



Republic of the Philippines  
Supreme Court  
Manila

FIRST DIVISION

NOTICE

Sirs/Mesdames:

*Please take notice that the Court, First Division, issued a Resolution dated July 28, 2020 which reads as follows:*

**“A.C. No. 10730 [Formerly CBD Case No. 17-5385] – DOROTHY P. CASES, complainant, versus ATTY. MANUELITO D. DELANI, respondent.**

This is a complaint<sup>1</sup> against Atty. Manuelito D. Delani (Atty. Delani) for engaging in the private practice of law while holding the position of City Legal Officer of Surigao City.

**The Case**

Complainant Dorothy P. Cases (Dorothy) was the private complainant in Criminal Case No. 10428, entitled *People of the Philippines v. Antonio U. Cases*, in which Dorothy charged her husband, Antonio U. Cases (Antonio), with violation of Section 5(h) of Republic Act (R.A.) No. 9262.<sup>2</sup> She was also the respondent in Civil Case No. 7689, entitled *Antonio U. Cases v. Dorothy P. Cases*, involving the judicial declaration of separation of their property.<sup>3</sup> Both cases were in separate branches of the Regional Trial Court (RTC) of Surigao City.

Dorothy avers that Atty. Delani appeared as counsel for her husband in both cases, despite having been appointed to the position of City Legal Officer of Surigao City. Dorothy further alleges that Atty. Delani continues to represent her husband without any written authority submitted to the trial court allowing such practice. She

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<sup>1</sup> *Rollo*, pp. 3-5.

<sup>2</sup> *Id.* at 3, 9.

<sup>3</sup> *Id.* at 3, 7.

asserts that this is a clear violation of Canon 6 of the Code of Professional Responsibility for Lawyers, as well as Section 7(b)(2) of R.A. No. 6713,<sup>4</sup> or the Code of Conduct and Ethical Standards for Public Officials and Employees.<sup>5</sup>

Atty. Delani counters in his Comment<sup>6</sup> that since he was engaged in the private practice of law prior to his appointment as City Legal Officer of Surigao City, he had clients, including Dorothy's husband, who needed representation after he assumed office.<sup>7</sup> For this purpose, he obtained an Authority to Practice Profession from the City Mayor, allowing him to engage in the private practice of his profession for as long as it would not pose a conflict or tend to conflict with his official functions and duties to the local government.<sup>8</sup>

Atty. Delani also states that his appearances in court did not conflict with his duties as a City Legal Officer, especially since his function as the Action Officer of the City Anti-Drug Abuse Council requires him to work even on weekends.<sup>9</sup> Finally, Atty. Delani avers that he has since withdrawn his appearance as counsel for Antonio in the cases in which Dorothy is a party.

In her Reply,<sup>10</sup> Dorothy attached a certification from the RTC of Surigao City, particularly the respective branches in which her cases are pending, which states that Atty. Delani has not attached a copy of his authority to practice law. She also submitted a copy of a Motion to Quash<sup>11</sup> dated September 23, 2014, filed in connection with a criminal case for violation of Section 11 of R.A. No. 9165, signed by Atty. Delani in his capacity as the counsel for the accused in Criminal Case No. 10134, entitled *People of the Philippines v. Tanquieng*.<sup>12</sup>

Atty. Delani filed a Rejoinder,<sup>13</sup> arguing that he was not required by the court to submit a copy of his written permission to

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<sup>4</sup> AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES; approved on February 20, 1989.

<sup>5</sup> *Rollo*, p. 4.

<sup>6</sup> *Id.* at 30-33.

<sup>7</sup> *Id.* at 30.

<sup>8</sup> *Id.* at 34.

<sup>9</sup> *Id.* at 31-32.

<sup>10</sup> *Id.* at 70-72.

<sup>11</sup> *Id.* at 75-78.

<sup>12</sup> *Id.* at 75.

<sup>13</sup> *Id.* at 79-81.

engage in private practice. He further alleges that he has withdrawn as counsel for the accused in said criminal case involving dangerous drugs on October 1, 2014. To support his claim, he submitted a copy of his motion to withdraw<sup>14</sup> as counsel, and the order<sup>15</sup> of the trial court granting the same.

The Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) directed both parties to appear in a mandatory conference.<sup>16</sup> Atty. Delani, however, manifested to the IBP-CBD that he cannot attend the scheduled conference because he was designated as Acting City Administrator in Surigao City.<sup>17</sup> In lieu of his personal appearance, he submitted a Mandatory Conference Brief.<sup>18</sup>

Since both parties failed to appear in the mandatory conference, the IBP-CBD, in an Order<sup>19</sup> dated February 6, 2018, directed the parties to submit their respective verified position paper within ten days from notice.<sup>20</sup>

Dorothy complied on March 7, 2018,<sup>21</sup> again reiterating her allegations in the complaint. She also claims that Atty. Delani continues to represent his clients to date, as a result of which, he is doubly compensated – as a government employee, and his acceptance fees and attorney’s fees as a private practitioner. Her prayer is for the complaint to be resolved in a manner consistent with jurisprudence, and to find Atty. Delani “guilty of disgraceful and grave misconduct.”<sup>22</sup>

On April 11, 2018, the IBP-CBD received the position paper<sup>23</sup> of Atty. Delani. He maintains that his private practice of law does not violate Section 7(b)(2) of R.A. No. 6713, especially since he obtained a written permission from the head of his agency, namely, Surigao City Mayor Ernesto T. Matugas. Such authority was initially granted on December 2, 2013<sup>24</sup> and annually, thereafter. Attached to the

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<sup>14</sup> Id. at 82-83.

<sup>15</sup> Id. at 84. Penned by Presiding Judge Victor A. Canoy.

<sup>16</sup> Id. at 93, 100-101.

<sup>17</sup> Id. at 107-108.

<sup>18</sup> Id. at 109-111.

<sup>19</sup> Id. at 114.

<sup>20</sup> Id.

<sup>21</sup> Id. at 115-118.

<sup>22</sup> Id. at 118.

<sup>23</sup> Id. at 137-144.

<sup>24</sup> Id. at 34.

position paper are certified true copies of his Authority to Practice Law granted on December 2, 2014,<sup>25</sup> December 2, 2015,<sup>26</sup> December 2, 2016,<sup>27</sup> and December 2, 2017.<sup>28</sup>

He also argues that for purposes of representing his clients in private practice, all notices and other court processes are addressed to his private law office. His court appearances are also limited to, at most, twice a week, and they do not conflict with the functions of his office.<sup>29</sup>

### **Report and Recommendation**

In its Report and Recommendation,<sup>30</sup> the IBP-CBD Investigating Commissioner found that Atty. Delani was issued an authority to practice his profession as a lawyer. Said authority having been issued by the head of his agency, Atty. Delani did not violate the prohibition against the engagement in private practice imposed on public officers.<sup>31</sup>

The Investigating Commissioner also found that Atty. Delani did not commit acts that resulted in a conflict of interest. Neither was it established that his practice impaired his performance of the official functions of his office. He has also withdrawn his appearance as counsel for Dorothy's husband.<sup>32</sup>

Thus, the IBP-CBD Investigating Commissioner recommended to dismiss the complaint against Atty. Delani:

**WHEREFORE, PREMISES CONSIDERED,** it is recommended that the herein complaint for disbarment against respondent **ATTY. MANUELITO D. DELANI,** be **DISMISSED.**

Respectfully submitted.<sup>33</sup>

In a Resolution passed on May 28, 2019, the IBP Board of Governors resolved to adopt the findings of fact and recommendation of the Investigating Commissioner to dismiss the complaint.<sup>34</sup>

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<sup>25</sup> Id. at 145.  
<sup>26</sup> Id. at 146.  
<sup>27</sup> Id. at 147.  
<sup>28</sup> Id. at 148.  
<sup>29</sup> Id. at 140-142.  
<sup>30</sup> Id. at 155-159.  
<sup>31</sup> Id. at 157-158.  
<sup>32</sup> Id. at 158.  
<sup>33</sup> Id. at 159.  
<sup>34</sup> Id. at 153.

### The Court's Ruling

The Court adopts the findings of the IBP, with modifications.

Section 7 of R.A. No. 6713 prohibits public officials and employees from engaging in certain acts or entering into transactions. In particular, paragraph (b)(2) of said provision prohibits the engagement in the private practice of a profession. Such prohibition is grounded on the principle that public office is a public trust, and further serves to “promote the observance and the efficient use of every moment of the prescribed office hours to serve the public.”<sup>35</sup>

The prohibition admits of an exception, but only when the following conditions are present: (1) such practice is authorized by the Constitution or the law; and (2) such practice will not conflict or tend to conflict with the public official or employee's official functions.

