

**FRANCISCO R. ACHACOSO, IN HIS OWN BEHALF AND IN BEHALF OF
CAPITAL INSURANCE & SURETY CO., INC., PETITIONERS, VS.
THE HON. COURT OF APPEALS, COTRAM, S.A., CAPITAL LIFE
ASSURANCE ...**

G.R. No. L-35867. June 28, 1973

Ponente: TEEHANKEE, J.

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TEEHANKEE, J.:

The Court censures the practice of counsels who secure repeated extensions of time to file their pleadings and thereafter simply let the period lapse without submitting the pleading or even an explanation or manifestation of their failure to do so. The Court herein reprimands petitioner's counsel for such misconduct with the warning that a repetition thereof will be dealt with more severely.

Upon the filing on December 15, 1972 of the petition at bar for review of the Court of Appeals' decision dismissing petitioner's petition for mandamus filed with said court to compel the Manila Court of First Instance to allow petitioner's proposed appeal from its adverse judgment dismissing plaintiff's complaint, the Court per its resolution of December 22, 1972 required respondents to comment thereon.

Respondents filed on February 8, 1973 an extensive eighteen-page comment, and petitioner's counsel, Rodrigo M. Nera, filed on February 12, 1973 a motion for leave to file reply within 15 days from notice, alleging that there was need for such reply "in order that this Honorable Court may be fully and completely informed of the nature of the controversy which gave rise to the instant petition." The Court granted such leave per its resolution of February 23, 1973, and notice of such leave was served on counsel on February 27, 1973.

On the last day for filing of the reply, viz, March 14, 1973, counsel asked for an additional 15 days averring that "due to the pressure of urgent professional work and daily trial engagements of the undersigned counsel during the original period granted, he has not had sufficient material time to complete the preparation of petitioner's reply." The Court granted the requested extension per its resolution of March 20, 1973.

On the last day of the extended period for filing of the reply, viz, March 29, 1973, counsel again asked for still another 15-day extension, stating that "due to the pressure of urgent professional work and daily trial engagements of the undersigned counsel, he has not had sufficient material time to complete the preparation of petitioner's reply. The undersigned counsel humbly apologizes that in view of his crowded schedule, he has been constrained to ask for this extension, but respectfully assures the Honorable Court that this will be the last one requested." As per its resolution of April 6, 1973, the Court granted counsel's motion for such third and last extension.

The period for the filing of petitioner's reply lapsed on April 13, 1973 without counsel having filed any reply or manifestation explaining his failure to do so.

Accordingly, the Court in its resolution of May 24, 1973 denying the petition for review for lack of merit, further required petitioner's counsel to show cause why disciplinary action should not be taken against him for failure to

file the reply after having obtained such leave and three extensions of time within which to do so.

Counsel filed in due course his verified Explanation dated June 7, 1973, stating that he was retained in the case "on a piece-work basis on the verbal understanding that all expenses for the preparation of pleadings and the cost of services of stenographer-typist shall be furnished in advance by petitioner upon being notified thereof"; that when he asked for a third extension on March 29, 1973, he so informed petitioner and requested him to "remit the expenses for the preparation of the reply as per agreement" and that he tried to contact petitioner before the expiration of the extended period but failed to do so as petitioner "was then most of the time out of his office."

Counsel relates that it was only on May 30, 1973 when he received notice of the Court's resolution of May 24, 1973 denying the petition and requiring his explanation - long after the expiration on April 13, 1973 of the extended period for the filing of the reply - that he wrote petitioner and in turn asked petitioner to explain the latter's failure to comply with his request for a remittance of P500.00 to cover the necessary expenses, and that petitioner had replied that counsel's letter had been misplaced by a clerk, and hence, petitioner had "failed to act on the same."

Counsel pleads that "this counsel has not the least intention of delaying the administration of justice and much less trifle with the resolutions and orders of this Honorable Court. The inability of this counsel to submit the reply within the third extension granted by this Honorable Court was due to supervening circumstances which could not be attributed to this counsel"; and that "if this poor and humble practitioner has been impelled to inaction, it surely was not intentional on his part, the truth of the matter being that this counsel was just helpless in the face of petitioner's failure to comply with his commitments aforesaid"; and that "this counsel deeply regrets this incident and hereby apologizes to this Honorable Court for all his shortcomings relative to this case, which after all were due to causes and circumstances not of his own making and far beyond his control."

Counsel's explanation is far from satisfactory. If indeed he was not in a financial position to advance the necessary expenses for preparing and submitting the reply, then he could have filed timely the necessary manifestation that he was foregoing the filing of such reply on petitioner's behalf. His inaction unduly delayed the Court's prompt disposition of the case after the filing by respondents on February 8, 1973 of their comments on the petition showing its lack of merit.

The Court would have then so disposed of the petition had it not been for petitioner's plea to be given time and opportunity to file a reply to the comments in order to fully apprise the Court of the nature of the controversy, which plea the Court granted in reliance on his good faith. Yet after having obtained three extensions of time for the filing of the reply, counsel simply failed to file any reply nor to give the Court the courtesy of any explanation or manifestation for his failure to do so.

Counsel readily perceived in his explanation that his conduct comes close to delaying the administration of justice and trifling with the Court's processes. It does not reflect well on counsel's conduct as an officer of the Court that after assuring the Court that the third extension requested by him "in view of his crowded schedule" and "of urgent professional work and daily trial engagements" would be the last within which period he would at last file the awaited reply, for him thereafter to let the period simply lapse without any explanation whatsoever, and worse, to wait to be found out, and have the Court require him to explain.

Considering, however, that counsel's record shows no previous infractions on his part since his admission to the Philippine Bar in 1953, the Court is disposed to be lenient in this instance.

ACCORDINGLY, the Court hereby administers a reprimand on Atty. Rodrigo M. Nera, with the warning that a repetition of the same or similar acts shall be dealt with more severely. Let a copy of this resolution be filed in his

personal record.

Makalintal, Acting C.J., Zaldivar, Ruiz Castro, Fernando, Barredo, Makasiar, Antonio, and Esguerra, JJ., concur.

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