

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 369

**IMPOSING THE PENALTY OF SUSPENSION FOR SIX (6) MONTHS
WITHOUT PAY ON ASSISTANT PROVINCIAL PROSECUTOR
EULOGIO I. PRIMA OF THE PROVINCIAL PROSECUTION
OFFICE OF CAMARINES SUR**

This refers to the administrative complaint of Manuel B. Casaclang, Deputy Ombudsman for the Military, against Assistant Provincial Prosecutor Eulogio I. Prima of Camarines Sur (Adm. Case No. RV-96-001-AC) for negligence of duty.

The facts of the case, as found by the Fact Finding Investigation Panel duly constituted by the Department of Justice for the purpose, are as follows:

“On November 9, 1994, the Office of the Provincial Prosecutor, Iriga City Sub Office, received, through Segundina Buena, the complete records of the case entitled “People of the Philippines versus SPO1 Melchor Prades and SPO1 Henry Orbita” from the Office of the Ombudsman with an accompanying instruction to regularly update the said office of the progress of the case after the Information is filed.

Upon the filing of the Information, the case was raffled off to the 5th Municipal Circuit Trial Court of Nabua-Bato, Camarines Sur. It was docketed as Criminal Case No. 6978. The arraignment of the accused was set on January 20, 1995. It turned out, however, that the arraignment was legally defective since during the court proceedings, the Information was not read to the accused, the accused did not personally enter his plea, and the respondent prosecutor was absent. Notwithstanding these defects, respondent prosecutor, did not exert any effort when he appeared in court on July 20, 1995 and August 17, 1995 to rectify the irregularity. Instead, he just let the trial proceed.

In the subsequent hearing on December 8 and 22, 1995, respondent prosecutor, did not appear in Court despite notice. He did not even make a formal motion for the postponement of the scheduled hearings. This was again repeated on February 9, 1996. In view of his series of failures to appear in court, the case of arbitrary detention initiated by the Office of the Ombudsman against the police officers was dismissed. Furthermore, respondent

11)

prosecutor, without any justifiable reason, failed to submit to the Office of the Ombudsman the requested progress report during the pendency of the case.

In defense, respondent prosecutor claims he is not the designated prosecutor to handle criminal cases filed before the MCTC Nabua-Bato; that whoever is approached in his office by the private complainant will be the trial prosecutor for such particular case; that he was never approached by the private complainant in the arbitrary detention case to handle the same; that his office is not in possession of any record pertaining to Criminal Case No. 6978; that he happens to be involved in the said case when the private prosecutor at one instance was absent during the trial; that on the scheduled hearing on February 9, 1996, he had to appear in another Court; and, in an attempt to justify his failure to appear in court for several times, he professes that it is a fundamental rule in our jurisdiction that a complaint for arbitrary detention can always be prosecuted by a private prosecutor since the offended party is a private individual."

Upon evaluation of the evidence and arguments adduced by both complainant and respondent, the Secretary of Justice found the defense of the latter frivolous.

A public prosecutor who enters his appearance in court is deemed to try the case up to its termination or until there is a formal withdrawal in such capacity and which withdrawal is approved by the court. Thus, for all legal intents and purposes, he is the trial prosecutor for the said case. In such capacity, he has the supervision and control over the prosecution of the case. It is, therefore, incumbent upon the respondent prosecutor to take an active role in the case. He cannot entirely relegate the matter to the private prosecutor, be it a case of a private or public offense. The physical presence of the public prosecutor in a criminal proceedings is an indispensable requisite. On this point, respondent prosecutor failed to discharge his duty accordingly.

The respondent in his attempt to be absolved from the responsibility, denies possession of the records transmitted by the Office of the Ombudsman. His denial is, however, explicitly contradicted by the fact of receipt of such record by Segundina Buena, Clerk Stenographer of the Office of the Provincial Prosecutor, Iriga City Sub-Station. Such gratuitous denial on the part of the respondent prosecutor amounts to an indirect admission of the loss of record of the case while it was in his custody. Had he exercised due diligence, the loss of the record would not have happened. His gross negligence in handling the records of the case also constitutes conduct prejudicial to the best interest of the service.

11

Furthermore, respondent's claim that his intervention in the subject case is necessary only when requested by the complainant, the offended party being a private individual, is untenable. Such contention runs counter with Sec. 4, Rule 110, of the Revised Rules of Court which reads:

SEC. 4. Who must prosecute criminal actions. - All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal.

This is because, except for private crimes, criminal cases are public offenses committed against the state. Ignorance by the respondent prosecutor of this basic concept should not be sanctioned.

In view of the foregoing considerations, I concur with the Secretary of Justice that respondent prosecutor is clearly guilty of negligence of duty and conduct prejudicial to the best interest of the service.

WHEREFORE, premises considered, Assistant Provincial Prosecutor Eulogio I. Prima of the Provincial Prosecution office, Camarines Sur, is hereby imposed the penalty of six (6) months suspension from office without pay.

SO ORDERED.

Manila, Philippines, DEC 08 1997



By the President:



RUBEN D. TORRES
Executive Secretary

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