LEGAL AND JUDICIAL ETHICS

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"It is its (ethics) office to diffuse sound principles among the people, that they may intelligently exercise the controlling power placed in their hands, in the choice of their representatives in the legislature and of judges, in deciding, as they are often called upon to do, upon the most important changes in the constitution, and above all, in the formation of that public opinion which may be said in these times, almost without a figure, to be ultimate sovereign."[1]

I. DUTIES OF A LAWYER.

A. TO THE COURT.

1. *Maintenance of respect due the court.*

It is well-settled that the lawyer owes the Court the duty of maintaining a respectable attitude, not for the sake of the temporary incumbent but for the maintenance of its supreme importance. Whenever there is proper ground for serious complaint against a judicial officer, it is the right and duty of the lawyer to submit his grievance to the proper authorities.[2] A lawyer cannot disobey orders of the Court merely because they do not respond to his convenience, whim, or caprice.

A certain Jose Torres, while appearing as counsel for the defendant in the case of *People v. Venturanza*,[3] was declared by the Court to be guilty of contempt on two charges. In the first case, it was proved and he was found guilty of inducing and encouraging his clients not to appear in Court for trial and to disobey its orders, thus obstructing the speedy course of the administration of justice. This was clearly a violation by the respondent of his duty to use his best efforts to restrain and prevent his clients from doing those things which the lawyer himself ought not to do, particularly with reference to their conduct towards the Courts and judicial officers.[4] The picture, however, is not yet complete for this conduct of the respondent was but the first of a series of acts which constitute violations of the rules which a lawyer should follow. Feeling perhaps that the judge was acting arbitrarily and oppressively against him, he filed an action for moral damages against the latter without lawful

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* Member, Student Editorial Board, 1956-57.

1 Judge Sharwood cited in GARCIA, LEGAL AND JUDICIAL ETHICS 16 1953.

2 Canon 1, CANONS OF PROFESSIONAL ETHICS; Rule 127, §19: "It is the duty of an attorney:... (b) To maintain the respect due to the courts of justice and judicial officers."

3 G.R. No. L-7974, Jan. 20, 1956.

4 Canon 16, CANONS OF PROFESSIONAL ETHICS.

cause or reason. This the Court declared to be not in accord with the rule that no lawyer should sign a complaint without just cause.[5]

With respect to the second charge, it appears that during the course of the trial the respondent sent a telegram to the presiding judge couched in terms constituting a threat that, if the judge did not grant him his requests, he would file charges against the latter. The Supreme Court declared what the respondent had done to be unbecoming of a lawyer and was a violation of the lawyer's oath.

An offshoot of the case of *People v. Venturanza*[6] is the case of *De Leon v. Torres.*[7] The record discloses that, in connection with the former case, the complainant judge of the Court of First Instance of Capiz entered an order requiring the respondent to appear in Court to show cause why he should not be dealt with severly and suspended from the practice of law for having sent the threatening telegram referred to above. The respondent did not appear in Court and when the judge issued an order for his arrest, he could not be located because he had gone to Manila, whereupon the complainant issued an order suspending the respondent from the practice of law. Subsequently, the respondent, in complete disregard of this order, handled civil, cadastral and criminal cases before courts of the Philippines. This action arose therefrom and the only defense which the respondent set up and which the Court did not find to be of merit is that he was not given opportunity by the Court to defend himself. He even intimated that he disobeyed the order of the complainant because said order was erroneous. In emphasizing the duty of the lawyer to the Court, the Supreme Court said:

> "We desire to call attention to the fact that courts' orders, however erroneous they may be, must be respected, especially by the bar or the lawyers who are themselves officers of the courts. Court orders are to be respected, not because th judges who issue them should be respected, but because of the respect and consideration that should be extended to the judicial branch of the government. This is absolutely essential if our government is to be a government of laws and not of men. Respect must be had, not because of the incumbents to the positions, but because of the authority that vests in them. Disrespect to the judicial incumbents is disrespect to that branch of the government to which they belong, as well as to the state which has instituted the judicial system."

External acts, spoken words and written statements are but some of the ways by which a lawyer may show his disrespect to the Court. Insinuations reflect upon the honesty and integrity of the

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[5] Rule 127, §19: "It is the duty of an attorney:... (d) To counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law."

[6] G.R. No. L-7974, Jan. 20, 1956.