Relatedly, Atty. Delani and the IBP-CBD Investigating Commissioner both invoked Section 136 of the 2017 Omnibus Rules on Appointments and Other Human Resource Actions as basis to support the dismissal of the complaint. However, at the time of the averments in the subject complaint, the applicable regulation was Civil Service Commission Resolution No. 99-1907,<sup>36</sup> issued on August 27, 1999. Section 18 of said resolution states:

**SEC. 18. UNLESS OTHERWISE PROVIDED BY LAW, NO OFFICER OR EMPLOYEE SHALL ENGAGE DIRECTLY OR INDIRECTLY IN ANY PRIVATE BUSINESS OR PROFESSION WITHOUT A WRITTEN PERMISSION FROM THE HEAD OF AGENCY. 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, THE TIME DEVOTED OUTSIDE OF OFFICE HOURS SHOULD BE FIXED BY THE HEAD OF THE AGENCY SO THAT IT WILL NOT IMPAIR IN ANY WAY THE EFFICIENCY OF THE OFFICER OR EMPLOYEE NOR POSE A CONFLICT OR TEND TO CONFLICT WITH THE OFFICIAL FUNCTIONS.** (Emphasis in the original omitted; emphasis supplied)

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<sup>35</sup> *Query of Atty. Karen M. Siverio-Buffe, Former Clerk of Court-Br.81, Romblon, Romblon-On the Prohibition from Engaging in The Private Practice of Law*, A.M. No. 08-6-352-RTC, August 19, 2009, 596 SCRA 378, 391, citing *Aquino-Simbulan v. Zabat*, A.M. No. P-05-1993, April 26, 2005, 457 SCRA 23, 30.

<sup>36</sup> Amendments to Civil Service Commission Memorandum Circular 40, s. 1998.

In this case, it is undisputed that Atty. Delani was issued an Authority to Practice Profession on December 2, 2013, by the head of agency, the City Mayor, subject to the condition that “[i]t would not pose a conflict or tend to conflict with his official functions and duties to the City Government.”<sup>37</sup> This authority was granted every year thereafter.<sup>38</sup> For this reason, Atty. Delani was authorized to engage in the private practice of his profession at the time he represented Dorothy’s husband.

But whether such practice will not conflict or tend to conflict with the public official or employee’s official functions, the Court finds the explanation of Atty. Delani lacking in certain respects.

Dorothy alleges that Atty. Delani entered his appearance as counsel in the following cases: (1) for her accused husband in the criminal case instituted for violation of R.A. No. 9262, or the Anti-Violence Against Women and Their Children Act; and (2) in the proceedings for the judicial declaration of separation of property likewise representing her husband. Likewise, Dorothy points out that Atty. Delani appeared as defense counsel for an accused charged with violating R.A. No. 9165, or the Comprehensive Dangerous Drugs Act of 2002, despite his designation as the Action Officer of the City Anti-Drug Abuse Council. Atty. Delani does not deny this, merely stating in his rejoinder that he has since withdrawn his appearance as counsel for the accused in said criminal case.

Parenthetically, the Local Government Code<sup>39</sup> enumerates the following functions and duties of a Legal Officer:

**SECTION 481. Qualifications, Terms, Powers and Duties. x x x**

- (b) The legal officer, the chief legal counsel of the local government unit, shall take charge of the office of legal services and shall:
  - (1) Formulate measures for the consideration of the sanggunian and provide legal assistance and support to the governor or mayor, as the case may be, in carrying out the delivery of basic services and provisions of adequate facilities as provided for under Section 17 of this Code;

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<sup>37</sup> *Rollo*, p. 34.

<sup>38</sup> *Id.* at 145-148.

<sup>39</sup> AN ACT PROVIDING FOR THE LOCAL GOVERNMENT CODE OF 1991; approved on October 10, 1991.

- (2) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same, particularly those which have to do with programs and projects related to legal services which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;
- (3) In addition to the foregoing duties and functions, the legal officer shall:
- (i) Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a party: Provided, That, in actions or proceedings where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party;
  - (ii) When required by the governor, mayor or sanggunian, draft ordinances, contracts, bonds, leases and other instruments, involving any interest of the local government unit; and provide comments and recommendations on any instruments already drawn;
  - (iii) Render his opinion in writing on any question of law when requested to do so by the governor, mayor or sanggunian;
  - (iv) Investigate or cause to be investigated any local official or employee for administrative neglect or misconduct in office, and recommend appropriate action to the governor, mayor or sanggunian, as the case may be;
  - (v) Investigate or cause to be investigated any person, firm or corporation holding any franchise or exercising any public privilege for failure to comply with any term or condition in the grant of such franchise or privilege, and recommending appropriate action to the governor, mayor or sanggunian, as the case may be;
  - (vi) When directed by the governor, mayor, or sanggunian, initiate and prosecute, in the interest of the local government unit concerned, any civil action on any bond, lease or other contract upon any breach or violation thereof; and
  - (vii) Review and submit recommendations on ordinances approved and executive orders issued by component units;

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- (3) Recommend measures to the sanggunian and advise the governor or mayor as the case may be on all other matters related to upholding the rule of law;
- (4) Be in the frontline of protecting human rights and prosecuting any violations thereof, particularly those which occur during and in the aftermath of man-made or natural disasters or calamities; and
- (5) Exercise such other powers and perform such other duties and functions as may be prescribed by law or ordinance.

