LEGAL AND JUDICIAL ETHICS

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I. LEGAL ETHICS

After the law graduate shall have passed the bar examinations, he takes the lawyer's oath,[1] before the Supreme Court,[2] signs the lawyer's roll,[3] and pays the license fee representing a privilege tax on his occupation.[4] From then on he is permitted to practice, that is to say, give legal consultation, represent clients in any transactions necessitating an application of the law and prosecute and defend their cases in all courts of justice.[5] Whether he should accept a particular case or not is at his option but he cannot reject, for any consideration personal to himself the cause of the defenseless or the oppressed.[6] He can be appointed *de oficio* counsel for a destitute litigant whether in a civil case[7] or in a criminal case.[8]

Can he volunteer to be counsel *de oficio*? The practice of soliciting cases at law for the purpose of gain either personally or through pail agents or brokers constitutes malpractice.[9] However in one particular case the volunteering of services as *de oficio* counsel evoked praise rather than punishment. The Supreme Court took occasion to commend the lawyer, thus:

> "We cannot close this decision without putting in a good word for defendant's lawyer, Atty. Antonio Ma. Azurin. Appointed counsel de oficio below, he volunteered to prosecute defendant's appeal by seeking a new appointment as such counsel on the appellate level. Conscientious and diligent in championing defendant's rights below and on appeal, his actuations present an exemplary case of devotion to duty. They are those of a worthy member of the Bar."[10]

However, as the Rules now stand, a counsel *de oficio* is entitled to honorarium from public funds,[11] ranging from ₱30 to ₱500. One who

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[1] Form 28, Rules of Court, hereinafter cited by number and section.
[2] Rule 138, sec. 17.
[3] Rule 138, sec. 19.
[4] TAX CODE, sec. 201.
[5] Rule 138, sec. 24.
[6] Rule 138, sec. 20, par. (h).
[7] Rule 138, sec. 31.
[8] Rule 116, sec. 4.
[9] Rule 138, sec. 27.
[10] People v. Oandasan, G.R. No. 29532, September 28, 1968.
[11] Rule 138, sec. 32.

volunteers to act *de oficio*, if accepted, should be entitled to his attorney's fee under the Rules. Consequently, the attorney who makes it a practice to volunteer as *de oficio* counsel in the hope of earning fees might open himself to the suspicion of engaging in the solicitation of cases which the Rules of Court prohibit.

Again, an attorney cannot appear when not so authorized and if he willfully does so, he can be punished for contempt.[12] But in the special remedies of certiorari, prohibition and mandamus the attorney representing the party seeking to sustain the order of the respondent Judge has the duty to appear and defend both in his behalf and in behalf of the Judge affected by the proceedings.[13] Thus, in *Pinza v. Aldovino*[14] the respondent Aldovino was absolved of contempt for having appeared in a certiorari case for himself and for the respondent Judge. The judge is no more than a nominal party, he has no personal interest in the case. Rule 65, section 5 of the Rules of Court composes upon the party interested in sustaining the proceedings and duty "to *appear and defend*, both in his or their own behalf, *and in behalf of the court or judge* affected by the proceedings." (Italics supplied)

But it appears from the facts of the case that Aldovino was not an attorney at law. Undoubtedly, he could appear for himself without employing an attorney.[15] Whether he could appear for the respondent Judge under section 34, Rule 138 read in connection with Rule 65, section 5, might be an open question. Perhaps the better answer should be that he cannot.

Having accepted the retainer in a particular case, an attorney becomes more than a mere agent of his client because he manages, in fact controls, the incidents thereof. So much so that notice should be sent to him not to his client. Notice sent to the latter is not valid[16] according to the Supreme Court:

> ". . . . where a party appears by attorney, notice to the former is not a notice in law, unless service upon the party himself is ordered by the court. This rule is not a mere technicality, . . . but one founded on considerations of fair play. A party engages an attorney of record precisely because it does not feel competent to deal with the intricacies of law and procedure. Furthermore, as the party directly served would have to communicate with its attorney and turn over to him the notice received, the net result would be to noticeably shorten the usable period of taking the proper steps required to protect the party's interest."[17]

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[12] Rule 71, sec. 3(e) and Rule 138, sec. 21.
[13] Rule 65, sec. 5.
[14] Pinza v. Aldovino, G.R. No. 25226, September 27, 1968.
[15] Rule 138, sec. 34.
[16] Rule 13, sec. 2; Pabiling v. Parinacio, G.R. No. 22682, July 23, 1968; J. M. Javier Logging Corp. v. Atanacio, G.R. No. 28188, August 27, 1968.
[17] J. M. Javier Logging Corp. v. Atanacio, *supra*, note 16.

Since it is with the attorney the courts and the adverse party deal and not with the client, the client must have to bear the consequences of his counsel's non-feasance. To this effect the Supreme Court held in *Palanca v. American Food Manufacturing Co.*:[18] citing *Duran v. Pagarigan*,[19] that failure of counsel to notify his client on time of the adverse judgment to enable her to appeal therefrom does not constitute excusable negligence. Notice sent to counsel of record is binding upon the client and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment valid and regular on its face.

In *Juane v. Garcia*[20] the counsel for the petitioner changed his address without notifying the court. Calling attention to the prejudice which such neglect may cause the Supreme Court said:

> "The time has come, we believe, for this Court to remind the members of the Bar that it is their inescapable duty to make a record their correct address in all cases in which they are counsel for a suitor. For, instances there have been in the past when, because of failure to inform the court of the change of address, litigation were delayed. And this, not to speak of inconvenience caused the other parties and the court. Worse still, litigants have lost their cases in court because of such negligence on the part of their counsel. It is painful enough for a litigant to suffer a setback in a legal battle. It is doubtly painful if defeat is occasioned by his attorney's failure to receive notice because the latter has changed the place of his law office without giving the proper notice therefor. It is only when some such situation comes about that the negligent lawyer comes to realize grave responsibility that he has incurred both to his client and to the cause of justice. It is then that the lawyer is reminded that in his oath of office he solemnly declared that he 'will conduct' himself 'as a lawyer according to the best of his knowledge and discretion.' Too late. Experience indeed is a good teacher. To a lawyer, though, it could prove very expensive....
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> Opportunity to be heard was given. Petitioners lost that opportunity because of their lawyer's negligence. There was due process. The city court had jurisdiction to decide the case. Certiorari to annul said judgments filed with the Court of Appeals on behalf of said petitioners will not prosper. Neither will a plea for the other extraordinary writs."

Now while it is the attorney who guides and manages the conduct of the litigation, it is the client that controls the substance of it.[21] Therefore if an attorney agrees to a compromise, by withdrawing an appeal already undertaken, and the record does not show that his client had consented to the step taken, the lawyer is considered unauthorized even if there is agreement reached between counsels. Thus, in *Dorego v. Pe-*

[18] G.R. No. 22822, August 30, 1968.
[19] G.R. No. 12573, January 30, 1960, 57 O.G. 2481 (April, 1961).
[20] G.R. No. 21115, October 29, 1968.
[21] Rule 138, sec. 23.

rez[22] an action for the foreclosure of a real estate mortgage was decided against the defendant who appealed to the Court of Appeals. On an allegation that the parties had arrived at an amicable settlement the appeal was withdrawn. The Court of Appeals required the petitioner's counsel to present a written conformity of petitioner's to withdrawal of appeal and for them to pay the docket fee. This, not having been complied with the Court of Appeals dismissed the appeal and remanded the records. The court of origin on motion of the respondents issued execution, disregarding the petitioner's objection since the Court of Appeals resolution did not mention any amicable settlement. The petitioners filed an urgent motion for reconsideration annexing the amicable settlement reached by the attorneys of the parties. This was denied. The Supreme Court upheld the denial saying:

> "But as the lower court noted, the above receipt could only prove the personal agreement between counsels. And respondent correctly points out that this could not prove the oral amicable settlement between the parties since without special authorization counsels cannot compromise their client's litigation (Sec. 23, Rule 138). The special authorization of respondent's counsel has not been shown."

In the conduct of the prosecution or defense of his client's case, an attorney maintains a three-fold relationship: he deals with his client, with the courts and with the adverse party. To his client he owes loyalty; to the courts he owes respect; to his adversary he must deal with fairness. But the rules do not permit him to exercise that loyalty so as to commit a wrong. He must employ only such means as are consistent with truth and honor, nor should be encouraged the commencement or continuance of an action or delay any man's case from any corrupt motive or interest.[23] Under his oath he should not wittingly or willingly promote or sue any groundless, false or unlawful suit nor give aid or consent to the same nor delay any man for money or malice.[24]

The Supreme Court had occasions during the year under review to discipline erring attorneys. In *Cobb-Perez v. Lantin*[25] the Supreme Court assessed treble costs against the petitioner's counsels with the following observations:

> "We feel compelled to observe that during the protracted litigation below, the petitioners resorted to a series of actions and petitions, at some stages alternatingly, abetted by their counsel, for the sole purpose of thwarting the execution of a simple money judgment which has long become final and executory. Some of the actions were filed, only to be abandoned or withdrawn. The petitioners and their counsel, far from view-

[22] G.R. No. 24922, January 2, 1968.
[23] Rule 138, sec. 20.
[24] Form 28; Rule 138, sec. 20.
[25] G.R. No. 22320, July 29, 1968.

> ing courts as sanctuaries for those who seek justice, have tried to use them to subvert the very ends of justice."

Attorneys Baizas and Bolinao moved for a reconsideration of the Supreme Court's decision in so far as it reflects adversely upon their "professional conduct" and condemns them to pay treble costs adjudged against their clients.

The court denied the motion on a finding that the protracted litigation was designed to cause delay, and that the active participation of petitioner's counsel was patent. The two lawyers were held jointly and severally liable for treble the costs. At the same time the Supreme Court issued a stern reminder to lawyers in these words:

> "A counsel's assertiveness is espousing with candour and honesty his client's cause must be encouraged and is to be commended; what we do not and cannot countenance is a lawyer's insistence despite the patent futility of his client's position. . . ."
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> It is the duty of a counsel to advise his client, ordinarily a layman to the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible. A lawyer must resist the whims and caprices of his client, and temper his client's propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable."

In *Samar Mining Co., Inc. v. Arnado*[26] a claim for compensation under the Workmen's Compensation Act was filed on June 18, 1956. Decision was rendered on October 14, 1958 by Pompeyo V. Tan, Officer of Regional Office No. VI of Department of Labor, ordering the petitioner to pay. Reconsideration was denied on March 24, 1960. On June 30, 1961 the petitioner commenced an action in Court of First Instance of Manila for certiorari and prohibition with preliminary injunction. This was dismissed on the ground or wrong venue and the dismissal was affirmed by the Supreme Court. On July 21, 1961, petitioner commenced the present action in Cebu. The action was dismissed, on the ground that Tan had authority to hear and pass upon claim of Abuyen.

The court found that the illness on which the claim for compensation was based occurred in 1956. The petitioner succeeded in prolonging the litigation for twelve years although the compensability of the claim had never been questioned. The petitioner relied on a theory rejected by the Supreme Court as early as August, 1961. Once more the Court called down the lawyer in the case and adjudged him jointly and severally liable with the petitioner for costs; a certified copy of this de-

[26] G.R. No. 22304, July 30, 1968.

cision was ordered attached to the personal record of the lawyer. The court said that the conduct of counsel who interposes an appeal in behalf of his client manifestly for purpose of delay, "often resorted to as a means of draining the resources of the poorer party" and "of compelling it to submit out of sheer exhaustion," compatible with the duty of the Bar to assist in the administration of justice.

In *Manila Pest Control Inc. v. Workmen's Compensation Commission*,[27] the petitioner alleged denial of due process and claimed that the decision of the Workmen's Compensation Commission was served not on its counsel, Atty. Corpus, but on another attorney. However, it was shown that the service had been made on Attorney Camacho, upon instructions of Atty. Corpuz, petitioner's counsel who had informed the server of the decision that Atty. Camacho was handling the case.

