SURVEY OF 1955 CASES IN LEGAL AND JUDICIAL ETHICS

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The year 1955 is almost barren of decisions on Legal and Judicial Ethics. Relatively few cases had been brought to the attention of our courts and most of them merely reiterated previous rulings and well-settled doctrines.

I. AUTHORITY OF ATTORNEYS TO BIND CLIENTS.

A. ADMISSION AS TO NATURE OF CLIENT'S ACTION.

The rule that attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure, but they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash,[1] was applied in the case of *Belendres v. Lopez Sugar Central Mill Co.*[2] Said the Supreme Court:

> "The line of demarcation between the respective rights and powers of an attorney and the client is well defined. The proceedings in court to enforce the remedy, to bring the claim, demand cause of action, or subject matter of the suit to hearing, trial, determination and execution, are within the exclusive control of the attorney. The cause of action, the claim or demand sued upon, and the subject-matter of the litigation are all within the exclusive control of the client; and the attorney may not impair, compromise, settle, surrender, or destroy them without his client's consent." [3]

The above-named case involved the recovery of damages for the death of a train conductor resulting from a derailment of a wagon of the defendant company. The plaintiff alleged negligence on the part of defendant's other employees. The case was dismissed by the CFI on the ground, among other things,[4] that the action was in

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[1] Rule 127, § 21, Rules of Court.

[2] G.R. No. L-6869, May 27, 1955; 51 O.G. 288 (1955).

[3] Similar ruling was previously made in Natividad v. Natividad, 51 Phil. 613 (1928).

[4] In the case of Belandres v. Lopez Sugar Central Mill Co., *supra* note 2, the Supreme Court also held that the subject matter of any given case is determined, not by the nature of the action which the party is entitled under the facts and the law to bring, but by the nature and character of the pleadings and issues submitted by the parties to the court for trial and judgment. The plaintiff seeks remedy under articles 2176 and 2180 of the new Civil Code because it is alleged in the complaint that decedent's death was due to the negligence of defendant's other employees.

the nature of a claim for compensation under the Workmen's Compensation Act,[5] as admitted by the plaintiff's counsel. On appeal the Supreme Court reversed the lower court holding that admitting that the plaintiff's counsel did admit that his client's action was one for compensation under the Workmen's Compensation Act, his admission or statement in that respect was certainly beyond the scope of his authority as counsel, for the same did not refer to any matter of judicial procedure related to the enforcement of the remedy, but to the subject matter or cause of action.

B. AUTHORITY OF LAWYER TO BIND CLIENT IN TAKING APPEAL.

The Rules of Court specifically grant attorneys the authority and power to bind their clients in taking appeal.[6] This runs counter to the view that the authority of an attorney to represent his client in the trial court does not include authority to appeal from an adverse decision, unless the client has expressly given such authority.[7] Our Supreme Court, however, made it unequivocal that a lawyer has authority to bind his client in taking appeal from an adverse decision even without his client's express consent. Thus, in the case of *Ocampo v. Court of Appeals*,[8] the petitioner was one of the accused in a criminal case filed with the C.F.I. After appropriate proceedings, the trial court rendered decision and promulgated it on Nov. 5, 1948, convicting the petitioner of robbery. He was sentenced to serve in prison from Nov. 5, 1948, the minimum term of which was to expire March 27, 1951 and the maximum term, on April 13, 1955. Petitioner started serving his sentence on Dec. 17, 1948. The Court of Appeals affirmed the decision of the C.F.I. Now the question whether there was a valid appeal from the decision of the CFI to the Court of Appeals was material whether the sentence meted out by the trial court should commence to run from Nov. 5, 1948 or from July 14, 1953, the latter date being the date when the Court of Appeals affirmed the CFI decision. Although petitioner denied having

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[5] Act No. 3428, as amended, § 46 of which provides that the Workmen's Compensation Comn'r shall have exclusive jurisdiction to hear and decide claims for compensation under the Workmen's Compensation Act, subject to appeal to the Supreme Court, in the same manner and in the same period as provided by law and by rules of court for appeal from the CIR to the Supreme Court.

