) deaths; 4) legal separations; 5) annulments of marriage; 6) judgments declaring marriages void from the beginning; 7) legitimations; 8) adoptions; 9) acknowledgements of natural children; 10) naturalization; 11) loss, or (12) recovery of citizenship; 13) civil interdiction; 14) judicial determination of filiation; 15) voluntary emancipation of a minor;<sup>6</sup> and 16) changes of name.

And under Article 70 of the Civil Code (now, Article 25 of FCP), the local civil registrar also requires the registration of the application for marriage license as the 17th registrable event.

Now, with the enactment of the FCP, the civil registrars are required to register the following acts, events and judicial decrees.

<sup>5</sup> In 1 A. Tolentino, **Civil Code of the Philippines** 218-219 (1990), the commentator raised serious doubts about the need for such a code without going through the usual legislative process in order to reflect a *more popular and democratic character*. In any case, as to equality between men and women, we handled the Gina Espina case, the local version of Lorena Bobbit. One of our arguments is that it is easy to mutilate a man's organ but difficult to do so to a woman's. To us, it was another vestige of the pro-macho bias of the Revised Penal Code and the legal system in general. A woman is better off killing the man than mutilating him with one snip of a scissor while to destroy the reproductive capacity of a woman would require much more effort. However, the case was disposed of civilly and the issue of equal protection or equality between men and women was not tested. In a recent article, a columnist touched on the issue. C. de Quiros, *A Fate Worse Than Death*, **Daily Inquirer**, Mar. 7, 1995, p. 6, col. 2.

1. *affidavit of reappearance of the absentee spouse previously declared by court as presumptively dead*, at the instance of *any interested person* (not necessarily the spouse who reappears, such as the children in the former marriage), with due notice to the spouses of the subsequent marriage; the *judicial declaration and determination of the fact of reappearance in case such fact is disputed* is also recorded in the office of the civil registrar [Article 42, FCP]<sup>7</sup>

Without the judicial declaration of presumptive death, the second marriage may be bigamous and void under Article 35 of the Family Code. Article 41 requires a judicial declaration of absence by means of summary proceeding under Title XI of the Family Code. By contrast, under the Civil Code a judicial declaration of absence was not required for remarriage purposes.<sup>8</sup>

Under the FCP, the effect of recording such affidavit of reappearance in the office of the civil registrar of the residence of the parties to the subsequent marriage shall automatically terminate said marriage.

According to the Civil Code Revision Committee (CCRC) which drafted the FCP, the automatic termination of the second marriage is a solution to an anomalous situation created under Article 83 of the Civil Code when a present spouse will have two husbands or two wives in case nobody files a case for annulment. The CCRC argued that the present spouse will not be given a choice whether to choose the first or the second spouse or maintain both. *The returning spouse can even blackmail the spouses to the second marriage by threatening to annul their marriage if they do not payoff. The second marriage on the other hand, will remain insecure and hanging because it may be annulled by either of the parties during each other's lifetime. . . . [T]he automatic termination of the second marriage . . . is a risk that the parties to said marriage knew they were taking when they entered into such marriage, so that if it does happen, they have no reason to complain.*<sup>9</sup>

2. *marriage settlements and any modification thereof in a public instrument in order to affect third persons* [Article 77, FCP]<sup>10</sup>

<sup>6</sup> Under R. A. 6809, reducing the age of majority from twenty-one to eighteen years, the two other methods of emancipation (1) by marriage of a minor and (2) by a concession of the parents have been deemed abolished as unnecessary. Accordingly, the above 15th item on voluntary emancipation of minor is no longer a registrable event. See 1 A. Tolentino **Civil Code of the Philippines** 642 (1990).

<sup>7</sup> Article 42. The subsequent marriage referred to in the preceding Article shall be automatically terminated by the recording of the affidavit of reappearance of the absent spouse, unless there is a judgment annulling the previous marriage or declaring it void ab initio.

A sworn statement of the fact and circumstances of reappearance shall be recorded in the civil registry of the residence of the parties to the subsequent marriage at the instance of any interested persons, with due notice to the spouses of the subsequent marriage and without prejudice to the fact of reappearance being judicially determined in case such fact is disputed. (n)

<sup>8</sup> See 1 R Aquino **Civil Code** 151 (1990).

