LEGAL AND JUDICIAL ETHICS

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LEGAL ETHICS

I. CONCEPT OF "THE PRACTICE OF LAW"

The practice of law is not limited to the conduct of cases or litigation in court and to the preparation of pleadings and other papers incident to actions and special proceedings.[1] Under modern conditions it consists in no small part of work performed outside of any court and having no immediate relation to proceedings in court. It embraces conveyancing, the giving of advice to clients on a large variety of subjects connected with the law, and all actions taken for them in matters covering an extensive field of business and trust relations and other affairs,[2] where the work done involves the determination by the trained legal mind of the legal effect of facts and conditions.[3]

Of great importance to practicing lawyers is the answer to the question of whether or not appearance before the Patent Office and the preparation and prosecution of patent applications, etc., are included in the practice of law. If not, then lawyers desiring to practice before the Patent Office would have to take and pass an examination given by that office as a qualification therefor -- a requirement which the Director of Patents has, heretofore, been imposing on the theory that business transactions in that office involve the use and application purely of technical and scientific knowledge and training. Otherwise, the rule would apply that any member of the bar in good standing *may practice law* anywhere and before any entity, whether judicial or quasi-judicial or administrative, in the Philippines.[4] An affirmative answer was given in the recent case of *Philippine Lawyers' Association v. Agrava*.[5] According to the Supreme Court, much of the business in the Patent Office involves the interpretation and determination of the scope and application of the Patent Law and other laws applicable, as well as the presentation of evidence to establish facts involved. Furthermore, a great part of the functions of the Director of Patents is judicial or quashi-judicial, so much so that appeals from his orders and decisions are, under the law, taken to the Supreme Court. For these reasons, a member of the bar should, because of his legal knowledge and training, be allowed, without further examination or other qualification, to appear before the Patent Office. The practice of law includes such appearance, the representation of applicants, oppositors, and other persons, and the prosecution of their applications for patent, their oppositions thereto, or the enforcement of their rights in patent cases.

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1 5 AM. JUR. 262.
2 3 MORAN, COMMENTS ON THE RULES OF COURT 665-666 (1957 ed.).
3 5 AM. JUR. 263.
4 RULES OF COURT, Rule 127, Sec. 1; Philippine Lwyers' Association v. Agrava, G.R. No. L-12426, February 16, 1959.
5 **Supra, note 4.**

II. THE ATTORNEY'S DUTIES TO HIS CLIENT

A. Exercise of diligence

It is the duty of every attorney to act with diligence in all cases, now and then urging the prosecution or termination of the cases committed to his charge, be they criminal, civil, or administrative.[6] If he finds it impossible to continue representing his client, he should so inform him, in order to give him the opportunity to seek the services of other counsel who could study the situation and work out the solution.[7] But until he is released from his professional relationship with his client, he must take all measures necessary for the latter's protection.[8] In the *Wack Wack Golf case*,[9] an action was filed by an employee of the Golf Club for the recovery of overtime pay, etc. Despite notice to them, neither the defendant employer nor its counsel, Messrs. Balchoff and Poblador, appeared at the hearing on May 5, 1955. Plaintiff was allowed to present his evidence, and on May 10, 1955, the court granted him his claim. On May 14, 1955, the firm of Juan Chuidian, on the Club's behalf, filed a petition to set aside the judgment on the grounds of mistake and excusable neglect. It appears that the Club, even before the date of hearing, had manifested its desire to replace its counsel Messrs. Balchoff and Poblador with the law office of Juan Chuidian; but the records of the case were turned over to the latter's office only on May 13. In upholding the denial of the Club's petition, the Supreme Court said:

> 'As of May 6, the law firm of Balchoff, (etc.) was still the employer's counsel of record, the law office of Chuidian having entered its appearance only on May 14, 1955. *As such counsel of record, said law firm must have known that, its impending relief as counsel for defendant notwithstanding, it is under obligation to protect the client's interest (which includes appearance at the hearing) until its final release from the professional relationship with such client.* For its part the court could recognize no other representation on behalf of the client except such counsel of record until formal substitution of attorney is effected."

III. ATTORNEY'S RIGHT TO COMPENSATION AND ITS INCIDENTS

A. Amount Recoverable as Fees; Court's Authority to Fix the Same

The compensation that an attorney may receive for services rendered by him is determined either by contract or by the courts. A contract, if present, will ordinarily control the amount recoverable as fees.[10] But in no event should such fees be more than what is reasonable in each case, taking into consideration, among other things, the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney.[11] This is as it should be for the legal profession is a branch of the administration of justice and not a money-making trade.[12] Hence, even where there is a stipulation fixing the attorney's fees, the courts have the power to reduce the same on a *quantum meruit* basis where such stipulation appears excessive, unreasonable, or unconscionable. The reason, again, is that

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6 Ventura v. Santos, 59 Phil. 123 (1933); Gaerlan, et al. v. Bernal, et al., G.R. No. L-4049, January 28, 1952.

7 Ventura v. Santos, **supra**, note 6.

8 Wack Wack Golf & Country Club v. Court of Appeals, G.R. No. L-11724, November 23, 1959.

9 **Supra**, note 8.

10 RULES OF COURT, RULE 127, sec. 22; Early v. Sy-Guang, 4 Phil. 419 (1905).

11 RULES OF COURT, **supra**, note 10; Delgado v. De la Rama, 43 Phil 419 (1922).

12 CODE OF LEGAL ETHICS, Canon 12; Jayme v. Bualan et al., 58 Phil. 422 (1933).

the lawyer is primarily a court officer charged with the duty of assisting the court in administering impartial justice between the parties, and hence, his fees should be subject to judicial control.[13]

In the case of *Gorospe and Sebastian v. Gochangco*,[14] it was stipulated between the creditor-mortgagee and the debtors-mortgagors that in case the former should secure the services of a lawyer to secure his rights under their contract, the latter shall pay, in addition to all other expenses, the attorney's fees, such fees being fixed in an amount equivalent to 20% (or ₱3,600) of the amount claimed by the mortgagee (₱18,000.00). The lower court found that the work of the attorney hired by the mortgagee consisted merely of sending written demand to the mortgagors for the payment of their indebtedness after it had become due, sending a written communication to the sheriff requesting sale of the properties mortgaged, being present at the auction sale and receiving from the sheriff the certificate of sale. It accordingly reduced the fees of the mortgagee's lawyer to ₱200.00. The mortgagee appealed, questioning the authority of the trial court to fix the amount of attorney's fees which the mortgagee could charge the mortgagors, notwithstanding the stipulated amount fixed by the parties in the mortgage contract. *Held*: A stipulation fixing the attorney's fees does not necessarily imply that it must be literally enforced no matter how injurious or oppressive it may be. Public policy demands that courts disregard stipulations for counsel fees whenever they appear to be a source of speculative profit at the expense of the debtor or mortgagor.

The Court further said that it is not material that the action is between debtor and creditor, and not between client and counsel. Citing the case of *Bachrach v. Golingco*,[15] it stated that in either case the same rule applies. For as the Court has power to fix the fee as between attorney and client, it must necessarily have the right to say whether a stipulation like the present one is valid. A different ruling would make it exceedingly easy to evade the usury laws.

B. Attorney's Liens

As a measure of protection in their right to recover professional fees, in addition to that afforded by the courts, lawyers are granted two kinds of liens: (1) the general, retaining or possessory lien and (2) the charging lien.[16] These liens are deemed necessary to preserve the decorum and respectability of the profession,[17] and courts, in the exercise of their exclusive and supervisory authority over attorneys, are bound to respect and protect them.[18]

1. General, retaining or possessory lien

This lien is dependent upon possession and does not attach to anything not in the attorney's hands. It exists only so long as the attorney retains possession of the subject matter and expires when the possession ends.[19] In the case of *De Jesus-Alano v. Tan and Roxas*,[20] the Supreme Court recognized the proper acquisition and granted exercise by the petitioner of the retaining lien. It appears that after having withdrawn her action for judicial fore-

13 Bachrach v. Golingco, 39 Phil. 138 (1918); Sison v. Suntay, G.R. No. L-10000, December 30, 1959.
14 G.R. No. L-12735, October 30, 1959.
15 **Supra**, note 13.
16 RULES OF COURT, Rule 127, Sec. 33.
17 Rustia v. Abeto, 72 Phil. 133 (1941).
18 De Jesus-Alano v. Tan and Roxas, G.R. No. L-9437, November 28, 1959.
19 Rustia v. Abeto, **supra**, note 17.
20 Supra, note 18.

closure of the real estate mortgage made in her favor by the Ocampo spouses as security for a debt, Mrs. Roxas, through another attorney, Rosario de Jesus-Alano, applied for and obtained extrajudicial foreclosure on the same mortgage. From the proceeds of the sale she claimed, in addition to the amount of her credit, 10% attorney's fees. She obtained a judgment for such fees only after litigation with other creditors of the Ocampos, in which she was again represented by the petitioner. By virtue of a writ of execution the sum claimed was delivered to petitioner. Later, however, Mrs. Roxas filed a petition in the same court alleging that the fees belonged to her and not to the petitioner who had no right to the same. The court granted her petition and ordered Atty. De Jesus-Alano to return and deposit in court the amount of ₱2,500 under pain of contempt. The attorney petitioned for certiorari. *Held*: The amount of ₱2,500 in question was by the writ of execution ordered to be delivered to petitioner, "she being the lawyer of Mrs. Roxas." Petitioner had, therefore, and may validly exercise, a general or retaining lien over said amount. This, recognized in the first part of Section 33, Rule 127 of the Rules of Court, extends to moneys collected by the attorney for his client in the course of his employment, whether or not upon a judgment or award. The petitioner then has the right to retain the amount in question and to apply it to her claim for attorney's fees, the same having been already adjudicated as the reasonable value of her professional services to the respondent Mrs. Roxas.

2. Charging Lien

It is the rule with respect to this lien upon a judgment secured by the attorney for his client that it takes legal effect only from and after, but not before, notice of said lien has been entered upon the records of the court rendering the judgment and served on his client and the adverse party.[21] But if, in an ejectment case, this requisite has been complied with, may the attorney still seek to annotate his attorney's lien on the back of his client's certificate of title? The case of *Peralta Vda. de Caina v. Victorino, et al.*[22] gives a negative answer. He has done all that the rule requires — that of having caused a statement of his claim to be entered in the record of the ejectment case — and he cannot go any further. It would be beyond the province of the court to grant, as was done in the *Peralta* case, the attorney's motion for annotation.

IV. DISCIPLINARY ACTIONS AGAINST ATTORNEYS

In 1959, more than at any other time in the past, the Supreme Court, in its determination to keep the honor and integrity of the profession, had been most strict and exacting upon attorneys with regard to their conduct, professionally or otherwise. This is demonstrated by the fact that, except in one administrative case, the Supreme Court consistently imposed the penalty of disbarment to erring attorneys.

A. Disbarment — Grounds

1. *Moral turpitude*

The nature of the office, the trust relation which exists between attorney and client, as well as between court and attorney, and the rule prescribing the qualifications of attorneys, uniformly require that an attorney shall be a

21 RULES OF COURT, Rule 127, Sec. 33; Macondry & Co. v. Jose, 66 Phil 590 (1938).
22 G.R. No. L-12905, February 26, 1959.

person of good moral character. This qualification is as essential during the continuance of the practice and exercise of the privilege as it is as a condition precedent to obtaining a license. Therefore, an attorney will be removed not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his duties, which shows him to be unfit for the office and unworthy of the privileges which his license and the law confer upon him.[23]

Accordingly, conviction of a crime or the commision of any other act involving moral turpitude will warrant either suspension or disbarment.

Meaning of moral turpitude. The term moral turpitude is difficult of exact and complete definition. But it has been held to refer, comprehensively, to moral depravity, vileness or baseness of character or in the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.[24] It has also been defined as any act done contrary to justice, honesty, modesty, or good morals.[25] These definitions are synthesized in *Tak Ng v. Republic.*[26]

Acts constituting moral turpitude. In the case of *In re De los Angeles,*[27] the Supreme Court considered the conviction of *attempted bribery* of the respondent attorney as admittedly one invovling moral turpitude. He was disbarred in spite of his supplication for mercy on the ground that he has six children of tender age. The Court applied strictly the provisions of Section 25, Rule 127, of the Rules of Court.

Profiteering is undoubtedly also a crime involving moral turpitude inasmuch as it affects the price of prime commodities and goes to the life of citizens, especially those who are poor and with hardly the same means to sustain themselves.[27a]

Removal based on a ground not connected with his professional duties by an attorney is illustrated in *Cabrera v. Agustin.*[27b] Respondent therein, after he and his fiancee, the complainant, Anita Cebrera, had signed and filed their application for a marriage license and declared to the Civil Registrar of Manila that they were willing to marry each other, told the complainant that as they were already married they would go to Grace Park and call on his uncle to introduce her to him. In Grace Park they went to a house which she later on learned was Venus Hotel. After the respondent had signed a book, he and Anita went inside a room, the door of which he closed. He then asked her to have sexual intercourse with him for they were already married. Because of his insistence and his assurance that they were already married, Anita, who has reached the first year of high school only and did not have the slightest idea of a legal and valid marriage, gave in to his desire. Such a relation was repeated once a month for three consecutive months, when Anita asked why despite their marriage they had not yet lived as husband and wife. He said he was waiting for the bar results. When he passed the bar, a church marriage ceremony was arranged. But before the date's arrival, he withdrew from such agreement. Anita, then on the family way, came to know

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23 CHIEF JUSTICE JOHNSON in In re Smith, 73 Kansas 743 (1906), cited in In re Pelaez, 44 Phil. 567, 572 (1923).

