

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 171

DISMISSING ASSISTANT CITY PROSECUTOR VENERANDO L. AGUSTIN OF QUEZON CITY FROM THE SERVICE.

This is an administrative case against Assistant City Prosecutor Venerando L. Agustin of Quezon City filed by his immediate superior, City Prosecutor Jose F. Erestain, Jr., for alleged rank insubordination, disrespect towards his superior, gross dishonesty and conduct prejudicial to the best interest of the service.

In his letter-complaint to then Justice Secretary Sedfrey A. Ordoñez, dated March 17, 1989, City Prosecutor Jose F. Erestain, Jr., of Quezon City, averred that, during the monthly luncheon meeting of the Quezon City Prosecutors held at the Innocentes Farmhouse on February 10, 1989, respondent Assistant City Fiscal Venerando L. Agustin asked him if he believed the complaint lodged against the respondent by two ladies. Despite being admonished to let the matter rest as it had already been taken up between them, respondent insisted that if he (Erestain) believed said complaint, he should file charges against respondent. Fiscal Erestain then reminded respondent that, if a party complains once against the actuation of an assistant fiscal, he would consider it as one of the so-called occupational hazards, but when seven similar complaints are directed against the same fiscal, "that is no longer a smoke, but a fire". Apparently resenting Fiscal Erestain's remark, respondent loudly proclaimed that the former was harassing fiscals and employees, instead of protecting them, to which Fiscal Erestain replied that he could not protect dishonest fiscals or employees. Whereupon, respondent, in stentorian voice, challenged Fiscal Erestain to file charges against him, adding: "Baka tamaan ka rin!" (I can also hit you with charges). "I can work for your ouster, too!"

Fiscal Erestain further claimed that respondent is well known among secretaries and employees in the Fiscal's Office for his arrogance and insolence. In support thereof, Fiscal Erestain submitted the letter-reports of Stenographer Armida L. Bayquen and Supervising Stenographer Zenaida C. Natividad, dated January 19, 1988 (should be 1989) and November 18, 1988, respectively. According to Ms. Bayquen, sometime on January 19, 1989 at about 9:25 A.M., she was asked by respondent about the nature of the charge filed by certain complainants who were then present. When she responded that it was for a violation of a presidential decree, respondent twice retorted with arrogance: "What is that!", to which she answered: "I do not know, Sir.", adding that "Kayo ho ang lawyer, siyempre alam nyo." She was then ordered by respondent to go and research, when actually that was not her job.

Fiscal Dy to whom said illegal recruitment case was reassigned stated that, during the preliminary investigation thereof, respondent kept on following up the case in favor of respondent Erlinda Hagad.

Finally, Fiscal Erestain alleged that other prosecutors have likewise conveyed to him similar experiences with respondent showing the latter's unpardonable conduct. According to Fiscal Erestain, even judges, lawyers and party litigants have not been spared from making unsavory comments against respondent. Metropolitan Trial Court (MTC) Judge Gregorio Dayrit even complained one time that respondent was interfering during the trial of a Serious Physical Injuries case, entitled "People vs. Martin Po Cham, et al.," although he was not a trial fiscal assigned in his sala and was seen coaching the complaining witness during the trial.

By a 1st indorsement dated March 22, 1989, Chief State Prosecutor Fernando P. de Leon required respondent to submit his answer to the charges, with a right to elect a formal investigation, if he so desires. Otherwise, the case will be considered solely on the basis of the complaint and answer.

In his Answer of April 18, 1989, respondent alleged at the outset that, during the occasion mentioned in Fiscal Erestain's complaint, he felt being alluded by the latter's remark as the prosecutor charged with several complaints and that, emboldened by the after-effect of the several bottles of beer he drank, which were then freely served, he stood up and told Erestain why he would insult and harass him with such unfounded remarks. Respondent further averred that the two ladies (the Santillan sisters) who complained against him for allegedly asking a set of calling cards and a suiting material and demanding P5,000 nearly had him entrapped by the NBI through the instigation of Fiscal Erestain were it not for the revelation of Ms. Violeta Estacio, a loyal friend who was present when the Santillan sisters and Erestain planned their entrapment on account of respondent's refusal to file an information for estafa based on the complaint of the Santillan sisters.

