



Republic of the Philippines
Sandiganbayan
Quezon City

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-21-CRM-0010 & 0011
For: Violation of Sec. 3(e),
R.A. No. 3019, as amended

- versus -

NICANOR E. FAELDON, ET AL.,
Accused.

Present:

LAGOS, J., *Chairperson,*
MENDOZA-ARCEGA, and
CORPUS-MAÑALAC, *JJ.*

Promulgated:

x ----- March 07, 2024 ----- x
Genel El Gu

RESOLUTION

PER CURIAM:

For resolution is the **Motion for Leave (Re: Disqualification of Accused Faeldon's Counsel)**¹ dated February 21, 2024 filed by the prosecution on February 22, 2024 seeking the disqualification of Atty. Jelina Maree D. Magsuci, assisting counsel for accused Nicanor E. Faeldon, from appearing as counsel in these cases pursuant to Section 90(b)(2) of Republic Act No. 7160 (*Local Government Code of 1991*), which reads:

Sec. 90. *Practice of Profession.* – [x x x].

(b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during sessions hours: **Provided, That sanggunian members who are also members of the Bar shall not:**

x x x x

(2) **Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office.** (Emphasis supplied)

The prosecution alleges that Atty. Magsuci is an incumbent member of the *Sangguniang Panlungsod* of Calapan City, Oriental Mindoro after having been elected as such during the 2022 elections, and that accused

¹ Records, Vol. 7, pp. 170-174 (See also pp. 175-179, 181-183-a).

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Faeldon, as Commissioner of the Bureau of Customs (BOC), an officer of the national government, is accused of an offense committed in relation to his office in these cases.

Apart therefrom, the prosecution likewise prays that Atty. Magsuci be held liable for appearing as counsel in these cases. It furnished the Committee on Bar Discipline of the Integrated Bar of the Philippines and the Secretary of the Department of the Interior and Local Government a copy of its motion.

On February 23, 2024, Atty. Magsuci in turn filed a **Motion for Leave to File and Admit Motion to Expunge Sham Pleading**² of even date praying that the prosecution's motion be expunged from the records "[f]or being obviously false, in bad faith, contrary to reason, logic, common sense, and elementary statutory construction."³

She contends that accused Faeldon had long ceased to be the Commissioner of the BOC upon his resignation therefrom, and that the phrase "an officer of the national government" is used in Section 90(b)(2) of R.A. No. 7160 in its present tense such that, quoted *verbatim*, "the accused (at the file of filing) was (then) presently or (is) currently an officer of the national government."⁴ She argues that the underlying reason for the proscription in Section 90(b)(2) of R.A. No. 7160 is the potential conflict of interest of an officer of the national government in using the influence and resources of the public office, but when that officer is no longer an incumbent, any possible conflict of interest already ceases.

According to her, the prosecution's motion is sham for not being under oath, or that the two public prosecutors who signed the said motion — Acting Director Ma. Christina T. Marallag-Batacan and Assistant Special Prosecutor II Ryan Rey S. Quilala — "cannot affirm, under oath, as bona fide, the allegations in their sham motion, and expose themselves not just to Perjury, but to a counter-complaint for abusing processes for their patently frivolous, meritless and clearly groundless motion or action."⁵

She avers that the public prosecutors did not file a verified complaint against her before the Supreme Court or the IBP, asserting that an administrative disciplinary proceeding against a lawyer is not commenced by simply furnishing the IBP a copy of their motion.

On February 29, 2024, the prosecution filed its **Comment & Opposition**⁶ of even date praying that Atty. Magsuci's motion be denied.

² *Id.*, pp. 189-192.

³ *Id.*, p. 189.

⁴ *Id.*, p. 190.

⁵ *Id.*

⁶ *Id.*, pp. 204-213 (See also pp. 214-223).

The prosecution argues that its motion is not sham as it contains very clear allegations; that Atty. Magsuci never denies that she is an incumbent member of the *Sangguniang Panlungsod* of Calapan City, Oriental Mindoro; that there is nothing in Section 90(b)(2) of R.A. No. 7160 that requires the accused to be an incumbent official; that it is of no moment if such an accused is no longer in government service at the time the information is filed in court for an offense committed in relation to office; and that what is proscribed in Section 90(b)(2) of R.A. No. 7160 is not the potential conflict of interest of an officer of the national government in using the influence and resources of the public office, but rather the conflict of interest between the discharge of the public duties and the practice of profession of the public officers the fall under Section 90(b) of R.A. No. 7160, citing *Javellana v. DILG*.⁷ Finally, the prosecution invokes Section 28, Canon II on Propriety and Section 21, Canon III on Fidelity of the Code of Professional Responsibility and Accountability (CPRA) against Atty. Magsuci, to wit:

CANON II
Propriety

Sec. 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.

