ETHICS AND EXCELLENCE FOR YOUNG ASSOCIATES IN INSTITUTIONAL LAW FIRMS*

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By the 2005 case of *Dallong-Galicina vs. Castro*,[1] I am an unethical lawyer.

In that case, the Supreme Court disciplined a lawyer for hurling Ilocano invectives at a Lady Clerk of Court concerning the vagina of her mother. As some of you know, the Ilocano invective, as phrased by the Supreme Court itself, is "Okinnam". He hurled this curse at the hapless lady thrice.

The Americans also have their own version of that invective: "*Son of a bitch*".

Those who have worked with me know that I liberally use the Tagalog version: "*Putang Ina*". My defense is that I do not utter that invective, or any other invective, at a lady or gentleman in a court room or in any adjudicatory proceedings.

I only use the invective against stupid ideas.

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[1] A.C. No. 6131, 474 SCRA 1, Feb. 28, 2005.

The unsuitability of my penchant for using that invective was brought to my attention by Justice Efren I. Plana in an embarrassing and dramatic way.

During one emotional ACCRA Partners' Meeting, I argued my propositions with such force and emotion that in the midst of my arguments, Justice Plana interrupted me in his gentlemanly way: "Joe, why do you punctuate all your sentences with that word? Can you not use a better word?"

The interruption immediately brought sobriety to the discussion. I lost the argument.

Since that incident, I have been thinking of alternative appropriate graphic language to replace my favorite Tagalog invective. Perhaps, Frank Sinatra's gentlemanly language will do: "The lady is a tramp."

So much for invectives as they relate to Legal Ethics. Despite being mandatory in law school curricula,[2] it is the least appealing law subject. One reason may be its paltry 5% weight in the Bar Examinations.[3] Another is that "law students do not think that they will become unethical lawyers."[4]

Nevertheless, Rule 2, Section 2 of the Supreme Court's Rules on Mandatory Continuing Legal Education (MCLE) devotes six out of 36 MCLE hours to Legal Ethics. In comparison, nine hours are allotted for "updates on substantive and procedural laws," which covers four major subjects" constitutional, civil, commercial, and remedial law. The allotment of six hours to a single subject, to my mind, unflatteringly suggests that lawyers' unethical conduct must have deteriorated to an alarming level that the Bench and Bar can no longer ignore.

The trap laid before a lawyer who gives his thoughts on Legal Ethics is that he might create the impression of a "Holier Than Thou" posture. Worse, he might unethically suggest the unthinkable: "Do as I tell you, not what I do." At the risk of falling into this trap, my paper is confined to Legal Ethics problems one encounters in an institutional law

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[2] RULES OF COURT, Rule 138, § 5(2).

[3] §14.

[4] Patrick S. Schiltz, *On Being A Happy, Healthy, And Ethical Member Of An Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 907 (1999).

firm like ACCRA. My entire career has been confined within two law firms then transforming into institutional law firms.

I. A LAW FIRM'S RESPONSIBILITY TO ENSURE ITS MEMBERS AND ASSOCIATES' ETHICAL BEHAVIOR

Our Code of Professional Responsibility does not detail a law firm's responsibility for its partners or lawyers' unethical behavior.[5] The American Bar Association (ABA), on the other hand, recommends the following Model Rule:[6]

> LAW FIRMS AND ASSOCIATES
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> Rule 5.1 *Responsibilities of Partners, Managers, and Supervisory Lawyers*
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> (a) A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make *reasonable efforts* to ensure that the firm has in effect measures giving *reasonable assurance* that all lawyers in the firm conform to the Rules of Professional Conduct.
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> (b) A lawyer having direct supervisory authority over another lawyer shall make *reasonable efforts* to ensure that the other lawyer conforms to the Rules of Professional Conduct.
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> (c) A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:
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> (1) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or
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> (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or

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[5] The only rule I found which mentions the terms "firm", "partners" and "associates" is Rule 21.04: "A lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client."

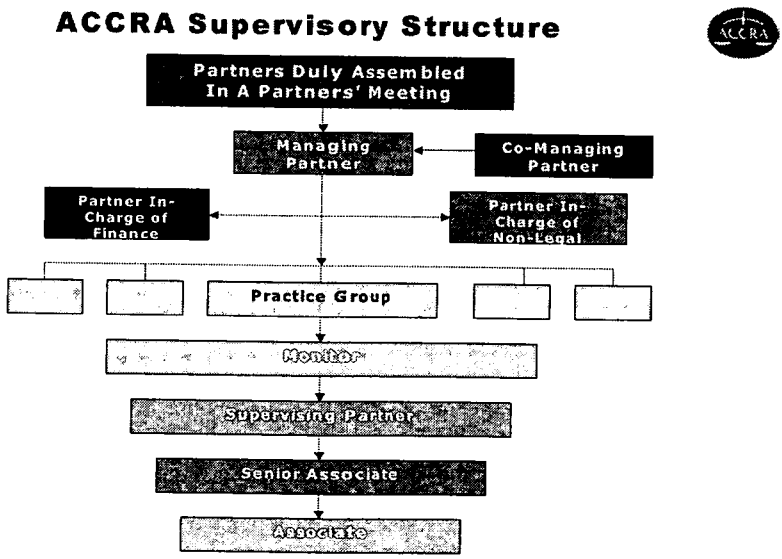
[6] *Cited in* Solatan vs. Inocentes, AC No. 6504, 466 SCRA 1, 19 n.16, Aug. 9, 2005.

> has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action. (emphasis supplied)

Note its standards of reasonable efforts and reasonable assurance. Further, by deliberately using "partner" and "lawyer" as distinct terms, the Model Rule, particularly in its last subparagraph, emphasizes the substantial difference in a partner's disciplinary liability. Certainly, it would be unfair and unjust for a non-partner to be made liable for other lawyers' unethical conduct, lawyers over whom he exercises no supervisory authority, except for the particular case envisioned in subparagraph (c)(1).

Further, the choice of words emphasizes that the "partner" and the "lawyer" are the parties liable; the law firm is a mere fiction that has no vicarious disciplinary liability. It cannot practice law, and therefore, cannot be disbarred or suspended from its practice.

Read in ACCRA's organizational context, the different levels of supervisory authority for purposes of liability under this Model Rule would be:



The lack of an explicit Philippine rule has not deterred our Supreme Court from fashioning jurisprudential standards for partners' vicarious liability. *Rheem of the Philippines, Inc. v. Ferrer (In Re Proceedings Against Alfonso Ponce Enrile, Leonardo Siguion Reyna, Manuel G. Montecillo, Enrique M. Belo, Oscar R. Ongsiako and Jose S. Armonio)*[7] is the first case I found that imposed upon a law firm's name partners the affirmative duty of "exercising adequate supervision and control of the pleadings and other documents submitted by their law firm to the courts of justice of this country."[8]

Ponce Enrile, Siguion Reyna, Montecillo, Belo & Ongsiako was then the country's largest law firm. If we are to believe Senator Edgardo J. Angara, who was then working, as an Associate, in that firm, it was also the country's most competent firm. The Sycip Law Office was only, where I was then working as an Associate, then a lean and hungry upstart law firm.