The Supreme Court reproved Atty. Corpuz for his unseemly conduct. The Court said:

> "It is one thing to exert to the utmost one's ability to protect the interest of one's client. It is quite another thing, and this is to put it at its mildest, to take advantage of any unforeseen turn of events, if not to create one, to delay if not to defeat the recovery of what is justly due and demandable, especially so, when as in this case, the obligee is a necessitous, and poverty-striken man suffering from a dreaded disease, that unfortunately afflicts so many of our countrymen and even more unfortunately requires an outlay far beyond the means of our poverty-striken masses.
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> "The ancient and learned profession of the law stresses fairness and honor; that must ever be kept in mind by everyone who is enrolled in its ranks and who expects to remain a member in good standing. This Tribunal is rightfully entrusted with the serious responsibility of seeing to it that no deviation from such a norm should be countenanced. If what occurred here would not be characterized for the shocking thing it was, then it could be said that the law is less than fair and far from honorable. What happens then to the ideal that only he is fit to belong to such a profession who remains a faithful votary at the altar of justice? Such an ideal may be difficult to approximate. That is true, but it not be said that when such a notorious breach of its lofty standard took place, as unfortunately it did in this case, this Court exhibited magnificent unconcern."

Lawyers come to grief because of the improper exercise of their functions as notary public. In *Lopez v. Casaclang*[28] disbarment proceedings were instituted against the respondent for having: 1. Improperly notarized a document purporting to be a deed for transfer of rights over a piece of land by the complainant in favor of Demetria Casaclang, respondent's mother, in the absence of the person executing and

[27] G.R. No. 27662, October 29, 1968.
[28] G.R. Adm. Case No. 549, August 26, 1968.

the two witnesses; 2. notarized a falsified general power of attorney; and, 3. prepared an affidavit and taken verification of the affiants, knowing the contents to be false.

As to first charge, the complainant and witnesses to the document testified that although they do not dispute the genuineness of their signature, they allegedly did not appear before the respondent for the signing and notarial acknowledgment. The respondent claimed otherwise. On this point the court stated that mere preponderance of evidence is not sufficient to overcome import of the certification by a notary public that the grantor in a document acknowledged the fact of its execution before him. To accomplish this result, evidence to the contrary must be clear, strong and convincing. Furthermore, according to the Court:

> "Considering that the signatures on the document in question are genuine, even if respondent did notarize the same in complainant's absence the irregularity is not serious enough to warrant disbarment or suspension. It merely suggests lack of caution, not culpable malpractice.... Nor does the fact that respondent's mother was a party make his act any more blameworthy, the transaction being above board and untainted with fraud or trickery."

On the second counsel it was proved that the signature purporting to be that of the principal in a general power of attorney had been written with her consent, by her aunt-in-law, because the former was indisposed at the time. Such authority was confirmed by both in the preliminary investigation for falsification against respondent.

The third charge that the respondent prepared an affidavit knowing that its contents were false, refers to a sworn statement by affiants giving the wrong date of birth of the complainant's daughter. The respondent disclaimed responsibility by testifying that the affidavit was prepared at the instance of the complainant herself and that complainant was the one who furnished data. Respondent is not related in any manner to complainant and did not know that the recitals were untrue. Respondent had no reason to compound the falsity.

The Supreme Court held that under the facts, disbarment or suspension was not warranted. However, on the evidence presented to support the second charge, the respondent was held guilty of certain degree of laxity and carelessness in notarizing a power of attorney which, he knew had not been signed by principal but by another upon her authority, without such fact being made to appear on the face of the document itself. The respondent was reprimanded.

An attorney was disbarred for misappropriating the amount of ₱298 which his client gave him to answer for the appellate docket fees, appeal

bond, printing of the record on appeal and appellant's brief. The appeal was dismissed because of respondent's failure to pay the docket fee and to deposit the estimated cost of printing of the record on appeal. The high degree of irresponsibility of this particular attorney was shown by the following facts: (1) prior to the commencement of the administrative proceeding after he promised to settle the matter with complainants but did nothing to keep his promise; (2) in his answer he alleged that he would introduce additional evidence but failed to do so after securing four postponements; and (3) he failed to submit a memorandum in lieu of oral argument was granted.[29]

But where the record did not show that the attorney had any knowledge of his client's fraud, the attorney was let off with a warning.[30] The Supreme Court took into consideration the youth of the respondent who was charged with acts of falsification because in the jurat of certain documents, he (as notary public) made it appear that the documents were subscribed, sworn to and signed before him and in his presence in Lucena City, when in fact they were signed in Manila and not in his presence. The respondent signed as notary public relying merely on the assumption that the papers were in order believing them to have been duly processed by the bank manager of the rural bank. The evidence showed that the respondent was not involved in the scheme of issuing fraudulent loans in violation of the Charter of the Rural Bank of Lucena to warrant a finding that he had himself committed falsification. According to the Court,

> "His being a young lawyer would disincline us to believe that he could have consciously lent himself as a tool in the petpetration of fraudulent loans as the Lucena Rural Bank had been charged with."

To the Court, the attorney owes respect. The consequence of a failure to render this duty may be punishment for contempt. Thus, in *J.M. Tuason v. Familara,*[31] for having hurled false and malicious charges against the judge the respondent was declared in contempt. The Supreme Court citing section 10 of Rule 7 regarding appeal of contempt cases said:

> "It is clear, therefore, that the appeal may be taken as in criminal cases necessarily resulting in the periods provided for such type of litigations being applicable. What is that period? The law is unmistakable. Thus: 'An appeal must be taken within fifteen (15) days from promulgation or notice of the judgment or order appealed from. This period for perfecting an appeal shall be interrupted from the time a motion for new trial is filed until notice of the order overruling the motion shall have been served upon the defendant or his attorney." (Sec. 6, Rule 122)

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[29] Capulong v. Aliño, G.R. Adm. Case No. 381, February 10, 1968.
[30] *In re* Manigbas, G.R. Adm. Case No. 501, October 26, 1968.
[31] G.R. No. 24934, September 28, 1968.

> "The computation made by both the lower court and petitioner-appellee is correct. The order finding respondent-appellant guilty of contempt having been received on Oct. 26, 1964, the 15 day period ended on Nov. 10, 1964. It was not until November 12, 1964 that he filed a motion for reconsideration. It was much too late. . . ."

The conduct of the lawyer before the court and with other lawyers should be characterized by candor and fairness. It is unprofessional and dishonorable to deal other than candidly with the facts in taking statements of witnesses, in drawing affidavits, and in presentation of causes.[32] During the year under review the Supreme Court in pointed language called attention to the failure of lawyers to observe this canon of professional ethics and ordered counsels guilty of the lapse to pay treble the costs.

Albert v. The Court of First Instance of Manila[33] was according to Mr. Justice J.B.L. Reyes, a "legal marathon". Action was instituted in 1949. Within a span of 19 years the case came up to the Supreme Court five times. It began as a suit for breach of contract against the University Publishing Company, Inc. From the bringing of the suit until a judgment against the company was to be executed in 1961 the corporate existence of the defendant was taken for granted. When the order of execution was issued against the University Publishing Co., Inc. it was discovered that no such entity existed, the Securities and Exchange Commission having no record of its registration. Whereupon, the plaintiff sought a writ of execution against Jose M. Aruego, who had signed the contract with the plaintiff on behalf of and as President of the company. Jose M. Aruego and his law firm were counsel for the company. Aruego opposed the petition on the ground that he was not a party to the case. In an extended opinion, the Supreme Court through Mr. Justice Jose P. Bengzon, accepted as an undisputed fact the non-registration of the company and held that the company had no personality separate from Jose M. Aruego. Aruego represented a non-existent entity and induced not only the plaintiff but even the court to believe in such representation . . . "Jose M. Aruego was, in reality, the one who answered and litigated, through his own law firm as counsel. He was in fact, if not in name, the defendant." The Supreme Court then remanded the case in the lower court for supplementary proceedings for the purpose of carrying the judgment into effect against the University Publishing Co., Inc. and/or Jose M. Aruego. At this stage, Jose M. Aruego appeared in *propria persona* and joined the company in a motion for reconsideration asking that they afforded opportunity to prove the corporate existence of the University Publishing Company, Inc. The certificate of registration, articles of incorporation, by-laws, and a certificate of reconstitution of records issued by the Securities and Exchange Commission were

[32] Canon of Professional Ethics, No. 22.
[33] G.R. No. 26364, May 29, 1968.

submitted but reconsideration was denied. The Court held that the defendant "could have presented the foregoing papers before the lower court to counter the evidence of non-registration, but defendant-appellant did not do so. It could have reconstituted its records at the stage of the proceedings, instead of only on April 1, 1965 after decision was promulgated."

Once again the plaintiff moved the lower court for execution of the judgment against Aruego and the latter again blocked the execution, utilizing the same documents which the Supreme Court had rejected in the motion for reconsideration. For the fifth time the case reached the Supreme Court on a petitioned for certiorari and mandamus against the order of the lower court denying the motion for execution. The Supreme Court granted the petition and ordered the respondent Aruego to pay treble costs. Through Mr. Justice J.B.L. Reyes the Court reproved Aruego for his lack of candor and fairness, thus: We now come to the cry of injustice proferred by respondent Jose M. Aruego. Even upon a cursory examination of his gripe, his position at once losses leverage; the potency of his arguments vanishes.

As we look in retrospect at the facts, we find that it was Aruego who executed the contract as president of the University Publishing Company, Inc. He is a lawyer. At the time he executed the contract with plaintiff, he should have known that the possibility existed that the records of the corporation had been destroyed. For, it is a matter of public knowledge that buildings which kept public records in the City of Manila had been razed by fire during the last war. He should have at least inquired whether the records of the corporation in the Securities and Exchange Commission had been saved. Of course, he knew and should have known that persons dealing with corporations are wont to look to records of the Securities and Exchange Commission for the existence of non-existence thereof. In this particular case, from the documents he himself presented in the court below (after he had knowledge of the fact the admission thereof was denied by this Court in L-19118), he is practically the corporation itself. Because out of the capital stock of ₱2,000, he subscribed to ₱1,600, and out of the paid subscription of ₱500, he contributed the sum of ₱450, leaving but ₱50 to be spread amongst the minor stockholders.

This case was filed and concluded as against the corporation. When finally, plaintiff's counsel and the Sheriff University Publishing Company, Inc. for execution of that judgment, he sought to stave off satisfaction thereof. Then, plaintiff's counsel and the Sheriff came to know that the corporation did not legally exist. Aruego could have very easily caused the corporation to pay. Or did he think that the corporation could evade payment, since the records of the corporation in the Securi-

ties and Exchange Commission had not yet been reconstituted? The resultant effect is that after long years of litigation, plaintiff is still left holding the bag. As this Court noted in L-19118, it would be too late for the plaintiff to file suit against Aruego personally. For, by then prescription has set in.

Canon 22 of the Canons of Legal Ethics is a constant reminder to the members of the Bar that the conduct of a lawyer before the court "should be characterized by candor and fairness; and it is unprofessional and dishonorable to deal other than candidly with the facts x x x in the presentation of causes." When the question of whether execution should issue against Jose M. Aruego, a member of the Bar, did emerge before the lower court in the proceedings for execution of the judgment, candor and fairness should have impelled him to tell the court that the representation of counsel for plaintiff that University Publishing Company, Inc. is not a corporation, was not true, and that the corporation had the papers and documents to show otherwise. He should not have kept this fact under wraps for so long a time while the execution proceedings were still with the lower court and before judgment on the appeal taken by plaintiff in L-19118. He has failed in these. Literally, he laid an ambush. It was only after he realized that this Court considered him as the real party in interest that he presented the fact of corporate existence of this Court to overturn the decision rendered in L-19118. Where a party "has taken a position with regard to procedure, which has been acted or relied on by his adversary or by the court," he must be held to be in estoppel "from taking an inconsistent position respecting the same matter in the same proceeding, to his adversary's prejudice.

In *Batangas Laguna Tayabas Bus Co. v. Cadiao*[34] Mr. Justice Fernando likewise dealt with counsel's failure to live up to his duty towards the courts:

> "A word more however is required in view of the conspicuous failure of petitioner's counsel to exhibit the candor required of an officer of the Court. The petition, as shown in the motion to dismiss and in the course of the oral argument, left out many facts within the knowledge of the petitioner with the evident purpose of imparting a semblance of plausibility to a petition otherwise clearly lacking merit. While counsel is expected to exhibit the utmost zeal on behalf of a client, it is likewise imperative if the rule of law were to be truly meaningful that the orders of this Court be based on a full and candid disclosure of relevant matters, so that whatever action may thereafter be taken be warranted by the events as they did transpire. Members of the Bar would then be remiss in their duty towards a court of justice if in their undoubtedly earnest efforts to serve their client's cause, there is, as in this case, a failure to live up to their

[34] G.R. No. 28725, March 12, 1968.

exacting responsibility to exert the utmost diligence that their pleadings submitted reflect the facts with truth and accuracy."

Corresponding to and in return for the performance of his services the attorney is entitled to reasonable honorarium. But he cannot resort to intimidation in order to collect. Thus in *Barrera v. Laput*[35] disbarment proceedings were instituted against the respondent on charges of having (1) misappropriated several sums of money held by him in trust for the estate of the complainant's late husband under administration; (2) tried to appropriate two parcels of land belonging to same and (3) threatened the complainant into signing several papers at gunpoint.

The respondent admitted attorney client relation with the complainant but denied the allegations of the complaint, averring that the complaint was merely "part of a scheme to beat off" his claim for attorney's fee. The facts show that prior to January 10, 1955, complainant was not inclined to cause the proceedings for the settlement of the estate to be closed. The respondent wanted to put an end to it, however, since there was nothing else to be done and he wanted to collect his fees. He prepared the petition for declaration of the complainant universal heir of her deceased husband, for the delivery to her of the residue of his estate and the termination of the proceedings. He caused to be prepared a notice "for the rendition of the final accounting and partition" of the estate. The respondent presented said petition and notice to the complainant for her signatures. She refused to sign and suggested that the papers be left with her so that she could have them read by someone else. Annoyed by this manifestation of distrust, the respondent sought to offset her adamance by putting his revolver on his lap although he did not point it at her. Thus, intimidated the complainant affixed her signature. The Supreme Court found that improper and censurable as these acts inherently are, they become more so when we consider that they were performed by a man dealing with a woman 72 years of age. The offense in this case is compounded by the circumstance that being member of the Bar and an officer of the court, the offender should have set the example as a man of peace and a champion of the Rule of Law. Worse still is the fact that the offended party is the very person whom the offender was pledged to defend and protect was his own client. The court took into account two extenuating circumstances, namely (1) he considered himself insulted and was obfuscated because she indicated lack of confidence in him; and (2) he required her to do something really harmless. The respondent was found guilty of gross misconduct in office and was suspended for one year.

[35] G.R. Adm. Case No. 217, November 27, 1968.

Under Canon 34 a lawyer is not permitted to divide his fees with one who is not an attorney. Splitting fees with the president of the union he represents, comes within this prohibition, the Supreme Court held in *Amalgamated Laborer's Association v. Court of Industrial Relations.*[36] In this case the Court of Industrial Relations decided in favor of the complainants and the Union. The back wages amounted to ₱29,755.22. Atty. Fernandez filed a "Notice of Atty's. Lien" claiming 25% of the award for services rendered since 1956 as attorney's fee on contingent basis per agreement evidenced by a Note. This was later amended with the inclusion of the statement that although the laborer had initially voluntarily agreed to give him 30%, upon request by union president he agreed to reduce it to 25% and award the 5% to Atty. Carbonnel (a former associate) for his actual services which however was claimed to be insignificant. One of the issues raised concerned the splitting of the fees. The Court held that 25% reasonably compensate Fernandez for the active conduct and prosecution of the case. Atty. Carbonnel did not file notice of Attorney's Lien. Nevertheless, 25% should be shared by Attys. Fernandez and Carbonnel, who were former associates. Although Atty. Fernandez handled most of the stages of litigation, still the services of Atty. Carbonnel are not negligible. Their shares were to be determined by CIR.

The union President should not share in fees, despite the claim that there was a verbal agreement entered into by the union and its officers through its President with the two attorneys. Canon 34 of Legal Ethics condemns this. No divisions of fees for legal services is proper, except with another lawyer, based upon a division of service or responsibility. The Union President was not an Attorney for the laborers. He may seek compensation only as such president. He cannot share in the attorney's fee.

A contingent fee contract specifying the percentage of recovery an attorney is to receive in a suit should be reasonable under all the circumstances of the case, including the risk and uncertainty of the compensation, but should always be subject to the supervision of the court as to its reasonableness.[37] The court held that 30% as attorney's fee is excessive and unconscionable considering that the successful complainants were mere wage earners paid at a daily rate of ₱4.29 to ₱5.00.

Mindful of the provision of Article 24 of the Civil Code, the court took account of the inequality between the lawyers in this case

[36] G.R. No. 23467, March 27, 1968.

[37] Mambulao Lumber Co. v. Philippine National Bank, G.R. No. 22993, January 30, 1968, 64 O.G. 10942 (Oct., 1968).

had the laborers they represented and refused to grant to full amount of contingent fee claimed.

Under 2208 of the New Civil Code, his client is also permitted to recover attorney's fees from the adverse party, but even if this were imposed by the contract, the same is subject to the determination of the court as to its reasonableness. Thus the Supreme Court held in *Mambulao Lumber Co. v. PNB*[38] that the stipulation regarding attorney's fees was applicable in an extrajudicial foreclosure of mortgaged property. The amount claimed as attorney's fee was ₱5,821.35 representing 10% of the mortgaged loan. The trial court allowed only ₱1,000 but on appeal the Supreme Court raised it to ₱3,000. Once again the high court reiterated the various circumstances to be taken into account in fixing counsel's fees on the basis of quantum meruit.

Where there is no stipulation that violation of the contract would render the guilty party liable for the payment of attorney's fees and a party seeks to recover attorney's fees from his antagonist only on the basis of 2208 of the New Civil Code of the Supreme Court has held that recovery of attorney's fee is permissible only in the cases therein stated.

