

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 395

**IMPOSING THE PENALTY OF SUSPENSION FOR ONE
(1) MONTH ON ASSISTANT CITY PROSECUTOR
EDUARDO R. GARCIA, OFFICE OF THE CITY
PROSECUTOR, PASIG CITY**

This refers to the formal administrative charges filed motu proprio by the Department of Justice against Asst. City Prosecutor Eduardo R. Garcia of the Office of the City Prosecutor, Pasig City, for neglect in the performance of duty, upon complaint of P/Insp. Reynaldo Baral, SPO4 Antonio Llagas and SPO1 Oscar de la Cruz, which complaint was endorsed to said Department by the Honorable Secretary Robert Z. Barbers of the Department of Interior and Local Government.

The complaining police officers allege that respondent prosecutor Eduardo Garcia hastily dismissed on September 12, 1996, after the conduct of an inquest three (3) days earlier, the complaints which they filed against one Jaime Batimana and Delia Perez for violation of Sections 15 and 16, Article III of Republic Act No. 6425 (The Dangerous Drugs Act) and violation of Article 212 of the Revised Penal Code (corruption of public officials) despite the strong evidence which they submitted.

It appears that last September 6, 1996, Jaime Batimana, an "identified drug lord" was arrested by the complaining officers for delivering almost one (1) kilo of shabu. At the jail, Batimana was visited by his housemaid, Delia Perez, who delivered P100,000.00 to Batimana, who in turn offered the money to the police officers in exchange for his release. On the basis of these incidents, complaints were filed by the complaining officers against Batimana and Perez before the City Prosecutor's Office, Pasig City.

IN REPLYING, PLEASE CITE:
PFVR Letter # L981403



L981403

Respondent Garcia herein, who conducted the inquest on September 9, 1996, dismissed the complaints on September 12, 1996 for insufficient evidence and ordered the release of Batimana and Perez on the same day. Hence, the filing of an administrative complaint by herein complainants against respondent Garcia before the Department of Justice for conduct prejudicial to the best interest of the service.

After a thorough evaluation of the records, the Department of Justice found a prima facie case to hold respondent Garcia administratively liable, not for conduct prejudicial to the best interest of the service, but for neglect in the performance of duty for having failed to secure the approval of the City Prosecutor of Pasig City in dismissing the complaints against Batimana and Perez as required by Section 9, of the DOJ Circular No. 61, s. 1993, which states in part:

“Section 9. Where Arrest Not Properly Effected - Should the Inquest Officer find that the arrest was not made in accordance with the Rules, he shall:

a) recommend the release of the person arrested or detained;

b) note the disposition on the referral document;

c) prepare a brief memorandum indicating the reasons for the action taken; and

d) forward the same together with the record of the case to the City Prosecutor for appropriate action.” (underscoring supplied) xxx.

A formal administrative investigation was thus conducted by a panel of prosecutors. Before said panel, respondent Garcia manifested that the issue on whether or not he failed to secure

the approval of the City Prosecutor in dismissing the complaints against Batimana and Perez has been "squarely treated and discussed" in his answer dated November 7, 1996 and moved that the case be submitted for resolution.

In his answer dated November 6 (not 7), 1996, respondent Garcia avers that the dismissal of the complaints were justified and in accordance with the New Rules on Inquest (DOJ Circular No. 61, series of 1993) and that his authority to act for and in behalf of the City Prosecutor is fully supported by Office Order No. 96-063 dated August 5, 1996 of the Office of the City Prosecutor, Pasig City.

On April 4, 1997, the panel of prosecutors which conducted the formal investigation recommended that respondent be reprimanded only, with a stern warning that repetition of the same offense shall be dealt with more severely, having found merit in respondent Garcia's allegation that he had authority to dismiss cases on inquest even without the approval of the City Prosecutor pursuant to Office Orders Nos. 96-035 and 96-063. The panel pointed out that the only transgression committed by respondent prosecutor Garcia was that he failed to indicate the authority given and delegated to him pursuant to said office orders which gave the impression that he acted without authority.

A careful reading however of both Office Orders, specifically Office Order No. 96-063, shows that respondent Garcia is only authorized to approve, on behalf of the City Prosecutor, resolution of cases "under his review recommending dismissal of the complaint or further investigation of the case and the corresponding release order after inquest proceedings, and the City Prosecutor is not available or out of the Office."

It appears that I.S. No. T66 96-3847 was directly assigned to respondent Garcia for inquest and was not passed on to him for review. Thus, Office Orders No. 96-035 and 96-063 will not apply. Accordingly, respondent Garcia failed to secure the City



Prosecutor's authority to dismiss the complaints against Batimana and Perez and to subsequently order their release.

Moreover, Section 9(c) of the New Rules on Inquest mandates that the inquest officer shall prepare a brief memorandum indicating the reasons for the action taken. No such brief memorandum was prepared as required by the rules. Instead, respondent issued a resolution dismissing the complaint sans the approval of the City Prosecutor.

While it may be true that the City Prosecutor, in his memorandum-status report dated September 20, 1996, supported the disposition of respondent Garcia in dismissing the cases against Batimana and Perez, said status report is not the "approval" required by the rules. Besides, the report was issued eight (8) days later after accused Batimana and Perez were released from detention.

It also appears that respondent Garcia has not shown any evidence to show that he has complied with the requirements of the Office Orders that is, by submitting a memorandum stating the circumstances as to why he had to approve his own resolution dismissing the complaint and ordering the release of Batimana and Perez and the fact that he thereafter immediately forwarded the record of the case to the City Prosecutor of Pasig City as required by the rules.

In the light of the foregoing circumstances, we concur with the Secretary of Justice that respondent Garcia neglected his duty in first securing the approval of the City Prosecutor of Pasig City before dismissing the complaints against Batimana and Perez and before releasing the latter from detention as required by the Rules on Inquest. We agree that such requirement should not be lightly dispensed with, specially in dealing with serious offenses like drug-related cases which is one of the focal points of the government's drive against criminality.



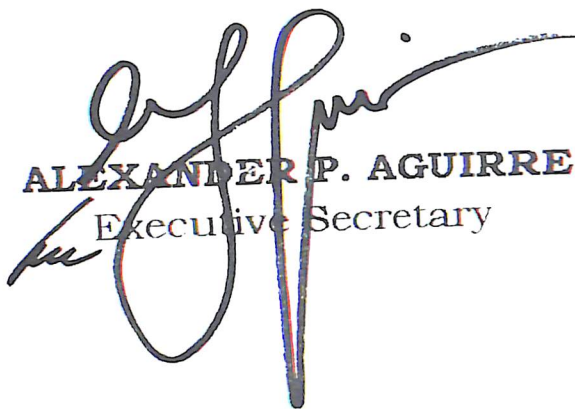
While the City Prosecutor may have concurred with the action taken by respondent prosecutor several days later, it is apparent that the latter had already committed an infraction which would have been grievous if the City Prosecutor had adopted a different conclusion on the matter.

WHEREFORE, Assistant City Prosecutor EDUARDO R. GARCIA of the City Prosecution Office, Pasig City, is hereby found liable for neglect in the performance of his duty. Consequently, he is suspended for a period of one (1) month without pay.

DONE in the City of Manila, this 12th day of May in the year of Our Lord, Nineteen Hundred and Ninety-Eight.



By the President:



ALEXANDER P. AGUIRRE
Executive Secretary