

MALACAÑANG

Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 196

DISMISSING FROM THE SERVICE STATE PROSECUTOR NESTOR B. ORELLANA OF THE DEPARTMENT OF JUSTICE.

This is an administrative case filed by the Department of Justice (DOJ) against State Prosecutor Nestor B. Orellana, detailed at the Office of the Provincial Prosecutor of Rizal Province, for alleged insubordination, inefficiency and gross neglect of duty.

Records show that, on March 17, 1987, I.S. No. DO-62-001, entitled "Securities and Exchange Commission vs. Ocampo, et. al.", was assigned to respondent. More than two (2) years thereafter, the DOJ received a letter, dated August 28, 1989, from Jose S. Ocampo, one of the respondents in the above-mentioned case, complaining that, after submitting his memorandum on August 20, 1987, he (Ocampo) never heard of any development in his case.

pl Hence, on August 31, 1989, respondent was directed by Chief State Prosecutor Fernando P. de Leon to explain within seventy-two (72) hours why no administrative/disciplinary action should be taken against him for serious neglect of duty for failure to resolve I.S. No. DO-62-001, and for failure to submit his accomplishment reports for the months of June and July, 1989. Upon respondent's request, he was granted a 5-day extension to submit his explanation in a letter of the DOJ, dated September 19, 1989, which communication was received by him on September 27, 1989. Despite thereof, respondent failed to submit an explanation.

Again, on September 31, 1989, the DOJ received another letter, dated March 7, 1989, from Mr. Galo B. Garchitorena, Executive Director of the Quedan Guarantee Fund Board (QGFB), also complaining of the delay by respondent in resolving the two (2) criminal complaints for estafa filed with the DOJ Task Force on National Food Authority (NFA) and QGFB cases against Conrado O. Colarina and Emily J. Unson. It appears that preliminary investigations of said cases had been conducted by respondent in 1987 and the same were submitted for resolution sometime in April and May, 1988, respectively, but remained unresolved by him. Moreover, while the criminal complaint against Colarina does not appear in respondent's "Report of NFA Assigned Cases", yet he admitted having taken cognizance thereof, thereby prompting Senior State

Prosecutor and NFA Task Force Chairman Ronaldo M. Banzuela to issue a memorandum to respondent on February 15, 1989, the full text of which is quoted below:

"MEMORANDUM to -

State Prosecutor Nestor Orellana
O f f i c e

"SUBJECT: CASE RECORD AND INVESTIGATION OF
QUEDAN BOARD VS. CONRADO COLARINA

"A careful examination of the entire records of above-entitled case as well as the docket and record books of this Office shows that the complaint in said case has not been officially docketed; neither has it been officially filed with the Task force nor filed with the Record Section of the Department considering that the letter-complaint is addressed to the Secretary of Justice.

"On the basis thereof, submit a memorandum within five (5) days from receipt hereof justifying your action in taking cognizance of said case and conducting the preliminary investigation."

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Again, Orellana failed to comply with the above-quoted DOJ directive, for which reason Senior State Prosecutor Banzuela addressed another memorandum to the respondent, dated October 16, 1989, this time requiring respondent to submit his explanation not only as regards the Colarina case but also as to his failure to terminate on time the preliminary investigation of certain cases. Said memorandum reads in full:

"MEMORANDUM to -

STATE PROSECUTOR NESTOR ORELLANA

"SUBJECT: CASES PENDING PRELIMINARY
INVESTIGATION AND MEMORANDUM
DATED FEBRUARY 15, 1989

"It appears from your monthly report of cases that there are six (6) cases which have been pending since 1987; one (1) case since November 1988 and another since March 9, 1989

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in violation of Section 3(f), Rule 112 and department circulars which mandate the period within which preliminary investigation should be terminated and disposed of.

"On February 15, 1989, a memorandum was issued for you to explain why you have taken cognizance of a case for preliminary investigation which has not been officially filed and docketed but you failed to submit any comments or explanation on the subject matter treated in said memorandum. Xerox copy is attach for reference.

"Submit to this Office within five (5) days your explanation on the above subject matters as well as your own justification for your continuance as member of the DOJ-NFA Task Force considering further that you are on full time detail with the Office of the Provincial Fiscal of Rizal."

For the third time, respondent failed to heed a directive issued by his superior.