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.

x x x x

CANON III
Fidelity

Sec. 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.

On March 1, 2024, Atty. Magsuci filed a **Comment/Opposition**⁸ of even date reiterating that the prosecution's motion be expunged from the records for being sham. She maintains that *Sanggunian* members who are lawyers are allowed to practice their profession, citing *Sedano v. Bendita*⁹ and *Catu v. Rellosa*,¹⁰ and that the prosecution failed to prove its allegations that the prohibition covers her appearance in these cases, whether based on

⁷ G.R. No. 102549, August 10, 1992.

⁸ Records, Vol. 7, pp. 225-235.

⁹ A.C. No. 10611, October 5, 2020.

¹⁰ A.C. No. 5738, February 19, 2008.

the plain text of Section 90(b)(2) of R.A. No. 7160, the legislative intent, or the prevailing jurisprudence. She repeats her contention that the phrase “an officer of the national government” in the provision covers only incumbents or current holders of a public office, as it is allegedly couched in the present tense, and accused Faeldon had ceased to be connected with any public office as of September 4, 2019¹¹ and she entered her appearance in these cases on May 19, 2021.¹²

She posits that the prosecution’s motion, which, according to her, has no apparent purpose to serve but “to harass, vex, weaken the resolve and scandalize”¹³ her, violated numerous provisions of the CPRA, viz.: Section 1, 2, 6, 13, 14, 28, Canon II on Propriety and Section 7, Canon III on Fidelity of the CPRA.¹⁴

¹¹ Records, Vol. 7, p. 229.

¹² *Id.*, pp. 229-230

¹³ *Id.*, p. 232.

¹⁴ CANON II, Propriety

A lawyer shall, at all times, act with propriety and maintain the appearance of propriety in personal and professional dealings, observe honesty, respect and courtesy, and uphold the dignity of the legal profession consistent with the highest standards of ethical behavior.

Sec. 1. *Proper conduct.* — A lawyer shall not engage in unlawful, dishonest, immoral, or deceitful conduct.

Sec. 2. *Dignified conduct.* — A lawyer shall respect the law, the courts, tribunals, and other government agencies, their officials, employees, and processes, and act with courtesy, civility, fairness, and candor towards fellow members of the bar.

A lawyer shall not engage in conduct that adversely reflects on one’s fitness to practice law, nor behave in a scandalous manner, whether in public or private life, to the discredit of the legal profession.

X X X X

Sec. 6. *Harassing or threatening conduct.* — A lawyer shall not harass or threaten a fellow lawyer, the latter’s client or principal, a witness, or any official or employee of a court, tribunal, or other government agency.

X X X X

Sec. 13. *Imputation of a misconduct, impropriety, or crime without basis.* — A lawyer shall not, directly or indirectly, impute to or accuse another lawyer of a misconduct, impropriety, or a crime in the absence of factual or legal basis.

Neither shall a lawyer, directly or indirectly, file or cause to be filed, or assist in the filing of frivolous or baseless administrative, civil, or criminal complaints against another lawyer.

Sec. 14. *Remedy for grievances; insinuation of improper motive.* — A lawyer shall submit grievances against any officer of a court, tribunal, or other government agency only through the appropriate remedy and before the proper authorities.

Statements insinuating improper motive on the part of any such officer, which are not supported by substantial evidence, shall be ground for disciplinary action.

X X X X

Sec. 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.

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.

X X X X

CANON III, Fidelity

X X X X

Sec. 7. *Prohibition against frivolous suits and abuse of court processes.* — A lawyer shall not:

- (a) file or encourage the filing of any suit or proceeding not authorized by law or jurisprudence and without any evidentiary support;
- (b) unduly impede the execution of an order or judgment which is warranted; or
- (c) abuse court processes.

Finally, she accuses the prosecution of material concealment relating to the status of accused Faeldon, thus, quoted *verbatim*:

Material Concealment is clear proof of Bad Faith

XI. Careful note should be made that in their *sham* Motion, the prosecutors **purposely** hid the following:

- the date when Accused Faeldon ceased to be connected with any public office, and by which he formally severed his status as a public officer; and
- the private complainant himself affirmatively alleged, under oath, that (then Respondent) (now) Accused Faeldon, already resigned as Commissioner of the Bureau of Customs.

