LEGAL AND JUDICIAL ETHICS

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CONTEMPT OF COURT

Contempt of court is broadly defined as a despising of the authority, justice, or dignity of the court.[1] Rule 71 of the Revised Rules of Court recognizes two forms of contempt: direct and indirect. There is direct contempt when misbehavior is committed in the presence of or so near a judge as to obstruct or interrupt him in the administration of justice.[2] If the misconduct occurs out of the presence of the court, as in the refusal to obey its order or lawful process, it is indirect contempt.[3]

Direct contempt

The use of disrespectful language in court is a direct contempt. Lawyers, particularly those engaged in a vigorous defense of their client's cause, are most susceptible to this form of misbehavior. What they frequently forget in the heat of litigation is their first duty as officers of the court, to observe and maintain the respect due the courts of justice and judicial officers.[4] As early as 1932, the Supreme Court[5] gave notice that it will treat all disrespectful language contemptuous and resolved to apply more rigorous penalties to suppress it.[6] Whether lapse of time had eased the Court's firm resolve or whether the Court was merely exercising judicial restraint is not altogether clear by the decision reached in *Rheem of the Philippines,*

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1 Villavicencio v. Lukban, 39 Phil. 778 (1919); 6 R.C.L., Contempt, Sec. 3 (1915).

2 Rules of Court, Rule 71, Sec. 1.

3 Rules of Court, Rule 71, Sec. 2; Narcida v. Bowen, 22 Phil. 365 (1912); Lee Yick Hon v. Collector of Customs, 41 Phil. 548 (1921); Caluag v. Pecson, 82 Phil. 8 (1948).

4 Rules of Court, Rule 138, Sec. 20(b). Canons of Professional Ethics, Canon 19 requires a lawyer to "maintain towards the courts a respectful attitude."

5 Hereinafter referred to as "The Court".

6 The Supreme Court Resolution of December 24, 1932 reads: "As this Court is determined to break up the vicious practice altogether too common, of using disrespectful language relating to the trial courts and opposing counsel in pleadings and briefs filed in this court, notice and warning is hereby given that this Court will hold such language contemptous and apply more rigorous penalties to suppress it, and the clerk is instructed to publish in the Official Gazette this resolution as a *per curiam* decision."

Inc. v. Ferrer.[7] Here, a motion for reconsideration by counsel for plaintiff so outraged the Court that the writer of the motion and the members of the law firm were required to show cause why they should not be cited for contempt. The offending paragraphs of the motion were couched in the following language:

> "One pitfall into which this Honorable Court has repeatedly fallen whenever the question as to whether or not a particular subject matter is within the jurisdiction of the Court of Industrial Relations is the tendency of this Honorable Court to rely upon its own pronouncement without due regard to the statutes which delineate the jurisdiction of the industrial court. Quite often, it is overlooked that no court, not even this Honorable Court, is empowered to expand or contract through its decision the scope of its jurisdictional authority as conferred by law. This error is manifested by the decisions of this Honorable Court citing earlier rulings but without making reference to and analysis of the pertinent statute governing the jurisdiction of the Court of Industrial Relations. This manifestation appears in this Honorable Court's decision in the instant case. As a result, the errors committed in earlier cases dealing with the jurisdiction of the industrial court are perpetuated in subsequent cases involving the same issue . . .
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> "It may also be mentioned in passing that this Honorable Court contravened Rule 2, Section 5 of the Rules of Court when it applied the so-called 'rule against splitting of jurisdiction' in its decision in the present case . . ."

In the Court's mind, the first paragraph gave the implication that the "... Court is so patently inept that in determining the jurisdiction of the industrial court, it has committed error and continuously repeated that error to the point of perpetuation"; while the second paragraph yielded "a tone of sarcasm when counsel labelled as 'so-called' the rule against splitting of jurisdiction." Dismissing counsel's pleas in exculpation, the Court said that even if the language used was the result of over-enthusiasm, it should be circumscribed within the bounds of propriety, and want of intention is no excuse. After reminding counsel of their duty to the Court under the Rules of Court, the Canons of Professional Ethics, and their oath, the Court gave the following guidelines as to the language to be employed in judicial proceedings:

> "To be proscribed then is the use of unnecessary language which jeopardizes high esteem in courts, creates or promotes dis-

[7] G.R. No. 22979, June 26, 1967.

