

## FIRST DIVISION

[ A.M. No. RTJ-10-2217, April 08, 2013 ]

**SONIA C. DECENA AND REY C. DECENA, PETITIONERS, VS.  
JUDGE NILO A. MALANYAON, REGIONAL TRIAL COURT, BRANCH  
32, IN PILI, CAMARINES SUR, RESPONDENT.**

### D E C I S I O N

**BERSAMIN, J.:**

A judge may not involve himself in any activity that is an aspect of the private practice of law. His acceptance of an appointment to the Bench inhibits him from engaging in the private practice of law, regardless of the beneficiary of the activity being a member of his immediate family. He is guilty of conduct unbecoming of a judge otherwise.

#### **Antecedents**

The complainants have lodged an administrative complaint for conduct unbecoming a judge against Hon. Nilo A. Malanyaon, the Presiding Judge of the Regional Trial Court, Branch 32, in Pili, Camarines Sur.<sup>[1]</sup>

In their joint complaint-affidavit dated April 10, 2007,<sup>[2]</sup> the complainants averred that complainant Rey C. Decena had brought an administrative case in Regional Office No. V of the Civil Service Commission in Legaspi City, Albay against Judge Malanyaon's wife, Dr. Amelita C. Malanyaon (Dr. Amelita), then the Assistant Provincial Health Officer of the Province of Camarines Sur; that during the hearing of the administrative case on May 4, 2006, Judge Malanyaon sat beside his daughter, Atty. Ma. Kristina C. Malanyaon, the counsel of Dr. Amelita in the case; and that the events that then transpired were as recounted in the joint complaint-affidavit, to wit:

3. During the early stage of the hearing when the hearing officer, Atty. Dennis Masinas Nieves, brought up the matter regarding Dr. Malanyaon's manifestation or motion (to dismiss the case for lack of jurisdiction), Judge Malanyaon coached her daughter in making manifestations/motions before the hearing officer, by scribbling on some piece of paper and giving the same to the former, thus prompting her daughter to rise from her seat and/or ask permission from the officer to speak, and then make some manifestations while reading or glancing on the paper given by Judge Malanyaon. At one point, Judge Malanyaon even prompted her daughter to demand that Atty. Eduardo Loria, the collaborating counsel of our principal counsel, Atty. Mary Ailyne Zamora, be required to produce his PTR number.

4. When our principal counsel, Atty. Zamora, arrived and took over from Atty. Loria, she inquired regarding the personality of Judge Malanyaon, being seated at the lawyer's bench beside Atty. Malanyaon, Judge Malanyaon then proudly introduced himself and manifested that he was the "counsel of the respondent's counsel". Atty. Zamora proceeded to raise the propriety of Judge Malanyaon's sitting with and assisting his daughter in that hearing, being a member of the judiciary, to which Judge Malanyaon loudly retorted that he be shown any particular rule that prohibits him from sitting with his daughter at the lawyers' bench. He insisted that he was merely "assisting" her daughter, who "just passed the bar", defend the respondent, and was likewise helping the latter defend herself. Pertinent portion of the records of the proceedings are as follows:

x x x x

Atty. Nieves: First, she has to enter her appearance.  
Okay?

Atty. : Anyway, ... I don't think, I do not memorize  
Zamora my PTR number, I don't remember my PTR  
number, but aside from that Your Honor, I  
think this Honorable Hearing Officer could  
take judicial notice that Atty. Ed Loria is  
indeed a lawyer in good standing in IBP.  
And moreover, Your Honor, I would like to  
inquire as to the personality of the  
gentleman next to the lawyer of the  
defendant or respondent, Your Honor?

**Judge : I am the counsel of the complainant,**  
**Malanyaon ah, of the respondent's counsel, I am**  
**Judge Malanyaon. I am assisting her.**  
**And so what?!!**

Atty. : Ah, you are the counsel of the ...  
Zamora (interrupted)

Atty. Nieves: There's no need to be belligerent... let's  
calm down...

Atty. : Your Honor, Your Honor, we all do not know  
Zamora each other, and with due respect to the  
judge, there is also a hearing officer here  
Your Honor, and I think Your Honor the  
Hearing Officer here deserves due respect.  
I mean, the word "So what?!", I don't think  
that would be proper Your Honor in this  
Court.

Judge : I am sorry your Honor, because the ... is  
Malanyaon out of turn, out of turn.

Atty. Nieves: This is not necessary, actually, this is not  
necessary. So we might as well proceed  
with our hearing today. I've already made  
a ruling regarding the, the query regarding  
PTR. Okay, at this stage it is not proper  
considering that Atty. Loria only entered  
his appearance during the start of the  
hearing. Okay. So, we have to proceed  
now.

Atty. Zamora :I am accepting Your Honor the delegation again of Atty. Loria. I am entering my appearance as the lead counsel for this case, Your Honor, as counsel for the complainant.

Atty. Nieves:Okay.

Atty. Zamora :And may I be clear that the judge will be the collaborating counsel for the respondent or the counsel of record of the respondent?

Atty. Nieves:... of the judge is ... I'm sorry?

Atty. Zamora :He manifested Your Honor that he is the counsel of the respondent.

**Atty. :No, the counsel of the counsel of the Malanyaon respondent.**

Atty. Nieves:He has not, he has not entered his appearance in this case.

Atty. Zamora :Would that be proper for him Your Honor, considering that he is a judge Your Honor? Would that, ah, there will be undue influence, or whatever, Your Honor? We are just trying to avoid any bias or undue influence in this court, Your Honor.

Atty. Nieves:Okay, it will not, considering the fact that he has not entered his appearance for the respondent.

