LEGAL AND JUDICIAL ETHICS

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The year 1960 evidenced a growing laxity of lawyers in the pursuit of their client's cause. Cases have to be dismissed by the court on the basis of the lawyer's negligence to comply with procedural requirements. At this point it is but proper to state one of the Lawyer's Cardinal Loyalties:

> "To his client he owes absolute candor, unswerving fidelity and undivided allegiance, furthering his cause with entire devotion, warm zeal, and his utmost ability and learning, but without using means other than those addressed to reason and understanding; employing and countenancing no form of fraud, trickery, or deceit, which if brought to light would shame his conscience or bring discredit to his profession." [1]

I. RELATION OF ATTORNEY AND CLIENT

A. Counsels Have No Right To Assume That Motion for Postponement Would Be Granted.

Motions for postponement are addressed to the sound discretion of the court and while counsels can not assume that such will be denied they have no right to assume that the same will be granted especially if the motion was filed on less than three days notice.[2] In the case of the *National Lumber and Hardware Co. v. Pedro Velasco* [3] it appeared that after the case had been postponed for four times upon motion of the defendant, the latter filed another motion for postponement two days before the scheduled hearing, the reasons being that he had not received any formal notice of the hearing set for Aug. 9, 1956, and that he had another hearing at the C.I.F. of Rizal. On the day set for hearing neither the defendant nor his counsel appeared. Instead, a certain Atty. Moises Bantoc appeared with medical certificate stating that the defendant was suffering from active lumbago and reiterated the latter's request for postponement. The motion was denied and plaintiff recovered judgment. On appeal the Court stated that if the defendant was really ill at least his counsel should have appeared to find out what action was taken on his motion for further postponement filed two days before the hearing.

The Court reiterated its ruling in the case of *Segunda Inocando v. Juan Inocando* [4] where it appeared that the notice of the date of hearing was received by counsel for the defendant thirty days earlier. Counsel filed his motion for postponement only the day before the trial and he did not even appear at the day of hearing. The Court in dismissing the appeal stated that counsel had no right to assume that his motion would be granted.

B. Attorney's Duties to His Client.

1. Preserve Client's confidence.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be comingled with his own

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[1] DRINKER, HENRY S., LEGAL ETHICS 3-7.
[2] Bautista v. Muncipal Council of Mandaluyong, 52 O.G. 759.
[3] G.R. No. L-14109, January 30, 1960.
[4] G.R. No. L-16030, November 29, 1960.

or be used by him.[5] In the case of *Gervasio Liwag v. Gilberto Neri*,[6] the complainant delivered to the respondent attorney the sum of thirty pesos (₱30.00) as filing fee for a complaint which he wanted to institute against his debtor. The respondent attorney did not file any complaint for the alleged reason that the debtor sponses had given assurances to pay, although he informed the complainant that he had already done so. The Court held that respondent had committed a breach of professional ethics when, contrary to the fact, he made the complainant believed that the debtors had been sued in court and did not return the amount intended as filing fee.

In another case,[7] it appeared that Atty. Fernandez as counsel for Timotea Perryras instituted a special proceedings for latter's appointment as guardian over the persons and properties of her minor brothers. Upon her appointment, she petitioned the Court for authority to sell a nipa land owned in common by the wards, for the purpose of paying outstanding obligation to one Maximiano Umangay. This nipa land had been previously sold with a right of repurchase to Ricardo Perryras and Umangay who in turn assigned their interest for ₱200 to Atty. Manuel Fernandez. Of the purchase price of ₱1,000, ₱200 was paid to Atty. Fernandez as assignee of the credit and the other ₱200 was given to said attorney in payment of his legal fees for services rendered as counsel of the father of the ward in a civil case. These payments were made without the previous authorization of the Court. In upholding his conviction for contempt the Court held that as a lawyer, the petitioner is charged with the knowledge that the property and effects of the wards are under the control and supervision of the Court and could not be taken nor expended without the latter's permission.

2. Exercise diligence

An attorney is required as respects his clients to exercise such skills, care and diligence as men of legal profession commonly possess and exercise in such matters of professional employment.[8] This degree of care and skill required of him is in no manner affected by the fact that he intrusts to another the performance of a duty undertaken by him.[9] The duty to compute the period to appeal is a duty that devolves upon that attorney which he can not delegate to his employees because it concerns a question of study of the law and its application. In the case of *Felipe Eco v. Juan de Rodriguez*,[10] the petitioner filed a petition for certiorari in the C.F.I. of Manila to annul all proceedings, orders and decisions rendered by the Sec. of Agriculture. The trial court dismissed the petition and counsel for the petitioner received the same on May 5, 1958. On June 3, 1958 or 28 days thereafter petitioner filed a motion for reconsideration which was denied on June 14, 1958. On June 21, 1958 petitioner filed a notice of appeal and appeal bond. The trial court disapproved the same as having been filed out of time. Petitioner filed a motion for relief under Rule 38 on ground of excusable negligence consisting in the erroneous computation by counsel's clerk of the period within which an appeal may be made, said clerk being of the impression that the prescribed period to appeal in certain cases is also 30 days like ordinary civil cases instead of 15 days as provided for by Sec. 17, Rule 41 of the Rules of Court. In support of his view he cited the cases of *Coombs v. Santos*[11] and *Herrera v. Far Eastern Air Transportation Inc.*[12]

[5] Code of Legal Ethics, Canon 11.
[6] Adm. Case 275. April 29, 1960.
[7] Manuel Fernandez v. Hon Eloy Bello, G.R. No. L-14279, April 30, 1960.
[8] 7 C.J.S. 979.
[9] 5 Am. Jur. 287.
[10] G.R. No. L-16731, March 30, 1960.
[11] 24 Phil. 446.
[12] G.R. No. L-2587, September 19, 1950.

These cases are inapplicable because the delay was due to illness either of the clerk or of the attorney. In the case at bar what was delegated was the computation itself of the period within which the appropriate pleading may be filed. This act is hardly prudent or wise and could not therefore be considered as excusable negligence.

In the later case of *Emilia Mendoza v. Camilo Bulandi*,[13] the failure of the lawyer to appear at the trial due to the inadvertence or mistake of his clerk who after receiving the notice of hearing, misfiled it in one of the envelopes containing the records of other cases, and 3 days thereafter went on vacation to the province without calling his attention to said notice of hearing, was held not to constitute excusable negligence inasmuch as counsel could have made inquiries as to what court notices or papers been received by the clerk before the latter left for vacation.

The failure of the secretary to call counsel's attention as to the time to file an answer was held not to constitute excusable negligence as would justify the lifting of the order of default and the reopening of the case. Counsels were charged by laws with the knowledge of the reglamentary period within which to answer.[14]

A client is bound by the negligence or mistake of his lawyer.[15] If the counsel could not attend the trial he should have advised the court by presenting a motion for postponement at least three days before the trial especially so if he had done so before on several occasions when he or his client could not appear on the date set for hearing. In the case of *Francisco, Patricio, and Roman all surnamed Martin v. Jalandoni*,[16] it appeared that in the trial the counsel for the plaintiff failed to appear and the lower court dismissed the case for failure to prosecute. The order of dismissal was reconsidered and the case was reset for hearing. Counsel, again asked for postponement which was also granted. On the date for hearing counsel again asked for postponement on the ground that all his efforts were concentrated in the study and preparation of a criminal case. The court held that the plaintiff had been guilty of neglect because if counsel was not ready for the trial of the case, he should have advised the court by presenting the proper motion at least three days before the trial.

After the *Martir* case, the Court in the case of *Demetria Flores v. Philippine Alien Property Administration* [17] found that plaintiff and his counsel failed to appear on the date set for hearing after the case had been repeatedly postponed from July 5, 1951 to June 1, 1955 on petition mostly of the plaintiff. In the motion for reconsideration of the order of dismissal of the lower court, the plaintiff invoked excusable neglect of her counsel in that from May 26 to June 1, 1955 her counsel was in Dumaguete City attending a meeting of the Board of Trustees of Silliman University and because of the many important matters affecting the University that were taken up at the meeting, the hearing of the case set for June 1, 1955 slipped off his mind. The Court in dismissing the appeal held that counsel should have seasonably asked for postponement as he had done so on previous occasions. However much the appellant is entitled to court's sympathy, she is nevertheless bound by the negligence of her lawyer.

Again in another case [18] the Court held that the misconduct on the part of the counsel is binding upon the client. In that case the defendant filed a motion

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[13] G.R. No. L-13092, May 18, 1960.
[14] Pimentel v. Gomez, G.R. No. L-15234, October 31, 1960.
[15] Montes v. C.F.I. of Tayabas, 49 Phil. 645; Isaac v. Mendoza, G.R. No. L-2820, June 21, 1951.
[16] G.R. L-12870, March 25, 1960.
[17] G.R. No. L-12741, April 28, 1960.
[18] *Supra* Note 4.

to reopen the case, alleging that he was not notified of the hearing. The Court held that the defendant could not complain that his failure to appear at the hearing was due to the fact that he was not personally notified of the hearing. If a party appears by an attorney who makes of record his appearance, service of the pleadings is required to be made upon the attorney and not upon the party.[19] Indeed in such a case notice to the party is not notice in law.

An attorney in the pursuit of his client's cause although not required to exercise extraordinary diligence must nevertheless guard against forseeable risks. In the case of *Consuelo Arranz v. Veneracion Babers Arranz (oppositor-appellant), Abelardo Arranz, petitioner appellee,*[20] the C.F.I. of Cagayan issued an order adjudicating to the petitioner certain parcels of land. Veneracion Babers, wife of the petitioner filed a motion for new trial. The case was set for hearing on Nov. 22, 1955 but was postponed twice upon petitioner's motion. The case was reset for hearing on Feb. 25, 1956 at 8:30 a.m. but neither the appellant nor his counsel appeared. Appellant alleged that although Messrs. Alcantara and Paz were the attorneys on the record of the case it was only in the afternoon of Feb. 24, 1956 that Atty. Paz was notified that he was to handle the trial the next morning, that it being dangerous to travel at night, Atty. Paz waited until the next morning, that he was waiting from 6:00 a.m. of Feb. 25 but all the buses were packed to capacity and that he was able to get one only at about 10:00 a.m., that he sent a telegram requesting postponement of the case to 11:00 a.m. and that upon his arrival at 11:00 a.m. the case was already submitted for decision. Held: No adequate reason is given why the conduct of the case should be transferred from one lawyer to another only the day before the hearing. Diligence expected of counsel called for his proceeding to Tuguegarao, Cagayan on the same day that he was informed of the scheduled hearing particularly because the hearing had been repeatedly postponed at his instance and the court had twice warned him not to expect further continuance. If he thought that travel at night was unsafe, still he could have sent in ample time, his telegram asking that the hearing be deferred, instead of waiting till the eleventh hour to remedy a situation which he brought about by not guarding against forseeable risks.

3. An attorney owes it to himself and to his clients to invariably adopt a system whereby he can be sure of receiving promptly all judicial notices during his absence from his address of record.[21]

In the case of *Doña Nena Marquez and Vicente Noza v. Hon. Tomas P. Panganiban,*[22] the counsel for petitioners on June 3, 1959, filed a motion for reconsideration of a judgment of Court of Agrarian Relations of May 12, 1959, which petition was denied as having been filed out of time. Counsel alleged that he received copy of said decision only on May 29, 1959 for the reason that it was served on one Felicitas Pabellona, clerk of Atty. Alfredo Raya, with which office he was not in any way connected. Held: Counsel admitted that months prior to the rendition of the judgment he had been residing in Manila. In spite of this change of address he failed to notify the court a quo and the respondents of the said fact. The failure of the counsel to notify the court of his change of address to insure that he could receive judicial notices and processes promptly is plain dereliction of duty to himself, to his client and to the court.

[19] Rules of Court, Rule 27, sec. 2.
[20] G.R. No. L-14904, August 29, 1960.
[21] Enriquez v. Bautista et al., 79 Phil. 220; Martinez v. Martinez, G.R. No. L-4075, January 23, 1952.
[22] G.R. No. L-15842, October 31, 1960.

Service of copy of the decision to Atty. Alfredo Raya's office is justified because it appeared that on one occasion counsel for petitioner had used an envelope with printed letter head of Raya's Law Office in his correspondence to respondent's counsel, indicating that he and Raya are associates or at least have a common law firm.

II. TERMINATION OF THE RELATION

Either the client or the attorney may end the relation for any cause, and the former may terminate it even without any cause. But the attorney can not put an end to such relation without the consent of hir client or without the permission of the Court. Rule 127, sec. 24 of the Rules of Court provides:

> "Change of Attorney—An attorney may retire at any time from any action or special proceeding by the writeen consent of his client filed in Court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the Court, on notice to the client and attorney and on hearing determine that he ought to be allowed to retire"

Counsels have no right to assume such a relief of attorneys of record except in the manner provided for by law. In the case of *Horacio Guanzon v. Francisco Aragon*,[23] counsel for defendant failed to appear on the date set for hearing and in the motion for relief filed by defendant, said counsel explained that afer the initial hearing of the case before the J.P. of Parañaque, appellant took all the papers of the case from him and turned all the papers of the case to Atty. Eliseo Tenza so that the latter may prepare the necessary pleadings for the mandamus case, that because of the employment of Atty. Tenza, he had the impression that appellant had already terminated his services, that when he received notice of the hearing he went to the clerk of Court and inquired whether Atty. Tenza was also notified of the hearing and when he received an affirmative answer he felt that his appearance at the hearing was no longer necessary. The Supreme Court in affirming the decision of the trial court quoted the latter's decision.

> "But a lawyer of ordinary prudence knows that the relief of the counsel of record in a case could only be effected in the modes outlined in Sec. 24 of Rule 127 of the Rules of Court and Atty. Leuterio had not been retired as counsel for Guanzon in any of the modes as specified in said section 24. His assumption that he was already relieved as counsel for Guanzon had therefore no legal basis so that his failure to appear at the hearing was an omission which an ordinary prudent lawyer under the circumstances could not have committed and hence said failure constituted gross negligence."

III. Attorney's Right to Compensation and Its Incidents

The duty of the courts is not alone to see that lawyers act in a proper and lawful manner, it is also their duty to see that lawyers are paid their just and lawful fees. In the case of *Manuel Fernandez v. Hon. Eloy Bello*,[24] the Court held that the order of the trial court for the refund of ₱200, representing the attorney's fees due to the petitioner for services rendered to the father of the guardian and the wards in a civil case would deprive the petitioner of the fees that he was entitled to receive. The Courts can not deny him that right, there is no law that authorizes them to do so. The opinion of the judge that the petitioner is "below average standard of a lawyer" is not the basis of the

[23] G.R. No. L-14436, March 31, 1960.
[24] *Supra*, Note 7.

right to a lawyer's fees. It is the contract between the lawyer and the client and the nature of the services rendered.

The contracting parties may establish such stipulations, terms and conditions in their contract, provided they are not contrary to law, morals, good customs, public policy and public order.[25] Parties to a contract may therefore stipulate for the payment of attorney's fees in case of a subsequent litigation. Such stipulations shall be binding upon the parties unless it be found to be unconscionable. Accordingly, in the case of *Compañia Maritima v. Court of Appeals and Libby, McNeill & Libby (Phil.) Inc.*,[26] a stipulation in a contract that in case of litigation, an additional 20% of the unpaid price would be paid as attorney's fees can not be overruled by the fact that all records of the defendant were destroyed during the fight for liberation of Manila, which made it impossible for the defendant to verify whether or not it was really obligated to pay respondent Libby & Co. any amount. However much as appellant is entitled to sympathy still the Court can not disregard the express contract of the parties providing for the payment of the sums which do not appear excessive or unconscionable.