According to respondent, Fiscal Erestain had an ax to grind against him, as the latter suspected him to be the author of the letter-complaint for graft and corruption filed against Erestain by one Lourdes Maranan before the Justice Department, but the truth of the matter is that it was Maranan's counsel, Atty. Arsenio Cabrera, who prepared the said letter-complaint. Respondent claimed that when Erestain summoned him to his office upon receipt of a copy of the letter-complaint, he was asked by Erestain to sign a letter to the effect that he (Erestain) never asked respondent to do anything favorable to the Po Cham family, respondents in the Grave Oral Defamation and Serious Physical Injuries cases filed by Maranan.

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Amplifying thereon, respondent averred that he had already signed the resolution and information for grave oral defamation and serious physical injuries against the Po Cham family when Fiscal Erestain called for him and in front of the accused told the latter that only he (respondent) could help them. Upon being informed of his action, Erestain felt offended and, the following day, Edith Po Cham, probably upon Erestain's advice, formally charged him with being biased and requested that the case be reassigned to another fiscal.

Respondent also denied not having offered an apology to Fiscal Erestain, claiming that, during the induction ceremonies of the incoming Board Members of the Quezon City IBP Chapter held on March 19, 1989, he approached Erestain to offer his apology but he was told by the latter that that was not the proper place and time. Respondent had earlier learned from Fiscal Myrna Vidal that Erestain wanted him to make a public apology during a meeting of the Quezon City fiscals.

As to Fiscal Erestain's allegation in his complaint that respondent intentionally absented himself during the March 10, 1989 monthly fiscals' meeting, respondent explained that he was not purposely avoiding Erestain but that he was requested by then IBP Chapter President Atty. Confesor Sansano to start preparing the much delayed issue of "The Q.C. Lawyer," the official newsletter of the IBP Quezon City Chapter, of which fact respondent requested Atty. Sansano to inform Erestain.

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On the Amida Bayquen Report, respondent claimed that he felt insulted by the arrogant manner by which Ms. Bayquen refused to heed his request to get a copy of a certain presidential decree, prompting the party litigant then present to remark that he (respondent) was being bossed around by his secretary. Respondent further alleged that the Bayquen report was never referred to him for comment nor was he called by Fiscal Erestain to explain his side of the case.

Respondent took exception to the Natividad Report by stating that Ms. Natividad was treating him as her co-equal, he being new in the office then. Respondent alleged that, while he and his secretary, Minda Patron, were in the thick of discussion, Natividad suddenly butted in and started giving him a sermon as if he were her subordinate. As in the Bayquen Report, respondent claimed that he was not given the opportunity to explain his side of the case.

Concerning the affidavit of Fiscal Castelo, respondent denied having made the remark mentioned therein, but admitted asking Fiscal Castelo, a provincemate, to help the complainants in the Rental Law case being handled by her. While claiming that the complainants in

said case are his personal friends, respondent, however, denied having received a single centavo from them in connection with the said case. Respondent decried as being libelous, false and malicious Fiscal Castelo's insinuation that he used her name to obtain money from the complainants, since Lydia Medina, et al., being as poor as city rats compared to respondent, Le Lin Co Sio who is a Chinese millionaire, could not have given money to respondent to be offered as bribe to Fiscal Castelo. According to respondent, Fiscal Castelo got mad at him because she suspected that he was instrumental in the filing of an appeal by the complainants with the Department of Justice from her resolution dismissing the complaint. Respondent further averred that Fiscal Castelo's dismissal of the Rental Law case after sitting on it for nine (9) months was rather surprising, considering that there was prima facie evidence against the accused and that Le Lin Co Sio never appeared during the scheduled preliminary investigations of the case.

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With regard to Fiscal Mayo's affidavit, respondent denied having constantly talked to or followed up with the former the illegal recruitment case against Erlinda Hagad and claimed that he only inquired once from Fiscal Mayo about the status of the case. Respondent alleged that Erlinda Hagad, his provincemate, requested him to verify the status of the case because of her desire to arrive at an amicable settlement with the complainants. Respondent thus maintained that merely inquiring about the status of a case does not necessarily mean that one is asking for a favor.

In the case of Fiscal Dy, respondent admitted that he approached the former twice, once in the Quezon City Fiscal's Office and the other in Baguio City during the national convention of prosecutors, but only to inquire about the status of the criminal case filed against Erlinda Hagad, which had been reassigned to her. Respondent insisted that he never asked Fiscal Dy to favor Hagad, but that he simply conveyed to her Hagad's willingness to settle her obligation with the complainants.