> trust in judicial administration, or which could have the effect of harboring and encouraging discontent which, in many cases, is the source of disorder, thus undermining the foundation upon which rests that bulwark called judicial power to which those who are aggrieved turn for protection and relief." (Salcedo v. Hernandez, 61 Phil. 151)."

Despite a clear finding that the quoted statements detracted much from the dignity of, and respect due to, the Court—and more seriously, that they brought into question the capability of its members—the author of the motion was merely admonished, and the members of the law firm advised to exercise adequate supervision and control of the pleadings submitted by their firm to the courts of justice.

The power to punish for contempt, being extraordinary and drastic in nature, should be invoked only whenever necessary in the interest of justice.[8] Accordingly, as held in *De Joya v. David*,[9] a petitioner who in good faith makes derogatory remarks in a manifestation before the Court is not guilty of contempt. So too is a litigant who, as in *Austria v. Masaquel*,[10] respectfully requests through counsel that the judge inhibit himself from further trying his (the litigant's) case on the ground that opposing counsel was the former associate of the judge.

However, a finding of contempt is justified where a lawyer directly imputes bias or prejudice, or stubbornly insists in a malicious, arrogant, belligerent, and disrespectful manner to disqualify a judge. Hence, in *Lualhati v. Albert*,[11] a lawyer was declared in contempt for moving thrice to disqualify the judge from conducting a new trial — the first and second motions having been denied by the Court of Appeals and the trial judge. The Court sustained the latter who construed the third motion as misbehavior intended to make the public believe that he was not capable of administering justice to the accused.

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[8] Victorino v. Espiritu, G.R. No. 17735, July 30, 1962.

[9] G.R. No. 23504, December 29, 1967. In this case, respondent David filed contempt charges against the petitioners who subscribed to a manifestation by the Solicitor General before the Court stating that he (David) inserted in his own handwriting on the document introduced by him to prove the claim of his client, the very words on which the claim was made. Finding however that the derogatory remarks had been made in good faith, and inasmuch as petitioners seasonably made of record additional facts formerly unknown to them showing that respondent David had acted above board, the Court dismissed the contempt charges.

[10] G.R. No. 22536, August 31, 1967.

[11] 57 Phil. 86 (1932).

A finding of contempt is also justified where, as in *Relativo v. De Leon*,[12] a complainant causes the premature disclosure by publication of the filing and pendency of disbarment proceedings. Disbarment or suspension proceedings are required by Rule 139, section 10 of the Revised Rules of Court to be kept private and confidential to prevent litigants and other persons from making malicious and vindictive charges.[13] Premature publication of such proceedings tends to obstruct and influence the administration of justice and hence constitutes contempt of court.

Indirect contempt.

Disobedience of or resistance to a lawful injunction issued by a court is a form of indirect contempt under the Rules.[14] In *Commissioner of Immigration v. Cloribel*,[15] for disobeying an injunction of the Supreme Court, a judge of the Court of First Instance was found guilty of indirect contempt and fined ₱100. The private respondents in this case brought a civil case for certiorari (Case 58624) to annul an order of exclusion of the Board of Immigration Commissioners and another case for habeas corpus (Case 58782) for the release of one of the respondents' children. Judge Cloribel granted a motion in the habeas corpus case for their release upon approval of a bond. On certiorari to the Court, respondent judge was enjoined from enforcing the order granting bail and from assuming jurisdiction over the case. Later, the Court permitted the grant of bail, subject to the decision to be promulgated. Despite the injunction, respondent judge rendered a joint decision on both civil cases, declaring respondents to be entitled to remain in the Philippines. The Court's verdict was that the joint decision was an open defiance of the injunction. To the defense that the Supreme Court resolution allowing bail cleansed the injunction of its prohibitory effect the Court said that this was a subtle attempt to sidetrack the injunction. The Court noted that (1) in the answer to the motion for contempt the judge deftly avoided any mention of the contents of the injunction (2) in the joint decision, he refrained from reciting in the dispositive part any mention of Case No. 58782 (3) that case 58782 by the terms of

