

**The Public Attorney's Office:
Philippine Government's Principal
Legal Aid Office Fortified By a New Law**

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March 23, 2007 is an auspicious date for the Public Attorney's Office (PAO), the Philippine government's principal legal aid office. This marked the end of the three-decade long quest for independence of the PAO.

On this day, Her Excellency President Gloria Macapagal-Arroyo signed the PAO bill which became Republic Act No. 9406, titled "*An Act Reorganizing And Strengthening the Public Attorney's Office (PAO), Amending For The Purpose Pertinent Provisions of Executive Order No. 292, Otherwise Known As The "Administrative Code of 1897", As Amended, Granting Special Allowance To PAO Officials and Lawyers, And Providing Funds Therefore.*" The signing of its Implementing Rules and Regulations subsequently followed on July 14, 2009.

SEC. 2 of the PAO Law states:

"Xxx Xxx Xxx

"The PAO shall be an independent and autonomous office, but attached to the Department of Justice xxx for purposes of policy and program coordination."

Among the highlights of the PAO Law are the following, to wit: **(1)** The Chief Public Attorney, Deputy Chief Public Attorneys and Regional Public Attorneys shall not be removed or suspended, except for cause provided by law; **(2)** The clients of the PAO are exempted from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies; **(3)** The PAO is exempted from payment of charges on postage stamps and mail matters; **(4)** Public Attorney's positions at the ratio of one public attorney to an organized court sala; **(5)** PAO lawyers have general authority to administer oaths in connection with the performance of duty. No need to apply before the courts for authority as notary public; **(6)** The Chief Public Attorney, the Deputy Chief Public Attorneys, the Regional Public Attorneys, the Provincial, City and Municipal District Public Attorneys, other PAO lawyers and officials who have direct supervision over PAO lawyers shall be granted special allowances not exceeding 100% of the basic salary of PAO officials and lawyers.

ILAF 2009

With the PAO's new status in the light of the recently signed RA 9406, the **1,048** public attorneys and **800** support staff have a renewed vigor in carrying out the PAO's mandate.

FOR THE POOR AND "OTHER PEOPLE"

In giving free legal services, the PAO applies two important criteria: *firstly*, the client must be indigent; and *secondly*, the case must be meritorious.

Taking into consideration the PAO Memorandum Circular No. 18, s. 2002, as amended, and subject to such further amendments by the Chief Public Attorney, the following shall be considered *indigent persons*:

- 1) Those without income;
- 2) Those residing in Metro Manila whose family income does not exceed ₱ 14,000.00 a month;
- 3) Those residing in other cities whose family income does not exceed ₱ 13,000.00 a month;
- 4) Those residing in all other places whose family income do not exceed ₱ 12,000.00 a month.

The following are proofs of indigency:

- 1) Latest Income Tax Return;
- 2) Certificate of Indigency from the Department of Social Welfare and Development (DSWD) having jurisdiction over the residence of the applicant together with an Affidavit of Indigency executed by the applicant; or
- 3) Certificate of Indigency from the Barangay Chairman having jurisdiction over the residence of the applicant.

The term "family income" refers to the gross income of the litigant and that of his or her spouse, but shall not include the income of the other members of the litigant's family (Rule 1, Section 2(b), Implementing Rules and Regulations of R.A. 9406).

Ownership of land shall not *per se* constitute a ground for disqualification of an applicant for free legal assistance (Rule 6, Section 23, Implementing Rules and Regulations of R.A. 9406).

A case shall be considered meritorious if an evaluation of the law and evidence on hand discloses that the legal services of the office will assist, or be in aid of, or in furtherance of justice, taking into consideration the interests of the party and those of society. In such cases, the PAO shall represent the party concerned. *A contrario*, a case is deemed unmeritorious if it appears, from an evaluation of the law and evidence on hand that it has no chance of success, or is intended merely to harass or injure the opposite

ILAF 2009

party, or to cause oppression or wrong. In which case, the PAO must decline to accept said case.

Provided, however, that in criminal cases the accused enjoys the constitutional presumption of innocence until the contrary is proven, hence, cases of defendants in criminal actions shall be deemed meritorious.