A recovery of attorney's fee as damages allowed in *Batangas Transportation Co. v. Caguimbal,*[39] and *De la Cruz v. de la Cruz.*[40] In the first case a bus belonging to the plaintiff figured in accident on April 25, 1954 because of failure of its driver to exercise the degree of diligence required by law. Two passengers died. An action for damages dismissed by the CFI and reversed on appeal by the Court of Appeals was elevated to the Supreme Court on certiorari. On the issue of whether attorney's fee should be allowed under Article 2208 the Court stated:

> "As regards the last case, which permits the award, where the court deems it just and equitable that attorney's fee . . . should be recovered, it is urged that the evidence on record does not show the existence of such just and equitable grounds.
>
> "We, however, believe otherwise, for: (1) the accident in question took place on April 25, 1954, and the Caguimbals have been constrained to litigate for over thirteen (13) years to vindicate their rights; and (2) it is high time to impress effectively upon public utility operators the nature and extent of their responsibility in respect of the safety of their passengers and their duty to exercise greater care in the selection of drivers and conductors and in supervising the performance of their duties, in accordance, not only with Art. 1733 of the Civil Code of the Philippines, but also, with Arts. 1755 and 1756 thereof and the spirit of these provisions, as disclosed by the letter thereof, and elucidated by the Commission that drafted the same."

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[38] *Supra.*
[39] G.R. No. 22985, January 24, 1968.
[40] G.R. No. 19565, January 30, 1968, 64 O.G. 10324 (Oct., 1968).

In the *De la Cruz v. de la Cruz* case the plaintiff sued her husband alleging that he not only abandoned her but was also mismanaging their conjugal property. She asked for separation of property, monthly support, and ₱20,000 as attorney's fees.

The award of attorney's fees in the amount of ₱20,000 by the lower court was reduced to ₱10,000 on appeal. According to the Supreme Court:

> "On the matter of attorney's fees, it is our view that because the defendant, by leaving the conjugal abode, has given cause for the plaintiff to seek redress in courts, and ask for *adequate* support, an award of attorney's fees to the plaintiff must be made. Ample authority for such award is found in paragraphs 6 and 11 of article 2208 of the New Civil Code which empowers courts to grant counsel's fees, in actions for legal support and in cases where the courts deem it just and equitable that attorney's fees should be recovered. However, an award of ₱10,000.00, in our opinion, is, under the environmental circumstances, sufficient."

No attorney's fees were granted in *Angel Jose Warehousing v. Chelda Enterprises*[41] and in *Receiver of North Negros Sugar Company v. Ybañez.*[42] In the first case there was no stipulation for its payment and the claim did not fall under Article 2208 of the Civil Code. No attorney's fees were awarded in the second case[43] because the case arose before the New Civil Code went into effect. The Supreme Court reiterated instead the rule applicable under the old Civil Code, stating:

> "It is not sound public policy to place a penalty on the right to litigate. To compel the defeated party to pay the fees of counsel for his successful opponent would throw wide the door of temptation to the opposing party and his counsel to swell the fees to undue proportions, and to apportion them arbitrarily between those pertaining properly to one branch of the case from the other.... This Court has already placed itself on record as favoring the view taken by those courts which hold that attorney's fees are not a proper element of damages . . . Counsel fees, other than those fixed in the rules as costs, are not an element of recoverable damages."

In what manner or proceeding may attorney's fees be recovered from the client? The Supreme Court has held that this can be well considered a mere incident to the main case. Thus, in *Amalgamated Laborers Association v. Court of Industrial Relations,*[44] the petitioners contended that: (1) the CIR had no jurisdiction since a claim for attorney's fees is not a labor dispute; and (2) to consider it as a mere incident to case would disregard the special and limited jurisdiction of the Court of Industrial Relations.

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[41] G.R. No. 25704, April 24, 1968.
[42] G.R. No. 22183, August 30, 1968.
[43] *Supra,* note 42.
[44] *Supra,* note 36.

The Court found these arguments devoid of merit. *First,* a grant of jurisdiction implies the necessary and usual incidental powers essential to effectuate it, and very regularly constituted court has power to do all things reasonably necessary for the administration of justice within the scope of its jurisdiction, and for the enforcement of its judgments and mandates, *even though the court may thus be called to decide matters which would not be within its cognizance as an original cause of action. Second,* the rules abhor multiplicity of suits. *Third,* the approved procedure where a charging lien has attached to a judgment or where money has been paid into court, is for the attorney to file an intervening petition had have the amount and extent of his lien judicially determined.

As a consequence of his right to his fees, the rules permit a lawyer to retain the funds, papers and documents entrusted to him until his lawful fees and disbursements are paid.[45] But in *Villanueva v. Querubin,*[46] the Supreme Court held that documents which are public records marked and presented as exhibits cannot be retained by an attorney under the pretense of retaining lien. In this case respondents Guanzon and Matti engaged the professional services of the petitioner. After several hearings and while the trial was going on, the respondents manifested before open court that they were terminating the services of petitioner. The petitioner had in his possession documents and papers which were obtained through *subpoenas duces tecum* and were presented and marked as exhibits during the trial. The respondent Judge *required the petitioner to deposit these documents and papers with the Clerk of Court.* The petitioner refused asserting that he had a lien over these documents. In rejecting the retaining lien asserted by the petitioner the court said:

> "As admitted in the petition, the documents and papers in question were introduced as exhibits; moreover, as set forth in the answer of respondent Judge, they consist of public documents. There is no occasion, therefore for the privilege of a retaining lien granted an attorney to be availed of. It would be to extend its scope beyond unwarranted limits to make it applicable to the kind of documents and papers of such character. Moreover, it would be to curtail unduly the inherent power of a judicial tribunal in the conduct of the proceedings before it if it is to be held bereft of power to compel the surrender of such documents. Such an undesirable eventuality this Court cannot willingly allow to pass.
>
> "What must be stressed anew is that if petitioner were to be indulged in his refusal to abide by the lawful orders of respondent judge, the proper and due respect to which a court of Justice is by right entitled would be diminished. That cannot be permitted.

