

**MALACAÑANG
MANILA**

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 331

**IMPOSING THE PENALTY OF SIX (6) MONTHS SUSPENSION ON CEBU
FIRST ASSISTANT PROVINCIAL PROSECUTOR GLORIA
LASTIMOSA-DALAWAMPU**

This refers to the 27 July 1994 complaint filed before the Office of the Ombudsman by Julian Menchavez, a concerned citizen, against Cebu Provincial Prosecutor Oliveros Kintanar and 1st Assistant Provincial Prosecutor Gloria Lastimosa-Dalawampu. The respondents were charged of violating the provisions of R.A. No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) and P.D. No. 807 (Civil Service Law) by their alleged refusal and defiance to comply with the directive of the Office of the Ombudsman to file the information for Attempted Rape against Santa Fe Mayor Rogelio Ilustrisimo.

The facts and proceedings of the case may be gleaned from the Supreme Court decision in G.R. No. 116801 dated April 6, 1995 entitled "Lastimosa vs. Vasquez" (243 SCRA 497).

"On February 18, 1993 Jessica Villacarlos Dayon, public health nurse of Santa Fe, Cebu, filed a criminal complaint for frustrated rape and an administrative complaint for immoral acts, abuse of authority and grave misconduct against Mayor Rogelio Ilustrisimo of Santa Fe, Cebu. The cases were filed with Office of Ombudsman-Visayas where they were docketed as OMB-VIS-(CRIM)-93-0410 and OMB-VIS-(CRIM)-93-0036, respectively.

The complaint was assigned to a graft investigation officer, who after an investigation, found no prima facie evidence and accordingly recommended the dismissal of the complaint. After reviewing the matter, however, the Ombudsman, Hon. Conrado Vasquez, disapproved the recommendation and instead directed that Mayor Ilustrisimo be charged with attempted rape in the Regional Trial Court.

Accordingly, in a letter dated May 17, 1994, the Deputy Ombudsman for Visayas, respondent Arturo C. Mojica, referred the case to Cebu Provincial Prosecutor Oliveros E. Kintanar for the "filing of appropriate information with the Regional Trial Court of Danao City, . . ." The case was eventually assigned to herein petitioner, First Assistant Provincial Prosecutor Gloria G. Lastimosa.



It appears that petitioner conducted a preliminary investigation on the basis of which she found that only acts of lasciviousness had been committed. With the approval of Provincial Prosecutor Kintanar, she filed on July 4, 1994 an information for acts of lasciviousness against Mayor Ilustrisimo with the Municipal Circuit Trial Court of Sante Fe.

In two letters written to the Provincial Prosecutor on July 11, 1994 and July 22, 1994, Deputy Ombudsman Mojica inquired as to any action taken on the previous referral of the case, more specifically the directive of the Ombudsman to charge Mayor Ilustrisimo with attempted rape.

As no case for attempted rape had been filed by the Prosecutor's Office, Deputy Ombudsman Mojica ordered on July 27, 1994 Provincial Prosecutor Kintanar and petitioner Lastimosa to show cause why they should not be punished for contempt for "refusing and failing to obey the lawful directives" of the Office of the Ombudsman.

For this purpose a hearing was set on August 1, 1994. Petitioner and the Provincial Prosecutor were given until August 3, 1994 within which to submit their answer. An answer was timely filed by them and hearings were there upon conducted.

It appears that earlier, on July 22, 1994, two cases had been filed against the two prosecutors with the Office of the Ombudsman for Visayas by Julian Menchaves, a resident of Santa Fe, Cebu. One was an administrative complaint for violation of Sec. 3 (e) of Republic Act No. 3019 and Art. 208 of the Revised Penal Code. The complaints were based on the alleged refusal of petitioner and Kintanar to obey the orders of the Ombudsman to charge Mayor Ilustrisimo with attempted rape.

In the administrative case (OMB-VIS-(ADM)-94-0189) respondent Deputy Ombudsman for Visayas Mojica issued an order on August 15, 1994 placing petitioner Gloria G. Lastimosa and Provincial Prosecutor Oliveros E. Kintanar under preventive suspension for a period of six (6) months, pursuant to Rule 111, Sec. 9 of the Rules of Procedure of the Office of the Ombudsman (Administrative Order No. 7), in relation to Sec. 24 of R. A. No. 6670. The order was approved by Ombudsman Conrado M. Vasquez on August 16, 1994 and on August 18, 1994 Acting Secretary of Justice Ramon J. Liwag designated Eduardo Concepcion of Region VII as Acting Provincial Prosecutor of Cebu."

From the order of preventive suspension, respondent Lastimososa filed the aforementioned case before the Supreme Court questioning her preventive suspension and the proceedings against her, raising the issue of whether a prosecutor is duty bound to file an information in respect of a case not personally investigated by him. On April 6, 1995, the Supreme Court *en banc*, found the preventive suspension justified and dismissed the petition for lack of merit.

Meanwhile, the Office of the Ombudsman (Visayas) as a result of the hearings conducted, issued a resolution finding respondents guilty of Grave Misconduct, Neglect of Duty and Insubordination, and recommended to the Ombudsman the penalty of reprimand against respondent Kintanar and the six months suspension without pay of Lastimososa.

The Ombudsman approved the resolution subject to the modification recommended by the Chief Legal Counsel that the reprimand with respect to respondent Kintanar can no longer be implemented in the light of Kintanar's filing of certificate of candidacy for Congressman in the 1995 elections. By operation of law, Kintanar is deemed resigned from public office, thus bringing his person beyond the reach of the Ombudsman's disciplinary authority; and rendering the instant case, insofar as he is concerned, moot and academic.

A review of the aforementioned acts showed not only respondent's refusal but her defiance to comply with the directive for them to file the Information for Attempted Rape after a preliminary investigation of the case had been conducted by the Office of the Ombudsman. The duty of a prosecutor designated or deputized by the Office of the Ombudsman "to act as special investigator or prosecutor" is mandated by Section 31 of the Ombudsman Act of 1989 (R.A. No. 6770), as follows:

"Designation of Investigators and Prosecutors. - The Ombudsman may utilize the personnel of his Office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him as herein provided shall be under his supervision and control. (Emphasis added)"

When a prosecutor is deputized pursuant to the foregoing provision of law, he comes under the "supervision and control" of the Ombudsman which means that he is subject to the power of the Ombudsman to direct, review, approve, reverse or modify his (prosecutor) decision. Petitioner cannot legally act on her own and refuse to prepare and file the information as directed by the Ombudsman.

Underscoring respondent's refusal to file the information for Attempted Rape is the belligerent manner in which she expressed her contrary position *vis-a-vis* the directive issued by the Ombudsman who had supervision and control over her. The respondent further arrogated to herself the authority to pass upon the resolution of the Ombudsman in OMB-VIS-CRIM-93-0140, a prerogative that only the Supreme Court may, but is generally loathe to, exercise. Respondent Lastimososa in fact virtually reviewed, and substituted with her own, the final resolution of the Office of the Ombudsman in said case, resulting in the filing of a different charge. Considering further her open defiance to and contempt for the authority of the Office of the Ombudsman with the resulting obstruction of that Office's functions, administrative sanctions are called for.

WHEREFORE, in view of the nature and gravity of the infractions committed, 1st Assistant Provincial Prosecutor Gloria Lastimososa-Dalawampu of the province of Cebu is hereby suspended from office for six (6) months without pay effective upon receipt of this Order.

SO ORDERED.

Manila, Philippines, *10 Dec 97.*

By the President:



RUBEN D. TORRES

Executive Secretary

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