Provided, further, that the PAO may represent an indigent client even if the cause of action is adverse to a public officer, government office, agency, or instrumentality, as long as the case is meritorious. Caution, should, however, be exercised so that the office will not be exposed to charges of harassment, unfairness or haste in the filing of suits. (Rule VI, Section 25, Implementing Rules and Regulations of R.A. 9406)

Although the PAO's mandate is to render legal assistance to *indigent clients*, it can also provide provisional assistance even to non-indigents.

Under the following instances, Public Attorneys may provisionally accept or handle cases pending verification of the applicant's indigency and evaluation of the merit of his/her case:

1. Where a warrant for the arrest of the applicant has been issued;
2. Where a pleading has to be filed immediately to avoid adverse effects to the client;
3. Where an appeal or petition for certiorari or prohibition has to be perfected or filed immediately;
4. Where the Public Attorney is appointed by the court as counsel *de officio* to represent the defendant during the trial of the case, provided, however, that if a subsequent investigation discloses that the client is not indigent, the lawyer should respectfully request the court to release him;
5. Where the Public Attorney is designated on the spot as counsel *de officio* for the purpose only of arraignment, pre-trial or the promulgation of the decision;
6. Where a Public Attorney is called upon by proper government authorities to render assistance to other persons who are in need of legal services subject to existing laws, rules and regulations; and
7. Other similar urgent cases.

In 2002, the *Sandiganbayan*, the Philippine Court which tries graft and corruption cases, ordered the PAO to extend provisional assistance to former President Joseph Estrada when he decided not to avail anymore of the services of his private lawyers. The former president was the highest-ranking Filipino official to be prosecuted under RA 7080 (An Act Defining and Penalizing the Crime of Plunder) as amended by RA 7659.

The nine (9) court-appointed PAO lawyers which included this humble public servant as one of the lead counsels, rendered free legal representation to the former President Estrada from February to May 2002.

ILAF 2009

The Republic Act 9406 has widened the coverage of the PAO's clientele, through Section 3 of this new law. Section 3 of the PAO Law provides that "in the exigency of the service, the PAO may be called upon by proper *government authorities* to render such service to *other persons*, subject to existing laws, rules and regulations." (Emphasis supplied) The word "service" in the same provision refers to free legal representation, assistance and counseling in criminal, civil, labor, administrative and other quasi-judicial cases. The word "service" refers also to the PAO's other legal aid services like documentation (except commercial documents), mediation and conciliation, jail visitation, inquest/night court duties, and administration of oaths.

Illustrative cases for Section 3 of the PAO Law are two cases in the Philippines which the PAO has the honor to be a part of, to wit: (1) the cases of the victims of the *M/V Princess of the Stars maritime tragedy* and (2) the case of Filipino news anchor and radio commentator, Mr. Ted Failon.

On April 16, 2009 at around 5:00 a.m., I received a call from DZMM radio station and from a broadcaster/employee of the AFP-DWDD, a government radio station, to render legal assistance to Mr. Failon, to his driver and house helpers by administering their oaths in their affidavits at Camp Karingal, Quezon City.

This was in connection with the suicide case of Ms Trina Etong, the late wife of Mr. Failon, who together with five other people, were charged with obstruction of justice but was subsequently dismissed when the National Bureau of Investigation (NBI) concluded that indeed, Ms Etong committed suicide. This was the position of the Public Attorney's Office even from the very first time we met Mr. Failon at Camp Karingal and after perusing the documents relevant to his case.

Our decision to heed the call for provisional legal assistance in this particular case was well within the ambit of the law, specifically Section 3 of the Republic Act No. 9406 or the PAO Law. And the act of the public attorney who administered the oaths of Mr. Failon and his driver when they were under custodial interrogation, including the free legal assistance extended to Ms. Kaye Etong, Mr. Failon's daughter, could be considered as part and parcel of the PAO's other services classified as *immediate, temporary, provisional* and *limited* legal assistance.

Every month, our public attorneys assigned in the different district and regional offices of the PAO nationwide, submit their periodic reports on the regular and limited services they render.

Section 3 of the PAO Law has also made it possible for us to help in bringing to courts and administrative bodies the owners of the Philippine vessel *M/V Princess of the Stars* who have evaded for years their accountabilities for miserably failing in transporting both their passengers and cargoes to their respective places of destination.

Because of this provision, the Department of Justice (DOJ) was able to issue me an authority to handle the cases of all the victims of the *M/V Princess of the Stars* which

ILAF 2009

sunk on June 21, 2008. For the victims of this maritime tragedy, we have done away with the PAO indigency test, this being a mass disaster.

