

## THIRD DIVISION

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

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

### R E S O L U T I O N

**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:

1. 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;
2. Respondent is entitled to attorney's fees in the amount equivalent to **THIRTY-FIVE PERCENT (35%)** of the total amount awarded<sup>[1]</sup> to petitioner in Civil Case No. SM-951; and
3. Respondent is to **return** the amount of Two Hundred Ninety Thousand One Hundred Nine Pesos and Twenty-One Centavos (P290,109.21),<sup>[2]</sup> 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.<sup>[3]</sup>

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 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