

PCGG CHAIRMAN MAGDANGAL B. ELMA AND PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, PETITIONERS, VS. REINER JACOBI, CRISPIN REYES, MA. MERCEDITAS N. GUTIERREZ, IN HER CAPACITY AS UN...*G.R. No. 155996. June 27, 2012*

Ponente: BRION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-155996/>**BRION, J.:**

Before the Court is a petition for certiorari under Rule 65 filed by the Presidential Commission on Good Government (PCGG) and its former Chairman Magdangal Elma[1] (petitioners) questioning the resolutions, dated July 17, 2002[2] and September 20, 2002,[3] of then Undersecretary of Justice Ma. Merceditas N. Gutierrez. The assailed resolutions dismissed the petitioners' petition for review, denied the petitioners' motion for reconsideration and ultimately ruled that no probable cause for falsification and use of falsified document existed against Atty. Crispin Reyes and Reiner Jacobi (respondents).

ANTECEDENTS

The records show that on two occasions - evidenced by the December 22, 1988 and May 6, 1991 letters[4] - then PCGG Commissioner, and later Chairman, David M. Castro, purportedly acting for the PCGG, agreed to pay Jacobi a fee of ten percent (10%) of any amount actually recovered and legally turned over to the Republic of the Philippines from the ill-gotten wealth of Ferdinand E. Marcos and/or his family, associates, subordinates and cronies, based on the information and evidence that Jacobi would furnish the PCGG. Chairman Castro sent another letter dated December 19, 1991 to Jacobi confirming "that actual recovery [of] the Kloten gold account managed by Union Bank of Switzerland (UBS) subject of [Jacobi's] information and other efforts done will be properly compensated as previously committed." [5] We shall collectively refer to these letters as "PCGG letters."

A few years later, a similar letter dated August 27, 1998 (De Guzman letter) was sent by the new PCGG Chairman, Felix M. de Guzman, to Jacobi, confirming the PCGG's promise (as contained in the PCGG letters) to pay Jacobi and his intelligence group a 10% fee for the US\$13.2 billion ill-gotten wealth of Former President Ferdinand E. Marcos, his family, trustee or fronts in UBS still/now being claimed and recovered by the Philippine Government. The De Guzman letter reads in full:[6]

27 August 1998

Mr. Reiner Jacobi
c/o Business Center
JW Marriott Hotel, Hong Kong

Care: Counsel Crispin T. Reyes

Dear Mr. Jacobi:

I refer to the letters dated 22 December 1988, 6 May 1991 and 19 December 1991 addressed to you from Mr.

David M. Castro, former Chairman of the PCGG, copy (sic) for ready reference.

I hereby confirm the agreement of the PCGG to pay you/your group a ten (10%) percent fee of the US\$13.2 Billions ill-gotten wealth, unexplained or hidden deposits/assets of former President Ferdinand E. Marcos, his family, trustees or fronts in Union Bank of Switzerland, still/now being claimed and recovered by the Philippine government which is being assisted/facilitated/realized by their identification as a result of the findings, information and evidence supplied by you/your group to the PCGG that is otherwise not known to the Commission from other sources nor previously and voluntarily disclosed by the Marcoses, their trustees, associates or cronies.

Very truly yours,

FOR THE COMMISSION:

[Signed]

FELIX M. DE GUZMAN [Countersigned by Director Danilo Daniel]

Chairman

FMG/lai[7]

d01[8]

a. The Sandiganbayan petition

On March 8, 1999, the respondents filed with the Sandiganbayan a verified Petition for Mandamus, Prohibition and Certiorari (with Prayer for a Writ of Preliminary Mandatory and Prohibitory Injunction)[9] (Sandiganbayan petition) against the petitioners (docketed as Civil Case No. 006). Atty. Reyes acted as Jacobi's counsel. Jacobi did not sign or verify the petition.

The contents of the PCGG letters and the De Guzman letter, among others, were substantially reproduced in the Sandiganbayan petition and were attached as annexes. (The De Guzman letter was attached as Annex E). Likewise attached (as Annex G), was a June 24, 1998 letter from PCGG Chairman Magtanggol Gunigundo (Gunigundo letter), seeking judicial assistance from the Swiss Ministry of Justice and the Police of Switzerland regarding Marcos-related accounts in UBS.[10]

The Sandiganbayan petition began with the alleged commitment of the PCGG to Jacobi (and his group, including Atty. Reyes[11]) - as contained in the PCGG letters and the De Guzman letter. It also cited the reports[12] submitted by Jacobi's group to the PCGG detailing their ill-gotten- wealth-recovery efforts and services, as well as their follow-up letters[13] to the government to press for the UBS account. They alleged that due to their persistence, the PCGG (through Chairman Gunigundo and Chairman De Guzman) made an official request[14] to the Swiss Ministry of Justice to freeze the US\$13.2 billion UBS account (as of August 25, 1998[15]) in the name of Irene Marcos Araneta, alias "I. Araneta" (UBS account).[16] They claimed that the UBS itself admitted the existence of this account, and only denied that the account is owned in any way by the Marcoses.[17]

The Sandiganbayan petition also strongly questioned[18] Chairman Elma's appointment and reappointment of two Swiss "Trojan Horses" lawyers (Peter Cosandey and Martin Kurer) who had been allegedly blocking the government's efforts to recover the UBS account by secretly working for the UBS.[19] It alleged that Chairman Elma was working with these Swiss lawyers to frustrate the PCGG and its recovery efforts. Specifically, it alleged that:

In not revoking the re-appointment of Martin Kurer as PCGG lawyer despite the honest and sincere suggestions, pleadings and demands by [Atty. Reyes]; in not pursuing the great efforts of the Philippine government through Ambassador Tomas T. Syquia to have the account frozen; in appointing, allowing and in

fact abetting Martin Kurer who is associated (sic) and conspiring with Peter Cosandey in blocking the recovery of said account; [Chairman Elma] has shown beyond reasonable doubt that he has a personal agenda and is unusually interested in protecting [the UBS account] for another person or persons, other than the Filipino people.[20]

The Sandiganbayan petition prayed:

AFTER NOTICE AND HEARING, to declare the re-appointment of Swiss lawyer Martin Kurer and Peter Cosandey as having been issued in grave abuse of discretion and highly prejudicial to the interests of the Philippine Government and the Filipino people and therefore null and void; to order [Chairman Elma and PCGG] to perform their mandated duty to recover [the UBS account] for the Filipino people; and to sentence [Chairman Elma] to pay [Atty. Reyes and Jacobi] actual damages that may be proved during the trial; xxx

On March 15, 1999, Atty. Reyes, through the Anti-Graft League of the Philippines, Inc. (AGLP), filed a complaint with a similar thrust against Chairman Elma with the Office of the Ombudsman (Ombudsman complaint).[21] Atty. Reyes attached the Sandiganbayan petition (together with its annexes) to this complaint.[22] Atty. Reyes alleged that Chairman Elma's (i) reappointment of Martin Kurer, despite official information that he had been secretly working for UBS, and (ii) failure to follow-up the PCGG's previous official requests to the Swiss authorities were obvious violations of the provisions of Republic Act No. 3019.[23]

Later, Atty. Reyes filed an Urgent Manifestation[24] with the Sandiganbayan, withdrawing the De Guzman letter and the Gunigundo letter as annexes of the Sandiganbayan petition. A similar manifestation was filed with the Office of the Ombudsman regarding the Ombudsman complaint.[25] Atty. Reyes explained that he had been prompted to withdraw these letters after he learned of reports questioning the authenticity of these documents. Atty. Reyes asserted that Jacobi had nothing to do with the preparation nor with the attachment of these letters to the Sandiganbayan petition and to the Ombudsman complaint; thus -

Annex "E" of the [Sandiganbayan Petition] is [the De Guzman letter] which was previously shown to [Chairman de Guzman] by [Atty. Reyes] before it was used as an annex and he stated that the statements therein appear to be in the document he has signed. xxx

[Jacobi] had absolutely nothing to do about this Annex "E"

xxx

At any rate, this questionable document is merely a restatement of PCGG Chairman Castro's commitment to Mr. Jacobi which is still perfectly binding and enforceable xxx and, further, it is absolutely immaterial to the main issue in this case.

Hence, this document marked Annex "E" of the [Sandiganbayan Petition] should be withdrawn, as it is now hereby withdrawn xxx, from the records of this case.

Further, [Atty.] Reyes has also carefully examined... Annex "G" of the [Sandiganbayan] Petition. He asked first for a copy of this document sent to Ambassador Syquia in Switzerland but he was informed that there is no copy in PCGG records. Afterwards, a copy of the document was provided by a PCGG insider and this is now marked as Annex "G"... Again, [Jacobi] had nothing to do with this document marked as Annex "G".

[Atty.] Reyes has also carefully examined this document and found that while the statements therein appear authentic, however, upon closer examination, it seems that the signature thereunder is not the signature in the original signed by [Chairman Gunigundo] xxx.

Hence, this Annex "G" should be likewise withdrawn...

xxx

If [respondents], particularly counsel Reyes, had known from the very beginning that these documents are questionable and not trustworthy, of course, they will never use them in this case for purposes of recovering Marcos UBS account of \$13.2 Billions (sic) by PCGG for the people of the Philippines.

And whenever there is anything wrong or questionable, [respondents] will not hesitate to and will immediately inform the [Sandiganbayan] accordingly, as, in fact, they are doing now, and it is their desire to deal with all candor, fairly and honestly, with [the Sandiganbayan] and all courts of the land. *[italics in the original]*

b. The PCGG's reaction

The attachment, as annexes, of the De Guzman letter to the Sandiganbayan petition and to the Ombudsman complaint elicited a legal response from the PCGG. Based on the affidavits executed by Chairman De Guzman, Director Danilo Daniel[26] of the Finance and Administration Department of the PCGG,[27] and Lilia Yanga,[28] what appears as their signatures and initials at the bottom of the De Guzman letter actually pertain to their signatures and initials affixed to another letter (dated August 25, 1998) sent by Chairman De Guzman to the Philippine Ambassador to Switzerland, Tomas Syquia.[29] This August 25, 1998 letter, however, had nothing to do with any contingency agreement with Jacobi and/or Atty. Reyes. Lourdes Magno,[30] a Records Officer, and Sisa Lopez[31] also executed affidavits stating that the PCGG has no record of the De Guzman letter. All of these affiants were then PCGG employees.