[45] Rule 138, sec. 37.
[46] G.R. No. 26137, September 23, 1968.

> "The disputed documents and papers were public in character. Moreover, they were introduced as exhibits. They were properly subject to the court's custody. The intransigence of the petitioner in his persistence to continue in possession of the same based on his erroneous belief as to the extent of the privilege of a retaining lien, to impart a semblance of legality to his defiance, must not be, as earlier noted, accorded the imprimatur of the approval of this Tribunal. If such were not the law, the resulting injury to a fair and efficient administration of justice might well prove to be incalculable. Against such a deplorable consequence this Court must resolutely set its face."

Since the documents were records brought to Court by virtue of *subpoena duces tecum*, there should be no question that they were not private papers of his client; and the attorney could not be heard to invoke his retaining lien. Let it not be overlooked, however, that even if they be public documents, *e.g.* a Torrens Title as in the Rustia case, if they belonged to the client and had been previously entrusted to the attorney, the retaining lien attaches from the time of delivery. Nor should it matter that they had been previously identified and marked as exhibits, because if not as yet formally presented and admitted in Court, the legal custody is still with the attorney and it is his right and the duty of the Court to protect him as well as the client, by holding an incidental hearing on the retaining lien and ordering the payment of the just fees before he should be commanded to surrender the documents. If the solution were otherwise, the retaining lien would have served him nothing.

II — JUDICIAL ETHICS

After a judge shall have been appointed, he takes his oath which is distinct from the ordinary oath taken by a government officer under section 23 of the Revised Administrative Code because it further includes the declaration of the effect that "affiant will administer justice without respect to person and do equal right to the poor and the rich."[47] Under the Rules of Court, he undertakes that "justice shall be impartially administered without unnecessary delay."[48]

A judge is empowered, in fact obligated, to enforce discipline in the conduct of the litigation.[49] But he is expected to exercise his power within reason. The Supreme Court has held that tardiness for very short time occasioned by excusable negligence should not be penalized by a judge in such a way as to make a party lose his case. Thus, in *Go Lea Chu v. Gonzales*[50] the Supreme Court held that the trial

[47] Rep. Act No. 296 otherwise known as Judiciary Act of 1948, sec. 3.
[48] Rule 135, sec. 1.
[49] Rule 135, sec. 5.
[50] G.R. No. 23687, February 26, 1968.

judge had committed grave abuse of discretion and warned him that "he is not a depository of arbitrary power, but a judge under the sanction of law." In this case the trial judge ordered the dismissal of a complaint and conducted an *ex parte* hearing on the adversary's counterclaim, because the counsel for the complainant arrived 10 minutes late. The Supreme Court in setting aside the order of dismissal, referred to past cases of similar nature and indicated what action would have been proper. The court said:

> "Tardiness for ten minutes is not such a contemptuous disregard of his duty to appear on time; it does not warrant immediate and absolute purging of his client's complaint and letting the opponent's counterclaim be heard *ex parte*. Gil v. Taleña, (96 Phil. 32), should have reminded the trial judge that where plaintiff and counsel were only about fifteen minutes late in arriving at the court, it was an abuse of discretion of the trial court to dismiss the case definitely, and that it would be too drastic to make a litigant suffer for such a short tardiness. And again, in the Philippine National Bank v. Phil. Recording System, Inc., (L-11310, March 29, 1960), where plaintiff's witnesses were not in court at the scheduled time of hearing, did not arrived at the extended period of ten minutes, but finally showed up barely two minutes after the entry of the order of dismissal, this Court reprobated the trial court in the following language: Once more we are confronted with a question which could have been avoided had the trial Judge been more human and tolerant. As the records show, barely two minutes had passed after the entry or the order of dismissal when the plaintiff's witnesses arrived in Court. There was a display on the part of the court of incorrect use of discretion. It was impatience pardonified.
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> It could have been an easy matter for the trial judge to call off the *ex-parte* hearing before his deputy clerk, or if hearing has started, to have allowed Gonzales' lawyer to take part therein if only to cross-examine the witnesses and to present his client's own evidence. Because Gonzales was not declared in default on the counterclaim. She was entitled to be heard. Not that such action on the part of trial judge would bring about injustice to Go Lea Chu. The latter did not stand to suffer prejudice. And then, one distinct advantage is that the rights of the parties could have been tested in the crucible of a trial on the merits.
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> Tardiness in court as attendance, indeed, is to be discouraged. Because, by Canon 21 of the Canons of Professional Ethics, a lawyer is bound not only to his client, but also to the Courts and to the public to be punctual in attendance. Justice Malcolm aptly stated that an attorney of character should make it unnecessary for a court to discipline him on account of tardy appearance. This, however, is no license for a trial Judge to summarily dismiss where tardiness for a very short time occasioned by excusable negligence is brought to the court's attention. For, a judge is enjoined to be temperate and attentive, patient and impartial (Canon 4, Canons of Judicial Ethics: Canon 31). He is warned that he is not a depository of arbitrary power, but a judge under the sanction of law." (Canon 18)

In the performance of his essential duties, the judge should demonstrate diligence, impartially, independence, rectitude and restraint. By way of dictum in *Zaldivar v. Estenzo*,[51] and *Superable v. Escalona*,[52] the Supreme Court emphasized the importance of strict neutrality.

In *Zaldivar* case the Supreme Court set aside the orders of the respondent judge for want of jurisdiction but observed:

> "Due process of law requires a hearing before an impartial and disinterested tribunal, and that every litigant is entitled to nothing less than the cold neutrality or an impartial judge. Moreover, second only to the duty of rendering a just decision, is the duty of doing it in a manner that will not arouse any suspicion as to its fairness and the integrity of the Judge. It is difficult enough to attain the ideal of a presiding judge being wholly free, disinterested, impartial and independent. It becomes doubtly difficult for such qualities to be in evidence whenever the matter before him is so enmeshed and so interviewed with partisan considerations that even if he could justly lay claim to such attributes, he still would be susceptible to the suspicion, by whichever group may feel that its just claim is rejected, that he acted not in accordance with the cold dictates of reason, but with the prompting and urgings of his sympathy and predilections in whatever direction they may lie.—(citing Gutierrez v. Hon. Santos, L-15824, May 30, 1961)."