XII. The prosecutors concealed such material information from this Court, precisely to make it appear that Accused Faeldon, at the time of filing of their *sham* Motion, was an incumbent or an officer of the national government.

We leave it up to this Court on how to deal with such material concealment.¹⁵ (Emphasis, italics and underscoring in the original)

RULING

After a careful consideration of the facts and applicable law, the Court finds and holds that Atty. Magsuci, assisting counsel for accused Faeldon, is disqualified from appearing as counsel in these cases pursuant to Section 90(b)(2) of R.A. No. 7160.

At the outset, it must be clarified that the Court treats the prosecution's **Motion for Leave (Re: Disqualification of Accused Faeldon's Counsel)** as a *motion for disqualification* and not as a motion for leave. Apart from its title, nothing in the said motion shows that the prosecution is simply asking for leave of court to move for the disqualification of Atty. Magsuci. In fact, all the allegations therein delve only into the reasons for its primary purpose, that is, to have Atty. Magsuci disqualified from appearing in these cases.

Moreover, the rules do not require leave of court for such filing. In *Republic v. Rambuyong*,¹⁶ the involved filing was a *motion for inhibition*. There was no mention of any need for leave of court. Therein, pursuant to Section 90(b)(1) of R.A. No. 7160, the Supreme Court disqualified a lawyer who was the presiding officer of the *Sangguniang Bayan*, being then the incumbent Vice Mayor of Ipil, Zamboanga Sibugay, from appearing as counsel for a party adverse to an instrumentality of the government in a civil case.

¹⁵ Records, Vol. 7, p. 229.

¹⁶ G.R. No. 167810, October 4, 2010.

The same goes with Atty. Magsuci's **Motion for Leave to File and Admit Motion to Expunge Sham Pleading**, which is to be treated as a *motion to strike out* and not as a motion for leave. Its basis, as alleged therein — Section 13, Rule 8 of the Rules of Court — does not require leave of court for such filing.

Now, on the merits.

Section 90 of R.A. No. 7160 regulates the practice of profession of elective public officials, with particular reference to the *Sanggunian* members who are also members of the Bar:

Sec. 90. *Practice of Profession.* – (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

(b) *Sanggunian* members may practice their professions, engage in any occupation, or teach in schools except during sessions hours: **Provided, That *sanggunian* members who are also members of the Bar shall not:**

(1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;

(2) **Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office;**

(3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and

(4) Use property and personnel of the government except when the *sanggunian* member concerned is defending the interest of the government. (Emphasis supplied)

Not only does Atty. Magsuci not deny the prosecution's allegation that she is an incumbent member of the *Sangguniang Panlungsod* of Calapan City, Oriental Mindoro, she even practically admitted such fact in her Comment/Opposition:

XVII. Herein counsel signed and filed a pleading before this Court on the above-captioned cases as early as 19 May 2021.

The prosecutors thereafter learned that herein counsel ran and won in the 13 May 2022¹⁷ [sic] local elections as Sangguniang Member of the Lone District of Calapan City. Yet, the prosecutors did not file any Motion for Disqualification at such time[.]¹⁸ (Emphasis supplied)

¹⁷ The national and local elections were held on May 9, 2022.

¹⁸ Records, Vol. 7, p. 230.

Even so, the Court also takes judicial notice of the fact that Atty. Magsuci won a seat in the *Sangguniang Panlungsod* of Calapan City, Oriental Mindoro during the May 9, 2022 elections.¹⁹

In the present cases for violation of Section 3(e) of R.A. No. 3019 (*Anti-Graft and Corrupt Practices Act*), not only are there two accused officers or employees of the national government (*i.e.*, accused Faeldon as Commissioner of the BOC and accused Tomas L. Alcid as District Collector, BOC), one of them, the primary accused, Faeldon, is in fact being represented by Atty. Magsuci.

The offense under Section 3(e) of R.A. No. 3019 is one that is necessarily committed in relation to office because public office is a constituent element thereof. In other words, the offense cannot exist without the office. Its elements are as follows:

1. **The accused must be a public officer discharging administrative, judicial or official functions;**

2. He must have acted with manifest partiality, evident bad faith or [gross] inexcusable negligence; and

3. That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.²⁰ (Emphasis supplied)

In *Catu v. Rellosa*,²¹ the Supreme Court enunciated that Section 90 of R.A. No. 7160 is a special provision that applies specifically to the practice of profession by elective local officials:

This is a special provision that applies specifically to the practice of profession by elective local officials. As a special law with a definite scope (that is, the practice of profession by elective officials), it constitutes an exception to Section 7(b)(2) of RA 6713, the general law on engaging in the private practice of profession by public officials and employees. *Lex specialibus derogate generalibus*.