The marriage settlement affects not only the parties but also third persons who in the future may enter into contracts with the spouses or either of them. Such third persons should know what property regime govern the property relations of the spouses, and the extent of guaranty for obligations contracted by either spouse. Accordingly, it must be in a public instrument to be recorded in the local civil registry where the marriage contract is registered, and in the Registry of Property. A private instrument will not suffice in order to affect third persons. The present article, like the Civil Code, merely requires a marriage settlement to be in a private writing, so as to be enforceable between the parties; it may even be oral, insofar as the parties are concerned.<sup>11</sup>

If the marriage settlement is not registered, it will not prejudice third persons and the absolute community regime will apply as to them.<sup>12</sup>

A similar requirement for registration using a public instrument is found in Article 89<sup>13</sup> of the FCP involving waiver of rights, interests, shares and effects of the absolute community. Under Article 146 of the Civil Code, the prohibition applies only to *gains or effects* during the marriage. In the FCP, the CCRC expanded such prohibition by using the all-inclusive terms *rights, interest, shares and effects*. The reason for the rule is to avoid undue influence exerted by one spouse on the other.<sup>14</sup>

### 3. parental authorization or ratification of artificial insemination [Article 164, FCP]<sup>15</sup>

The Family Code has taken cognizance of the progress of medical science by introducing a provision on artificial insemination which is not yet found in the legislation of many other countries. While this is practiced in many jurisdictions, its effects are governed more by jurisprudence than by positive law.<sup>16</sup>

The cited article gives the status of a legitimate child to a child conceived by artificial insemination under the following conditions:

- a) the artificial insemination is made on the wife, **not** on another woman;
- b) the artificial insemination of the wife is done with the sperm of the husband or of a donor or of both the husband and a donor
- c) the artificial insemination has been authorized or ratified by the spouses in a written instrument executed and signed by them before the birth of the child;<sup>17</sup> and
- d) the written instrument is recorded in the civil registry together with the birth certificate of the child.<sup>18</sup>

Artificial insemination may be defined as the impregna-

tion of a female with semen from a male without sexual intercourse.<sup>19</sup>

The CCRC decided to include this provision in order to determine the status of children born of artificial insemination and to remove any uncertainty on their status. Justice Eduardo Caguioa, a member of the CCRC, enunciated this rationale by rejecting criticisms from some Catholic groups that said provision was immoral and violated the sacredness or sanctity of family life. He said that the provision neither addresses itself to the legality or illegality, nor the morality or immorality of artificial insemination, nor approve its practice; similarly, the law has always determined the status of illegitimate children but that does not mean that the law approves of children born out of wedlock.<sup>20</sup>

The CCRC further outlined the following pointers regarding this provision:

- a) The fact that the child was born of artificial insemination should not appear in the birth certificate of the child, so that the child would not know that he or she was born of artificial insemination. Likewise, the husband would like the public to believe that he is the father of the child.
- b) The written instrument executed and signed by the parents must be recorded in the civil registry together with the birth certificate for the protection of the doctor who did the artificial insemination, and also to protect the wife in case the husband dies before the birth of the child.
- c) As to the fear of some CCRC members that the recording of the written instrument might destroy the secrecy of artificial insemination, the majority answered that in case of conflict between such secrecy and a determination of the child's status, secrecy should be sacrificed in order to settle the child's status.
- d) In the case of artificial insemination of the wife with the semen of a donor, the latter must be unknown. Indeed, no donor would want his identity known to avoid paternity suits in the future. Besides, the anonymous donor cannot be considered the natural father of the child, as he is no more responsible for the use of his sperm than the donor of blood or a kidney to a patient.<sup>21</sup>

<sup>9</sup> A. Sempio-Diy, *Handbook on the Family Code of the Philippines* 51 (1988). But see A. Tolentino, *supra*, at 284-285, for his criticism on above solution by citing critical questions on property relations, support and status of children.

