

MALACAÑANG

Manila

ADMINISTRATIVE ORDER NO. 41

SUSPENDING MR. NARCISO T. ATIENZA FROM OFFICE FOR ONE (1) MONTH WITHOUT PAY AS ASSISTANT CITY FISCAL OF QUEZON CITY.

This is an administrative case filed by Mrs. Vicenta de Cruz-Gatdula, mother of the deceased Federico Gatdula, against Assistant City Fiscal Narciso T. Atienza of Quezon City, for neglect of duty in the prosecution of Criminal Case No. Q-8517, entitled "People vs. Danilo Mendoza y Hernandez et al.," for homicide before Branch IV, of the then Court of First Instance of Rizal (Quezon City), arising out of the killing of Federico Gatdula in Quezon City in 1967.

Respondent was the trial fiscal assigned to Branch IV of the then Court of First Instance of Rizal (Quezon City). One of his assignments included the prosecution of Criminal Case No. Q-8517 against Danilo Mendoza for the killing of Federico Gatdula in Quezon City on October 5, 1967. On March 13, 1972, the case was set for hearing. The hearing was postponed upon motion of the defense counsel who sought for a 10-day period counted from the receipt of the transcript of stenographic notes within which to file a demurrer to evidence. In the meantime, the trial of the case was set on April 21, 1972, and then reset to May 15, 1972, due to illness of the defense counsel. The May 15 hearing was reset anew to June 5, 1972, but on the latter date the hearing was, in open court, ordered reset to June 30 "to give the defense counsel enough time to prepare for trial."

On June 26, 1972, respondent informed his superiors that he was going to take a sick leave from June 27 to July 3, 1972, which in fact he did, and requested that another fiscal take his place to attend to his cases during his absences. Since respondent was on leave, Fiscal William Bayhon, upon superior orders, substituted for Fiscal Atienza in the June 30 hearing. During the June 30 hearing, a motion to dismiss was filed by the defense on the ground of insufficiency of evidence and Fiscal Bayhon petitioned for a 10-day period within which to file an opposition thereto. The substituting fiscal received the copy of said motion for the fiscal's office and accordingly filed the same in respondent's folders of cases. Five days after the filing of the motion to dismiss, or more specifically on July 5, 1972, respondent reported back for work. He, however, did not file any opposition to the motion.

On August 28, 1972, CFI Judge Walfrido de los Angeles issued an order dismissing the case against Danilo Mendoza thereby acquitting him. Judge De los Angeles in said order of dismissal noted that: "the prosecution was given sufficient time within which to file an opposition but up to this date no opposition has been received, notwithstanding the lapse of the period given to the government." It is on the basis of this quoted pronouncement in the court of dismissal that Mrs. Vicenta de Cruz-Gatdula, mother of the deceased Federico Gatdula, made a letter-complaint, dated September 7, 1972, charging Fiscal Atienza with negligence. Said letter-complaint gave rise to the present administrative case for neglect of duty, with the following omissions as specific charges:

"(1) That continuation of the trial for the reception of the evidence for the defense was set on 13 March 1972, but this hearing was postponed at the instance of the counsel for the defense who asked the court to give him ten days within which to file a motion to dismiss but notwithstanding that you were thus put on notice of the impending motion to dismiss, you neglected to prepare your opposition beforehand;

"(2) That although you underwent an emergency operation at the UST Hospital on 27 June 1972 and were therefore on leave when the motion to dismiss was filed in court on June 30, 1972, you failed to send the proper request to your Office for adequate attention to your pending cases, particularly those the exigencies of which required urgency;

"(3) That the order of dismissal dated 28 August 1972 states in the second paragraph that 'The prosecution was given sufficient time within which to file an opposition but up to this date no opposition has been received notwithstanding the lapse of the period given to the government,' the reason for this failure according to your allegation, being the fact that neither the office of the City Fiscal nor yourself were furnished a copy of the motion to dismiss; and yet you have not indicated that you took any remedial measure towards informing Judge Walfrido de los Angeles that a copy of the motion to dismiss was not received."

Respondent argues that he came to know of the existence of the motion to dismiss only upon the filing of the administrative case against him. He further claims that, on June 26, 1972, prior to his leave of absence, he made arrangements with his superiors relative to the handling of his cases by another fiscal during his absence; that he

instructed his secretary to refer to him matters that needed his immediate attention and to make available to the substituting fiscal all the records of his cases; that, when he reported back for work, neither his secretary nor Fiscal Bayhon informed him of the motion to dismiss or what actually transpired during his sick leave, more specifically that relating to Criminal Case No. Q-8517; that the Fiscal's copy of the Motion to Dismiss of June 30 was attached to the folder of another criminal case, entitled "People vs. Jose Santos;" and that, not having been notified about this motion to dismiss, he could not have filed an opposition thereto and, hence, he could not be guilty of the charge of neglect of duty.

Respondent's arguments, assuming them to be true, betray his negligence. For they speak of his failure to perform his duties as a prosecutor. Had he, upon his return to duty, devoted a little time to know the status of his cases as an ordinary lawyer or fiscal would do under the same or similar circumstances, he could have discovered the existence of a motion to dismiss the case. This he could have done by going over the folder-records of the cases himself and he could have found his copy of the motion. But he did not. The fact that he was assigned a number of cases did not prevent him to do as suggested above because it was not a physical impossibility to do so. Again, he could have asked the court or the fiscal who took over his cases while he was on leave what the status of the case was. (He claims that he did not know that the case was set for hearing on June 30, 1972, despite the fact that the June 5 order resetting the case to June 30, was given in open court.) But he did not. He chose to wait for someone charitable enough to call his attention to his duty. He chose to rely on and follow blindly the word of his secretary who, like him, did not go over the records of the case and was, therefore, in no position to inform him of the existence of a motion to dismiss. It is indeed inconsistent with his position, which carries a high degree of responsibility and which calls for the exercise of more than ordinary devotion, care and diligence to justify his negligence from the omissions of others. As a fiscal, and having been in the "lucrative practice of law" before he became a fiscal, he is presumed to know that, as what happened in the case (Gatdula) where the civil action was deemed instituted with the criminal action, dismissal of the case extinguished the civil action against the accused. Had respondent shown reasonable concern over the case, unfortunate consequences could have been avoided. It is obvious that respondent had not shown that devotion, care and diligence of one who professes to serve the public interest.

In, view of the foregoing, and as recommended by the Secretary of Justice, Assistant City Fiscal Narciso T. Atienza of Quezon City

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is hereby suspended from office for one (1) month without pay, effective upon receipt of a copy of this Order.

Done in the City of Manila, this 19th day of October in the year of Our Lord, nineteen hundred and eighty seven.

Corazon B. Aquino

By the President:

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