

<sup>21</sup>Dissenting opinion of Mr. Justice Makalintal in the Palisoc case, supra.

<sup>22</sup>Jarencio, p. 87.

<sup>23</sup>Sumption, p. 81.

<sup>24</sup>35 SCRA 160

## THE FREE LEGAL ASSISTANCE OFFICE AS A MEANS OF SOCIAL JUSTICE

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### I. INTRODUCTION

One of the rights zealously safeguarded by our constitution is the right to counsel. This constitutional right has been interpreted by jurisprudence to apply only to criminal cases.<sup>1</sup> It seems that the law gives the accused in a criminal case a sort of special treatment considering the fact that he may be deprived not only of liberty but even of his precious life if proven guilty beyond reasonable doubt of the crime charged.

It is submitted however, that the aid of a counsel is essential not only in a criminal proceeding but in all litigations, civil or criminal. What has been said is also true when it comes to labor cases. An employee might have a meritorious claim against his employer but his legal aspirations would be in vain if he would not be represented by a counsel.

But the question comes up – “How could an employee avail the services of a prestigious law firm or even that of a private practitioner when the truth of the matter is that he has no sufficient funds to support his family with the basic necessities of life?” In such a situation, it would only be normal and logical on the part of the employee to set aside his labor case against his employer and for him to work first for the food, clothing, and shelter of his family.

To remedy such an unjust situation, the President/Prime Minister of the Republic deemed it necessary to create by virtue of a presidential decree the FREE LEGAL ASSISTANCE OFFICE (FLAO) in the Ministry of Labor and Employment the main purpose of which is to provide free legal assistance to indigent workers and employers.

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\*At present, works with the FLAO

## CREATION OF THE FLAO

The presidential decree which created the Free Legal Assistance Office was Presidential Decree No. 1366. The decree provides that:

There is thereby created in the Ministry of Labor a Free Legal Assistance Office, hereinafter referred to as the "Office" which shall be under the direct supervision and control of the Minister of Labor and shall be headed by an Executive Director assisted by a Deputy Executive Director. The Executive Director and the Deputy Executive Director shall be members of the Philippine Bar and shall have at least two years experience in labor relations.

Under the Decree, the Office is enjoined to render free legal assistance not only to indigent workers but for indigent employers as well. This statement is supported by Section 3(c) of the decree which requires the Office to "perform primarily policy and program development and advisory functions for the Ministry of Labor in the administration and enforcement of laws relating to extension of free legal assistance to indigent workers and employers." Besides, Section 4 of the same decree further provides that

The duly appointed or designated Free Legal Assistance Officers are authorized to appear in behalf of indigent workers and employers, as the case maybe, before the National Labor Relations Commission, any Labor Arbiter or Administrative bodies of the Ministry of Labor including the Office of the Minister of Labor and that of the Office of the President.

Question: Is a FLAO Officer permitted by the decree to appear for and in behalf of an indigent employer against an employee? It is submitted that the answer is no. The main purpose of P.D. 1366 is to provide free legal assistance

to indigent workers and in so far as indigent employers are concerned, at most what the FLAO Officer could do is to advise and enlighten them regarding their rights and obligations under labor laws and other social legislations. In fact, the Rules and Regulations Implementing P.D. 1366 defines an indigent employer as one

Who cannot afford the services of counsel and who seek advice on latest issuances on labor laws, rules and policies<sup>3</sup>

Indeed, there has never been a time in the history of the Office where it handled a case for and in behalf of an employer against an employee.

One more point which is worthy of consideration is Section 5 of P.D. 1391 which provides that

Appeals from the NLRC to the Minister of Labor under the present set up is hereby eliminated but the President of the Philippines may continue to exercise his powers under P.D. No. 442 as amended.

This only means that a FLAO Officer, in the prosecution of a labor case for and in behalf of an employee, could no longer appeal decisions of the NLRC to the Minister of Labor, and in so far as the Office of the President is concerned, it would be discretionary on the part of the President whether or not he would assume jurisdiction over any cases which he considers national interest cases. In case the President decides to assume jurisdiction, a FLAO Officer can appear for and in behalf of the indigent worker. The latter refers to

Any person who has no visible means of support; or those whose income is insufficient for the subsistence of his family, taking into account the number of his dependents; or who does not own any real property listed for taxation purposes in his name as indicated in the Affidavit of Pauper Litigant.<sup>4</sup>

## FLAO OFFICERS

Section 4 of the Rules and Regulations Implementing P.D. 1366 provides for the minimum qualifications of FLAO Officers:

At least underbar graduates, senior and junior law students from reputable law schools in the country who have passed Labor Laws I and certified by their respective law deans to belong to the first top 10% of their class with a general weighted average of at least 80% may be considered for employment in the Office and its regional divisions.

