

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 23

**IMPOSING THE PENALTY OF SUSPENSION FOR ONE (1) YEAR WITHOUT
PAY ON ASSISTANT PROVINCIAL PROSECUTOR CRISPULO TRUYA,
PROVINCIAL PROSECUTION OFFICE OF CEBU**

This refers to the administrative complaint filed by Jesus Gelig Sr. against Prosecutor Crispulo Truya, 4th Assistant Provincial Prosecutor of Cebu, for gross negligence and inefficiency in the performance of duty.

From the records, it appears that on August 26, 1991, complainant was arrested by virtue of a warrant issued by the Municipal Circuit Trial Court of Daabantayan-Medellin Cebu on charges of direct assault with attempted homicide. The court conducted the preliminary investigation and found probable cause to hold complainant for the offense charged.

Thereafter, complainant was brought to the Cebu Provincial Detention and Rehabilitation Center where he was detained since October 3, 1991, until he was ordered released by the Regional Trial Court of Cebu on February 14, 1996, for having practically served the imposable penalty of the offense charged.

Complainant alleged that the delay in the resolution of his case is traceable to respondent's gross neglect in not filing immediately the information in court after his case was elevated to the Provincial Prosecution Office.

Respondent in his defense narrates that as far back as February 5, 1992, he had made his first draft of the information for direct assault with attempted homicide against complainant herein, followed by a June 2, 1992 draft and followed by his last draft dated June 10, 1992. The last draft, respondent claimed, bears a big check mark on the upper left hand corner indicating that it was ready to be finalized.

Meanwhile, respondent prosecutor, on May 16, 1994, was suspended for one (1) year for gross misconduct pursuant to Administrative Order No. 128 issued by this Office.

To exculpate himself, respondent submitted a photocopy of the subscribed affidavit of desistance signed by complainant dated April 5, 1996. Respondent certified the affidavit to be a true copy of the original on file.



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Records show that complainant's case was assigned to respondent on October 7, 1991. After the requisite preliminary investigation, respondent recommended on September 30, 1995, the filing of an information in Court. On October 23, 1995, the information was approved for filing in court but it was actually filed in court only on February 1, 1996. On February 14, 1996, the Regional Trial Court dismissed the case and ordered the release of complainant.

This brings us to the pivotal issue of whether or not respondent should be held liable for gross negligence and inefficiency in the performance of his duty as a prosecutor.

The Secretary of Justice found, after a formal investigation, that respondent should be held administratively liable for the charges aforementioned and be meted the penalty of suspension for one (1) year.

I concur with said findings.

It is clear that respondent violated DOJ Circular No. 35 dated September 17, 1991 (amended by Department Circular No. 49 dated July 14, 1993 and further amended by Department Circular No. 24 dated March 24, 1995) which directed all prosecutors to observe a ninety (90)-day reglementary period for capital offenses and a thirty (30) day reglementary period for other cases within which to terminate and resolve the preliminary investigation of all complaints assigned to them. In the case at bar, the case was assigned to respondent on October 7, 1991 and he had thirty (30) days or until Nov. 7, 1991 within which to resolve the case. However, it was only on September 30, 1995 that respondent finally prepared his comment and recommendation enclosing therein the information against complainant. Thus, it can be said that respondent sat on complainant's case from October 7, 1991 to September 30, 1995, which is a span of almost four (4) years. This clearly violates the right of an accused to a speedy trial.

A delay of close to four (4) years cannot be justified by any of the arguments advanced by the respondent. Other than his drafts which were still subject to finalization, respondent has not presented other compelling evidence to rationalize the delay adverted to.

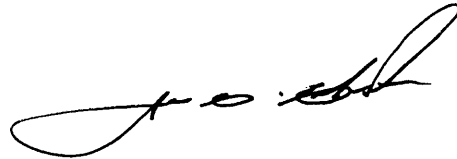
I find no merit in respondent's motion to dismiss based on an affidavit of desistance purportedly executed by the complainant. Said affidavit of desistance is only a photocopy of the original. As such, it is inadmissible under the best evidence rule. Besides, I am not inclined to dismiss the instant charge on account of the mere withdrawal of charges or desistance by the complainant as such withdrawal does not ipso facto discharge a respondent from liability especially when the charges can be proved by other evidence independent of the complaint and when the moral fitness of the employee is in question.. What is more, complainant is not competent to pass upon the guilt or innocence of respondent Truya.



I note that respondent prosecutor had been previously suspended for one (1) year, pursuant to Administrative Order No. 128. Be that as it may, respondent ought to have been more cautious and prudent in the performance of his duties. Public officials are under obligation to perform the duties of their office honestly, faithfully and to the best of their ability.

WHEREFORE, premises considered, respondent Assistant Provincial Prosecutor Crispulo Truya of Cebu is hereby found liable for gross negligence and inefficiency in the performance of his duty. Consequently, he is hereby suspended for a period of one (1) year without pay, effective upon his receipt hereof, with a warning that he shall be dismissed from the service upon a repetition of the same or similar offense in the future.

Done in the City of Manila, this 29th day of SEPT. in the year of our Lord, nineteen hundred and ninety eight.



By the President:



RONALDO B. ZAMORA
Executive Secretary



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