[7] Adm. Cas No. 180, June 30, 1956.

judge; hence, they have no place in a court pleading, and, if uttered by a member of the bar, constitute a serious disrespect. As an officer of the Court, it is his moral and sworn duty to help build and not destroy the high esteem and regards towards the courts which are essential to the proper administration of justice. The case of *De Joya et al. v. Rilloraza*[8] is an excellent example. The petitioners were attorneys of record of Oscar Castelo who was accused of murder in a criminal case pending before the respondent judge. Because, in their petition for disqualification, they charged that the judge was in connivance with the prosecutors for the conviction of the accused, and that the judge was, directly or indirectly, connected with the attempted extortion of ₱100,000 from Castelo in consideration of his acquittal in the case, the petitioners were adjudged guilty of direct contempt of court. The Supreme Court found that the imputations contained in the statements mentioned above were not only contemptuous but had no basis in the evidence and serve nothing save to discredit the judge in an attempt to secure his disqualification.

B. TO THE CLIENT.

1. *In dealing with trust properties.*

The relation between attorney and client being one of trust and confidence, the former is obliged to discharge his functions properly and efficiently always bearing in mind the interests of the latter. Money belonging to the client or collected for the client or other trust properties coming into the possession of the lawyer should be reported and accounted for promptly, and should not, under any circumstance, be comingled with his own[9] or devoted to purposes other than those originally contemplated.

The case of In re *Francisco Abad*[10] involved such duty of a lawyer to render proper accounting of funds coming into his possession for the client. It was shown that one Maria Aldana executed a power of attorney in favor of the respondent in order that he may receive and sign the retirement check to which the husband of the former was entitled under the Osmena Retirement Act, No. 2589. Being successful in his efforts, the respondent delivered to his client the amount of ₱696 out of which he collected ₱50 as his fee. Subsequently, Maria Aldana discovered from other sources that the retirement gratuity collected by the respondent amounted to ₱4,000. It turned out that, without notice and previous conformity of his client, the respondent disposed of

[8] G.R. No. L-9785, Sept. 19, 1956.
[9] Canon 11, CANONS OF PROFESSIONAL ETHICS.
[10] Adm. Case No. 90, April 28, 1956.

the remainder of the gratuity in favor of the heirs of the deceased by his first marriage. Hence, the commencement of this action. In passing judgment on the respondent, the Supreme Court found out that the disbursements made by him were in good faith. However, in failing to observe that formality which is so elementary of informing his client as to the exact amount received by him from the government, he was reprimanded.

The question may be propounded: May a lawyer, against whom an administrative charge had been filed, be exonerated and at the same time be reprimanded? An affirmative answer was given by the case of In re *Attorney Leonardo Rilloraza.*[11]

It is to be remembered that the lawyer is enjoined to refrain from any action whereby, for his personal benefit or gain, he abuses or takes advantage of the confidence reposed in him by his client.[12] Whatever property or sum of money he may have in his possession in trust for his client should be accounted for promptly. The case under consideration involves precisely the question of whether or not there has been a violation of this important rule. Respondent Rilloraza was counsel for the plaintiffs in a labor case pending before the Court of First Instance of Baguio. During the trial and in the absence of the respondent, one of the plaintiffs, Corazon Gapuz, testified that, while it is true that she made an indorsement of her money order to the respondent, she did not authorize him as her counsel to cash the same. The respondent, upon learning of this testimony, sought to introduce evidence tending to show that the plaintiff Corazon Gapuz made a wrong statement because she misunderstood the question asked her by the other counsel. The presiding judge, believing that the respondent had engaged in malpractice, filed a charge against the latter to determine whether he had violated the trust of his client. The Supreme Court ruled that there was indeed enough ground to suspect that the witness did not tell the truth when she was asked regarding the disposition of the money order but that there were facts in the record which showed that she had really delivered the money order to the respondent to be cashed by him. It then exonerated him of the charge, but he was reprimanded.[13]

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[11] Adm. Cast No. 256, May 31, 1956.

[12] Canon 11, CANONS OF PROFESSIONAL ETHICS. Rule 127, §23 further provides: "When an attorney unjustly retains in his hands money of his client after it has been demanded, he may be punished for contempt as an officer of the court who has misbehaved in his official transactions; but proceedings under this section shall not be a bar to a criminal prosecution."

[13] Justice Alex Reyes dissented, he being of the belief that the respondent should not have been reprimanded since he was exonerated of the charges proferred against him.

