

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 61

SUSPENDING MR. JULIO ABAD FROM OFFICE AS MUNICIPAL JUDGE
OF TANZA, CAVITE.

This is an administrative proceeding instituted motu proprio by the Department of Justice against Municipal Judge Julio Abad of Tanza, Cavite, for dereliction of duty for refusing to issue a search warrant to the Philippine Constabulary command to conduct a search in certain houses in Barrio Amaya, Tanza, Cavite, suspected to contain untaxed "blue seal" cigarettes. Both the District Judge of Trece Martires City who investigated the case and the Undersecretary of Justice found respondent guilty of the charge but recommended varying penalties: the former, that respondent be fined in an amount equivalent to five days' salary, and the latter, that he be suspended from office without pay for two months.

The following facts are duly established by the evidence.

On June 16, 1966, about 4:30 P.M., Capt. Orlando Antonio of the Philippine Constabulary went to respondent's office at the municipal hall of Tanza, Cavite, to secure a search warrant. With him were his two witnesses and the necessary papers. Finding respondent's office closed, he forthwith proceeded to Barrio Amaya, Tanza, where the houses sought to be searched are located. In the immediate vicinity, Capt. Antonio found his superior officer, Col. Rizalino Garcia, PC Provincial Commander of Cavite, who informed him that another officer, Col. Rodrigo Tecson, was already in respondent's house (also in Barrio Amaya). Col. Garcia instructed Capt. Antonio to proceed to the house of respondent with the two witnesses and the necessary papers. At respondent's house, Capt. Antonio was informed by Col. Tecson that respondent would not issue the search warrant requested because he does not hold office in the afternoon. Capt. Antonio offered their services and their jeep to get the seal of the court at respondent's office, but respondent refused the offer, stating that his clerk was no longer in the court and that he himself does not hold office in the afternoon.

The principal fact that respondent refused to issue the search warrant is not denied or disputed. To justify, however, his action, respondent maintains:

That it was almost dusk when the constabulary officers sought the issuance of the search warrant and it was therefore inconvenient for him to go to his office in the town hall to conduct the examination of the witnesses;

That it is not true that the officers, Col. Tecson and Capt. Antonio, offered to accompany him in their jeep, but this notwithstanding, he would have declined such offer because he does not want to receive services from party litigants;

That he is a sickly man, suffering from high blood pressure, and on that particular afternoon he was indisposed;

That the key to his office was in the possession of his clerk who had gone to Manila that afternoon to attend school; and

That he does not like to issue search warrant at night because should the search be finished at an unholy hour, he would have to be awakened to accept custody of the goods or articles seized for under the Revised Rules of Court, such articles must, after completion of the search, be forthwith delivered to the court which issued the warrant.

Respondent's defenses, which will be discussed one by one, are devoid of merit.

Regarding his first defense that it would have been inconvenient for him to proceed to the municipal hall to conduct the examination of the witnesses, the records show that when he was asked if he could not have conducted the examination in his house, respondent countered that he had previously requested the permission of the Department of Justice for him to hold office in the house, but such request was denied, with instructions to always hold office in the municipal hall. Respondent's explanation, to say the least, is unconvincing. As aptly observed by the investigator, for a judge to hold office and court session permanently in his house cannot be permitted under any circumstance; but for a judge to conduct in his house the examination of witnesses in connection with an application for a search warrant is entirely different from holding office and session in his house permanently, provided his house is within the territorial jurisdiction of his court.

At any rate, had he proceeded to the town hall to conduct the examination, it would not have entailed arduous inconvenience. Mere inconvenience on the part of a magistrate is no legitimate excuse for failing to cooperate with peace officers, especially in urgent matters such as the search for contraband of places well known to be landing sites of such commodities.

As to the second defense, when the Philippine Constabulary and other police agencies apply for search warrants, they are not considered party litigants, because in doing so, they are merely performing their official duties. Hence, it would not be improper for a judge to accept their assistance to take him in their vehicle, not for the personal use or purpose of respondent, but merely to dispose with dispatch a pressing official matter.

The third defense of respondent deals on his alleged sickly condition. However, no evidence whatsoever was adduced to support this averment. Neither a physician nor even respondent's wife was introduced to corroborate him. Moreover, respondent did not inform the constabulary officers of his alleged indisposition on that afternoon of June 16, 1966, which has therefore the earmarks of an afterthought.

Again, respondent was not corroborated by any witness on his fourth defense that the key to his office was in the possession of his clerk who had gone to Manila to attend classes. It would have been too easy for him to present the clerk to prove this point.

Respondent's last defense centers again on the probable inconvenience which might have caused him had he issued the search warrant to be served at nighttime, in that should the search be terminated at midnight, he would have to be awakened at such an hour to receive the goods or articles seized. Respondent's interpretation of the word "forthwith" used in Section 11, Rule 126 of the Revised Rules of Court is a clear misconception. Such term means that the goods or articles or papers seized must be delivered to the court as soon as possible or practicable, and not necessarily at any hour or time. Again, it must be emphasized that a public servant, especially one in respondent's position, must not refuse to perform his duty merely because of some personal inconvenience. Public service entails sacrifice which government men must be ready to make.

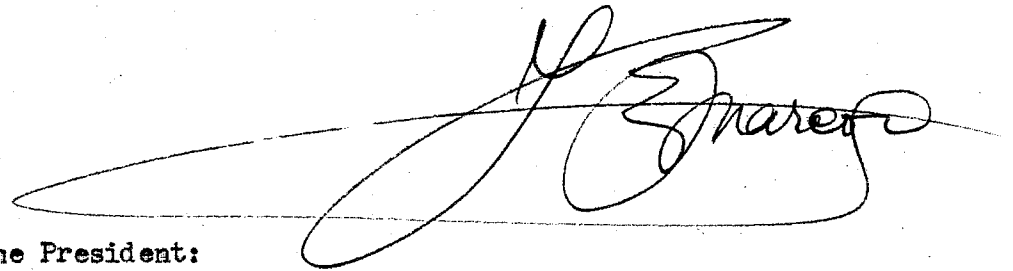
Although it may be said that respondent acted without malice or bad faith, in adamantly refusing to issue the search

warrant applied for simply because of the inconveniences which might be caused him, he displayed poor judgment and apparent indifference to the national effort to eradicate smuggling. Parenthetically, it may be stated that a search warrant was obtained from the District Judge of Trece Martires and the search yielded positive results.


In view of the foregoing, I find respondent guilty of dereliction of duty.

Wherefore, and upon the recommendation of the Under-secretary of Justice, Mr. Julio Abad is hereby suspended from office as Municipal Judge of Tanza, Cavite, for a period of two (2) months without pay, effective upon receipt of notice hereof, and warned that repetition of the same or similar offense will be dealt with more severely.

Done in the City of Manila this 27th day of May ,
in the year of Our Lord, nineteen hundred and sixty-seven.



By the President:



RAFAEL M. SALAS
Executive Secretary