LEGAL AND JUDICIAL ETHICS

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The continued upholding of the dignity and honor of the law profession in order to keep vibrant and aflame the respect and trust of the people in the administration of justice is a solemn duty incumbent upon all and every lawyer for as long as he is a part of the profession. Henry S. Drinker sums up such duty in this wise:

> "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. WHO CAN PRACTICE LAW

The practice of law is a privilege accorded only to those who measure up to certain rigid standards of mental and moral fitness. For the admission of a candidate to the bar the Rules of Court not only prescribes a test of academic preparation but requires satisfactory testimonials of good moral character. These standards are neither dispensed with nor lowered after admission; the lawyer must continue to adhere to them or else incur the risk of suspension or removal.[2]

II. ATTORNEY-CLIENT RELATIONSHIP

A. PARTY BOUND BY ACTS OF COUNSEL

It is well settled that a party is bound by the acts of his counsel, even if the latter had been negligent in the discharge of his duties. Thus held the Supreme Court in the case of *Beatriz et al v. Cederia.*[3] In this case, the Court turned down the defendant's motion for relief of judgment holding that the allegation made in said motion of fraud, collusion, accident and excusable negligence on the part of their former counsel is but a mere conclusion of the defendants, without any fact to substantiate it. Moreover, it appears that counsel for plaintiffs met defendant Martin Cederia about ten (10) days

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[1] DRINKER, HENRY S., LEGAL ETHICS, 3-7.

[2] *In re* Gutierrez, Adm. Case No. 363, July 31, 1962.

[3] G.R. No. L-17703, February 28, 1962.

after receipt of copy of the decision and informed him of the rendition of said decision against the defendants.

B. LIABILITY OF COUNSEL FOR FAILURE OF HIS CLIENT TO COMPLY WITH ORDER OF COURT

In Special Proceedings No. Q-453 entitled *Intestate Estate of Marcelo de Castro,* the respondent judge issued an order requiring the executrix to explain why she had secured a small loan from the Development Bank of the Philippines without previous court authority, and why she had failed to include in her accounting the income from some properties of the estate. Not satisfied with the explanation given by the executrix in connection therewith, the respondent judge, in open court, found her guilty of contempt and ordered to comply strictly with the order. The executrix, through her counsel, petitioner herein, filed her "compliance" with the order. The respondent judge ruled that the same was not in conformity with his order, without, however, specifying in what respects the statement was defective. In view of this, petitioner, as counsel for the executrix inquired from the respondent judge in what particulars the compliance was defective, to which the judge replied that petitioner had no right to make such an inquiry and held him guilty of contempt for which he was ordered to pay a fine of twenty (₱20.00) pesos. Hence, petitioner filed a petition to set aside the order declaring him in contempt. *Held:* It is thus obvious that the one under obligation to comply with the order of the Court requiring the administratrix (petitioner's client) to explain why she had secured a loan without previous court authority and why she had not included in her accounting the income from certain properties of the estate was not petitioner but his client who had already been fined for contempt. Hence, counsel cannot be held liable for contempt for failure of his client to comply with the order of the Court.[4]

C. LAWYERS ARE PROHIBITED FROM REPRESENTING CONFLICTING INTEREST IN A CASE

In *Mejia et al. v. Reyes,*[5] respondent, a practicing lawyer, was in 1947 appointed bank attorney and notary public for the Baguio Branch of the Philippine National Bank. While still holding such position, his professional services were engaged by complainants, residents of Baguio City, to bring an action in court against the Philippine National Bank and the Rehabilitation Finance Corporation for the cancellation of a mortgage on a parcel of land. The

[4] Consulta v. Yatco *et al.*, G.R. No. L-15964, January 30, 1962.
[5] Adm. Case No. 378, March 30, 1962.

Court *held:* Lawyers are prohibited from representing conflicting interests in a case. So the respondent's act of appearing and acting as counsel for the complainants in the civil case against the Philippine National Bank that had appointed him bank attorney and notary public, constitutes malpractice.

D. BREACH OF PROFESSIONAL DUTY

As already aforesaid, to the client a lawyer owes "absolute candor, unswerving fidelity and undivided allegiance." This duty, a lawyer should hold up high if he were to enjoy the continued respect and trust, hence patronage, of his clients. But in one case,[6] the lawyer-respondent disregarded and violated this duty. It thus happened that petitioner engaged the services of respondent lawyer to find ways by which the lands she had sold could be redeemed. Respondent succeeded in redeeming the lands but the sale was executed in his name. Afterwards, he sold eight lots at a profit and kept the two lots for himself as his attorney's fees. *Held:* Respondent is guilty of malpractice. It is not only irregular but a breach of professional duty towards petitioner client whose trust respondent-lawyer disregarded and violated.

E. PROHIBITION AGAINST COUNSEL TO BUY CLIENT'S PROPERTY.

The conveyance of the property in litigation made by the litigant to his counsel during the existence of attorney-and-client relationship is void, the reason being that because of their client-attorney relationship, petitioner-counsel was disqualified to buy under Article 1941 of the New Civil Code. In such a case, perhaps the period of prescription should be counted only from the severance of the attorney-client bond, because it is only then that the controlling influence of the attorney has ceased. Nonetheless, the litigant may not be allowed to unjustly profit at the expense of her attorney by retaining the consideration of the sale. When a sale is avoided, the seller shall return the purchase price, together with interest.[7]

III. SUBSTITUTION AND WITHDRAWAL OF COUNSEL

A. SUBSTITUTION

When a lawyer voluntarily withdraws as counsel after another lawyer had entered his appearance for the same client, the filing almost simultaneously by the former of a motion for the payment of his attorney's fees, amounts to an acquiescence to the appearance

[6] Imbuido v. Mañgonon, Adm. Case No. 200, March 31, 1962.
[7] Sotto v. Samson, G.R. No. L-16917, July 31, 1962.

of the latter as counsel for the client. This consideration came up in one administrative case.[8] In said case petitioner was retained by Nieves Rillas Vda. de Barrera to handle the settlement of the testate estate of her husband. Preparatory to the closing of the administration proceedings, petitioner prepared two pleadings but Mrs. Barrera refused to countersign said pleadings and instead advised petitioner not to file them. Sometime later, petitioner found that respondent Atty. Patalinghug had filed on January 11, 1955 a written appearance as new counsel for Mrs. Barrera. On February 7, 1955, the other respondent Atty. Remotigue entered his appearance. *Held:* Petitioner's voluntary withdrawal as counsel for Mrs. Barrera after Atty. Patalinghug had entered his appearance, and his (petitioner's) filing almost simultaneously of a motion for the payment of his attorney's fees, amounted to an acquiescense to the appearance of respondent, Atty. Patalinghug, as counsel for Mrs. Barrera. This should estop petitioner from now complaining that the appearance of Atty. Patalinghug was unprofessional. Moreover, the Solicitor General found that before respondent Attorney Patalinghug entered his appearance, Mrs. Barrera had already filed with the court a pleading discharging petitioner. If she did not furnish petitioner with a copy of said pleading, it was not the fault of Atty. Patalinghug but that of Mrs. Barrera. It appears that the reason why Mrs. Barrera dismissed petitioner was that she did not trust him any longer. Much less could respondent Atty. Remotigue be held guilty of unprofessional conduct inasmuch as he entered his appearance only on February 7, 1955, and after petitioner had voluntarily withdrawn appearance on February 5, 1955.

B. WITHDRAWAL

An attorney retained in a case the trial of which is set for a date which he knows he cannot appear because of his engagement in another trial set previously on the same date, has no right to presume that the court will necessarily grant him continuance. The most ethical thing for him to do in such a situation is to inform the prospective client of all the facts so that the latter may retain another attorney. If the client, having full knowledge of all the facts, still retains the attorney, he assumes the risk and cannot complain of the consequences if the postponement is denied and finds himself without attorney at the trial. But an attorney who has not made any formal withdrawal from the case is still considered his client's attorney.[9]

[8] Laput v. Remotigue, Adm. Case No. 219, September 29, 1962.
[9] Gutierrez v. Medel, G.R. No. L-14455, April 26, 1962.

IV. ATTORNEY-TO-ATTORNEY RELATIONSHIP

In Administrative Case No. 434[10]—a sequel to Administrative Case No. 219[11]—an original complaint was filed with the court charging the respondent lawyer with malice, bad faith, and misrepresentation when the latter allegedly filed motions in court without notice to the complainant lawyer, thereby committing unfair and unethical practices bordering on dishonesty, all to the prejudice of said complainant. The complainant alleges that by virtue of a duly recorded "Attorney's Lien," he has in his lawful possesion transfer certificates of title to all real properties of the estate under administration; that the respondent, without notice to the complainant, filed with the probate court motions praying that the complainant be directed to surrender the aforementioned certificates of title, and another motion praying that he be issued owner's duplicate copies of the certificates of title on the ground that the same were lost. The respondent knowing all along that the complainant is in lawful possession of said certificates of title; and that with the duplicate titles, the respondent and his client Mrs. Barrera (formerly the client of the complainant) sold without notice the lots covered thereby, all of which, aside from being unfair and unethical, were prejudicial to the complainant's recorded lien to the said lots. On the question whether the respondent had committed unfair and unethical practices bordering on dishonesty, the Court *held:* The Solicitor General, to whom this case was referred to for investigation found that since January 11, 1955, Mrs. Barrera had asked the complainant herein to turn over all the records and papers of the estate under administration to her but despite motions and orders of the court, the complainant stubbornly kept to himself the transfer certificates of title in question. It would seem that the complainant was the one at fault. Hence, the recommendation of the Solicitor General for the respondent's complete exoneration should be approved.

V. ATTORNEY'S FEES

A. ATTORNEY'S LIENS

Incidental to and as a measure of protection of the right of lawyers to recover professional fees for services rendered, the Rules of Court[12] provides for two kinds of liens: (1) general, retaining, or possessing lien; and (2) charging lien. The former is the attorney's right to retain the funds, documents and papers of his client which come into his possession and control and until his lawful fees

[10] Laput v. Remotigue, September 29, 1962.
[11] *Supra*, note No. 8.
[12] Rules of Court, Rule 127, Sec. 33.

and disbursements have been paid and to apply such funds to the satisfaction thereof. The latter is that which the attorney has upon all judgment for the payment of money and execution issued in pursuance of such judgment.[13] These liens are deemed necessary to preserve the decorum and respectability of the profession,[14] and courts, in the exercise of their exclusive and supervisory authority over attorneys, are bound to respect and protect them.[15]

Charging lien; partakes of the nature of collateral security when established on the property of the deceased in litigation to secure payment of attorney's fees.

To secure payment of attorney's fees for services rendered to a deceased during his lifetime, which court shall entertain the payment of the claim for attorney's fees, the probate court or the ordinary courts? This question came up for determination in the case of *Testamentaria de Don Amadeo Matute Olave v. Paterno R. Canlas, et al.*[16] It appears that Amadeo Matute Olave died in the City of Manila in 1955 and forthwith testamentary proceedings were instituted before the Court of First Instance of said city for the probate of his will and the settlement of his estate. During his lifetime Matute was made party defendant in a civil case and to defend him he engaged the services of respondent Paterno R. Canlas, the former agreeing to pay the latter twenty per cent (20%) of the market value of the property in litigation. After the termination of the case, Atty. Canlas filed in said civil case a motion praying that his claim for attorney's fees be established as a charging lien on the properties under litigation. The court granted the motion. Counsel was able to secure fifty thousand (₱50,000.00) pesos partial payment. When he filed an urgent motion for the payment to him of the balance of eighty-five thousand (₱85,000.00) pesos remaining in posession of the clerk of court in full payment of his fees, the administrator of the estate filed an opposition thereto alleging lack of jurisdiction on the part of the trial court and claiming that, it, involving money claim, the same should be submitted to the probate court. The trial court sustained its jurisdiction. Hence a petition for certiorari was filed. The Court *held:* Under the Rules of Court,[17] a creditor holding a claim against the deceased secured by mortgage or other collateral security may foreclose his mortgage or realize upon his security by ordinary action in court making the

[13] 5 Am. Jur. 387.
[14] Rustia v. Abeto, 72 Phil. 133 (1941).
[15] De Jesus-Alano v. Tan and Roxas, G.R. No. L-9437, November 28, 1939.
[16] G.R. No. L-12709, February 28, 1962.
[17] Rules of Court, Rule 87, Sec. 7.

executor or administrator a party defendant, and need not file his claim before the probate court to share in the general distribution of the assets of the estate. Under the same theory, an action to recover real or personal property from the estate or to enforce a lien thereon, may be prosecuted by the interested person against the executor or administrator independently of the testate or intestate procedings. *And it cannot be gainsaid that a charging lien established on the property in litigation to secure the payment of the attorney's fees partakes of the nature of a collateral security or of a lien on real or personal property within the meaning of the provisions of the rules.* The reason behind this rule is that such claims cannot be considered claims against the estate, but the right to subject specific property to the claim arises from the contract of the debtor whereby he has during his lifetime set aside certain property for its payment, and such property does not, except insofar as its value exceeds the debt belong to the estate, and the instrument being of record or the property being in the possession of the creditor is notice to all the world of the contract.[18] Moreover, a probate court, being of limited jurisdiction, has no authority to enforce a lien unless conferred by a statute. The statutory jurisdiction of a probate court is exclusive,[19] and since the lien referred to in Section 1, Rule 88 is not among those mentioned in Section 5, Rule 87, all money claims secured with a lien are outside the jurisdiction of the probate court. Petition dismissed.

B. WHEN ORDER TO ANNOTATE LIEN CONSTITUTES ABUSE OF DISCRETION

In *Candelario v. Cañizares et al.*,[20] one Attorney Canlas presented a motion before the court praying that a charging lien for attorney's fees be created on whatever property, right, and interest petitioners will receive in the estate of the deceased. Petitioners objected to the motion alleging, among other things, that respondent attorneys had already been overpaid and they had already presented a motion to stop further payment of attorney's fees. The court overruled the opposition and ordered that the charging lien of Atty. Canlas be recorded. On the petition for certiorari, the Court *held:* The lower court abused its discretion in ordering the annotation of the lien in favor of respondent attorneys notwithstanding the apparently valid claim that the attorney's fees have been fully paid and without previous trial finding that the claim of petitioners of full payment of fees is not true or correct.

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[18] 34 C.J.S. 175-177.
[19] *Ibid.*, 721.
[20] G.R. No. L-17688, March 30, 1962.

VI. DISCIPLINARY ACTION

A. DISBARMENT; CONVICTION OF CRIME INVOLVING MORAL TURPITUDE; EFFECT OF ABSOLUTE PARDON

Although one has already been admitted to the practice of law, he does not cease to be bound by the rigid standards of mental and moral fitness required of those accorded the privilege to practice law. On the contrary, these standards are neither dispensed with nor lowered after admission. The lawyer must continue to adhere to them or else incur the risk of suspension or removal.[21]

In order that a pardon granted an attorney after conviction of a crime involving moral turpitude can operate to bar any proceeding for his disbarment, the pardon must be absolute. This was the holding of the court in *In re Gutierrez*.[22] Respondent Diosdado Q. Gutierrez, a member of the Philippine Bar, was convicted of the murder of Filemon Samaco, former municipal mayor of Calapan, and was sentenced to the penalty of death. The judgment of conviction was affirmed by the Supreme Court but the penalty was reduced to *reclusion perpetua*. After serving a portion of the sentence, respondent was granted a conditional pardon by the President. The unexecuted portion of the prison term was remitted on condition that he shall not again violate any of the penal laws of the Philippines. Thereafter, the widow of the deceased Samaco filed a verified complaint before the Supreme Court praying that respondent be removed from the roll of lawyers pursuant to Rule 127, Section 5. Respondent pleaded the conditional pardon in defense, on the authority of the decision of the Court in the case of *In re Lontok*.[23] The Court rejected respondent's plea and *held:* Reliance is placed by respondent on the *Lontok* case. The respondent therein was convicted of bigamy and thereafter pardoned by the Governor-General. In a subsequent proceeding for his disbarment on the ground of such conviction, the Court held that a pardon operates to wipe out the conviction and is a bar to any proceeding for the disbarment of the attorney after the pardon has been granted. This ruling does not govern the question at bar. In making it, the Court proceeded on the assumption that the pardon granted to respondent Lontok was absolute. This is implicit in the *ratio decidendi* of the case, particularly in the citations to support it. Thus, the portion of the decision in *Ex Parte Garland*,[24] quoted with approval in the *Lontok* case is as follows: "A pardon reaches both the punishment prescribed

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[21] In re Gutierrez, *supra*, note No. 2.
[22] *Ibid.*
[23] 43 Phil. 293.
[24] 4 Wall. 380.

