

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 60

IMPOSING UPON ASSISTANT CITY PROSECUTOR BEN DE LA CRUZ OF THE OFFICE OF THE CITY PROSECUTOR OF QUEZON CITY THE PENALTY OF ONE (1) YEAR SUSPENSION WITHOUT PAY FOR GROSS NEGLIGENCE OF DUTY, INEFFICIENCY, INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL FUNCTIONS AND VIOLATIONS OF DEPARTMENT OF JUSTICE (DOJ) ORDERS NO. 49, SERIES OF 1993 AND NO. 9, SERIES OF 1998.

This has reference to the administrative complaints against Assistant City Prosecutor Ben de la Cruz of the Office of the City Prosecutor of Quezon City in ADM Case No. 98-005-A-FS for neglect of duty and violation of DOJ Order No. 49, series of 1993, as amended, and ADM. Case No. 99-0056-FS for gross neglect of duty, inefficiency and incompetence in the performance of official functions. The Secretary of Justice found respondent prosecutor liable of said charges and recommended, in his letter of October 12, 2001, the suspension of the latter for one (1) year without pay.

I. ADM. Case No. 98-005-A-FS

This a complaint filed by former City Prosecutor Candido V. Rivera of the Office of the City Prosecutor, Quezon City, for neglect of duty and violation of Department Order No. 49, series of 1993, as amended, against respondent. It stemmed from his failure to resolve seventy-six (76) cases assigned to him for preliminary investigation within the prescribed sixty (60)-day period.

During the evaluation stage of this case, respondent was required to submit his comment/answer to the charge but he failed to do so even while his request for extension of time was granted. He likewise did not submit his answer to the formal charge or attend the scheduled hearing of this case despite receipt of a copy of the administrative charge and notice of hearing. Thus, this case was resolved on the basis of the evidence presented by the complainant.

We find respondent prosecutor liable for neglect of duty and for having violated DOJ Order No. 49, series of 1993, as amended.

The inventory by the Office of the City Prosecutor of Quezon City in April 1997 of the cases assigned to respondent for preliminary investigation reveals that he failed to resolve the seventy-six (76) cases that were assigned to him. This includes the two cases that were assigned to him as early as December 28, 1994 and June 2, 1995.

Respondent obviously disregarded the rules in the conduct of preliminary investigations as provided for under Section 3, Rule 112 of the Revised Rules on Criminal Procedure. He also violated DOJ Order No. 49, series of 1993, as amended, which requires at that time prosecutors in the National Prosecution Service to resolve the preliminary investigation of cases within sixty (60) days from the date of assignment.

This Office has consistently impressed upon the prosecutors the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. The prosecutors, being the paradigm of justice in the final instance, are exhorted to dispose of their cases within the required period. Any delay and inaction in the disposition of cases can easily cause great injustice. It also invites suspicion of ulterior motives on the part of the prosecutor. When circumstances arise that would render him incapable to decide within the prescribed period a case for preliminary investigation, all that the prosecutor has to do is to request from the Secretary of Justice an extension of time within which to resolve the case. We can reasonably assume that the Secretary of Justice, cognizant of the caseload of the prosecutors and mindful of the difficulty encountered by them in the seasonable disposition of cases, would usually grant the request.

We also note that his superior has repeatedly warned respondent of his failure to resolve the aforementioned cases. His persistent refusal to heed said warning indicates not only defiance and disrespect to his superior but also extreme indifference and unwillingness to perform his duty as a prosecutor.

The conduct of respondent clearly gravely undermines the government's policy to speed up the administration of justice and to restore the people's trust in our criminal justice system particularly in the National Prosecution Service.

II. ADM. Case No. 99-0056-FS

This is a complaint for gross neglect of duty, inefficiency and incompetence in the performance of official functions. The evidence for private complainant Esmaela Padilla shows that she is the complainant in I.S. No. 98-26125 against Danilo Chua, et al., for illegal demolition, landgrabbing and qualified trespass to dwelling. Her complaint was filed before the Office of the City Prosecutor on December 28, 1998. It was later assigned to respondent for preliminary investigation. She followed up with him, on several occasions, the resolution of her complaint but to no avail. She even filed motions to this effect. At present, the case has remained unresolved to her prejudice.

On January 17, 2000, a formal charge against respondent prosecutor for gross neglect of duty, inefficiency, and incompetence in the performance of official functions was issued by then DOJ Secretary Serafin R. Cuevas. Specifically, the formal charge reads:

"That you failed to act on the complaint of Esmaela A. Padilla for illegal demolition, landgrabbing, qualified trespass to dwelling, grave threats, grave coercion and malicious mischief against Danilo Chua, et al. docketed as I.S. No. 98-26125 and the subsequent motion filed my complainant from the time that it was assigned to you on January 20, 1999 up to the present, in violation of Sec. 3, Rule 112 of the Revised Rules on Criminal Procedure and Department Order No. 9 dated February 6, 1998. Court."

Although he was required to submit, within ten (10) days from receipt of the formal charge, his answer thereto and his sworn statement covering his testimony and those of his witnesses, respondent prosecutor did not do so.

During the initial investigation of this case, respondent prosecutor failed to attend on time. In the second setting held on April 7, 2000, respondent prosecutor requested for the deferment of the hearing until May 3, 2000. The deferment was prompted by his desire to seek from the DOJ Secretary an extension of time within which to file his comment as required by the formal charge. He, however, failed to appear on May 3, 2000, much less show proof that he, in fact, requested for additional time within which to submit his answer. He likewise did not attend the subsequent hearing on May 24, 2000 despite notice thereof. As it is, respondent prosecutor did not file his answer or any sworn statement as required in the formal charge. He likewise did not adduce any evidence on his behalf. Thus, upon motion of complainant, this instant administrative complaint was submitted for resolution.

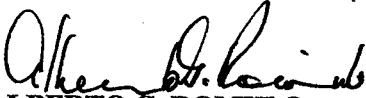
We find the instant administrative complaint meritorious especially in light of the fact that respondent failed to dispute the same despite the various opportunities for him to do so.

Complainant has categorically stated that respondent prosecutor failed to resolve her complaint in I.S. No. 98-26125 which she filed on December 28, 1998. Worse, he did not resolve the said case despite repeated follow-ups by the complainant. This certainly is contrary to Section 3, Rule 112 of the Revised Rules on Criminal Procedure and DOJ Order No. 9 dated February 6, 1998 which directs all prosecutors to resolve cases on preliminary investigation within forty-five (45) days.

WHEREFORE, and as recommended by the Secretary of Justice, Assistant City Prosecutor Ben de la Cruz of the Office of the City Prosecutor of Quezon City is hereby **SUSPENDED** for a period of one (1) year without pay effective upon his receipt of this Administrative Order with a stern warning that commission of the same or similar offenses in the future will warrant his dismissal from the service.

DONE in the City of Manila this *7th* day of *February* in the year of Our Lord two thousand and three.

By authority of the President:


ALBERTO G. ROMULO
 Executive Secretary