[12] Adm. Case No. 540, September 15, 1967.
[13] *In re* Lozano & Quevedo, 54 Phil. 801 (1930).
[14] Rules of Court, Rule 71, Sec. 3(b).
[15] G.R. No. 24139, August 31, 1967.

the joint judgment is also decided therein; and that having declared that the private respondents were entitled to remain in the Philippines, the petition for *habeas corpus* was perforce granted. In assessing the penalty, the Court was guided by the rule that the power to punish for contempt should be exercised on the preservative, not vindictive principle.[16]

DISBARMENT AND SUSPENSION

Grounds for disbarment in general

It is settled that the statutory enumeration of the grounds for disbarment or suspension is not a limitation on the inherent power of courts to suspend or disbar a lawyer.[17] One of the special defenses raised by respondent in *In re Puno*[18] was that the allegations in the complaint against him do not fall under any of the grounds for disbarment under Section 25 of Rule 127 of the old Rules of Court. The complainant in this case alleged and proved that respondent Puno succeeded in having sexual intercourse with her because of a promise of marriage. However, after she had become pregnant and had given birth to a baby boy, he failed to fulfill his promise despite her repeated requests. The Court found the respondent guilty of committing a grossly immoral conduct, and for failing to conform to the highest standard of morality required of members of the legal profession, he was disbarred. If good moral character is a condition precedent to a license or privilege to enter upon the practice of law, the Court said, it is essential during the continuance of the practice and the exercise of the privilege. Grossly immoral conduct has been added as a ground for suspension or disbarment under the new Rules of Court.

Conviction of a crime involving moral turpitude.

Conviction of a crime involving moral turpitude is a ground for suspension or disbarment.[19] The term moral turpitude has been comprehensively defined in *In re Basa*[20] as "any act done

[16] Citing Lualhati v. Albert, *Supra,* See note 11 at 90; Villavicencio v. Lukban, *supra,* see note 1; *In re* Quirino 76 Phil. 630 (1946); People v. Rivera, 91 Phil. 354 (1952).

[17] *In re* Pelaez, 44 Phil. 567 (1923), citing *In re* Smith, 73 Kan. 743, 85 P. 584 (1906); Balinon v. de Leon, 94 Phil. 277 (1954); Mortel v. Aspiras, Adm. Case No. 145, 100 Phil. 586 (1956).

[18] Adm. Case No. 389, February 28, 1967.

[19] Rules of Court, Rule 138, Sec. 27.

[20] 41 Phil. 275 (1920).

contrary to justice, honesty, modesty, or good morals." *In re Vinzon*[21] holds that in essence and in all respects, estafa is a crime involving moral turpitude because it is unquestionably against justice, honesty and good morals. The same ruling was previously made in *In re Jaramillo*.[22] A lawyer was likewise disbarred in *In re Avanceña*[23] who took advantage of his profession in defrauding his clients and was subsequently convicted of the crime of falsification of public documents.

Gross Misconduct

For making a false statement under oath in an information sheet required by the Civil Service Commission, a lawyer-applicant to the position of Chief of Police was disbarred in *Calo v. Degamo*.[24] Respondent answered "none" to the question whether he had any criminal or police record, including those which did not reach the court, when at the time he accomplished the form, he had a pending criminal case. Pleading good faith as a defense, respondent explained that it was his honest interpretation that the question referred to a final judgment or conviction. The Court remained unconvinced because the question was simple, couched in ordinary terms and devoid of legalism. In a subsequent resolution on motion for reconsideration, the Court relented upon a showing that respondent (1) was appointed Chief of Police on January 17, 1959 at a monthly salary of ₱95 and served only until May 17, 1959; (2) that subsequently he was elected mayor and served from 1960 to 1964; (3) that he was later appointed as Election Registrar in 1965; (4) that there was no evidence that he had not served honestly in the different offices that he held. Judgment was modified to suspension for three years.

