

[ADMINISTRATIVE ORDER NO. 234, September 09, 1991]

SUSPENDING ROBERTO ROCHA, REGISTER OF DEEDS OF SURIGAO DEL NORTE

This is an administrative case against Atty. Roberto Rocha, Register of Deeds of Surigao del Norte, for grave misconduct.

The case was initiated by a record clerk of the Registry of Deeds of Surigao del Norte, who filed a letter-complaint, dated November 19, 1987, with the Department of Justice against Atty. Rocha for alleged irregularities in office. Acting thereon, the Justice Department referred the complaint to the National Land Titles and Deeds Registration Administration (NLTDRA) for appropriate action. Whereupon, NLTDRA Administrator Teodoro G. Bonifacio directed Atty. Benjamin A. Flestado, Chief of NLTDRA's Inspection and Investigation Division, to conduct a fact-finding investigation thereon.

Thereafter, Atty. Flestado submitted his investigation report dated February 26, 1988, thereunder recommending that Atty. Rocha be charged administratively.

In a letter of March 14, 1988, the NLTDRA Administrator charged Atty. Rocha with grave misconduct upon the following specifications: (a) On April 15, 1987, Atty. Rocha *motu proprio* issued a second owner's duplicate of Transfer Certificate of Title (TCT) No. T-3872 in the name of one Ricardo C. Geotina in lieu of an old one, portions of which had "been eaten by termites and with torn edges", in violation of Section 109 of the Property Registration Decree (PD 1529) which requires a petition to be filed in court for such issuance; (b) he registered on May 20, 1987 a Deed of Exchange executed on September 21, 1984, by and between the Development Bank of the Philippines (DBP) and the spouses Raul del Castillo Jr. and Consuelo Egay-Castillo, resulting in the cancellation of TCT Nos. T-5993 and T-6118 and the issuance in lieu thereof of TCT Nos. T-8098 and T-8099, respectively, without proof of payment of, or exemption from, capital gains tax as required by NLTDRA Circular No. 1 dated November 11, 1981; and (c) he registered on June 2, 1987 a Deed of Assignment he himself executed on May 27, 1987 in favor of his minor children, resulting in the cancellation of Original Certificate of Title (OCT) No. 5336 and TCT No. 4684, and, in lieu thereof, the issuance of TCT Nos. T-1231 and T-8112, respectively, wherein said children were made to appear as being of legal age.

In his sworn answer, dated March 24, 1988, respondent admitted issuing, without a court directive, a second duplicate of TCT No. T-3872 as a replacement of the certificate of title which was intact, but whose "edges were eaten by termites and appeared mutilated". He asserted, however, that such issuance is not violative of Section 109 of PD 1529, which requires the aforesaid court directive only when a TCT sought to be replaced is lost or destroyed, a fact not obtaining in the case.

With regard to the DBP's Deed of Exchange which he allowed to be registered without proof of payment of, or exemption from, capital gains tax, respondent cited the opinion of the Regional Director of Revenue Region No. 10-B, embodied in a letter dated May 22, 1987, that "no capital gain was realized in the exchange xxx".

Anent the discrepancy between the entries as to the ages of his children appearing in the aforementioned Deed of Assignment and TCT Nos. T-1231 and T-8112, respondent, in his letter to the NLTDRA dated February 1, 1988, explained that it was the entry typist (Ms. Echin) who committed the error and that he intended to correct what he regarded as an "honest mistake" at some later date.

As requested by respondent, NLTDRA conducted a formal investigation, after which the investigator-designate (Atty. Flestado) submitted his report, dated September 5, 1988. In that report, Atty. Flestado recommended that respondent be adjudged guilty of the charge and be meted the penalty of six (6) months suspension from office and sternly warned. In a paper of October 5, 1988 to the NLTDRA Administrator denominated as "Comment", however, Atty. Flestado stated: "I respectfully concede that the proper imposable penalty for respondent is suspension for one (1) year." The NLTDRA Administrator, in his letter of November 3, 1988 to the Secretary of Justice, recommended the penalty of one (1) year suspension and stern warning. In turn, then Secretary of Justice Sedfrey A. Ordonez, in his letter-report to me dated September 19, 1989, likewise recommended a penalty of one (1) year suspension with stern warning, observing:

"The claim by respondent Rocha that, in issuing the second owner's duplicate of TCT No. T-3872, he merely renewed the 'intact and extant' certificate with edges eaten by termites and which 'appeared mutilated' cannot be given consideration. The renewal he invokes resulted in the replacement of the certificate of title involved. Such replacement should have been effected in accordance with the provisions of Section 109.

" In addition, it must be observed that the second owner's duplicate certificate respondent Rocha caused to be issued contains no annotation or memorandum relative to its being a replacement. Furthermore, his signing of the second owner's duplicate certificate of title which bears the date '1st day of April in the year nineteen hundred and seventy-six' as the entry date gives rise to the impression that he issued the same on the said date, when, as a matter of fact, Atty. Luis Calderon, Jr., as then Register of Deeds of Surigao del Norte, issued and signed the original certificate involved and the duplicate thereof.

" In connection with the registration of the Deed of Exchange between the DBP and the spouses del Castillo even without proof of payment of or exemption from the capital gains tax, such registration was effected without compliance with the requirement of NLTDRA Circular No. 1 dated 11 November 1981 which directs Registers of Deeds to, among others, '[r]egister transfers of real property subject to the Capital Gains Tax xxx or those exempt therefrom only upon presentation of the required Certificate of Clearance or Exemption issued by the authorized BIR officials.'

" It must be noted that, although respondent Rocha allowed the