A. Attorney's Liens

As an incident to the right of lawyers to compensation for services rendered the Rules of Court[27] grants him two kinds of liens: (1) the general, retaining or possessing lien and (2) the charging lien. The retaining lien is the right of the attorney to retain the funds, documents and papers of his client which have come into his possession and control and until his lawful fees and disbursements have been paid and to apply such funds to the satisfaction thereof. The charging lien is that which the attorney has upon all judgment for the payment of money and execution issued in pursuance of such judgment.[28]

Charging Lien

Satisfaction of the judgment in general does not of itself bar or extinguish the attorney's lien.[29] As a matter of fact if a satisfaction of the judgment had been in disregard of attorney's rights, notice having previously been given to judgment debtor, the court may upon attorney's motion vacate such satisfaction and enforce judgment for the amount of the lien.[30] In the case of *Bacolod Murcia Milling Co. Inc v. Fidel Hernaes*,[31] the Court upheld the right of the lawyer to have his fees paid out of the proceeds of the sale of certain properties in satisfaction of a judgment which he had secured for the plaintiff. It appeared that Atty. Ricardo Nolan acted as counsel for the plaintiff in an action for foreclosure of mortgage. Judgment was rendered in favor of the plaintiff in the amount of ₱31,405.02 with legal interest at 6% annually from date of the filing of the complaint until fully paid plus 10% of the total indebtedness as attorney's fees and costs. Atty. Nolan filed a notice of his lawyer's lien in court. Subsequently a writ of execution was issued and Nolan petitioned the court that plaintiff be ordered to pay him his lawyer's lien. Plaintiff opposed the petition on the ground that the judgment, having been satisfied by the sale of mortgaged properties, there was no longer any judgment to which the attorney's lien could legally attach. Held: The American cases holding the

[25] New Civil Code, Art. 1306.
[26] G.R. No. L-14949, May 30, 1960.
[27] Rules of Court, Rule 127, sec. 33.
[28] 5 Am. Jur. 387.
[29] 6 C.J. 797.
[30] In Re King 60 NE 1054; Goodrich v. McDonald 112 NY 157.
[31] G.R. No. L-13505, March 30, 1960.

plaintiff's view proceed on the theory that there has been a waiver of the lien either by the attorney's active conduct or by his passive omission. In the case at bar, there was no such waiver inasmuch as Nolan filed his notice of lawyer's lien with the court and served the same on his client and to the adverse party in the foreclosure action. Moreover, he wrote a letter to the Provincial Sheriff of Negros Occidental before the sale at public auction of the property stating his claim which was duly annotated. The sale of the property at public auction did not extinguish the lien, for while, in this jurisdiction, the lien does not attach to the property in litigation, it is obvious that it should attach to the proceeds of the judgment for the payment of money otherwise the lien would be meaningless and without substance. The client upon receiving satisfaction without paying his lawyer, held the proceeds of the judgment in trust for his lawyer to the extent of the value of his recorded lien because after the charging lien has attached the attorney is to the extent of said lien to be regarded as equitable assignee of the judgment funds produced by his efforts.[32]