Misbehavior as notary public

A notary public is usually a person who has been admitted to the practice of law. In the commingling of his duties as notary and lawyer, he can be held to account for any misconduct to the extent of disbarment.[25] Respondent was disbarred in *In re*

[21] Adm. Case No. 561, April 27, 1967.
[22] 101 Phil. 323 (1957).
[23] Adm. Case No. 407, August 15, 1967.
[24] Adm. Case No. 516, June 27, 1967.
[25] Panganiban v. Borromeo, 58 Phil. 367 (1933); *In re* Rusiana, Adm. Case, No. 270, May 29, 1959.

Flores[26] for notarizing six documents after his commission as notary public had already expired, on the ground that it constitutes not only malpractice but also the commission, in six separate and distinct occasions, of the crime of falsification of public documents. The documents here were presented to the city assessor of Toledo, and it was on the strength of respondent's representation that he had authority to ratify them that the assessor accepted them for registration and cancelled the tax declarations in the name of the former owners of the properties involved. But ratification of a deed of sale in the absence of the vendee and his witness which enabled an unscrupulous third party to consummate an illegal act resulted only in the reprimand of a lawyer in *Ramirez v. Ner.*[27] The Court did not consider it serious enough to merit suspension or disbarment since "it merely suggests lack of caution, not culpable malpractice or immorality."

Seizure of documents by law enforcement agents

In *Relativo v. De Leon*[28] agents of the National Bureau of Investigation who seized falsified documents from a law office were charged with unethical conduct. On a finding by a trial court that the documents were indeed falsified, and the raid on the law office had been prompted by "highly reasonable suspicion" respondents were exonerated, the Court ruling, that the seizure was done in performance of duty, unattended by bad faith and, instead properly commendable.

Defenses

Pardon is a defense to disbarment proceedings where the latter depend solely on a statute making the fact of conviction a ground for disbarment. But if disbarment proceedings are founded on professional misconduct involved in a transaction which resulted in a conviction of a crime, pardon is not a bar.[29] Conditional pardon was not accepted by the Court as a defense in *In re Avanceña,*[30] where respondent was convicted of falsification of public documents. The reason for this rule as enunciated in the *Lontok* case[31] is that criminal acts may nevertheless

[26] Adm. Case No. 546, December 18, 1967.
[27] Adm. Case No. 500, September 27, 1967.
[28] *Supra,* see note 12.
[29] *In re* Lontok, 43 Phil. 293 (1922).
[30] *Supra,* see note 23.
[31] *Supra,* see note 29.

constitute proof that the attorney does not possess a good moral character and is not a proper person to retain his license to practice law.

Neither is prescription a defense. *Calo v. Degamo*[32] adopts the rule that the ordinary statutes of limitation have no application to disbarment proceedings; further, the circumstance that the facts set up as a ground for disbarment constitute a crime, prosecution for which in a criminal proceeding is barred by limitation does not affect disbarment proceedings.[33]

Pendency of a criminal case, as a prejudicial question was also raised in the *Calo* case.[34] It was overruled by the Court on the following grounds: (1) the disbarment proceeding was not for conviction of a crime involving moral turpitude but for gross misconduct (2) violation of a criminal law is not a bar to disbarment[35] (3) an acquittal is not obstacle to cancellation of the lawyer's license.[36]

Waiver of right to present evidence

A respondent is given full opportunity to defend himself, produce witnesses on his behalf and to be heard by himself or by counsel in the investigation conducted by the Solicitor General.[37] He is given the same rights after the complaint is filed if he indicates in his answer that he wishes to introduce additional evidence.[38] In both cases he may waive his rights and the hearing will proceed *ex parte*. Thus, the failure of respondent to indicate in his answer to the disbarment complaint that he intended to present additional evidence was deemed a waiver of his right to present such evidence in *In re Puno*.[39] So also was the right to be heard considered waived on the failure of the respondent in *In re Vinzon*[40] to appear at the date of hearing.