It is apparent that Atty. Delani's appearance as counsel for Dorothy's husband, in either criminal and civil case, does not conflict or tend to conflict with his functions as a City Legal Officer of Surigao City. These cases do not relate, even remotely, to the duties of Atty. Delani as a public officer. However, his representation of the accused in a criminal case involving violations of R.A. No. 9165 is a different matter. Atty. Delani himself made admissions that he is the Action Officer of the City Anti-Drug Abuse Council, which oversees the local government's program against the proliferation of dangerous drugs. He also admits being part of the Barangay Anti-Drug Abuse Council, which conducts an information campaign against the use and sale of illegal drugs.<sup>40</sup>

His representation, therefore, of an accused charged with violating R.A. No. 9165 is hardly consistent with these functions. This constitutes a violation of the explicit condition in the written permission granted to him for the private practice of his profession. Thus, insofar as his appearance as counsel for said drug cases is concerned, Atty. Delani exceeded the bounds of his authority. Rule 6.02 of the Code of Professional Responsibility is relevant in this regard:

CANON 6 — THESE CANONS SHALL APPLY TO  
LAWYERS IN GOVERNMENT SERVICE IN THE  
DISCHARGE OF THEIR OFFICIAL TASKS.

x x x x

Rule 6.02 - A lawyer in government service shall not use his public position to promote or advance his private interests, **nor allow the latter to interfere with his public duties.** (Emphasis supplied)

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<sup>40</sup> Rollo, p. 32.



Notably, the authority granted to Atty. Delani does not fix the amount of time he may utilize in this pursuit. Atty. Delani admits in several of his submissions to the IBP-CBD that his appearances in court are limited to twice a week. He asserts that this does not interfere with the performance of his duties as City Legal Officer, which required him to work past regular office hours and in certain occasions, during the weekend. Atty. Delani also maintains that he has a private law office, and all court processes, issuances, and correspondences relating to his private practice are addressed to said office.

While these court appearances are presumably made during regular office hours, the complainant failed to show that the volume of work in Atty. Delani's private practice has substantially interfered with the discharge of his public functions.<sup>41</sup> Further, the complainant was unable to establish that Atty. Delani devoted much of his time to court hearings, thus impairing the performance of his official functions as City Legal Officer. There is also no showing that he used government resources to cater to his private practice. More importantly, the Court notes that Atty. Delani has already withdrawn his appearance as counsel for the cases in which Dorothy is a party, and for those involving violations of R.A. No. 9165.

All told, the Court nonetheless emphasizes that government lawyers are foremost public servants, and as such, when there is conflict involving one's private practice of profession, the discharge of a government lawyer's duties and functions must take precedence. In light of the extant circumstances of this case, the Court deems it proper to modify the findings of the IBP and admonish Atty. Delani for representing a matter that conflicts or tend to conflict with his official public duties, in violation of Rule 6.02 of the Code of Professional Responsibility.<sup>42</sup>

**WHEREFORE**, respondent Atty. Manuelito D. Delani is hereby found guilty of violating Rule 6.02 of the Code of Professional Responsibility. He is **ADMONISHED** to be more circumspect in representing cases that conflict or tend to conflict with his official public duties. He is likewise **STERNLY WARNED** that a repetition of the same or a similar act will be dealt with more severely. The other charges are hereby dismissed for lack of merit.

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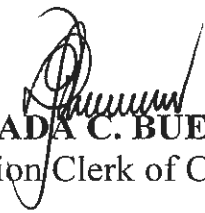
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<sup>41</sup> *Monares v. Muñoz*, A.C. No. 5582, A.C. No. 5604 & A.C. No. 5652, January 24, 2017, 815 SCRA 237.

<sup>42</sup> See *Abella v. Cruzabra*, A.C. No. 5688, June 4, 2009, 588 SCRA 218.

**SO ORDERED.”**

**By authority of the Court:**

  
**LIBRADA C. BUENA**  
Division Clerk of Court *yes*

by:

**MARIA TERESA B. SIBULO**  
Deputy Division Clerk of Court  
**100-A**

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