In a March 17, 1999 resolution (PCGG resolution),[32] the PCGG stated that the De Guzman letter does not exist in its records.[33] Chairman De Guzman himself denied any participation in the preparation of this letter, and said:[34]

In connection with Civil Case No. 006 xxx the declaration of Director Danilo R.B. Daniel that the contents [of the De Guzman letter] is not authentic is hereby confirmed it appearing that the records of the PCGG bearing on the alleged letter indicates that the signature of the undersigned and the initials of Dir. Daniel written thereof refers to a letter addressed to Ambassador Tomas Syquia dated August 25, 1998 and not to the [De Guzman letter addressed] to Mr. Jacobi. *[emphasis added]*

The PCGG resolution also stated that a Swiss official[35] already denied the existence of the US\$13.2 billion UBS account claimed by Jacobi. Ultimately, the PCGG resolved to (i) declare Jacobi's arrangement with then Chairman Castro as non-binding and inexistent, and (ii) authorize Chairman Elma to file appropriate civil and criminal charges against the respondents.[36]

In a March 16, 1999 report of the National Bureau of Investigation (NBI), the latter confirmed that the De Guzman letter was a falsified document as the questioned signatures and entries therein "were lifted/extracted probably from the original and/or xerox copy"[37] of the August 25, 1998 letter addressed to Ambassador Syquia.

c. Criminal Complaint

On March 22, 1999, Chairman Elma filed an affidavit-complaint[38] with the Department of Justice (DOJ), charging the respondents with falsification and with use of falsified document (under Article 171, paragraph 2 and Article 172, paragraphs. 1 and 3 of the Revised Penal Code). The petitioners attached to the complaint the NBI report and the affidavits of the PCGG employees.[39]

On April 5, 1999,[40] Atty. Reyes and the AGLP filed a criminal complaint with the Office of the Ombudsman against Director Daniel (Daniel Complaint) for his alleged "traitorous mission for [UBS] and [the] Marcoses against the interest of the Philippine government." [41] The complaint stated the following particulars surrounding the Gunigundo letter and the De Guzman letter:

Atty. Reyes also informed [Dir. Daniel] that [Atty. Reyes] requested [the] PCGG record section for a copy of

[the Gunigundo letter]... but he was told they had no copy in their records.

And regarding the missing [De Guzman] letter, the statement in the affidavits of [the PCGG employees] that there is neither a copy of Chairman de Guzman's letter... is not surprising and confirms [that] important documents are usually missing.

xxx

Further, about middle of September, 1998, Atty. Reyes again visited [Dir. Daniel] xxx and xxx inquired about [the] Gunigundo letter... and the [De Guzman] letter... to Reiner Jacobi [which] merely restated what former PCGG Chairman David Castro committed to Reiner Jacobi. The PCGG record section said it has no copy. And xxx [Dir. Daniel] said that he will check his records and give copies if available in his file.

Some days thereafter, again [Atty. Reyes] visited [Dir.] Daniel and he gave me xerox copy of [the] Gunigundo letter... (marked Annex "G" [of the Sandiganbayan] Petition...) xxx and [Chairman] De Guzman's letter... (marked Annex "E" [of the Sandiganbayan] Petition...

I never knew then that xxx [Dir.] Daniel has been working for the Marcoses and UBS in conspiracy with Swiss "Trojan Horse" Martin Kurer against the Philippine government. And I learned about it only recently. Hence, before I did not bother to check the trustworthiness of these documents which he gave me and which I believed all along to be authentic until my attention was called by negative press reports on this [De Guzman letter].

But, on the very day I read negative press reports on the authenticity of [Chairman] De Guzman's letter xxx, I realized that the two documents (Gunigundo's letter of June 24th and De Guzman's letter of Aug. 27th) given to me by [Dir.] Daniel must have been falsified. xxx

Accordingly, on the same day, Atty. Reyes formally withdrew these two documents marked Annexes "E" and "G" of the PETITION in Sandiganbayan Case No. 006 xxx from the record of the case.[42]

Atty. Reyes imputed the falsification to Director Daniel and claimed good faith in annexing the De Guzman letter to the Sandiganbayan petition; thus -

[Dir. Daniel] had the means and opportunity to create the [De Guzman letter] which confirmed PCGG's contingency fee agreement with Jacobi. [Dir.] Daniel had initialed the letter dated August 25, 1998. It has subsequently been discovered by the NBI that the signatures and initialing of the genuine letter dated 25 August 1998 have been transposed onto the forged [De Guzman] letter.

Because [Dir.] Daniel had access to the letter dated 25 August 1998, he was in the best position to forge the [De Guzman] letter. The NBI has stated that the [De Guzman] letter... was a very crude forgery. Indeed, it is now clear that this was such a crude forgery that it was designed to be discovered. Likewise, [Dir.] Daniel had access to Gunigundo's letter of June 19, 1996, hence, he was also in the best position to forge said [Gunigundo] letter of June 24, 1998 which is also a crude forgery.

xxxx

In contrast, Jacobi and Reyes have no motive in creating a forged contingency fee agreement because Jacobi already has a binding agreement with the Philippine government. Indeed, their subsequent conduct contradicts any suggestion of guilty knowledge. In good faith, they attached the [De Guzman letter] in their Petition filed against Chairman Elma and the PCGG with the Sandiganbayan wherein recovery of \$13.2 Billion from UBS is the main issue. It is ludicrous to suggest that Jacobi and Reyes would create a crude forgery and then produce it in contentious court proceedings when such a forgery is unnecessary to their case and is easily discoverable. Verily, the obvious forger is [Dir.] Daniel of the PCGG.[43]

Atty. Reyes filed his counter-affidavit,[44] adopting the explanation and allegations contained in his Urgent

Manifestation and in the Daniel Complaint in pleading for the dismissal of the criminal case.

For his part, Jacobi, through Atty. Cynthia Peñalosa, denied any participation in the falsification of the De Guzman letter. He explained:

8. I was informed by [Atty. Reyes] at the time that I received a copy of [the De Guzman letter] that that letter had been given to [him] by [Dir.] Daniel. The obvious forger is no other than PCGG insider [Dir.] Daniel xxx.[45]

Jacobi added that he and Atty. Reyes have no reason or motive to forge the letter since he already had an existing contingency fee agreement with the PCGG/Philippine government. Jacobi attached an affidavit of Chairman Castro confirming the veracity of the PCGG letters.[46] Jacobi stated that the petitioners' complaint ignored his work history with the PCGG and the consistency of his conduct with the agreement he entered into with the Philippine government.

Chairman Elma and the PCGG countered that the respondents' withdrawal of the falsified letter cannot extinguish the offenses already committed. The petitioners refuted the respondents' allegation that Director Daniel was the source of the De Guzman letter per Director Daniel's affidavit, to wit:

I am not in a position to give [Atty. Reyes] the falsified [De Guzman] letter xxx to Reiner Jacobi as I do not have a copy of said letter.

I strongly dispute Jacobi's statement that "the obvious forger is no other that (sic) the PCGG insider Danilo Daniel who furnished Attorney Crispin T. Reyes the letter in question." This is absolutely false and baseless. As I have stated above, I had no participation at all in this spurious letter. If I participated in this proceeding, why do I need to falsify it. Why not just give them a genuine copy of the letter.[47] (underlining added)

d. The DOJ's initial finding: existence of probable cause

In a June 25, 1999 resolution (first resolution), Senior State Prosecutor Jude Romano found probable cause against the respondents on the basis of two legal presumptions - that (i) the possessor and user of a falsified document is the forger; and (ii) whoever stands to benefit from the forgery is the author thereof - which the respondents failed to overthrow. Thus, he recommended the filing of the corresponding information whose dispositive portion stated:[48] thus -

WHEREFORE, premises considered, it is respectfully recommended that informations for Falsification and Use of Falsified Documents under Article 172 (1) in relation to Article 171(2) and Article 172 par. 3 of the Revised Penal Code, respectively, be filed against respondents xxx and another information for Use of Falsified Document under Article 172 par. 3 xxx be filed against [Atty. Reyes].

Prosecutor Romano rejected Jacobi's claim (that he had nothing to do with the forged letter or with its attachment as annex to the Sandiganbayan petition), on the ground that the act of Atty. Reyes, as Jacobi's counsel in the Sandiganbayan petition, bound him as client.[49]

Atty. Reyes seasonably moved for reconsideration of the first resolution,[50] alleging that neither of the presumptions relied upon by Prosecutor Romano applies.[51] Jacobi, through Atty. Peñalosa, received his copy of the first resolution on June 30, 1999.[52]

d1. The procedural complications.

On July 13, 1999,[53] the Padilla, Jimenez, Kintanar and Asuncion law firm (Padilla law firm) filed its Entry of Appearance with Omnibus Motion[54] for Jacobi, requesting for additional time to file an appropriate

pleading.[55] The Entry of Appearance attached the June 29, 1999 letter of Jacobi to Atty. Alexander Padilla (Padilla letter) of the Padilla law firm, retaining the latter as his “attorney to deal with the DOJ.”[56] The Padilla letter stated that Jacobi has attached a copy of his June 29, 1999 letter to Atty. Peñalosa (Peñalosa letter). Jacobi did not state the contents of the Peñalosa letter and neither was a copy of the Peñalosa letter actually attached to the Entry of Appearance.

