[ADMINISTRATIVE ORDER NO. 27, October 08, 1998]

IMPOSING THE PENALTY OF DISMISSAL FROM THE SERVICE WITH FORFEITURE OF BENEFITS UNDER THE LAW OF ASSISTANT PROVINCIAL PROSECUTOR CARLOS B. BARBERO OF ABRA

This is an administrative complaint initialed by the Department of Justice against Assistant Provincial Prosecutor Carlos B. Barbero of Abra, for serious misconduct inimical to public interest and gross dishonesty.

Respondent Provincial Prosecutor Carlos B. Barbero was charged administratively for having filed a motion which led to the dismissal of two (2) criminal complaints for Robbery with Homicide (Julie Dabbay Case) and Robbery with Rape (Juliet Velasco case) docketed as Criminal Case Nos. 1287 and 1288, respectively, of the Regional Trial Court of Abra.

The factual milieu of the administrative complaint as narrated in the letter-memorandum of then Secretary of Justice (now Senator) Franklin M. Drilon dated August 25, 1994, are as follows:

> "The formal charge in the administrative case against respondent prosecutor thus reads:
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> > '1. That in the complaints for Robbery with Homicide and Robbery with Rape (Crim. Case Nos. 1287-1288) filed before the Regional Trial Court of Abra, Branch 2, you allowed the two (2) witnesses, Saelito Sabaot and Michelle Bringas (who were then the subject of a motion in court to be discharged as state witnesses), to be induced and made to recant without assistance of counsel, their previous voluntary confessions which were duly executed with the assistance of former Prosecutor and now PAO lawyer Sergio Paredes and freely subscribed before Asst. provincial Prosecutor Edgardo Flores;
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> > '2. That as trial prosecutor, you failed to require Sabaot and Bringas to take the witness stand to testify and be cross examined on their alleged recantations so as to counteract the same and introduce countervailing proof of their previously counseled confessions with the end in view of determining the circumstances and the motivation of their alleged recantations;
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> > '3. That you allowed incompetent evidence to be the basis for the dismissal of the case wherein the affidavits of desistance and the recantations were merely marked as exhibits but

never formally offered in evidence; thus, violating Rule 132 of the Rules of Court;

'4. That you committed gross dishonesty when you denied under oath having made the motion in court to dismiss the case it appearing from the transcript of stenographic notes of the hearing of October 14, 1993 that it was you who moved for the dismissal of the case.'

"Required to comment, respondent prosecutor denies the charges leveled against him and alleges that there is no way for him to have allowed Sabaot and Bringas to be induced and made to recant their previous voluntary confessions because they were not under his protective custody. Further, respondent prosecutor states that the documents were not merely marked but were submitted to the court which subsequently gave it probative value. Respondent also claims that he did not question the due execution of these documents because he was the administering officer thereof.

"As to the charge of dishonesty, respondents prosecutor pointed out that his statement in his letter dated January 10, 1994 that '(i)t was accused. thru their counsel who moved for the dismissal of the case', has reference to the October 11, 1993 hearing. He admitted though that he moved for their dismissal on October 14, 1993, in line with the accused's constitutional rights to be presumed innocent and to a speedy disposition of their cases."

In finding the respondent guilty as charged and recommending his dismissal from the service with forfeiture of benefits, the Department of Justice, in the said letter-memorandum, made the following findings and conclusions, to wit:

"After a painstaking evaluation of the evidences on record, State Prosecutor Menrado V. Corpuz, who conducted the formal investigation hereof, found respondent prosecutor guilty as charged. We agree with his evaluation and further sustain his recommendation that respondent prosecutor be dismissed from the service.

"The dismissal of Crim. Case No. 1287 (Robbery with Homicide) and Crim. Case No. 1288 (Robbery with Rape) on motion of respondent prosecutor that the guilt of accused cannot be proven beyond reasonable doubt in view of the retractions of the witnesses and the lack of interest of the parents of the victims, is highly reprehensible. Respondent-prosecutor's precipitate act in moving to dismiss the subject cases despite sufficient evidence to secure the convictions of the seven (7) accused is the kind of gross and flaunting misconduct that so quickly and surely corrodes the respect for the law which is vital in civilized society.

"Indeed, notwithstanding the apathy of Bringas and Sabaot to the prosecution's cause, respondent may call on Atty. Sergio Paredes (assisting counsel of Sabaot and Bringas) when they executed their extrajudicial confession, Prosecutor Edgardo Flores (administering officer) and SPO2 Antonio Carpio/SPO1 Samson Dumalo (investigating officers) who can attest to the voluntariness and regularity of the confession. As between the extrajudicial confession of Sabaot and Bringas and their