Republic of the Philippines
Supreme Court
Manila

EN BANC

SOLEDAD NUÑEZ, represented by Anamias B. Co, Attorney-in-Fact for Complainant,
Complainant,

-versus-

ATTY. ROMULO L. RICAFORT,
Respondent.

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ADELITA B. LLUNAR,
Complainant,

-versus-

ATTY. ROMULO L. RICAFORT,
Respondent.

IN RE: PETITION FOR JUDICIAL CLEMENCY OF ROMULO L. RICAFORT.

A.C. No. 5054

A.C. No. 6484

Present:
PERALTA, *C.J.*, Chairperson,
PERLAS-BERNABE,
LEONEN,
CAGUIOA,
GESMUNDO,
HERNANDO,
CARANDANG,
LAZARO-JAVIER,
INTING,
ZALAMEDA,
LOPEZ, M.,
DELOS SANTOS,
GAERLAN,
ROSARIO, and
LOPEZ, J., *JJ.*

Promulgated:
March 2, 2021

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RESOLUTION

PERLAS-BERNABE, *J.*:

Before this Court are the Petition for Judicial Clemency and Compassion[1] dated March 21, 2019 (subject petition) and the Supplemental Petition for Judicial Clemency and Compassion[2] dated April 5, 2019 (supplemental petition) filed by Romulo L. Ricafort (petitioner) seeking that he be reinstated in the Roll of Attorneys.

The Facts

Records show that a total of three (3) administrative disciplinary complaints were filed and resolved against petitioner, all involving serious breaches of his fiduciary duties as an attorney to his clients. These complaints were docketed as **A.C. No. 5054** decided on May 29, 2002,[3] **A.C. No. 8253** decided on March 15, 2011,[4] and **A.C. No. 6484** decided on June 16, 2015.[5]

To recount, the records of **A.C. No. 5054** show that in 1982, petitioner was engaged by a client to sell the latter's lots. After successfully selling the same, petitioner, however, failed to remit the proceeds of the sale despite numerous demands, resulting in his client filing a civil suit against him. Even after his client won in the civil case, petitioner engaged in various machinations to avoid said remittance, and in so doing, defied the final and executory judgment in the civil case. In light of the foregoing, the Court indefinitely suspended him from the practice of law, and ordered him to return to the complainant the amount of ₱13,800.00.[6]

Meanwhile, in **A.C. No. 8253**, petitioner was engaged by a client in 1992 to assist him in a dispute involving the latter's foreclosed property. Instead of consigning the money given to him by his client, petitioner deposited the amount into his personal account. Furthermore, when the court required the filing of a memorandum, petitioner, despite having been paid additional expenses by his client, did not file the same. Since he failed to return the aggregate amount of money despite demands, his client filed a disciplinary complaint against him. After due proceedings, petitioner was found administratively liable, and considering his previous similar infraction in A.C. No. 5054, the Court imposed on him the supreme penalty of disbarment, and ordered him to return to the complainant the amount of ₱80,000.00.[7]

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1 *Rollo* (A.C. No. 5054), pp. 220-225; and *rollo* (A.C. No. 6484), pp. 244-249.
2 *Rollo* (A.C. No. 5054), pp. 266-268; and *rollo* (A.C. No. 6484), pp. 281-283.
3 *Nuñez v. Ricafort*, 432 Phil. 131 (2002).
4 *Tarog v. Ricafort*, 660 Phil. 618 (2011).
5 *Llunar v.* Ricafort, 760 Phil. 27 (2015).
6 *Nuñez v. Ricafort*, supra.
7 *Tarog v. Ricafort*, supra.

Finally, in **A.C. No. 6484**, petitioner was once more, engaged by a client in September 2000 regarding a potential case for recovery of land. In connection therewith, the latter gave petitioner the money that was supposed to answer for the redemption price of the land, the filing fees, and his legal fees. Three (3) years later, the client discovered that petitioner did not institute the necessary action, as agreed upon. When the client demanded for the return of the money, petitioner explained that he assigned another lawyer to file the case for him; as such, petitioner expressed his willingness to return only the remaining amount which was in his possession. Further, the client found out that petitioner was indefinitely suspended from the practice of law since May 29, 2002, which was probably the reason why the latter pawned off the case to another counsel. In light of his transgressions against his client and for practicing law despite his indefinite suspension, the Court found him administratively liable for violations of Canons 16 and 18 of the Code of Professional Responsibility, as well as for unauthorized practice of law. Thus, petitioner was, once again, imposed the penalty of disbarment. He was further ordered to return to the complainant the amount of ₱95,000.00.[8]

On March 25, 2019, petitioner filed the subject petition, attaching numerous certifications and testimonials in support of his plea for clemency. He laments that it has been 17 years since he was ordered indefinitely suspended in **A.C. No. 5054** and has since atoned for his indiscretions. At the age of 70, petitioner earnestly hopes to be accorded judicial clemency "before he embarks on his final journey into the unknown,"[9] and that his absolution would be the only legacy he would leave to his children and grandchildren.[10]

On April 11, 2019, petitioner filed the supplemental petition, reiterating his prayer to be reinstated as a member of the Philippine Bar in good standing.[11]

Notably, the captions of the subject petition and supplemental petition (subject petitions) indicate the docket numbers of the three (3) cases against petitioner, *i.e.*, **A.C. Nos. 5054**, **6484**, and **8253**.

