

May 27, 2010

ATTY. ANNA MARIE D. YAP
Asst. Local Civil Registrar of Lapu-lapu City
City Hall
Lapu-lapu City
Cebu

Dear Atty. Yap:

This has reference to your letter dated May 24, 2010, requesting guidance on the practice of your profession as a lawyer and at same time employed as an official in the local government unit.

The Rules Implementing the Code of Conduct of and Ethical Standards for Public Officials and Employees provide in Rule X Section 1 that no government official or employee shall “engage in the private practice of his profession unless authorized by the Constitution, law or regulation provided that such practice will not conflict or tend to conflict with his official functions”. Hence, the private practice of profession is allowed if so provided in the Constitution, law or regulation.

Relative thereto, Section 12, Rule XVIII of the Revised Civil rules specifically provides –

“Section 12. – No officer or employee shall engage directly or indirectly in any private business, vocation or profession, to be connected with any commercial, credit, agricultural or industrial undertaking without a written permission from the head of the department”. (underscoring supplied)

The Supreme Court, in the case of Oscar Abeto vs. Manuel Garcesa (A.M. No. P-88-269, December 29, 1995), stressed that the authority to engage in practice of profession covers only employees of other government agency, not the judiciary, citing Section 12, Rule XVIII (supra). Needless to say, the lawyers of local government units are in no way part of the judiciary.

In the case of Erwin B. Javellana vs. Department of the Interior and Local Government, et al., G.R. No. 102549, August 10, 1992, the Supreme Court held – “government employees are prohibited only from engaging in the private practice of their profession if such practice would represent interest adverse to the government”.

On September 16, 1998, this Department issued Circular No. 98-17, otherwise known as “GUIDELINES FOR REQUESTING AUTHORITY TO PRACTICE LAW PROFESSION”. Pertinent portions thereof are quoted hereunder, to wit –

- I. A written request from concerned lawyer shall be submitted to his/her immediate superior for consideration.
- II. If the immediate superior interposes no objection to the request, he/she shall indorse the same to the head of the agency or its representative, for the issuance of an authority;
- III. In the event that the immediate superior interposes an objection to the request, he/she must clearly state the reasons for his action and elevate the matter to the head of the agency or its representative, for further and final consideration;
- IV. It is understood that the authority granted herein shall not prejudice the public service more particularly, in performance of the applicant’s public duties. In case of conflict of schedule, the former shall take precedence.

The said Circular has not been superseded. A copy of the same is hereto ttached for reference.

In view of the foregoing rules, jurisprudence and circular, lawyers employed in local government units are allowed to engage in the practice of their profession subject to the limitations contained therein.

Truly yours,

PEDRO A. NOVAL, JR.
Regional Director