[6] See note 1 *supra*.

[7] GARCIA, LEGAL AND JUDICIAL ETHICS—PRINCIPLES AND PROBLEMS 45 (1953); VENTURA, NOTES ON LEGAL AND JUDICIAL ETHICS 43 (1954).

[8] G.R. No. L-7469, May 6, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 701-2 (1955).

made or consented to an appeal in the case, yet the Supreme Court found that the record of said criminal case belied him. It appeared that on Nov. 6, 1948 his counsel filed a notice of appeal on his behalf. Considering, the Court ruled, that "attorneys have authority to bind their clients in any case . . . in taking appeals, and in all matters of ordinary judicial procedure," [9] it is obvious that the petitioner's contention is devoid of merit.

C. DENIAL OF ALLEGATIONS OF USURY ON BEHALF OF CLIENT BY ATTORNEY BINDS CLIENT.

In the case of *Matel, et al., v. Rosal et al.*,[10] the defendants on appeal maintained that the denial of their special defense of usury should have been made by the plaintiffs themselves who were in a position to know the facts and not by their counsel. It appeared that it was the counsel of the plaintiffs who made under oath [11] the denial of allegations of usury adduced as special defense in defendant's amended answer. The Supreme Court observed—

> "It will be noticed that the rule above reproduced (Rule 9, sec. 8) does not specify who is to make the denial, whether the party concerned or his counsel. Of course, we agree with the defendants that only a person having personal knowledge may validly make the specific denial under oath. It will equally be noticed, however, that the denial here though made by counsel in behalf of the plaintiffs, is couched in general terms. He does not say that his denial was based on his information or belief because if he did, it would not be a valid denial sufficient to counteract the allegation of usury. We must presume that the denial made by counsel for plaintiffs was based on his own personal knowledge . . . . What the defendants should have done was to appear at the hearing and prove their allegation of usury which they failed to do."

II. DUTY OF LAWYER TO HIS CLIENT.

A. ATTENTION AND DILIGENCE IN PROSECUTION OF CLIENT'S CASE.

The lawyer owes entire devotion to the interest of the client, warm zeal in the maintenance or defense of his rights and the exertion of his utmost learning and ability, to the end that nothing be taken or withheld from him, save by the rules of law, legally ap-

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[9] Rule 127, § 21, Rules of Court.

[10] G.R. No. L-7095, April 25, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 853-54 (1955).

[11] Rule 8, § 8 provides that "Allegations of usury are deemed, admitted if not denied specifically and under oath." See § 9 of Act No. 2655, as amended, otherwise known as the Usury Law of the Philippines.

plied.[12] In prosecuting or defending the case of his client an attorney should exercise due care, skill and reasonable diligence.[13]

The case of *Espere v. Atty. Santos*,[14] involved the duty of a lawyer to his client in the prosecution of his client's appeal with promptness. The petitioner engaged the legal service of the respondent attorney to prepare and file his brief in a criminal case pending before the Court of Appeals. Such brief fell due on June 22, 1952. On June 19, the respondent attorney filed a petition for an extension of thirty days to present the appellant's brief, but failed to give a copy thereof to the office of the Solicitor-General. For that reason the Court of Appeals refrained from acting on said petition. Respondent then filed another petition for extension with a copy thereof sent to the said office, but the court, observing that June 22, 1952 had already passed, denied the petition and remanded the case to the court of origin. As a consequence, petitioner was deprived of his right to a rehearing before the Court of Appeals. Upon this set of facts the Supreme Court said—

> "Although the appeal of defendant exhibited no definite prospect of success and respondent's omission probably caused no undue hardship to his client, nevertheless, the negligence may not be entirely condoned; so he is admonished to be more careful in the practice of his profession. He should remember that attention and diligence are essential to membership in the Bar."

