

[ADMINISTRATIVE ORDER NO. 30, October 27, 1998]

**IMPOSING THE PENALTY OF SUSPENSION FOR ONE YEAR
WITHOUT PAY ON ASSISTANT CITY PROSECUTOR RAMON E. SAN
AGUSTIN, JR. OF THE CITY PROSECUTION OFFICE OF MANDAUE
CITY**

This refers to the administrative complaint filed by City Prosecutor Ferdinand G. Peque, City Prosecution Office, Mandaue City, against Assistant City Prosecutor Ramon R. San Agustin, Jr. of the same office, for grave misconduct, gross insubordination and refusal to perform official duty.

The facts of the case are as follows:

Complainant City Prosecutor alleges that on September 19, 1995, an information for violation of Section 16, Article III, Republic Act. 6425, as amended, was filed by the Philippine National Police (PNP) against Fritz Callelero and Theodore Garaygay before the Regional Trial Court, Branch 28, Cebu City, docketed thereat as Crim. Case No. DU-5178. Upon motion of the accused and without objection on the part of respondent prosecutor San Agustin, the assigned prosecutor thereat, the scheduled arraignment on November 16, 1995 was deferred and a reinvestigation was ordered by the court.

In a reinvestigation report dated March 22, 1996, respondent prosecutor recommended the dismissal of the case. Complainant City Prosecutor, however, disapproved/reversed the said recommendation in his order dated April 19, 1996 embodied in respondent prosecutor's reinvestigation report (third page) and sustained the filing of an information in court against Fritz Callelero and Theodore Garaygay. Subsequent thereto and during the leave of absence of complainant City Prosecutor, respondent prepared a similar report/recommendation of dismissal dated May 17, 1996, and had the same approved by OIC/Assistant City Prosecutor Carmelita Terez. This reinvestigation report/recommendation of dismissal was filed in court and was later made the basis for the court's dismissal of the case.

Upon reporting for work, complainant City Prosecutor directed respondent prosecutor to explain the dismissal order issued by the court. For failure of respondent to comply with this directive, complainant City Prosecutor filed an administrative complaint against respondent prosecutor before the Office of the Regional State Prosecutor.

A fact-finding investigation was initiated by the Office of the Regional State Prosecutor (RSP), but despite notice, however, respondent prosecutor failed to file his answer. Moreover, complainant City Prosecutor was found to have issued another memorandum dated July 30, 1996, directing respondent prosecutor to file a motion for reconsideration of the court's order of dismissal in Criminal Case No. DU-5178 and in the event of a denial thereof, to file a new information against the accused.

However, as of August 15, 1996, when the decision on the complaint was rendered, respondent prosecutor took no action thereon. Hence, the RSP's recommendation that respondent prosecutor be formally charged for serious misconduct, gross insubordination and refusal to perform official duty.

Respondent prosecutor elected for the conduct of a formal investigation and refuted the charges. He averred that his first reinvestigation report dated March 22, 1996, was an honest assessment/evaluation that the case should be dismissed. When he submitted his resolution to complainant City Prosecutor for the latter's "initial perusal and scrutiny without finality", the resolution was returned to him with "notations". Believing that it was necessary to justify his recommendation for the dismissal of the case and/or additional matters need to be incorporated, he made verbal explanations to complainant City Prosecutor regarding loopholes in the evidence and requested for a further discussion of the case. Complainant City Prosecutor, however, went on leave and as the court's allotted time had lapsed, he was constrained to file another reinvestigation report dated May 17, 1996 which was approved by OIC Terez. This report was filed in court and on the basis thereof, the case was dismissed.

Upon complainant City Prosecutor's return, respondent prosecutor was asked to explain the court's dismissal order. Since the case folder was missing, he complied verbally and asked for an extension of time within which to file his answer. Complainant City Prosecutor did not, however, wait for the answer and filed the instant complaint/matter before the office of the RSP. After due notice, respondent prosecutor verbally explained to RSP Masangkay and to the investigating prosecutor regarding the still missing case folder. He then filed an ex-parte motion for an extension of time within which to file his answer. For failure of respondent prosecutor to file his answer within the time granted him, the administrative complaint of City Prosecutor Peque was forwarded to the Department of Justice.

During the intervening period, complainant City Prosecutor again issued a memorandum dated July 30, 1996, directing him to file before the court a motion for reconsideration of its order dismissing the Callelero case. Thus, on August 23, 1996, he filed the corresponding motion in court for which the case was ordered revived and the accused were arrested.

During the conduct of the formal administrative investigation, complainant City Prosecutor manifested that the instant case arose from a mere misunderstanding. Openly professing his faith on the ability of respondent prosecutor, complainant City Prosecutor avers that the investigation the former was not necessary as the mistake committed by said respondent prosecutor had already been corrected when he (respondent prosecutor) caused the revival of the case which is now undergoing trial and for which a possible conviction is foreseen. The accused had, however, jumped bail.

After a careful evaluation of the evidence on record, I find, as did the Secretary of Justice, respondent Prosecutor Ramon E. San Agustin, Jr. administratively liable for grave misconduct.

Complainant City Prosecutor's disposition dated April 19, 1996, on respondent prosecutor's reinvestigation report dated April 19, 1996 clearly reversed the latter's findings that the criminal complaint against Callelero and Garaygay should be dismissed and "sustained the filing of the information in court." Notwithstanding said