FRANCISCO RAYOS, PETITIONER, VS, ATTY. PONCIANO G. HERNANDEZ, RESPONDENT.

G.R. NO. 169079. August 28, 2007

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

Before Us is a Motion for Reconsideration dated 16 March 2007 filed by respondent Atty. Ponciano G. Hernandez, seeking a modification of the Decision dated 12 February 2007.

The dispositive portion of the Decision states:

> WHEREFORE the Court Resolves that:
>
> - Respondent is guilty of violation of the attorney's oath and of serious professional misconduct and shall be SUSPENDED from the practice of law for six (6) months and WARNED that repetition of the same or similar offense will be dealt with more severely;
>
> - Respondent is entitled to attorney's fees in the amount equivalent to THIRTY-FIVE PERCENT (35%) of the total amount awarded[1] to petitioner in Civil Case No. SM-951; and
>
> - Respondent is to return the amount of Two Hundred Ninety Thousand One Hundred Nine Pesos and Twenty-One Centavos (P290,109.21),[2] which he retained in excess of what we herein declared as fair and reasonable attorney's fees, plus legal interest from date of finality of this judgment until full payment thereof.
>
> Let copies of this Decision be entered in the personal record of respondent as member of the Bar and furnished the Office of the Bar Confidant, the IBP, and the Court Administrator for circulation to all courts of the country.

Respondent received a copy of the Decision on 5 March 2007. Hence, the Motion for Reconsideration was filed within the reglementary period provided under the Rules.

Respondent begs the compassionate understanding and magnanimity of the Honorable Court for some leniency regarding his unintentional transgression and prays that the penalty of suspension of six months imposed upon him be reduced to a fine, invoking his almost 15 years of patient, devoted, complete and successful professional services rendered to petitioner; for the bad faith of the latter in dismissing him as counsel without justifiable cause; and his good faith in retaining the money "contingently" with the view of winning petitioner's cause.

In light of respondent's sincere plea for compassion from the Court, we take a second look at the penalty imposed.

In several administrative cases, the Court has refrained from imposing the actual penalties in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the Court's determination of the imposable penalty.[3]

Applying the rationale in the aforesaid catena of cases, it is appropriate for this Court, in the case at bar, to consider the following circumstances, to wit:

a) respondent had spent 15 years in defending petitioner's cause from the trial court to the Supreme Court;

b) his efforts at defending their cause were palpably real, complete, and total, with utmost devotion and zealousness;

c) respondent's advanced age;

d) this is the first time that respondent has been found administratively liable per available record; and

e) respondent's good faith in retaining what he sincerely believed to be his contingent fee. As can be gleaned from the facts, petitioner and respondent entered into a contingent fee arrangement whereby the latter, as counsel, will be paid for the legal services only if he secures a judgment favorable for his client. When respondent retained the amount of P557,961.21 and P159,120.00 out of the P1,219,920.00, he did so believing in good faith that it was a reasonable payment for the contingent fees which he was entitled to retain. It cannot be ignored that respondent indeed successfully defended petitioner's case in Civil Case No. SM-951.

We are persuaded to exhibit a degree of leniency towards the respondent. We, thus, maintain a more compassionate approach.

WHEREFORE, the respondent's Motion for Reconsideration is partly GRANTED. The Decision dated 12 February 2007 is MODIFIED in that the suspension of six months is DELETED, and in lieu thereof a fine of P20,000.00 is IMPOSED, effective from date of receipt of herein Resolution, with warning that repetition of the same or similar acts will be dealt with more severely. The said Decision is AFFIRMED in all other respects.

SO ORDERED.

Ynares-Santiago, (Chairperson), Austria-Martinez, and Nachura, JJ., concur. Reyes, J., no part.

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[1]P1,060,800.00 as damages and P159,120.00 (15% of P1,060,800.00) as attorney's fees or a total of P1,219,920.00.

[2] 35% of P1,219,920.00 is P426,972.00. Since respondent retained P557,961.21 and P159,120.00 and 35% of P1,219,920.00 is P 426,972.00, respondent will return the difference of P290,109.21 to petitioner. The amount of P557,961.21 and P159,120.00 retained by respondent is actually 59% of the amount due to petitioner in Civil Case No. SM-951.

