

LEGAL AND JUDICIAL ETHICS**SOLEDAD NUNEZ v. ATTY. ROMULO L. RICAFORT**

A.C. Nos. 5054 & 6484, 02 MARCH 2021, EN BANC (PERLAS-BERNABE, J.)

DOCTRINE OF THE CASE

The new clemency guidelines for reinstatement to the Bar are as follows:

1. *A lawyer who has been disbarred cannot file a petition for judicial clemency within a period of **five (5) years** from the effective date of his or her disbarment, unless for the most compelling reasons based on extraordinary circumstances, a shorter period is warranted.*

For petitions already filed at the time of this Resolution, the Court may dispense with the five (5)-year minimum requirement and instead, in the interest of fairness, proceed with a preliminary evaluation of the petition in order to determine its prima facie merit.

2. *Upon the lapse of the said five (5)-year period, or earlier if so permitted by the Court, a disbarred lawyer becomes eligible to file a **verified petition** for judicial clemency. The petition, together with its supporting evidence appended thereto, must show on its face that the following criteria have been met:*
 - (a) *The petitioner has fully complied with the terms and conditions of all prior disciplinary orders, including orders for restitution, as well as the five (5)-year period to file, unless he or she seeks an earlier filing for the most compelling reasons based on extraordinary circumstances;*
 - (b) *The petitioner recognizes the wrongfulness and seriousness of the misconduct for which he or she was disbarred. For petitions already filed at the time of this Resolution, it is required that the petitioner show that he or she genuinely attempted in good faith to reconcile with the wronged private offended party in the case for which he or she was disbarred (if any), or if such is not possible, the petitioner must explain with sufficient reasons as to why such attempt at reconciliation could not be made; and*

- (c) *Notwithstanding the conduct for which the disbarred lawyer was disciplined, the disbarred lawyer has the requisite integrity and competence to practice law.*
3. *Upon the filing of the verified petition for clemency, together with its attachments, the Court shall first conduct a **preliminary evaluation and determine if the same has prima facie merit based on the criteria above-stated.***
 4. *If the petition has prima facie merit based on the above criteria, the Court shall **refer** the petition to the OBC (or any other fact-finding body the Court so designates) in order to verify the details and the authenticity of the statements made and the evidence attached to the clemency petition. If the petition fails to show any prima facie merit, it should be denied.*
 5. *After its investigation, the OBC (or such other fact-finding body designated by the Court) shall submit its fact-finding report to the Court, which shall ultimately resolve the clemency petition **based on the facts established in the said report.** The threshold of evidence to be applied is **clear and convincing evidence** since it is incumbent upon the petitioner to hurdle the seriousness of his or her established past administrative liability/ies, the gravity of which had warranted the supreme penalty of disbarment.*
 6. *Unless otherwise resolved by the Court sitting En Banc, these guidelines and procedure shall apply to pending petitions for judicial clemency, as well as to those filed after the promulgation of this Resolution.*

The new clemency guidelines, as detailed herein, should not only apply to clemency petitions filed after the promulgation of this Resolution, but likewise, to pending petitions.

FACTS

There were three different administrative disciplinary complaints filed against Atty. Romulo Ricafort (Ricafort). All of which involved serious breaches of his fiduciary duties to his clients. The first administrative case against him happened in 1982, which was based on his failure to remit the proceeds of the lot sold despite numerous demands. The client won the civil case, however, Ricafort did various machinations just to avoid the remittance of the money. This resulted in his indefinite suspension.

In his 1992 case, it was alleged that Ricafort deposited in his own personal account the client's money instead of using it for the purpose as to why it was given to him. Despite demands made by the client, he failed to return the said money. The Court took into account his previous case in the penalty to be imposed. It decided to disbar Ricafort.

Later on, another complaint was filed against Ricafort for his failure to institute an action for a case of recovery of land. In addition, he did not return the money paid by his client. The Court considered the fact that Ricafort practiced law despite his indefinite suspension, it once again imposed a disbarment penalty.

In 2019, Ricafort filed before the Supreme Court a plea for clemency. This plea was made 17 years after his indefinite suspension from his first case, and when he was already 70 years old. He stated that he has atoned for his indiscretion.

ISSUE

Should judicial clemency be granted in favor of Nunez?

RULING

NO. The judicial clemency should not be granted. Judicial clemency harkens back to the nature of membership in the Bar as a special privilege imbued with public interest. At its core, "[t]he basic inquiry in a petition for reinstatement to the practice of law is whether the lawyer has sufficiently rehabilitated himself or herself in conduct and character. The lawyer has to demonstrate and prove by **clear and convincing** evidence that he or she is again worthy of membership in the Bar."

