

EN BANC

[A.C. No. 4738, June 10, 2003]

**VIOLETA FLORES ALITAGTAG, COMPLAINANT, VS. ATTY.
VIRGILIO R. GARCIA, RESPONDENT.**

R E S O L U T I O N

PER CURIAM:

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*^[1] and reiterated in the case of *Martin vs. Felix Jr.*,^[2] 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^[3] 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^[4] 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 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^[5] and the execution of the special power of attorney in favor of respondent on November 7, 1996.^[6] 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.^[7] Even the decision of the lower court in Civil Case No. 65883^[8] which was filed for the nullification of the subject deed of donation did not contain any specific finding as to the alleged participation of respondent in the falsification of the subject deed.^[9]

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.^[10] Disbarment should never be decreed where any lesser penalty could accomplish the end desired.^[11] Without doubt, a violation of the high moral standards of the legal profession justifies the imposition of the appropriate penalty, including suspension and disbarment.^[12] However, the said penalties are imposed with great caution, because they are the most severe forms of disciplinary action and their