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MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 66

IMPOSING THE PENALTY OF SUSPENSION OF ONE MONTH FROM
THE SERVICE ON THIRD ASSISTANT CITY PROSECUTOR
NICOLAS SELLON OF THE OFFICE OF THE CITY
PROSECUTOR OF CEBU CITY

This refers to the complaint of Atty. Noel D. Archival against 3rd Assistant City Prosecutor Nicolas Sellon of Cebu City for delay in resolving a case.

It appears from the records that Prosecutor Sellon received on May 9, 1990 the case of Rogelio Narra, Sr., et al. vs. Jaime Gabunada, et al. in I.S. Nos. 89-02429 and 2430 for reinvestigation of double frustrated murder and multiple murder. The cases were initially investigated by Prosecutor Valentin Suan but the City Prosecutor assigned them to Prosecutor Sellon for reinvestigation upon motion of one of the parties. Prosecutor Sellon set the formal investigation of the cases on June 6, 1990, where after the hearing, he formally terminated the investigation (t.s.n. p. 12, Sept. 12, 1991). The respondent prosecutor issued his resolution on the cases on May 20, 1991 modifying the original resolution of Prosecutor Suan by having Gabunada dropped from the complaint. Hence, the complaint for undue delay.

Respondent Prosecutor Sellon denies liability for the delay. He claims that after he had terminated the investigation of the cases on June 6, 1990, Atty. Carlos Cardenas, one of the counsel for complainants in the above case, requested him to suspend the investigation and defer the resolution of the same until he can strengthen his case against Jaime Gabunada. It appears that the witness of Atty. Cardenas failed to identify Gabunada during the preliminary investigation. Prosecutor Sellon acceded to the request and that it was only sometime in April 1991 that Atty. Cardenas gave up hope of propping up his evidence against Jaime Gabunada and asked Prosecutor Sellon to resolve the case.

Atty. Archival, herein complainant, who represents one of the aggrieved parties in the

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aforesaid cases and who found that Prosecutor Sellon has not resolved the same as of May 19, 1991, apparently changed his heart. In a Manifestation submitted to the Department of Justice, dated December 12, 1991, he contended that he was merely emotional and that he learned from his uncle, Atty. Cardenas, that the delay was really beneficial to their interests. He now seeks to absolve Prosecutor Sellon stating that the latter indeed merely acceded to the request of Atty. Cardenas.

The issue is whether or not the liability of Prosecutor Sellon is erased due to the Manifestation of complainant which seeks for his absolution.

A close scrutiny of the records indisputably shows the prosecutor's gross neglect to resolve the case within the period prescribed under existing rules of the Department of Justice. He cannot evade this responsibility by claiming that that was the request of Atty. Cardenas, even if true. The prosecutor controls the proceedings and resolution of the case, and these cannot be made to depend on the whims or wishes of the parties-litigants. If he wants to grant the request for deferment of proceedings, he should have at least come up with the additional evidence and resolve it within the reglementary period based on the evidence adduced. To have allowed the parties to set their own sweet time for the resolution of the case shows utter lack of sensitivity to the Department policy on the speedy resolution of cases, which has been repeatedly articulated in many public pronouncements of the Secretary of Justice. Moreover, the matter of the conduct of preliminary investigation and its termination are no longer purely private concern. Being an initial step in the criminal justice process, it has transcended into a question of public interest beyond the private parties' sole control. The complainant's subsequent, nay regrettably, belated change of heart and earnest desire to exculpate the prosecutor after vigorously protesting his actuations in delaying the case, all the more should alert us on the culpability of the respondent prosecutor, and with more reason that we seek the imposition of sanctions against him. Complainant's wavering hand can no longer halt the inevitable outcome of his own doing which has taken its energy deriving its power from the unalterable fact that there was a clear breach of Department policy which cannot be abated by his desistance or remorse. Public policy and interest demand so. Prosecutor Sellon has no one to blame but

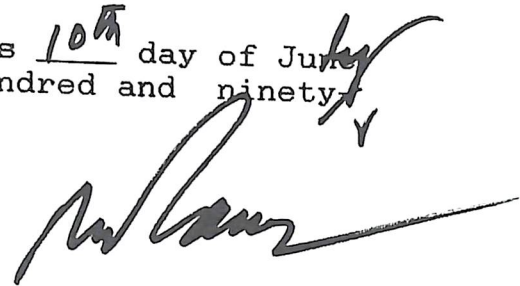
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his own cavalier attitude towards established Department policy.

WHEREFORE, premises considered, respondent Third Assistant City Prosecutor Nicolas Sellon is hereby found guilty of undue delay amounting to Neglect of Duty for which he deserves the penalty of one (1) month suspension from the service.

Done in the City of Manila, this 10th day of June in the year of Our Lord, nineteen hundred and ninety-three.



By the President:



TEOFISTO T. GUINGONA, JR.
Executive Secretary



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