for the offense and the guilt of the offender; *and when the pardon is full, it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense.* If granted before conviction, it prevents any of the penalties and disabilities, consequent upon conviction, from attaching; if granted after conviction, it removes the penalties and disabilities, and restores him to all his civil rights; it makes him, as it were, a new man, and gives him a new credit and capacity." In the instant case, the pardon granted to respondent is not absolute but conditional. So it does not reach the offense itself, unlike that in *Ex Parte Garland,*[25] which was a full pardon. Respondent Gutierrez must be judged upon the fact of his conviction for murder without regard to the pardon he invokes in defense. The crime was qualified by treachery and aggravated by its having been committed in band, by taking advantage of his official position (respondent being a municipal mayor at the time) and with the use of a motor vehicle. The degree of moral turpitude involved is such as to justify his being purged from the profession.

B. JUSTICES OF THE PEACE; COHABITATION EVEN WITH CONSENT OF COMPLAINANT, IMMORAL

As a high government official in the community of his assignment, a Justice of the Peace ought to be a person of exemplary character, if not a model citizen.[26] In the case of *Viojan v. Duran,*[27] a petition for disbarment was filed by the complainant against Restituto M. Duran, Justice of the Peace of Basey, Samar. The complainant claims that Duran had carnal knowledge with her by force. After investigation, the district judge of Samar found that Duran did not commit rape on the complainant because the sexual intercourse which Duran had with the latter was with her consent. Nevertheless, the district judge found him guilty of immorality and recommended his suspension from the service. Said finding was affirmed by both the Secretary of Justice and the President. In consequence thereof, Duran was suspended from the service without pay for six (6) months. The complainant, however submits that said punishment is too lenient and that Duran ought to be disbarred from the practice of law. The Solicitor General, on the other hand, recommends dismissal of these proceedings but with a

[25] *Ibid.*
[26] Viojan v. Duran, Adm. Case No. 248, February 26, 1962.
[27] *Ibid.*

warning, on the ground that respondent has already been sufficiently punished. *Held:* Undoubtedly, respondent's immorality is condemnable. He is a Justice of the Peace and, as such, he is considered a high government official in the community of his assignment. He ought to be a person of exemplary character, if not a model citizen. By committing the immorality in question, the respondent violated the trust reposed in his high office, and utterly failed to live up to the noble ideals and the strict standards of morality required of the law profession. However, considering that the respondent had already undergone the penalty of suspension, and, furthermore, the immorality committed by him was made possible partly by the rather equivocal conduct of complainant herself, the present disbarment proceeding is dismissed, with a warning that a repetition of a similar offense by him would be dealt with more severely by the Court.

C. JUDGES; SERIOUS INEFFICIENCY AND IGNORANCE OF LAW

In an administrative case,[28] one Atty. Candido San Luis filed a complaint, against Judge Gregorio D. Montejo of the Court of First Instance of Zamboanga City charging the latter with serious inefficiency, ignorance of the law, and falsification of public documents allegedly committed in connection with the performance of his official duties. Justice Juan P. Enriquez of the Court of Appeals, who was designated to investigate the charges, made the following findings: In Civil Case No. 256, the defendant therein filed a motion for bill of particulars but respondent failed to resolve it until after the lapse of seven (7) months and this inaction notwithstanding, respondent Judge filed his certificate of service every 15th day and end of each month. Respondent Judge explained that he labored under the belief that a motion for bill of particulars is not submitted for resolution even after the filing of plaintiff's objections and defendant's reply thereto until the motion is reset for hearing. In Criminal Case No. 8100 for rape, respondent Judge made this finding in his decision: "The court . . . believes that there was an attempt made by the accused to disrupt the virginity of the offended party, but an attempt is not a crime of rape as stated in the information," and so he acquitted the accused. In another criminal case for murder and triple frustrated murder, the accused therein were found guilty as charged and yet the penalty imposed on them was not the one prescribed by law. From the fore-

[28] San Luis v. Montejo, Adm. Case No. 74, March 30, 1962.

going findings, the Court *held:* That the respondent Judge did not observe the care and diligence required of a judge of first instance in the performance of his duties which account for the errors he has committed in the disposal of the cases subject of the present administrative complaint. For this reason, the Court resolved to admonish him to be more careful in the future with the warning that a repetition of similar errors will not be countenanced, and will be the subject of a stern disciplinary action.