Gross misconduct or negligence was not shown as to warrant disbarment, suspension or fine. But a client who suffers damages by the failure of his attorney in preparing or filing pleadings necessary in the proper conduct of the case may recover damages therefor.[15]

III. Duty of Lawyer to the Court.

A. Impertinent and disrespectful statements ground for contempt of court and suspension.

The foundation of liberty in democratic countries is respect for the law. The courts have been created especially for the purpose of interpreting and enforcing the law. Anything, therefore, which undermines the judicial edifice is disastrous to the continuity of govern-

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[12] Canon 15, Canons of Professional Ethics.

[13] Enriquez, et al. v. Bautista, 45 O.G. 1248 (1949); Linis v. Rovira, 61 Phil. 137 (1935); Ventura v. Santos, 59 Phil. 123 (1933) In Re Filart, 40 Phil. 205 (1919).

[14] Adm. Case No. 151, April 30, 1955. See Notes, *Recent Decisions*, 30 Phil. L.J. 898-900 (1955).

[15] *In re* Filart, 40 Phil. 205 (1919).

ment and to the attainment of the liberties of the people.[16] The Rules of Court make it the duty of an attorney to "maintain the respect due to the courts of justice and judicial officers." [17]

An attorney-at-law in the case of *In re Susano Velasquez*,[18] was found guilty of contempt of court for which he was suspended from the practice of law for six months. On March 16, 1948, a complaint was filed against the Consolidated Investment, Inc. The defendant was represented by Claro M. Recto as its attorney of record. After the defendant's motion to dismiss was denied by Judge Rodas, the defendant filed its answer on June 13, 1948. January 19, 1949 was set for hearing, notice of which was sent to Atty. Barredo. On the day set for hearing nobody appeared for the defendant and the lower court granted a motion for default. On January 27, 1949, however, the lower court granted a motion signed by Attys. Recto and Barredo setting aside the order for default, and after due hearing dismissed the case. The Supreme Court on appeal affirmed the dismissal of the case. Thereafter, Atty. S. Velasquez for the plaintiff-appellant signed and filed a motion for reconsideration containing the following statements:

> "The decision of the lower court if allowed to stand, affirmed by this Honorable Court, means only one thing—that before our courts of justice a man of the reputation of Atty. C. M. Recto can do no wrong, cannot commit any error. He has but to allow his name and signature to be used in a case, and without even appearing once during the trial of the case, he can file his answer 48 days late, he can affect childish petulance by a sham pleading, make inexcusable excuses for his failure to attend the trial . . . .
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> ". . . we no longer have a government of laws but of men, and our courts may distort and break our procedural laws and jurisprudence to favor a party litigant . . ."

The Supreme Court, passing upon the foregoing statements of a lawyer, ruled that the charges were not pertinent or relevant to the issues, nor were they necessary to disprove the facts and circumstances relied upon by the lower court in admitting defendant's answer and setting aside the order of default and by this Court in affirming the appealed decision. The Court also found that the answer filed by the defendant was late only for two days, because the

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[16] MALCOLM, LEGAL AND JUDICIAL ETHICS 160 (1949).

[17] Rule 127, § 19(b). Canon 1, Canons of Professional Ethics, provides: "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."

[18] Resolution of the Supreme Court, April 29, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 850-53 (1955).

motion for clarification filed by defendant had the effect of suspending the period for filing the answer and that the counsel for defendant was unable to appear at the hearing for reasons beyond his control as the notice of the hearing was not sent directly to him.

The Supreme Court in 1922, however, once said:

> "We feel also that litigants and lawyers should not be held to too strict on account for words said in the heat of the moment, because of chagrin at losing cases and that the big way is for the court to condone even contemptuous language. When Atty. Gomez comes to reflection on his conduct and on his obligation as an officer of the court . . . he will realize the impropriety of his action.
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> "The rule in the more progressive jurisdictions is that, courts, when a case is finished, are subject to the same criticism as other people. Where the liberty of the press and freedom of public comment end, there tyranny begins."[19]