Proceedings Before the Court

Considering the three (3) docket numbers indicated in the captions, the subject petitions were separately assigned to three (3) different Members of the Court for appropriate action. Subsequently, all three (3) cases were taken up on the same *En Banc* agenda date, *i.e.*, June 4, 2019, and since the

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8 *Llunar v. Ricafort*, supra.
9 *Rollo* (A.C. No. 5054), p. 221; and *rollo* (A.C. No. 6484), p. 245.
10 *Rollo* (A.C. No. 5054), p. 221; and *rollo* (A.C. No. 6484), p. 245.
11 *Rollo* (A.C. No. 5054), p. 267; and *rollo* (A.C. No. 6484), p. 282.

cases were not consolidated, conflicting recommended actions on the subject petitions resulted.

In particular, in **A.C. No. 5054**, the Court noted the subject petitions, and referred the same to the Office of the Bar Confidant (OBC) for evaluation, report, and recommendation,[12] while in **A.C. No. 6484**, the Court merely noted the same.[13] In contrast, in **A.C. No. 8253**, the Court denied the exact same petitions,[14] which denial was then contested by petitioner in a motion for reconsideration.[15]

On August 8, 2019, the OBC submitted its report[16] recommending the following: (*a*) for the purpose of resolving the subject petitions, **A.C. Nos. 5054**, **6484**, and **8253** be consolidated in order to avoid conflicting actions and/or resolutions from the Court; (*b*) deem the subject petitions docketed under **A.C. Nos. 5054** and **6484** as moot and academic in light of their denial in **A.C. No. 8253**; and (*c*) deny petitioner's motion for reconsideration in **A.C. No. 8253** for merely reiterating his previous statements.[17]

In a Resolution[18] dated August 28, 2019, the Court ordered the consolidation of **A.C. Nos. 5054** and **6484** only, and in a Resolution[19] dated June 23, 2020, the Court denied petitioner's motion for reconsideration in **A.C. No. 8253**.

The Issue Before the Court

The central issue in this case is whether or not judicial clemency should be granted in favor of petitioner.

The Court's Ruling

I. *Preliminary Considerations.*

At the onset, the Court observes that the separate docketing and assignment of the subject petitions to different Justices resulted in conflicting actions on the same. On one hand, the subject petitions and subsequent motion for reconsideration in **A.C. No. 8253** were denied by the Court, while, on the other hand, the exact same petitions were referred to the

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12 *Rollo* (A.C. No. 5054), pp. 257-258.
13 *Rollo* (A.C. No. 6484), pp. 292-293.
14 *Rollo* (A.C. No. 8253), p. 416.
15 Dated July 22, 2019. Id. at 417-422.
16 *Rollo* (A.C. No. 5054), pp. 260-261; *rollo* (A.C. No. 6484), pp. 290-291; and *rollo* (A.C. No. 8253), pp. 426-427.
17 *Rollo* (A.C. No. 5054), p. 261; *rollo* (A.C. No. 6484), p. 291; and *rollo* (A.C. No. 8253), p. 427.
18 *Rollo* (A.C. No. 5054), pp. 262-263; and *rollo* (A.C. No. 6484), pp. 308-309.
19 Not attached to the *rollo*.

OBC for evaluation, report, and recommendation in **A.C. No. 5054** and noted in **A.C. No. 6484**. As it stands, the petitions in **A.C. No. 5054** remains unresolved, whilst the same set of petitions have already been denied in **A.C. No. 8253**, and merely noted in **A.C. No. 6484**.

Notwithstanding the Court's action in **A.C. No. 8253**, the Court deems it appropriate to take cognizance of the subject petitions as filed in **A.C. Nos. 5054** and **6484** and examine the same under the lens of the new clemency guidelines hereinafter set forth. As will be explained below, it is high time – as it has, in fact, been long overdue – that the Court institutionalize a new set of operative guidelines in resolving petitions for judicial clemency of disbarred lawyers. This change is largely impelled by the observation that the Court – which is not a trier of facts – is primarily called to resolve clemency petitions based on purely factual submissions, without the benefit of hearings/mechanisms for their authentication; thus, the need for a fact-finding process to vet clemency petitions that are, at the very least, *prima facie* meritorious.

