EN BANC

[A.M. No. 25-07-56-RTC. September 30, 2025]

RE: REQUEST FOR AUTHORITY TO APPEAR AS PRIVATE COUNSEL BY ATTY. DYANN ISABEL M. AGUILAR, CLERK OF COURT V, BRANCH 32, REGIONAL TRIAL COURT [RTC], DUMAGUETE CITY, IN CIVIL CASE NO. 2012-14746

D E C I S I O N

LOPEZ, J.:

This Court resolves the letter-query[1] of Atty. Dyann Isabel M. Aguilar (Atty. Aguilar), Clerk of Court V of Branch 32, Regional Trial Court (RTC), Dumaguete City (RTC-Branch 32) addressed to the Office of the Court Administrator, where she requested to appear as the assisting private counsel with her grandfather, Atty. Wilfredo C. Martinez (Atty. Martinez), counsel-on-record and attorney-in-fact for plaintiffs in a Nullification of Settlement, Quieting of Title and Damages case, docketed as Civil Case No. 2012-14746.[2]

On February 15, 2006, Annabelle Macion-Arbas (Annabelle) and Laureano Macion-Fernando (Laureano) filed a complaint for partition and accounting against Elsa Macion-Vergara (Elsa) and Gil Vergara Jr. (Gil) at Branch 40, RTC, Dumaguete City (RTC-Branch 40), docketed as Civil Case No. 13910. The subject matter involved the estate of Calixta Ojastro-Cansilan which consisted of a 197-square meter parcel of land denominated as Lot No. 982 under Original Certificate of Title (OCT) No. 2495-A. Anabelle, Laureano, and Elsa were allegedly the only surviving heirs of Calixta.[3]

On August 5, 2008, the RTC-Branch 40 resolved the complaint by directing the partition of the property, without prejudice to the final determination of Calixta's true heirs in a special proceeding:

> **WHEREFORE**, premises considered, let there be a partition of Lot 982 covered by Original Certificate of Title No. 2495-A in favor of Laureano Macion Fernando, Annabelle Macion and Elsa Macion-Vergara in equal shares. The parties are directed to make the partition among themselves by proper instruments of conveyance subject to confirmation by this Court. Should there be no agreement, this Court shall proceed in accordance with Sections 3 to 6, Rule 69 of the 1997 Rules of Civil Procedure.
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> The parties are further ordered to mutually account for all benefits received

and reimbursements for expenses made.

SO ORDERED.[4] (Emphasis in the original)

On November 27, 2012, Atty. Martinez, Thelma Martinez-Nieves, Aletha Martinez-Saile, Merulo Domingo, Lydia D. Minoza, Hespelo C. Domingo, Jaime Domingo, Noel Domingo, Gil C. Domingo, Lourdes Ariola Cansilan, Mercedito Cansilan, Elda C. Duran, Maribel C. Tayros, and Antonieta C. Cansilan (Atty. Martinez et al.) filed the nullification complaint against Annabelle, Laureano, Elsa, and Gil (Annabelle et al.) before the RTC Branch 39, RTC, Dumaguete City (RTC-Branch 39), claiming to be the successors-in-interest of Calixta's three children (Avelina Ojastro Cansilan-Martinez, Dolores Ojastro Cansilan-Domingo, and Esteban Ojastro Cansilan).[5]

On December 21, 2012, RTC-Branch 39 *motu proprio* dismissed the nullification complaint for lack of cause of action. It also ruled that Atty. Martinez et al. are not real parties-in-interest, absent evidence of their filiation to Calixta. The RTC-Branch 39 also held that it had no authority to interfere with the rulings of a co-equal court, RTC-Branch 40.[6]

After the denial of their motion for reconsideration, Atty. Martinez et al. filed a petition for *certiorari* before the CA docketed as CA-G.R. SP No. 07588, with a prayer to remand the case for further proceedings.[7]

In a Decision, the CA dismissed the petition for being an improper remedy. It found that the RTC-Branch 40's order dismissing their motion was a final order, one that was the proper subject of an appeal. Afterward, Atty. Martinez et al. sought reconsideration but was denied.[8]

Aggrieved, Atty. Martinez et al. resorted to a petition for review on *certiorari* before the Court, arguing that the RTC-Branch 40's order was a dismissal of the complaint without prejudice. Further, they pointed out that the grounds for the complaint's dismissal do not bar the filing of a similar case. Therefore, the proper recourse for them was to file a petition for *certiorari*.[9]

In this Court's Resolution[10], We ruled in favor of Atty. Martinez et al., emphasizing that the Rules of Court is explicit that no appeal may be taken from an order dismissing an action without prejudice and thus, their recourse to file a petition for *certiorari* was proper:

> **FOR THESE REASONS**, the Petition is **GRANTED**. The Court of Appeals' Resolution dated April 30, 2013 in CA-G.R. SP No. 07588 is **REVERSED**. The case is **REMANDED** to the Regional Trial Court, Branch 40 of Dumaguete City for further proceedings on the merits with dispatch.