IV. Malpractice and Violation of Attorney's Oath.

A. Preparing and Ratifying Deed of Sale Containing False Statements.

Under his oath an attorney-at-law solemnly swears that he will do no falsehood, nor consent to the doing of any in court. An attorney was suspended from the practice of law for having prepared and subscribed to an affidavit which stated in substance that the subscribing attorney and his wife had been separated as husband and wife and that each one of them was free again to marry and take another life-partner. This, according to the Court, was a clear violation of the attorney's oath.[20]

In the case of *Sevilla v. Zoleta*,[21] the respondent, a lawyer and notary public, prepared and ratified a deed purporting to be a sale of a piece of land stating therein that the land is free from all liens, charges and encumbrances of whatever kind and nature, when as a matter of fact he knew well that on two different occasions he had acted as witness to the execution of two deeds of mortgage involving the same parcel of land. Now the question was whether the consent of the mortgagees to the execution of the deed of sale with false statements justified the act of the respondent. The Supreme

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[19] *In re* Gomez, 43 Phil. 376, 377 (1922). The case of *In re* Velasquez, *supra* note 17, may be distinguished from the *Gomez* case in that in the former the case was still *sub judice* and the respondent attorney had been previously warned that repetition of similar offense might cause his disbarment while in the *Gomez* case there were no such facts.

[20] Balinon v. De Leon and Velayo, 50 O.G. 583 (1954).

[21] Adm. Case No. 131, March 28, 1955. See Notes, *Recent Decisions*, 30 Phil. L.J. 513-14 (1955).

Court held that the act done was improper and irregular and not in keeping with the oath of a member of the Bar. The proper step for him to take, even if the mortgagees had consented to the sale of the land encumbered, the Court observed, would have been to cancel the mortgage, or to state in the deed of sale that the land was encumbered in order that a third person might not be misled and involved in future litigation. The Court admonished the respondent to be more careful in the future in the performance of his duties as notary public and as a member of the Bar.

B. FALSE STATEMENT MADE IN GOOD FAITH.

In *Tiamson v. Atty. Reyes*,[22] the respondent attorney was charged with having violated his oath of office. It was alleged in the complaint that he maliciously instigated the filing of an application for registration of a parcel of land, stating therein false statement when he knew very well that his client and complainant's father was still living and that the complainant was entitled to one half of said parcel of land. The Supreme Court dismissed the case upon the finding of the investigating officials that there was never an instigation, much less malicious instigation, by the respondent for his client to apply for the registration of land in question; that the complainant had already received his share in the inheritance, contrary to what he claimed; and that respondent did not really know whether or not their father was still living because he had lost track of him.

V. COMPENSATION FOR LEGAL SERVICE.

In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade.[23] Although the law student and the attorney are constantly admonished to remember that the law is to be pursued for its own sake and not for gain, and although this is fundamentally true, yet the stubborn fact remains that the attorney must live by his profession.[24]

A. CONTINGENT FEES.

This type of professional charge consists in the promise of a client, orally or in writing, to pay his attorney a certain part of the matter under litigation depending upon the success or failure in the effort to enforce a supposed right whether doubtful or not. Con-

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[22] Adm. Case No. 165, Oct. 12, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1030-32 (1955).

[23] Canon 12, Canons of Professional Ethics. Jayme v. Bualan, 58 Phil. 422 (1933).

[24] MALCOLM, LEGAL AND JUDICIAL ETHICS 49 (1949).

tigent fees, said our Supreme Court,[25] are not prohibited in the Philippines and since impliedly sanctioned by law "should be under the supervision of the court in order that clients may be protected from unjust charges." [26]