Granting judicial clemency lies in the sound discretion of the Court pursuant to its constitutional mandate to regulate the legal profession in the exercise of such discretion, the Court is essentially called to perform an **act of mercy** by permitting the return of a repentant and reformed disbarred lawyer back to the ranks of the legal profession and thus, resume discharging the privileges and assuming the duties attendant thereto. However, the compassion of the Court in clemency cases must always be tempered by the greater interest of the legal profession and the society in general.

In fine, for the guidance of the Bench, the Bar, and the public, the new clemency guidelines for reinstatement to the Bar are as follows:

1. A lawyer who has been disbarred cannot file a petition for judicial clemency within a period of **five (5) years** from the effective date of his or her disbarment, *unless* for the most compelling reasons based on extraordinary circumstances, a shorter period is warranted.
 - (a) **For petitions already filed at the time of this Resolution**, the Court may dispense with the five (5)-year minimum requirement and instead, in the interest of fairness, proceed with a preliminary evaluation of the petition in order to determine its *prima facie* merit.

2. Upon the lapse of the said five (5)-year period, or earlier if so permitted by the Court, a disbarred lawyer becomes eligible to file a **verified petition** for judicial clemency. The petition, together with its supporting evidence appended thereto, must show on its face that the following criteria have been met:
 - (a) The petitioner has fully complied with the terms and conditions of all prior disciplinary orders, including orders for restitution, as well as the five (5)-year period to file, unless he or she seeks an earlier filing for the most compelling reasons based on extraordinary circumstances;
 - (b) The petitioner recognizes the wrongfulness and seriousness of the misconduct for which he or she was disbarred. For petitions already filed at the time of this Resolution, it is required that the petitioner show that he or she genuinely attempted in good faith to reconcile with the wronged private offended party in the case for which he or she was disbarred (if any), or if such is not possible, the petitioner must explain with sufficient reasons as to why such attempt at reconciliation could not be made; and

- (c) Notwithstanding the conduct for which the disbarred lawyer was disciplined, the disbarred lawyer has the requisite integrity and competence to practice law.
3. Upon the filing of the verified petition for clemency, together with its attachments, the Court shall first conduct a **preliminary evaluation and determine if the same has *prima facie* merit based on the criteria above-stated.**
 4. If the petition has *prima facie* merit based on the above criteria, the Court shall **refer** the petition to the OBC (or any other fact-finding body the Court so designates) in order to verify the details and the authenticity of the statements made and the evidence attached to the clemency petition. If the petition fails to show any *prima facie* merit, it should be denied.
 5. After its investigation, the OBC (or such other fact-finding body designated by the Court) shall submit its fact-finding report to the Court, which shall ultimately resolve the clemency petition **based on the facts established in the said report.** The threshold of evidence to be applied is **clear and convincing evidence** since it is incumbent upon the petitioner to hurdle the seriousness of his or her established past administrative liability/ies, the gravity of which had warranted the supreme penalty of disbarment.
 6. Unless otherwise resolved by the Court sitting *En Banc*, these guidelines and procedure shall apply to pending petitions for judicial clemency, as well as to those filed after the promulgation of this Resolution.

The new clemency guidelines, as detailed herein, should not only apply to clemency petitions filed after the promulgation of this Resolution, but likewise, to pending petitions.

In the instant case, it is observed that the testimonials/certifications attached to the subject petitions were all one-pagers that are similarly patterned and worded. The uncanny similarities between the testimonials/certifications

created an impression that they were not actual and personal accounts of the signatories, but rather - more likely than not - all pre-made, *pro-forma* documents conveniently made for their signing.

It is similarly worth noting that Ricafort committed multiple administrative infractions, all involving serious breaches of his fiduciary duties to his clients which demonstrates his propensity in this respect. In the same vein, he filed the subject petition only on March 25, 2019 - or just three (3) years, nine (9) months, and nine (9) days from the most recent Decision. In view of Ricafort's numerous infractions, the time that has lapsed from the imposition of the penalty is insufficient to ensure a period of reformation. In addition, after preliminary evaluation, the subject petitions failed to show any *prima facie* merit.

**SUSAN R. ELGAR v. JUDGE SOLIMAN M. SANTOS, JR.,
MUNICIPAL CIRCUIT TRAIL COURT, NABUA-BATO
CAMARIES SUR**

**A.M. No. MTJ-16-1880 (FORMERLY OCA IPI No. 13-2565-MJT), 27
APRIL 2021, *EN BANC RESOLUTION*, (INTING, J.)**

DOCTRINE OF THE CASE

The purpose of A.M. No. 03-10-01-SC, also known as “Resolution Prescribing Measures to Protect Members of the Judiciary from Baseless and Unfounded Administrative Complaints” is to protect judges from baseless and unfounded suits. Such has no application in the case at bar because the complaint against Judge Santos is not baseless and is not unfounded.