SO ORDERED.[11] (Emphasis in the original)

In her letter-request, Atty. Aguilar claims that the Court resolved the complaint in favor of Atty. Martinez et al. after nearly 10 years on appeal in the Resolution dated July 27, 2022.[12] Yet, she argues that the second level courts have not yet acted on the Court's directive to conduct further proceedings on the merits and with dispatch. The primary basis for Atty. Aguilar's request is that her 90-year-old grandfather, Atty. Martinez, who has difficulty in hearing, thereby necessitating her assistance.[13]

Atty. Aguilar laments that in some instances and per the authority of this Court to have administrative supervision over all court personnel, this Court has granted the request of court personnel to appear as counsel on behalf of their immediately family members provided that: (1) their representation will not conflict or tend to conflict with her official functions; (2) that they must not use official time in preparing for the case; and (3) that they file the corresponding leaves of absence on the scheduled dates of hearing and/or every time they are required to attend the case.[14]

Report and Recommendation of the Office of the Court Administrator

In its Report,[15] the Office of the Court Administrator recommended for the approval of Atty. Aguilar's request:

> It is respectfully recommended for the consideration of the Honorable Court that the request of Atty. Dyann Isabel M. Aguilar, Clerk of Court V, Branch 32, RTC, Dumaguete City, to appear as assisting counsel in Civil Case No. 2012-14746 be GRANTED, provided that: 1) her representation will not conflict or tend to conflict with her official functions; 2) she must not use official time in preparing for the case; and 3) she files the corresponding leaves of absence on the scheduled dates of hearing and/or every time she is required to attend to the case.[16]

This Court's Ruling

Preliminarily, this Court stresses the need to discuss the following applicable laws and their relevant provisions which covers lawyers in government service, whether incumbent or otherwise, and court employees: Republic Act No. 6713, as amended, or the Code of Conduct and Ethical Standards for Public Officials and the Code of Conduct for Court Personnel, along with this, the Code of Professional Responsibility and Accountability (CPRA).

In the past, the Judiciary Act of 1948 provides that Clerks of Court were previously categorized under the Department of Justice for administrative purposes, but, in the performance of their duties, they are subject to the supervision of the Judges of the

Courts to which they respectively pertain. Section 46 of the Republic Act No. 296 provides:

> SEC. 46. *Clerks and other subordinate employees of Courts of First Instance*. — Clerks, deputy clerks, assistants, and other subordinate employees of Courts of First Instance shall, for administrative purposes, belong to the Department of Justice; but in the performance of their duties[,] they shall be subject to the supervision of the Judges of the courts to which they respectively pertain.
>
> The clerks of Courts of First Instance shall be appointed by the President of the Philippines with the consent of the Commission on Appointments. No person shall be appointed clerk of court unless he is duly authorized to practice law in the Philippines: *Provided, however*, [t]hat this requirement shall not affect persons who, at the date of the approval of this Act, are holding the position of clerk of court, nor those who have previously qualified in the Civil Service examination for said position;
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> The clerk of a Court of First Instance may, by special written deputization approved by the judge, authorize any suitable person to act as his special deputy and in such capacity to perform such functions as may be specified in the authority granted.

Prior to the effectivity of the CPRA, Rule 138 of the Rules of Court states that 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 advice to clients, which include Clerks of Court:

> 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 advice to clients.

As a general rule, Section 7 of Republic Act No. 6713 provides for the prohibited acts and transactions of public officials and employees during their incumbency, which continue to apply for a period of one year after their resignation, retirement, or separation from office. This is based on the constitutional principle that public office is a public trust[17] and which also serves to remove any impropriety, real or imagined, which may occur in government transactions between a former government official or employee and his or her former colleagues, subordinates or superiors.[18]

As an exception, Section 7(b)(2) allows a public official to engage in the private practice of their profession during their incumbency when the following conditions are met: *first*, the private practice is authorized by the Constitution or by the law; and *second*, the practice will not conflict, or tend to conflict, with his or her official functions:

> SECTION 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:
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> . . . .
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> *(b) Outside employment and other activities related thereto. – Public officials and employees during their incumbency shall not:*
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> . . . .
>
> *(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*[.] (Emphasis supplied)

