

[ADMINISTRATIVE ORDER NO. 129, August 01, 1989]

DISMISSING FROM THE SERVICE ELISEO C. FALLAR, ASSISTANT CITY FISCAL, OFFICE OF THE CITY FISCAL OF MANILA

This refers to the administrative complaints against Assistant City Fiscal Eliseo C. Fallar of Manila for (1) public misbehavior committed in the courtroom of the Regional Trial Court, Branch 35, Manila, presided by Judge Ramon P. Makasiar, on December 2, 1987; (2) serious irregularity in the performance of official duty for dismissing an estafa case; and (3) unwarranted actuations towards the members of the Western Police District (WPD).

The first case involving public misbehavior took place as follows:

"When the above-entitled case (Criminal Case No. 87-56733, The People of the Philippines vs. Bruderick Dinglasan) was called for the initial reception of the prosecution's evidence on December 2, 1987, at about 8:30 o'clock in the morning, more or less, Fiscal Fallar manifested in open court that the prosecution was ready, but he requested for thirty (30) minutes to enable him to confer with his witnesses, who were in court. The Court granted his request.

"Subsequently, Fiscal Fallar asked the Branch Clerk of Court, Atty. Alice Castañeda-Gutierrez, to request the Court for a resetting, which the latter did. The Court, however, denied the request on account of the earlier manifestation, placed on the record, that the prosecution was ready, apart from the fact that the prosecution witnesses were present in court and ready to testify.

"When Atty. Gutierrez informed Fiscal Fallar of the reaction of the Court to his request, Fiscal Fallar successively banged his eyeglasses, the copy of the transcripts that he was at the time reading, and his pack of cigarettes, on the attorney's table, shouting at the same time, 'ayoko, ayokong mag-trial.' Forthwith, the Branch Clerk of Court advised Fiscal Fallar, to talk with the Judge, but Fiscal Fallar, said 'Ayoko, ayoko', and hurriedly left the courtroom.

"Upon resumption of the court session at around 9:15 o'clock the same morning and this case was called for hearing, only the court personnel, the defense counsel, the prosecution witnesses and the accused were present. Fiscal Fallar did not appear anymore, for which reason, the court was constrained to reset the initial reception of the prosecution's evidence."

When asked to explain, respondent fiscal stated that, upon being informed that his request was denied and anticipating that the Judge will force him to proceed with the trial, he left the courtroom against the advice of the Branch Clerk of Court and that his actuation was prompted by sheer frustration for not having been given the opportunity to study the case thoroughly and thereby present a good case for decision.

The Secretary of Justice found respondent's actuation unbecoming of a lawyer and prosecutor. He said:

" x x x He (Fiscal Fallar) is considered an officer of the Court and as such, it is his duty to uphold its dignity and authority by obeying all its lawful orders and rulings. He should be more circumspect in his language, and should show respect to the court by refraining from unnecessary gestures and unwarranted display of passion. Fiscal Fallar's frustration over a denied request for a resetting of the case does not justify his outburst of emotion."

Anent the second administrative complaint levelled against respondent by Lydia Amor Isip and Mora Linda Isip for irregularity in the performance of official duty for dismissing an estafa case (I.S. No. 87-10697) involving the total amount of P88,900.00, which they filed against Dr. Corazon Igna Dizon, allegedly on the basis of their withdrawal of the complaint and desistance noted on the face of the "Memo of Preliminary Investigation," the Secretary of Justice found as follows:

"There is indubitable proof of intercalation on the complaint sheet and that complainants did not consent to the dismissal of their complaint for estafa.

"Firstly, complainants who do not appear to be unlettered could have easily understood the import and consequence of the withdrawal of their complaint if such were written on the document before they signed it. It appears that on May 20, 1987, after the scheduled hearing before Fiscal Fallar, they were accompanied by Atty. Peleo to another fiscal before whom they subscribed their joint affidavit-complaint for estafa. On the same day, a similar complaint (I.S. No. 87-12190) signed by Atty. Peleo was filed but was dismissed on July 30, 1987 for failure to prosecute. I.S. No. 87-10697 which was dismissed by Fiscal Fallar has been revived and is now undergoing further preliminary investigation. These facts show that complainants are serious and determined in pursuing their complaint and recovering from Dr. Dizon, who never appeared at the investigation, the amount of P88,900.00 which they allegedly gave to her for their passports, visas and plane tickets to the USA.

"Secondly, the dismissal of the criminal case by Fiscal Fallar on the basis of the notations on the complaint sheet appears to be irregular. It shows on its face that two counsels, namely Attys. Peleo and Simbulan appeared for the complainants on May 13, 1987 as shown by their signatures thereon although complainants refer only to Atty. Peleo as their counsel. They claim that when they signed the complaint sheet it was made in the presence and at the instance of both Atty. Peleo and Fiscal Fallar (t.s.n. pp. 18 and 19, Dec. 10, 1987). Fiscal Fallar knows very well that the proper procedure whenever a complainant withdraws