[3] In the case of Re: Administrative Case for Dishonesty Against Elizabeth Ting, Court Secretary I, and Angelita C. Esmerio, Clerk III, Office of the Division Clerk of Court, Third Division, (A.M. No. 2001-7-SC & 2001-8-SC, 22 July 2005, 464 SCRA 1) where therein respondents were found guilty of dishonesty, the Court, for humanitarian considerations, in addition to various mitigating circumstances in respondents' favor, meted out a penalty of six months suspension instead of imposing the most severe penalty of dismissal from service. In imposing a lower penalty, the court for humanitarian considerations, took note of various mitigating circumstances in respondent's favor, to wit:: (1) for respondent ANGELITA C. ESMERIO: her continued long years of service in the judiciary amounting to 38 years; her faithful observance of office rules and regulations from the time she submitted her explanation- letter up to the present; her acknowledgment of her infractions and feelings of remorse; her retirement on 31 May 2005; and her family circumstances (i.e., support of a 73-year old maiden aunt and a 7-year old adopted girl); and (2) for ELIZABETH L. TING: her continued long years of service in the judiciary amounting to 21 years; her acknowledgment of her infractions and feelings of remorse; the

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importance and complexity of the nature of her duties (i.e., the preparation of the drafts of the Minutes of the Agenda); the fact that she stays well beyond office hours in order to finish her duties; and her Performance Rating has always been "Very Satisfactory" and her total score of 42 points is the highest among the employees of the Third Division of the Court.

In Reyes-Domingo v. Morales (396 Phil 150,165-166), the branch clerk of court, Miguel C. Morales, who was found guilty of dishonesty in not reflecting the correct time in his Daily Time Record (DTR) was merely imposed a penalty of P5,000.00. In this case, respondent did not indicate his absences on 10 th and 13 th May 1996, although he was at Katarungan Village, interfering with the construction of the Sports Complex therein, and at the Department of Environment and Natural Resources-National Capital Region, pursuing his personal business.

In Office of the Court Administrator v. Saa (457 Phil. 25 [2003]) the clerk of court of the Municipal Circuit Trial Court of Camarines Norte, Rolando Saa, who made it appear in his DTR that he was present in court on the 5th and 6th June 1997, when all the while, he was attending hearings of his own case in Quezon City, was fined P5,000.00.

The Court in In Re: Irregularities in the Use of Logbook and Daily Time Records by Clerk of Court Raquel D.J. Razon, Cash Clerk Joel M. Magtuloy and Utility Worker Tiburcio Morales, MTC-OCC, Guagua, Pampanga (A.M. No. P-06-2243, 26 September 2006, 503 SCRA 52, 62-63) deemed it proper to impose a fine of P2,000.00 on Raquel Razon for making it appear that she was present in the office on 7 September 2004. The Court further noted that Razon readily acknowledged her offense, offered sincere apologies, and promised not to do it again. The fact that it was only her second administrative case in her 27 years in government service was also in her favor. She was previously charged with discourtesy, insubordination and violation of office regulation and procedure in A.M. No. P-97-89, but the same was dismissed on 10 October 1989.

In the case of Floria v. Sunga (420 Phil. 637, 651 [2001]), the Court tempered justice with mercy by imposing a fine of P10,000.00, considering the following circumstances: the administrative offense of immorality charged against Alda C. Floria took place many years ago; she has been employed in the Court of Appeals for a period of 29 years; it was the first time that she was being found administratively liable per available record; and her children were innocent victims, and dismissing or suspending their mother from the service would be a heavy toll on them, a punishment they did not deserve.

In the case of Concerned Taxpayer v. Doblada, Jr. (A.M. No. P-99-1342, 20 September 2005, 470 SCRA 218), the penalty of dismissal was reduced by the Court to six months suspension without pay for the attendant equitable and humanitarian considerations therein: Norberto V. Doblada, Jr. had spent 34 years of his life in government service and that he was about to retire; this was the first time that he was found administratively liable per available record; Doblada, Jr. and his wife were suffering from various illnesses that required constant medication, and that they were relying on Doblada's retirement benefits to augment their finances and to meet their medical bills and expenses.

In Civil Service Commission v. Belagan (G.R. No. 132164, 19 October 2004, 440 SCRA 578, 601), Allyson Belagan, who was charged with sexual harassment and found guilty of Grave Misconduct, was meted out the penalty of suspension from office without pay for one year, instead of the heavier penalty of dismissal, given his length of service, unblemished record in the past, and numerous awards.

In Vidallon-Magtolis v. Salud (A.M. No. CA-05-20-P, 9 September 2005, 469 SCRA 439, 469-470), Cielito M. Salud, a Court of Appeals personnel, was found guilty of inefficiency and gross misconduct, punishable by dismissal from service even for the first time offenses. However, considering that Salud had not been previously charged nor administratively sanctioned, the Court instead imposed the penalty of suspension for one year and six

months.

