

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 60

**IMPOSING THE PENALTY OF DISMISSAL FROM THE
SERVICE WITH FORFEITURE OF ALL BENEFITS
UNDER THE LAW ON TACLOBAN CITY FIRST
ASSISTANT PROSECUTOR LEO C. TABAO**

This is an administrative complaint initiated by former Assistant City Prosecutor Emmanuel B. Gerez against First Assistant City Prosecutor Leo C. Tabao, both of Tacloban City, for dishonesty, gross negligence, dereliction of duty, and conduct unbecoming of a public officer.

In his sworn-complaint dated October 15, 1993, complainant alleges the following:

1. respondent committed gross negligence for failing to appear, despite due notice, in the scheduled hearing on September 3, 1993 of Criminal Case No. 93-06-352 (People v. Ballais, et. al.), for violation of Section 4, Article 2 of Republic Act (RA) No. 6425, resulting in the dismissal of the case; resting Criminal Case No. 92-05-191 (People v. Fabi, et. al.), for violation of Presidential Decree No. 705, albeit identity of the persons accused had not been sufficiently established, despite existence of several witnesses listed in the information, leading to the dismissal of the complaint; and continuing to appear in the prosecution of Criminal Case No. 93-05-287 (People v. Peñaranda), for violation of Sec. 4, Art II of RA 6425, although he had previously inhibited himself therefrom, thus bungling the prosecution's evidence leading to the acquittal of the accused;
2. respondent committed dishonesty when he stated in his certificate of service that he rendered full-time service for the month of April 1993 despite his absence from court duty in the entire morning of April 27, 1993; and
3. respondent likewise committed conduct unbecoming of a public officer in placing the letters S _ T, which conveys no other meaning than the term "SHIT", in the "Opposition to the Formal Offer of Exhibits for the Prosecution" filed in the case of People v. Pelaez pending before Branch 2, Metropolitan Trial Court of Tacloban City.



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Responding, Tabao denied being negligent in handling the criminal cases in question. While admitting that he was absent in the morning of April 27, 1993 and that he stated in his certificate of service that he rendered full-time service for that month, he alleged that the charge of dishonesty is frivolous as a leave of absence is not required for a half-day absence. He also maintained that if ever he wrote "s _ _ t" on his file copy of the subject pleading, such is not the concern of others, including complainant.

Finding respondent's explanation to be unsatisfactory, the Department of Justice (DOJ) formally charged Tabao for the aforesaid offenses.

By way of answer, respondent submitted photocopies of his formal transmittal letter dated January 10, 1994, regarding his formal answer with annexes on the same administrative complaint filed by complainant; the copy itself of his formal answer; the letter of the Chief State Prosecutor to the Solicitor General relative to the Fabi case; and the decision dated October 3, 1994 of the Hon. Franklin Drilon, then DOJ Secretary, exonerating him on the same charges. (Page 5, Letter of the DOJ Secretary dated January 6, 1999)

After formal investigation, the case was submitted for decision.

In his letter-report to me dated January 6, 1999, the DOJ Secretary resolved to dismiss, for lack of basis, the charge of gross negligence and dereliction of duty, but found respondent liable for dishonesty and misconduct/conduct unbecoming of a public officer and recommended his dismissal from the service with forfeiture of benefits. The Secretary explained his findings as follows:

"Evaluating the complaint in the light of the evidence presented, we find that there is substantial evidence to impose disciplinary sanction against respondent prosecutor for dishonesty and conduct unbecoming of a public officer. His admission that he executed a certificate of service for the month of April 1993 in that he rendered full time service without absences albeit in the prosecution of Criminal Case No. 89-07-315 against Jesus Lazada, Jr., he stated, when required by the court to explain his absence from his court duty on April 27, 1993, that he was absent from the office in the morning of said date, confirms that he indeed committed dishonesty. While it is true that leave application submitted on a prescribed form for a half-day



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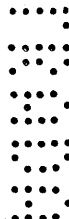
absence is not required, nevertheless, it behooves upon respondent prosecutor to inform his immediate supervisor of such absence and to reflect it on his certificate of service so that the corresponding deduction on his leave credits be effected. It must be emphasized that government prosecutors are not exempted to render not less than eight (8) hours of work a day for five (5) days a week as prescribed under the civil service law and rules. Thus, respondent prosecutor's act in deliberately certifying that he rendered full-time service on April 27, 1993 when in truth and in fact he was absent on the whole morning of said date, constitutes a clear case of dishonesty.

Likewise, respondent prosecutor's impudent admission that he inscribed profanities on his official copies of judicial documents, brazenly insisting that it is not the public's concern, vividly demonstrates his mental trait and behavior incompatible with the qualities required of a public servant. As borne out from the record, the subject document (Annex F-1 of the complaint) where respondent prosecutor made a notation of "S—t", which means "SHIT", is undoubtedly part of the official record in criminal case entitled "People of the Philippines vs. Frank Pelaez", then pending before the Metropolitan Trial Court of Tacloban City, Branch II. As a matter of fact, it is page 150 of the record of the said case. Respondent prosecutor's claim that it is his file copy and that he did not know how it came to be with the court is of no moment. Whether the subject document is his file copy or part of the judicial record, since it is an official document, respondent prosecutor has no authority to inscribe profanities thereon. Worse, a scrutiny of [the] record of the said case of "People vs. Frank Pelaez", as pointed out by complainant, the original copy of the "Opposition to the Formal Offer of Exhibits for Prosecution" (p.143), filed by accused's counsel, Atty. Jose S. Buban, contained the designation indicated below respondent prosecutor's name. This only shows that Atty. Buban never meant to disregard indicating the official designation of respondent prosecutor in the said pleading. Hence, to our mind, respondent prosecutor's penchant for allusions to provoke trivial matters and



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disparaging insinuations on his fellow court officers, expressed in uncouth and intemperate language, are evidently conduct unbecoming of a public officer.

