

**[ ADMINISTRATIVE ORDER NO. 159, March 09, 1990 ]**

**DISMISSING 3RD ASSISTANT CITY FISCAL MATEO P. FRANCISCO OF ZAMBOANGA CITY.**

This is an administrative case against 3rd Assistant City Fiscal Mateo P. Francisco of Zamboanga City for Dishonesty.

The factual antecedents of the case are as follows:

On September 22, 1986, a certain Emilio D. Garay issued in favor of one Romeo Amar a check (BPI Check No. 41243), post-dated October 7, 1986, in the amount of P14,960.00 representing the amount of loan obtained by the former from the latter. When the check was about to mature, Garay requested Amar not to encash it to enable him (Garay) to raise funds to cover the check. Amar acceded to the request. Thereafter, on January 9, 1987, Amar deposited the check with the PCIB-Zamboanga City, but it was dishonored for being a "Closed Account." Whereupon, Amar filed with the Zamboanga City Fiscal's Office sometime in April 1987 a complaint against Garay for violation of Batas Pambansa (BP) Blg. 22 (Bouncing Checks Law) which docketed therein as I.S. No. 87-220.

During the preliminary investigation before herein respondent Fiscal Mateo P. Francisco, Garay and Amar agreed to settle the case amicably. Thus, on June 25, 1987, Garay offered to pay the amount of P10,000.00 as initial payment of his obligation but, since Amar was not present at that time, Garay handed the P10,000 to respondent at the latter's office, in the presence of stenographer S. Codilla, for which respondent issued an acknowledgment receipt, with the express understanding that the said amount will be given to Mr. Amar. Of the aforementioned amount, however, it appears that only P5,000 was actually turned over by respondent to Amar at the former's residence on the following day (June 26, 1987).

Thereafter, or on August 17, 1987, Garay gave Amar at respondent's office and in the latter's presence P1,000 in cash and a check (PNB Check No. 761969-T) in the amount of P4,000 which the latter was subsequently able to encash, in full payment of Garay's loan obligation to Amar.

Notwithstanding said payments, and contrary to his expectation that I.S. No. 87-220 would soon be dropped, Garay instead found himself being charged anew by respondent sometime in January 1988 with violation of BP Blg. 22 (Crim. Case No. 8687) and Estafa (Crim. Case No. 8686). Through his counsel, Atty. Alfredo Jimenez, Garay requested Fiscal Francisco to move for the dismissal of the two (2) cases on the ground that the aforesaid loan had been paid in full, but said request was rejected by the respondent on April 22, 1988.

As a postscript to Amar's testimony given during the hearing of consolidated Criminal Case Nos. 8686 and 8687 on November 28, 1988, that respondent gave him only P5,000 out of the total amount of P10,000 entrusted by Garay to respondent, Garay filed an affidavit-complaint, dated January 12, 1989, charging respondent with dishonesty.

In his counter-affidavit of March 28, 1989, respondent denied having misappropriated or pocketed any amount from Garay or Amar and averred that he filed the two (2) informations for estafa and violation of the Bouncing Checks Law against Garay because of Amar's failure to execute an affidavit of desistance and further on account of Amar's insistence to file the two cases in court for Garay's failure to pay the amount of P5,000 over and above his obligation of P10,000. (As disclosed, however, by the testimony of Amar given during the hearing of the cases, he (Amar) only filed a complaint for violation of B.P. Blg. 22 and not for estafa against Garay because they were compadres and solely for the purpose of compelling the latter to pay his loan of P14,960.00); that if it was true that he failed to deliver the P10,000 to Amar, Garay should have brought up said fact when he, Garay, was subpoenaed or when he received the resolution of the case; that Amar's testimony given before the court hearing of the aforesaid two criminal cases is a blatant and deliberate lie because he personally gave to Amar the P10,000 in the presence of his (respondent's) wife, son, brother-in-law, and sister-in-law, namely, Eleonor S. Francisco, Ian Mark Francisco (10 years old), Alberto Cajayon and 3d Assistant City Fiscal before City Fiscal Wilfredo M. Yu during Dorothy Cajayon; and that Amar's aforesaid testimony before the court conflicts grossly with his statement made under oath before City Fiscal Wilfredo M. Yu during the hearing of Garay's motion for reinvestigation filed thru his counsel, Atty. Jimenez, that he (Amar) did not receive a single centavo from respondent.

After due investigation, Pagadian City Fiscal Alejandro S. Urro recommended the dismissal of the administrative complaint against respondent for the following reasons: (a) it is rather strange why Garay did not demand from Amar an affidavit of desistance on August 17, 1987, when he tendered to the latter the remaining balance of his loan obligation, and insist for the return of the check that formed the basis of the complaint; (b) it is inconceivable for Amar not to know the exact amount given by Garay to respondent on June 26, 1987, since the latter informed the former's wife by telephone of his initial payment made to respondent; (c) that Amar's credibility leaves much to be desired, in view of his conflicting statements, on the one hand, that respondent gave him only P5,000 on June 26, 1987, and that he did not receive a single centavo from the latter, on the other; (d) that, although respondent was negligent in not demanding a receipt from Amar when he gave to him the money, his claim that he handed the full amount of P10,000 to Amar is corroborated by Fiscal Cajayon and other witnesses; and (e) that, considering her official position, there is no reason to doubt Fiscal Dorothy Cajayon's sworn statement confirming respondent's assertion, although, she is respondent's sister-in-law, which statement was corroborated by her husband, Alberto Cajayon, who presumably would not allow his wife to be used as an instrument in the pursuit of a lie.

Upon review, the Secretary of Justice, in a Memorandum for me, dated January 26, 1990, disagreed with the investigating fiscal and, instead, recommended respondent's dismissal from the service, in view of his following findings and observations: