



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

**OCA CIRCULAR NO. 10-004**

**TO : THE COURT OF APPEALS,  
SANDIGANBAYAN, COURT OF TAX  
APPEALS, REGIONAL TRIAL COURTS,  
SHARI'A DISTRICT COURTS,  
METROPOLITAN TRIAL COURTS,  
MUNICIPAL TRIAL COURTS IN CITIES,  
MUNICIPAL TRIAL COURTS, MUNICIPAL  
CIRCUIT TRIAL COURTS, SHARI'A  
CIRCUIT COURTS, THE OFFICE OF THE  
STATE PROSECUTOR, PUBLIC  
DEFENDERS OFFICE AND THE  
INTEGRATED BAR OF THE PHILIPPINES**

**SUBJECT: SUSPENSION FROM THE PRACTICE OF  
LAW AND COMMISSION AS A NOTARY  
PUBLIC FOR THREE (3) YEARS OF ATTY.  
VIRGILIO R. GARCIA**

For the information and guidance of all concerned, quoted hereunder is the Resolution of Supreme Court En Banc dated June 10, 2003 in Administrative Case No. 4378 entitled "Violeta Flores Alitagtag vs. Atty. Virgilio R. Garcia", to wit:

"This refers to the motion for reconsideration of the Resolution of this Court, dated February 6, 2002, finding respondent 'guilty of grave misconduct rendering him unworthy of continuing membership in the legal profession' and ordering his disbarment 'from the practice of law and his name stricken off the Roll of Attorneys.'

In essence, respondent reiterates his innocence by denying authorship and participation in the falsification of the subject deed of donation. However, he admits his negligence and expresses remorse for his failure to diligently perform his duties as notary public with respect to the notarization of the said deed of donation. Respondent pleads for compassion and mercy and asks that the Court be more lenient in imposing penalty for the infractions he has committed.

As early as the case of *Santos vs. Dichoso*<sup>1</sup> and reiterated in the case of *Martin vs. Felix Jr.*,<sup>2</sup> this Court held:

“In disbarment proceedings, the burden of proof rests upon the complainant, and for the court to exercise its disciplinary powers, the case against the respondent must be established by clear, convincing and satisfactory proof. Considering the serious consequence of the disbarment or suspension of a member of the Bar, this Court has consistently held that clear preponderant evidence is necessary to justify the imposition of the administrative penalty.”

There is no question that respondent was remiss in the performance of his duties as a notary public. In fact, there is preponderance of evidence showing that he subverted the clear provisions of Section 1<sup>3</sup> of Public Act 2103, otherwise known as “An Act Providing for the Acknowledgement and Authentication of Instruments and Documents within the Philippine Islands” and Section 246<sup>4</sup> of Act 2711, otherwise known as the Revised Administrative Code of 1917.

Respondent is likewise found guilty of harassing the occupants of the property subject of the donation by asking Meralco to disconnect its services to the property and by posting security guards to intimidate the said occupants. These acts do not speak well of his standing as a member of the bar. Rule 7.03, Canon 7 of the Code of Professional Responsibility provides that a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner

<sup>1</sup> 84 SCRA 622, 627 (1978).

<sup>2</sup> 163 SCRA 111, 130 (1988).

<sup>3</sup> “Section 1. (a) The acknowledgement shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgements of instruments or documents in the place where the act is done. **The notary public or the officer taking the acknowledgement shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed.** The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.” (Emphasis ours)

<sup>4</sup> “Sec. 246. Matters to be entered therein. – The notary public shall enter in such register, in chronological order, the nature of each instrument executed, sworn to, or acknowledged before him, the person executing, swearing to, or acknowledging the instrument, the witnesses, if any, to the instrument, the fees collected by him for his services as notary in connection therewith, and , when the instrument is a contract, he shall keep a correct copy thereof as part of his records, and shall likewise enter in said records a brief description of the substance thereof, and shall give to each entry a consecutive number, beginning with number one in each calendar year. x x x. A certified copy of each month’s entries as described herein and a certified copy of any instrument acknowledged before him shall, within the first ten days of the month next following, be forwarded by the notary to the clerk of court of the court of first instance of the province (or city) where he exercises his office, and shall be filed under the responsibility of such officer, provided, that if there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of the certified copies herein required.” (Emphasis ours)

to the discredit of the legal profession. By engaging in acts that undermine recognition of and respect for legal processes, respondent has clearly committed conduct that adversely reflects on his fitness to be a member of the legal profession.

However, as to the issue of falsification of the subject deed of donation, a review of the records at hand shows that there is no clear and convincing evidence to prove that respondent is the author of the forged signature of the donor or that he actively participated or conspired with any party in forging the said signature as it appears in the questioned deed of donation. The only proven link respondent has to the falsified deed is the fact that he notarized it. The Court agrees with the observation of the Investigating Commissioner of the IBP that there is no proof that respondent knew that the signature of Cesar Flores appearing on the deed of donation was falsified. Complainant never disputed respondent's claim that the deed of donation was already signed when personally handed to him by Cesar Flores, Sr. There is no reason shown why respondent should have doubted that the donor's signature was forged. Moreover, the fact that respondent was later on given a special power of attorney to administer and sell the property covered by the forged deed of donation does not prove his participation in the falsification of the said deed. Records reveal that there is a gap of more than five years between the date of notarization of the subject deed of donation on September 19, 1991<sup>5</sup> and the execution of the special power of attorney in favor of respondent on November 7, 1996.<sup>6</sup> If respondent was indeed part of a scheme to defraud the other children of Cesar Flores, we find it illogical that he and his cohorts would wait that long for him to be given the power of attorney to dispose of the subject property.