Duty of court where charges are not proved

Because removal from the practice of law entails serious consequences, courts have the duty to protect lawyers from un-

[32] *Supra*, see note 24.
[33] Citing 5 Am. Jur., Attorneys at Law, Sec. 287 (1936).
[34] *Supra*, see note 24.
[35] MORAN, COMMENTS ON THE RULES OF COURT, 242 (1963 ed.), citing *In re* Montagne & Dominguez, 3 Phil. 577 (1904).
[36] *In re* del Rosario, 52 Phil. 399 (1928).
[37] Rule 139, Sec. 3.
[38] Rule 139, Sec. 7.
[39] *Supra*, see note 18.
[40] *Supra*, see note 21.

just and malicious accusations. Satisfactory proof, established by a preponderance of evidence is required in disbarment proceedings. In line with the foregoing, the Court in *Go v. Candoy*,[41] *Santos v. Bolanos*,[42] *In re Baltazar Jr.*,[43] *Albano v. Coloma*[44] dismissed complaints for disbarment where the charges were not proved to the satisfaction of the Court.

Burden of proof

The presumption is that the attorney is innocent of the charges preferred and has performed his duty as an officer of the court in accordance with his oath.[45] The burden of proof is upon the complainant, who must establish respondent's guilt by convincing evidence.[46] But the presumption of innocence to which an attorney is entitled at the commencement of disbarment proceedings holds only until a prima facie case is made out. Thereupon the burden of overcoming such prima facie case by evidence is upon the lawyer. In the *Puno* case[47] the Court held that it was not enough that the respondent denies the charges against him; he must also meet the issue, overcome the evidence of the complaint and show proof that he still maintains the highest standards of morality and integrity which at all times is expected of him.

ATTORNEY-CLIENT RELATIONSHIP

Duty to Client

Both the Rules of Court and the Canons of Professional Ethics, impose on the lawyer the duty of devotion to the interest of his client.[48] In *Javellana v. Lutero*,[49] the Court censured counsel for petitioner for being remiss in his duty of preparing for trial with diligence and deliberate speed. The duty of diligence, according to the Court, applies even in detainer cases where the issues are essentially simple and uncomplicated. The trial in this case was postponed thrice at the instance of counsel. At the last postponement, counsel still failed to appear at the date

[41] Adm. Case No. 736, October 23, 1967.
[42] Adm. Case No. 483, July 21, 1967.
[43] Adm. Case No. 661, June 26, 1967.
[44] Adm. Case No. 528, October 11, 1967.
[45] *In re* Tionko, 43 Phil. 191 (1922).
[46] *Supra*, see note 41.
[47] *Supra*, see note 18.
[48] Canons of Professional Ethics, Canon 15; Rule 138, Sec. 3, containing the Attorney's oath.
[49] G.R. No. 23956, July 21, 1967.

of hearing without any justifiable reason although he had a month's time to adjust his schedule.

It is likewise part of a lawyer's duty of diligence, if he finds that he can no longer continue to represent his client to so inform him. But until his professional services are terminated he should take all measures in prosecuting his client's claim. In *Blanza v. Arcanjel*,[50] respondent lawyer was charged by his clients for failure to attend to their pension claims for six years and for failure to return some documents. As the evidence adduced were insufficient to warrant the taking of disciplinary action, it appearing that the complainants were partly to blame for the delay, the charges were dismissed. Nevertheless, the Court made clear that respondent did not conduct himself in accordance with the high standards of the profession. Declared the Court:

> "A lawyer has a more dynamic and positive role in the community than merely complying with the minimal technicalities of the statute. As a man of law, he is necessarily a leader of the community looked up to as a model citizen. His conduct must, perforce be par excellence, especially so, as in this case, he volunteers his professional services. Respondent has not levelled up to that standard."