In the cited case, the Supreme Court ordered all the Name Partners and their Associate Jose S. Armonio, "to show cause why" they should not be declared in contempt of court for the following portion of a motion for reconsideration that the latter prepared and signed:

> One pitfall into which this Honorable Court has repeatedly fallen whenever the question as to whether or not a particular subject matter is within the jurisdiction of the Court of Industrial Relations is the tendency of this Honorable Court to rely upon its own pronouncement without due regard to the statutes which delineate the jurisdiction of the industrial court. Quite often, it is overlooked that no court, not even this Honorable Court, is empowered to expand or contract through its decision the scope of its jurisdictional authority as conferred by law. This error is manifested by the decisions of this Honorable Court citing earlier rulings but without making any reference to and analysis of the pertinent statute governing the jurisdiction of the Court of Industrial Relations. This manifestation appears in this Honorable Court's decision in the instant case. As a result, the errors in earlier cases dealing with the jurisdiction of the

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[7] Rheem of the Philippines, Inc. v. Ferrer, G.R. No. 22979, 20 SCRA 441, Jun. 26, 1967.
[8] *Id.* at 447.

> industrial court are perpetuated in subsequent cases involving the same issue.[9]

The Name Partners assumed "full responsibility" but pleaded the defenses, as summarized by the Court, that:

> (1) "not one of the partners was able to pass upon the draft or final form of the said motion";
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> (2) "Atty. Armonio, an associate, prepared, signed and filed the motion 'without clearing with any of the partners'";
>
> (3) the partners "were not in the office at the time said motion was filed — which was the last day"; and
>
> (4) "it is the policy of the firm known to all its members and associates that only the partners can sign court pleadings except in rare cases where, for want of time or due to unexpected circumstances, an associate has to sign the same."[10]

Note the last defense: if it were true that all partners were not in the office when the motion was filed on the last day, then Atty. Armonio was authorized to sign and file that motion under the firm's own policy.

If you were the associate, and the name partners pleaded those defenses and strategy of blaming you, an associate, to insulate themselves from any disciplinary liability, how would you feel?

I would have felt abandoned.

As a historical footnote, Atty. Armonio is a Sigma Rho Fraternity member and Harvard Law School graduate.

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[9] *Id.* at 442.
[10] *Id.* at 443, 446.

All the Name Partners and their associate appeared before the Supreme Court. Don Alfonso Ponce Enrile and Atty. Armonio were heard. Despite their explanations, the Court held that the disputed language "detract[s] much from the dignity of and respect due"[11] the Supreme Court because:

> The plain import of all this is that this Court is so patently inept that in determining the jurisdiction of the industrial court, it has committed error and continuously repeated that error to the point of perpetuation. It pictures this Court as one which refuses to hew to the line drawn by the law on jurisdictional boundaries. Implicit in the quoted statements is that the pronouncements of this Court on the jurisdiction of the industrial court are not entitled to respect.[12]

Accordingly, the Court ruled that a lawyer using such offensive language violated his duty, "To observe and maintain the respect due to the courts of justice and judicial officers;"[13] and is a breach of the present Canon 11 which enjoins, "A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others."[14]

Turning to the partners' liability, the Court ruled that:

> [P]artners are duty bound to provide for efficacious control of court pleadings and other court papers that carry their names or the name of their law firm. Seemingly, such control was absent.
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> ....
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> Attention of Attys. Alfonso Ponce Enrile, Leonardo Siguion Reyna, Manuel G. Montecillo, Enrique M. Belo and Oscar R. Ongsiako is invited to the necessity of exercising adequate

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[11] *Id.* at 444.

[12] *Id.* at 443-444.

[13] RULES OF COURT, Rule 138, § 20(b).

[14] The Court cited then Cannon 1 of the Cannons of Professional Ethics: "it is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected."

> supervision and control of the pleadings and other documents submitted by their law firm to the courts of justice of this country.[15] (emphasis supplied)

This case is a fair warning to supervising partners who do not read the drafts proposed by an associate for filing with the courts. Specifically, note the degree, or if not, the quality of partners' responsibility: they must exercise *"efficacious control"* and *"adequate supervision and control"* of court filings. Recall that the ABA Model Rule requires only *"reasonable efforts"* and *"reasonable assurance."*

Thus, claiming lack of prior approval in the face of perceived error sounds hollow because this betrays lack of "*efficacious control*" and "*adequate supervision and control.*" The claim also collapses under the concept of "command responsibility," under which a name partner was held disciplinary liable for an associate's unethical behavior in *Solatan v. Inocentes.*[16]

The law firm in question was the Oscar Inocentes and Associates Law Office. The Spouses Andres and Ludivina Genito retained its services to address their legal problems arising from their apartment complex's sequestration. They were also authorized by the PCGG to handle the ejectment cases against non-paying tenants.

A default judgment was rendered in one of such ejectment case awarding the Genito Spouses the sum of ₱30,600.00 plus 24% interest as unpaid rentals, ₱10,000.00 as attorney's fees, and the costs of suit.

The complainant, brother of the tenant who was abroad, was the apartment's actual occupant. Before the writ of execution could be levied upon, the complainant approached Atty. Oscar Inocentes, who referred him to his associate, Atty. Jose Camano, the attorney in charge of the Genito's ejectment cases.

The complainant was allowed to stay in the apartment following a verbal settlement, where he agreed to pay his sister's entire judgment debt, including half the awarded attorney's fees and ₱1,600.00 as costs of suit. As

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[15] Rheem of the Philippines, Inc. v. Ferrer, G.R. No. 22979, 20 SCRA 441, 446-447, Jun. 26, 1967.
[16] A.C. No. 6504, 466 SCRA 1, Aug. 9, 2005.

partial compliance, he issued a check for ₱5,000.00, in Atty. Camano's name, representing half the awarded attorney's fees.

The complainant failed to make any other payment. Thus, the sheriff, with Atty. Camano and some policemen, levied upon the properties in the apartment. Upon the complainant's request, a new agreement was forged whereby the levied properties were released except for a Northern Hill 3-burner gas stove which was retained and used by Atty. Camano in another apartment in the Genito's Apartments and the complainant paid Atty. Camano the costs incurred in enforcing the writ of execution.

Thereafter, the complainant filed a disbarment case against Attys. Inocentes and Camano.

The Court upheld the IBP'S findings that Atty. Camano's acceptance of ₱5,000.00 and the costs of implementing the writ, and his taking possession of the Northern Hill oven, constituted "culpable acts which tend to degrade the profession and foment distrust in the integrity of court processes."[17]

On appeal, Atty. Inocentes asserted "that he was incorrectly punished for Atty. Camano's acts when his mere participation in the fiasco was to refer complainant to Atty. Camano."[18] The Court, speaking through Justice Tinga, disagreed.

> [P]recisely because of such participation, consisting as it did of referring the complainant to his associate lawyer, that Atty. Inocentes may be held administratively liable by virtue of his associate's unethical acts. His failure to *exercise certain responsibilities* over matters under the charge of his law firm is a blameworthy shortcoming. The term '*command responsibility*', as Atty. Inocentes suggests, has special meaning within the circle of men in uniform in the military; however, the principle does not abide solely therein. It *controls the very circumstance in which Atty. Inocentes found himself.*[19] (emphasis supplied)

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[17] *Id.* at 13.
[18] *Id.*
[19] *Id.*

The Court re-affirmed the doctrine of *Adaza vs. Barinaga*[20] that lawyers are administratively liable for the conduct of their employees in failing to timely file pleadings, and *Rheem's* "that partners are duty bound to provide for efficacious control of court pleadings and other court papers that carry their names or the name of the law firm."[21]

The Court went "further" and widened the net of responsibility of "partners and practitioners who hold supervisory capacities"[22] to include:

> We now hold further that partners and practitioners who hold supervisory capacities *are legally responsible to exert ordinary diligence* in apprising themselves of the *comings and goings* of the cases handled by the persons over which they are exercising supervisory authority and *in exerting necessary efforts to foreclose the occurrence of violations of the Code of Professional Responsibility by persons under their charge.* Nonetheless, the liability of the supervising lawyer in this regard is by no means equivalent to that of the recalcitrant lawyer.... [23] (emphasis supplied)

Solatan imposed upon "partners and practitioners who hold supervisory capacities" the duty *"to exert ordinary diligence* in apprising themselves of the comings and goings of" legal matters referred by them to their associates and to exert *"necessary efforts to foreclose the occurrence of violations of the Code of Professional Responsibility by persons under their charge."*[24]

Solatan thus raised the bar of responsibility. *Rheem* merely imposed the standard of "supervision and control" by name partners over pleadings' language. In contrast, *Solatan* includes "other practitioners" in addition to name partners, and supervision must also include awareness of the "comings and goings", or the progress and status of given referrals.