Section 3 of RA 9406 is not a mere provision of law. It is a felt reality in the lives of the victims and their relatives who are fighting for justice. Sixty-eight (68) civil cases have already been filed against the owners and management of the Sulpicio Lines, Inc. (SLI) in Manila and fifty (50) in Cebu City. Administrative and criminal cases have also been filed against the said respondents at the Maritime Industry Authority (MARINA) and the DOJ.

THE PAO'S FINANCIAL AFFAIRS

In 2008, the Office had an approved appropriation of **Php 767,397,000.00**. However, a total amount of **Php 751,280,245.00** only was released by the Philippine Government through the Department of Budget and Management (DBM), which included the payment of Terminal Leaves and Retirement Gratuities of 89 retired/resigned employees amounting to **Php 13,281,343.97**.

The budget allocation for the PAO every fiscal year goes largely to salaries and overhead expenses. Nonetheless, out of our budget austerity measures, in 2008, we were able to procure **125** computers, **5** monitors, and **153** printers to augment our existing **474** computers and **569** printers. Likewise, in the same year, we were able to purchase **25** copiers to supplement the **204** that we already have.

Being a free legal aid office, we do not charge any amount to our clients.

Section 6 of RA 9406 provides that the *“clients of the PAO shall be exempt from payment of docket and other fees incidental to instituting an action in court and other quasi-judicial bodies, as an original proceeding or on appeal.*

“The costs of the suit, attorney’s fees and contingent fees imposed upon the adversary of the PAO clients after a successful litigation shall be deposited in the National Treasury as trust fund and shall be disbursed for special allowances of authorized officials and lawyers of the PAO.”

GOVERNMENT-FUNDED BUT INDEPENDENT

The PAO is funded by the government but it has remained true to its mandate and has proven its independence through the years.

The brief narration below of some of the challenges faced squarely by the Public Attorneys and this Speaker (as the PAO’s Chief Public Attorney) can exemplify the independence we fought for during our pre-PAO Law years and vigilantly maintained up to this very day.

ILAF 2009

The National Prosecution Service (NPS) and the PAO both belong to the same mother department, the Department of Justice. But because of its newly acquired independence and autonomy, the PAO has now the status of being an attached agency of the DOJ. By the very nature of their jobs, the prosecutors and the public attorneys found and still find themselves at opposite camps during court battles. Their circumstances during the pre-PAO Law years caused some very awkward situations for both the prosecutors and the public attorneys.

A study headed by the Supreme Court in the Philippines observes that this situation invariably raises the question of independence of the PAO. However, it correctly notes that the “functional relationship of the NPS and the PAO has remained at professional level. So even if the prosecutors and the PAO lawyers are seen together, they do not discuss cases outside work premises”.¹ It concludes that “in a sense, professional integrity permeates them respectively”.²

Nonetheless, my position has always been for the PAO to be independent and autonomous in the exercise of its functions. Thus, I persistently lobbied for the approval of the PAO bill then at the House of Representatives and Senate of the Philippines for five (5) months, from November 2006 up to the first three (3) weeks of March 2007.

The cases of former President Estrada and that of death convicts Roberto Lara and Roderick Licayan made up the crucible where the independence, integrity, courage and competence of public attorneys were tested during our pre-PAO Law years.

In 2002, when former President Joseph Estrada dismissed his lawyers, nine (9) public attorneys, including this humble public servant as one of the lead counsels, were ordered by the *Sandiganbayan* to be among his court appointed lawyers. The group’s worthy opponents were the government prosecutors from the DOJ.

To the PAO lawyers’ appointment many have reacted harshly. “*Espiya*” (spy), mockingly they called the public attorneys. There were insinuations that we, the court appointed lawyers were not serious in defending the former chief executive, instead we were actually spying for the prosecution.

As the trial progressed, though, we were able to prove our worth as officers of the court. This Speaker argued before the court that former President Estrada had the right to be treated by a doctor of his own choice and in a hospital that he trusted. This somehow helped in clearing the air of mistrust and misgivings.

Our group was able to prove our independence when we presented government doctors as expert witnesses who gave credence to the defense team’s contention. Later however, the court-appointed PAO lawyers had to file a Motion to Withdraw as counsels

¹ 2003 *Assessment of the Public Attorney’s Office*, (Philippine Supreme Court: 2004), p. 12.

