MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 209-A

REDUCING THE PENALTY OF SIX (6) MONTHS SUSPENSION FROM THE SERVICE WITHOUT PAY TO THREE (3) MONTHS SUSPENSION ON SECOND ASSISTANT CITY PROSECUTOR VICTORINO S. ALVARO OF MANILA

This refers to the Motion for Reconsideration filed by 2nd Asst. City Prosecutor Victorino S. Alvaro, of Administrative Order No. 209, dated August 2, 1995, imposing upon him the penalty of six (6) months suspension from the service, without pay, for grave misconduct and conduct prejudicial to the best interest of the service.

Upon Indorsement by this Office dated October 12, 1995, of the instant motion, to the Department of Justice for comment, the Secretary of Justice replied on February 13, 1996, in this wise:

> "Pursuant to your 1st Indorsement dated October 12, 1995 hereunder are our comments on the motion for reconsideration of 2nd Assistant City Prosecutor Victorino S. Alvaro of the Office of the City Prosecutor of Manila of Administrative Order No. 209, dated August 2, 1995, imposing the penalty of six (6) months suspension from the service without pay.
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> "We carefully re-evaluated the evidence adduced during the formal investigation in the light of the arguments raised in the said motion and we find cogent reasons to modify our finding and recommendation.
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> "At the outset, we wish to state that aside from the administrative complaint filed with this Department against Prosecutor Alvaro, then 1st Assistant City Prosecutor Porfirio S. Macaraeg (now Judge) of Manila, likewise filed a criminal complaint with the Office of the Ombudsman for violation of Sec. 3 (e) of R.A. 3019, as amended, involving exactly the same set of facts, the same witnesses and the same documentary exhibits. When this Department resolved the instant administrative complaint, the Office of the Ombudsman had not yet resolved the said similar complaint and it was only after this

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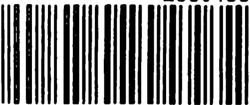

Department had already submitted its finding and recommendation to your Office that the Office of the Ombudsman came up with a resolution dismissing the complaint.

"While an absolution from a criminal charge is not a bar to an administrative prosecution and neither would the results in one conclude the other, we, however, find these principles inapplicable. The criminal complaint which involved the same act complained of in the instant administrative charge was dismissed even before reaching the court because of lack of probable cause.

"Besides, as can be gleaned from our finding and recommendation and that of the Office of the Ombudsman, it is very apparent that there are two (2) conflicting findings involving the same facts and issues. Specifically, while this Department found *'that Prosecutor Alvaro deliberately, downgraded the charge against Miano' x x* and *'his defense that his approval of the information of murder and homicide was an honest mistake is indeed incredible, he being an experienced prosecutor'*, the Office of the Ombudsman, on the other hand, found that the *'established facts and circumstances tend to negate the existence of evident bad faith or premeditated mistake as imputed to respondent x x x"* (p, 3, Res. of Ombudsman dated October 28, 1994) and concluded that *'from the evidence, it can be deduced that the mistake committed was not a deliberate scheme to favor accused Miano or to prejudice the administration of justice"* (p. 7, Ibid).

"Clearly, we have a situation wherein two (2) fora have conflicting and irreconcilable findings on the same act complained of with one forum saying that the mistake committed was not deliberate while the other forum found such mistake committed deliberately. In order to rectify this blatant inconsistency of findings and taking into account the fact that the finding of the Office of the Ombudsman had already become final and executory, administrative courtesy and propriety dictate that we subscribe to its findings which are elucidated in the following manner, thus -

> "The following established facts and circumstances tend to negate the existence of

evident bad faith or premeditated mistake as imputed to respondent Alvaro, to wit:

"1. Contrary to complainant's assertion that Prosecutor Alvaro stole from the records the note where the latter wrote his directive to downgrade the offense, said respondent admitted that after his 1st short Memo dated 12-22-92 was rejected by Special Counsel Laguilles he detached the same and dictated a 2nd on 12-23-92 but no specific addressee was mentioned therein (Rejoinder-affidavit of Alvaro, p. 172, Records).

"Furthermore, he submitted that he also removed the 2nd short memo from the records of the case (p. 173, Records) after Prosecutor Canto disagreed with his suggestion.

"Respondent's actuations cannot be considered as irregular because it is a common practice for the Chief or Assistant Chief of the Inquest Division to make suggestions thru a Memo and exchange views/opinions with the filing Prosecutor as part of the evaluation process in order to ensure the preparation of an accurate information.

"2. The insinuations that respondent Alvaro pressured Prosecutor Diccion to sign the prepared information downgrading the charge against Miano by presenting the same thru stenographer Josie Yambao at 5:00 p.m. when she was about to leave the office so that she could not have sufficient time to read it are not supported by the facts. The logbook entries show that the records of I.S. No. 33676-78 subject of this complaint was handed to Prosecutor Diccion at 3:00 p.m. for her evaluation. She signed the information and returned the records to the Inquest Division at 3:25 p.m. on 23 December 1992 (p. 193, Records). Also, as shown by the records, Criminal Case No. 92-114137 against Miano was filed and received by Willie Carino, a personnel of the Office of the Clerk

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of Court, Regional Trial Court, Manila, at 4:00 p.m. on 23 December 1992 (p. 194, Records). Thus, the admission of Prosecutor Diccion that she did not carefully read the information before she signed it is her own accountability. Suffice it to say that there is no positive evidence showing that she was influenced or induced by respondent to sign the Information against her will.

