

[ADMINISTRATIVE ORDER NO. 41, October 19, 1987]

**SUSPENDING MR. NARCISO T. ATIENZA FROM OFFICE FOR ONE
(1) MONTH WITHOUT PAY AS ASSISTANT CITY FISCAL OF
QUEZON CITY**

This is an administrative case filed by Mrs. Vicenta de Cruz-Gatdula, mother of the deceased Federico Gatdula, against Assistant City Fiscal Narciso T. Atienza of Quezon City, for neglect of duty in the prosecution of Criminal Case No. Q-8517, entitled "People vs. Danilo Mendoza y Hernandez et al.," for homicide before Branch IV, of the then Court of First Instance of Rizal (Quezon City), arising out of the killing of Federico Gatdula in Quezon City in 1967.

Respondent was the trial fiscal assigned to Branch IV of the then Court of First Instance of Rizal (Quezon City). One of his assignments included the prosecution of Criminal Case No. Q-8517 against Danilo Mendoza for the killing of Federico Gatdula in Quezon City on October 5, 1967. On March 13, 1972, the case was set for hearing. The hearing was postponed upon motion of the defense counsel who sought for a 10-day period counted from the receipt of the transcript of stenographic notes within which to file a demurrer to evidence. In the meantime, the trial of the case was set on April 21, 1972, and then reset to May 15, 1972, due to illness of the defense counsel. The May 15 hearing was reset anew to June 5, 1972, but on the latter date the hearing was, in open court, ordered reset to June 30 "to give the defense counsel enough time to prepare for trial."

On June 26, 1972, respondent informed his superiors that he was going to take a sick leave from June 27 to July 3, 1972, which in fact he did, and requested that another fiscal take his place to attend to his cases during his absences. Since respondent was on leave, Fiscal William Bayhon, upon superior orders, substituted for Fiscal Atienza in the June 30 hearing. During the June 30 hearing, a motion to dismiss was filed by the defense on the ground of insufficiency of evidence and Fiscal Bayhon petitioned for a 10-day period within which to file an opposition thereto. The substituting fiscal received the copy of said motion for the fiscal's office and accordingly filed the same in respondent's folders of cases. Five days after the filing of the motion to dismiss, or more specifically on July 5, 1972, respondent reported back for work. He, however, did not file any opposition to the motion.

On August 28, 1972, CFI Judge Walfrido de los Angeles issued an order dismissing the case against Danilo Mendoza thereby acquitting him. Judge De los Angeles in said order of dismissal noted that: "the prosecution was given sufficient time within which to file an opposition but up to this date no opposition has been received, notwithstanding the lapse of the period given to the government." It is on the basis of this quoted pronouncement in the court of dismissal that Mrs. Vicenta de Cruz-Gatdula, mother of the deceased Federico Gatdula, made a letter-complaint, dated September 7, 1972, charging Fiscal Atienza with negligence. Said letter-complaint