

[ADMINISTRATIVE ORDER NO. 88, October 13, 1967]

**REMOVING MR. SALVADOR C. MACAINAN FROM OFFICE AS
FIFTH ASSISTANT CITY FISCAL, BACOLOD CITY**

This is an administrative case against Mr. Salvador C. Macainan, 5th Assistant City Fiscal of Bacolod City, initiated by the Undersecretary of Justice in a letter dated July 11, 1967, charging the said Macainan with Gross Misconduct in and/or Abandonment of Office.

Service of the copies of the charges and the notice of hearing of this administrative case was effected by Patrolman Ernesto Blanco of the Bacolod City Police Department by personally repairing to the publicly known residence of Mr. Macainan in that City on July 25, 1967 and delivering copies thereof, in the absence of Macainan, to his wife Mrs. Line Macainan; who received said copies but refused, however, to sign the proof of service.

The notice of hearing required the respondent Macainan to file his answer to the charges within five (5) days from the service and set the hearing at 9:00 o'clock A.M. of the third day following the expiration of the five days' period for the filing of the answer.

It appears that Macainan on October 11, 1966 left with a clerk in his office an application for an indefinite leave of absence to take effect on the very same day. The leave application did not state the period of its duration and the exact address where the applicant intended to spend his leave. On October 13, 1966 State Prosecutor Dominador de Guzman together with the City Fiscal filed an amended information for Murder in the Court of First Instance of Negros Occidental against several accused including Macainan. And on the very same day a warrant of his arrest was issued. The warrant was immediately delivered to Lt. Aguirre of the Philippine Constabulary Command of Bacolod City who forthwith took steps to execute the warrant. He did not effect the arrest of Macainan because he could not be found in Bacolod City, and he was informed that Macainan had left for Manila two (2) days before the issuance of the warrant or on October 11, 1966.

On October 14, 1966, the leave application left by Macainan with his clerk was submitted to the City Fiscal for appropriate action, and the City Fiscal signed thereon indicating his conformity with the leave. However, according to the standard operating procedure in the Office of the City Fiscal, after said official has signed the application as an indication of his conformity, the same is returned to the applicant for the preparation of the corresponding indorsement to the Secretary of Justice recommending approval. This indorsement was never accomplished and the application was never forwarded to the Department of Justice until June 12, 1967 when the City Fiscal was reminded by the Mayor of the official status of Mr. Macainan, who since October 11, 1966 up to June 12, 1967 had never reported for

duty in his office. Forthwith, the City Fiscal transmitted the application for leave in question and attached thereto a report regarding the absence of Mr. Macainan.

Court Record of the Court of First Instance of Negros Occidental shows that the warrant for the arrest of Mr. Macainan was never effected and returned to the Court. On July 20, 1967 the Court rendered a decision in Criminal Case No. 8918 wherein Macainan was one of the accused. In that decision, Erasmo Cuadra, one of the co-accused of Macainan, was convicted of Murder and sentenced to suffer to extreme penalty of death. In the same decision, the Court made a finding that "the accused, Salvador Macainan, fled from Bacolod City, to evade arrest, before his name was included in the information and remains at large x x x".

It is evident that the filing of the leave application of Mr. Macainan on the very day of its intended effectivity without explanation of its urgency violates Section 16 of the Rule XVI of the Civil Service Rules, which directs that application for leave should be filed five days in advance. Then his application has not been filed in accordance with the standard operating procedure in the office of the City Fiscal of the City of Bacolod. In consequence, it did not carry the required stamp of approval of officials concerned in the Department of Justice, pursuant to Administrative Order No. 235 of the Secretary of Justice, series of 1962. Moreover, the record shows that as of June 30, 1966, Mr. Macainan had earned a total of only approximately fifteen days of vacation and sick leaves. Considering that he intended his application to be for an indefinite period, as in fact, he has not reported for duty for a period of more than sixty days since October 11, 1966, and up to now, the period of leave in excess of the fifteen days he has already earned should be understood to be leave without pay. And pursuant to Section 30 of Rule XVI of the Civil Service Rules and Executive Order No. 324, series of 1941, as amended by Executive Order No. 91, series of 1955, leaves without pay in excess of sixty days shall require the approval of the Secretary of Justice. This has not been done in the application for leave of Mr. Macainan. Moreover, Section 20 of Rule XVI of the Civil Service Rules also provides that leave of absence for any reason other than serious illness of an officer or employee or any member of his family must be contingent upon the needs of the service. In other words, it is a clear mandate of the Rule that an application for leave for any reason other than serious illness, being contingent upon the needs of the service, the previous approval thereof must first be secured before said leave could be enjoyed by the applicant.

Again, Mr. Macainan did not state in his application the definite period of the duration of his leave. As it is, even if it was duly submitted for appropriate action by the Secretary of Justice, it indeed could have deprived the latter of the means to act on it on the basis of its duration and its effect on the exigencies of public interest and the needs of the service. Likewise, the exact address where Mr. Macainan intended to spend his leave is not stated in the application. This could also have deprived the City Fiscal of the City of Bacolod and the Department of Justice of the means to make contact with him if and when the needs of the service required his recall from his leave.

In view of these vital defects in the application for leave of Mr. Macainan, the same could not be said to have been validly filed. His leaving his office and his not reporting for duty as assistant fiscal since October 11, 1966, up to the date of this investigation were, therefore, unauthorized and constitute gross disregard of the rules and regulations pertaining to his official actuations, conduct and department as