Client bound by lawyer's mistakes

When a party is represented by attorney, the latter controls the conduct of the case, and binds the former in all matters of ordinary judicial procedure.[51] Thus, the negligence and blunders of counsel in the course of the proceedings do not constitute a ground for new trial or relief. In *Ocampo v. Caluag*,[52] respondent's counsel failed to appear at the trial and allowed judgment to become final. In order to save himself from this predicament, respondent substituted counsel and moved for relief. The lower court granted the motion, on the ground that his (respondent's) former counsel failed to appear at the trial because the latter's receiving clerk was taken ill unexpectedly and thereafter forgot about the case. In reversing the trial judge, the Supreme Court said, quoting *Philippine Air Lines v. Arca*[53] that the ground for relief was

> ". . . the most hackneyed and habitual subterfuge employed by litigants who fail to observe the procedural requirements

[50] Adm. Case No. 492, September 5, 1967.
[51] Rules of Court, Rule 138, Sec. 23.
[52] G.R. No. 21113, April 27, 1967.
[53] G.R. No. 22729, February 9, 1967.

> prescribed by the Rules of Court. The uncritical acceptance of this kind of common-place excuses, in the face of the Supreme Court's repeated rulings that they are neither credible nor constitutive of excusable negligence is certainly whimsical exercise of judgment as to be a grave abuse of discretion."

On the lower court's view that an innocent party should not be made to suffer from the mistake of his attorney the Court reiterated the rule that clients are bound by such errors and negligence.[54]

Authority to compromise client's case

Without special authority, attorneys cannot compromise their client's case.[55] This requirement is mandatory, according to *Jacinto v. Montesa.*[56] Citing *Zafra de Alviar v. Court of First Instance of La Union,*[57] as precedent, the Court ruled that a judgment based on a compromise entered into by an attorney without specific authority from the client is void and its execution may be restrained in any proceeding by the party against whom it is sought to be enforced. Petitioner Jacinto was a co-defendant who was declared in default for failure to file an answer. Without adducing evidence against him, the plaintiff entered into a compromise with the principal defendant. The latter was assisted by counsel who signed an attorney for the defendants. After the judgment based on the compromise was returned unsatisfied, an alias writ of execution was sought to be enforced against Jacinto, who impugned the validity of the judgment on the ground that he did not authorize counsel for the principal defendant to sign the compromise for him. The Court upheld Jacinto's contention (which was corroborated by principal defendant and his counsel) upon a finding that he was not a signatory to the agreement, and there was nothing in the records which showed that the former had a special authority to compromise the case on the latter's behalf.

The rule has however no application to an agreement which though labelled a "compromise", does not partake of the nature of a true compromise. Thus, in *Merced v. Roman Catho-*

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[54] Citing Montes v. Court of First Instance of Tayabas, 48 Phil. 640 (1926); Isaac v. Mendoza, 89 Phil. 279 (1951); Vivero v. Santos, 98 Phil. 500 (1956); Flores v. Philippine Alien Property Administration, G.R. No. 21741, April 28, 1960, 58 O.G. 5180 (July, 1962).

[55] Rule 138, Sec. 23.

[56] G.R. No. 23098, February 28, 1967.

[57] 64 Phil. 301 (1937).

lic Archbishop of Manila,[58] the Court refused to apply this rule, where upon analysis, the "compromise agreement" submitted to the court by the counsel of both parties, contained nothing more than a recognition of the obligation of appellant lessees under the facts disclosed in their pleadings, in conformity with existing law. It was shown in addition, that the concessions therein were solely on the part of the lessor, hence, the agreement was not a true compromise, the essence of which consists in reciprocal concessions.[59] That the stipulation was labelled "compromise" does not make it one in fact, according to the Court.