Lastly, respondent branded as baseless Fiscal Erestain's allegation that prosecutors, judges, lawyers and party litigants have complained about his (respondent's) unpardonable conduct for the former's failure to name names. As for MTC Judge Gregorio Dayrit mentioned in the complaint, respondent alleged that he was allowed by the said judge to seek permission from Fiscal Erestain to appear as prosecuting fiscal in "People of the Philippines vs. Martin Po Cham, et al.", but his request was turned down. Moreover, respondent denied having interfered with the trial of the case against Po Cham, et al., he having been allegedly granted permission by Judge Dayrit to sit at the place designated for counsels. Respondent likewise denied that he coached the complaining witness in said case.

During the initial hearing of the case conducted by State Prosecutor Basilio R. Gabo, Jr., on July 13, 1989, respondent manifested that he was waiving his right to a formal investigation and moved that the case be submitted for decision on the basis of the documents presented. This notwithstanding, the investigating officer nonetheless called Fiscal Castelo and Mesdames Bayquen and Natividad to affirm their respective affidavits. For his part, respondent presented as his witnesses, Lourdes Maranan, Lydia Medina, Jose Tan and Benjamin Nabong who also affirmed their respective affidavits.

At the next hearing held on August 1, 1989, Fiscal Gertrudo Abary and Atty. Esmeraldo Acorda, counsel for Po Cham, et al., both declared that they were not affected by respondent's presence during the trial of the Po Cham case, as they were engrossed in their respective cases. Judge Dayrit likewise appeared and stated that he did not complain to Fiscal Erestain about respondent's actuation during the hearing of said case. Moreover, he added that respondent asked his permission to attend the trial and that he was not affected by respondent's presence thereat.

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After due consideration, then Justice Secretary Sedfrey A. Ordoñez in his memorandum for me, dated October 3, 1989, found respondent guilty of gross misconduct and accordingly recommended that respondent be dismissed from the service, noting, among others, that:

"There is no reason or cause to doubt the credibility of Fiscal Erestain, the other complaining fiscals and stenographers whose charges have not been satisfactorily refuted in Fiscal Agustin's explanation.

"Fiscal Agustin has utterly and wantonly disregarded the norms of conduct required of a public officer - to uphold public interest, discharge his duties with utmost integrity and competence and act with justice and professionalism. His abhorrent personal conduct in dealing with his co-employees and subordinates, his practice of following up cases and influencing other fiscals to favor one party and his unusual interest in following up cases amount to gross misconduct which render him notoriously undesirable.

"In view of the foregoing, I respectfully recommend to Her Excellency the dismissal of Fiscal Venerando Agustin from the service."

After careful review, I concur in the findings and recommendation of the Secretary of Justice. Respondent's contumacious conduct during the Quezon City prosecutors' monthly meeting held on February 10, 1989, wherein he challenged, while under the influence of liquor, City Fiscal Erestain, to file charges against him right in the midst of other city prosecutors and employees amounted no less to rank insubordination and gross disrespect towards a superior. Respondent's actuation was further exacerbated by the threat he hurled against Fiscal Erestain that he (respondent) could also file charges against and work for the latter's ouster, too. By his demeanor, respondent had set an ugly and unprecedented example to his co-prosecutors and employees of the city fiscal's office.

Moreover, respondent's arrogant and insolent manner of dealing with his subordinates does not speak well of his position and stature as assistant city prosecutor and member of the bar. Needless to emphasize, respondent's actuation as such does not conduce to a healthy and sound relationship between him and his subordinates and is bound to prejudice, if not imperil, public service. It should have occurred to respondent that the unwholesome situation he had created would tend to delay the disposition of his cases and, consequently, the dispensation of justice, which precisely he was called upon to perform.

More deserving of censure than respondent's above-mentioned offenses is his unprofessional act of following up cases being handled by other prosecutors and influencing the latter to decide in favor of certain party litigants. Being a prosecutor himself, respondent ought to realize that every complaint should be resolved with the highest degree of fairness and with utmost impartiality. By trying to influence his co-prosecutors to decide one way or the other, with or without consideration, respondent had thereby transformed himself into an instrument for evisceration of justice, which renders him undeserving of being retained any further in the prosecution service.

WHEREFORE, and as recommended by the Secretary of Justice, Assistant City Prosecutor Venerando L. Agustin of Quezon City is hereby DISMISSED from the service, effective upon receipt of a copy hereof.

Done in the City of Manila, this 8th day of June in the year of Our Lord, nineteen hundred and ninety.

Venerando L. Agustin

By the President:

Catalino Macaraig, Jr.
CATALINO MACARAIG, JR.
 Executive Secretary