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On October 24, 1989, Chief State Prosecutor Fernando P. de Leon issued a memorandum directing respondent to submit for reassignment, within five (5) days from receipt thereof, the nine (9) assigned cases pending review by him and other eight (8) cases pending preliminary investigation also by him or suffer the consequence of being drastically proceeded against. Upon careful examination of respondent's inventory of cases, it was disclosed that said seventeen (17) cases were pending review and preliminary investigation by him for more than one (1) year and that he has not been collecting his salary from the time the same was withheld in July 1989. True to form, respondent did not obey said directive.

In his Memorandum for me, dated April 16, 1990, Secretary of Justice Franklin Drilon made the following observations and recommendation:

"The foregoing indubitable facts, to our mind, clearly demonstrate that Prosecutor Orellana does not deserve to remain in office. His repeated failure to comply with lawful orders and circulars of this Office betrays his lack of respect for higher authority. It is palpable proof of insubordination. His failure to act on cases assigned to him for review and investigation within the prescribed

period constitutes inefficiency and gross neglect of duty. It also shows that he is not attuned to the present thrust of this government, in general, and the Prosecution Service, in particular, to improve and hasten the administration of justice. We believe that Prosecutor Orellana's continuance in office would be detrimental to the higher goals of public service. He has not proven himself equal to the tasks and responsibilities of his office."

"In view of the foregoing, we find Fiscal Orellana administratively liable for insubordination, inefficiency and gross neglect of duty and it is respectfully recommended that he be dismissed from the service."

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Meanwhile, having come across an item in the April 22, 1990 issue of the Manila Bulletin wherein his name was mentioned as having been recommended for dismissal from the service for being remiss in the performance of his duties as prosecutor, respondent wrote Justice Secretary Drilon explaining, among others that (a) he practically attended singlehandedly to the main bulk of NFA cases, which included carry-over cases from his predecessor, since the NFA Task Force Chairman and the other two members thereof had some commitments; (b) due to human limitations, he was constrained to sacrifice in some instances immediate action on other aspects of his work, like the disposition and resolution of other cases assigned to him for review and investigation; and (c) to ensure the success of NFA cases handled by him before the Sandiganbayan, he had to devote a portion of his time in preparing prospective witnesses and gathering documentary evidence. While admitting that there was some delay in the preliminary investigation and resolution of cases assigned to him, respondent, however, made the appeal that the case against him be objectively assessed and that his situation be fully comprehended and deeply appreciated.

After circumspect study, I am in complete accord with the findings and recommendation of the Secretary of Justice. Indeed, by his continued and unjustifiable refusal to comply with the directives issued by his superiors to explain the protracted delay in resolving said I.S. DO-62-001 and the cases for estafa filed against Colarina and Unson as well as his failure to submit for reassignment the aforementioned seventeen(17) cases pending review and preliminary investigation by him, including his accomplishment report for the

months of June and July, 1989, respondent had evinced a complete disregard of and disrespect towards higher authority. It is of insubstantial moment that respondent was overburdened with NFA cases, as claimed by him, resulting in his inability to devote his entire time to cases assigned to him as regular prosecutor of the DOJ. The logic and common sense of the situation should have prompted respondent to seek his relief as NFA Task Force member and replacement by another prosecutor to bail him out of his predicament. Indeed, he was even required to justify his continuance as member of the DOJ-NFA Task Force, not to mention the fact that, in view of his failure to act with dispatch on the seventeen (17) cases assigned to him, he was ordered to submit the records thereof for reassignment. By taking the matter into his own hands, despite his full awareness that he could not ably cope with his customary tasks, what with the alleged series of conferences and meetings he had to attend to as NFA Task Force member, thereby resulting in his virtual neglect of his duties and, necessarily, in the inefficient discharge thereof, culminating in the slow dispensation of justice, a situation I so intensely abhor because it spawns discontent among our people, especially among the poor and underprivileged, respondent has only to blame himself if, as here, as a consequence thereof he is ordered dismissed from the service.

WHEREFORE, and as recommended by the Secretary of Justice, State Prosecutor Nestor B. Orellana is hereby **DISMISSED** from the service, effective upon his receipt of a copy thereof.

Done in the City of Manila, this 13th day of September, in the year of Our Lord, nineteen hundred and ninety.

Horacio S. Aquino

By the President:

Catalino Macaraig, Jr.

CATALINO MACARAIG, JR.

Executive Secretary