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FIRST DIVISION

[A.M. No. P-99-1287. January 26, 2001]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ATTY. MISAEL M. LADAGA, Branch Clerk of Court, Regional Trial Court, Branch 133, Makati City,** *respondent.*

SYNOPSIS

Respondent is an RTC Branch Clerk of Court who appeared as *pro bono* counsel for his cousin in a criminal case without prior permission from the Court. Hence, he was charged under Sec. 7(b)(2) of the Code of Conduct and Ethical Standards for Public Officials and Employees which prohibits civil servants from engaging in the private practice of their profession.

Sec. 35 of Rule 138 of the Revised Rules of Court also prohibits certain attorneys from engaging in the private practice of their profession. However, it should be clarified that the "private practice" of the law profession that is prohibited does not pertain to an isolated court appearance. It contemplates succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer. Here, the isolated instances when respondent appeared as *pro bono* counsel of his cousin does not constitute the "private practice" of the law profession contemplated by law. Nonetheless, respondent failed to obtain a written permission therefore from the head of the Department, which is this Court as required by Section 12, Rule XVIII of the Revised Civil Service Rules, and not the Presiding Judge of the court to which respondent is assigned, as the Judge is not the head of the department contemplated by law. And despite the fact that respondent filed leave applications corresponding to the dates he appeared in court. Respondent was reprimanded with stern warning that any repetition of the act would be dealt with more severely.

SYLLABUS

1. ADMINISTRATIVE LAW; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND

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EMPLOYEES; PROHIBITED PRIVATE PRACTICE OF LAW PROFESSION; ELUCIDATED. — Respondent is charged under Sec. 7(b)(2) of the Code of Conduct and Ethical Standards for Public Officials and Employees which prohibits civil servants from engaging in the private practice of their profession. A similar prohibition is found under Sec. 35, Rule 138 of the Revised Rules of Court which disallows certain attorneys from engaging in the private practice of their profession. . . However, it should be clarified that "private practice" of a profession, specifically the law profession in this case, which is prohibited, does not pertain to an isolated court appearance; rather, it contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer. . . [T]he isolated instances when respondent appeared as *pro bono* counsel of his cousin in Criminal Case No. 84885 does not constitute the "private practice" of the law profession contemplated by law.

2. **ID.; REVISED CIVIL SERVICE RULES; WRITTEN PERMISSION TO PRACTICE PROFESSION FROM HEAD OF DEPARTMENT, REQUIRED.** — [W]hile respondent's isolated court appearances did not amount to a private practice of law, he failed to obtain a written permission therefor from the head of the Department, which is this Court as required by Section 12, Rule XVIII of the Revised Civil Service Rules. . . WHEREFORE. . . respondent is. . . REPRIMANDED with a stern warning that any repetition of such act would be dealt with more severely.

RESOLUTION

KAPUNAN, *J.*:

In a Letter, dated August 31, 1998, respondent Atty. Misael M. Ladaga, Branch Clerk of Court of the Regional Trial Court of Makati, Branch 133, requested the Court Administrator, Justice Alfredo L. Benipayo, for authority to appear as *pro bono* counsel of his cousin, Narcisa Naldoza Ladaga, in Criminal Case No. 84885, entitled *"People vs. Narcisa Naldoza Ladaga"* for Falsification of Public Document pending before the Metropolitan

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Trial Court of Quezon City, Branch 40.[1] While respondent's letter-request was pending action, Lisa Payoyo Andres, the private complainant in Criminal Case No. 84885, sent a letter to the Court Administrator, dated September 2, 1998, requesting for a certification with regard to respondent's authority to appear as counsel for the accused in the said criminal case.[2] On September 7, 1998, the Office of the Court Administrator referred the matter to respondent for comment.[3]

In his Comment,[4] dated September 14, 1998, respondent admitted that he had appeared in Criminal Case No. 84885 without prior authorization. He reasoned out that the factual circumstances surrounding the criminal case compelled him to handle the defense of his cousin who did not have enough resources to hire the services of a counsel *de parte*; while, on the other hand, private complainant was a member of a powerful family who was out to get even with his cousin. Furthermore, he rationalized that his appearance in the criminal case did not prejudice his office nor the interest of the public since he did not take advantage of his position. In any case, his appearances in court were covered by leave applications approved by the presiding judge.