On July 15, 1999 - the last day to avail of a remedy from the first resolution - Jacobi, through Atty. Peñalosa, filed an unverified petition for review[57] with the DOJ Secretary. With this development, the petitioners opposed the Padilla law firm’s earlier request for additional period (to file appropriate pleading).[58] The petitioners’ opposition notwithstanding, Prosecutor Romano granted the Padilla law firm’s requests “in the interest of justice” in a July 15, 1999 order.[59] Accordingly, on July 29, 1999,[60] Jacobi (through the Padilla law firm) moved for the reconsideration of the first resolution (first MR).[61]

Meanwhile, in a July 19, 1999 manifestation, Jacobi, through the Padilla law firm, stated that “only [the Padilla law firm is] authorized to represent [Jacobi] and that any and all other pleadings and documentations filed or submitted by any other person and counsel, purportedly in and for his behalf, are manifestly not authorized.”[62]

In a January 25, 2000 order (second resolution), Prosecutor Romano resolved[63] to deny Jacobi’s first MR, reasoning as follows:

Records show that on July 13, 1999, [Atty. Padilla] filed an Entry of Appearance with Omnibus Motion manifesting that he is entering his appearance as counsel for [Jacobi]. xxx

Subsequently, on July 29, 1999, Atty. Padilla filed a Motion for Reconsideration. A perusal of the records however reveal[s] that a Petition for Review was filed before the Secretary of Justice by Atty. Cynthia Peñalosa in behalf of [Jacobi] on July 15, 1999. It further appears that no withdrawal of appearance as counsel or a withdrawal of the Petition was ever filed by said counsel. Thus, Atty. Peñalosa remains to be a counsel on record of [Jacobi] with Atty. Padilla as co-counsel.

Considering that the respondent has filed a Petition for Review of the [first resolution] that is the subject of the Motion for Reconsideration, the undersigned in deference to the Secretary of Justice is constrained to deny the Motion for Reconsideration. [emphases added]

Earlier however (or on January 10, 2000), then Secretary of Justice Serafin Cuevas also resolved to dismiss Jacobi’s unverified petition for review (Cuevas resolution) for Jacobi’s failure to “submit a verification of the petition signed by [Jacobi] himself.”[64]

On March 7, 2000,[65] the Sanidad Abaya Te Viterbo Enriquez and Tan law firm (Sanidad law firm) filed an Entry of Appearance as “sole and principal counsel”[66] for Jacobi. The Sanidad law firm attached two facsimile letters of Jacobi: one is dated March 3, 2000,[67] addressed to Prosecutor Romano/Chief State Prosecutor Jovencito Zuño; and the other is dated June 29, 1999[68] (which is actually the Peñalosa letter, supposedly attached to the Padilla law firm’s Entry of Appearance) addressed to Atty. Peñalosa. Both letters attest to “the lack of authority of Atty. Peñalosa to represent and take action [for Jacobi] as of [June 29, 1999]”[69] – or before the unverified petition for review was filed. These facsimile letters do not bear the actual date of their transmission.[70]

The Sanidad law firm moved for the reconsideration[71] (second MR) of the second resolution, arguing that Prosecutor Romano erred in refusing to recognize that Atty. Peñalosa had already been validly discharged upon the subsequent unqualified appearance of the Padilla law firm well before the unverified petition for review was filed. It cites in support the Padilla law firm’s July 19, 1999 Manifestation.[72]

In a March 6, 2001 resolution (third resolution), Chief State Prosecutor Jovencito Zuño (i) approved the recommendation of Prosecutor Romano to grant Jacobi's second MR and Atty. Reyes' pending motion for reconsideration, and (ii) dismissed the complaint against the respondents.[73] Since both the second resolution (denying Jacobi's first MR) and the Cuevas resolution (denying Jacobi's unverified petition for review) were not based on the merits, the prosecutors considered Jacobi's second MR "in the interest of justice." The prosecutors observed:

[The De Guzman letter] merely confirms the agreement between the PCGG and Jacobi's group.... The [De Guzman letter] was annexed to [the Sandiganbayan petition] [which] specifically prayed "for the revocation of the re-appointment of Swiss lawyers and representatives in Switzerland x x x and to continue, push through and follow up the previous government efforts and take such appropriate actions called for. xxx

As can be gleaned from the above, the subject letter is not necessary for the successful resolution of the case. As explained, its annexation to the petition is a surplusage for even without it, the action was sufficient. There is no logical reason for the respondents to falsify the subject letter knowing fully well that no benefit would accrue in their favor. It would be different if the action filed was for the collection of the stipulated 10% fee. The subject letter then becomes very material as it serves as proof of their right to the fees.[74]

In the meantime, Atty. Peñalosa withdrew[75] as Jacobi's counsel. She attached to her Notice of Withdrawal her letters-explanation to Jacobi, disproving her alleged lack of authority to file the unverified petition for review. In one of her letters, Atty. Peñalosa explained:

You [referring to Jacobi] know... that despite the [Peñalosa letter] (which was faxed to me after I received a copy of the adverse DOJ Resolution...) You repeatedly requested me to proceed... and to immediately inform [Atty. Padilla] that it was [you who gave] me authority to prepare/submit the necessary papers. I then informed [Atty. Padilla] of your decision. Nevertheless... I told [Atty. Padilla] that I could withdraw from [the] case so he can enter his appearance and make the necessary legal moves. [Atty. Padilla] said [that] he did not know about your DOJ case and that he was busy and that I just go ahead with your request that I proceed with the preparation/submission of the papers.

xxxx

On July 15, 1999 which was the last day for the filing of the petition [for review with the DOJ], I asked you again if we were to proceed and your decision [was] that I file it. Even Dr. David Chaikin, your lawyer, who was with you at that time and whom you consulted, advised me to proceed. So, the petition was filed.[76] (Emphases added)

The petitioners moved for reconsideration[77] of the third resolution but its motion was denied in a January 9, 2002 resolution.[78] Prosecutors Romano and Zuño rejected the petitioners' argument that the dismissal of Atty. Peñalosa's petition for review bars a reconsideration of the second resolution.

It should be noted that the [third resolution] treats, not only of [Jacobi's] motion for reconsideration, but likewise that of [Atty. Reyes] which was [seasonably] filed. xxx

Therefore, insofar as the Motion for Reconsideration filed by [Atty. Reyes] is concerned, the same is still pending and had to be resolved. It is of record that [Atty. Reyes] never filed a petition for review of the [first resolution]. Hence the [Cuevas petition] dismissing on a mere technicality the Petition for review filed by Atty. Peñalosa, alleged counsel [of Jacobi], did not affect the pending Motion for Reconsideration filed by [Atty. Reyes] and did not bar the undersigned from acting thereon.

Insofar as the Motion for Reconsideration filed by [Jacobi] is concerned, the same had to be resolved principally in the interest of justice xxx.

This case involves the same facts and the same issues for both [Jacobi and Atty. Reyes] such that injustice could occur should there be two different decisions. xxx

xxx [the] dismissal [of the petition for review] never affected the Motion for reconsideration filed by [Atty. Reyes] then pending with the undersigned for resolution. Certainly, the resolution of this motion was within the jurisdiction/authority of the undersigned and the Chief State Prosecutor whose resolution is subject of reconsideration. xxx[79] [emphasis supplied]

e. The DOJ's present finding: No probable cause

On April 29, 2002, the PCGG filed a petition for review[80] with the DOJ Secretary.[81] Usec. Gutierrez, acting "for the Secretary of Justice" Hernando Perez, denied the petition for review on the ground that no prima facie case exists against the respondents. With the denial[82] of the petitioners' motion for reconsideration,[83] the petitioners went directly to this Court on a petition for certiorari.

THE PETITIONERS' POSITION

The petitioners claim that Usec. Gutierrez gravely abused her discretion when she sustained the impropriety of (i) Jacobi's simultaneous resort to two different remedies – filing a petition for review and a motion for reconsideration – through two different counsels[84] and (ii) filing a second motion for reconsideration of an adverse resolution through another counsel.[85] Jacobi's first and second MRs were "purposely devised... to make it appear that Atty. Peñalosa was not authorized to file the unverified petition for review." [86]

The petitioners also claim that the alleged termination of Atty. Peñalosa's services surfaced only when - as late as March 2000 - the Sanidad law firm attached to Jacobi's second MR a copy of the Peñalosa letter. The petitioners argue that nothing in the records of the case would show that Jacobi terminated Atty. Peñalosa's services at any time before she filed the unverified petition for review. The Padilla law firm's (i) Entry of Appearance and (ii) July 19, 1999 manifestation, as well as the Padilla letter attached to these, are silent about the alleged termination of Atty. Peñalosa. These documents do not contain the Peñalosa letter which supposedly evidences Jacobi's termination of Atty. Peñalosa's services.[87] At any rate, the Padilla and the Peñalosa letters are of dubious authenticity because they do not contain the actual date of transmittal by Jacobi to their addressees, as would normally appear at the top edge of a faxed document.[88]

The petitioners assert that Atty. Peñalosa was Jacobi's counsel at the time she filed the unverified petition for review, citing Prosecutor Romano's observation in the second resolution and Atty. Peñalosa's letters-explanation, attached to her Notice of Withdrawal.[89] The petitioners likewise claim that since Atty. Peñalosa remained Jacobi's counsel at the time she filed the petition for review, then the filing of the first and second MRs by the Padilla law firm and by the Sanidad law firm, respectively, is highly improper.

The petitioners add that Usec. Gutierrez gravely abused her discretion when she sustained Prosecutor Romano and Prosecutor Zuño's grant of Jacobi's second MR, which effectively (albeit without authority) overturned the Cuevas resolution,[90] instead of maintaining respect to the appellate authority of then Secretary Cuevas.