More importantly, partners are now required to exert "necessary efforts to *foreclose the occurrence of violations* of the Code of Professional Responsibility by persons under their charge."[25] Accordingly, the *Rheem* requirement that partners provide *"efficacious control"* and to exert *"adequate*

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[20] AC No. 1604, 104 SCRA 684, May 29, 1981.
[21] Rheem of the Philippines, Inc. v. Ferrer, G.R. No. 22979, 20 SCRA 441, 446-447, Jun. 26, 1967.
[22] Solatan v. Inocentes , A.C. No.6504, 466 SCRA 1, Aug. 9, 2005.
[23] *Id.*
[24] *Id.* Emphasis supplied.
[25] *Id.* Emphasis supplied.

supervision and control" over court filings must now include, according to *Solatan*, the exertion of *"necessary efforts to"* prevent unethical conduct of a firm's partners and lawyers.

Finally, partners and lawyers are also liable for their non-legal staff's negligence or failure. In *Adaza v. Barinaga*,[26] a solo practitioner tried to evade disciplinary liability by pleading that he instructed his secretary to file a motion for reconsideration by mail, on the last day. The secretary allegedly did not follow his instructions.

> Making the law office secretary, clerk or messenger the scapegoat or patsy for the delay in the filing of pleadings, motions and other papers and for the lawyer's dereliction of duty is common alibi of practicing lawyers. Like the alibi of the accused in criminal cases, counsel's shifting of the blame to his office employee is usually a concoction utilized to cover up his own negligence, incompetence, indolence and ineptitude....[27]

II. THE ETHICAL STANDARD OF COMPETENCE AND DILIGENCE

After Oscar Franklin B. Tan, another Sigma Rho Fraternity member admitted to the Harvard Law School, submitted his research, he requested my opinion on whether consensual sex between an unmarried man and an unmarried woman constitutes gross immorality as would warrant the disbarment of a lawyer. The conversation went:

> OBT: Does consensual sex between an unmarried lawyer and an unmarried woman constitute gross immorality as to warrant the disbarment of a lawyer?
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> JCC: Have you passed the Bar Exams?
>
> OBT: Well, not yet.

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[26] A.C. No. 1604, 192 SCRA 198, May 29, 1981.
[27] *Id.* at 200.

> JCC: Pass the Bar Exams first, then take your oath as a lawyer and sign the Roll of Attorneys. After that, you will know what to do.

A lawyer who does not know how to solve that ethical question should, in my opinion, be disbarred for gross incompetence. Since OBT is only daydreaming, he can be forgiven.

Mere compliance with Legal Ethics does not necessarily make one an ethical lawyer. You are also required to live an ethical life. Thus commands *Quingua vs. Puno*[28] which dealt directly with the query of OBT.

The rules for living an ethical life are simple. Parents instill in their children the rules of honesty, fairness, morality, and the golden mean: do not do unto others what you do not want to be done to you. These rules remain valid and should govern one's entire life even if, in the meantime, one has become a lawyer.

When one is admitted to the practice of law, the Supreme Court certifies, in effect, to the public that you have the competence to practice law. However, that is merely a presumption. Every legal problem you are hired to solve is a test of your competence and diligence.

Of the 74 disciplinary cases found by OBT for the period from January 2005 to April 2006, 30% involved lawyers' incompetence and negligence. This is disturbing and a sad commentary on the legal profession.

Canon 18 is the relevant rule:[29]

> CANON 18 — A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE.
>
> Rule 18.01 — A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

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[28] A.C. No. 389, 19 SCRA 439, 443-445, Feb. 28, 1967.
[29] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 18.

> Rule 18.02 — A lawyer shall not handle any legal matter without adequate preparation.
>
> Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.
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> Rule 18.04 — A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

A practicing lawyer must be *both* competent and diligent. If only one element is complied with, Canon 18 is violated. A lawyer may be competent, be the valedictorian of his class, have topped the bar examinations and studied in Harvard. However, if he is not diligent in the actual practice of law, he will be subjected by the Supreme Court to a disciplinary action and clients and prospective clients will not respect him, and will avoid him as their legal adviser.

I emphasize this particular rule because ACCRA credo anchors the firm's institutional goals to this ethical standard, to differentiate itself from others that believe otherwise. Some law firms and individual lawyers believe that political and judicial connections and close relations with influential businessmen are the keys to financial success, not "competence and diligence."

ACCRA Philosophy

- To uphold and maintain the principle on which the Firm was established — namely, that *an institution founded upon ability, integrity, and professional skill* will endure.
- *To provide and maintain quality and efficient service to clients* and protect or defend their rights with warm zeal and entire devotion within the bounds of the law, without regard to their financial resources, social position, or popularity.
- *To observe with great fidelity the ethical standards of the legal profession.*
- To be constantly aware that the practice of law is not a business but a noble profession and *that the prime goal of the Firm is to provide high quality legal services* to its clients at reasonable cost.

> To recognize that the legal profession is imbued with a spirit of public service and to encourage the participation of the lawyers of the Firm in public, professional, educational, charitable, cultural and religious endeavors.[30]

Why ACCRA opted to use the term "philosophy" instead of "Mission Statement" as the American Law firms do, I cannot explain. The firm's proclamation to adhere to the ethical standard of "competence and diligence" is repetitive; four out of five core goals are linguistic variations of the theme "ability, integrity, and professional skill."

The relevant query is whether ACCRA and its lawyers have adhered to these goals in their dealings among themselves and with their clients, the courts, other adjudicatory agencies, other governmental agencies and the public in general. Reality, as you know, is sometimes different from lofty goals.

To answer that question, I first review two recent decisions concerning Rule 18.03, instructing that a lawyer not "neglect a legal matter entrusted to him." This command broadly preempts the entire field of lawyering, where other rules are confined to "cases" or litigated matters. Per *PCGG v. Sandiganbayan*,[31] Legal Ethics' "historical lineage" shows that: "The principal thrust of the standards was directed towards the litigation conduct of lawyers," and that the "other basic duties — competency, diligence, loyalty, confidentiality, reasonable fees and service to the poor — originated in the litigation context, but ultimately had broad application to all aspects of lawyer's practice."

Thus, do not be deluded into thinking that you are not covered because your work is merely drafting an opinion, a boring review of contract, or the investigative work of due diligence. I emphasize: you are expected to do your work diligently and competently.

Consider *Anderson v. Cardeño*.[32] The complainant, an American citizen, was the plaintiff in a civil case for reconveyance of his share in an inheritance. His lawyer died during the pendency of his case, forcing him to retain the services of Atty. Reynaldo C. Cardeño.

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[30] *Available at* http://www.accralaw.com/sub.php?p=about&s=philosophy.
[31] G.R. No. 151809, 455 SCRA 526, 565-566, Apr. 12, 2005.
[32] A.C. No. 3523, 448 SCRA 261, Jan. 17, 2005.

When the defendants filed a Demurrer to Evidence, Atty. Cardeño did not file an opposition thereto and he failed to appear when the motion was heard. These omissions prompted the trial court to dismiss the case. Again, Atty. Cardeño failed to move for a reconsideration of this dismissal, nor did he appeal. Thus, the complainant sought his disbarment.

As summarized by the Court, Atty. Cardeño justified his acts of omission with these reasons:

1. The "complainant was being ungrateful to him" because "he was only asked by a good friend of the complainant" to be complainant's lawyer and he "accommodated the request ... even without personally meeting the complainant" who "was residing in the United States".

2. The complainant "did not give him full cooperation"; the records turned over to him were "voluminous" and "in disarray"; when he appeared as complainant's counsel he had "only half the information and background of the case and not knowing the person he was representing" as the "good friend" of the complainant could not answer several questions."

3. He met the complainant only when he was about to present the last witness and since his deceased counsel had already taken his deposition he did not find it necessary to present the complainant as a witness.

4. It was a "big surprise" to him that the taking of complainant's deposition was defective as the opposing parties and their counsel were not notified which led the trial court to grant the demurrer of evidence.

5. The "biggest surprise" for him was when some "good friends" of the complainant told him that "they have good access and have made arrangements with the Presiding Judge" and was requested to prepare a motion for reconsideration which he did and gave to the "good friends" for filing with the court.

6. Because of the actions of the "good friends" which he considers contrary to his duty as an officer of the court,

> and also against the respect due to the courts, he asked to be relieved as counsel but was refused.[33]

All these defenses, which in my opinion are arrogant and shallow, were rejected by the Court because:

> [I]t was incumbent upon Atty. Cardeño to insist on his client's participation in the proceedings in the case. ... Knowing that his client was based in the United States should, with more reason, have moved him to secure the legal means available to him either to continue representing the client effectively or to make the necessary manifestation in court, with the client's conformity, that he was withdrawing as counsel of record. That his client did not agree to terminate his services is a mere allegation that has not been substantiated.
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> Thus, in view of the fact that he remained counsel of record for the complainant, it was highly irregular for him to entrust the filing of the Motion for Reconsideration to other people who did not lawfully appear interested in the subject litigation.[34]

I agree with the Court. I have experienced partners and associates alike invoke reasons substantially similar to Atty. Cardeño's to explain unreasonable delay.

"I am busy with other equally urgent work" is the usual excuse. I do not accept that justification. If a lawyer is truly busy, he should, at the first opportunity, inform the supervising partner that he cannot complete his assigned task on time. In my case, I usually take over the work if the other team members are truly busy with other equally urgent professional work.

Next, consider *Reyes v. Vitan*[35] an unusual disbarment case.

The complainant paid ₱17,000.00 to Atty. Jeremias Vitan for the filing of an action for and prosecution of an inherited property's partition. After receiving the money, Atty. Vitan did not file any case nor did he

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[33] *Id.* at 265-66.
[34] *Id.* at 269-70.
[35] A.C. No. 5835, 456 SCRA 87, Apr. 15, 2005.

render any service at all. Curiously, neither did he submit any explanation for his inaction despite several orders from the IBP Commissioner. Neither did he attend the hearings; instead, he merely sent his secretary.

Absent any explanation, the Court had no alternative but to rule that:

> When respondent accepted the amount of ₱17,000.00 from complainant, it was understood that he agreed to take up the latter's case and that an attorney-client relationship between them was established. From then on, it was expected of him to serve his client, herein complainant, with competence and attend to his cause with fidelity, care and devotion.
>
> The act of receiving money as acceptance fee for legal services in handling complainant's case and subsequently failing to render such services is a clear violation of Canon 18 of the *Code of Professional Responsibility* which provides that a lawyer shall serve his client with competence and diligence....[36]

Anderson and *Reyes v. Vitan* serve as guideposts in the evaluation of ACCRA lawyers, from Founding Partners to the youngest Associate. Based on my experience, most if not all of ACCRA recruits are competent. It is in the area of diligence that some need occasional prodding.

There are incidents in ACCRA, few though they may be, that involve lawyers' inaction to clients' irritation, if not prejudice. This can force the latter to refer legal business to other law firms whose lawyers can render not only competent but, most importantly, expeditious legal service.

A recurring problem in ACCRA's early years was that some Partners litigated cases on their own, by-passing the Litigation Department and making their own team assignments.

For a significant period during those early years, only Senator Edgardo J. Angara, Rogelio A. Vinluan and I had some respectable experience in litigation. Thus, cases not referred to the Litigation Department were assigned to relatively inexperienced lawyers. Soon, clients

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[36] *Id.* at 90.

began complaining to then Managing Partner, Ed Angara, that their cases were not being properly attended to.

In fairness to Ed Angara, he referred all litigation referrals that he received to Rolly Vinluan or myself for evaluation and recommendations.

On one occasion, Ed Angara called my attention, as the then Litigation Department Head to one case that had been accepted by an ACCRA partner, for which he had created a team, with himself as the supervising partner. The client had complained to Ed Angara that more than a year had lapsed yet no case had been initiated nor had he been updated on the referral's status at that late stage.

I reminded Ed Angara that he himself as the Managing Partner had allowed other partners to accept cases and create their own teams independently of the Litigation Department. Hence, I reasoned, the Litigation Department should not be held responsible for those cases.

As the problem persisted and I was getting irritated with inquiries regarding the status of those referrals, I suggested, and Ed Angara agreed, that I create a Monitoring Group within the Litigation Department to monitor the movements of cases up to a certain point, after which the assigned Supervising Partner shall be left alone.

Hence, the creation of the Litigation Monitoring Group (LMG) as distinct from the Litigation Department. Membership in the Monitoring Group was then only by written invitation from me as Chairman of the Litigation Department, and the Litigation Monitor was elected by the group's members.

The Monitoring Group met promptly at 5:00 P.M every Friday to monitor litigation referrals from internal evaluation up to the filing of a pleading. The Monitor took care of the day-to-day problems, including creating and assigning team members for new referrals.

At that time, I used "peer pressure" to prod the neglectful lawyers to do their legal work. Each Supervising Partner was asked to report on the status of cases assigned to him. If he cited the failure of a Senior Associate or an Associate as a reason for the delay, I immediately called, during the meeting, for the lawyer concerned for an explanation for the delay.

If that lawyer was out of the ACCRA building at that particular time, the LMG secretary, Ms. Marcia Angeles, requested the lawyer to see me in my office and give his explanation.

Where the lawyer concerned does not improve his performance within a reasonable period, I would table his neglectful habit for discussion by the Monitoring Group. We would decide whether I should talk to that lawyer and inform him that he cannot be a litigator. On the rare occasions that I was authorized to do so, I invited the lawyer for breakfast in my home in Pasig and told him the "facts of life" according to the ACCRA LMG.

This led to what the Litigation Partners call the "Shape Up or Ship Out Policy".

Before long, the other practice groups created their own Monitoring Groups and Monitors. I cannot stress the importance of internal monitoring against individual neglect strongly enough. I recall an incident when one lawyer from another group could not be contacted by a retainer client who was promised an ordinary opinion months before. As you know, ordinary opinions are covered by the regular retainer fee. If an extensive opinion is required, additional billings will be made.

I stumbled on this incident because my own daughter asked me for assistance. After a week of chasing this ghost of an ACCRA Lawyer, she gave up and advised her employer to get another law firm. That firm assigned a senior partner with a well-deserved reputation for competence and promptness, and from then on, our retainer client referred all work in that area to that other firm.