In the case of *Grey v. Insular Lumber Co.*,[27] the Supreme Court set aside an order of the trial court granting a motion to collect a contingent fee in order to afford at least the legal representative of the estate of the attorney's client the opportunity to be heard on the matter. This case was originally instituted by Grey against the defendant company to collect a sum of money. Upon plaintiff's death she was substituted by her administratrix. The trial court rendered a judgment for the plaintiff. The defendant thereafter, in compliance with the judgment, delivered a check for the judgment amount of ₱88,453.56 in the name of the administratrix to Atty. Hilado as counsel for the plaintiff. Upon motion of Atty. Hilado with notice thereof sent to the attorney of the estate by registered mail, the trial court ordered that his contigent fee of 25% be made of record for all legal purposes and that the check issued by the defendant be cancelled and in lieu thereof two checks, one in the name of Atty. Hilado, be issued. In setting aside such order the Supreme Court, citing the Ulanday case,[28] said:

> ". . . Grey being now dead, it is but just that the legal representative of her estate which would be paying said contingent fee if duly established should be heard . . . Administratrix R. Grey is residing in the U.S. True the attorney for the estate, Atty. Strachan, may have been notified of the filing of the claim and recording of the attorney's lien . . . but even if he had received the notice by registered mail . . . he could have had no material time to communicate with the administratrix . . . and receive her answer, much less for said administratrix to come to the Philippines . . . study the petition for the payment of contingent fee and declare her stand whether she was agreeable to it or she opposed the same."

B. CONTRACT FOR CONTINGENT FEE CONSTRUED.

The case of *Garcia v. De los Santos, et al.*[29] furnished our Supreme Court the occasion to construe a written contract providing for the payment of 20% "of the total amount that may be awarded

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[25] Ulanday v. Manila R.R., 45 Phil. 540 (1923).

[26] Canon 13: "A contract for a contingent fee, where sanctioned by law, should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation, but should always be subject to the supervision of a court, as to its reasonableness."

[27] G.R. No. L-7777, Oct. 31, 1955. See Notes, *Recent Decisions*, 30 PHIL. L.J. 1032-34 (1955).

[28] See note 25 *supra*.

[29] G.R. No. L-7933, Nov. 29, 1955.

and adjudicated" in favor of the client "by final decision in said case after said award is actually realized." The trial court awarded a money judgment for ₱14,600.00, but only the mortgaged property was adjudicated to the client for ₱7,000.00 and no other money or property was received for the satisfaction of the judgment. Disagreement arose because the client was willing to pay 20% of ₱7,000.00, whereas the attorney demanded 20% of ₱14,600.00. The Supreme Court gave three possible interpretations of the phrase "after said award is actually realized" upon which the disagreement hinged: (1) it may have meant payment of 20% *only after* the full amount if the judgment would have been *fully realized;* (2) it may have meant that payment of 20% *after some amount* would have been realized; or (3) it may have meant an undertaking to pay 20% of *whatever amount* that would *actually* be realized.

The Court adopted the third and last interpretation, thus allowing the attorney only 20% of ₱7,000.00 without prejudice to his right to recover his unsatisfied contingent fee whenever his client would receive some or all of the remainder of the judgment, for the reason that said phrase having been inserted apparently for the client's benefit, the rule applied was: "That is to be taken which is the most favorable to the party in whose favor the provision was made." [30] Moreover, the interpretation seems to be fair and practical, and as the contract was drafted by the lawyer, he should not be heard to complain.

C. ATTORNEY'S LIENS.

Section 33 of Rule 127 provides and recognizes two kinds of attorney's liens, namely, the "retaining lien" and the "charging lien." The former is dependent upon possession and does not attach to anything not in the attorney's hands; it is but a right to retain the papers and moneys of clients as against the latter, until the attorney is fully paid.[31] Charging lien, on the other hand, being a special lien, attaches or arises only from the time it is entered upon the records of the case and upon notice served upon the adverse party and the client.[32]

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[30] Rule 123, § 65.

[31] Rustia v. Abeto, 72 Phil. 133 (1941).

[32] Rustia v. Abeto, *id.* Rule 127, § 33, last par. In Morente v. Firmalino, 71 Phil. 49 (1940), the Court held that a charging lien does not entitle the attorney to subrogate himself in the place of his client.