FACTS

The complainant Susan Elgar (Elgar) filed a case against Judge Soliman Santos (Judge Santos) for gross negligence of the law and violations of the Code of Judicial Conduct and Canons of Judicial Ethics. On February 4, 2020, the Supreme Court *En Banc* found Judge Santos administratively liable for the following: a) failure to refer a case to the Philippine Mediation Center (PMC) as prescribed by law; b) pressing the parties to enter into an amicable settlement through means that exceeded the bounds of propriety; c) gross inefficiency through causing undue delay in the termination of the preliminary conference of the case; d) issuing an Extended Order after the withdrawal of the petition, wherein Elgar’s counsel was unduly castigated, thereby exceeding the bounds of propriety; and e) giving the oppositor the option of submitting his pre-trial brief in contravention of its mandatory nature under the Rules of Court.

Accordingly, the Court imposed fines on Judge Santos and issued upon him a stern warning that a repetition of the same or similar acts would be dealt with more severely. The case at bar is now Judge Santos’ Motion for Partial Reconsideration, claiming that the finding of his guilt and fines ordered for the first, fourth, and fifth offenses be reversed and set; the penalty for the fine in the second offense be reduced; A.M. No. 03-10-01-SC, also known as “Resolution Prescribing Measures to Protect Members of the Judiciary from Baseless and Unfounded Administrative Complaints” be operationalized against Elgar’s counsel. He also prayed for the removal of the decision against him from the Supreme Court website until the final ruling of the case at bar.

ISSUE

Should the Court reconsider its previous Decision?

RULING

YES. The Court partly reconsidered its decision.

The Court found no compelling reason to reverse its finding that Judge Santos violated Supreme Court rules, directives, and circulars. Here, Judge Santos claimed that the charge against him of failure to refer the case to the PMC was not alleged in the Complaint-Affidavit and, thus, violates his right to be informed of the charges against him. To this, the Court ruled that such failure to refer was already evident in the narration of facts and no longer needed to be alleged specifically in the Complaint.

Furthermore, the Court also found no compelling reason to reverse its finding that Judge Santos exceeded the bounds of propriety when he issued the Extended Order and unduly castigated Elgar's counsel. According to the Court, Judge Santos should have been more prudent in his course of action and refrained from using his position to browbeat the counsel just because the latter did not agree with him. He further should have avoided the Extended Order since he had already granted the withdrawal of the petition.

However, the Court found that Judge Santos' act of giving the oppositor the option of submitting his pre-trial brief is not, as they have previously ruled, gross ignorance of the law, but is a mere violation of Supreme Court rules, directives, and circulars. While Judge Santos is not justified in making the oppositor's submission of the pre-trial brief optional, the Court took cognizance of Judge Santos' previous Orders directing the oppositor and his counsel to submit a pre-trial brief. Judge Santos even strongly reprimanded oppositor's counsel and ordered him to pay a fine of P1,000.00 for noncompliance with the Orders. Thus, the Court held that Judge Santos, although cognizant of the requirement of the pre-trial brief, decided to relax such requirement. While Judge Santos' action does not constitute gross ignorance of the law, he is still guilty of violation of Supreme Court rules, directives, and circulars.

The Court also found that the cited A.M. No. 03-10-01-SC, also known as "Resolution Prescribing Measures to Protect Members of the Judiciary from Baseless and Unfounded Administrative Complaints" had no application in the

case at bar. The purpose of such is to protect judges from baseless and unfounded suits. However, here, the complaint against Judge Santos is not baseless and not unfounded.

As for the prayer to remove the Court's decision from the Supreme Court website must fail. Here, the Court cites Sections 2, 3, and 4(b), Rule 14 of the Internal Rules of the Supreme Court which states that within 24 hours from the promulgation of the decision, the Chief Justice shall be formally informed of such and the latter shall direct the publication of such decision on the Supreme Court website.

Evidently, there is nothing in the Internal Rules of the Supreme Court to the effect that the decision of a motion for reconsideration must be waited upon before uploading the previous decision on the website.

Lastly, the Court mitigated Judge Santos' penalty as it found that the infractions were not attended by bad faith. Although this does not absolve him from administrative liability, the absence of malice is a mitigating circumstance.