Even though the client did not file an administrative complaint, I consider the matter irreparable considering that:

1. ACCRA lost the goodwill and continuing future referrals from a large and prestigious multinational client;

2. When asked by prospective clients, they will invariably give their honest assessment: Most ACCRA lawyers are competent and diligent but some are neglectful; and

3. Given that honest assessment, those prospective clients will shy away from ACCRA.

So much for ACCRA's philosophy "that an institution founded upon ability, integrity, and professional skill will endure" and that ACCRA will "provide and maintain quality and efficient service to clients". Whether the method I employed in enforcing the ethical standard of "competence and diligence", is the more effective tool, I leave it to your individual ethical judgment.

I believe that effectively taking advantage of ACCRA's various Monitoring Groups may sufficiently comply with *Solatan's* mandate that "partners and practitioners" must appraise themselves of the "comings and goings" of legal referrals and that they should adopt measures to "foreclose" violations of the Code of Professional Responsibility. However, given the decision's broad language, I believe that each Practice Group should now explicitly monitor not only the status of referrals, but lawyers' ethical and unethical conduct as well, and impose appropriate rewards and disincentives.

The challenge, for ACCRA's young blood, as the Founding Partners fade, is to nurture the core value of "competence and diligence" in a profession that increasingly tempts beginning lawyers to hitch their stars to money and power oriented values.

III. THE TRANSACTION COUNSEL AND "THE CONFLICT OF INTEREST" RULE

Because of an institutional law firm's large number of clients, it is often confronted with conflicts of interest more often than a solo practitioner. Outside, the traditional litigation context, however, a firm faces distinct issues when it acts as what I call a "transaction counsel."

During United States Justice Louis D. Brandeis' confirmation hearings, the only issue raised against him concerned his professional ethics as a practicing lawyer. Specifically, he was accused of having acted as

counsel for multiple parties with conflicting interests in the Lennox affair.[37] When asked who he represented, he replied: "I should say that I was counsel for the situation. ... I was looking after the interest of everyone."[38]

Scholars criticize the term "counsel for the situation" as "a misty phrase"[39] or as "imprudent".[40] The suggested alternatives "lawyer for multiple parties", "multiple representation", "transaction matters", "transaction lawyer", and "transaction practice" are unsatisfactory as they also include "situations" in which the lawyer or the law firm concerned incurs ethical obligations to persons other than the consenting clients.

For my purposes, I use "transaction counsel" which I limit to apply only to situations involving two or more clients' representation. I define the term to refer to a lawyer, or a law firm, who acts as the common lawyer for two or more persons for their mutual benefit. This happens, more often than not, in drafting contracts.

A good example is the lawyer in estate proceedings requested by all the heirs to advise them on how to divide the estate and thereafter draft the requisite contract or file the appropriate action. Another example is when two or more parties ask a lawyer to prepare a contract for the sale of property from one to the other, or to prepare a joint venture agreement between them.

In bilateral and multi-lateral contracts, parties have actual, not potential, conflicts of interest. Take a simple contract of sale. A seller seeks

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[37] Brandeis was approached by James Lennox, a tannery owner, regarding his failing business. Brandeis then represented one of Lennox's creditors, but advised Lennox to assign assets to a trust to be operated by his law partner to dissuade creditors from pushing him into bankruptcy. Lennox proved uncooperative and soon found himself against Brandeis in the bankruptcy proceeding.

The quote was actually attributed to Brandeis by Lennox's counsel, Sherman Whipple. He testified that Brandeis explained to him: "I did not agree to act for Mr. Lennox when he came to me. When a man is bankrupt and can not pay his debts, ... he finds himself with a trust, imposed upon him by law, to see that all his property is distributed honestly and fairly and equitably among all his creditors, and he has no further interest in the matter. Such was Mr. Lennox's situation when he came to me, and he consulted me merely as the trustee for his creditors, as to how best to discharge that trust, and I advised him in that way. I did not intend to act personally for Mr. Lennox, nor did I agree to." Clyde Spellinger, *Elusive Advocate: Reconsidering Brandeis as People's Lawyer;* 105 YALE L.J. 1445, 1507 (1996).

[38] Milner S. Ball, *Lawyers in Context: Moses, Brandeis, and the A.B.A.,* 14 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321, 332 (2000).

[39] John P. Frank, *The Legal Ethics of Louis D. Brandeis,* 17 STAN. L. REV. 683, 698-702 (1965); Geoffrey C. Hazard, *Lawyer For The Situation,* 39 VAL. U. L. REV. 377.

[40] Geoffrey C. Hazard, *Lawyer For The Situation,* 39 VAL. U.L. REV. 377, 377 (2004).

the highest price with no warranties, or "where is, as is" basis. The buyer, having an opposing interest, seeks the lowest price with full warranties.

In agreeing to advise both, shall one advise the seller not to give any warranties beyond those required by law, and at the same time advise that the buyer demand full warranties? Conflicting interests are a reality at the outset. Suppose the buyer inadvertently confides that, based on his studies, the true commercial value of the property is X Pesos plus a premium of 50%, which is considerably higher than the price the seller confided as his maximum price. Does one convey this confidential information to the seller?

In re De La Rosa[41] resolved whether a transaction counsel may ethically act as a common lawyer for parties with actual and potential conflicting interests. The lawyer there was exonerated because, according to the Court:

> The complainant knew that De la Rosa was acting for and on behalf of the purchaser because he had conferred with him as her representative. The purchaser knew that he was acting for and on behalf of the seller for pay because he had obtained from her express permission to do so.
>
> Although it appears from the evidence that the respondent was acting for and on behalf of both parties to the controversy, we do not regard this as constituting malpractice under the law, it appearing undisputed in the record that he acted thus *with the knowledge and consent of both parties interested.* This being the case, neither party was deceived by respondent, and neither one suffered involuntary damages of his action.[42] (emphasis supplied)

A difficult conflict of interest problem arises when one party raises grounds, meritorious or unmeritorious, to renege on contractual obligations. If the brewing contractual dispute erupts into an actual judicial dispute, may the transaction counsel represent one party against the other?

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[41] 27 Phil. 259 (1914).
[42] *Id.* at 265.

In *Bautista v. Barrios*,[43] the transaction counsel opted to do so. According to complainant Bautista, she hired Atty. Barrios to draft a deed of extra-judicial partition over property left by her deceased sister. Atty. Barrios prepared the deed and all the heirs signed it. When Federico Rovero, her sister's widower, refused to comply with the deed's terms, she asked Atty. Barrios to initiate the appropriate suit against him. Atty. Barrios declined, and she hired another lawyer.

Atty. Barrios, however, appeared as counsel for Rovero and asserted the defense, among others, that the deed "did not contain all the terms of the agreement" and that "it was subject to certain modifications"[44] which the complainant knew at the time of the execution of the deed. In response to an administrative complaint, Atty. Barrios asserted that it was Rovero, not the complainant, who hired his services, and that at most, he acted as common counsel for all the heirs.

The Court held that Atty. Barrios acted unethically:

> [E]ven supposing that, as claimed by Atty. Barrios, he was *employed by both Rovero and the Bautista brothers* (sic) to draft the partition, *it is doubtful whether he could appear for one as against the other in subsequent litigation.* At most, if he could appear for one client, it should be *for him who seeks to enforce* the partition as drafter. Yet he appeared for Rovero who sought to avoid compliance with it, asserting that it did not contain all the terms of the agreement, that it was subject to certain modifications, etc. Moreover, in his defense of Rovero, he raised issues which obviously violated Rufina's confidence, because he alleged — in behalf of Rovero — that the undisclosed modifications were known to Rufina at the time of the execution of the partition.[45] (emphasis supplied)

Bautista v. Barrios is unsatisfactory in providing guidance because:

1. It merely opined that "it is doubtful whether" a transaction counsel "could appear for one" of the contracting parties "as against the other in subsequent litigation."

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[43] A.C. No. 258, 9 SCRA 695, Dec. 21, 1963.
[44] *Id.* at 697.
[45] *Id.* at 697.

2. It merely suggested that "if" a transaction counsel "could appear for one client, it should be for him who seeks to enforce the partition as drafter."

3. Its only definitive ruling is that by pleading, on behalf of one contracting party, a fact or circumstance not stated in the written contract and claiming that such unstated fact or circumstance is known to the other party, the transaction counsel violated the latter's confidence.

Gesuden vs. Ferrer[46] is similarly unclear. The respondent lawyer in that case prepared a deed of extrajudicial partition that all heirs executed. Subsequently, on behalf of one heir, he filed a case disputing the same partition. In his defense, he claimed that he advised his client against filing the suit. In overruling this defense, the Court held:

> [T]he proper thing for him to do was not to involve himself in it. As to his withdrawal therefrom, the order of the court allowing him to do so shows that he withdrew after he had presented the principal evidence for the plaintiff.
>
> We hold that the respondent violated his duty as a lawyer when he appeared as counsel for one of the heirs in her suit against the other heirs over a matter which the respondent had handled for all of them.[47]

Gesuden is unsatisfactory because it peremptorily ruled, without any explanation, that the lawyer "violated his duty" by his appearance as counsel for one party as against the other. *Bautista* at least attempted to distinguish between the lawyer representing the party seeking to be freed from his obligations as compared to the lawyer representing the party seeking to enforce the contract according to its express terms.

The 2005 case of *Frias v. Lozada*[48] presented another of the conflict of interest rule's aspects, as it applies to a transaction counsel. Atty. Carmencita Lozada in that case acted as the buyer and the seller's common

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[46] A.C. No. 1806, 128 SCRA 357, Mar. 23, 1984.
[47] *Id.* at 360.
[48] A.C. No. 6656, 477 SCRA 393 Dec. 13, 2005.

counsel and, at the same time, as the seller's paid broker. Both parties were then her existing clients in unrelated matters.

After the parties had partially implemented the contract and Atty. Lozada was paid her broker's commission, a dispute erupted which led to the filing of several suits involving the parties, including Atty. Lozada who, despite the fact that the sale was aborted, refused to return the broker's commission she received. One such suit ended with the court ordering her to return this commission.

The Court ruled that it was unethical for Atty. Lozada to have acted as the commission broker and, at the same time, the common counsel because:

> She even had the temerity to broker the transaction. At that early stage, she should have realized that her role as their lawyer had been seriously compromised. Since buyer and seller had evident antagonistic interests, she could not give both of them sound legal advice. On top of this, respondent's obvious tendency then was to help complainant get a high selling price since the amount of her commission was dependent on it.
>
> ...
>
> The records further establish that respondent collected her full commission even before the transaction between complainant and San Diego was completed. This unmasked respondent's greed which she now wants us so badly to ignore. Her integrity was placed in serious doubt the moment her promised commission started motivating her every move. Her behavior was, sad to say, simply distasteful.[49]

Canon 15 provides the initial ethical rules that govern the transaction lawyer's conduct at the time that he agrees to act as such:[50]

> CANON 15 — A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENT.

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[49] *Id.* at 401-02.

[50] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 15.

> Rule 15.01 — A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict with another client or his own interest, and if so, shall forthwith inform the prospective client.
>
> Rule 15.02 — A lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client.
>
> Rule 15.03 — A lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of the facts.

It is imperative, that the referring clients, whether only one or both are existing clients, are immediately made aware of these rule's express terms, meaning and implications on the proposed legal transaction because:

1. Unlike the old Canons of Professional Ethics which merely required "express consent"[51] that could be proven by circumstantial evidence, as seen in De la Rosa and Bautista, Rule 15.03 now requires "written consent".

2. In rendering legal services, the transaction lawyer will necessarily require a host of information and documents from the clients. As observed by the Solicitor General in Gesuden in the course of drafting a contract, the counsel acquires knowledge of relevant and irrelevant facts, secret and well known facts, data and information that might prejudice one or all of the contracting parties.

3. It is prudent to recognize the substantial risk that the contracting clients' relationship may sour to a level that there might arise a dispute which would force one party to sue the other.

4. For that reason, the role that the transaction lawyer will assume in case of a dispute should immediately be discussed with, and resolved by, the clients even before the transaction starts working on their referral.

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[51] Rule 6(2), regarding "*Adverse influence and conflicting interests*" provided: "It is unprofessional to represent conflicting interests, except by express consent of all concerned given after full disclosure of the facts."

If two clients proposing that ACCRA act as their transaction counsel are both retainer clients, is the required written consent complied with by this provision of the ACCRA Retainer Agreement?:

> Conflict of Interest: In case any matter should arise between you and another client of this office, by virtue of which we might have a conflict of interest under the code of professional responsibility which binds all lawyers, we reserve the right to inhibit ourselves from representing you and/or our other client(s) insofar as that particular matter is concerned.

In my opinion, the all-encompassing language does not constitute the "written consent" required by Rule 15.03 for these reasons:

1. Rule 15.03 requires that the "written consent" must be "given after a full disclosure of the facts."

2. At the time that the Retainer Agreement was entered into, "the facts" peculiar to the specific legal matter are not yet known or may have yet to occur.

3. It is only at the time that the proposed referral is made and after a preliminary client interview is conducted can the ACCRA lawyer identify relevant information that may need to be disclosed to him if he is expected to render satisfactory service.

4. Besides, the quoted Retainer Agreement applies only to a situation where ACCRA decides to inhibit itself from acting as counsel of one of two clients with conflicting interests, not where those clients themselves request ACCRA as their common counsel on a specific legal matter.

The initial proper procedure, I suggest, is that both contracting parties be present when the transaction counsel briefs them on the relevant ethical rules.

Without violating clients' confidences, I will attempt to illustrate my proposition with an actual transaction. Teddy Regala was the supervising partner of the retainer team serving Client 1, while I was the

supervising partner of the team serving Client 2. The transaction arose when Partner X, a member of Teddy Regala's retainer team, requested me to ask Client 2 whether it was possible to reach some arrangement to avert a possible business collision between them. Client 2 candidly replied: "Everything is possible. Tell Client 1 or his lawyers to get in touch with me."

For several weeks, I did not hear of any developments. One afternoon, Teddy Regala told me by phone to proceed, within the hour, to a five-star hotel for an urgent Executive Committee Meeting. There, I found Ed Angara, Teddy Regala as the Managing Partner, Frank Drilon as the Co-Managing Partner and Partner X. They were all in a somber mood and appeared to have been meeting for some time. I got the impression that Ed Angara was requested to act as a sort of *amicus*.

At that meeting, I was told that Client 1 and Client 2 had agreed, in principle, on forging a business alliance; that the crucial negotiation will commence that evening on a "make or break" basis; that the partners present had decided that ACCRA should, during the negotiations, act merely as an adviser and only if asked by the clients; that it would be a mistake for an ACCRA lawyer to advocate a given position by one party in opposition to the other's proposal; that if the delicate matter is not handled properly, it may even cause the firm's breakup.