On the issue of probable cause, the petitioners reiterate the findings in the first resolution that the respondents' defense of "lack of knowledge [of the forgery] is self-serving and is better ventilated in a full blown trial." [91] Relying on the presumption that the holder of a forged document is presumed to be the forger thereof, the petitioners assert that the respondents failed to rebut this presumption with credible evidence. Since the Sandiganbayan petition seeks to compel the petitioners (as respondents in Civil Case No. 006) to recover the UBS account, the Sandiganbayan petition was actually an action to compel recognition of the respondents' alleged 10% finder's fee as confirmed in the De Guzman letter.[92]

Citing *Choa v. Judge Chiongson*,^[93] the petitioners add that the withdrawal of the De Guzman letter from the Sandiganbayan petition and the Ombudsman complaint cannot negate the criminal liability that the respondents had already incurred. Criminal liability for knowingly introducing a falsified document in court is incurred once the document is submitted to the court through its attachment to the complaint.^[94] The respondents cannot likewise claim good faith in withdrawing the De Guzman letter since the withdrawal was made after Chairman De Guzman denied any participation in the forged letter and after the NBI confirmed the falsification.^[95]

THE RESPONDENTS' POSITION

The respondents question the propriety of the petitioners' resort to a certiorari petition instead of a petition for review under Rule 43;^[96] they posit that even assuming the remedy of certiorari is proper, the petition is insufficient in form and substance due to the petitioners' failure to (i) implead the DOJ in their petition^[97] and (ii) to observe the doctrine of hierarchy of courts.^[98]

Contrary to the petitioners' remonstrance, the assailed resolutions of Usec. Gutierrez were actually issued for Secretary of Justice Hernando Perez, and therefore, Usec. Gutierrez did not reverse the Cuevas resolution.^[99] The respondents assert that the petitioners cannot compel the prosecutor to proceed with the case after finding that no probable cause exists against the respondents since the determination of probable cause involves an exercise of discretion.^[100]

The respondents add that the petitioners' failure to present the original of the allegedly forged document is fatal to their accusations of forgery. At any rate, the presumption of authorship, relied upon by the petitioners, is inapplicable to and rebutted by *Jacobi* and *Atty. Reyes*, respectively: first, the presumption cannot apply to *Jacobi*, who was never in possession of the De Guzman letter; he had no participation in the preparation of the Sandiganbayan petition and he did not even verify it; and second, *Atty. Reyes* sufficiently explained how he came into possession of the De Guzman letter.^[101]

ISSUES

- Whether certiorari under Rule 65 is the proper remedy to question the DOJ's determination of probable cause.
- If it is, where should the petition be filed.
- Whether the DOJ committed grave abuse of discretion.
- In effectively allowing *Jacobi* to (i) simultaneously avail of the remedy of a petition for review and a motion for reconsideration, and (ii) file a second motion for reconsideration.
- In finding that no probable cause for falsification and use of falsified document exists against the respondents?

OUR RULING

The petition lacks merit.

Before going into the substance of the petition, we shall first resolve the procedural questions the respondents raised.

I. Procedural aspects

- a. Rule 65 is the proper remedy to assail the DOJ's determination of the presence or absence of probable cause

The respondents claim that a petition for review under Rule 43 is the proper remedy in questioning the assailed DOJ resolutions.

The respondents are mistaken.

By weighing the evidence submitted by the parties in a preliminary investigation and by making an independent assessment thereof, an investigating prosecutor is, to that extent, performing functions of a quasi-judicial nature in the conduct of a preliminary investigation. However, since he does not make a determination of the rights of any party in the proceeding, or pronounce the respondent's guilt or innocence (thus limiting his action to the determination of probable cause to file an information in court),^[102] an investigating prosecutor's function still lacks the element of adjudication^[103] essential to an appeal under Rule 43.

Additionally, there is a "compelling reason" to conclude that the DOJ's exclusion from the enumeration of quasi-judicial agencies in Rule 43 of the Rules of Court is deliberate. In *Orosa v. Roa*,^[104] we observed:

There is compelling reason to believe, however, that the exclusion of the DOJ from the list is deliberate, being in consonance with the constitutional power of control lodged in the President over executive departments, bureaus and offices. This power of control, which even Congress cannot limit, let alone withdraw, means the power of the Chief Executive to review, alter, modify, nullify, or set aside what a subordinate, e.g., members of the Cabinet and heads of line agencies, had done in the performance of their duties and to substitute the judgment of the former for that of the latter.

Being thus under the control of the President, the Secretary of Justice, or, to be precise, his decision is subject to review of the former. In fine, recourse from the decision of the Secretary of Justice should be to the President, instead of the CA, under the established principle of exhaustion of administrative remedies. x x x. Notably, Section 1 x x x of Rule 43 includes the Office of the President in the agencies named therein, thereby accentuating the fact that appeals from rulings of department heads must first be taken to and resolved by that office before any appellate recourse may be resorted to. [citations omitted, emphasis ours]

However, Memorandum Circular No. 58^[105] of the Office of the President bars an appeal from the decisions/orders/resolutions of the Secretary of Justice on preliminary investigations of criminal cases via a petition for review, except for those involving offenses punishable by reclusion perpetua to death.^[106] Therefore, a party aggrieved by the DOJ's resolution - affirming or reversing the finding of the investigating prosecutor in a preliminary investigation involving an offense not punishable by reclusion perpetua to death - cannot appeal to the Office of the President and is left without any plain, speedy and adequate remedy in the ordinary course of the law. This leaves a certiorari petition as the only remedial avenue left.^[107] However, the petitioner must allege and show that the DOJ acted with grave abuse of discretion in granting or denying the petition for review.

We also reject the respondents' allegation that the present petition suffers from a fatal procedural defect for failure to implead the DOJ (or its appropriate official) as an indispensable party.

Unlike a Rule 45 petition, one filed under Rule 65 petition requires the petitioner to implead as public respondent the official or agency^[108] whose exercise of a judicial or quasi-judicial function is allegedly tainted with grave abuse of discretion.^[109] Contrary to the respondents' assertion, the petition for certiorari filed by the petitioners with the Court impleaded Usec. Gutierrez, who, as then Justice Undersecretary, issued the assailed resolutions "for the Secretary of Justice." While the DOJ did not formally enter its appearance in this case, or file any comment or memoranda, the records show that the Court issued resolutions, addressed to the DOJ as a party, to submit the appropriate responsive pleadings.^[110] As an extraordinary remedy, Rule 65 of the Rules of Court does not require that summons be issued to the respondent; the service upon him of an order to file its Comment or Memorandum is sufficient.^[111]

b. The doctrine of hierarchy of courts
not inflexible

Conceding the remedial propriety of the present petition, the respondents nevertheless assert that under the doctrine of hierarchy of courts, the present petition should have been filed with the Court of Appeals (CA), which has concurrent jurisdiction with the Supreme Court to issue the extra-ordinary writ of certiorari.

We agree with the respondents.

In *Vergara, Sr. v. Judge Suelto*,^[112] the Court laid down the judicial policy expressly disallowing a direct recourse to this Court because it is a court of last resort. The Court stressed that “[w]here the issuance of an extraordinary writ is also within the competence of [another court], it [must be in that court] that the specific action for the writ’s procurement must be presented.” The rationale behind the policy arises from the necessity of preventing (i) inordinate demands upon the Court’s time and attention which are better devoted to those matters within its exclusive jurisdiction, and (ii) further overcrowding of the Court’s docket.^[113]

People v. Cuaresma^[114] and subsequent jurisprudence later reaffirmed this policy, stating that a direct invocation of the Court’s original jurisdiction may be allowed only if there are special and important reasons clearly and specifically set out in the petition or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.^[115]

In the present case, the petitioners have not advanced any special and important reason or reasons why direct recourse to this Court should be allowed, considering the availability of a certiorari petition with the CA; nor do we find exceptional and compelling circumstances in the present petition to apply the exception to the judicial policy.^[116] However, if only to avoid further delay – by leniently reading the petition, and assuming import to, the allegation that the respondents falsified a document that forms part of the PCGG’s official records of its correspondence with a Philippine diplomatic official – we deem it of practical necessity to resolve the case on its merits.^[117]

c. Grave abuse of discretion: procedural
aspect of the DOJ’s determination of lack
of probable cause

The petitioners argue that since Atty. Peñalosa was still Jacobi’s counsel of record at the time she filed the unverified petition for review, Jacobi could not disown the act of his counsel by simply availing of another remedy through another counsel. Consequently, the dismissal of Jacobi’s unverified petition for review - albeit on a technical ground - rendered the first resolution as the final determination of the existence of probable cause against the respondents.

The mere filing of a notice of appearance of a new counsel does not automatically give rise to the presumption that the present counsel of record has already been substituted or that his authority has been withdrawn. Therefore, absent a formal withdrawal of appearance filed by Atty. Peñalosa, the Padilla law firm is considered merely as a collaborating counsel and its entry of appearance does remove from Atty. Peñalosa the authority to file, when she did, the petition for review with the DOJ.^[118] Even Jacobi impliedly admitted that Atty. Peñalosa was still his counsel at the time she filed the petition for review by not addressing the issue of her authority to file it and by conveniently choosing to keep silent (thus impliedly agreeing with) regarding her account of the filing of the petition.

Contrary to the petitioners’ claim, records bear out that the Padilla law firm had attached the Peñalosa letter to its July 19, 1999 manifestation, showing that Jacobi already terminated Atty. Peñalosa’s services as of June 29, 1999

(or before the unverified petition for review was filed). However, since this Manifestation was filed with the DOJ only on July 20, 1999,[119] Atty. Peñalosa's earlier filing of the petition for review cannot be considered unauthorized. While the filing of this July 19, 1999 manifestation would have the effect of discharging Atty. Peñalosa,[120] it cannot undo her act which was valid and effective at the time it was done.[121]

All things considered, the factual peculiarities of this case do not lead us to adopt the petitioners' position.

Under Department Circular No. 70 of the DOJ,[122] an aggrieved party may appeal the resolution of the city or provincial prosecutor to the Secretary of Justice upon receipt either of the questioned resolution or of the denial of a motion for reconsideration of the questioned resolution. Logically, the filing of a petition for review is deemed a waiver of the more expedient remedy of asking for reconsideration from the investigating prosecutor.

Notwithstanding the irregularity that would result in availing two remedies in succession, Prosecutor Romano granted Jacobi's request (through the Padilla law firm) for an additional period within which to file an appropriate pleading, glossing over the petition for review filed on the same date (July 15, 1999) with the Secretary of Justice. Accordingly, Jacobi filed his first MR on July 29, 1999, through the Padilla law firm.

Upon discovery of Jacobi's previously filed petition for review, Prosecutor Romano refused to entertain Jacobi's first MR "in deference to the Secretary of Justice." [123] (Unfortunately, the then Secretary of Justice subsequently denied Jacobi's petition for review based solely on a procedural defect, i.e., Jacobi failed to verify the petition).

