

# MALACAÑANG

Manila

## ADMINISTRATIVE ORDER NO. 31

CONSIDERING ASSISTANT PROVINCIAL FISCAL SOFRONIO P. CAPAO OF CEBU CITY DISMISSED FROM THE SERVICE FOR CAUSE.

This is an administrative case filed by Mrs. Adriana S. Miñoza against Assistant Provincial Fiscal Sofronio P. Capao of Cebu City for alleged bribery, grave misconduct, and malpractice. The charges were investigated by the Department of Justice.

The case stemmed from the criminal complaint for perjury filed by Atty. Idefonso Suerte against herein complainant Adriana S. Miñoza in this administrative case. After conducting preliminary investigation, respondent fiscal filed the corresponding information with the Court of First Instance (now Regional Trial Court) of Cebu.

In her complaint, Miñoza alleged that, prior to the initial hearing of the criminal case on March 28, 1973, she went to respondent's office upon the latter's invitation on March 16 and 27, 1973. During those meetings, respondent allegedly intimated that he would arrange for the dismissal of the perjury case against herein complainant and asked her to prepare ₱250 to be given to Fiscal Medida "as a sort of pasalubong because he (would) also sign the papers of the amicable settlements." Complainant further averred that respondent connived with Atty. Suerte in conducting the investigation of the fabricated charges against her. To substantiate her allegations, she submitted a carbon copy of her sworn statement given before the Philippine Constabulary, Cebu City, on April 17, 1973.

In his answer, dated June 13, 1973, respondent denied having demanded money from the complainant in exchange for his working out the dismissal of the perjury case. He alleged that it was complainant who expressed her desire to have the case settled amicably, but that he advised her that this was no longer possible, as it has been filed in court, the best thing she could do being to make arrangements with Atty. Suerte. In support thereof, respondent presented Atty. Suerte's sworn statement that it was Miñoza who was interested in settling the case.

Respondent further averred that he filed the information for perjury against complainant not for any ulterior motive but because he was convinced that there was a prima facie case against her. According to respondent, Miñoza filed the instant administrative case out of revenge and to force him into desisting from further prosecuting the perjury case against her.

After due investigation, the Department of Justice found respondent guilty of grave misconduct. The Justice Department was convinced that

respondent, who appears to have given moral support to Atty. Suerte in the filing of the perjury complaint and other cases against Miñoza, really demanded money from her in consideration of the eventual dismissal of the perjury case. It noted that, while it could be unlikely that the prosecution was interested in dismissing the case, it would become likely in view of the apparent weakness of the case against Miñoza. The Justice Department did not give credence to the above-mentioned sworn statement of Atty. Suerte whose integrity it found to be not exactly above board, as evidenced by his filing of a grave slander case against Miñoza who was exonerated therefrom upon the finding that she was not present at the time and place of the alleged crime and for want of allegation of malice in the information or proof thereof during the trial.

Consequently, in his letter to this Office, dated January 22, 1974, the Secretary of Justice reiterated the acceptance of respondent's resignation, which he had previously twice recommended on March 21, 1973, and January 9, 1974, following his conviction in the administrative case filed against him by Atty. Florito Mangubat.

Upon referral of subject case for updated comment and recommendation on September 23, 1985, the Justice Department informed this Office in a 2nd Indorsement, dated November 20, 1985, that respondent had been separated from the government service on September 20, 1975, after his resignation was accepted by then President Marcos.

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Since respondent is no longer connected with the government in any capacity whatsoever, his official ties therewith having been completely severed with the acceptance of his resignation, it would seem at first blush that the instant administrative case against him has become moot and academic. Thus:

"As an administrative proceeding is predicated on the holding of an office or position in the government and there being no doubt as to the resignation of respondent Judge having been accepted as of August 31, 1967, there is nothing to stand in the way of the dismissal prayed for." (Diamalon vs. Quintillan, Adm. Case No. 116, Aug. 29, 1969, 29 SCRA 347; See also Castillo vs. Barsana, Adm. Matter No. 77-MJ, May 16, 1975, 64 SCRA 47; Secretary of Justice vs. Catolico, Adm. Matter No. 625-CFI, Nov. 18, 1975, 68 SCRA 62).

However, the better and more recent rule is that which was pointed out in the later case of People vs. Valenzuela (L-63950-60 April 19, 1985, 135 SCRA 712), citing Perez vs. Abiera (Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302), to the effect that the doctrinaire pronouncement in the Diamalon vs. Quintillan case is not to be applied with undeviating rigidity, considering that:

" . . . It was not the intent of the Court in the case of Quintillan to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and penalty proper and imposable under the situation." (Emphasis added.)

After a careful review of the case, I concur in the findings of the Department of Justice that respondent fiscal is guilty of grave misconduct.

WHEREFORE, Assistant Provincial Fiscal Sofronio P. Capao of Cebu City is hereby considered dismissed from the service for cause, effective as of the date of the acceptance of his resignation, and is hereby ordered to refund to the government whatever retirement and other benefits he had received, if any, the right to which he lost by virtue of his being considered dismissed from the service for cause.

Done in the City of Manila, this 25th day of August, in the year of Our Lord, nineteen hundred and eighty-seven.

By the President:

  
JOKER P. ARROYO  
Executive Secretary