Since I was getting the impression, wrongly or rightly, that the "riot act" was being read to me, I assured them, in the course of the briefing, that they should not worry because Client 2 had not told me that he had agreed, in principle, to enter into any transaction with Client 1, much less requested me to assist them in any negotiation. Further, based on my dealings with Client 2, I was sure that they would have agreed to the ACCRA rules because that was, anyway, their own procedure when negotiating important business contracts. My protestations were brushed aside because they were sure that, before the end of the afternoon, Client 2 would ask me to be present during the negotiations. And the client did.

The negotiations took place that night and ended at 5 AM. We were then all requested to join Client 1 at his Forbes Park residence at 7 AM, and at 8 AM, the two clients shook hands to seal their agreement.

The conversation was provoked by Client 1 and I participated without being asked to:

Client 1:	(*addressing Client 2*) Since our children are unaware of what we agreed upon, I think that it would be a good idea to ask ACCRA to put our agreement in writing.
Client 2:	I have no problem with that. They are also my lawyers.
JCC:	I think that you should hire your respective lawyers to draft the contract because ACCRA is in a conflict of interest situation in this transaction.
Client 2:	What is wrong with that, Joe?
JCC:	Nothing is wrong with that if the clients expressly consent that ACCRA act as the lawyer for both of them.
Client 1:	I suggested ACCRA to draft the contract.
Client 2:	And I agreed. Do you still have a problem?
JCC:	In case of a dispute, who would you like to decide the controversy: the courts or an arbitration board?
Client 2:	I suggest that we submit the dispute to arbitration. What do you think (addressing Client 1)?
Client 1:	If that is what you like, I agree.
JCC:	How would you select the members of the arbitration board?
Client 2:	We do it now. I nominate ACCRA. (addressing Client 1) What do you think?
Client 1:	I agree.

JCC: Who in ACCRA will compose the arbitration board?

This conversation led the parties to agree on definite ACCRA lawyers who would compose the three-man arbitration board.

After I analyzed the written stipulation on arbitration, I began entertaining doubts on its ethical validity, as ACCRA acted as the common legal adviser during the negotiations and, further, drafted the contract.

My doubts were resolved in 1987, fortunately for me, when the present Rule 15.04 expressly permitted a transaction counsel to act as an arbitrator: "Rule 15.04 – A lawyer may, with the written consent of all concerned, act as mediator, conciliator or arbitrator in settling disputes."[52]

Rule 15.04, in my opinion, is eminently the preferable solution to the unresolved issue of whether ACCRA may act as counsel for one party against the other in case of a contract dispute.

Two other matters, I suggest, should be discussed with the clients at the inception.

The first is the prudence of creating two separate and independently working teams to service clients' respective requirements while ACCRA is in the process of documenting their juridical relationship. In multiparty transactions more than two teams will be required to assist each client.

The other is the advisability of erecting a Chinese Wall between and among the separate teams, and the rest of the ACCRA lawyers in general.

A Chinese Wall is different from the Great Wall of China. It was invented by the Wall Street banks and other financial institutions to give them some comfort in claiming that they acted impartially in being the lender or financier of a given transaction, such as a merger, an acquisition, or a simple loan and, at the same time, the financial adviser of the debtor

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[52] CODE OF PROFESSIONAL RESPONSIBILITY, Rule 15.04.

and the other contracting parties. In such a situation, the bank creates a team that shall assist its officers with the proposed transaction's financial aspects, and another team or teams will be created to assist the debtor and other contracting parties. These teams are prohibited from discussing with any matter relating to transaction with the others.

The problem with the Chinese Wall is that it is made of bamboo, like the walls of ordinary bedrooms in China. Conversations and acts taking place in one room can be heard in the adjoining rooms.

Before long, the Wall Street law firms imitated their clients. This is now usually done when a law firm works on a corporate matter for a publicly listed corporation that may affect its share price. The Chinese Wall was thus erected primarily to prevent insider trading. Outside the law firm and in a broader context, the United States Securities and Exchange Commission precisely requires Chinese Walls today to prevent insider trading.

As a result of American law firms' frenzied mergers and consolidations in recent years, there has been significant lawyer migration from one firm to another. This lateral hiring necessarily created the real danger, not merely potential, of conflicts of interest. To avoid disqualifying entire firms, American firms have erected Chinese Walls around new hires who previously represented existing clients' opponents. I must add that the expression "Chinese Wall", because of its "potentially offensive and linguistically discriminatory" tone, has been replaced by the more politically correct terms "ethical screens", "insulation walls", "ethical walls", "cones of silence", or "fire walls".[53]

Inferring from this practice, our Code of Professional Responsibility now requires a law firm to erect a Chinese Wall when the client so instructs:

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[53] M. Peter Moser, *Chinese Walls: A Means Of Avoiding Law Firm Disqualification When A Lawyer Personally Disqualified Joins The Firm*, 3 GEO J. LEGAL ETHICS 399 (1990); Christopher Dunnigan, *The Art Formerly Known As The Chinese Wall: Screening in Law Firms: Why, When, And How*, 11 GEO. J. LEGAL ETHICS 291 (1998); Susan Shapiro, *If It Ain't Broke ... An Empirical Perspective in Ethics 2000, Screening, and the Conflict-of-Interest Rules*, 2003 U. ILL L. REV. 1299 (2003); Jason Hungerford, *Working With What We've Got: Toward A Modern Approach To Ethical Screens*, 18 GEO. J. LEGAL ETHICS 823 (2005); Paul R. Tremblay, *Migrating Lawyers And The Ethics Of Conflict Checking*, 19 GEO. J. LEGAL ETHICS 489 (2006).

> Rule 21.04 — A lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client.
>
> Rule 21.05 — A lawyer shall adopt such measures as may be required to prevent those whose services are utilized by him, from disclosing or using confidences or secrets of the client.

Rule 21.04's language "unless prohibited by the client" unmistakably grants to the client the absolute right to prohibit the disclosure of his referral's details to partners and associates other than those working on his referral. In that situation, it is mandatory for ACCRA, under Rule 21.05 to adopt measures to prevent the disclosure of "confidences or secrets" to those excluded partners and associates. A Chinese Wall is one such measure.

It might interest you to know that even before the present Canon 21 was promulgated, ACCRA has been creating Chinese Walls for specific files where the clients request that their affairs not be disclosed to particular lawyers, or to all other ACCRA lawyers outside the relevant team.

IV. CLOSING THOUGHTS

I also asked OBT to poll ACCRA associates regarding specific ethical concerns. The following appear to represent their main queries:

1. How do you justify using extralegal measures to protect a client's interests, even when the client is clearly entitled to relief as a matter of law, when you are aware that doing so will contribute to the rampant corruption in our legal system, even indirectly?

2. How do you respond when a judge or one of his staff members is clearly soliciting a bribe?

3. What are the ethical restrictions on dating a client's daughter?

4. What are the ethical restrictions on dating your supervising Partner's daughter?

I shall allow OBT to address the latter two pressing concerns in his daydreams, although I am curious because most partners' daughters are well below eighteen years of age. As for the first two queries, Canon 1, particularly Rule 1.01, answers both:

> CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR THE LAW AND FOR LEGAL PROCESSES.
>
> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

The concrete answer to the second question is: I tell, as I have done in some instances, the Judge or his staff that I am not authorized by my client to act on such matters but that I will refer the matter to him.

As soon as I return to the office, I immediately call the client for a meeting during which I inform him of the solicitation. I tell the client he may or may not act on the solicitation and request that he does not tell me what he proposes to do, or not do, so that I will not be forced to report the matter to the proper authorities. This response is based on Canon 15, particularly Rule 15.06 and Rule 15.07:

> CANON 15 — A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTONS WITH HIS CLIENT.
>
> ...
>
> Rule 15.06 — A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

> Rule 15.07 — A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

Based on my training from my parents and from my school, and my experience as a private practitioner, corrupting public officials, most especially those in the judicial and other adjudicatory systems, can never be justified.