**Judge :If Your Honor, please, the respondent Malanyaon is my wife. Counsel for the respondent is my daughter. She just passed the bar! I'm assisting her. Is it not my right, my duty to assist my daughter? And to assist my wife defend herself? I am only sitting with my daughter! I'm not acting for the respondent!**

Atty. Zamora :I don't think Your Honor under the rule, the counsel needs a counsel. Only the one charged or the one being charged needs a counsel.

Atty. Nieves:Okay, let's settle this now. Judge Malanyaon has not entered his appearance. It will not in any way ...

x x x x

The complainants averred that the actuations of Judge Malanyaon during the hearing of his wife's administrative case in the Civil Service Commission constituted violations of the *New Code of Judicial Conduct for the Philippines Judiciary*.

On June 21, 2007, then Court Administrator Christopher O. Lock required Judge Malanyaon to comment on the complaint.<sup>[3]</sup>

On July 15, 2007, Judge Malanyaon filed his comment, refuting the allegations of the complaint thusly:

1. Complainants are the sister and nephew of my wife, Amelita C. Malanyaon, there is bad blood between them arising from divergent political loyalties and family differences;
2. There is no reason for complainants to take offense at my sitting beside my daughter Ma. Kristina, when she appeared for my wife in the first hearing of the administrative case Rey C. Decena filed against my wife; the hearing officer himself could cite no rule disallowing me from sitting beside my daughter, in the counsel's table, and he did not ask me to vacate where I sat beside my daughter; the transcript does not support complainants' claim;
3. It is true I snapped at Atty. Zamora, when she asked about my personality – but she was speaking out of turn as all I was doing was sitting beside my daughter when she came as the transcript will show, I apologized to the hearing officer, who graciously let the matter pass;
4. My daughter is a new practitioner; her law partner and lead counsel could not make it on time, and as her consultant, I did not speak, nor enter my appearance for my wife – to lend a helping hand to a neophyte lawyer, defending her mother in an administrative case, is not unethical, nor does it constitute the proscribed practice of law;
5. It is petty for my sister-in-law and for my nephew to complain of my presence during the hearing; it is my filial duty to lend my wife and daughter, moral and legal support in their time of need; indeed, it is strange for complainants to take offense at my presence and accuse me of practicing law during my stint as a judge when before the bad blood between my wife and her sibling and nephew erupted, I helped them out with their legal problems gratis et amore and they did not complain of my practicing law on their behalf, indeed, one of the crosses a judge must carry is the cross of base ingratitude.<sup>[4]</sup>

On March 27, 2008, then Court Administrator Zenaida N. Elepaño recommended to the Court that: (a) the complaint be re-docketed as a regular administrative matter; (b) Judge Malanyaon be found guilty of gross misconduct; and (c) Judge Malanyaon be fined P50,000.00.<sup>[5]</sup>

On September 16, 2009, the Court required the parties to manifest within 10 days from notice if they were willing to submit the case for resolution on the basis of the records or pleadings filed.<sup>[6]</sup>

The complainants complied on November 13, 2009, stating their willingness to submit the case for resolution after a formal investigation or hearing was conducted, and after they were given time to file their respective position papers or memoranda.<sup>[7]</sup>

On January 11, 2010, the Court resolved: (a) to re-docket the administrative case

as a regular administrative matter; (b) to await Judge Malanyaon's compliance with the September 16, 2009 resolution; and (c) to refer the administrative matter to the OCA for evaluation, report and recommendation.<sup>[8]</sup>

After Judge Malanyaon did not submit any compliance with the September 16, 2009 resolution, the Court ordered him on February 10, 2010 to show cause why he should not be disciplinarily dealt with or held in contempt for such failure, and further directed him to still comply with the resolution.<sup>[9]</sup>

On February 15, 2010, Judge Malanyaon's counsel informed the Court that Judge Malanyaon had meanwhile suffered a massive stroke on September 2, 2009 that had affected his mental faculties and made him unfit to defend himself here; and prayed for the suspension of the proceedings until Judge Malanyaon would have been found competent to comprehend and stand the rigors of the investigation.<sup>[10]</sup>

On April 12, 2010, the Court deferred action on the case, and required Judge Malanyaon to submit a medical certificate.<sup>[11]</sup>

Judge Malanyaon submitted a medical certificate dated May 27, 2010, issued by the Philippine General Hospital, certifying that he had been confined thereafter from September 2, 2009 to October 19, 2009 for the following reason, to wit:

Cerebro Vascular disease, Hypertension Intra Cerebral Hematoma  
Left Thalamus with obstructive Hydrocephalus; DM type II, Chronic  
Obstructive Pulmonary disease; Pneumonia; Ileus (resolved); Neurogenic  
bladder, Benign Prostatic Hypertrophy; Grave's disease;  
Arthritis.

OPERATION PERFORMED:

Bilateral tube ventriculostomy<sup>[12]</sup>

Judge Malanyaon submitted two more medical certificates, the first dated October 5, 2010,<sup>[13]</sup> certifying that, among others, he was undergoing regular check-up, and the other, dated January 24, 2011,<sup>[14]</sup> certifying that his functional and mental status had been assessed as follows:

The severity and location of the hemorrhage in the brain resulted in residual epileptogenic focus (Post-ictal seizures) and significant impairment of cognition, memory judgment behavior (Vascular Dementia). He has problems with memory recall, analysis of information, events and situations which may make defending himself difficult, if necessary. Although he is independent on ambulation, he requires assistance even in basic activities of daily living.<sup>[15]</sup>

The Court required the complainants to comment on Judge Malanyaon's medical certification dated October 5, 2010.