

[ADMINISTRATIVE ORDER NO. 209-A, March 12, 1996]

**REDUCING THE PENALTY OF SIX (6) MONTHS SUSPENSION
FROM THE SERVICE WITHOUT PAY TO THREE (3) MONTHS
SUSPENSION ON SECOND ASSISTANT CITY PROSECUTOR
VICTORINO S. ALVARO OF MANILA**

This refers to the Motion for Reconsideration filed by 2nd Asst. City Prosecutor Victorino S. Alvaro, of Administrative Order No. 209, dated August 2, 1995, imposing upon him the penalty of six (6) months suspension from the service, without pay, for grave misconduct and conduct prejudicial to the best interest of the service.

Upon Indorsement by this Office dated October 12, 1995, of the instant motion, to the Department of Justice for comment, the Secretary of Justice replied on February 13, 1996, in this wise:

"Pursuant to your 1st Indorsement dated October 12, 1995 hereunder are our comments on the motion for reconsideration of 2nd Assistant City Prosecutor Victorino S. Alvaro of the Office of the City Prosecutor of Manila of Administrative Order No. 209, dated August 2, 1995, imposing the penalty of six (6) months suspension from the service without pay.

"We carefully re-evaluated the evidence adduced during the formal investigation in the light of the arguments raised in the said motion and we find cogent reasons to modify our finding and recommendation.

"At the outset, we wish to state that aside from the administrative complaint filed with this Department against Prosecutor Alvaro, then 1st Assistant City Prosecutor Porfirio S. Macaraeg (now Judge) of Manila, likewise filed a criminal complaint with the Office of the Ombudsman for violation of Sec. 3 (e) of R.A. 3019, as amended, involving exactly the same set of facts, the same witnesses and the same documentary exhibits. When this Department resolved the instant administrative complaint, the Office of the Ombudsman had not yet resolved the said similar complaint and it was only after this Department had already submitted its finding and recommendation to your Office that the Office of the Ombudsman came up with a resolution dismissing the complaint.

"While an absolution from a criminal charge is not a bar to an administrative prosecution and neither would the results in one conclude the other, we, however, find these principles inapplicable. The criminal complaint which involved the same act complained of in the instant administrative charge was dismissed even before reaching the court because of lack of probable cause.

"Besides, as can be gleaned from our finding and recommendation and that of the Office of the Ombudsman, it is very apparent that there are two (2) conflicting findings involving the same facts and issues. Specifically, while this Department found *'that Prosecutor Alvaro deliberately, downgraded the charge against Miano' x x* and *'his defense that his approval of the information of murder and homicide was an honest mistake is indeed incredible, he being an experienced prosecutor'*, the Office of the Ombudsman, on the other hand, found that the *'established facts and circumstances tend to negate the existence of evident bad faith or premeditated mistake as imputed to respondent x x x'*" (p. 3, Res. of Ombudsman dated October 28, 1994) and concluded that *'from the evidence, it can be deduced that the mistake committed was not a deliberate scheme to favor accused Miano or to prejudice the administration of justice'*" (p. 7, Ibid).

"Clearly, we have a situation wherein two (2) fora have conflicting and irreconcilable findings on the same act complained of with one forum saying that the mistake committed was not deliberate while the other forum found such mistake committed deliberately. In order to rectify this blatant inconsistency of findings and taking into account the fact that the finding of the Office of the Ombudsman had already become final and executory, administrative courtesy and propriety dictate that we subscribe to its findings which are elucidated in the following manner, thus -

"The following established facts and circumstances tend to negate the existence of evident bad faith or premeditated mistake as imputed to respondent Alvaro, to wit:

"1. Contrary to complainant's assertion that Prosecutor Alvaro stole from the records the note where the latter wrote his directive to downgrade the offense, said respondent admitted that after his 1st short Memo dated 12-22-92 was rejected by Special Counsel Laguilles he detached the same and dictated a 2nd on 12-23-92 but no specific addressee was mentioned therein (Rejoinder-affidavit of Alvaro, p. 172, Records).

"Furthermore, he submitted that he also removed the 2nd short memo from the records of the case (p. 173, Records) after Prosecutor Canto disagreed with his suggestion.

"Respondent's actuations cannot be considered as irregular because it is a common practice for the Chief or Assistant Chief of the Inquest Division to make suggestions thru a Memo and exchange views/opinions with the filing Prosecutor as part of the evaluation process in order to ensure the preparation of an accurate information.

"2. The insinuations that respondent Alvaro pressured Prosecutor Diccion to sign the prepared information downgrading the charge against Miano by presenting the same thru stenographer Josie Yambao at 5:00 p.m. when she was about to leave the office so that she could not have