

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 200

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE
WITH FORFEITURE OF ALL BENEFITS UNDER THE LAW OF
EDUARDO D. FABIAN, 3RD ASSISTANT PROVINCIAL
PROSECUTOR OF RIZAL

This refers to the administrative complaint filed by the Department of Justice against 3rd Assistant Provincial Prosecutor Eduardo D. Fabian of Rizal for gross neglect of duty, gross inefficiency and violation of Department Circulars.

It appears that respondent has, more or less, 106 unresolved cases, ninety-two (92) of which were not resolved within the 60-day prescribed period and another fourteen (14) cases which remain unresolved despite directives from the Provincial Prosecutor of Rizal in violation of Department Circular Nos. 36 and 49, series of 1991 and 1993, respectively.

In answer to this charge, respondent claims that as of June 1994 his remaining unresolved cases are only 73 and not 106; that he has no 1991 and 1992 unresolved cases particularly those dated 21 October 1991, 01 December 1991 and 16 January 1992; that these cases are supposed to be reconstituted cases but were not reconstituted at all for failure of the parties to appear and submit their reconstituted documents for preliminary investigation; that this reconstitution was necessary because of the destruction of the records when a fire razed the Prosecution Office in Cainta on May 9, 1992; that after the fire, the Prosecution Office in Cainta held office under an improvised shade; that he rescheduled the continuation of the preliminary investigation after the municipal government shall have relocated them; that he instructed the parties to submit reconstituted affidavits and counter-affidavits; that the cases of those parties who complied with this instruction were resolved in due course but some parties did not return to pursue their complaints; that as of November 25, 1994, he had nine (9) unresolved 1993 cases and that of the number of cases mentioned in the charge sheet, thirty-three (33) remain unresolved; that he assisted in the preparation and filing of cases for reconstitution and this takes much of his time even on Saturdays; that he attends to court hearings three (3) times a week in Cainta and also holds office and conducts preliminary investigation in Pasig and his time is eaten up by the notorious traffic situation along Ortigas Avenue; that he was also assigned to the Regional Trial Court, Branch 166 in Pasig, a special court wherein he has to study the transcript of records for a better understanding of the case considering that he came in midstream after two or three prosecutors; that he also took over court reinvestigation cases; that he was not able to resolve all the old cases as he had to resolve the new cases within the prescribed deadline; that he also suffers from asthma

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and had been on sick leave of absence for seven (7) days in May, 1994; that in April, 1994 he applied for a vacation leave of absence for the period June 20 to July 1, 1994 but it turned out to be a sick leave as he again got sick on said period; that on October 27, 1994 he applied for twenty (20) days leave of absence so as to concentrate on resolving the cases assigned to him, to be either antedated or postdated to conform to official duties, but the application was not approved; that he was not neglectful of his work but the circumstances he described was the cause of the delay in his resolution of the cases assigned to him; that he asks for a second chance to recover and if not, be allowed to resign.

Respondent waived his right to a formal investigation.

A careful evaluation of the evidence on record shows that the respondent had several unresolved cases as of June, 1994 per his admission but offered excuses thereto.

The first is his court duties and reinvestigation cases. This is not a peculiar function assigned to respondent prosecutor. Other prosecutors all over the country also attend to hearings before the Regional Trial Court and Metropolitan/Municipal Trial Courts, receive cases for reinvestigation and attend to preliminary investigations, in addition to handling cases referred by other offices like the Office of the Solicitor General, the Ombudsman, the COMELEC, the Commission on Human Rights and sometimes, the local government units. Still, they are able to resolve cases assigned to them for preliminary investigations within the period prescribed under existing circulars of the Department of Justice.

Second excuse is the traffic situation in the metropolis. This is not only a problem of respondent. This is a social issue. A resident in Metro Manila or one who has to transact business in Metro Manila will in some way face this problem. It is how we prioritize our daily activities that can help us respond to this problem.

Third is his health condition. Suffice it to say that there are privileges given to government workers and the availment thereto would make respondent an effective and efficient worker.

Fourth is that some of these unresolved cases were supposed to be reconstituted cases but were not reconstituted by the parties. It must be noted that the reason for the reconstitution is the fire that razed the municipal hall of Cainta, Rizal, including the Prosecution Office thereat. But this fire broke out on May 9, 1992 only and if these "supposed reconstituted cases" dated 21 October 1991, 01 December 1991 and 16 January 1992 (paragraph 6, Answer Affidavit) were resolved within the period prescribed under Department rules and circulars, these would have been either dismissed for lack of probable cause or already filed in court for trial. In this situation, the parties to these cases cannot be blamed if they did not appear for the reconstitution which the respondent prosecutor scheduled. The

circumstances point to the glaring fact that they lost interest in the prosecution of their complaint, resulting to a loss of confidence in the administration of justice.

Sad to note also that respondent prosecutor categorically admitted (par. 22, Answer Affidavit) that he applied for leave of absence just to resolve these overdue cases to be either "ante-dated or post-dated to conform" to his "official office records". This is plain dishonesty.

Finally, respondent prays for compassion and asks for a "second chance" or be allowed to resign. His record file shows that there was a first incident of a similar nature in 1989.

Harsh as it may seem, the law should take its course for the best interest of the public. The respondent prosecutor by his inaction committed a palpable and flagrant breach of duty. This subverts the ends of justice and amounts to gross neglect of duty. This being the second time, respondent prosecutor merits a strict administrative sanction.

WHEREFORE, premises considered, respondent **EDUARDO D. FABIAN**, 3rd Assistant Provincial Prosecutor of Rizal is hereby found liable for gross neglect of duty, gross inefficiency and violation of Department Circulars. Consequently, his dismissal from the service with forfeiture of all benefits under the law is hereby imposed.

DONE in the City of Manila, this 26th day of June , in the year of Our Lord, Nineteen Hundred and Ninety-Five.



By the President:



RUBEN D. TORRES
Executive Secretary