Likewise, the failure of the respondent to submit to the proper authorities a copy of the subject deed of donation which he notarized does not directly prove that he tried to cover up the falsification committed.

It must also be noted that in the criminal case for falsification filed by complainant against several accused including herein respondent, the city prosecutor of Pasig found no sufficient evidence to indict respondent.<sup>7</sup> Even the decision of the lower court in Civil Case No. 65883<sup>8</sup> which was filed for the nullification of the subject deed of donation did not contain

<sup>5</sup> Exhibit "G-1", p. 181, Vol. II, Original Records.

<sup>6</sup> Exhibit "I-2", p. 188, Vol. II, OR.

<sup>7</sup> See Annex "7" to Respondent's Comment, pp. 55-57, Rollo.

<sup>8</sup> Entitled, "Heir of Cesar Flores Namely: Maria Evangelina Flores Palparan, Plaintiff, vs. Gregorio G. Flores, Maria Eugenia Flores Garcia, Virgilio R. Garcia and Magdalena G. Flores, Defendants"

any specific finding as to the alleged participation of respondent in the falsification of the subject deed.<sup>9</sup>

In sum, complainant failed to discharge her burden of proving the liability of respondent with respect to the falsification of the questioned deed of donation. Suspicion, no matter how strong, is not enough to warrant the disbarment of respondent.

Indeed, the power to disbar must be exercised with great caution, and may be imposed only in a clear case of misconduct that seriously affects the standing and the character of the lawyer as an officer of the Court and as a member of the bar.<sup>10</sup> Disbarment should never be decreed where any lesser penalty could accomplish the end desired.<sup>11</sup> Without doubt, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment.<sup>12</sup> However, the said penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their consequences are beyond repair.<sup>13</sup>

A review of pertinent and relevant jurisprudence convinces the Court to reconsider the penalty imposed on herein respondent.

In *Maligsa vs. Cabanting*,<sup>14</sup> the respondent lawyer was disbarred after this Court found out that he notarized a forged deed of quitclaim. However, the penalty of disbarment was imposed after considering that he was previously suspended from the practice of law for six months on the ground that he purchased his client's property while it was still the subject of a pending certiorari proceeding.

In *Flores vs. Chua*,<sup>15</sup> the respondent lawyer was disbarred after he was found guilty of notarizing a forged deed of sale. But again, the penalty of disbarment was imposed because in a previous administrative case, respondent was found guilty of violating Rule 1.01<sup>16</sup> of the Code of Professional Responsibility and had been sternly warned that a repetition of a similar act or acts or violation committed by him in the future will be dealt with more severely. The Court also

<sup>9</sup> See RTC Decision, Exhibit "Q", pp. 198-209, Vol. II, OR.

<sup>10</sup> *Resurreccion vs. Sayson*, 300 SCRA 129, 136 (1998); *T-Boli Agro-Industrial Development Inc. vs. Solilapsi*, AC No. 4766, December 27, 2002.

<sup>11</sup> *Ibid.*

<sup>12</sup> *De Ere vs. Rubi*, 320 SCRA 617, 622 (1999).

<sup>13</sup> *Ibid.*

<sup>14</sup> 272 SCRA 408 (1997).

<sup>15</sup> 306 SCRA 465 (1999).

<sup>16</sup> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

took into consideration the other infractions or acts of misconduct committed by the respondent such as forum shopping, committing falsehood, injurious, willful and unprofessional conduct of publishing, or causing the publication, in a newspaper of general circulation of a pending case, causing undue delay in the court proceedings and for notarizing a document without the party being present.

In *Roces vs. Aportadera*,<sup>17</sup> the Court suspended the respondent lawyer from the practice of law for a period of two years after it was found out that he has dubious involvement in the preparation and notarization of the falsified sale of his client's property.

Thus, taking into consideration the foregoing jurisprudence, the totality of the acts of misconduct proven to have been committed by herein respondent, his admission of negligence, plea for compassion and the fact that this is his first offense, the Court finds it proper to reconsider the penalty imposed. Nonetheless, the Court reiterates the principle that where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any.<sup>18</sup> The penalty of suspension, both from respondent's practice of law and from his commission as a notary public is apropos to the offenses he committed.

WHEREFORE, the motion for reconsideration is **GRANTED**. Respondent is **REINSTATED** as a member of the Bar but he is **SUSPENDED** from the practice of law and from his commission as a notary public for a period of three (3) years, effective immediately, with a warning that a commission of the same or similar acts in the future shall be dealt with more severely.

The Clerk of Court of this Court is **DIRECTED** to immediately circularize this Resolution for the proper guidance of all concerned.

Let copies of this Resolution be furnished the Office of the Bar Confidant and the Integrated Bar of the Philippines.

SO ORDERED.”

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<sup>17</sup> 243 SCRA 108 (1995)

<sup>18</sup> *Flores vs. Chua*, *supra*; *Bernardo Vda. de Rosales vs. Ramos*, AC No. 5645, July 2, 2002..

Copy of this resolution was received by Atty. Garcia on June 24,  
2003.

28 January 2004.

  
**JOSE P. PEREZ**  
Acting Court Administrator

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