A significant point that should be appreciated at this juncture is that Atty. Reyes himself had a validly filed motion for reconsideration since he had been alleged to be not only a lawyer, but a co-conspirator of Jacobi in the offenses sought to be charged. It must be considered, too, that the petitioners' accusations against the respondents arose from the same set of disputed (and undisputed) facts whose resolution, for purposes of determination of probable cause, could not be considered independently of one another. The prosecutors apparently forgot about Atty. Reyes' motion for reconsideration when they recognized the petition for review Jacobi earlier filed and in ruling on Jacobi's first MR.

From this perspective, Prosecutor Zuño's March 6, 2001 ruling on Jacobi's second MR and on Atty. Reyes' first MR cannot be appreciated as grave abuse of discretion. While it seemingly violated established rules of procedure, it provided ample justification therefor – the avoidance of possibility of two conflicting rulings on two motions treating of the same inseparable subject matter.

We remind the petitioners that when the technical rules of procedure desert its proper office as an aid to justice and becomes a great hindrance to the attainment of justice, its invocation deserves the least consideration from this Court. Rules of procedure must yield, when proper and under justifiable causes and/or circumstances (as what has been done in the present case), in the interest of substantial justice.

In these lights, we cannot likewise agree with the petitioners' remonstrations that Usec. Gutierrez improperly overruled the resolution of former Secretary Cuevas. As the respondents pointedly countered, the assailed resolutions were issued by Usec. Gutierrez "for the Secretary of Justice," who at the time was no longer Secretary Cuevas.[124] Absent any allegation and proof of any acquired vested right, the discretion exercised by a former alter-ego cannot tie the hands of his successor in office since cabinet secretaries are mere projections of the Chief Executive himself.[125]

With the procedural issues cleared, we now resolve the ultimate issue of whether probable cause exists to charge the respondents with falsification and use of falsified documents.

II. Substantive aspect

a. Determination of probable cause, an executive function

The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government.[126] The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice.[127] Who to charge with what crime or none at all is basically the prosecutor's call.

Accordingly, the Court has consistently adopted the policy of non-interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause.[128] Courts cannot order the prosecution of one against whom the prosecutor has not found a prima facie case; as a rule, courts, too, cannot substitute their own judgment for that of the Executive.[129]

In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of certiorari. To justify judicial intrusion into what is fundamentally the domain of the Executive,[130] the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law,[131] before judicial relief from a discretionary prosecutorial action may be obtained. All these, the petitioner failed to establish.

b. Lack of probable cause for falsification

For purposes of filing an information in court, probable cause refers to facts and circumstances sufficient to engender a well-founded belief that a crime has been committed and that the respondents probably committed it. To guide the prosecutor's determination, a finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused; the quantum of proof to establish its existence is less than the evidence that would justify conviction, but it demands more than bare suspicion.[132]

No definitive basis to determine probable cause has been established, except to consider the attendant facts and circumstances according to the prosecutor's best lights.[133] No law or rule states that probable cause requires a specific kind of evidence. No formula or fixed rule for its determination exists. Probable cause is determined in the light of conditions obtaining in a given situation.[134] In going through the process, the prosecutor should carefully calibrate the issues of facts presented to him to the end that his finding would always be consistent with the clear dictates of reason.[135]

In the present case, the petitioners rely on the jurisprudential presumption that a holder of a forged document is himself the forger, and should be charged under Article 171, paragraph 2[136] and Article 172, paragraphs 1 and 3[137] of the Revised Penal Code.

I. The presumption's roots in jurisprudence

In the 1906 case of *U.S. v. Castillo*,^[138] the Court laid down the rule that the utterance or use of a forged instrument, when unexplained, is strong evidence tending to establish that the user himself (or herself) either forged the instrument or caused it to be forged. In this case, the accused merely denied ever presenting the forged check to the complainant or receiving the amount it represented; the Court found no merit in these denials. In *People v. De Lara*^[139] (a 1924 case), the Court again applied the presumption after finding the explanation of the accused – on how he came into possession of checks that were subsequently encashed – to be “unusual and unreasonable as to carry conviction.”^[140]

In *People v. Domingo* (1926),^[141] the Court applied the presumption because a few days after the certificate of title (over a property) was loaned to the accused, a forged deed of sale covering the property was executed by two alleged vendors. The Court ruled that the failure of the accused to explain what she did with the certificate of title loaned to her could only lead to the inference that she placed the certificate of title in the hands of her confederates as without the certificate, the forgery could not have been accomplished.

In *People v. Astudillo* (1934),^[142] the Court clarified^[143] that for the presumption to apply, the use of the forged document must be accompanied by these circumstances: the use is so closely connected in time with the forgery,^[144] or the user may be proved to have the capacity to undertake the forgery, or such close connection with the forgers to create a reasonable link. These additional circumstances have been loosely applied in subsequent cases.

In *Alarcon v. Court of Appeals* (1967),^[145] the Court applied the presumption after considering the “patent irregularity in the transaction”^[146] and the “extraordinary interest” of the accused in the property covered by the forged document/s in holding that “no reasonable and fair[-]minded man” would say that the accused had no knowledge of the falsification. *Sarep v. Sandiganbayan* (1989 case),^[147] gave occasion for the ruling that since the accused was the only person who stood to benefit by the falsification of the document found in his possession, the presumption of authorship of the falsification applies in the absence of contrary convincing proof by the accused.^[148]

In the more recent (1992) *Caubang v. People*,^[149] the accused - who claimed to have the authority to transact (in behalf of an entity) with a government agency in Manila - attempted to overthrow the presumption of authorship against him by alleging intervening circumstances from the time he arrived in Manila until the transaction with the government agency was made. The accused claimed the he did not carry the forged document when he arrived in Manila and that third persons (including a “fixer”) actually transacted with the government. Allegedly, these claims disproved that he had any knowledge or inference in the making of the submitted forged document. Rejecting this claim, the Court ruled that:

[U]tilizing a fixer as part of the scenario becomes a convenient ploy to divert the mind of the court from the more plausible inference that the accused-petitioner engineered the spurious [document].

x x x x

Even if the allegation that some other person [did the transaction] was true, the accused-petitioner would still be subjected to the same conclusion.

x x x x

Having been the one responsible for the filing of the registration papers, including the means he felt necessary to accomplish the registration, the accused must likewise be accountable therefor. As the authorized representative, he is deemed to have been the one in custody or possession, or at least the one who has gotten hold even for a short while, of the papers which included the [falsified document]. That he knew of the execution of the statement is a possibility not too difficult to imagine under the circumstances.

x x x x

The [submission] of the previously inexistent document [with the government] subjects the accused-petitioner to the inference that he used it as part of the registration papers. In the absence of a credible and satisfactory explanation of how the document came into being and then filed with the [government agency], the accused is presumed to be the forger [.]^[150] (*italics supplied*)

In *Dava v. People* (1991),^[151] involving an accused who misrepresented to his friend that he had no driver's license and thereafter induced his friend to deal with "fixers" so that he could have a driver's license, the Court ruled that the "patent irregularity"^[152] that attended the procurement of the license cannot escape the conclusion that the accused knew that the license he obtained was fake and that he acted as a principal by inducement in the falsification of the license.

The above case law instructs us that if a person had in his possession (actual or constructive) a falsified document and made use of it, taking advantage of it and/or profiting from such use, the presumption that he authored the falsification also applies.^[153]

These cited cases, however, already involve a determination of the guilt or innocence of an accused, requiring the application of the rigid standard of moral certainty. In a preliminary investigation that merely inquires into the probability of guilt of a respondent, no reason exists why the same presumption cannot apply *mutatis mutandis*, taking into account the different level of certainty demanded.

Where the evidence before the investigating prosecutor jibes with the factual premises^[154] necessary for the application of the presumption of authorship, a *prima facie*^[155] case for falsification under Article 171 of the Revised Penal Code is created. Correspondingly, the legal presumption gives rise to the necessity for the presentation of contrary evidence by the party (against whom the presumption applies) to overcome the *prima facie* case established;^[156] otherwise, the existence of probable cause cannot be disputed.^[157]

Based on these standards, the twin-issue we confront is whether the presumption applies and whether the facts giving rise to it have been adequately rebutted by the respondents.

ii. The legal presumption does not apply to Jacobi

Jacobi argues that the presumption of authorship does not apply to him because he never became a possessor or holder of the De Guzman letter.

The De Guzman letter shows that Jacobi was its intended addressee although it was sent in "care" of Jacobi's then counsel, Atty. Reyes. Unlike the PCGG letters, whose authenticity the petitioners do not dispute, the De Guzman letter recognized Atty. Reyes as Jacobi's counsel in his dealing with the PCGG. The petitioners do not dispute, too, Atty. Reyes' representation to the PCGG as Jacobi's counsel in several correspondences he had sent, confirming that he had been acting in such capacity.

The relation of an attorney and a client is in many respects one of agency and the general rules of ordinary agency apply. The extent of authority of a lawyer, when acting on behalf of his client outside of court, is measured by the same test applied to an ordinary agent.^[158] Accordingly, even if we go by Atty. Reyes' account of how the De Guzman letter surfaced, Jacobi, at least, had constructive possession of the De Guzman letter. Being a mere extension of the personality of the principal (client), the agent's (lawyer's) possession is considered that of the principal's.^[159]

However, possession of the falsified letter is not enough to trigger the application of the presumption of

authorship; the use of the document[160] and the existence of any of the circumstances previously discussed is still necessary.

In the present case, Jacobi's use of the De Guzman letter is placed in doubt considering (i) that he was not in the country when the Sandiganbayan petition - containing the De Guzman letter - was filed, and (ii) the absence of his signature in the Sandiganbayan petition and in its verification. There is also a seven-month interval between the date of the De Guzman letter and the filing of the Sandiganbayan petition. Cognizant of these facts, the petitioners theorized that Jacobi and Atty. Reyes acted in conspiracy in coming up with a falsified De Guzman letter.[161] The petitioners claim that the attachment of the De Guzman letter to the respondents' Sandiganbayan petition was precisely aimed at compelling the PCGG to recognize Jacobi's (and his group's) 10% contingent fee arrangement with the PCGG and, ultimately, recovering it in the same action.