24 Traders & General Insurance Co. v. Russel, Tex. Civ. App., 9 S.W. (2nd) 1079.

25 In re Basa, 41 Phil. 275 (1920).

26 G.R. No. L-13017, December 23, 1959.

27 Adm. Case No. 350, August 7, 1959.

27a Tak Ng v. Republic, supra, note 26.

27b Adm. Case No. 225, September 30, 1959.

from her father, to whom she showed the documents in her possession, that they had not been married civilly. As respondent refused to consummate the marriage, Anita filed this complaint charging respondent with immorality. *Held*: Respondent has not maintained the highest degree of morality and integrity, which at all times is expected of, and must be possessed by, a member of the bar. He is, therefore, disbarred and his name in the Roll of Attorneys striken out.

In *In re Rusiana*,[28] the acts committed by the respondent attorney were the following: He was a checker in the District Engineer's office of Cebu City, and, having discovered that Omay, another employee of the office, had left the service without collecting his accumulated vacation and sick leave of absence and that his whereabouts was unknown, he prepared a power of attorney in his favor to enable him to collect the money value of such leave, signing the name of Omay. He also executed the acknowledgement, making false entries as to the certificate of residence and as to the number and discription of the document. *Held*: A member of the bar who performs an act, as a notary public, of a disgraceful or immoral character may be held to account by the Court even to the extent of disbarment. Respondent attorney has exhibited such a frame of mind and observed such a norm of conduct as is unworthy of a member of the legal profession. He should therefore be disbarred.

But the act of soliciting, charging and receiving as fees amounts in excess of the limits fixed by Republic Act. No. 145 for the preparation, presentation, and prosecution of the benefits claims of certain persons under United States laws administered by the U.S. Veterans Administration cannot be classified as one involving moral turpitude. Conviction of such offense, a *malum prohibitum*, cannot therefore be a ground for disbarment. However, the attorney committing it may be reprimand, since the prohibition concerns the practice of his profession and he should have been meticulous in the observance thereof. This was the holding in the *Katalbas v. Tupas*[29] case.

JUDICIAL ETHICS

I. JUDGE'S INTERFERENCE IN CONDUCT OF TRIAL

Section 14 of the Code of Judicial Ethics provides:

> "While a judge may properly intervene in a trial of a case to promote expedition and prevent unnecessary waste of time, or to clear up some obscurity, nevertheless he should bear in mind that his undue interference, impatience or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of a trial, may tend to prevent the proper presentation of the case, or the ascertainment of the truth in respect thereto.
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> "He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to unnecessary display of learning or a premature judgment."

A grave disregard of the rules provided for in this section was alleged in the case of *Ventura and Evangelista v. Yatco*.[30] During the hearing therein and while plaintiff Ventura was on the stand, Atty. Evangelista, plaintiff's coun-

28 Adm. Case No. 270, May 29, 1959.
29 Adm. Case No. 328, April 30, 1959.
30 G.R. No. L-11223, March 16, 1959.

sel, was found by the respondent judge, in contempt twice. Once when he manifested that the respondent judge has been taking an active part in the proceedings and again when he asked for the suspension of the hearing to enable him to file a motion for disqualification of the judge. On petition for certiorari, Atty. Envangelista contended that the trial judge had interrupted the proceedings by remarks, questions, etc. in a most aggressive and angry manner; that his participation as judge has been overzealous, showing a prejudgement of the case, and prejudices the plaintiff.

Held: "The Court actively took part in the examination. However, said active participation did not show any prejudice, bias or hostility against the witness or her case. He acted in the interest of a speedy trial when he tried to make counsel for the plaintiff direct his evidence toward the real issue of the case. His other participations were merely to clarify certain points. While judges should as much as possible refrain from showing partiality to one party and hostility to another, it does not mean that the trial judge should keep mum throughout the trial and allow parties to ask the questions that they desire, on issues which they think are important issues, when the former are improper and the latter are immaterial. Judges are not mere referees like those of a boxing bout, only to watch and decide the results of the game. They should have as much interest as counsel in the orderly and expeditious presentation of evidence. Counsel should not therefore resent any interest that the judge takes in the conduct of the trial; they should be glad that a trial judge takes such interest."