II. RIGHTS OF A LAWYER.

A. TO BIND CLIENTS.

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.[14] The rationale of this rule was explained by the Supreme Court in the case of *Vivero v. Santos* et al.[15] as follows:

> "If such grounds (referring to mistakes of lawyers) were to be allowed as reasons for reopening cases, there would never be an end to a suit so long as new counsel could be employed who could allege and show that prior counsel had not been sufficiently diligent, or experienced, or learned."[16]

The facts of the case are as follows: The date for the hearing of the case having been fixed by the Court, counsel for the defendant filed a motion praying that it be postponed to any date after the elections (of 1953) for the reason that, being a candidate for congressman, he would be occupied in his political campaign. This motion was denied. On the date of the hearing, neither the defendant nor his counsel appeared, whereupon the plaintiff was allowed to introduce evidence. Upon the termination of the presentation by the plaintiff of his proofs, the court rendered judgment. The defendant sought to have the order of the lower court set aside on the ground that neither the court nor his counsel informed him of the date of the hearing.

Upon this set of facts, the Supreme Court ruled that, while it was true that the failure of the appellant to appear at the hearing was not due to his fault but to lack of necessary diligence on the part of his counsel which resulted in his prejudice, yet such a failure was binding upon him. The Court then explained that a client is bound by the action or inaction of his counsel in the conduct of a case and he cannot be heard to complain that the result might have been different had he proceeded differently.

But in the event that several lawyers representing a party should act differently on any matter relating to the conduct of the litigation which lawyer may claim the right to bind the client? Is a client bound by every act of each of his attorneys? The case of *Delgado and Dee v. Santiago*[17] supplies the answers to these questions.

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[14] Rule 127, §21. *See also* Montes v. CFI of Tayabas, 48 Phil. 640 (1925); Isaac v. Mendoza, G.R. No. L-2820, June 21, 1951; Belendres v. Lopez Sugar Central Mill Co., G.R. No. L-6869, May 27, 1955; Natividad v. Natividad, 51 Phil. 613 (1928).

[15] G.R. No. L-8105, Feb. 28, 1956.

[16] Citing De Florez v. Reynolds, Fed. Case No. 3742, 16 Blatch (U.S.) 397.

[17] G.R. No. L-8935, May 28, 1956.

The petitioners were represented in the lower court by the Delgado law offices throughout the entire proceedings save when the law firm of Tesoro and Cruz entered their appearance as additional counsel for them three days before it was set for hearing. The latter firm appeared before the court only once. When the judge rendered his decision, a copy thereof was served on the firm of Tesoro and Cruz on January 5, 1955, while the Delgado law offices was notified of the decision only on January 12, 1955. On February 9, 1955, the latter firm filed its notice of appeal, record on appeal, and appeal bond. The presiding judge did not approve the same.[18]

The records disclose that the Delgado law offices had mapped out the defense of the petitioners and chosen the time, manner, and other conditions for the execution of their plan of action, and, that the parties regarded said firm as the main defense counsel. Obviously, said the Supreme Court, one of the major features of any plan of defense is the question whether or not appeal should be taken from an adverse judgment, and, in the affirmative case, to what court, for which purpose a determination, even if tentative, of the issues to be raised in the appeal is essential. The decision on these points is to be made by principal counsel and his action or inaction upon the same shall be binding upon his client.

B. TO DETERMINE THE MANNER AND CONDUCT OF LITIGATION.

In the case of *Siochi v. Tirona*,[19] the presiding judge set the case for hearing on October 1, 1951. Notice thereof was served on counsels for defendant-appellant on September 4, 1951. The next day, they filed an ex parte motion with the court praying that the hearing be postponed for the reason that they have another case set for hearing on the same date. The motion was not acted upon, and when the date for hearing finally arrived, neither the defendant nor his counsels appeared, whereupon the court proceeded to receive the evidence of the plaintiff and rendered judgment in accordance therewith. The motion to set aside the decision and for the granting of a new trial having been denied, the case was elevated to the Supreme Court.

The Court ruled that while attorneys should not assume that a motion for postponement would be granted, they are nonetheless entitled to a timely notice of its denial to know what to do to protect the interest of their client, it being the concern of the law firm representing the party to determine whether or not one or the other

[18] On the theory that since notice was served on the firm of Tesoro and Cruz on January 5, 1955, the filing of the notice of appeal on Feb. 9, 1955 was beyond the 30-day period fixed by Rule 41, §3.

[19] G.R. No. L-8313, June 29, 1956.

of two or more partners can handle the trial. The Court has no right to assume this duty.

C. TO COMPENSATION.

An attorney is entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court is bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services controls the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.[20]

The facts of the case of *Ilada and Villadiego v. Ilada*[21] are as follows. After Marcelina Ilada was declared incompetent, her husband was appointed guardian of her person and property. When the guardian died, Francisco Ilada, nephew of the incompetent, moved to be appointed guardian, but this motion was objected to by one Crispina Villadiego who claimed preference because she was appointed executrix of the will of the deceased husband of the incompetent. The opposition caused Ilada to employ the services of an attorney. As a consequence, the court appointed Francisco Ilada guardian of the property and Villadiego of the person. Incidentally, the court gave Ilada, upon his request, authority to employ the services of an attorney in order that the latter may assist the former in protecting the rights of the incompetent.

When the attorney filed a motion for the payment of his fees, the petitioners opposed on the ground that he had not rendered services for the benefit of the ward but for the guardian; hence, the guardian should pay. The Supreme Court, upon examining the record, found that the attorney had really rendered services for the benefit of the ward. Moreover, the Court said, as long as the contract to hire the services of attorney is authorized by the court, the persons benefited by his services are bound to pay.

1. *Contingent fees.*

Contingent fees are professional charges collected by attorneys by virtue of promises made by their clients, whether orally or in writing, whereby the client engages to pay to his counsel a portion of

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[20] Rule 127, §22. See also Canon 12, Canons of Professional Ethics.
As to the power of courts to fix the reasonable compensation of attorneys, see Delgado v. de la Rama, 43 Phil. 419 (1922); Panis v. Yangco, 52 Phil. 499 (1928); Arevalo v. Adriano, 62 Phil. 671 (1935).

[21] G.R. No. L-6458, Jan. 23, 1956.

the property in litigation depending upon the success or failure of the action in an effort to enforce a right, whether doubtful or not. According to cases decided by the Supreme Court before the promulgation of the enw Civil Code, contingent fees are not prohibited in the Philippines,[22] and are impliedly sanctioned by our Canons of Professional Ethics.[23]

Does Article 1491[24] of the new Civil Code prohibit the collection of contingent fees? This was one of the issues raised in the case of *Recto v. Harden*.[25]

It appears that sometime in June, 1941, Mrs. Harden entered into a contract for professional services with Claro M. Recto whereby she agreed to pay to the latter twenty per cent of the share or participation she might receive from the funds and properties of her conjugal partnership with Fred Harden in consideration of the services he would perform in protecting and preserving her interests therein. The records show that, from 1941 to 1952, Atty. Recto performed services for Mrs. Harden in compliance with his obligation set forth in their agreement. In this appeal from the decision of the lower court which granted Recto the sum of ₱384,110.97 as attorney's fees, Harden contests the right of the former to collect on the ground that the contract was void.

The Supreme Court, after declaring that contingent fees are not prohibited in the Philippines, as they never were in the past, declared:

> "...In the United States, the great weight of authority recognizes the validity of contracts for contingent fees, provided such contracts are not in contravention of public policy, and it is only when the attorney has taken an unfair or unreasonable advantage of his client that such a claim is condemned."[26]

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[22] Ulanday v. M. R. R. Co., 45 Phil. 540, 544 (1923). The rule in the United States is the same. See DRINKER, LEGAL ETHICS 176, cited in the instant case.

[23] Canon 13 provides: "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."

[24] "The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:...

Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession."

[25] G.R. No. L-6897, Nov. 29, 1956.

[26] 5 AM. JUR., 359 *et seq.*; BALLANTINE, LAW DICTIONARY 276 (2nd ed.).

Needless to say, there was absolutely nothing in the records to show that the attorney herein had, in any manner, taken an undue advantage of his client.

III. GROUNDS FOR DISBARMENT.

A member of the Bar may be removed or suspended from his office as attorney for any deceit, malpractice, or other gross misconduct in such office, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for any willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.[27]

The above enumeration of grounds for disbarment, however, is not exclusive. As the Supreme Court stated in the case of *Mortel v. Aspiras*,[28] in this jurisdiction, lawyers may be removed from office on grounds other than those enumerated by the statutes.[29] The facts are as follows: Sometime in 1952, the respondent met one Josefina Mortel, single, and in due course of time, succeeded in winning her affections. Eventually, enticed by his promise of marriage, she succumbed to his carnal desires. Thereafter, upon the invitation of the respondent, she went to Manila to be married to the former who reprented himself to be single. Through the machinations of the respondent, Mortel got married to the respondent's son instead . After the ceremony, the contracting parties separated and Mortel went on living with the respondent as his wife.

The Supreme Court disbarred the respondent. It justified its decision in this wise:

> "The continued possession... of a good moral character is a requisite condition for the rightful continuance in the practice of law... and its loss requires suspension or disbarment, even though the statutes do not specify that as a ground for disbarment.[30]

JUDICIAL ETHICS.