This was the very provision cited by Atty. Aguilar in her letter-request. In contrast, Canon III, Section 5 of the Code of Conduct for Court Personnel provides for "outside employment" that a court official or court employee may undertake in addition to their official duties:

> Outside employment may be allowed by the head of office provided it complies with all the following requirements:
>
> (a) The outside employment is not with a person or entity that practices law before the courts or conducts business with the Judiciary;
>
> (b) The outside employment can be performed outside of normal working hours and is not incompatible with the performance of the court personnel's duties and responsibilities;
>
> (c) The outside employment does not require the practice of law; Provided, however, that court personnel may render services as professor, lecturer, or resource person in law schools, review or continuing education centers or similar institutions;
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> (d) The outside employment does not require or induce the court personnel to disclose confidential information acquired while performing official duties;
>
> (e) The outside employment shall not be with the legislative or executive branch of government, unless specifically authorized by the Supreme Court. *Where a conflict of interest exists, may reasonably appear to exist, or where the outside employment reflects adversely on the integrity of the Judiciary, the court personnel shall not accept outside employment*. (Emphasis supplied)

Another point of distinction is that Section 7(b)(2) of Republic Act No. 6713 prohibits the practice of law as a practice of profession, while Canon III, Section 5 pertains to the restriction of the practice of law as outside employment. In *Cayetano v. Monsod*,[19] We defined the practice of law as any activity in and out of court that requires the application of law, legal procedure, knowledge, training and experience.[20] To engage in the practice of law is to perform acts which are characteristics of the profession, that is, to give notice or render any kind of service, requiring the use in any degree of legal knowledge or skill.

The same principles are also reflected in Canon II, Sections 28 and 29 of the CPRA:

> SECTION 28. Dignified government service. – Lawyers in government service shall observe the standard of conduct under the CPRA, the Code of Conduct and Ethical Standards for Public Officials and Employees, and other related laws and issuances in the performance of their duties.
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> Any violation of the CPRA by lawyers in government service shall be subject to disciplinary action, separate and distinct from liability under pertinent laws or rules.
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> SECTION 29. Lawyers formerly in government service. – A lawyer who has left government service shall not engage in private practice pertaining to any matter before the office where he or she used to be connected within a period of one (1) year from his or her separation from such office. Justices, judges, Clerks of Court, city, provincial, and regional prosecutors shall not appear before any court within the territorial jurisdiction where they have previously served within the same period.
>
> After leaving government service, a lawyer shall not accept an engagement which could improperly influence the outcome of the proceedings which the lawyer handled or intervened in, or over which the lawyer previously exercised authority, while in said service.

Section 22, Canon III of the same law also states:

> SECTION 21. Lawyers in government service; conflict of interest. – A lawyer currently serving in the government shall not practice law privately, unless otherwise authorized by the Constitution, the law, or applicable Civil Service rules and regulations. If allowed, private practice shall be upon the express authority of the lawyer's superior, for a stated specified purpose or engagement, and only during an approved leave of absence. However, the lawyer shall not represent an interest adverse to the government.

The concern at bar is not one of first instance and of peculiarity as this Court encountered a similar query in *In re: Silverio-Buffe*. Atty. Karen M. Silverio-Buffe (Atty. Buffe), who was previously employed as a Clerk of Court VI of Branch 81, RTC, Romblon, sought clarification from this Court on whether she was prohibited from

engaging in the private practice of law in several cases before the same branch after resigning from her position. What differs this from the instant case was when Atty. Buffe sought clarification from the Court on her authority to appear as private counsel, she already engaged in the private practice of law within the one-year period of prohibition in Section 7(b)(2) of Republic Act No. 6713 and was meted with the corresponding disciplinary action and penalties under the old Code of Professional Responsibility:

> Atty. Buffe apparently misreads the law. *As the OCAT aptly stated, she interprets Section 7(b)(2) as a blanket authority for an incumbent clerk of court to practice law. We reiterate what we have explained above, that the general rule under Section 7(b)(2) is to bar public officials and employees from the practice of their professions; it is unlawful under this general rule for Clerks of Court to practice their profession. By way of exception, they can practice their profession if the Constitution or the law allows them, but no conflict of interest must exist between their current duties and the practice of their profession. As we also mentioned above, no chance exists for lawyers in the Judiciary to practice their profession, as they are in fact expressly prohibited by Section 5, Canon 3 of the Code of Conduct for Court Personnel from doing so*. Under both the general rule and the exceptions, therefore, Atty. Buffe's basic premise is misplaced.
>
> As we discussed above, a Clerk of Court can already engage in the practice of law immediately after her separation from the service and without any period limitation that applies to other prohibitions under Section 7 of R.A. No. 6713. The Clerk of Court's limitation is that she cannot practice her profession within one year before the office where he or she used to work with. In a comparison between a resigned, retired or separated official or employee, on the one hand, and an incumbent official or employee, on the other, the former has the advantage because the limitation is only with respect to the office he or she used to work with and only for a period of one year. *The incumbent cannot practice at all, save only where specifically allowed by the Constitution and the law and only in areas where no conflict of interests exists*.[21]