<sup>10</sup> Art. 77. The marriage settlements and any modification thereof shall be in writing, signed by the parties and executed before the celebration of the marriage. They shall not prejudice third persons unless they are registered in the local civil registry where the marriage contract is recorded as well as in the proper registries of property. (122a)

<sup>11</sup> See Sempio-Diy *Handbook on the Family Code of the Philippines*, *supra*, at 112 (1988); and 1 A. Tolentino, *Civil Code of the Philippines* 364 (1990).

<sup>12</sup> See Sempio-Diy *supra*, at 112.

A long time ago, I realized the fascination of the issue posed when a woman, without the consent of her husband decides to have a baby by artificial insemination. In *MacLennan c. MacLennan*,<sup>22</sup> the *pursuer* sought a decree of divorce from the *defender* on the ground of adultery. The parties were married on August 25, 1952. They had not lived together or had marital relations since May 31, 1954. On July 14, 1955, she gave birth. Her defense was artificial insemination.<sup>23</sup>

4. registration by priest, rabbi, imam, or minister of any church or religious sect with Civil Registrar General (not the local civil registrar) [Article 7(2), FC]<sup>24</sup>

This article amended Articles 56 and 92 of the Civil Code by removing the registration of such ministers from the director of the proper government office (meaning, the Bureau of Public Libraries). *Registration was transferred by the Family Code to the Office of the Civil Registrar General because it is necessary for such official to have supervision and control over priests and ministers for purposes of the preparation and proper execution of documents attendant to the celebration of marriages and their proper submission to the Civil Registrar General under the rules and regulations that he will promulgate in connection therewith.*<sup>25</sup>

Pursuant to this provision of the FCP, a Register of Solemnizing officers is now kept and maintained in the Office of the Civil Registrar General.

It should be noted that under this provision, unlike in Article 56(4) of the Civil Code, mayors of cities and municipalities were no longer allowed to solemnize marriages. Agitation however led to the return of the power in the Local Government Code.<sup>26</sup> I was still in the Senate then; the lobby succeeded.

The other provisions of the Family Code either expanded or simplified the recording of certain details in recording registrable acts or events. Below are few examples.

Article 22 of the FCP concerning the contents of a marriage certificate amended Article 67 of the Civil Code by having additional information on (a) the sex, citizenship, and religion of each party; (b) the date and precise time of the celebration of the marriage; and (c) a statement that the parties have entered into a marriage settlement, if any, attaching a copy thereof to the marriage certificate.

Article 23 of the FCP requires that a marriage certificate should be in four (4) copies and not three under Article 68 of the Civil Code. The local civil registrar of the place where the marriage was contracted shall receive the duplicate and triplicate copies.

The FCP has abolished all distinction between illegitimate children. All children conceived and born outside a valid

marriage are illegitimate, unless the law gives them legitimate status such as in legitimation under Article 177-182 and adoption under Articles 183-193 of the FCP.

Friends, locating and collating the above is something most everyone can do, with many of you being able to do it better than I ever can. Maybe we can briefly discuss certain policy considerations.

### **Equality of the sexes**

There is no question that we should equalize to the extent we can the status of men and women. The battle has been won on principle but a lot has to be done on the ground. (Among the laws I authored in my time enabled women to enter the Philippine Military Academy.)

### **Legitimates and Illegitimates**

The last battleground may be that between legitimate and illegitimate children.

We can say with Shakespeare: *Why bastard, wherefore base? When my dimensions are as well compact, My mind as generous and my shape as true, As honest madam's issue? Why brand they us With base? with baseness? bastardy? base, base?*<sup>27</sup>

In a paper I prepared many years ago, I argued that there was no constitutional basis to discriminate between legitimate and illegitimate children. I researched on church and graveyard records in Brittany, France available in an American university. People have kept records in oral tradition or some written form (You have made the job much easier.)<sup>28</sup>

It is interesting that in *Levy v. Louisiana*, 391 U. S. 68 (1968) and its companion case, *Glon v. American Guarantee, etc.*, 391 U.S. 73 (1968), the issue was whether bastardy is a form of invidious discrimination that offends the equal protection clause.