The petitioners' claim fails to persuade us. The petitioners ignore the professional relationship existing between Jacobi and Atty. Reyes at the time the Sandiganbayan petition was filed. The existence of this relationship necessarily calls for a different appreciation of the facts established during the preliminary investigation than it would if no such relationship existed. Under Rule 138[162] of the Rules of Court, matters of ordinary judicial procedure are within the exclusive authority of the attorney. These include such questions as what action or pleading to file, what should be the theory of the case, and how the claim (or defense) may be proved and those affecting the sufficiency, relevancy and materiality of certain pieces of evidence.[163] The annexation of the De Guzman letter in the Sandiganbayan petition and the Ombudsman complaint falls within these matters. Even Atty. Reyes himself explained that Jacobi had no participation in the preparation of the Sandiganbayan petition, much less in the attachment as annex of the De Guzman letter.[164]

Without determining the validity of Jacobi's supposed arrangement with the PCGG, a reading of the Sandiganbayan petition does not support the petitioner's theory of conspiracy. In filing the Sandiganbayan petition, the respondents seek to compel the petitioners to perform their duty to recover the ill-gotten wealth of the Marcoses. With or without the agreement, the performance of this duty is a task imposed by law on the PCGG; the performance of this duty is what the Sandiganbayan petition speaks of in plain terms.

Then, too, the DOJ found nothing to support the petitioners' allegation of conspiracy or of inducement on Jacobi's part. Likewise, the Court cannot find any reason why the respondents should file the Sandiganbayan petition to compel the petitioners to recognize their alleged contingent fee arrangement. To begin with, the records do not show that the petitioners ever disputed the validity of this arrangement - as evidenced likewise by the PCGG letters, which[165] are of similar import as the De Guzman letter and whose authenticity the petitioners impliedly admitted at the time the respondents filed the Sandiganbayan petition.

Yet again, the existence of several letters and reports made by the respondents to the PCGG, regarding the UBS account and the respondents' activities in connection therewith, shows that the PCGG was at least aware of the respondents' efforts to assist in the recovery efforts of the government, in general, and of the PCGG, in particular. Therefore, forging a letter that would simply be evidence of an implied agreement for those services hardly makes any sense.[166]

Considering the inapplicability of the presumption of authorship and the dearth of evidence to support the allegation of conspiracy, much less of evidence directly imputing the forgery of the De Guzman letter to Jacobi, we find no grave abuse of discretion on the part of the DOJ in absolving him.

iii. The presumption in forgery was sufficiently explained by Atty. Reyes

Atty. Reyes does not seriously dispute the application of the presumption of authorship[167] as to him since he was in possession, and made use, of the forged De Guzman letter, but offers an explanation on the circumstances of such possession and use. On the other hand, the petitioners dispute the adequacy of his explanation and impute grave abuse of discretion on the part of Usec. Gutierrez for surmising that the De Guzman letter “must have been ‘doctored’ in the PCGG.”[168]

What constitutes satisfactory explanation from the possessor and user of a forged document must be adjudged on a case to case basis, consistent with the twin-purposes of a preliminary investigation[169] - viz: first, to protect the State from having to conduct useless and expensive trials; and second, to protect the respondent from the inconvenience, expense and burden of defending himself in a formal trial, unless a competent officer shall have first ascertained the probability of his guilt.[170] Since the determination of probable cause lies within the prosecutor’s discretion, the soundness of the explanation (to rebut the prima facie case created by the presumption of authorship) is likewise left to the prosecutor’s discretion. Unless his determination amounted to a capricious and whimsical exercise of judgment evidencing a clear case of grave abuse of discretion, courts must defer to the prosecutor’s finding.

We do not find grave abuse of discretion in the present case. By capitalizing on Usec. Gutierrez’s assumption that the questioned letter must have been “doctored” in the PCGG, the petitioners turned a blind eye to the assumption’s factual premise. We quote Usec. Gutierrez’s discussion on this point, thus -

We have perused the NBI report; and our attention is caught by the statement therein that the “typewritten name and signature of FELIX M. DE GUZMAN, the typewritten entries ‘Chairman’, ‘FMG/lai’, ‘dol’, and the handwritten entries ‘5c Records’, ‘8/27’ were lifted/extracted probably from the original and/or xerox copy from the original of a typewritten letter addressed to the Hon. Tomas L. Syquia, Philippine Ambassador to Switzerland dated 25 August 1998.”

Since it is the PCGG that has the only copy of Chairman De Guzman’s letter to Ambassador Syquia (except of course the Ambassador) in its files bearing the same distinguishing entries from where the [De Guzman] letter was “lifted/extracted”, we cannot see our way clear how the falsification can be attributed to respondent Reyes. It is more credible that the questioned letter must have been “doctored” in the PCGG, which is the repository of all official communications of former Chairman De Guzman, and passed to [Atty. Reyes] who accepted the same not knowing its falsity.[171] (Emphasis added.)

In short, Usec. Gutierrez simply found Atty. Reyes’ explanation – that the De Guzman letter was handed to him by Director Daniel – consistent with the premise of her assumption and sufficient to disregard the DOJ’s previous finding of probable cause.

Additionally, we observe that along with the De Guzman letter, Atty. Reyes also withdrew the Gunigundo letter from the Sandiganbayan petition because of the questionable authenticity of the signature it carried. When Atty. Reyes tried to obtain a copy of this letter from the PCGG, he was informed that the PCGG had no copy of this letter. Interestingly, the absence of a copy of the De Guzman letter in the PCGG’s records was the core of the statements in the affidavits of the PCGG employees, attached to support the petitioners’ complaint.[172]

The petitioners place too much reliance on the findings contained in the first resolution, blurring their view of the function of a motion for reconsideration. It is precisely the office of a motion for reconsideration[173] to give an agency making a quasi-judicial determination an opportunity to correct any error it may have committed through a misapprehension of facts or misappreciation of the evidence,[174] leading to a reversible conclusion at the administrative level. The petitioners have not shown that in arriving at the assailed resolutions (which sustained the prosecutor’s reversal of the first and second resolutions), Usec. Gutierrez gravely abused her discretion which would warrant a corrective action from the Court.

c. Lack of probable cause for knowingly introducing a falsified document

Neither does probable cause exist against the respondents for the crime of introducing a falsified document in a judicial proceeding, punished under the last paragraph of Article 172 of the Revised Penal Code. The accused's knowledge of the falsity of the document, which he introduced in a judicial proceeding, is one of the elements^[175] of this crime. In the present case, not an iota of evidence was presented to show the respondents' knowledge of the falsity of the De Guzman letter at the time it was annexed to the Sandiganbayan petition. On this point alone, the petitioners' reliance on *Choa v. Judge Chiongson*^[176] is misplaced.

Given all the extant circumstances of the case, coupled with the immediate withdrawal of the De Guzman letter, the resulting credit given by Usec. Gutierrez to the respondents' defense-explanations must be respected.

d. The PCGG's role in the governmental scheme vis-à-vis the Court's general policy of non-interference

As a final observation, we draw attention to the fact that the PCGG is a unique legal creature with a unique mandate. It was created by President Corazon Aquino pursuant to her extraordinary legislative powers after she declared a revolutionary government. The PCGG's charter, Executive Order (E.O.) No. 1, was the very first executive order she issued. E.O. No.1 created the PCGG and charged it with the task of assisting the President in the "recovery of all ill-gotten wealth" accumulated by former President Marcos, his relatives and cronies. To accomplish its "gigantic task of recovering the plundered wealth of the nation,"^[177] E.O. No. 1 granted the PCGG ample powers and authority.^[178]

In no time, the President issued E.O. No. 2,^[179] authorizing the PCGG "to request and appeal to foreign governments" where the ill-gotten wealth might be found "to freeze them and otherwise prevent their transfer, conveyance, encumbrance, concealment or liquidation" in the meantime that the legality of their acquisition was determined. Indeed, the recovery of this "ill-gotten wealth" of former President Marcos, his relatives and cronies is not only a matter of right but the paramount duty of the government.

Viewed from the uniqueness of the PCGG's creation and role, on one hand, and the general policy of the Courts not to interfere with the prosecutor's evaluation of the sufficiency of evidence that would establish probable cause, on the other hand, we find it unfortunate, if not disturbing, how the respondents' documented efforts to assist the PCGG in the recovery of the ill-gotten wealth (given the staggering amount involved particularly in the UBS account) and how the concerns they raised that allegedly hamper the government's efforts, would end up as a legal warfare between two camps supposedly on the same side.

The seriousness of Atty. Reyes' allegations of irregularities^[180] should have served as a warning signal to the PCGG which carries a critical role in our people's remedial efforts in addressing the causes that gave rise to the EDSA revolution. The PCGG's success, if any and if at all, cannot be downplayed. To be sure, the PCGG's silence in the face of these accusations (except to characterize the respondents' defensive assaults as an "undeserved gibe"^[181]) raises a lot of unanswered questions and appears to justify the allegations of political motivation behind the criminal charges against the respondents.

In sum, under the circumstances and the other observations made, the Court cannot but rule that the petitioners failed to establish the existence of grave abuse of discretion justifying judicial interference.

WHEREFORE, we hereby DISMISS the petition.

SO ORDERED.

Carpio, (Chairperson), Perez, Sereno, and Reyes, JJ., concur.

[1] Chairman Elma files the present petition in his capacity as former Chairman of the PCGG. He was appointed as PCGG Chairman on October 30, 1998; rollo, p. 141.

[2] Records, pp. 996-1000.

[3] Id. at 1109.

[4] Rollo, pp. 344-345; Records, pp. 785-786.

[5] Rollo, pp. 163, 189; Records, p. 784.

[6] Records, p. 779.

[7] “lai” is the printed initial of Lilia Yanga, Secretary of Chairman De Guzman; rollo, p. 240.

[8] Id. at 194.

[9] Id. at 158-185.

[10] Id. at 198.

[11] Id. at 160.

[12] Id. at 190-193, 217-219; Records, pp. 754-756, 780, 783.

[13] Rollo, pp. 199, 205-209, 212-213, 232.