It bears stressing that as a public prosecutor, it must have been instilled upon respondent prosecutor that it is his duty as a public servant to exhibit the highest sense of honesty, integrity and strictest discipline in the performance of his official duties. Respondent prosecutor's insolent views on his false certification and his profane notations on public documents constitutes [sic] the very essence of conduct unbecoming of a public officer which falls below the highest ethical standards by which prosecutors of this Department are obliged to abide with.

Anent, however, the charge against respondent prosecutor for dereliction of duty and gross negligence in handling the following cases, to wit: Criminal Case No. 93-06-352 against Natividad Ballais, et al.; Criminal Case No. 92-05-191 against Mayor Ernesto Fabi, et al.; and Criminal Case No. 93-05-287 against Ramil Peñaranda, the same should be dismissed for insufficiency of evidence. Indeed, the instant accusation of gross negligence arising from the dismissal of Criminal Case No. 93-06-352 is a rehash of a similar complaint filed by Prosecutor Prosecutor Roland N. Homeres, which was already dismissed by this Department on October 3, 1994, thru then Secretary Franklin M. Drilon. As we have noted in the said case, "(r)espondent prosecutor was able to sufficiently explain why he failed to appear on the scheduled hearing of September 3, 1993 of the aforesaid criminal case. xxx The immediate filing by respondent prosecutor of the motion for reconsideration upon his receipt of the order of dismissal further strengthens his claim of good faith. Unless it can be indubitably shown that his actuation was tainted with malice or deliberate intent to cause an injustice, administrative sanction is not called for".

Similarly, we find no basis to hold respondent prosecutor administratively liable with the granting by the court of the demurrer to evidence filed by the accused in Criminal Case No. 92-05-191. His comments on the said



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demurrer to evidence, taken together with his immediate filing of a motion for reconsideration upon his receipt of the order granting the demurrer to evidence, as well as his request for a corrective writ with the higher court, which was favorably acted by no less than then Chief State Prosecutor Zenon L. de Guia, are telltale evidence that he acted in good faith and had no intention to cause an injustice.

Finally, we must also dismiss complainant's claim that respondent prosecutor bungled the prosecution's evidence leading to the acquittal of the accused in Criminal Case No. 93-05-287 for utter lack of evidence. As established on the record, Prosecutor Sionne V. Aujero-Gaspay took over the prosecution and handled the said case up to its termination. And, if it is true that respondent prosecutor interfered with the case undermining the cause of the prosecution, we wonder why Prosecutor Gaspay did not complain and denounce him since she was the prosecutor of the case who is supposed to be directly involved. Considering that respondent prosecutor's explanation on the matter remains uncontradicted, coupled by the fact that it was not clearly shown that he acted with malice and evidence, it stands to reason that he cannot be faulted with the acquittal of the accused in the aforesaid case. Accordingly, insofar as the charge for dereliction of duty and gross negligence is concerned, we resolve to dismiss the same for insufficiency of evidence." (*Supra*; Brackets supplied)

The inculpatory findings and conclusions of the DOJ Secretary, supported as they are by, or at least reasonably inferable from, substantive evidence on record commend themselves for concurrence. Indeed, respondent prosecutor, being a government employee, is duty-bound to observe civil service laws and rules concerning office attendance. His admission that he was absent in the morning of April 27, 1993 after deliberately stating in his certificate of service that he incurred no absence for that month is a clear case of dishonesty.

Similarly, the admission of respondent prosecutor that he wrote profanities on his official files, such as "S—t" or "shit" as well as his tendency to provoke trivial matters and disparaging insinuations on his fellow court officers are truly deplorable, tending as they do to destroy public respect for the public office that he holds and the institution he represents.

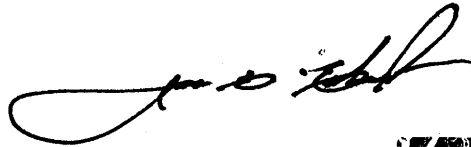


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WHEREFORE, premises considered, respondent First Assistant City Prosecutor Leo C. Tabao of Tacloban City is hereby found guilty of dishonesty and misconduct/conduct unbecoming of a public officer. Accordingly, as recommended by the Secretary of Justice, First Assistant City Prosecutor Leo C. Tabao is hereby DISMISSED from the service with forfeiture of all benefits under the law, effective upon his receipt of a copy hereof.

Done in the City of Manila, this 13th day of March in the year of Our Lord, nineteen hundred and ninety nine.



By the President:



RONALDO B. ZAMORA
Executive Secretary



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