"Except for FLAO employees with regular items, Officers shall initially be hired for a period of at least three (3) months on a casual or contractual basis and shall report everyday from Monday to Friday for at least four (4) hours."<sup>5</sup>

It shall be the duty of every officer to:

- a. Answer queries on labor relations, labor standards, department policies, rules and regulations, presidential decrees and other related issuances;
- b. Interview workers and determine the merit of their claims;
- c. Prepare and file complaints and allied pleadings with appropriate agency;
- d. Appear in behalf of workers before administrative bodies of the Ministry of Labor, including the Office of the Minister of Labor, and even that of the President/Prime Minister;
- e. Accomplish and submit monthly report forms indicating therein the status of cases handled and the problems that may have arisen thereof;
- f. Prepare a summary of all settled cases; and
- g. Perform such other functions which the Executive Director may require from time to time.<sup>6</sup>

The participating law colleges in which the officers are enrolled are given latitude in granting credits such as part of Practice Court, Trial Technique or YCAP in consideration for the services rendered pursuant to guidelines issued by the Ministry of Education and Culture. In this connection, the Office is required to report to the respective deans of law schools the accomplishments of every officer for accreditation in appropriate subjects.<sup>7</sup>

Aside from the monthly pay of ₱550 and ₱50 travelling allowance, a FLAO Officer may be considered for permanent employment in the Ministry by the Minister of Labor upon recommendation of the Executive Director after passing the Bar Examinations and after evaluation of his performance.<sup>8</sup> This is of course not to mention the valuable experience which the Officer will get on the job and that sense of fulfillment which he would feel after serving indigent workers. These are things which he could not learn within the four walls of the law school. In fact, it has been pointed out that the free legal assistance program would be beneficial not only to indigent workers but to law students as well since it will expose them to actual court practice and is in line with legal internship long advocated by the Ministry of Education and Culture.

## FLAO STANDARD OPERATING PROCEDURE

For information and guidance of all concerned, specifically indigent workers and employers as well as law students who might have wish to join the FLAO, this writer deems it necessary to include in this article the FLAO SOP<sup>9</sup> both for Original and Pending cases. This would lessen if not eliminate any sort of confusion which might arise as to when and how an indigent worker could avail of the services of the FLAO.

### ORIGINAL CASES

Section 1. Registration of Clients – Any FLAO Officer assigned as the Officer of the Day shall initially register a client who desires to avail of free legal services and asks him to fill up a request slip.

Section 2. Affidavit of Indigency – The client will then be issued a registration slip and will be required to execute an affidavit of indigency. This is a sworn statement prepared by the client or by an officer in behalf of the former describing and stating the financial inability of the client to prosecute his case.

Section 3. Assignment of Clients – The Supervising FLAO Officer shall assign the client to the FLAO Officer who conducts an interview for the purpose of determining whether his case is meritorious or not.

Section 4. Complaint – In case there is a prima facie cause of action, the Officer prepares the necessary complaint and accompanies the client to the Docket Section of the Regional Office where said complaint is filed.

Section 5. Notice of Hearing – The FLAO Officer shall advise the client to inform him immediately upon receipt of the Notice of Hearing.

Section 6. Editing and Signing of Pleadings – The Executive Director shall edit drafts of position papers, motions, petitions, appeals and other allied pleadings prepared by a FLAO Officer in the course of the hearing and sign the same when finalized.

Section 7. FLAO Seal – All position papers, motions, petitions, appeals and allied pleadings filed shall be stamped with the FLAO Seal; otherwise, it shall not be considered to have emanated from FLAO.

Section 8. Legal Advices and Queries – The FLAO Executive Director Supervising FLAO Officer and FLAO Officers shall give legal advices and answer queries directed to the Office.

Section 9. Cases Outside FLAO's Jurisdiction – Complaints for support, non-remittance of SSS premiums, physical injuries, breach of contract, recovery of debt, estafa and those which are not cognizable by the FLAO are referred by the FLAO Executive Director to appropriate agencies by means of a Referral Slip devised for the purpose.

## PENDING CASES

Section 1. Registration of Client – The Officer of the Day shall register the client and file the referral slip in the Central File maintained by the Office.