[14] Through Philippine Ambassador to Switzerland Tomas Syquia.

[15] Rollo, p. 166.

[16] Pursuant to the International Mutual Assistance in Criminal Matters.

[17] Rollo, pp. 167, 192-193, 196-197.

[18] Id. at 222-226, 230-231; Records, pp. 742-743, 747-751.

[19] Rollo, pp. 217-219.

[20] Id. at 181-182.

[21] Docketed as Ombudsman Case No. CPL-99-0883. Id. at 251-262; Records, pp. 711-722.

[22] Rollo, p. 253.

[23] Id. at 251-262.

[24] Id. at 274-276.

[25] Id. at 278.

[26] Id. at 241.

[27] Id. at 305.

[28] Id. at 240.

[29] Id. at 153, 250.

[30] Id. at 242.

[31] Id. at 243.

[32] Id. at 151-156. The PCGG Commissioners who approved the resolution were the following: Alexander Gesmundo, Antonio Rosales, Antonio Merelos and Jorge Sarmiento.

[33] Id. at 152-153.

[34] Id. at 239.

[35] Referring to Examining Magistrate Dieter Jann (Office of District Attorney IV for the Canton of Zurich, in charge of the International Mutual Assistance in Criminal Matters). Id. at 153.

[36] Id. at 154-155.

[37] Id. at 248.

[38] Docketed as I.S. No. 99-445. Id. at 141-149; Records, pp. 825-832.

[39] Rollo, p. 9.

[40] Id. at 467.

[41] Id. at 286.

[42] Id. at 284-286.

[43] Id. at 286-288.

[44] Id. at 519-520, 452-465.

[45] Id. at 271.

[46] Id. at 270, 341-344, 462. Jacobi also adopted all the allegations in the Urgent Manifestation dated March 19, 1999 filed by Atty. Reyes with the Sandiganbayan and the Office of the Ombudsman. (Id. at 271.)

[47] Id. at 409.

[48] Id. at 466-470.

[49] Id. at 470.

[50] On July 12, 1999. Id. at 472-476, 1273; Records, p. 573.

[51] Petitioners filed an Opposition to Atty. Reyes' Motion for Reconsideration (Records, pp. 382-395).

[52] Rollo, pp. 10, 483.

[53] Id. at 10.

[54] Dated July 12, 1999. Petitioners filed an Opposition to the Entry of Appearance (Records, pp. 377-381), calling the attention of the Prosecutor that (i) Jacobi had already filed an unverified Petition for Review of the first resolution (id. at 379) through Atty. Peñalosa and (ii) since Atty. Peñalosa has not withdrawn her appearance then she is presumed to be the lead counsel for Jacobi whose filing of a petition for review barred Jacobi from availing

a different relief from a different counsel.

[55] Rollo, pp. 480-481.

[56] Records, p. 562.

[57] Rollo, pp. 483-498.

[58] Id. at 662-664.

[59] Records, pp. 375-376.

[60] Rollo, p. 701.

[61] Id. at 668-676.

[62] Id. at 645.

[63] Id. at 691.

[64] Id. at 689.

[65] Id. at 70.

[66] Id. at 693.

[67] Id. at 695.

[68] Id. at 696.

[69] Id. at 697.

[70] The Sanidad law firm also filed a pleading, withdrawing the unverified petition for review filed by Atty. Peñalosa; id. at 687.

[71] Dated March 7, 2000.

[72] Rollo, pp. 701-704.

[73] Id. at 98-103; Records, pp. 870-875.

[74] Id. at 101.

[75] Through a Notice of Withdrawal/Manifestation dated April 6, 2000; rollo, pp. 706-707.

[76] Id. at 708-709.

[77] Id. at 111-138; Records, pp. 835-862.

[78] Rollo, pp. 105-109; Records, pp. 864-868.

[79] Rollo, pp. 106-108.

[80] Id. at 56-92; Records, pp. 882-918.

[81] Atty. Reyes filed his Comment to the Petition for Review; records, pp. 956-979. In turn, the petitioners filed their Reply; records, pp. 980-991.

[82] Rollo, p. 54.

[83] Id. at 713-734; Records, pp. 1085-1107. The petitioners' Motion for Reconsideration was Opposed by Atty. Reyes (Records, pp. 1058-1081).

[84] Rollo, p. 1026.

[85] Id. at 1018-1019, 1028-1029.

[86] Id. at 23.

[87] Id. at 1021-1022.

[88] Id. at 25-27.

[89] Id. at 1019-1021.

[90] Id. at 1033.

[91] Id. at 36; 469.

[92] Id. at 1039.

[93] 323 Phil. 438 (1996).

[94] Rollo, p. 1041.

[95] Id. at 1042.

[96] Id. at 954-956, 1278.

[97] Id. at 952, 1327.

[98] Id. at 958, 1289.

[99] Id. at 965.

[100] Id. at 959-962; 1290.

[101] Id. at 792.

[102] *Bautista v. Court of Appeals*, 413 Phil. 159, 168-169 (2001).

[103] *Santiago, Jr., etc. v. Bautista, et al.*, 143 Phil. 209, 219 (1970).

[104] 527 Phil. 347, 353-354 (2006).

[105] REITERATING AND CLARIFYING THE GUIDELINES SET FORTH IN MEMORANDUM CIRCULAR NO. 1266 (4 NOVEMBER 1983) CONCERNING THE REVIEW BY THE OFFICE OF THE PRESIDENT OF RESOLUTIONS ISSUED BY THE SECRETARY OF JUSTICE CONCERNING PRELIMINARY INVESTIGATIONS OF CRIMINAL CASES.

[106] The death penalty is abolished by Republic Act No. 9346.

[107] *Alcaraz v. Gonzalez*, G.R. No. 164715, September 20, 2006, 502 SCRA 518, 529.

[108] RULES OF COURT, Rule 65, Section 5 reads:

SEC. 5. Respondents and costs in certain cases. — When the petition filed relates to the acts or omissions of a judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person, the petitioner shall join, as private respondent or respondents with such public respondent or respondents, the person or persons interested in

sustaining the proceedings in the court; and it shall be the duty of such private respondents to appear and defend, both in his or their own behalf and in behalf of the public respondent or respondents affected by the proceedings, and the costs awarded in such proceedings in favor of the petitioner shall be against the private respondents only, and not against the judge, court, quasi-judicial agency, tribunal, corporation, board, officer or person impleaded as public respondent or respondents. [underscoring supplied]

[109] *Madrigal Transport, Inc. v. Lapanday Holdings Corp.*, 479 Phil. 768, 780-781 (2004), compared a Rule 45 petition with a Rule 65 petition as to the manner of filing, as follows:

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a certiorari, the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for certiorari is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for certiorari are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively. [underscoring supplied, citations omitted])

[110] The Court's January 13, 2003 and March 7, 2005 resolution, requiring the parties to submit a Comment and Memorandum included the Secretary of Justice; rollo, pp. 738, 932-933.

[111] Sections 6 and 8 of Rule 65 of the Rules of Court read:

SEC. 6. Order to comment. — If the petition is sufficient in form and substance to justify such process, the court shall issue an order requiring the respondent or respondents to comment on the petition within ten (10) days from receipt of a copy thereof. Such order shall be served on the respondents in such manner as the court may direct, together with a copy of the petition and any annexes thereto.

In petitions for certiorari before the Supreme Court and the Court of Appeals, the provisions of section 2, Rule 56, shall be observed. Before giving due course thereto, the court may require the respondents to file their comment to, and not a motion to dismiss, the petition. Thereafter, the court may require the filing of a reply and such other responsive or other pleadings as it may deem necessary and proper.

SEC. 8. Proceedings after comment is filed. — After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If, after such hearing or filing of memoranda or upon the expiration of the period for filing, the court finds that the allegations of the petition are true, it shall render judgment for such relief to which the petitioner is entitled.

However, the court may dismiss the petition if it finds the same patently without merit or prosecuted manifestly for delay, or if the questions raised therein are too unsubstantial to require consideration. [emphases ours]

[112] *Gelindon v. De la Rama*, G.R. No. 105072, December 9, 1993, 228 SCRA 322; 240 Phil. 719, 733 (1987).

[113] *Santiago v. Vasquez*, G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633; and *People v. Cuaresma*, 254 Phil. 418, 427 (1989).

[114] *Supra*.

[115] *Santiago v. Vasquez*, *supra* note 113.

[116] *Lacson Hermanas, Inc. v. Heirs of Ignacio*, 500 Phil. 673, 676-677 (2005).

[117] *Ferdinand A. Cruz v. Judge Henrick E. Gingoyon [Deceased], et al.*, G.R. No. 170404, September 28, 2011.

[118] *San Miguel Corporation v. Pontillas*, G.R. No. 155178, May 7, 2008, 554 SCRA 50, 58.

[119] *Records*, pp. 322-324.

[120] See *Bacarro v. CA (Fifth Division), et al.*, 147 Phil. 35, 41 (1971).

[121] In *Mobil Oil Philippines, Inc. v. Court of First Instance of Rizal, Branch VI*, G.R. No. 40457, May 8, 1992, 208 SCRA 523, 528, the Court ruled that lawyers have “the exclusive management of the procedural aspect of the litigation including the enforcement of the rights and remedies of their client.” See also Rule 19.03 of the Code of Professional Responsibility.

As between the Court and the adverse party, the rule is that the severance of the relation of an attorney and a client is not effective until a notice of discharge by the client or a manifestation clearly indicating the purpose is filed with the court and a copy thereof served upon the adverse party (Ruben E. Agpalo, *Legal and Judicial Ethics*, p. 352, 2002 ed.).

[122] Section 3 of the 2000 National Prosecution Service Rule on Appeal

SECTION 3. Period to appeal. The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed.

[123] *Rollo*, p. 691.

[124] *Id.* at 965.

[125] See *Malayan Integrated Industries Corp. v. Court of Appeals*, G.R. No. 101469, September 4, 1992, 213 SCRA 640, 651.

[126] Book IV, Title III, Chapter 1, Section 1, Administrative Code of 1987.