Applying the foregoing and considering the attendant circumstances, We deem it proper to deny the request for authority to appear as assisting private counsel and to appear in court with her grandfather, Atty. Wilfredo C. Martinez.

Notably, Atty. Aguilar is an incumbent Clerk of Court V, stationed at RTC-Branch 32 at the time the letter-request was written.

As clarified in *In re: Silverio-Buffe*, the restriction for lawyers in the Judiciary to practice their profession is expressly prohibited.

Although Atty. Aguilar's position, as Clerk of Court, does not necessarily give her the authority to influence the outcome of legal cases or make decisions, which is reserved

for judges and justices alike, it cannot be denied that her knowledge and role is essential for the administration of justice for which she is expected to uphold the integrity and impartiality of the judiciary.

Even to appear in court as private counsel, other than the one she is stationed, does not remove the potential influence she possesses as clerk, which constrains her to remain above any conflict of interest. This is what this Court seeks to prevent, an instance of conflict of interest or any semblance thereof, in relation to her current duties as a member of the legal profession and as court personnel.

The common objective under both provisions in Republic Act No. 6713 and the Code of Conduct for Court Personnel, is to avoid any conflict of interest on the part of the employee who may wittingly or unwittingly use confidential information acquired from his employment, or use his or her familiarity with court personnel still with the previous office.[22] The CPRA, too, was intentionally crafted to prevent such a situation. If lawyers themselves are expected to exercise a level of restraint and avoid circumstances where they may be painted with impropriety in connection with the privilege of practicing law, then with greater reason should the same standard be expected of court personnel.

It does not escape the Court that Atty. Aguilar has an immediate familial relationship to Atty. Martinez. We note that the case she seeks to appear as private counsel involves the nullification of title over property from which her grandfather has a direct interest over, from which she may benefit from as a successor-in-interest.

Those serving in the Judiciary must carry the heavy burden and duty of preserving public faith in our courts and justice system by maintaining high ethical standards.[23]

While this Court sympathizes with the plight of Atty. Martinez et al., this Court reminds them that they are not prohibited or prevented from obtaining the services of another counsel, outside of Atty. Aguilar.

ACCORDINGLY, Atty. Dyann Isabel M. Aguilar's request for authority to appear as private counsel is **DENIED**.

SO ORDERED.

Leonen,[**] *Acting C.J., Hernando, Lazaro-Javier, Inting, Zalameda, Gaerlan, Rosario, Dimaampao, Marquez, Kho, Jr., Singh,* and *Villanueva, JJ.,* concur.
Gesmundo,[*] *C.J.,* on official leave.
Caguioa,[***] *J.,* on official business.

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[*] On official leave.

[**] Acting Chief Justice.

*** On official business.

[1] *Rollo*, p. 3.

[2] *Id*. at 1.

[3] *Id*. at 4.

[4] *Id*. at 4-5.

[5] *Id*. at 5.

[6] *Id*.

[7] *Id*. at 7.

[8] *Id*.

[9] *Id*.

[10] **Martinez v. Macion-Arbas, G.R No. 212692**, July 27, 2002 [Unsigned Resolution, Second Division].

[11] *Id*. at 7.

[12] *Id*. at 3.

[13] *Id*.

[14] *Id*. at 1-2.

[15] *Id*.

[16] *Id*. at 2.

[17] CONST., art. XI. sec. 1.

[18] **In re: Silverio-Buffe**, 613 Phil. 1 (2009) [Per J. Brion, *En Banc*].

[19] 278 Phil. 235 (1991) [Per J. Paras, Second Division].

[20] *Id*. at 243.

[21] **In re: Silverio-Buffe**, 613 Phil. 18-19 (2009) [Per J. Brion, *En Banc*].

[22] *Id*. at 18.

[23] **Atty. Malibago-Santos v. Francisco**, 787 Phil. 670 (2016) [Per SAJ Leonen, *En Banc*].

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