

[ADMINISTRATIVE ORDER NO. 157, January 17, 1969]

**SUSPENDING MR. FELIZARDO L. ESPINO FROM OFFICE AS
ASSISTANT CITY FISCAL OF ROXAS CITY**

This is an administrative proceeding instituted by Felicisino Besana against Assistant City Fiscal Felizardo L. Espino of Roxas City for "partiality, ignorance of the law, and shielding criminals from being charged with the proper offense."

The record shows that on July 1, 1966, Felicisimo Besana filed a criminal complaint with the City Fiscal's office charging one Juanito Barza with physical injuries. Attached to the complaint was a medical certificate signed by Dr. Herman D. Dorado, dated July 1, 1966, describing the injuries of Besana and stating that they would heal in 7 to 9 days.

The City Fiscal assigned the case to the respondent. In the investigation, the counsel for the offended party presented another medical certificate, also issued by Dr. Dorado, wherein he stated that Besana's injuries would heal in 12 to 14 days. The physician admitted on the witness stand that the second certificate was actually issued on July 14, 1966, when Besana's injuries were already "completely healed," but he still placed the date as July 1, 1966, because he considered it as an amendment of the first.

Assistant Fiscal Espino filed an information for slight physical injuries based on the first medical certificate. The complainant believes the charge should have been for less serious physical injuries, with certain aggravating circumstances.

In his answer, the respondent maintained that the first medical certificate was more reliable than the second for being "spontaneous", and further, that the complainant suppressed evidence by presenting only the second medical certificate.

A perusal of the stenographic transcript reveals that Dr. Dorado had the hospital chart of Besana when he was on the witness stand and identified the second medical certificate issued on July 14, 1966 (altho he still dated it July 1, 1966), stating that Besana's injuries "would heal in 12 to 14 days." By Dr. Dorado's admission, Besana's injuries had completely healed when he issued that certificate. Mr. Espino was therefore in an excellent position to press the physician to give a definite and categorical answer on the exact number of days of treatment and, on the basis thereof, to file the corresponding information, but he failed to do so.

Moreover, there was reason to consider treachery as an aggravating circumstance because although the attack was frontal, it was sudden and, therefore, deprived the offended party of an opportunity to defend himself. Even drunkenness could have been taken into account since the accused was admittedly smelling of liquor.