To be sure, the disposition in **A.C. No. 8253** does not bar the Court from taking a second look at the subject petitions since administrative-disciplinary cases never really become final;[20] more significantly, the act of judicial clemency is purely discretionary and inherent to the Court. Hence, the power to grant clemency may be duly exercised in the rectified manner it now deems fit pursuant to its constitutional authority to regulate the practice of law.[21]

II. *Judicial Clemency in General.*

Judicial clemency hearkens back to the nature of membership in the Bar as a special privilege imbued with public interest.

As case law states, "[m]embership in the Bar is a privilege burdened with conditions. It is not a natural, absolute or constitutional right granted to everyone who demands it, but rather, a special privilege granted and continued only to those who demonstrate special fitness in intellectual

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20 See *Que v. Revilla, Jr.*, 746 Phil. 406, 413 (2014).

21 Section 5 (5), Article VIII of the 1987 Constitution states:

> Article VIII
> Judicial Department
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> x x x x
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> Section 5. The Supreme Court shall have the following powers:
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> x x x x
>
> (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar, and legal assistance to the under-privileged. x x x
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> x x x x

attainment and in moral character."[22] **"The same reasoning applies to reinstatement of a disbarred lawyer**. When exercising its inherent power to grant reinstatement, the Court should see to it that **only those who establish their present moral fitness and knowledge of the law will be readmitted to the Bar**. Thus, though the doors to the practice of law are never permanently closed on a disbarred attorney, **the Court owes a duty to the legal profession as well as to the general public to ensure that if the doors are opened, it is done so only as a matter of justice.**"[23]

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."[24]

Nevertheless, granting judicial clemency lies in the sound discretion of the Court pursuant to its constitutional mandate to regulate the legal profession.[25] 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. As held by the Court:

> **[C]lemency should not only be seen as an act of mercy. It is not only for the wrongdoer's convenience. The interests of the person wronged, as well as society in general – especially its value in precedent – should always be taken into primordial consideration**. [Verily, clemency] is neither a right nor a privilege that one can avail of at any time[, and its grant] must be delicately balanced with the preservation of public confidence in the courts [and in the legal profession in general.][26] (Emphasis and underscoring supplied)

The foregoing clemency principles have been framed into jurisprudential guidelines in the 2007 case of *Re: Letter of Judge Augustus C. Diaz, Metropolitan Trial Court of Quezon City, Branch 37, Appealing for Judicial Clemency*[27] (***Re: Diaz***). However, as will be explained below, recent

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22 *Que v. Revilla, Jr.*, supra, at 412.

23 *Re: In the Matter of the Petition for Reinstatement of Rolando S. Torres as a Member of the Philippine Bar*, 767 Phil. 676, 682-683 (2015); emphases and underscoring supplied.

24 See *San Jose Homeowners Association, Inc. v. Romanillos*, A.C. No. 5580, July 31, 2018; emphasis and underscoring supplied.

25 See Section 5 (5), Article VIII of the 1987 Constitution.

26 See *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*, A.M. No. SB-14-21-J, January 19, 2021.

27 560 Phil. 1 (2007).

jurisprudence in the 2021 case of *Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*[28] (***Re: Ong***) has exposed substantial flaws in the application of the said guidelines. **Although *Re: Ong* was decided under the auspices of a clemency petition filed by a disrobed judge, some of the key observations therein are equally applicable to disbarred lawyers seeking reinstatement to the Bar**; hence, coming off the heels of the very recent *Re: Ong* ruling, the Court takes this ripe opportunity to modify the current clemency guidelines for disbarred lawyers and consequently, apply the same to the present case.

III. *Jurisprudential Guidelines in Judicial Clemency Cases Involving Members of the Bar.*

Our jurisprudence on judicial clemency traces its roots to the 1910 case of *Re: Macario Adriatico*[29] (*Re: Adriatico*). While the ruling in *Re: Adriatico* did not explicitly discuss the governing principles pertinent to clemency petitions, the following factors were considered by the Court in granting clemency to therein petitioner: (1) his reinstatement was urged by the Philippine Bar Association; (2) he served as a member of the Philippine Assembly, and has merited the approval of Sergio Osmeña, then Speaker of the Assembly; (3) a judge of the Seventh Judicial Circuit certified his good conduct; and (4) there were no objections to his reinstatement.[30]

In the 1964 case of *Cui v. Cui*[31] (*Cui*), the Court first articulated certain governing principles on clemency cases, citing American sources, *viz.*:

> Whether or not the applicant shall be reinstated rests to a great extent in the sound discretion of the court. The court action will depend, generally speaking, on whether or not it decides that the public interest in the orderly and impartial administration of justice will be conserved by the applicant's participation therein in the capacity of an attorney and counselor at law. The applicant must, like a candidate for admission to the bar, satisfy the court that he is a person of good moral character – a fit and proper person to practice law. The court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the charge for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the application for reinstatement. (5 Am. Jur., Sec. 301, p. 443)
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> Evidence of reformation is required before applicant is entitled to reinstatement, notwithstanding [that] the attorney has received a pardon following his conviction, and the requirements for reinstatement have been held to be the same as for original admission to the bar, except that the

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28 *Re: Ong*, supra.
29 17 Phil. 324 (1910).
30 See id. at 324-325.
31 120 Phil. 725 (1964).

> court may require a greater degree of proof than in an original admission. (7 G.J.S., Attorney & Client, Sec. 41, p. 815).
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> The decisive questions on an application for reinstatement are whether applicant is 'of good moral character' in the sense in which that phrase is used when applied to attorneys-at-law and is a fit and proper person to be entrusted with the privileges of the office of an attorney, and whether his mental qualifications are such as to enable him to discharge efficiently his duty to the public, and the moral attributes are to be regarded as a (sic) separate and distinct from his mental qualifications. (7 C.J.S., Attorney & Client, Sec. 41, p. 816).[32]

Albeit discussing clemency principles, it should be noted that the issue in *Cui* was not whether or not reinstatement was proper but rather, whether or not a previously disbarred lawyer, *i.e.*, Antonio Ma. Cui, was qualified to act as an administrator in light of his reinstatement by the Court.[33] This notwithstanding, the Court would go on and cite the clemency principles in *Cui* as bases for succeeding reinstatement cases, such as *Re: Rovero*,[34] *Re: Publico*,[35] and *Re: Vailoces*.[36]

It was in the 2007 case of *Re: Diaz* that the Court first framed the operative guidelines for judicial clemency, albeit under the context of a clemency petition filed by a disrobed judge. In the said case, the Court, "[i]n the exercise of its constitutional power of administrative supervision over all courts and all personnel thereof, [laid] down the following guidelines in resolving requests for judicial clemency:"[37]

> 1. There must be proof of remorse and reformation. These shall include but should not be limited to certifications or testimonials of the officer(s) or chapter(s) of the Integrated Bar of the Philippines, judges or judges associations and prominent members of the community with proven integrity and probity. A subsequent finding of guilt in an administrative case for the same or similar misconduct will give rise to a strong presumption of non-reformation.
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> 2. Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.
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> 3. The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.
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> 4. There must be a showing of promise (such as intellectual aptitude, learning or legal acumen or contribution to legal scholarship and the development of the legal system or administrative and other relevant skills), as well as potential for public service.

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32 Id. at 731.
33 See id. at 727-730.
34 189 Phil. 605 (1980).
35 190 Phil. 612 (1981).
36 *Re: Vailoces* cited the same American sources mentioned in *Cui*. (See 202 Phil. 322 [1982]).
37 *Re: Diaz*, supra note 27, at 5.

> 5. There must be other relevant factors and circumstances that may justify clemency.[38]

Later, in the 2013 case of *Macarrubo v. Macarrubo*,[39] the Court explicitly applied the *Re: Diaz* guidelines to a clemency petition seeking the reinstatement of a disbarred lawyer. *Re: Diaz* would then be consistently cited by the Court as the jurisprudential guidelines in resolving clemency petitions, whether filed by a disrobed judge or a disbarred lawyer.[40]

IV. *Reformulation of the Judicial Clemency Guidelines and Procedure.*

As preliminarily discussed, judicial clemency is granted based on a policy framework created solely by the Court pursuant to its constitutional power of: (*a*) administrative supervision over all courts and all personnel thereof[41] with respect to dismissed judiciary employees; and (*b*) regulation of the legal profession[42] with respect to disbarred lawyers. In deciding whether to grant clemency, the Court endeavors to strike a balance between extending an act of mercy to an individual on the one hand, and on the other hand, preserving public confidence in the courts, as well as the legal profession. Certainly, safeguarding the integrity of the courts and the legal profession is an indispensable consideration in this assessment. **Hence, the petitioner should convincingly hurdle a high bar to be granted judicial clemency.**

However, as per the current procedure following the *Re: Diaz* guidelines, the Court, when resolving clemency cases, is not impelled to go beyond the allegations in the petition and written documents appended thereto. **Institutionally, the Court is not a trier of facts; thus, it lacks the proper capability to probe into the finer details of the factual assertions made in a clemency petition.** In the same light, the Court cannot, on its own, authenticate the petition's supporting evidence, or examine, under oath, the sincerity of the person seeking clemency, as well as of those who vouch for him or her.