[127] *D.M. Consunji v. Esguerra*, 328 Phil. 1168, 1184 (1996); *Aguirre v. Secretary, Department of Justice*, G.R. No. 170723, March 3, 2008, 547 SCRA 431, 452-453; and *First Women’s Credit Corporation v. Baybay*, G.R. No. 166888, January 31, 2007, 513 SCRA 637, 645-646.

[128] *First Women’s Credit Corporation v. Baybay*, *supra*; and *Chan v. Secretary of Justice*, G.R. No. 147065, March 14, 2008, 548 SCRA 337, 349-350.

[129] *Alcaraz v. Gonzalez*, *supra* note 107, at 529.

[130] *Aguirre v. Secretary of the Department of Justice*, *supra* note 127, at 453.

[131] *Marcelo G. Ganaden, et al. v. Honorable Office of the Ombudsman, et al.*, G.R. Nos. 169359-61, June 1, 2011.

[132] *Kalalo v. Office of the Ombudsman*, G.R. No. 158189, April 23, 2010, 619 SCRA 141, 148-149.

[133] *Metropolitan Bank and Trust Co. (Metrobank), represented by Rosella A. Santiago v. Antonio O. Tobias III*, G.R. No. 177780, January 25, 2012.

[134] *Microsoft Corporation v. Maxicorp, Inc.*, 481 Phil. 550, 567 (2004).

[135] *Metropolitan Bank and Trust Co, (Metrobank), represented by Rosella A. Santiago v. Antonio O. Tobias III*, *supra* note 133.

[136] Art. 171. Falsification by public officer, employee or notary or ecclesiastic minister. — The penalty of prison mayor and a fine not to exceed P5,000 xxx shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x

2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate[.]

[137] Art. 172. Falsification by private individual and use of falsified documents. — The penalty of prison correccional in its medium and maximum periods and a fine of not more than P5,000 xxx shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

x x x x

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

[138] 6 Phil. 453, 455 (1906).

[139] 45 Phil. 754, 759 (1924).

[140] Ibid.

[141] G.R. No. L-24086, March 25, 1926, 49 Phil. 28, 33 (1926).

[142] 60 Phil. 338, 346 (1934).

[143] Citing Wharton's Criminal Law as follows:

Does the uttering of a forged instrument by a particular person justify a jury in convicting such a person of forgery? This question, if nakedly put, must, like the kindred one as to the proof larceny by evidence of possession of stolen goods, be answered in the negative. The defendant is presumed to be innocent until otherwise proved. In larceny this presumption is overcome by proof that the possession is so recent that it becomes difficult to conceive how the defendant could have [gotten] the property without being in some way concerned in the stealing. So it is with the uttering. The uttering may be so closely connected in time with the forging, the utterer may be proved to have such capacity for forging, or such close connection with the forgers that it becomes, when so accomplished, probable proof of complicity in the forgery.

[144] See also *People v. Sendaydiego*, 171 Phil. 114, 134-135 (1978); and *People v. De Lara*, supra note 139, at 760.

[145] No. L-21846, March 31, 1967, 19 SCRA 688, 690; and *Pecho v. Sandiganbayan*, G.R. No. 111399, November 14, 1994, 238 SCRA 116, 138.

[146] See also *Castillo v. Sandiganbayan*, 235 Phil. 428 (1987).

[147] 258 Phil. 229, 238 (1989).

[148] *Maliwat v. CA*, 326 Phil. 732 (1996); and *Recebido v. People*, 400 Phil. 752 (2000).

[149] G.R. No. 62634, June 26, 1992, 210 SCRA 377.

[150] Id. at 389-391.

[151] 279 Phil. 65 (1991).

[152] Id. at 78.

[153] See *People v. Sendaydiego*, supra note 144; *People v. Caragao*, 141 Phil. 660 (1969); *Rural Bank of Silay, Inc. v. Atty. Pilla*, 403 Phil. 1 (2001); *Serrano v. Court of Appeals*, 452 Phil. 801 (2003); and *Pacasum v. People*, G.R. No. 180314, April 16, 2009, 585 SCRA 616.

[154] Revised Rules on Evidence, Oscar M. Herrera, 1999 ed. p. 39.

[155] Prima facie evidence is defined as “Evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party’s claim or defense, and which if not rebutted or contradicted, will remain sufficient. Evidence which, if unexplained or uncontradicted, is sufficient to sustain a judgment in favor of the issue it supports, but which may be contradicted by other evidence.” (*Wa-acon v. People*, G.R. No. 164575, December 6, 2006, 510 SCRA 429, 438, citing H. Black, et al., BLACK’S LAW DICTIONARY 1190 (6th ed., 1990).

[156] The effect of a presumption upon the burden of proof is to create the need of presenting evidence to overcome the prima facie case created, thereby which, if no contrary proof is offered, will prevail. *Lastrilla v. Granda*, 516 Phil. 667, 668 (2006). See also *Metropolitan Bank and Trust Co, (Metrobank), represented by Rosella A. Santiago v. Antonio O. Tobias III*, supra note 133.

[157] Probable cause, however, should not be confused with a prima facie case. *Cometa v. Court of Appeals* 378 Phil. 1187, 1196 (1999) teaches:

Prima facie evidence requires a degree or quantum of proof greater than probable cause. “[It] denotes evidence which, if unexplained or uncontradicted, is sufficient to sustain a prosecution or establish the facts, as to counterbalance the presumption of innocence and warrant the conviction of the accused.” On the other hand, probable cause for the filing of an information merely means “reasonable ground for belief in the existence of facts warranting the proceedings complained of, or an apparent state of facts found to exist upon reasonable inquiry which would induce a reasonably intelligent and prudent man to believe that the accused person has committed the crime.” What is needed to bring an action in court is simply probable cause, not prima facie evidence. In the terminology of the Rules of Criminal Procedure, what is required for bringing a criminal action is only such evidence as is sufficient to “engender a well founded belief as to the facts of the commission of a crime and the respondent’s probable guilt thereof.”

Accordingly, the inapplicability of the presumption of authorship (and, consequently, the lack of a prima facie case) in the preliminary investigation does not completely foreclose a finding of probable cause for falsification. However, it may be too difficult to establish even probable cause because of the secrecy in which the crime is generally done.

[158] *Uytengsu III v. Atty. Baduel*, 514 Phil. 1, 10 (2005).

[159] *Doles v. Angeles*, 525 Phil. 673, 689 (2006); and *Eurotech Industrial Technologies, Inc. v. Cuizon*, G.R. No. 167552, April 23, 2007, 521 SCRA 584, 592-593.

[160] See *Serrano v. Court of Appeals*, supra note 153; and *People v. Caragao*, supra note 153.

[161] Rollo, p. 39.

[162] Section 23.

[163] *Province of Bulacan v. Court of Appeals*, 359 Phil. 779, 791-792.

[164] *Atty. Reyes' Urgent Manifestation*; rollo, p. 274.

[165] While the petitioners claim that the PCGG letters are unauthorized by the PCGG en banc, they do not question their authenticity (PCGG Resolution No. 99-E-017); *id.* at 152.

[166] While motive is not reasonable basis in determining probable cause, the absence thereof further obviates the probability of guilt for falsification (*Torres, Jr. v. Sps. Drs. Aguinaldo*, 500 Phil. 365 (2005)). See also *Rañon v. CA, et al.*, 220 Phil. 171, 179 (1985).

[167] *Atty. Reyes* raised arguments precluding the application of the presumption - (i) the De Guzman letter is not a document within the meaning of Article 172 of the Revised Penal Code; and (ii) there was no counterfeiting or imitating of signature as the signatures were merely lifted or extracted from another letter, per the NBI report. Considering the limited scope of a certiorari petition and the fundamentally executive function of determining probable cause in a preliminary investigation, the resolution of these arguments is uncalled for in the present case.

[168] Rollo, p. 51.

[169] *Metropolitan Bank and Trust Co, (Metrobank), represented by Rosella A. Santiago v. Antonio O. Tobias III*, *supra* note 133.

[170] *Tandoc v. Judge Resultan*, 256 Phil. 485, 492 (1989); and *Venus v. Hon. Desierto*, 358 Phil. 675, 699-700 (1998).

[171] Rollo, pp. 48-53.

[172] Records, pp. 585, 664.

[173] Section 3 of the 2000 National Prosecution Service Rule on Appeal (DOJ Circular No. 70) provides:

SECTION 3. Period to appeal. The appeal shall be taken within fifteen (15) days from receipt of the resolution, or of the denial of the motion for reconsideration/reinvestigation if one has been filed within fifteen (15) days from receipt of the assailed resolution. Only one motion for reconsideration shall be allowed.

[174] *Ramientas v. Atty. Reyala*, 529 Phil. 128, 133 (2006), citing *Halimao v. Villanueva*, 323 Phil. 1, 8 (1996); *Sony Music Entertainment (Philippines), Inc. v. Judge Español*, 493 Phil. 507, 523 (2005).

[175] The elements of the crime of knowingly introducing a falsified document in a judicial proceedings are as follows:

- That the offender knew that a document was falsified by another person.
- That the false document is embraced in Article 171 or in any subdivisions Nos. 1 or 2 of Article 172.
- That he introduced said document in evidence in any judicial proceeding. (Luis B. Reyes, *The Revised Penal Code, Criminal Law, Book II*, 2008 ed., p. 232.)

[176] *Supra* note 93.

[177] *PCGG v. Judge Peña*, 243 Phil. 93, 107 (1988).

[178] Section 3, EO No. 1 (1986).

[179] March 12, 1986. REGARDING THE FUNDS, MONEYS, ASSETS, AND PROPERTIES ILLEGALLY ACQUIRED OR MISAPPROPRIATED BY FORMER PRESIDENT FERDINAND MARCOS, MRS. IMELDA

ROMUALDEZ MARCOS, THEIR CLOSE RELATIVES, SUBORDINATES, BUSINESS ASSOCIATES, DUMMIES, AGENTS, OR NOMINEES.

[180] See Atty. Reyes' Comment (to the Petition for Review filed by the petitioners with the DOJ); rollo, pp. 963-972.

[181] Records, p. 991.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.