My first experience with corruption as an aspiring lawyer was when I accepted the invitation of the late Senator Jose W. Diokno for a possible position in his law office. Some of you may know that the late Senator Diokno tied with Senator Jovito Salonga for the 1944 Bar Examinations' top position. He was also a Certified Public Accountant.

During the interview, he asked what subjects I studied at the Law School of the University of Pennsylvania. I cited Local Governments because that was the dean's field of expertise, and Taxation because I thought that it was a developing and promising field for private practice.

His devastating comment was:

> Unfortunately, in the Philippines, it is not what you know in taxation that is important. What matters are whom you know and how much you are willing to pay to those whom you know. This is the reason why I do not practice taxation.

My ambition of being a tax lawyer was thus blown to bits.

My second encounter with corruption came when I was already a third year associate in the Sycip Law Office.

I was once called to the Managing Partner's office, where a client of Chinese descent was already meekly seated giving me the impression that he had just received a tongue lashing from the late Alex Sycip. I was then a Member of the Team handling that client's legal problems, arising from his having been assessed by the City Treasurer of Manila with a huge municipal license tax as a hardware retailer and wholesaler.

As soon as I was seated, Alex Sycip said:

> Joe, your client wants to bribe an official of the Manila City Treasurer's Office. I told him I do not allow my Law Office to bribe public officials and I will not allow any of my lawyers to participate in corrupting public officials. I also told him that all that I will ask you to do is to watch, secretly and from a distance, the delivery of the bribe money so somebody can testify in his favor in case he will be arrested.

In a sense, I was lucky that these two incidents happened in my formative years of practice. Without them intending it to be so, I was mentored by the two prominent and successful lawyers on how they dealt with corruption.

In my entire fourteen (14) years in the Sycip Law Office, the Partners never suggested, nor did we participate in bribing public officials, especially in the judicial and other adjudicatory systems. We were aware, of course, of the rampant public corruption then and had had extended discussions on how to overcome the unfair advantage of opponents who opt to use corruption to win.

In short, it was in the Sycip Law Office that I learned and nurtured my instinctive aversion to public corruption. I brought the ethical culture to ACCRA, to the Litigation Department, in particular.

A related associate question was:

> 5. "How do you respond when a judge offers to let you write the decision?"

If the request is the product of corruption, I will not have anything to do with it. I will follow the same procedure for the case of a Judge or his staff directly soliciting a bribe.

If, however, the request is not the product of corruption, I will be flattered.

In my early years as a trial lawyer, I witnessed, several times, a Court of First Instance (now, Regional Trial Court) trial judge requesting the lawyer of one litigant to write the decision in favor of his client, in open court and in the presence of opposing counsel. In other instances, he asked

both opposing counsel to write the decision that they would like him to render.

I never heard that this practice of that trial judge, a respected one, was disallowed by the Supreme Court.

Note that United States rules allow counsel to write the order or decision he wants the court to promulgate granting provisional relief sought. In fact, a draft order is required to be attached to the motion at the time it is filed.

There was even a short article in the IBP journal by Joel Bodegon, another Sigma Rhoan, arguing that this procedure is not disallowed by the Rules of Court and should be adopted to declog judicial dockets.

Another related question:

> 6. "How do you handle a client who has a clearly losing (civil) case but insists you pursue it?"

Rule 1.03, 1.04 and 15.05 govern:

> CANON 1 — A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR THE LAW AND FOR LEGAL PROCESSES.
>
> ...
>
> Rule 1.03 — A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause.
>
> Rule 1.04 — A lawyer shall encourage his clients to avoid, end or settle the controversy if it will admit of a fair settlement.
>
> CANON 15 — A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTONS WITH HIS CLIENT.
>
> ...

> Rule 15.05 — A lawyer, when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case.

The question postulates that the client's cause is "a clearly losing (civil) case". Concededly, this is the associate's "candid and honest opinion on the merits and probable results of the client's case."

The dilemma is that it is only a "candid and honest opinion." He can not guaranty to the client that the Supreme Court will sustain his bleak assessment of the relevant facts and his pessimistic interpretation of the applicable laws. As Rule 15.05 provides, he can only give his "candid and honest opinion" on the "probable results", not guaranty results.

Differently phrased, there might be an honest disagreement between the lawyer and the client on a case or strategy's merits, as when the client is merely delaying the inevitable time when he must pay a debt justly incurred.

In such situations, I suggest to the client he has only two (2) options:

Option 1: Enter into an amicable settlement with the opponent under reasonable terms and conditions; or

Option 2: Hire another lawyer to help him.

Finally, I address a situation that may intimidate young lawyers:

> 7. "How do you handle a client whom you feel is clearly withholding something, misrepresenting the truth, or outright about to commit perjury?"

Canon 10, particularly Rule 10.01 governs:

CANON 10 — A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in court, nor shall he mislead or allow the Court to be misled by any artifice.

The query assumes that the lawyer has reached, in his study of the facts and the law applicable to the case, an impasse with his client and his witnesses who insist in their version of reality as opposed to what the lawyer perceives.

To avert such an impasse, I devised my own strategy of indirectly suggesting to the client and his witnesses that their recollection of the facts might be inaccurate. In my initial meeting with the client or his witnesses, I immediately state the rules that will govern our relationship:

JCC's Rules To Govern Clients and Their Witnesses

Rule 1: They must tell me everything that they know about the case.

Rule 2 They must give me all the documents that are in their possession which, they think, have a bearing on the case; and if those documents are not in their possession, where I can find them.

Rule 3 They must also tell me all the facts, circumstances and documents which they think are not relevant to the case, or not favorable to their case, with the explanation that:

a) The reason why they hired an expensive lawyer is because they do not know, from the legal point of view, what is relevant and what is favorable or unfavorable, for all they know what they consider unfavorable facts or

circumstances may, from the stand point of law or judicial precedents, are in their favor;

b) It is very important for me to know what their opponent will say to contradict their claim and their witnesses so I can prepare a reasonable and credible explanation for what they perceive to be inconsistent or unfavorable to their cause.

Rule 4 They must identify for me all persons who may personally know some facets of the case and state whether they are for us or for the opponent.

A lawyer is naive if he believes "hook, line and sinker" everything that his client or witnesses tell him. It is human nature to withhold or forget unpleasant experiences or embarrassing episodes in one's life. Thus, it is normal for a litigant to withhold information that he thinks is unfavorable to him.

Thus, my approach is to study all available documents. I also make my own factual investigation, verifying from independent sources the accuracy or inaccuracy of the client and his witnesses' version.

If the lawyer studied the case diligently and thoroughly, he would, at a given stage in his preparation, have deeper knowledge of a case's details than his client and witnesses.

I then proceed to the second and subsequent interviews of the client and his witnesses, without sharing the results of my own verification.

If the client and his witnesses deviate from what I have ascertained to be the credible facts, I immediately proceed, without their knowing what I am trying to establish, to ask a series of cross-examination questions. Slowly, they will realize from the tenor of my simple and logically sequenced questions that their version is not a credible version of what the truth is. At that point, I tell them how easy it is to catch them lying. I tell them, too, that they should expect more embarrassing questions from the opposing counsel out to destroy their credibility short of telling them to their faces they are liars and perjured witnesses.

Caught in such an embarrassing situation, they usually ask me what they should do. My advice is that they might have been mistaken in their recollection and they better re-assess whether they are mistaken, or take the risk of losing the case and at the same time go to prison for perjury.

Invariably, truth prevails.

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