

ADMINISTRATIVE ORDER NO. 133

**IMPOSING THE PENALTY OF DISMISSAL FROM OFFICE WITH
FORFEITURE OF RETIREMENT AND OTHER BENEFITS ON JESUS F.
BIGORNIA, JR., ASSISTANT FISCAL OF QUEZON CITY**

This refers to the administrative complaint against Third Assistant City Fiscal Jesus F. Bigornia, Jr., (hereinafter referred to as the respondent), of Quezon City, for alleged partiality in connection with the reinvestigation and trial of a homicide case where complainant's son, Ricarte Bautista, was the victim.

In her letter of April 7, 1988, complainant Mrs. Norma S. Bautista alleged that (1) in the course of the reinvestigation of Criminal Case No. Q-47653, entitled "People vs. Pedro Pertinez", respondent proposed to her, in the presence of her counsel and the counsel for the accused, the amicable settlement of the case, to which she and her counsel vigorously objected; (2) respondent, with no apparent valid reasons, disqualified complainant's counsel, Atty. Eriberto D. Ignacio, from participating in the prosecution of said criminal case so that respondent could have a free hand in asking questions that would favor the defense; (3) without presenting the other witnesses to the crime, respondent, in his resolution of July 3, 1987, recommended the dismissal of (a) Criminal Case No. Q-47653 against Pedro Pertinez and (b) the charges against Ramon Rodriguez, et al. in I.S. No. 86-11391; and (4) on several occasions after the hearings in Criminal Case No. Q-47653 were terminated, respondent was seen consorting happily with accused Pertinez and the latter's counsel.

The facts of the case are as follows:

In the early morning of September 17, 1986, Ricarte Bautista was with a group of friends at the Viva's Mami-Goto House located beside the McDonald Restaurant at Quezon Avenue, Quezon City. While Ricarte and another member of the group were answering a call of nature at a nearby place, gunshots were fired towards their direction. One hit Ricarte who expired in the afternoon of the same day.

Based on the declarations of Ricarte's companions, the shots came from the direction of a group - later identified as a certain Ramon Rodriguez, Aurelio Sebastian, Pedro Pertinez, and Rogelio Quiling - then gathered at the doorstep of Asia Trust Bank located opposite McDonald Restaurant. After investigation, the police lodged a complaint for Homicide against Pertinez only at the Office of the City Fiscal, Quezon City. The complaint eventually led to the filing of an information for Homicide against Pertinez, which

information was docketed as Crim. Case No. Q-47653 in Branch 99 of the Regional Trial Court (RTC) of Quezon City of which respondent was the regular trial fiscal.

Pending trial of the criminal case, and on account of the information furnished by Ricarte's companions that the gun wielder(s) could be Ramon Rodriguez and/or Aurelio Sebastian, the mother of Ricarte, Mrs. Norma Bautista, assisted by a private prosecutor - Atty. Eriberto Ignacio, petitioned the Office of the City Fiscal of Quezon City for a reinvestigation of Crim. Case No. Q-47653 and for investigation of a separate complaint for Murder against Pertinez, Rodriguez, Sebastian, and Quiling. The reinvestigation of Crim. Case No. Q-47653 as well as the investigation of the new complaint for Murder were assigned to the respondent as trial fiscal of RTC Branch 99. In his Resolution of July 3, 1987, respondent recommended not only the dismissal of the new complaint for Murder but also of Crim. Case No. Q-47653. The record shows that respondent's recommendation for the dismissal of Crim. Case No. Q-47653 was disapproved by the reviewing fiscal, Fiscal Francisco A. Querubin. The same record, however, does not show whether or not respondent's recommendation to quash the complaint for Murder against Pertinez, Rodriguez, Sebastian, and Quiling was disapproved.

Respondent's actuations during the reinvestigation and investigation, respectively, of Crim. Case No. Q-47653 and the complaint for Murder, as well as during the subsequent trial of Crim. Case No. Q-47653, constitute the basis for the present administrative case against him.

After formal investigation, the Secretary of Justice, in his memorandum of August 31, 1988, recommended that the respondent be suspended from office for a period of one (1) month, on the basis of his finding that:

"The actuations of Fiscal Bigornia, allegedly manifesting bias and partiality were substantially proven during the administrative investigation. It appears that he proposed to the complainant, the amicable settlement of the criminal case, recommended in his resolution, the dismissal of the case against all the respondents despite probable cause and announced in Court, as trial fiscal, that he would file a motion to dismiss the information without presenting the NBI ballistics reports, the gun and other witnesses. He moreover, disqualified the private prosecutor contrary to Section 16, Rule 110, Rules of Court which allows the intervention of the offended party in the prosecution of the criminal case."

"The foregoing actuations of Fiscal Bigornia are found not in conformity with the proper conduct and decorum required of

a fair and an impartial prosecutor whose actuations in office should be beyond suspicion and reproach."

I agree with the findings of the Secretary of Justice. However, I find the recommended penalty to be not commensurate with the quality of the offense committed by the respondent.

The records clearly show that during the reinvestigation and investigation, respectively, of Crim. Case No. Q-47653 and the complaint for Murder, respondent took it upon himself to propose to the victim's mother the amicable settlement of the case as, according to him, even murder cases can be settled in the Fiscal's Office. A proposal to settle a criminal case is per se unobjectionable. Coming, however, from a public prosecutor acting ostensibly in behalf of the accused, as here, such proposal manifests partiality. It is abhorrent to one's sense of fairness. By initiating the settlement of a case involving the loss of a life, respondent at once betrays a bias prejudicial to both the State and the victim of a crime.

As noted, respondent earlier recommended the dismissal (a) of Crim. Case No. Q-47653 before it could even be tried and (b) of the complaint for Murder against the other suspects. Having so recommended, fair play demands that respondent should have at least requested for his relief as prosecuting fiscal in the subsequent trial of the same case. No attempt was taken along this line, despite the fact that, even while the case was being reinvestigated for possible inclusion of other suspects and/or filing of an information for Murder, Mrs. Bautista, in her letter of May 6, 1987, already requested the City Fiscal for the transfer of the case to another fiscal "as [she has] perceived that said Fiscal Bigornia is not only biased but that [she] cannot expect justice from him for reasons known only to him." Why respondent did not inhibit himself from prosecuting the very case he had earlier recommended for dismissal remains a puzzle.

The pertinent transcripts of stenographic notes during the hearing of Crim. Case No. Q-47653 on October 19, 1987 and March 23, 1988, disclose that respondent acted more as a defense counsel than as government prosecutor. Going by those transcripts, there were instances when respondent even impeached the very witnesses of the government and elicited from them admissions derogatory to the People's case and favorable to the accused. In several stages of the trial, respondent disallowed the private prosecutor from taking part therein, which is rather unusual since the civil aspect of the case is deemed instituted with the criminal case. While the Rules of Court entrusts to fiscals control in the prosecution of offenses, the same Rules authorizes the offended party to intervene therein personally or by attorney, subject to such control (Sec. 16, Rule 110; *Diel v. Martinez*, 76 Phil. 274). As further reflection of partiality, respondent withheld presentation of the NBI ballistics reports positively showing that the shells found and recovered at the premises of the

incident were fired from the gun of Pertinez. Assuming that, as declared by some of the prosecution witnesses, Pertinez was not the one who actually fired said gun, respondent should have at least presented in court this incriminating evidence (NBI ballistics reports) and the gun itself if only to determine how the gun came to be in the possession of the real gun-wielder(s), in the light of the allegations of conspiracy attending the killing of Mrs. Bautista's son.

The above-described conduct of respondent unequivocally portrays a lack of objectivity and impartiality in a prosecutor whose main concern is to vigilantly see to it that justice be done to both the accuser and the accused without fear or favor. A prosecutor represents the State and the accuser; he can not therefore act against the interest of both. As above-discussed, he appeared more concerned in sparing those who appear to be responsible for a crime rather than ferreting out the truth in the interest of justice. For how else can one explain a settlement proposal emanating from the respondent himself, laced with remark that even murder cases can be settled in the Fiscal's Office!

Any act which is tantamount to partiality is abhorrent; it is not pleasant to be the victim of partiality or unfairness (Calo, Jr. v. Tapucar, L-48244, Jan. 16, 1979, 88 SCRA 78). Respondent, as representative of the State and of the offended party in a criminal case, was expected to deport himself with strict impartiality. By his conduct, respondent betrayed the trust reposed in the office he holds.

WHEREFORE, given the gravity of the offense committed by him, 3rd Assistant Fiscal JESUS F. BIGORNIA, JR. of Quezon City, is hereby DISMISSED from the service with forfeiture of retirement and other benefits.

Done in the City of Manila, this 12th day of September, in the year of Our Lord, nineteen hundred and eighty-nine.

Horayon S. Aquino

By the President:

Catalino Macaraig, Jr.
 CATALINO MACARAIG, JR.
 Executive Secretary