COMPENSATION

Attorneys entitled to reasonable compensation

Despite the moral admonition that law must be pursued for its own sake, it can hardly be ignored that a lawyer must live by his profession. Recognizing the economic facts of the profession, a long line of decisions has established the rule which is embodied in the Rules of Court,[60] that members of the legal profession are entitled to reasonable compensation for services rendered. It is reiterated in *Albano v. Coloma*[61] in this wise:

> "Counsel, any counsel, who is worthy of his hire, is entitled to be fully recompensed for his services. With this capital consisting solely of his brains and with his skill, acquired at tremendous cost not only in money but in the expenditures of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of a client to escape payment of his fees. It is indeed ironic if after putting forth the best that is in him to secure justice for the party he represents, he himself would not get his due. It views with disapproval any and every effort of those benefitted by counsels services to deprive him of his hard earned honorarium. Such an attitude deserves condemnation."

In *Fajardo v. Court of Industrial Relations*[62] the Court held that a lawyer who filed a motion for intervention in behalf of 138 non-union employees, appeared four times before the Court of Industrial Relations, and obtained a temporary increase for permanent employees was entitled to 2 1/2% of the total amount awarded as attorney's fees.

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[58] G.R. No. 24614, August 17, 1967.
[59] Civil Code, Art. 2628.
[60] Rule 138, Sec. 24.
[61] *Supra*, see note 44.
[62] G.R. Nos. 19453-4, May 30, 1967.

Some cases[63] hold that the services which an attorney renders his clients which are beneficial to a third person do not entitle the attorney to recover compensation from the persons benefited. The rule appears to be otherwise in labor cases. *Martinez v. Union de Maquinistas*[64] posits the rule that in labor cases lawyers who represent struggling members of unions and obtain benefits for all the employees should be paid corresponding fees by *all* those favored or benefited by the award, including non-union members.

Charging Lien

A charging lien is the right which an attorney has on all judgments for the payment of money and executions issued in pursuance of such judgments which he has secured in litigation for his clients.[65] Former Senator Recto's claim for attorney's fees in the famous *Harden* case[66] which was duly established by a charging lien, had met such stiff opposition, that as late as 1967, the balance was still being litigated upon. In *Harden v. Harden*[67] appellant contended that since the death of Mr. Harden on May 1, 1959, Recto's claim should have been dismissed and filed in the administration proceedings of Mr. Harden's estate. Rejecting this contention, the Court said that appellant erroneously assumed that Recto's claim was a "money claim" under section 5, Rule 86 of the new Rules of Court. But, according to the Court it is neither a claim nor a judgment for money directed against Mr. Harden; rather it is founded on a personal obligation of Mrs. Harden. Even granting that it is such, the Court pointed out that in *Olave v. Canlas*[68] it already ruled that a charging lien established on the property in litigation to secure the payment of attorney's fees partakes of the nature of a collateral security or of a lien on real or personal property, the enforcement of which need not be made in administration proceedings.

A charging lien takes effect only after notice of said lien had been entered upon the records of the Court rendering the

[63] O'Doherty & Yonts v. Bickel, 166 Ky 708. 179 S.W. 848 (1915); Orozco v. Heirs of Hernaez. 1 Phil. 77 (1901); Mallari v. Estipona 72 Phil. 34 (1941).
[64] G.R. Nos. 19455-56, January 30, 1967.
[65] Rule 138; Sec. 26; Rustia v. Abeto, 72 Phil. 133 (1941).
[66] Recto v. Harden, 100 Phil. 427 (1956).
[67] G.R. No. 22174, July 21, 1967.
[68] G.R. No. 12709, February 28. 1962. 61 O.G. 4064 (July. 1965).

judgment and served on his client and adverse party.[69] In *Sta. Cecilia Sawmills Inc. v. Court of Industrial Relations*[70] the employer appealed an order of the Court of Industrial Relations directing it to deduct 30% of the back wages due the laborers as attorney's fees on the ground that there was no proof of service of notice of a charging lien on the Company or the laborers. Holding that the appeal was devoid of merit, the Court said that the notice was signed by the officers of the union, which brought the action on behalf of the laborers, and that the company had no right to set up this defense which pertain solely to the laborers. Besides, the Court observed, the notice stated that counsel for the Company had been furnished a copy, enabling the latter to move for reconsideration. Moreover, the record shows that the company had no valid grounds for contesting the validity of the lien. By the facts of the case, the ruling of the Court appears to conform to the requirements of notice provided in section 31 of Rule 138 of the Rules of Court. But the sweeping statement that the defense of lack of notice pertains solely to the lawyer's client is contrary to said provision and inconsistent with *Menzi and Co. v. Batsida*[71] where it was held that the judgment debtor being a stranger to the contract for fees between the judgment creditor and his attorney, the former is entitled to notice before being charged with liability.

Manner of recovering contingent fees

How a contingent fee may be recovered is illustrated in *Albano v. Ramos.*[72] By agreement, Attorney Coloma's contingent fee consisted of 1/3 of whatever lands and damages might be awarded to her clients in a certain case. The trial court awarded 1/4 of the lands in litigation and damages of ₱17,000 to plaintiff. A lien was declared on the judgment for damages but not on the judgment for recovery of land for which the trial court ruled that a proper action should be filed. The Court of Appeals affirmed the order of the trial court as to the recovery of lands, and the decision become final. Of the ₱17,000 damages, plaintiff had already collected ₱13,624.80. For the collection of Attorney Coloma's fee the Court held:

> "In justice to both parties here, plaintiff should pay petitioner (Atty. Coloma) one third of ₱13,624.80, which they have

[69] Rule 138, Sec. 37.
[70] G.R. Nos. 24235-36, April 18, 1967.
[71] 63 Phil. 16 (1936).
[72] G.R. No. 20426, May 24, 1967.

> already collected from defendants, or the sum of ₱4,541.60, plus one third of whatever other amount may have been collected thereafter by plaintiff. In case of plaintiff's failure to pay, execution may issue against their properties including their 2/3 share in the lands adjudicated to them in the main case against defendants. Whatever balance were may be in favor of petitioner should be collected from defendants under the judgment for damages against them, by execution or otherwise, since petitioner's claim is a lien on said judgment; provided that any amount thus collected shall be divided between plaintiff's and petitioner in the proportion of two thirds and one third respectively."

DISQUALIFICATION OF JUDGES

May a judge be disqualified from hearing a case on the ground that the challenging party had previously filed administrative charges against him? The Court answered in the negative in *Pimentel v. Salanga*.[73] Anchoring his petition on the second paragraph of section 1, of Rule 137, petitioner, who had filed administrative charges against the judge, sought his disqualification from hearing several pending cases in which the former (petitioner) was counsel of record. After tracing the history of the second paragraph, the Court said that it applies only where a judge disqualifies himself, not when he goes forward with the case. The rule is, as it was before: a judge cannot be disqualified by a litigant or his lawyer for grounds other than those specified in the first paragraph of section 1, Rule 137. It pointed out however, that if a judge cannot legally be prevented from trying a case, and he refuses to inhibit himself, the Supreme Court, in the interest of justice, will not hesitate to grant a new trial to an aggrieved party.

In *People v. Gomez*[74] the Court granted the request of a judge to be disqualified from trying a criminal case, upon the ground that "he has lost all respect in the manner (sic) the special prosecutor... has been prosecuting the case".

Although the circumstance that the lawyer of defendant was a former associate of the judge when he was practicing law is not a ground for disqualification, yet, according to the Court in *Austria v. Masaquel*,[75] it may constitute a just or valid reason for the judge to voluntarily inhibit himself from hearing the case.

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[73] G.R. No. 27934, September 18, 1967.
[74] G.R. No. 22345, May 29, 1967.
[75] *Supra*, see note 5.