Superable v. Escalona was an administrative case filed by a city judge against a presiding judge of a court of first instance. None of the charges were sustained. On the subject to partiality, the Supreme Court reiterated its observation in past cases[53] that a charge of impartiality against a judge is to be expected from disgrunted lawyers and respondents in administrative cases.

In the *Go Lea Chu v. Gonzales*[54] the Supreme Court indicated that the diligence of a judge can be carried too far. The Supreme Court cautioned a trial court to exercise a measure of restraint in *Ysasi v. Fernandez*[55] where the respondent judge dissolved the preliminary mandatory injunction the Supreme Court ordered him to issue. He had before him the same facts and the same reasons which had been earlier advanced in the Supreme Court. In the course of the hearing the judge stated that the Supreme Court may have made a "little mistake" and told counsel who wanted to complete his argument for the satisfaction of the Supreme Court that:

> "The case is before me now, not before the Supreme. Forget about the Supreme Court."

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[51] G.R. No. 26065, May 3, 1968.
[52] G.R. Adm. Case No. 122-J, July 31, 1968.
[53] *In re* Impeachment of Flordeliza, 44 Phil. 608, 611 (1923) and *In re* Impeachment of Horilleno, 43 Phil. 212, 214 (1922).
[54] *Supra*, note 50.
[55] G.R. No. 28593, December 16, 1968.

Reacting to this statement, the Supreme Court said:

> "By itself alone, such remark certainly is not an expression of respect for this Court. Taken in context, it has a tendency to produce in the minds of the listeners the dispiriting thought that a judge of first instance may take the Supreme Court so lightly that he may brush aside or even ignore a judicial pronouncement of the highest tribunal. Of course, he apologized for said remark when this Court heard this case on November 7, 1968. But the harm is there. It intrudes deep into the respect due this Court. Want of intention to offend is no excuse; at best, it extenuates liability.
>
> It would not then be out of place to restate a truism long accepted: '(T)he Supreme Court, by tradition and in our system of judicial administration, has the last word on what the law is; it is the final arbiter of any justiciable controversy. There is only one Supreme Court from whose decision all other courts should take their bearings.' (Albert v. CFI, L-26364, May 29, 1968) Accordingly, respondent judge should have known that (a) becoming modesty of inferior courts demands realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation. (People v. Vera, 65 Phil. 56, 82)
>
> In the end, we say that is not impermissible for a judge of first instance to impress upon lawyers and the public the weight of his authority in court. It should be evident, however, that he may not do so at the expense of the dignity of a higher tribunal. We prefer to think that restraint still is a trait desirable in those who dispense justice."

But suppose a judge disagrees with a rule laid down by the Supreme Court, is he bound to follow? In *Albert v. CFI of Manila*,[56] the Supreme Court said:

> "If a judge of a lower court feels in the fulfillment of his mission of deciding cases that the application of a doctrine promulgated by this superiority is against his way of reasoning, or against his conscience, he may state his opinion on the matter, but rather than disposing of the law in accordance with his personal views, he must first think that it is his duty to apply the law as interpreted by the Highest Court of the land, and that any deviation from a privilege laid down by the latter would unavoidably cause, as a sequence, unnecessary inconvenience, delays and expenses to the litigants."

Is it proper for a judge to intervene in informal attempts at amicable settlement in a criminal case? In *Carriaga v. Guerrero*,[57] the Supreme Court held that the judge should have avoided it. In this case the respondent municipal judge heard the verbal complaints of the offended parties, intervened in attempts to settle the case extra-judicially, informally received the "information" filed by said offended parties who subscribed and swore, "to the truth of the information

[56] *Supra*, note 33.
[57] G.R. No. 24494, June 22, 1968.

before the (respondent judge) and allowed the withdrawal of the same," information from her with a view of having the case settled amicably. No settlement was affected and the offended parties filed their complaint. The case was commenced and prosecuted without the intervention, mediation or participation of the fiscal or any of his deputies. The court said that the acts of the respondent judge should have been avoided because they generate suspicion of *bias* on the mind of the accused. Nevertheless, those acts do not constitute a ground to disqualify the judge from trying the case. The jurisdiction of the court was not affected. The respondent court was directed to continue with the case upon notice to the fiscal.

During the year under review, the extreme penalty of dismissal was meted out to a district judge in *Secretary of Justice v. Cloribel.*[58] In this case the findings of the Supreme Court that:

> "It is the considered opinion of This Court, after mature deliberation over the facts, that the respondent Judge is guilty not only of negligence, as contended by him, but of serious misconduct and incompetence. The circumstances made manifest in the course of these administrative proceedings prove respondent to be insensitive to the dignity and ethics of the judicial office that demand that judges, more than any other officials, set the examples and comport themselves at all times like Ceasar's wife, avoiding at all cost to give grounds for suspicion. Respondent's disregard and refusal to comply with lawful orders of the Supreme Court, and his recklessness in the other cases of which he is heretofore found guilty, bid fair to undermine the authority and reputation of the Supreme Court. Even more, respondent's behavior places the Philippine Judiciary in extremely unfavorable light from the view point of the general public. How can the latter be expected to obey court orders, if the judges themselves set the example in contemptuously ignoring final and lawful orders of superior courts, and in invading the prerogatives and jurisdiction of other judges of equal category?
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> Public officials with such predisposition to callous disregard of the proprieties in the performance of judicial functions have no place in the Judiciary, for it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high degree of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration. It is in this spirit that we find no alternative, under the circumstances of this case, but to act accordingly with the end in view to dissipating the cloud of public opprobrium to which the Bench has been exposed by the acts of Respondent."

were approved by the President who ordered that he be considered resigned from office effective January 5, 1969.

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[58] G.R. Adm. Case No. 121-J, November 12, 1968. Resolution of the Supreme Court approved by the President in Administrative Order No. 153, dated December 16, 1968. *Note*: Quoted herein is portion of the Administrative Order that cited verbatim the conclusions of the Supreme Court.