Section 2. Assignment of Client – The Supervising FLAO Officer shall assign the client to an Officer who at this stage may be required to:

- a. Act as counsel in his behalf on a date and time indicated in the Notice of Hearing or intimated by the client himself before appropriate bodies;
- b. Prepare immediately drafts of position papers, affidavits, motions and related pleadings;
- c. Verify the status of cases, decisions and expedite issuance of Writs of Execution.

## JUSTIFICATION OF THE FLAO

Section 6 of Article 2 of the New Constitution provides that

The state shall promote social justice to ensure the dignity, welfare, and security of all the people. Towards this end, the State shall regulate the acquisition, ownership, use, enjoyment, and disposition of private property, and equitably diffuse property ownership and profits.

As Fr. Joaquin G. Bernas puts it, Social Justice, in the sense it is used in the Constitution, simply means the equalization of economic, political, and social opportunities with special emphasis on the duty of the state to tilt the balance of social forces by favoring the disadvantaged in life. In the language of the 1935 Convention, it means justice for the common *tao*, in the shibboleth of the 1973 Convention; Those who have less in life must have more in law.<sup>10</sup>

To implement this provision on social justice, Section 9 of the same article provides that

The state shall afford protection to labor promote full employment and equality in employment, ensure equal work opportunities regardless of sex, race, or creed, and regulate the relations between workers and employers. The state shall assure the rights of workers to self organization, collective bargaining, security of tenure, and just and humane conditions of work. The state may provide for compulsory arbitration.

Considering the above-quoted constitutional provisions, what better implementation of social justice and protection to labor can the state provide other than that of making available to every indigent worker and employer free legal assistance? Indeed, rights granted to the workers would be meaningless unless they are asserted and protected within the bounds of law and justice.

To my mind, this concept of social justice which includes protection to labor, is best exemplified and concretized with the timely establishment of the Free Legal Assistance Office in the Ministry of Labor and Employment.

According to the position paper of the FLAO, the rationale behind its creation revolves on the following issues:

First of all, delays in the disposition of labor cases will continue to be a perennial problem in the ministry if there would be no office to cater the legal needs of the indigents in terms of legal services in view of the indigents' inability to afford the sky-rocketing fees of counsel.

Secondly, since the clients are already within the periphery of the Ministry, the proximity between the clients and the ministry becomes a major consideration in providing a built-in filler (FLAO) in terms of legal assistance extremely needed by the indigents. It becomes therefore imperative that necessary legal services be extended and FLAO fills this vacuum.

Thirdly, considering that the FLAO is under the umbrella of the Ministry, it becomes logical that the office and its staff would be exposed to the latest policies, trends, and novel labor legislations which would contribute tremendously to their expertise. Hence, the FLAO Officers would be in a best position to handle labor cases than those counsels outside the ministry. They would be more competent to argue, discuss, and defend their clients' interests having no drawbacks in terms of exposure to the latest labor legislations, policies, and programs.

Lastly, since the conduct of labor cases is not as technical and legalistic as in other cases, in view of the fact that it is not bound by the technical rules of procedure, the ministry has initially tapped the services of underbar graduates, senior and junior law students to appear for and in behalf of indigent clients. While the FLAO caters the necessary legal services, this is maintained with the least resources and expense to the government without sacrificing effectiveness.

Foregoing, rightfully considered, there is no denying that the creation of the Free Legal Assistance Office is amply justified as an effective means of social justice. Let it be!

## FOOTNOTES

- <sup>1</sup>Chua Gan v. Insular Collector of Customs 59 Phil. 523
- <sup>2</sup>Section 1 P.D. 1366
- <sup>3</sup>Section 5 (6) Rules and Regulations Implementing P.D. 1366 Rule 1
- <sup>4</sup>Ibid, section 5 (5)
- <sup>5</sup>Ibid, Rule II Section 4
- <sup>6</sup>Ibid, Section 5
- <sup>7</sup>Ibid, Section 9
- <sup>8</sup>Ibid, Section 10
- <sup>9</sup>The FLAO SOP both for Original and Pending cases has been introduced by the incumbent Executive Director Attorney Mila R. Taruc.
- <sup>10</sup>The 1973 Philippine Constitution A Reviewer-Primer Joaquin G. Bernas S.J. p. 15

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2. P.D. 1391
3. Rules and Regulations Implementing P.D. 1366
4. Position Paper of the FLAO
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6. The New Labor Code as Amended