[ADMINISTRATIVE ORDER NO. 123, March 14, 1994]

IMPOSING THE PENALTY OF FINE EQUIVALENT TO ONE MONTH'S SALARY ON PROVINCIAL PROSECUTOR CLAUDIO NISTAL OF AGUSAN DEL SUR AND APPROVAL OF HIS APPLICATION FOR OPTIONAL RETIREMENT

This refers to the administrative complaint filed against Provincial Prosecutor Claudio Nistal of Agusan del Sur for Irregularities in the Performance of Duty amounting to Inefficiency and Incompetence in the Performance of Official Duties in connection with the order of dismissal issued by him of a criminal complaint for Rape with Homicide.

Records show that on May 24, 1990, an affidavit/complaint was executed by Josefina Margin at the PNP Station, San Francisco, Agusan del Sur accusing Daniel Tomas, Saturnino Pastor, Pablo Lonzaga and Pablito Tukbo of having raped and killed her daughter on May 23, 1990 at around 8:00 P.M. on May 30, 1990, P/Sgt. Paciano P. Ladera filed the complaint together with the sworn statements of other witnesses docketed as Criminal Case No. 1953 before Judge Ciriaco C. Arino of the Municipal Circuit Trial Court of San Francisco, Rosario and Bunawan, Agusan del Sur.

On June 15, 1990, after counter-affidavits were filed by the accused, Judge Arino issued a resolution finding probable cause against the accused and ordered the records of the case of forwarded to the office of the Provincial Prosecutor of Agusan del Sur for appropriate action.

The records were received by the Provincial Prosecutor's Office on June 18, 1990 and, on June 20, 1990, respondent assigned the case to Prosecutor Victoriano Pag-ong who, the following day, subpoenaed P/Sgt. Paciano Ladera to appear on June 28, 1990 for preliminary investigation.

But on June 28, 1990, while the records of the case were still with Prosecutor Pag-ong, respondent issued a resolution dismissing the case on the ground of insufficiency of evidence on the basis of which the accused were released from detention.

On July 11, 1990, Prosecutor Pag-ong issued a subpoena to Provincial Warden Sulapas to explain the reported release of the accused.

On the same day, the Provincial Warden Sulapas appeared before Prosecutor Pag-ong's office, and furnished him with a copy of respondent's resolution.

Hence, on the same day, Prosecutor Pag-ong, in a letter to respondent, returned the records of the case to respondent since the latter had opted to personally act on the case.

However, on July 12, 1990 respondent issued a Supplemental Resolution lifting his June 28, 1990 resolution and directing that an information for Rape with Homicide be filed.

On July 13, 1990, the victim's parents learned of the release of the accused and on July 16, 1990, after meeting with respondent who offered no explanation for his action, sent a letter to the Department of Justice requesting for an investigation of the actuations of respondent.

On July 18, 1990, the respondent filed the Information for Rape and Homicide with the Regional Trial Court pursuant to his Supplemental Resolution dated July 12, 1990.

On July 24, 1990, the Undersecretary of Justice Silvestre Bello sent a 1st Indorsement to respondent directing him to explain his patently conflicting resolutions which are "bereft of any basis, in fact and in law x x x".

In his 2nd Indorsement dated August 12, 1990, addressed to the Hon. Silvestre H. Bello III, respondent explained that he issued resolution dated June 28, 1990 dismissing the case which resulted in the immediate release of Daniel Tomas, et al., on the strength of the representation of the father of the accused that the case had already been amicably settled and promise to submit the written agreement with the complainant the following day; but that he recalled this order and filed the case in court when the father of the accused failed to submit the written amicable settlement.

On August 24, 1990, Eugenio Margin sent a letter to Undersecretary Bello denying that any amicable settlement had been discussed.

On February 4, 1991, Undersecretary Bello instructed Eugenio Margin to send his complaint in a form of a sworn statement.

On February 12, 1991, Eugenio Margin filed his original complaint dated July 16, 1990 this time duly sworn to on February 5, 1991. The complaint was filed with the Department of Justice and the Ombudsman. The case was assigned to State Prosecutor Hernani Barrios for investigation.

In his position paper dated October 4, 1991, respondent submitted that he signed his June 28, 1990 resolution without full knowledge of the facts and surrounding circumstances because for the past two (2) years, he had been suffering from poor retentive memory and impaired judgment due to neurological imbalance, as certified by a Dr. Rogelio Hunching H. Chua. However, he claims that the unintentional dismissal of the case was immediately rectified by his supplemental resolution, the filing of the information and the rearrest of the accused and that due to his mental problems, he has decided to file an application for an optional retirement.

After evaluating the evidence and papers submitted in the administrative case, Acting Secretary of Justice Silvestre H. Bello III recommended the imposition of the penalty of fine equivalent to a salary of six (6) months upon respondent anchored on the following findings of irregularities in the issuance of respondent's resolution dated June 28, 1990.

First, respondent violated Rule 112, Section 5 of the Rules of Court which mandates that should the provincial or city fiscal disagree with the findings of the investigating judge on the existence of probable cause, the fiscal's ruling shall prevail but he must