I. DUTY OF JUDGE.

A. TO BE IMPARTIAL.

A judge should be temperate, attentive, patient, impartial and, since he is to administer the law and apply it to the facts, he should

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[27] Rule 127, §25.
[28] Adm. Case No. 145, Dec. 28, 1956.
[29] Following the ruling in the following cases: *In re* Pelaez, 44 Phil. 567 (1923); Balinon v. de Leon, 50 O.G. 583 (1954).
[30] Citing 5 AM. JUR. 417.

be studious of the principles of the law and diligent in endeavoring to ascertain the facts.[31]

The case of *Wong v. Yatco*[32] is illustrative of the rule that enjoins every judge to be impartial in the discharge of his judicial functions. In said case, petitioner was charged with a violation of Commonwealth Act No. 104 for allowing more than four hundred laborers to work in a room of 3,427.2 cubic meters space, during the period from May 3, 1954 to October 11, 1954. Subsequently and after the accused pleaded not guilty to the information, he filed a motion to quash on the ground that, at the time of the alleged violation, the regulations implementing the law had not yet been published in the Official Gazette as required by law. The Department of Labor, through its legal assistant, joined the petitioner in asking for the dismissal of the case on the ground that the violation was merely technical. When the case was called for hearing, the assistant city attorney of Quezon City made a verbal motion for the dismissal of the charge on the same ground as that alleged in the motion to dismiss filed by the Department of Labor. Instead of ruling on the motion, the judge made a surprise visit to the place where the alleged violation was taking place, conducting an ocular inspection of the same.

According to the Supreme Court, the act of the respondent judge in conducting the ocular inspection was perfectly valid and legal, but that, in so doing, he must observe utmost impartiality, devoid of prejudice in favor of the accused or of the state, abstaining from acts indicative of undue or unjustified interest for one side or the other, in order that the public may have confidence in the administration of justice. The Court added that the discretion lodged in the judge in granting or refusing a motion to dismiss does not authorize him, much less justify, the personal interest demonstrated by him in making an ocular inspection of the place.

In so far as it falls within the realm of judicial ethics, the case of *Parina v. Cobangbang*[33] is interesting. The facts may be briefly stated as follows: The municipal court of Manila rendered judgment adverse to the petitioner herein. In the Manila Court of First Instance, a writ of preliminary injunction to enjoin the execution of the judgment was issued ex parte upon a verified complaint and the filing of a bond by petitioner. Soon thereafter, the respondent filed a motion praying for the dissolution of the writ. This was granted by the court giving rise to this special civil action of certiorari.

[31] Canon 4, Canons of Judicial Ethics.
[32] G.R. No. L-9525, Aug. 28, 1956.
[33] G.R. No. L-8398, March 21, 1956.

One of the claims of the petitioner was that, the presiding judge issued the order dissolving the writ because he has incurred the judge's resentment. It appears that the attorney for the petitioner had improperly tried to transfer the records or *expediente* of the case from the sala of the judge trying the case to that of another.

While it is true that the complaint for the writ of preliminary injunction was insufficient and its dissolution proper which the Supreme Court confirmed, nevertheless the Court declared that the resentment of the presiding judge of the lower court was justified. Is this latter declaration of the Supreme Court proper? Granting that the counsel for the petitioner had erred, is it consistent with the dignity of the Supreme Court to justify the resentment of the judge of the lower court? We do not believe so.

II. PREVENTIVE SUSPENSION.

Justices of the Peace against whom administrative charges had been filed may be subjected to preventive suspension in order to grant opportunity to the complainant to prove the charges filed by him. The need for such preventive suspension becomes more apparent when we consider the fact that the Justice of the Peace, while holding office, could easily persuade witnesses to testify in his favor in view of his office and position. This was the ruling in the case of *Suelto v. Munoz-Palma.*[34]

An administrative complaint having been filed against the petitioner on the grounds of electioneering, abuse of position and immorality, the respondent judge issued an order suspending petitioner from office immediately. Subsequently, the hearing was conducted and after the complainant had finished presenting his evidence, petitioner filed a motion for reinstatement alleging that the purpose of the suspension had already been accomplished and that the continuance of his suspension will prevent him from fully defending himself.

The Supreme Court, in affirming the decision of the lower court which denied the motion, ruled that there is no law that limits the period of preventive suspension of judicial officers such as exist in the case of elective officials.[35] The absence of such limitation in administrative cases against justices of the peace implies legislative intent to deny the right to a limited preventive suspension and the grant of full and ample discretion in administrative investigation.

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[34] G.R. No. L-9034, April 13, 1956.

[35] In the preventive suspension of municipal officials under section 2189 of the Revised Administrative Code, a limit of 30 days for such suspension is established. Rep. Act No. 296 (Judiciary Act of 1948).