"3. The recommendation of respondent Alvaro to down-grade the offense charged against Miano was not premeditated in order to allow the latter to post bail for his temporary liberty for the following reasons:

> "a. Due to the failure of the arresting officer to submit the death certificate, medical and autopsy case report (as this is a medico-legal case the Inquest Prosecutor with approval of the City Prosecutor may direct the arresting officer to release the accused pursuant to existing Department of Justice (DOJ) Circular; but respondent did not do so;
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> "b. Respondent Alvaro could have approved the proposal of Prosecutor Venepi Canta who was inclined to recommend the release of accused Miano for further investigation (p. 093, Records). However, respondent did not adopt said recommendation.

"4. After P03 Rosendo de los Santos called his attention to the defectivety worded information (p. 195, Records), respondent immediately verified from the expediente of the case and thereafter sought the advice of his immediate superior. To rectify the error committed by Prosecutor Diccion, respondent recommended (which suggestion was approved by Chief Ofilada), that the said defective

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information be withdrawn, instead of seeking amendment, considering that accused Miano was already released on bail and the Court where the case was filed could not issue a warrant of arrest without first ordering the Prosecutor's Office to conduct a preliminary investigation.

"Besides, in actual practice, before the accused is arraigned the Judge has no ground to deny a motion to withdraw an information. And even the defense counsel has no ground to object against the said withdrawal, whereas, a judge can deny a motion to amend an information before arraignment and the counsel for the accused can also vigorously object thereto especially if the amendment is to charge his client from a lower to a higher offense.

"Another reason for respondent's suggestion to withdraw the said information is the absence of an allegation in the information against Miano of the essential phrase 'in conspiracy'.

"It may not be amiss to state that the situation would have been different if the Office of the Ombudsman found probable cause against respondent prosecutor of the criminal offense charged because such finding of probable cause would have otherwise supported our finding that respondent prosecutor was administratively guilty of grave misconduct which warranted our recommendation of his suspension for six (6) months from the service without pay.

"Under the foregoing circumstances, we find erroneous our finding that respondent prosecutor is guilty of grave misconduct. Instead, we find him guilty of simple neglect of duty, having failed to exercise due diligence and circumspection in signing and approving a defective information prepared by a subordinate. Being an experienced prosecutor, prudence should have prompted respondent prosecutor to carefully examine any document presented 'to him for his signature to avoid any suspicion of anomaly or irregularity in his actions.

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"Accordingly, it is respectfully recommended that our previous finding and recommendation on the instant administrative complaint against respondent prosecutor which was the basis of the assailed Administrative Order No. 209 dated August 2, 1995, be modified. It is hereby recommended that the penalty of suspension from the service be reduced from six (6) months to three (3) months, without pay.

Very truly yours,

TEOFISTO T. GUINGONA, JR.
Secretary

The opinion and recommendation of the Secretary of Justice is well-taken. However, this Office notes that Prosecutor Alvaro has already served the full penalty of six months suspension, without pay, pursuant to Administrative Order No. 209 resulting in the iniquitous situation where the suspension actually suffered was double the penalty to be actually imposed by this final order resolving his Motion for Reconsideration. In Abellera vs. City of Baguio (19 SCRA. 600) the Supreme Court settled the discrepancy brought about by such circumstances in this wise:

"The rule on payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered reinstated is already settled in this jurisdiction. Such payment of salaries corresponding to the period when an employee is not allowed to work may be decreed not only if he is found innocent of the charges which caused his suspension (Sec. 35, Rep. Act 2260), but also when the suspension is unjustified.

"In the present case, upon receipt of the decision of the Civil Service Commissioner finding petitioner- appellant guilty, but even before the period to appeal had expired, respondents dismissed the latter from the service and another one was appointed to replace him. The separation of petitioner before the decision of the Civil Service Commissioner had become final was evidently premature. Respondents should have realized that the employee still had the right to appeal the Commissioner's decision to the Civil Service Board of Appeals within a specified period, and the possibility of that decision being reversed or modified. As it did happen, on such appeal by

the petitioner, the penalty imposed by the Commissioner was reduced by the reviewing Board to only 2 months suspension. And yet, by respondents' action, petitioner was deprived of work for more than 2 years. Clearly, Abellera's second suspension from office, from July 10, 1961 to November 10, 1963, was unjustified, and the payment of the salaries corresponding to said period is, consequently, proper. Otherwise, Abellera would, in effect, suffer a suspension longer than that meted him by the Civil Service Board of Appeals."

WHEREFORE, Administrative Order No. 209 dated August 2, 1995, is hereby ***MODIFIED*** in that respondent Victorino S. Alvaro, Second Assistant City Prosecutor' of Manila, is hereby found guilty of ***SIMPLE NEGLECT OF DUTY***; the penalty of suspension from the service for six (6) months without pay, is hereby reduced to three (3) months, without pay; and considering that respondent was deprived of work for six (6) months which is three (3) months more than the penalty actually imposed upon him, he is therefore entitled to recover salaries corresponding to the other three (3) months during which he was suspended, pursuant to the decision of the Supreme Court in Abellera vs. City of Baguio, (supra).

DONE in the City of Manila, this 12th day of March in the year of Our Lord, Nineteen Hundred and Ninety-Six.

By the President:

RUBEN D. TORRES
Executive Secretary

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