

[ADMINISTRATIVE ORDER NO. 73, July 30, 1993]

**IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE
WITH FORFEITURE OF ALL BENEFITS UNDER THE LAW OF 4TH
ASSISTANT CITY PROSECUTOR OSMUNDO BADURIA OF NAGA
CITY**

This refers to the administrative complaint filed in August, 1990 by Naga City Prosecutor Vicente A. Estela against his 4th Assistant City Prosecutor Osmundo Baduria for neglect of duty, the same having stemmed from the latter's unexplained absence without leave from January 1, 1990.

Complainant alleges that: when the complaint was lodged sometime in August 1990, respondent Baduria has been continuously absent from work since January 1, 1990; his absence from office beginning May 1990 was not covered by any official leave as he failed to inform nor file any leave with the Office of the City Prosecutor; he lives within the City of Naga and his house is situated merely two kilometers from his place of work and yet notwithstanding advice from his co-employees to report for work, he simply promised to do so; considering then that it was rather uncertain as to whether respondent would be reporting for work, complainant was constrained to reassign respondent's cases for preliminary investigation to other prosecutors; moreover, respondent likewise abandoned his post as trial fiscal of Branch II, Municipal Trial Court of Naga City; for several months in 1989, respondent neither received his salary checks nor RATA in view of his unresolved pending cases which were already way beyond the reglementary period for preliminary investigation and most of which were for light offenses; and lastly, in a letter dated February 19, 1991 sent by the complainant, information was relayed that respondent failed to act even up to the present on the reinvestigation of a case assigned to him as early as March 1987, re: Criminal Case No. 59996 for Theft (People of the Philippines vs. Earl Gonzales), the records of which could not also be located.

Answering the complaint, respondent alleged that: his admitted continued absence from January 1, 1990 was caused by the fact he has been afflicted with acute gastritis and P.T.B. and in support thereof, five medical certificates dated April 6, 1990, September 2, 1990, February 5, 1991 and February 1, 1991 were submitted by him during the formal investigation thereat, issued by two doctors, namely: Dr. Jose G. Bernas and Dr. Venancio Barbin, attesting that he has been under treatment for the above-mentioned illnesses; further, he invokes excusable negligence in failing to submit before hand his application for leave as he was under the belief that sick leave of absence are to be filed after the same are consummated; and all cases assigned to him in 1989 have all been disposed of.

The recommendation of the Secretary of Justice to dismiss Osmundo Baduria from the service with forfeiture of all benefits under the law is anchored on the findings made that respondent's continued absence from office which started January 1, 1990 is untenable. Notwithstanding the submission of medical certificates attesting