² *Ibid.*

ILAF 2009

of the former President because the presence of private counsels among the court-appointed lawyers had already freed us from the duties of handling a client, who was not an indigent.

On former death convicts Lara and Licayan, while this Speaker was pursuing her modest yet unrelenting efforts for the deferment of their executions, the DOJ gave a different view on the predicament of these former death row inmates. One senior official of the DOJ said “the executions can no longer be deferred considering that the Supreme Court already did an automatic review of the case.”³

Her Excellency President Gloria Macapagal-Arroyo was also firm in carrying out the death penalty on Lara and Licayan and other convicted kidnappers and drug lords. However, her Excellency never swayed the public attorneys from their conviction nor exerted pressure on them. Through the President’s former spokesman, Hon. Ignacio Bunye, the Macapagal-Arroyo administration said that “it is expected that the Public Attorney’s Office will seek leniency for the death convicts. That is the job of the PAO to review thoroughly the cases of the convicts it has handled before, so its action is expected.”⁴

The Macapagal-Arroyo administration respected the ruling of the Supreme Court when the latter decided to reopen the case and had it returned to the Regional Trial Court, the original court that tried the case.

The case of Lara and Licayan is important to the PAO because after the oral arguments were delivered by this public servant before the Philippine Supreme Court, proving the innocence of the then death convicts, the subsequent retrial of this case served as the floodgate for presidential reprieves, pardon of qualified and sickly 70-year-old and above inmates. It also served as the precursor of the abolition of the death penalty in our country on June 24, 2006.

HEADWAYS ON INFORMATION

DISSEMINATION & JAIL VISITATION

One of the Guide Questions for our Report for this year’s ILAF, is, “What are your organization’s innovative legal aid initiatives in the recent years?” I would say that having a free legal aid column could be one of the PAO’s answers to this.

In my Introduction for my book entitled, “*Legal Eagle’s Counsel: Solutions to Everyday Legal Problems*,” I wrote: This may not be the most ingenious means of answering their problems but this legal eagle is happy to have found a medium which could enable her to continuously serve the people who are in need of legal advice even as she roosts and rest in her nest after a hard day’s work.”

³ http://www.santegidio.org/pdm/news2004/14_01_04b.htm

⁴ Ibid.

ILAF 2009

In the same vein, we write our free legal advice columns.

Some of the legal concerns of Filipinos (and even nationals of foreign countries) are sent to us by traditional mail and e-mail, or conveyed to us by some of the popular and respected newspapers in our country. We answer their legal queries, and the ones that are coursed through Philippine newspapers, we reply to them through our free legal advice columns like “*Dear PAO*” which is published in the *Manila Times*, a respected icon in Philippine journalism and publishing industry. Likewise, we have free legal advice columns in two (2) Philippine tabloids.

Maintaining these columns is part of the PAO’s information dissemination program. We also make ourselves available to invitations for guesting as resource persons in radio programs and television shows. We believe that the tri-media are the PAO’s vital and effective bridge to people who are embroiled in legal problems whom we cannot counsel personally because of some physical and geographical barriers. We deliver our legal advice on air with the hope that along with the information that we share with the listeners/viewers we also make them feel that they are not alone in their legal battles because we, their public defenders and counsels are just here to fight for their rights.

We have broadened our reach to the public further by making our legal opinions available in the print media. From 2008 up to August 28, 2009 we were able to publish a total of **395** column articles through the three (3) daily newspapers which I already mentioned.

The intensified jail visitation program of the PAO could also be considered as an innovative legal aid initiative.

Among the clients of the PAO are inmates who are serving their sentence in Philippine jails or are confined in detention centers. For them, we have intensified our jail visitation program. Its’ scope has become wider. For our free legal services, we have included medical, dental, and optical services at no cost. We now call it the **PAO’s free legal and medical jail visitation/decongestion program**.

Our outreach program for inmates started on April 12, 2007. The PAO Legal and Medical teams were able to visit **18** jails and give legal assistance to **4,065** inmates in 2007. **Three thousand one hundred and one** of them were released that same year. Also in 2007, **5,413** ailing inmates were given free medical/dental assistance and **2,339** inmates became recipients of free reading glasses.

In **2008**, we covered **50** jails and gave legal advice to **7,285** inmates. In the **50** jails that we visited, **11,781** inmates were released. Also during the said visits, **7,940**

ILAF 2009

ailing inmates were given free medical/dental assistance and **1,415** inmates became recipients of free reading glasses.

With the advent of the PAO Law, our Office has served an increasing number of clients and winning a good number of their cases, especially for the inmates.

In 2007, we were able to assist **4,382,611** clients and handled **599,076** cases. In 2008, we were able to assist **4,839,988** clients and handled **666,676** cases. Our efforts also helped in causing the release of **86,593** inmates in 2007 and **81,966** inmates in 2008.

For this, the whole workforce of the PAO has been recognized by the Office of the President through the Presidential Management Staff (PMS). A Commendation was given to the Public Attorney's Office last year by the PMS. It commended "the PAO's endeavors in doing its duty to provide legal assistance to indigents. It also acknowledged "the PAO's efforts in the delivery of justice to the poor and powerless," which "contribute greatly to the government's mission of upholding human rights."

Remarks like these inspire us but we don't rest on our past laurels. We know that in order to maintain our good stature in public service, we have to continuously do our mandate with the same values that have made the PAO an Office that is worthy of the people's trust.

MANY ARE TREADING (NOW) ON "THE ROAD LESS TRAVELED"

Legal aid could be considered as a road less traveled. But many are treading on the path leading to the PAO nowadays. This could be due to the new PAO Law which addresses among others, our concern on fast turn-over of lawyers because of heavy workload.

Section 7 of RA 9406 provides: "*There shall be a corresponding number of public attorney's positions at the ratio of one (1) public attorney to an organized sala and the corresponding administrative and support staff.*"

With the approval of the PAO's IRR there has also been an approval by the DBM of the funding needed for the additional *plantilla* positions for lawyers and staff that is provided by the PAO Law.

Section 7 is the answer to the unfair advantage in the number of prosecutors over public attorneys which is due to the provision of P.D. No.1275, which states that "whenever there is an increase in the number of court salas, there shall be a corresponding increase in the number of assistant provincial/city fiscal positions at the ratio of two fiscals to a sala."

It is also worthy to mention that aside from handling criminal and civil cases, public attorneys are likewise mandated to handle: (1) preliminary investigation of cases

ILAF 2009

before the Office of the Public Prosecutor; (2) labor cases before the National Labor Relations Commission (NLRC); (3) administrative cases before administrative bodies like the Department of Agrarian Reform Adjudication Board (DARAB), Professional Regulations Commission (PRC), Commission on Elections (COMELEC), Bureau of Customs, etc.

Yet, the PAO managed to handle a total of **666,676** cases involving about **4,839,988** clients for the year 2008. These figures show that every public attorney handles an average of **636** cases and rendered assistance to an average of **4,614** clients for 2008.

While the practice of law is not a money making venture,⁵ when I lobbied for a strengthened PAO, I also advocated for the raise in the salary and allowances of public attorneys. One Filipino lawyer rightly noted that “although the practice of law is a profession and not a business, lawyers, like anybody else, have a life to live and the right to live decently in a way commensurate with the position of a professional in the community.”⁶

Now pursuant to RA 9406 and its Implementing Rules and Regulations, the ranks of incumbent public attorneys were upgraded to the ranks that are equivalent to their respective counterparts at the National Prosecution Service. Salary and representation and transportation allowance (RATA) differentials accruing to the said qualified public attorneys were released by the Department of Budget and Management.

Three (3) years before the approval of the PAO bill, a study about the PAO was led by the Philippine Supreme Court. In it, the authors said that “the ability of an organization to motivate its staff rests not only on monetary terms.”⁷ In consonance thereto, they noted that “apparently, in the PAO the psychic rewards of helping the poor are very strong... The PAO has also harped on its social responsibility to create a bond of idealism among its people.”⁸

Even as the workforce of the PAO savors the blessings of RA 9406, the hearts of both the public attorneys and their support staff remain in the right place.... in genuine public service which requires sacrifices without counting the cost.

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⁵ Canlas vs. CA, 164 SCRA 160

⁶ Atty. Leon L. Asa, “Attorney’s Fees and Lawyers,” *The Lawyers Review*, February 28, 2002, p. 8.

⁷ Supra, Note 1, p. 13

⁸ Ibid., p. 14