On December 8, 1998, the Court issued a Resolution denying respondent's request for authorization to appear as counsel and directing the Office of the Court Administrator to file formal charges against him for appearing in court without the required authorization from the Court.[5] On January 25, 1999, the Court Administrator filed the instant administrative complaint against respondent for violating Sec. 7(b)(2) of Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," which provides:

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[1] *Rollo*, p. 16.

[2] *Id.*, p. 10.

[3] *Id.*, p. 9.

[4] *Id.*, pp. 6-7.

[5] *Id.*, at 20.

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Sec. 7. *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

x x x x x x x x x

(b) Outside employment and other activities related thereto. — Public officials and employees during their incumbency shall not:

x x x x x x x x x

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, Provided, that such practice will not conflict or tend to conflict with their official functions;

In our Resolution, dated February 9, 1999, we required respondent to comment on the administrative complaint.

In his Comment, respondent explained that he and Ms. Ladaga are "close blood cousins" who belong to a "powerless family" from the impoverished town of Bacauag, Surigao del Norte. From childhood until he finished his law degree, Ms. Ladaga had always supported and guided him while he looked up to her as a mentor and an adviser. Because of their close relationship, Ms. Ladaga sought respondent's help and advice when she was charged in Criminal Case No. 84885 for falsification by the private complainant, Lisa Payoyo Andres, whose only purpose in filing the said criminal case was to "seek vengeance" on her cousin. He explained that his cousin's discord with Ms. Andres started when the latter's husband, SPO4 Pedro Andres, left the conjugal home to cohabit with Ms. Ladaga. During the course of their illicit affair, SPO4 Andres and Ms. Ladaga begot three (3) children. The birth certificate of their eldest child is the subject of the falsification charge against Ms. Ladaga. Respondent stated that since he is the only lawyer in their family, he felt it to be his duty to accept Ms. Ladaga's plea to be her counsel since she did not have enough funds to pay for the services of a lawyer. Respondent also pointed out that in his seven (7)

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years of untainted government service, initially with the Commission on Human Rights and now with the judiciary, he had performed his duties with honesty and integrity and that it was only in this particular case that he had been administratively charged for extending a helping hand to a close relative by giving a free legal assistance for "humanitarian purpose." He never took advantage of his position as branch clerk of court since the questioned appearances were made in the Metropolitan Trial Court of Quezon City and not in Makati where he is holding office. He stressed that during the hearings of the criminal case, he was on leave as shown by his approved leave applications attached to his comment.

In our Resolution, dated June 22, 1999, we noted respondent's comment and referred the administrative matter to the Executive Judge of the Regional Trial Court of Makati, Judge Josefina Guevarra-Salonga, for investigation, report and recommendation.

In her Report, dated September 29, 1999, Judge Salonga made the following findings and recommendation:

> There is no question that Atty. Misael Ladaga appeared as counsel for and in behalf of his cousin, Narcisa Naldoza Ladaga, an accused in Criminal Case No. 84-885 for "Falsification of Public Documents" before the METC of Quezon City. It is also denied that the appearance of said respondent in said case was without the previous permission of the Court.
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> An examination of the records shows that during the occasions that the respondent appeared as such counsel before the METC of Quezon City, he was on official leave of absence. Moreover, his Presiding Judge, Judge Napoleon Inoturan was aware of the case he was handling. That the respondent appeared as *pro bono* counsel likewise cannot be denied. His cousin-client Narcisa Ladaga herself positively declared that the respondent did not receive a single centavo from her. Helpless as she was and respondent being the only lawyer in the family, he agreed to represent her out of his compassion and high regard for her.
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> It may not be amiss to point out, this is the first time that respondent ever handled a case for a member of his family who is like a big sister to him. He appeared for free and for the purpose of settling the case amicably. Furthermore, his Presiding Judge was

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aware of his appearance as counsel for his cousin. On top of this, during all the years that he has been in government service, he has maintained his integrity and independence.