The United States Supreme Court said yes. I agree. The holding remains good law. It is not the child's fault. The wrong party is being punished. It represents the best thinking of decades, if not centuries ago, when the only contraceptive technique known to be 100% certain *kuno* was self-control not birth control.

We may not be ready yet for this. But in time, I predict we will.

<sup>13</sup> Art. 89. No waiver of rights, interests, shares and effects of the absolute community or property during the marriage can be made except in case of judicial separation of property.

When the waiver takes place upon a judicial separation of the property, or after the marriage has been dissolved or annulled, the same shall appear in a public instrument and shall be recorded as provided in Article 77. The creditors of the spouse who made such waiver may petition the court to rescind the waiver to the extent of the amount sufficient to cover the amount of their credits. (146a)

<sup>14</sup> See Sempio-Diy, *supra*, at 127-128.

<sup>15</sup> Art. 164. Children conceived or born during the marriage of the parents are legitimate.

Children conceived as a result of artificial insemination of the wife with the sperm of the husband or that of a donor or both are likewise legitimate children of the husband and his wife, provided, that both of them authorized or ratified such insemination in a written instrument executed and signed by them before the birth of the child. The instrument shall be recorded in the civil registry together with the birth certificate of the child. (255a, 258)

<sup>16</sup> See A. Tolentino, *supra*, at 521.

<sup>17</sup> But see A. Tolentino, *supra*, at 523. He said that the *formality of a written instrument executed before the birth of the child and registered in the civil registry are not essential for legitimacy. This form and registration are only a matter of evidence. In the absence of a written instrument, the consent may be proved by any other admissible evidence. The written instrument may be likened to a marriage certificate. It is the best proof of the marriage, but not the only proof, and its absence does not affect the validity of the marriage. In this case, the law should lean in favor of legitimacy.*

<sup>18</sup> See A. Sempio-Diy *supra*, at 231.

<sup>19</sup> *Id.*, citing F. Romero, **Legal Aspects of Artificial Insemination.**

<sup>20</sup> *Id.* at 232.

<sup>21</sup> *Id.* at 233; citing *Minutes of Committee Meetings* of June 22, 1985 and July 6, 1985.

<sup>22</sup> Sess. Cas. 105, [1958], Scots L.T.R. (Sess. Ct. Outer House)

<sup>23</sup> How would you decide the case? In *Orford v. Orford*, 49 Ont. L.R. 15, 19. 58 D.L.R. 251, 253, 254 (1921), the woman said she met a man who knew *quite a little about insemination*, who had offered to help her as her husband could not have relations with her due to her inability to have intercourse. The husband supposedly urged her to go to a doctor to be cured. The doctor advised artificial insemination. She said she went to the solicitous gentleman's flat where he introduced her to a doctor whose name she did not remember, went to bed, was put under anaesthesia, and when she awoke, she was told she had been inseminated artificially. The court refused to believe her story and ruled that it seemed more like a case of natural insemination.

<sup>24</sup> Article 7. Marriage may be solemnized by:

1. Any incumbent member of the judiciary within the court's jurisdiction;

2. Any priest, rabbi, imam, or minister of any church or religious sect duly authorized by his church or religious sect and registered with the civil registrar general acting within the limits of the written authority granted him by his church or religious sect and provided that at least one of the contracting parties belongs to the solemnizing officer's church or religious sect;

3. Any ship captain or airplane chief only in the cases mentioned in Article 31;

4. Any military commander of a unit to which a chaplain is assigned, in the absence of the latter, during military operation, likewise only in the cases mentioned in Article 32;

5. Any consul-general, consul or vice-consul in the case provided in Article 10. (56a)

<sup>25</sup> See A. Sempio-Dy, *supra*, at 11.

<sup>26</sup> R. A. No. 7160, Sec. 444 (xviii) and Sec. 455 (xviii).

<sup>27</sup> King Lear, Act 1, Scene 2.

<sup>28</sup> Incidentally, if you look at the records of the Local Civil Registrar of Mauban, Quezon, you will find that my registered name is *Augusto*, being August-, if not august-born.

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