The Supreme Court also held that the mere assignment by an attorney of his attorney's lien does not result in extinguishing the preference accorded such lien from the date on which the lien is entered upon the record and the adverse party notified thereof. Menzi & Co. v. Bastida, 63 Phil. (1936); Macondray & Co. v. Jose, 66 Phil. 590 (1938).

In the case of *Grey v. Insular Lumber Co.*,[33] the Court also said, "There is no question that the law protects charging lien of an attorney and if and when duly established would authorize its payment by the estate. But to do so Atty. Hilado would first have to prove the contract for the contingent fee." It may be gathered from the ruling of the court in this case that in cases of charging lien service of notice thereof to the client, as one of the requisites of constituting such lien, is to be complied with not merely for its own sake but it should be made in such a way as to afford the client sufficient and material time to say something about the attorney's fee.

In the *Grey* case, the Court also ruled that the adverse party which has no more legal interest in the disposition or distribution of the judgment because it has already complied with the judgment, cannot successfully oppose the motion to constitute a charging lien on the proceeds of the judgment.

D. AWARD OF ATTORNEY'S FEES UNDER CIR ACT.

In some jurisdictions the attorney's lien upon a judgment may be established and enforced upon an application to the court in the case wherein the judgment was rendered, but before it was fully executed. This lien may be enforced in an independent action by the attorney, yet ordinarily a motion in the cause is the proper remedy.[34]

Although the CIR was created primarily for the purpose of settling and adjudicating labor disputes in the Philippines, and may include in its award, order or decision any matter or determination which may be deemed necessary or expedient for the purpose of settling the dispute or of preventing further industrial or agricultural disputes,[35] yet in the case of *Apo Workers Union et al., v. Judge Gastillo, et al.*,[36] the CIR made awards for attorney's fees upon petition filed by the attorneys in the case wherein the decision was rendered. It appeared that the Apo Workers Union engaged the services of Attorneys Enage and Beltran in their claims for Christmas bonus for 1952 filed with the CIR. Upon application of the said attorneys a judge of said court awarded them their attorneys' fees and ordered that a portion of the bonus adjudicated to the employee-members of the Apo Workers Union be deposited in court. After the CIR had modified the award of bonus as to include and benefit

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[33] See note 27 *supra*.

[34] Dahlke v. Viña, 51 Phil. 707 (1928).

[35] § 1 of Com. Act No. 103, as amended, otherwise known as the Court of Industrial Relations Act. See also § 13 of the same Act.

[36] G.R. No. L-7480, Oct. 31, 1955.

all the employees of the respondent company, Atty. Muaña and Logarta intervened in the case claiming attorney's fees for services allegedly rendered for another union of the same company. The court granted the claim and directed that the same be paid out of the money deposited at the instance of Attorneys Enage and Beltran who now contend that their award of fees having become final and executory they have a prior right to the said deposit. The Supreme Court, without touching upon the power of the CIR to make an award of attorney's fees, ruled the contention of the petitioners as untenable—

> "It appearing that the period of three years from the time of award made in favor of counsel 'Enage & Beltran' has not yet transpired, it cannot be disputed that the CIR may still alter or modify the same in the manner it may see fit . . ." [37]

From the ruling of this case it can be inferred that the attorney's fees awarded by the CIR have no preferred lien even on specific fund deposited by order of the said court at the instance of the attorney for that purpose until after three years from the award because the court may still alter or modify the same within the said period. This, we venture to say, notwithstanding the compliance with the requirements of Section 33 of Rule 127 to constitute charging liens.[38]

VI. Substitution of Attorneys.

A. Formalities.

The Supreme Court in the case of *Ulanday v. Manila R.R.*[39] urged that the formalities announced in the case of *United States v. Borromeo*[40] must be complied with, before a substitution of attorneys will be permitted, to wit:

> (1) The party interested should file a written application for substitution;
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> (2) The written consent of the client should be attached thereto;
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> (3) The written consent of the attorney substituted, if such consent can be obtained, should also be attached; and
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> (4) In case such consent cannot be obtained there must be filed with the application for substitution proof of service of notice of such motion upon the attorney to be substituted.

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[37] See § 17 of Com. Act No. 103.

[38] Under the proviso of § 17, *id.*, the CIR may, on application of an interested party, and after due hearing, alter, modify in whole or in part, or set aside any such award, order or decision, or reopen any question involved therein, at any time during the effectiveness of such award, order or decision.

[39] See note 25 *supra*.

[40] 20 Phil. 189 (1911).

In the case of *Olivares v. Leola, et al.*,[41] the failure to satisfy the foregoing formalities for a valid substitution of attorneys proved fatal to the right of the defendants to seek relief from judgment under Rule 38 of the Rules of Court. The plaintiff in this case asked for the personal delivery of real property. The trial court rendered judgment for the plaintiff and a copy thereof was sent to Atty. M. San Diego, counsel of record for defendants, which copy he received on August 18, 1951, but failed to notify his clients thereof. On July 12, 1951, Atty. E .V. Navarro filed his appearance for the defendants, but neither did he state that his appearance was in substitution of Atty. San Diego nor did the defendants inform the trial court that they had terminated the services of Atty. San Diego. On December 7, 1951 the defendants learned of the decision rendered against them and on December 10, 1951 filed a petition for relief from judgment under Rule 38. The Supreme Court, in affirming the trial court decision that the petition was filed out of time, resolved the question whether or not there was a valid substitution of counsel, on which question depended the validity or invalidity of the notification of the decision made on Atty. San Diego. The Court found that the formalities for substitution of attorneys announced in the *Borromeo* case were not complied with. Citing another case,[42] the Court held further: "The fact that a second attorney enters an appearance on behalf of a litigant does not authorize a presumption that the authority of the first attorney had been withdrawn." There being no valid substitution of counsel, the notification of the decision to Atty. San Diego as counsel of record for the defendants was valid.

VII. JUDICIAL ETHICS.

Number 3 of the Canons of Judicial Ethics declares that a "judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life, should be beyond reproach."

The case of *People v. Bocar and Castelo*,[43] may not be a clear case falling under Judicial Ethics, yet the fact remains that it deals with the behavior of a judge in the administration of justice. This is a petition for certiorari and prohibition with preliminary injunction filed by the People of the Philippines against Judge Bocar. In a criminal case filed in the CFI of Rizal, Pasay City Branch, Oscar Castelo and fifteen others were charged with murder. After a pro-

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[41] G.R. No. L-6156, June 30, 1955.
[42] Aznar v. Hon. Norris, 3 Phil. 636 (1904).
[43] G.R. No. L-9050, July 30, 1955.

longed trial, Judge Rilloraza convicted eight of them including Castelo and sentenced them to suffer death penalty for the crime of murder. Thereafter Judge Bocar took Rilloraza's place as the latter had gone on vacation. On April 11, 1955 respondent Castelo filed a motion for new trial based mainly on the affidavit of one Robles, an original accused turned state witness, recanting his testimony given during the trial against Castelo. Judge Bocar on April 20 granted said motion and set aside the decision of conviction, setting the new trial for April 25, 1955. The Supreme Court observed:

> "Before concluding, the Tribunal wishes to unburden itself of what it thinks about the propriety of the actuations of Judge Bocar. While we believe that in entertaining the motion for new trial, granting it and setting the new trial for the introduction of evidence before him, particularly the alleged newly discovered evidence, respondent Judge acted within the law, the majority of the members of the Court feel, and strongly, that he should not have taken action on the motion for new trial but should have left it to the regular judge of the sala or one presiding over the trial court more or less permanently. . . . While he might have had the necessary time as we think he had of passing upon the merits of the motion for new trial and granting it he should and must have realized that he was in no position to conduct and finish the new trial and decide the case as regard Castelo anew.
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> ". . . In justice to respondent judge, however, we also should say that there is nothing in the record nor in any incident in relation with his actuations in the case that would reasonably warrant the suspicion, much less the belief that he was out to acquit Oscar Castelo. We presume all judges to be honest and men of integrity unless proven otherwise."