RECOMMENDATION

In the light of the foregoing, it appearing that the respondent appeared as counsel for his cousin without first securing permission from the Court, and considering that this is his first time to do it coupled with the fact that said appearance was not for a fee and was with the knowledge of his Presiding Judge, it is hereby respectfully recommended that he be REPRIMANDED with a stern warning that any repetition of such act would be dealt with more severely.[6]

We agree with the recommendation of the investigating judge.

Respondent is charged under Sec. 7(b)(2) of the Code of Conduct and Ethical Standards for Public Officials and Employees which prohibits civil servants from engaging in the private practice of their profession. A similar prohibition is found under Sec. 35, Rule 138 of the Revised Rules of Court which disallows certain attorneys from engaging in the private practice of their profession. The said section reads:

SEC. 35. *Certain attorneys not to practice.* — No judge or other official or employee of the superior courts or of the Office of the Solicitor General, shall engage in private practice as a member of the bar or give professional advise to clients.

However, it should be clarified that "private practice" of a profession, specifically the law profession in this case, which is prohibited, does not pertain to an isolated court appearance; rather, it contemplates a succession of acts of the same nature habitually or customarily holding one's self to the public as a lawyer.

In the case of *People vs. Villanueva*,[7] we explained the meaning of the term "private practice" prohibited by the said section, to wit:

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[6] *Id.*, at 57-58.

[7] 121 Phil. 894 (1965).

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We believe that the isolated appearance of City Attorney Fule did not constitute private practice, within the meaning and contemplation of the Rules. Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is frequent habitual exercise (*State vs. Cotner*, 127, p. 1, 87 Kan. 864, 42 LRA, N.S. 768). Practice of law to fall within the prohibition of statute has been interpreted as customarily or habitually holding one's self out to the public, as a lawyer and demanding payment for such services (*State vs. Bryan,* 4 S. E. 522, 98 N. C. 644, 647). The appearance as counsel on one occasion, is not conclusive as determinative of engagement in the private practice of law. The following observation of the Solicitor General is noteworthy:

> "Essentially, the word private practice of law implies that one must have presented himself to be in the active and continued practice of the legal profession and that his professional services are available to the public for a compensation, as a source of his — livelihood or in consideration of his said services."

For one thing, it has never been refuted that City Attorney Fule had been given permission by his immediate superior, the Secretary of Justice, to represent the complainant in the case at bar, who is a relative.[8]

Based on the foregoing, it is evident that the isolated instances when respondent appeared as *pro bono* counsel of his cousin in Criminal Case No. 84885 does not constitute the "private practice" of the law profession contemplated by law.

Nonetheless, while respondent's isolated court appearances did not amount to a private practice of law, he failed to obtain a written permission therefor from the head of the Department, which is this Court as required by Section 12, Rule XVIII of the Revised Civil Service Rules, thus:

Sec. 12. *No officer or employee shall engage directly in any* private business, vocation, or *profession* or be connected with any commercial, credit, agricultural, or industrial undertaking *without*

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[8] *Id.*, at 897.

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a written permission from the head of the Department: Provided, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government; *Provided, further*, That if an employee is granted permission to engage in outside activities, time so devoted outside of office hours should be fixed by the agency to the end that it will not impair in any way the efficiency of the officer or employee: *And provided, finally*, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer of the board of directors.[9]

Respondent entered his appearance and attended court proceedings on numerous occasions, *i.e.*, May 4-15, 1998, June 18, 1998, July 13, 1998 and August 5, 1998, as borne out by his own admission. It is true that he filed leave applications corresponding to the dates he appeared in court. However, he failed to obtain a prior permission from the head of the Department. The presiding judge of the court to which respondent is assigned is not the head of the Department contemplated by law.

WHEREFORE, in view of the foregoing, respondent Atty. Misael M. Ladaga is hereby *REPRIMANDED* with a stern warning that any repetition of such act would be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J. (Chairman), Puno, Pardo, and *Ynares-Santiago, JJ.*, concur.

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[9] Italics supplied.