In De Guzman, Jr. v. Mendoza (A.M. No. P-03-1693, 17 March 2005, 453 SCRA 545, 574), sheriff Antonio O. Mendoza was charged with conniving with another in causing the issuance of an alias writ of execution and profiting on the rentals collected from the tenants of the subject property. Mendoza was subsequently found guilty of Grave Misconduct, Dishonesty and Conduct Prejudicial to the Best Interest of the Service; but instead of imposing the penalty of dismissal, the Court meted out the penalty of suspension for one year without pay, it appearing that it was Mendoza's first offense.

In the case of Buntag v. Pana (G.R. No. 145564, 24 March 2006, 485 SCRA 302), the Court affirmed the findings of the Court of Appeals and the Ombudsman when they took into consideration Corazon G. Buntag's length of service in the government and the fact that this was her first infraction. Thus, the penalty of dismissal for Falsification of Official Document was reduced to merely one year suspension.

In Geocadin v. Hon. Remigio Peña (195 Phil. 344 [1981]), Judge Remigio Reña was found guilty of knowingly rendering manifestly unjust orders, partiality, and drunkenness. The Supreme Court agreed that respondent committed acts unbefitting an occupant of a judicial office. However, in view of his serious illness which prevented him from presenting evidence other than his comment/answer to the complaint against him and the constitutional presumption of innocence in his favor Judge Remigio Peña was merely reprimanded and made to suffer the forfeiture of three months of his salary, to be deducted from whatever retirement benefits he may be entitled to under existing laws.

In Re: Delayed Remittance of Collections of Teresita Lydia Odtuha (445 Phil. 220 [2003]), a court legal researcher, Lydia Odtuha of the Regional Trial Court of Pasay City was found guilty of serious misconduct in office for failing to remit a P12,705.00 fund collection to the proper custodian for three years and doing so only after several demands or directives from the clerks of court and from the Office of the Court Administrator (OCA). For humanitarian reasons, the Court found dismissal from the service to be too harsh considering that Odtuhan subsequently remitted the entire amount and she was afflicted with ovarian cancer. She was imposed a fine P10,000.00, with a stern warning that a repetition of the same or a similar act will be dealt with more severely.

In Sarenas-Ochagabia v. Atty. Balmes Ocampos (466 Phil. 1 [2004]), Atty. Balmes Ocampos failed to file for his clients an appellants' brief and the necessary Manifestation and Motion with the Court of Appeals. The Court noted that for the said offense, it had imposed penalties ranging from reprimand, warning with fine, suspension and, in aggravated cases, disbarment. Owing to his advanced age, the Court imposed on Atty. Balmes Ocampos the penalty of suspension for three months with a warning that a repetition thereof will be dealt with more severely.

In Re: Misappropriation of the Judiciary Fund Collections By Ms. Juliet C. Banag (465 Phil. 24 [2004]), Juliet C. Banag, the Clerk of Court of Municipal Trial Court of Plaridel, Bulacan, who was delayed in the remittance of her cash collections which constituting gross neglect of duty under the Civil Service Law. However, the Court took into consideration the lack of bad faith and the fact that Banag fully remitted all her collections and that she had no outstanding accountabilities. Because of these attendant circumstances and for humanitarian considerations, the Court merely imposed a fine of P20,000.00 and a stern warning that a repetition of the same or similar acts shall be dealt with more severely.

In Re: Imposition of Corresponding Penalties For Habitual Tardiness Committed During the First and Second Semester of 2003 by the Following Employees of this Court: Gerardo H. Alumbro, et al. (A.M. No. 00-06-09-SC, 16 March 2004, 425 SCRA 508, 515), Susan Belando, Human Resource Management Assistant of the Employees

Welfare and Benefit Division, OCA, was found to be habitually tardy for the third time. A strict application of the rules would have justified her dismissal from the service. However, for humanitarian reasons, she was only meted the penalty of suspension for 30 days with a warning that she will be dismissed from the service if she will commit the same offense in the future. She, subsequently, then incurred habitual tardiness for the fourth time. However, again, for humanitarian reasons, the Court found the penalty of suspension for three months without pay to be appropriate.

In Re: Imposition of Corresponding Penalties for Habitual Tardiness Committed During the First and Second Semesters of 2003 by the following employees of this Court: Gerardo H. Alumbro, et al., Renato Labay, Utility Worker II, Medical and Dental Services and Albert Semilla, Clerk III, Office of the Chief Attorney, they committed tardiness for the third time and, for which they were administratively held liable which should have caused them dismissal but instead a penalty of suspension for 10 days without pay, with a warning that a repetition of the same or a similar offense will warrant the imposition of a more severe penalty.

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