In referring to the *Sanggunian* members, the Supreme Court, in *Catu*, as reiterated in *Sedano v. Bendita*,²² clarified that the said provision itself grants *Sanggunian* members the authority to practice their professions, *inter alia*, outside session hours, without any need to secure prior permission for such purpose:

¹⁹ See *Chua v. Commission on Elections*, G.R. No. 236573, August 14, 2018, in which the Supreme Court *en banc* “takes judicial notice of the fact that Chua won the 2018 Barangay Elections in Barangay Addition Hills, San Juan City as Punong Barangay.”

²⁰ *Cabrera v. Sandiganbayan*, G.R. Nos. 162314-17, October 25, 2004.

²¹ *Supra* note 10.

²² *Supra* note 9.

[M]embers of the *sangguniang panlalawigan*, *sangguniang panlungsod* or *sangguniang bayan* may practice their professions, engage in any occupation, or teach in schools except during session hours. In other words, they may practice their professions, engage in any occupation, or teach in schools outside their session hours. Unlike governors, city mayors and municipal mayors, members of the *sangguniang panlalawigan*, *sangguniang panlungsod* or *sangguniang bayan* are required to hold regular sessions only at least once a week. **Since the law itself grants them the authority to practice their professions, engage in any occupation or teach in schools outside session hours, there is no longer any need for them to secure prior permission or authorization from any other person or office for any of these purposes.** (Emphasis supplied)

The limitation, however, is that, where a *Sanggunian* member is also a member of the Bar, the practice of profession, even outside session hours, must not fall under any of the specified proscriptions enumerated in Section 90(b)(1) to (4) of R.A. No. 7160.

Thus, in *Republic v. Rambuyong*,²³ the Supreme Court, pursuant to Section 90(b)(1) of R.A. No. 7160, disqualified the respondent therein — Atty. Richard B. Rambuyong, a *Sanggunian* member being a municipal vice mayor — from appearing as counsel for a party adverse to the National Power Corporation, an instrumentality of government, in a civil case:

The provisions of law relevant to the present case state:

Sec. 90. *Practice of Profession.* — [x x x]

(b) *Sanggunian* members may practice their professions, engage in any occupation, or teach in schools except during session hours: **Provided, That *sanggunian* members who are also members of the Bar shall not:**

(1) **Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party[.]**

x x x x

Section 446 of the Local Government Code provides that “[t]he *sangguniang bayan*, the legislative body of the municipality, shall be composed of the municipal vice mayor as the presiding officer x x x.” **Thus, pursuant to Sec. 90 (b), (1) of the Local Government Code, Atty. Rambuyong, as *sanggunian* member, cannot appear as counsel of a party adverse to the NPC, which is an instrumentality of government.**

WHEREFORE, the petition is **GRANTED**. The May 20, 2004 Decision and April 13, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 72800 are **REVERSED** and **SET ASIDE**. **Atty. Richard B. Rambuyong is disqualified from appearing in Civil Case No. 1-197.** (Additional emphasis supplied)

²³ *Supra* note 16.

Atty. Magsuci asseverates that the prohibition to appear as counsel under Section 90(b)(2) of R.A. No. 7160 covers only criminal cases in which, *inter alia*, an accused therein must be an *incumbent* officer or employee of the national (or local) government at the time of such appearance. She avers that accused Faeldon is no longer in the service since September 4, 2019 while she entered her appearance in these cases thereafter or on May 19, 2021.

The Court cannot accept this contention. The plain text of the provision does not require such status on the part of the accused. It simply says that, in a criminal case, “**an officer or employee of the national or local government is accused of an offense committed in relation to his office.**” The Informations in these two cases are clear and categorical that both Faeldon and Alcid, as officers of the national government, are accused as such of an offense that is necessarily committed in relation to office, to wit, quoted *verbatim*:

Criminal Case No. SB-21-CRM-0010

That on 9-March-2017 to 23-June-2017, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, **accused public officers NICANOR E. FAELDON (Faeldon), Commissioner, Bureau of Customs (BOC), with Salary Grade 30 and TOMAS L. ALCID (Alcid), District Collector, BOC, with Salary Grade 25, while in the performance of their official administrative duties and functions as such, and taking advantage of their positions, committing the offense in relation to office [x x x].** (Emphasis supplied)