In fact, it is reasonable to suppose that, more likely than not, all of the submissions in a clemency petition are self-serving since it would always be in the petitioner's natural desire to submit everything beneficial to him or her so as to convince the Court to reinstate him or her back to the Bar. Moreover, the number of testimonials/certifications, as well as the perceived

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38 Id. at 5-6.

39 702 Phil. 1 (2013).

40 See *San Jose Homeowners Association, Inc. v. Romanillos*, supra note 24; *Concerned Lawyers of Bulacan v. Villalon-Pornillos*, 805 Phil. 688 (2017); *Greenstar Bocay Magandingan v. Adiong*, A.M. No. RTJ-04-1826, August 16, 2016; and *Talens-Dabon v. Arceo*, 699 Phil. 1 (2012).

41 See Section 5 (6), Article VIII of the 1987 Constitution.

42 See Section 5 (5), Article VIII of the 1987 Constitution.

clout of the petitioner's sponsors/endorsers, are unspoken factors that influence the Court's disposition.[43] **In the end, without a proper fact-finding procedure, the Court is constrained to resolve a clemency petition based on a subjective – instead of an objective – analysis of the petition.**

Thus, in *Re: Ong*, the Court cautioned that:

> Judicial clemency **cannot be subjective**. The more we have personal connections with one who pleas for clemency, the more we should seek to distance ourselves. It is also anticipated that pleas for judicial clemency are largely self-serving.[44] (Emphasis supplied)

Aside from the problem of subjectivity, equally significant is the **quandary of authenticating** the alleged socio-civic activities meant to prove that the petitioner has indeed reformed. Due to the lack of a fact-finding mechanism, the Court is hard-pressed to determine whether or not these activities were actually undertaken, or if so, how many times they were undertaken and their actual scope. In this regard, the Court cannot simply discount the possibility that these so-called "socio-civic activities" may just be isolated instances which are not truly reflective of the petitioner's sincere and genuine reformation but rather, listed only to pad up the petition.

In light of these issues, the Court, in the recent case of *Re: Ong*, resolved that ***prospectively***, all clemency petitions which, upon the Court's evaluation, demonstrate *prima facie* merit, **should be referred to a commission created to receive the evidence to prove the allegations by substantial evidence,** *viz.*:

> **Prospectively**, allegations of those who apply for clemency must first be evaluated by this Court to find whether ***prima facie*** **circumstances exist to grant the relief**. Should there appear to be so, **a commission must be created to receive the evidence**, with due notice to any offended party and the public. **The commission will then determine if there is substantial evidence supporting the allegations.** [45] (Emphases and underscoring supplied)

Furthermore, as may be gleaned from the cited excerpt, the Court in *Re: Ong* stated that "**a commission must be created to receive the evidence, with due notice to any offended party and the public**."[46]

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43 See Daven, Mark T., *Forever Banned: An Analysis of Permanent Disbarment in Arkansas After in Re: Madden*, 66 Ark. L. Rev. 1029 (2013) available at <https://cpb-us-e1.wpmucdn.com/wordpressua.uark.edu/dist/0/285/files/2014/03/66-ArkLRev-1029-Daven.pdf> (last visited March 2, 2021).

44 *Re: Ong*, supra note 26.

45 *Re: Ong*, supra note 26.

46 *Re: Ong*, supra note 26; emphasis and underscoring supplied.

Nevertheless, it is to be reiterated that *Re: Ong* was decided in the context of a clemency petition filed by a disrobed judge, and not a disbarred lawyer. In this regard, the Court herein qualifies that the public notice requirement may be too taxing of a requisite, at least insofar as disbarred lawyers are concerned. After all, the Court should discern that the infractions of disbarred lawyers are not exactly on the same level as that of disrobed judges who are more stringently bound – and hence, held to a different standard – as public servants by virtue of the Constitution's public accountability framework. Thus, the public magnification of the disbarred lawyer's previous faults, as well as any expenses attendant hereto, may not be reasonably commensurate to the mercy applied for.

In the same vein, notice to the private offended party may be impractical due to the fact that past infractions may have been committed so many years ago; perhaps, due to the passage of time, it may be even impossible to trace the address of the said party and thus, render the notice requirement infeasible.

Finally, while reception of evidence by a fact-finding commission may be desirable as held in ***Re: Ong***, it would render tedious – due to logistical reasons – the clemency procedure, at least insofar as it concerns greater the population of lawyers all over this jurisdiction. Besides, as mentioned, the substantive import of a disbarred lawyer's faults should not be equated to an erring public officer. Hence, what remains pertinent is that the practice of resolving clemency petitions filed by disbarred lawyers be grounded on facts established by some fact-finding investigation. Accordingly, rather than requiring the reception of evidence as in a full-blown trial, a petition for reinstatement, which demonstrates *prima facie* merit upon preliminary evaluation of the Court, should instead, be referred 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 in and evidence attached to the clemency petition**. The said office should then submit its report on its fact-finding to the Court for its ultimate disposition on the clemency plea filed by the disbarred lawyer.

To note, *Re: Ong* also provides for a **five (5)-year minimum period before "dismissal or disbarment [can] be the subject of any kind of clemency,"** *viz.*:

> Generally, **unless for extraordinary reasons**, dismissal or disbarment cannot be the subject of any kind of clemency in less than **five years**.[47] (Emphases and underscoring supplied)

To be sure, the underlying impetus of establishing a **default uniform period** is to curtail the broadly subjective process of determining the

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[47] *Re: Ong*, supra note 26.

appropriate period within which genuine remorse and reformation are perceived to have been attained. Conceptually, the five (5)-year requirement[48] is a reasonable estimation by the Court of the minimum period necessary for the petitioner's reflection of his or her past transgressions for which he or she was meted the ultimate penalty of disbarment. For clarity, the period is reckoned from the time the Court's resolution is promulgated since it is only by then that the lawyer becomes duly informed of his or her administrative liability and hence, would be able to begin atoning for his or her malpractice.

This uniform period also addresses the apparent inconsistency of the *Re: Diaz* guidelines which, *on the one hand*, requires "[s]ufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation"[49] (second guideline), while *on the other hand*, mandates that "[t]he age of the person asking for clemency must show that [he or she] still has productive years ahead of [him or her] that can be put to good use by giving [him or her] a chance to redeem [himself or herself]"[50] (third guideline). Indeed, time may be perceived as a single continuum and to require sufficient time to first lapse but at the same time demand that productive years still remain, may be contradictory in concept and purpose.

Nonetheless, this period requirement should not cause the denial of petitions already filed in the interest of fairness, since it is only now that the abstract ideal of "sufficient" time to reform has been concretized into a uniform eligibility period.

Noticeably, *Re: Ong* allows a reinstatement application to be filed before the five (5)-year minimum period for "extraordinary reasons."[51] It should, however, be clarified that this phrase should only pertain to **the most compelling reasons based on extraordinary circumstances**, else the Court reverts back to the subjectivity problem tainting the *Re: Diaz* guidelines. Pressing and serious health concerns, as well as highly exemplary service to society post-disbarment, provided that they are supported by evidence, may be taken into account by the Court, among others.

Nonetheless, before granting such leniency in terms of permitting petitions filed earlier, the Court must first counterbalance the plea of clemency with the nature and gravity of the offense for which a disbarred lawyer was removed. The rationale is that **extraordinary circumstances which would allow the filing of a petition for clemency within a shorter period may be offset by the severity of the acts and/or omissions which**

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48 This same five (5)-year period is also applied under the American Bar Association Model Rules for Lawyer Disciplinary Enforcement (see <https://www.americanbar.org/groups/professional_responsibility/resources/lawyer_ethics_regulation/model_rules_for_lawyer_disciplinary_enforcement/rule_25/> [last visited March 2, 2021]).

49 *Re: Diaz*, supra note 27, at 5.

50 *Re: Diaz*, supra note 27, at 6.

51 *Re: Ong*, supra note 26.

led to the lawyer's disbarment. *In this respect, the gravity of the offense is effectively taken into account not with respect to granting clemency (which is an act of mercy in itself), but rather, to the period in which one can begin seeking reinstatement.* The period aims to assure the Court that a disbarred lawyer, during such length of time, has contemplated the consequences of his or her misconduct and has sought ways to rehabilitate and reform. Hence, the graver the act, the more time should one spend in reformation, and in turn, the less lenient the Court should be in permitting exceptions to the minimum five (5)-year period.

At this juncture, it should be noted that anent the requirement to prove remorse or reformation, the Court, in *Re: Ong*, has further stated that "[r]emorse and reformation must reflect how the [petitioner] has redeemed their moral aptitude by clearly understanding the gravity and consequences of their conduct."[52] Thus, "**[t]here is an element of reconciliation in clemencies.**"[53] Accordingly, the Court, in *Re: Ong*, added another new guideline, holding that, as a mandatory requirement for clemency, there must be an attempt at reconciliation depending on whether or not a private offended party is involved:

> When there is a private offended party, there should be an attempt at reconciliation where **the offender offers an apology and, in turn, the wronged gives a full and written forgiveness. Only after this reconciliation can this Court acquire jurisdiction on the plea for clemency. Where there is no private offended party, the plea for clemency must contain the public apology**.[54] (Emphasis supplied)

It should be clarified, however, that the "full and written forgiveness" by the "wronged [private offended party]" may not always be obtainable by the petitioner despite earnest efforts at reconciliation. The Court cannot require proof of forgiveness at all times since forgiveness is essentially an act of free will by the aggrieved party, of which the one seeking forgiveness has no real control over. Therefore, what should instead be required is that the petitioner genuinely attempted to reconcile in good faith with the wronged party in the case for which he or she was disbarred (if any), or if such is not possible, he or she must explain with sufficient reasons as to why such attempt at reconciliation could not be made. Overall, the Court is bound to examine the evidence in its totality, including any proof of apology and reconciliation submitted by the petitioner, provided that the same is verified by the OBC's (or such other fact-finding body designated by the Court) investigation. Note that, same as the minimum five (5)-year period, this requirement should be applied prospectively in the interest of fairness.

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52 *Re: Ong*, supra note 26.
53 Id.; emphasis supplied.
54 Id.

Finally, it is apt to point out that *Re: Ong* qualified that the new clemency guidelines should be "prospective" in application. However, after careful consideration, ***the Court now holds that, with the exception of the minimum five (5)-year period before seeking clemency and the requirement of good faith reconciliation as above-described, 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***. After all, there is no vested right that can be claimed when it comes to pleas of clemency, which, by their very nature, pray for an essentially discretionary act of mercy by the Court and more significantly, an act which is imbued with great public interest. Nothing precludes the Court – pursuant to its sole constitutional authority to regulate the practice of law – from applying new clemency guidelines and procedures to pending cases. For indeed the Court maintains the duty to ensure that the inherent defects of the past clemency process be immediately rectified since the same involves the reinstatement of a disbarred lawyer back to the noble ranks of the legal profession, which in turn affects 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.

   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.

V. Application

To recall, herein petitioner committed multiple administrative infractions all involving serious breaches of his fiduciary duties to his clients.

In **1982**, petitioner was tasked by his client to sell parcels of land but after doing so, repeatedly failed to remit to his client the proceeds of the sale. Thereafter, he even committed various machinations to avoid the remittance. This was the subject matter in **A.C. No. 5054** for which he was indefinitely suspended from the practice of law on **May 29, 2002**.

In **1992**, petitioner received various amounts of money from his client for designated purposes. However, he deposited the money to his personal account without his client's consent, and failed to return the money despite several demands. This was the subject matter in **A.C. No. 8253**, which resulted in his disbarment on **March 15, 2011**.

Finally, from the period of **2000 to 2003**, petitioner again received professional fees from a client but failed to provide the legal service as agreed upon. Also, petitioner did not reimburse the fees received from his client despite numerous demands. Furthermore, petitioner failed to disclose to his client that he was already suspended in 2002, thereby engaging in unauthorized practice of law until 2003. For his violations, he was again meted with the penalty of disbarment in **A.C. No. 6484** on **June 16, 2015**.

On March 25, 2019 – or just three (3) years, nine (9) months, and nine (9) days from the most recent Decision against him in **A.C. No. 6484** – petitioner filed the subject petition; and seventeen (17) days later, on April 11, 2019, filed the supplemental petition.

As indicated by the facts, the subject petitions were filed less than five (5) years from the time the last administrative resolution in **A.C. No. 6484** was handed down against him. However, as stated in the new guidelines, "[f]or 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."

After preliminary evaluation, the subject petitions, however, fail to show any *prima facie* merit.

At the outset, it is observed that the testimonials/certifications attached to the subject petitions were all one-pagers that are similarly patterned and worded. These documents may be grouped based on their contents, *viz.*:[55]

ANNEX	CONTENTS
G	The undersigned is the _____. (or paragraph of similar import)

[55] *Rollo* (A.C. No. 5054), pp. 238-256, 269, and 272; and *rollo* (A.C. No. 6484), pp. 260-278, 284, and 287.

I J K L M N P V	I have known personally and officially [petitioner] as a competent and skilled law practitioner x x x. (or paragraph/s of similar import) Having known well [petitioner], I strongly recommend and attest to his competence and fitness to be reinstated as a member of the Philippine Bar. His reinstatement will result not only to his personal aggrandizement but also to continue providing efficient legal services which the public well deserve. Most importantly, it will mitigate the stain and trauma on his record and that of his family. (or paragraph of similar import) In view of the foregoing, the undersigned strongly recommends the grant of Judicial Clemency and Compassion to [petitioner]. (or paragraph of similar import) Thank you.
Q R	This is to certify that during my term as a member of the *Sangguinang Bayan* of the _____, [petitioner] volunteered his services by providing assistance of legal importance in the conduct of evaluation of pertinent local legislative measures including referrals from the Office of the Mayor passing through my Committee as Chairman of the Committee on Laws. (or paragraph of similar import) The foregoing continuing civic and social services of [petitioner] were given free of charge. (or paragraph of similar import) Issued upon request of the interested party for any legal purposes it may serve.
U U-1 U-2 U-3	This is to certify that [petitioner], a resident of No. 7 Orendain St., Tagas, Daraga, Albay, has volunteered his services covering the period from the year 2010 to the present in conducting periodic informal lectures and seminars to the Barangay Officials and Members of the Lupon in our barangay relative to barangay good governance, correct procedures in conducting barangay sessions observing proper parliamentary rules, assisting the Barangay Councils in preparing Barangay Ordinance/Resolutions addressing the needs of the barangay constituents, proper and correct procedure in conducting mediation conferences relative to the complaints among barangay residents and the importance of the Arbitration Award if the disputants have arrived into amicable settlement and other voluntary works involving *Bayanihan* Projects in the barangay, and this active and social works and services of [petitioner], is being rendered without any monetarial consideration but purely on a voluntary and *pro bono* services.
H O T W Y	The undersigned is _____. (or paragraph of similar import) I have known personally and officially [petitioner] x x x. (or paragraph/s of similar import) I have also known that after [petitioner] was stripped off his license to practice law for several years, he still managed to continue extending assistance to others in whatever means

	possible thus proving his strength of character and positive moral fiber, and such genuine concern for civic duties and public services deserves his Judicial Clemency and Compassion and reinstatement as member of the Philippine Bar. (or paragraph of similar import) In view of the foregoing, the undersigned strongly recommends that [petitioner] be granted Judicial Clemency and Compassion by the Honorable Supreme Court for him to be reinstated as a member of good standing in the Philippine Bar. (or paragraph of similar import)

The uncanny similarities between the testimonials/certifications create 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.

Complementarily, it is further observed that none of these testimonials/certifications were executed under oath and hence, render doubtful, on their face, the genuineness of the statements or at the very least, the sincerity of those who signed the same.

Even more, neither was there any corroborative evidence included in the petition to show that the alleged socio-civic activities mentioned in the petition were indeed conducted and if so, how many times were they conducted, including their details and scope.

At any rate, it is discerned that petitioner committed multiple serious breaches of his fiduciary duties to different clients, demonstrating his great propensity in this respect. This resulted into the imposition of the most drastic penalties of indefinite suspension in A.C. No. 5054, disbarment in A.C. No. 8253, and another disbarment in A.C. No. 6484. In fact, despite having been indefinitely suspended in A.C. No. 5054 on May 29, 2002, he continued practicing law from the years 2002 to 2003. Worse, aside from his unauthorized practice of law, he concealed the fact of his indefinite suspension from his client in A.C. 6484 and furthermore, failed to file the action for recovery as agreed upon resulting into the said client's prejudice. To note, as found in the Decision of A.C. No. 6484, it was only three (3) years later from the time of petitioner's engagement that the complainant in said case learned that no such action was ever filed by him. Thus, in view of petitioner's numerous infractions, the Court does not believe that "[s]ufficient time [has] lapsed from the imposition of the penalty to ensure a period of reformation,"[56] as already required in *Re: Diaz.*

All told, since the subject petitions fail to show *prima facie* merit based on the foregoing observations, and likewise, considering the

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[56] *Re: Diaz*, supra note 27, at 5.

multiplicity of petitioner's infractions which all constitute serious breaches of his fiduciary duties to his past clients, the Court denies the subject petitions filed in A.C. Nos. 5054 and 6484. This is consistent with the Court's earlier denial of the same subject petitions in A.C. No. 8253.

WHEREFORE, the Petition for Judicial Clemency and Compassion dated March 21, 2019 and the Supplemental Petition for Judicial Clemency and Compassion dated April 5, 2019 filed in A.C. Nos. 5054 and 6484 are hereby **DENIED**.

SO ORDERED.

ESTELA M. PERLAS-BERNABE
Senior Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice

MARVIC M.V.F. LEONEN
Associate Justice

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

ALEXANDER G. GESMUNDO
Associate Justice

RAMON PAUL L. HERNANDO
Associate Justice

ROSMARI D. CARANDANG
Associate Justice

AMY C. LAZARO-JAVIER
Associate Justice

HENRI JEAN PAUL B. INTING
Associate Justice

RODIL V. ZALAMEDA
Associate Justice

MARIO V. LOPEZ
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EDGARDO L. DELOS SANTOS
Associate Justice

SAMUEL H. GAERLAN
Associate Justice

RICARDO R. ROSARIO
Associate Justice

JHOSEP Y. LOPEZ
Associate Justice