IV. Disciplinary Actions Against Attorneys

A. Nature of Proceedings

Proceedings against attorneys are of private and confidential nature, except that the final order of the Court in the proceedings shall be made public.[33] The purpose of this provision is to enable the Supreme Court to make its investigation free from any extraneus influence or interference, as well as to protect the personal and professional reputation of attorneys and judges from baseless charges of disgruntled, vindictive and irresponsible clients and litigants.[34] In the case of *Delia Murillo v. Atty. Nicolas Superable Jr.*[35] the complainant Delia Murillo wrote a letter to the Chief Justice alleging that Superable employed her in his office, took advantage of his status as an employer, made love to her, that although she had informed him that she was a married woman, still he assured her that he being a lawyer with the necessary connections, they could arrange the matter and still marry each other, that she finally gave herself up to him and they cohabited for some time as a result of which, a child was born but later he abandoned them. Superable on the other hand admitted that he really made love to her but he found out later that she was maintaining illicit relationship with another man. The Court dismissed the case, but nine (9) days before such dismissal. the complaint of Delia Murillo was published in the tabloid Eastern Star. Held: Such publication is in violation of the provision of the Rules of Court which considers private and confidential proceedings against an attorney. Even a verbatim copy of a complaint against an attorney in a newspaper might be actionable.[36] The rule was enforced against editors and reporters in a number of cases.[37]

B. Reinstatement

An order or judgment of disbarment is not final and conclusive in that a disbarred attorney may be reinstated to the practice of law under proper circumstances. The effect of a judgment of disbarment will not be lightly set aside and a mere sentimental belief that the erring lawyer has been punished enough does not justify his reinstatement, as the Court on a petition for re-

[32] 6 C.J. 766
[33] Rules of Court, Rule 128, Sec. 10.
[34] 3 MORAN, *Comments on the Rules of Court* 676 (1957 ed); In Re Abistado 57 Phil. 668; Santiago v. Calvo 48 Phil. 919.
[35] Adm. Case 341, March 23, 1960.
[36] Santiago v. Calvo, *Supra* Note 34.
[37] In Re Lozano 54 Phil. 801; In Re Abistado, *supra* Note 33.

instatement has a solemn duty to the legal profession and to the public which must be performed without regard to feelings of sympathy. Evidence of reformation is required before an applicant is entitled to reinstatement.[38] The Court this year had occasion to lift and order of disbarment in the case of *Panfilo Royo v. Celsa T. Oliva.*[39] In this case the petitioner after filing one motion for reconsideration and two motions for lifting the order of Disbarment was finally reinstated to the practice of law. The Court in so granting considered all the reasons and the cases given and cited by him in the three pleadings, noted that two years had passed since he was ordered disbarred, took into account the circumstances involved in this case, and believed that respondent Oliva had been sufficiently punished and disciplined.

JUDICIAL ETHICS

Judges should be courteous to counsel, especially to those who are young and inexperienced, and also to others concerned in the administration of justice.[40] They should be temperate, attentive, patient and impartial.[41] The Court in the case of *Fernandez v. Bello* [42] admonished the judge when the latter sought to strike certain portions of petitioner's pleading for allegedly employing strong language. The Court held that the said strong language must have been impelled by the same language used by the judge below characterisizing the act of the petitioner as "anomalous and unbecoming" and in charging the petitoner of obtaining his fees" through maneuvers of documents from the guardian. If a judge desires not to be insulted, he should start using temperate language himself; he who sows the wind will reap a storm.

Again, the Canon of Judicial Ethics provides that a judge should be considerate of witnesses and others in attendance upon his court.[43] In the case of the *Philippine National Bank v. Philippine Recording System,*[44] it appeared that on the date set for trial, the plaintiff's witnesses were not present at 8:00 a.m. and when they failed to show up within the extension time given by the Court, the latter dismissed the case stating that it does not sanction indolence on the part of government witnesses and that they should be more prompt in their duties than private persons. Held: The judge should have been more tolerant and human and as the records show, barely 2 minutes had passed after the entry of the order of dismissal when the witnesses arrived in Court. Their tardiness was caused by the heavy traffic which is thus neither intentional nor deliberate. This is a display on the part of the Court of an incorrect use of discretion. It is impatience personified.

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[38] 7 C.J.S. 815.
[39] Adm. Case 228, March 9, 1960.
[40] Canon of Judicial Ethics, Canon 10.
[41] *Supra*, Canon 4
[42] *Supra*, Note 7.
[43] Canon 9.
[44] G.R. No. L-11310, March 29, 1960.

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Inst. 27, Page 7
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