Criminal Case No. SB-21-CRM-0011

That on 16-March-2017 to 23-June-2017, or sometime prior or subsequent thereto, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, **accused public officers NICANOR E. FAELDON (Faeldon), Commissioner, Bureau of Customs (BOC), with Salary Grade 30 and TOMAS L. ALCID (Alcid), District Collector, BOC, with Salary Grade 25, while in the performance of their official administrative duties and functions as such, and taking advantage of their positions, committing the offense in relation to office [x x x].** (Emphasis supplied)

To this Court, the question of whether an accused is still in office or not at the time of the appearance of the *Sanggunian* member as counsel is immaterial. Thus, even where an accused in such a criminal case is no longer an incumbent but is accused as an officer or employee of the national or local government of an offense committed in relation to office, the Court holds that the prohibition on *Sanggunian* members who are also members of the Bar to appear as counsel therein applies.

In addition, the prohibition under Section 90(b)(2) of R.A. No. 7160 appears broader than the *appearance* of a *Sanggunian* member *as counsel for an accused* officer or employee of the national or local government in the criminal case within the context of the provision. Rather, the prohibition is the *appearance as counsel in that criminal case*. This means that the prohibition still applies even where the *Sanggunian* member, for example, *appears as counsel in that criminal case* not for the accused officer or employee but *for an accused private person who is an alleged co-conspirator* of such officer or employee.

Indeed, the prohibition under Section 90(b)(2) of R.A. No. 7160 is a concrete expression of the general limitation under Section 21, Canon III on Fidelity of the CPRA that lawyers in government service “shall not represent an interest adverse to the government.”

Therefore, the prosecution’s motion cannot be considered sham, as it is in fact meritorious. Thus, Atty. Magsuci’s **Motion for Leave to File and Admit Motion to Expunge Sham Pleading** under Section 13, Rule 8 of the Rules of Court, which refers to the “striking out of pleading or matter contained therein,” lacks merit. It may be well to mention at this instance the distinction between a pleading and a motion. Section 1, Rule 6 of the Rules of Court defines *pleadings* as “the written statements of the respective claims and defenses of the parties submitted to the court for appropriate judgment” whereas a *motion*, as defined in Section 1, Rule 15 of the Rules of Court, is “an application for relief other than by a pleading.”

On another matter, Atty. Magsuci accuses the prosecution of material concealment, in particular the alleged concealment in its motion of the fact that accused Faeldon had long ceased to be a public officer, purportedly to make it appear that the said accused was an incumbent public officer at the time of the filing of the motion.

The Court finds the same to be clearly baseless and unfounded. As a matter of fact, the Court is not unaware that accused Faeldon is no longer an incumbent public officer. In Resolution dated September 14, 2022, which resolved the said accused’s **Most Respectful and Very Urgent Motion to be Allowed Very Brief Overseas Business Travel/s** dated September 12, 2022, the Court already mentioned such fact:

Indeed, even the alleged purpose of the requested foreign travels undeniably appears to be uncertain. Therefore, absent a concrete and substantiated purpose, the Court cannot simply rely on his bare claim of necessity, **more so that he is now a private citizen, having been separated from the service since September 5, 2019.** [x x x].²⁴
(Emphasis supplied)

²⁴ Resolution dated September 14, 2022, pp. 4-5.


As for the prosecution's prayer to hold Atty. Magsuci liable for appearing as counsel in these cases, the Court leaves it up to the proper authorities to take any action they may deem appropriate under the circumstances.

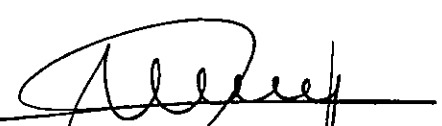
In sum, pursuant to Section 90(b)(2) of R.A. No. 7160, Atty. Magsuci, a *Sanggunian* member, is disqualified and cannot appear as counsel in these cases. The prosecution's motion is granted while Atty. Magsuci's motion is denied for lack of merit.

WHEREFORE, in light of the foregoing premises, Atty. Jelina Maree D. Magsuci, assisting counsel for accused Nicanor E. Faeldon, is **DISQUALIFIED** from appearing as counsel in these cases, SB-21-CRM-0010 and SB-21-CRM-0011.

The **Motion for Leave (Re: Disqualification of Accused Faeldon's Counsel)** dated February 21, 2024, treated as a *motion for disqualification*, filed by the prosecution is **GRANTED**. The **Motion for Leave to File and Admit Motion to Expunge Sham Pleading** dated February 23, 2024, treated as a *motion to strike out*, filed by Atty. Jelina Maree D. Magsuci is **DENIED** for lack of merit.

SO ORDERED.


RAFAEL R. LAGOS
Associate Justice
Chairperson


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice