LEGAL AND JUDICIAL ETHICS

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The Lawyer and the Court

The first duty of a lawyer is not to his client, as popularly misconceived, but to assist in the administration of justice. Principally, this public duty is two-fold. It consists, first, in his obligation to uphold the dignity of the court and to respect its authority.[1] Secondly, it behooves him to cooperate with the court whenever the exigencies of justice so require. The duty of respect is violated not uncommonly, by members of the Bar in the use of disrespectful language in open court and in pleadings and motions.[2] It is of course both the right and duty of a lawyer to protest vigorously against erroneous or oppressive judicial actuations but as felicitously observed in the *Rheem* case,[3] "the language vehicle does not run short of expressions, emphatic but respectful, convincing but not derogatory, illuminating but not offensive." Restraint is necessary for the orderly administration of justice because the judge in our scheme of government has been appointed to decide in the first instance. The lawyer must, for the time being, submit to rulings or orders he believes incorrect or unjustified and pursue his remedy before higher courts. If a lawyer's language is abusive or insulting, it is no defense that facts are present which justify it.[4] Opprobrious language used by a lawyer, which generated a similar linguistic outburst from the judge in *Luque v. Kayanan*[5] met with severe disapproval from the Supreme Court. In counsel's motion to disqualify the respondent judge, the former charged that the latter had "suppressed the true and genuine proceedings"; had "doctored the records" in reference to what took place on February 28, 1966; and that the order of March 8, 1966 was either due to gross incompetence or deliberately made as a basis for requiring him (counsel) to explain within twenty four hours why he should not be cited for contempt.

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[1] Rules of Court, Rule 138, sec. 20(B) states that it is the duty of an attorney "to observe and maintain the respect due to the courts of justice and judicial officers," while Canon I of The Canons of Professional Ethics enjoins him "to maintain towards the courts a respectful attitude."

[2] See Rheem of the Philippines v. Ferrer, G.R. No. 22979, June 26, 1967; Paragas v. Cruz, G.R. No. 24433, July 30, 1965; Sison v. Sandejas, G.R. No. 9270, April 29, 1959; De Joya v. Court of First Instance of Rizal, 99 Phil. 907 (1956); People v. Venturanza, 98 Phil. 211 (1956); *In re* Sotto, 82 Phil. 595 (1949); People v. Carillo, 77 Phil. 572 (1946); *In re* Franco, 67 Phil. 312 (1939); Medina v. Rivera, 66 Phil. 151 (1938); Salcedo v. Hernandez, 61 Phil. 724 (1935).

[3] *Supra*, note 2.

[4] Salcedo v. Hernandez, *supra*, note 2.

[5] G.R. No. 26826, August 29, 1969.

The orders complained of were found to contain omissions, and in one, as admitted by respondent judge himself, a mistake was committed. The Supreme Court was of the view that the omissions were not serious enough to warrant the use of the word "doctored" and that the mistake was committed without a purpose to mislead. While appreciating the lawyer's ordeal, and granting that he may have had a grievance, the Court condemned counsel's use of crude language. The first Canon of Professional Ethics is contravened, according to the Court, "if a lawyer goes past respectful disagreement with the judge and enters into the forbidden area of uncontrolled criticism . . ." It then pointed out that the administration of justice is a shared responsibility of both judge and counsel, and it is their duty to maintain, not to destroy, the high esteem and regard, for courts. Hence, any act on the part of one or the other that tends to undermine the people's respect for, and confidence in the administration of justice is to be avoided.

The social duty of the lawyer to cooperate with the courts is concretely exemplified where a court appoints a counsel *de oficio* for a destitute litigant. It is expected in this case that the lawyer should exert his best efforts in the defense of his client. While theoretically, the service is rendered without compensation, the Rules provide a counsel *de oficio* an honorarium ranging from ₱30 to ₱500, depending on the nature of the case, to be paid out of public funds[6] as incentive or performance. Despite this material inducement, the Court in *In re Parinas*[7] and *In re Adriano*,[8] had to resort to punitive measures to discipline members of the bar for being recreant in their duties. In the *Parinas* case, respondent was appointed counsel *de oficio* by the Supreme Court for defendants convicted of murder and sentenced to life imprisonment. Respondent failed to file the brief a year after the date for submission had expired and also contumaciously ignored a Court resolution requiring him to show cause why he should not be declared in contempt for failing in his duty. For this, he was declared in contempt and fined ₱100. Several motions for reconsideration, the last of which was justified on a plea of inability to pay the fine, failed to impress the Court. The last motion, taken in conjunction with his previous actuations had convinced the Court that respondent had exhibited an utter lack of regard for its orders.

In *Adriano*, the Supreme Court appointed respondent as counsel *de oficio* for a convict sentenced to death. After six requests for extension to file brief all of which were granted, and failing to submit one, he was required to show cause why no disciplinary action should be taken against him. As no explanation was given, the Court resolved to impose a fine of ₱500 on respondent with a warning that further non-compliance would merit more drastic punishment. Subsequently, noting respondent's callous disregard of Court

[6] Rule 138, sec. 32.
[7] G.R. No. 27569, July 28, 1969.
[8] G.R. No. 26868, February 27, 1969.

orders, the Court again issued a show-cause order why respondent should not be suspended for misconduct and violation of his oath of office. Finally, upon the finding that the last order was ignored, the Court, pushed to the limit of its patience, suspended respondent from the practice of law for one year. Respondent's conduct, the Court declared, revealed a "benumbed" appreciation of his obligation as counsel *de oficio* and of the courtesy and respect to the Supreme Court. Referring to the duties of counsel *de oficio*, the Court stressed:

> ". . . As such counsel *de oficio* he has as high a duty to the accused as one employed or paid by defendant. Because in the case of the latter he must exercise his best efforts and professional ability in behalf of the person assigned to his care. The accused defendant expects of him due diligence, not mere perfunctory representation. We do not accept the paradox that responsibility is less where the defended party is poor. It has been said that courts should 'have no hesitance in demanding high standard of duty of attorneys appointed to defend indigent persons charged with crime' for indeed a lawyer who is a vanguard in the bastion of justice is expected to have a bigger dose of social conscience and a little less of self-interest. Because of this, a lawyer should remain ever conscious of his duties to the indigent he defends."

To be sure, the two cases dealt with above are not isolated deviations from expected professional conduct in the annals of Philippine jurisprudence. Non-performance of duty and disregard of Supreme Court show-cause orders by *de oficio* counsel have been encountered in *In re Dianala So*[9] where respondent likewise failed to file a brief in a criminal case despite numerous extensions; in *In re Lahesa*[10] where counsel *de oficio* for two criminal cases failed to take any action, for which he was fined ₱200, and in *People v. Aguilar*.[11] It is perhaps understandable that counsel *de oficio* should, before the new Rules of Court took effect, give preference to cases where they are retained by paying clients; but with an honorarium provided under the Rules, assuming that the amount may not be fully commensurate to the services rendered, there seems to be no cogent reason why, even speaking from a mercenary viewpoint, some members of the legal profession still have to be disciplined by the Supreme Court to make them perform their duty. Besides, attorneys *de oficio* assigned to defend appellants in the Supreme Court are not necessarily expected to sustain the latter's innocence whenever they are otherwise convinced.[12]

Attorney-Client Relations

The Canons of Professional Ethics provide that "the lawyer owes 'entire devotion to the interest of the client, warm zeal in the maintenance and

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[9] 1 S.C.R.A. 31 (1961).
[10] 4 Phil. 298 (1905).
[11] G.R. No. 20147, February 28, 1963, 7 S.C.R.A. 468 (1963).
[12] People v. Trisuillo, G.R. No. 1473, October 27, 1948.

defense of his rights and the exertion of his utmost learning and ability' to the end that nothing be taken or withheld from him, save by the rules of law, legally applied."[13] In *Deles v. Aragona*,[14] the complainant sought to disbar a lawyer for having prepared and filed under oath a motion for contempt allegedly containing false and libelous imputations against him. Although the Supreme Court adjudged the imputations as lacking sufficient factual basis, it also noted that respondent was motivated by a legitimate desire to serve the interests of his clients, and took into account his efforts to ascertain the truth. As the statements were relevant to the subject-matter of the agrarian cases, of which the motion was an incident, they were held to be absolutely privileged communications, thus precluding any liability on the part of respondent. Lawyers, said the Court, must be allowed great latitude of pertinent comment in the furtherance of the causes they uphold, and for the felicity of their clients they may be pardoned some infelicities of language.

While lawyers owe the duty of complete fidelity and utmost diligence to their clients, candor and honesty to the courts remains their superior duty. Thus, for presenting in evidence an affidavit of adjudication and transfer of land containing a false statement, without knowledge of the falsity thereof, the respondent was not entirely exonerated in *Berenguer v. Camonza*.[15] Even on the accepted explanation that the document was not prepared by him and his failure to notice the existence of an incorrect statement in the affidavit was a mere oversight, the Court laid stress on the confusion and prolongation of the suit caused by the lawyer's negligence, for which he was not held blameless. He was therefore reprimanded and warned that a repetition of similar carelessness would be more severely dealt with. Emphasizing the lawyer's duty as officer of the court, the Supreme Court stated:

> "Every member of the bar must be on his guard lest through oversight or inadvertence, the way he conducts his case or the evidence he presents could conceivably result in a failure of justice. Time and time again, lawyers have been admonished to remember that they are officers of the court, and that while they owe their clients the duty of complete fidelity and the utmost diligence, they are likewise held to strict accountability insofar as candor and honesty towards the Court is concerned."

The Rules of Court specifically enjoin a lawyer "to counsel or maintain such action or proceeding as appears to him just and such defenses only as he believes to be honestly debatable under the law."[16] Likewise, he is prohibited to "encourage either the commencement or the continuance of an action or proceeding or delay any man's cause from any corrupt motive or interest."[17] If a lawyer discovers that his client has no cause of action or

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[13] CANONS OF PROFESSIONAL ETHICS, Canon 15.
[14] G.R. Adm. Case No. 598, March 28, 1969.
[15] G.R. Adm. Case No. 716, January 30, 1969.
[16] Rule 138, sec. 19(c).
[17] *Id.*, sec. 19(g).

ground for defense, it becomes his positive duty to inform the latter of such circumstance at the earliest opportunity so that he may take the necessary steps for the speedy termination of the case. An attorney is guilty of unprofessional conduct and justly deserves punishment if he advises a client to pursue a futile litigation to delay or defeat the legitimate claims of others. In *Salazar v. De Castrodes*,[18] the Court underscored the duty of counsel to inform his client of the futility of appeals which could only delay unduly the termination of a pending litigation and thus accord respect to the just claims of others. It noted the persistent efforts of the defendants-appellants to delay further, if not to render futile the plaintiff-appellees' enjoyment of his rights to a piece of land. Treble costs were awarded against defendants, payable by their counsel.

Upon the formation of the client-attorney relationship, the lawyer's duty of undivided allegiance to his client's cause begins. He cannot, without his client's unvitiated consent, act for another whose interest is adverse to or conflicting with that of his client in the same general matter.[19] This obligation forbids the subsequent employment from others in matters affecting any interest of the client with respect to which confidence has been reposed.[20] Where however the attorney-client relationship is not established by convincing evidence, it would be difficult for an aggrieved client to hold the lawyer liable. This was the unfortunate result in *Velasquez v. Banesa*.[21] The brother of the complainant in this case lost an ejectment case and was required by the municipal court to vacate the premises and to pay back rentals. Respondent helped him and his co-defendant in the preparation and filing of the notice of appeal and of the appeal and supersedeas bonds. The supersedeas bond was executed by a surety company which required the defendants to put up a counterbond. The counterbondsmen, in turn, demanded security from the defendants and for this purpose the personal properties of complainaint were mortgaged. Respondent intervened in the preparation and filing of the security agreements. The Court of First Instance, to which the case was appealed, rendered an adverse judgment and as a consequence, the counterbondsmen, now represented by respondent, filed a fourth party complaint against the defendants. This later led to the foreclosure of the chattel mortgage on complainant's properties; and his subsequent criminal prosecution for pledging one mortgaged property where respondent lawyer acted as private prosecutor. Complainant then accused respondent of malpractice and misappropriating certain sums given by him to the latter. The Supreme Court acquitted respondent of malpractice because his helping complainant's brother in perfecting their appeal and in the filing of the super-

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18 G.R. No. 25949, May 22, 1969.

19 Parker v. Parker, 99 Ala. 239, 13 So. 520, 42 Am. St. Rep. 48 (1893) and other cases as cited in 5 AM. JUR., *Attorneys at Law*, sec. 64 (1936).

20 CANONS OF PROFESSIONAL ETHICS, Canon 6.

21 G.R. Adm. Case No. 415, August 29, 1969.

sedeas bond and related indemnity bond did not necessarily make him their attorney of record in the appealed case. It likewise found nothing objectionable in respondent having represented the counterbondsmen in their fourth party complaint against defendant and in the enforcement of their rights against complainant. That respondent and complainant dealt with each other in the filing of the cash appeal bond and in the execution of the chattel mortgage did not create, in the Court's judgment, a client-attorney relationship between them. Hence, the Court concluded, there was no reason, legal or moral, to condemn his actuations as counsel for the counterbondsmen. With reference to the misappropriation charge, the Court found that part of the money was spent for expenses in connection with the ejectment suit; while the delivery of the remaining portion was not supported by convincing evidence. But on the assumption that it had been delivered, the Court said that it was reasonable compensation for services rendered to complainant's brother. The findings of the Court should be perhaps be a sufficient basis for the conclusion that the attorney's conduct in this case was free from censure; but what is startling is the Court's final pronouncement that it would have been more in accord with the demands of the profession that the respondent refrained from representing the counterbondsmen in the fourth party complaint, in the foreclosure of mortgage and in the prosecution of the criminal case against complainant. For these actuations, he was admonished with the warning that similar conduct in the future would be dealt with more drastically. It should be clear from the above narration that the services rendered by respondent to complainant's brother were in the nature of legal services and that an attorney-client relationship existed between them. Hence, his intervention in the legal proceedings against the latter was a patent disregard of his duty of fidelity heretofore enunciated. But in this case, the Court chose to exonerate respondent first and admonished him at the end.

A glaring example of infidelity to duty, characterized by gross negligence is *Toquib v. Tomol*.[22] Here, the lawyer failed to ask the Court below for another date for his client's deposition, hence, the case was declared submitted for decision without any evidence being presented on the part of his client. Despite an adverse decision, the lawyer in addition failed to take steps to protect his client's interest and allowed the period of appeal to lapse. This insensibility to his client's misfortune occasioned by his own gross negligence drew a sentence of supension from the practice of law for one year.

The Civil Code[23] and the Canons of Professional Ethics[24] prohibit the purchase by a lawyer of any interest in the subject matter of litigation in which they participated by reason of their profession. This was the basis

[22] G.R. Adm. Case No. 554, January 3, 1969.
[23] Art. 1491.
[24] Canon 10.

of the main charge in *Del Rosario v. Millado*.[25] Parts of a parcel of land, title to which was claimed by a deceased during his lifetime were the object of two ejectment suits against the latter's heir. Prior to the institution of the suits, another heir allowed respondent lawyer to construct a house within the disputed area in consideration for defending the deceased's claim, with the condition that he could buy the land on which the house was situated should be succeed in securing a favorable decision. Respondent was retained as counsel by the defendant heir in the ejectment suit but ceased to be so after filing the answer. Inasmuch as he acquired his interests in said lots before he intervened as counsel for the heir in the ejectment suit, and since it is not inconsistent with that of his client, the Court dismissed the complaint for being without merit. This affirms the ruling in *Gregorio Araneta Inc. v. De Paterno*[26] where the purchase of the property by the owner's counsel was effected before the property became the subject of litigation.

There is a prima facie presumption that an attorney has authority to act for a client whom he purports to represent.[27] The presumption however will not stand if there has been fraud or imposition, or the party has objected to the use of his name. The lawyer's wilful appearance in court for a person without being so employed may be punished for contempt as an officer of the Court who has misbehaved in his official transactions.[28] Petitioners in *Garrido v. Quisumbing*[29] sought the disbarment or suspension of respondent attorney for filing Civil Case No. 73668 of the Court of First Instance of Manila wherein, he included, as counsel or plaintiffs, one L. Garcia Pastor who allegedly had not authorized the former to institute the action on his (Pastor's) behalf. The Court held that no act of malpractice was committed for the reason that respondent filed the complaint upon the request of one of the plaintiffs therein, Julio Muñoz, who claimed to have authority to act on Pastor's behalf. It gave credence to the explanation that Muñoz had informed respondent that he was the controlling stockholder of the corporation involved in the case, while Pastor was his *alter ego* in its Board of Directors; hence he authorized respondent to file the action not only in his name but also in Pastor's name. This was supported by the fact that Pastor had not complained against respondent and the disbarment proceedings were initiated by the defendant in the civil case.

It is not always the case that clients are the hapless victims of oppression and deceit perpetrated by their lawyers. Within the matrix of attorney-client relations, there are instances where the lawyer is on the receiv-

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[25] G.R. Adm. Case No. 724, January 31, 1969.
[26] 91 Phil. 786 (1952).
[27] Rules of Court, Rule 138, sec. 21; Tan Lua v. O'Brien, 55 Phil. 53 (1930); Azotes v. Blanco, 78 Phil. 739 (1947).
[28] *Id.*, sec. 21.
[29] G.R. Adm. Case No. 840, June 30, 1969.

ing end. *Aragon v. Matol*[30] is one such happening. The complainant here charged her lawyer with misconduct, for failing to notify her of the court's dismissal order despite her periodic inquiry about the status of her case. Incontrovertible evidence disproving her allegations forced the Supreme Court to the conclusion that it was either out of deficient memory or lack of sufficient respect for truth which led her to impute a misconduct to respondent. Accordingly, she was admonished and cautioned against the repetition of the filing of such a baseless charge against any member of the bar. Speaking for the Court, Justice Fernando remarked:

> ". . . great care should be taken by a client before lodging a complaint for disciplinary action. As was so appropriately observed by the great jurist Cardozo, 'a reputation [in the legal profession] is a plant of tender growth, and its bloom once lost is not easily restored.' Very often the livelihood of a member of the bar depends upon maintaining intact such a reputation. Equally clear to an advocate is the maintenance of the esteem that the public has for his probity, his dedication, his conscientiousness. The charge that he is neglectful of his client's interest even if unfounded, as in this case, is unfortunately not without its adverse effect. There is all the more reason then to caution anyone who has availed himself of his services against any reckless or unfounded accusation as did occur in this case."

Aro v. Nanawa[31] involves the compromise of a suit by a client without the knowledge and intervention of his lawyer. There is of course no question that a client has a clear right to do so. But when, as in this case, the compromise was entered into in fraud of the lawyer with intent to deprive him of the fees justly due him and this is committed in confabulation with the adverse party who had knowledge of the lawyer's contingent interest, then such a compromise, the Supreme Court ruled, must be subject to the said fees. This would be better achieved, the Court pointed out, by settling the matter of the attorney fees in the same proceeding, after hearing all the affected parties and without prejudice to the finality of the compromise in so far as it does not adversely affect the rights of the lawyer.

Disbarment and Suspension

The practice of law is not an absolute right granted to anyone who demands it,[32] but is accorded only to those who achieve certain rigid standards of mental and moral fitness.[33] A lawyer is expected to maintain the highest standard of morality,[34] and the continued possession of a good moral character is a requisite condition for the continuance in the practice of law.[35]

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[30] G.R. No. 887, October 31, 1969.
[31] G.R. No. 24163, April 28, 1969.
[32] *In re* Del Rosario, 52 Phil. 399, 400 (1928).
[33] *In re* Gutierrez, G.R. No. 363, July 31, 1962; 62 O.G. 24 (Jan., 1966).
[34] Bolivar v. Simbol, G.R. Adm. Case No. 377, April 29, 1966; 16 S.C.R.A. 623, 631 (1966); Toledo v. Toledo, G.R. Adm. Case No. 266, April 27, 1963.
[35] Mortel v. Aspiras, 100 Phil. 586, 592 (1956); *In re* Puno, G.R. Adm. Case No. 389, February 28, 1967.

Grossly immoral conduct has been added in the New Rules of Court to the original grounds for disbarment and suspension.[36] While previously this was not a cause specifically provided in the Rules, it has been held that Section 25 of Rule 127 of the Old Rules of Court was broad enough to cover practically any form of misconduct in either professional or non-professional activities.[37]

The supreme penalty of disbarment was imposed on respondent in *Almirez v. Lopez*,[38] for having carnal knowledge of a woman upon a promise to marry which he failed to fulfill even after a child had been begotten as a consequence. Aside from respondent's breach of his promise to marry, he persuaded complainant, when her pregnancy was confirmed by a physician, to take some pills purportedly to hasten the flow of her menstruation and later urged her to have an abortion. Compounding these moral transgressions, respondent, while the case was pending in the Solicitor General's office, prevailed on complainant upon a second promise of marriage, to sign a motion withdrawing her complaint under the false allegation that he was innocent of her charges, only to marry another woman later on. Respondent's acts, held the Court, constituted grossly immoral conduct which rendered him unfit to continue as a member of the bar.

Disbarment proceedings are administrative in character and do not partake of the nature of criminal prosecutions.[39] Hence procedural niceties may be disregarded, provided of course that the respondent is given an opportunity to be heard. A technicality invoked by respondent in *Limalima v. Sanjurjo*[40] was disposed of in this manner. The complaint filed with the Supreme Court sought to prevent respondent Sanjurjo from taking his oath as member of the bar should he pass the 1956 bar examinations on the ground of immorality and breach of promise to marry. However, respondent who passed the examinations was able to participate in the mass oath-taking and to sign the roll of attorneys. The Supreme Court took cognizance of the case upon discovery of the error and referred the administrative case to the Provincial Fiscal of Cebu for investigation and report. In answer to the complainant's petition, respondent averred that it should be dismissed because the cause of action had become moot as he had already taken his oath and therefore the proper proceedings should have been for his disbarment. The question to be resolved then, was whether, considering respondent's objection, the proceedings may be treated as disbarment proceedings. The Court answered in the affirmative, holding that there is nothing sacred in procedural forms, and it is settled jurisprudence that technicalities of the sort invoked by respondent — that the proceedings be dismissed without prejudice to com-

[36] Rule 138, sec. 27.
[37] Royong v. Oblena, G.R. Adm. Case No. 376, April 30, 1963.
[38] G.R. Adm. Case No. 481, February 28, 1969.
[39] De Jesus v. Vailoces, G.R. Adm. Case No. 439, April 12, 1961.
[40] G.R. UDK Adm. Case, June 14, 1969.

plainant instituting disbarment proceedings — may be disregarded as long as the party concerned will not suffer any substantial prejudice and is given his day in Court. The Solicitor General was therefore directed to file the corresponding complaint against the respondent to be answered by him within 15 days from notice.

In disbarment proceedings, the burden of proof is on the complainant. He must, because of the serious consequences of disbarment, establish his charge with convincing proof.[41] The presumption is that the lawyer is innocent of the charges against him and has performed his duty as an officer of the court in accordance with his oath.[42] So that an equiponderance of evidence would result in the lawyer's acquittal.[43] But where there is insufficient or no proof that the respondent is guilty of unethical conduct, the charges will be dismissed.[44] Serious charges of deceit, and gross violation of oath were provisionally dismissed in *Balbarona v. Santos*,[45] where the complainant, after testifying at the final hearing conducted by the Solicitor General, in the absence of respondent and without the benefit of cross-examination failed to appear in subsequent hearings. He also failed, upon being required by the Supreme Court, to comment on the Solicitor General's recommendation of provisional dismissal. This recommendation was adopted by the Court upon the theory that complainant had lost any further interest in prosecuting the case.

Judicial Ethics

As courts exist for the administration of justice, the Canons of Judicial Ethics command that "a judge's official conduct should be free from the appearance of impropriety and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his everyday life he should be beyond reproach." In the *Luque case*,[46] the judge's reply to the petition for *certiorari* brought censure from the Supreme Court. He wrote:

> ". . . For the poor taste of petitioner to deduce that we have 'doctored' the records just for a simple mistake in the date of hearing, which is sometimes inevitable and not our own making, is *sheer deviltry* and plain *cussedness*, nay, a display of little, if not lack of, respect to the authority on the bench." (Emphasis supplied)

A district judge, said the Court in admonition, is expected to measure his words as befits his exalted position. Equally censurable was the judge's display of impatience and anger at the lawyer as noted from counsel's complaint: (1) that the judge angrily barked at a guard to commit him to jail when he refused to pay the fine for contempt of court; (2) that at a certain

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[41] Go v. Candoy, G.R. Adm. Case No. 736, October 23, 1967.
[42] *In re* Tionko, 43 Phil. 191, 194 (1922).
[43] See Blanza v. Arcangel, G.R. Adm. Case No. 492, September 5, 1967.
[44] De los Santos v. Bolanas, G.R. Adm. Case No. 483, July 31, 1967.
[45] G.R. Adm. Case No. 652, September 30, 1969, 29 S.C.R.A. 723 (1969).
[46] *Supra*, note 5.

hearing the judge would not give the counsel leeway to speak in court, interrupting him and continuing to say things against him in a derisive tone and in a humiliating and abusive manner; (3) that the judge said: "why don't you want me to hear and decide this case? Just because you are older you want to impose your will on this court"; (4) that after he became tired of talking, he told the lawyer who was not given a chance to speak fully: "That is enough, sit down;" and strongly banged the gavel.

But even when charges of grave misconduct, consisting of harassment, oppression and persecution were not proved to the satisfaction of the Supreme Court, a judge in *Conde v. Superable, Jr.*[47] was admonished that he should have taken greater pains to avoid the impression that his personal feelings were not kept under control, as is rightfully expected of a judge. Justice Fernando, speaking on the standard of judicial conduct observed:

> "It has been aptly remarked, and quite truly, that adjudication should not only be fair and just. It must appear to be so. A judge is human, but he is expected to rise above human frailties. At the very least, there must be an earnest and sincere effort on his part to do so. When a litigant is, therefore, an individual for whom he does not cherish kindly thoughts, he is called upon to show greater care lest inadvertently he finds himself unable to resist the prompting of his emotions. Perhaps of no government official is the truism that a public office is a public trust more applicable. He dispenses justice for the community. He is its instrument to assure that every one be given his due. He speaks and acts for the State, not for himself. His personal feelings must not get the better of him. So he must not for a moment forget."

If a judge resigns and his resignation is accepted by the President during the pendency of an administrative case against him, should the disciplinary proceedings be dismissed? Apparently it is proper to do so if the ruling in *Diamalon v. Quintillan*[48] is invoked as precedent. The judge in this case was charged with serious misconduct for including complainant, who allegedly was only an eyewitness, in an information for murder without giving him an opportunity to be heard, and for issuing a warrant of arrest and causing complainant's detention without due process. In his defense, the judge alleged that he had duly investigated and fairly appreciated the evidence before issuing the warrant of arrest against complainant. Further, he was of the sincere belief that the presence of the accused was not necessary in cases where both the preliminary examination and preliminary investigation is simultaneously conducted by a judge of the Court of First Instance before the issuance of a warrant of arrest. The case was already considered submitted for decision in the Supreme Court when respondent judge filed an urgent petition for dismissal for a number of reasons: first, for lack of cause; secondly, his resignation had been already accepted by the President; thirdly, his application for retirement could not favorably be acted upon in view of the

[47] G.R. Adm. Case No. 812, September 30, 1969, 29 S.C.R.A. 727 (1969).

pendency of the administrative case and, fourthly, he had been ill and confined at the hospital and would be "to the best interest of simple Christian justice" that the case be dismissed or decided as soon as possible. Considering all these, the Court did not see any necessity for inquiring further into the charges imputed against the respondent judge and forthwith dismissed the case. It reasoned that an administrative proceeding is predicated on the holding of an office in the Government and since the resignation of the judge had been accepted, there was nothing to stand in the way of the dismissal prayed for. This seems to violate an elementary rule in the law of public officers. There, it is settled that resignation is not a cause for dismissal of an administrative proceeding against an erring public officer. And the rule has been adopted with good reason: if a public officer is found guilty and his removal is warranted under the circumstances, he forfeits his privileges, such as retirement gratuity, commutable leaves of absence, etc. and leaves the government or an aggrieved party a means of redress. The practical effect of the Court's dictum in *Diamalon* is the acquittal of respondent without benefit of hearing. Perhaps moved more by humanitarian considerations, it decided on the basis of a principle of doubtful validity. It could have, since from all appearances the matter was arguable, justified its ruling otherwise and achieved the same result.

The grounds enumerated in the Rules of Court for the disqualification of a judge are exclusive: he cannot be inhibited for grounds other than those specified in the first paragraph of Section I, Rule 137.[49] But even previous to the adoption of the second paragraph of Section I, which now authorizes a judge, at his discretion, to disqualify himself from sitting in a case for just and valid reasons, the Court had observed that the exclusive enumeration of grounds for disqualification of a judge had never been interpreted to prohibit him from inhibiting himself even in the absence of challenge from any party on good, sound or ethical grounds.[50] Thus it was a matter of sound discretion on the part of a judge to so inhibit himself. Upon the proposition that all suitors are entitled to nothing short of the cold neutrality of an independent, wholly-free, disinterested and impartial tribunal, the Court in the *Luque* case,[51] however insisted that the judge should inhibit himself where his prejudice against a litigant had concretely been manifested and the animosity between him and the latter had developed through a long period of time. This case was distinguished from *Pimentel v. Salanga*[52] where the judge's disqualification was sought by counsel on the ground that the latter

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[48] G.R. Adm. Case No. 116, August 29, 1969.

[49] Pimentel v. Salanga, G.R. No. 27934, September 18, 1967; See also People v. Lopez, G.R. No. 1243, April 14, 1947, 44 O.G. 3213 (Sept., 1948), 78 Phil 286 (1947); U.S. v. Baluyut, 40 Phil. 385 (1919); Benusa v. Torres, 55 Phil. 737 (1931).

[50] Del Castillo v. Javellana, G.R. No. 16742, September 29, 1962.

[51] Luque v. Kayanan, supra, note 4.

[52] *Supra*, note 48.

was complainant in an administrative case against the former and the judge's ruling on his non-disqualification was upheld. In *Luque*, the complainant was not only counsel but also defendant and cross defendant. Further, and more important, no conduct of the judge showed arbitrariness or prejudice in *Pimentel* and whether or not petitioner's clients would get a fair trial was still speculative. Respondent's prejudice in *Luque* was concretely evident.

The determination of the question of disqualification lies in the first instance, within the judge's exclusive prerogative.[53] Under the Rules "No appeal of stay shall be allowed from or by reason of his decision in favor of his own competency until final judgment in the case."[54] The obvious reason is that the correctness of the judge's ruling may be raised on appeal. Generally, this is true in civil cases, though several cases in effect permit, ahead of the judgment on the merits,[55] resort to special civil actions of prohibition and *certiorari* before higher courts, on the issue that the judge committed a grave abuse of discretion amounting to lack or in excess of jurisdiction in refusing to disqualify himself. But the rule on the non-availability of appeal and stay of proceedings finds no application in criminal cases where the disqualification is asked by the prosecution or the offended party according to *Paredes v. Gopengco*.[56] Judge Paredes of the Manila City Court was sought to be disqualified from hearing a case of malicious mischief against Mayor Antonio Villegas for the reason that the latter's counsel was a law firm of which Quintin Paredes, his father, was senior partner. The motion was denied upon the fact that the law firm was not the counsel of record in the malicious mischief case. A writ of preliminary injunction issued by the Court of First Instance restrained Judge Paredes from taking cognizance of the case. On *certiorari* and prohibition to the Supreme Court, after an affirmance from the Court of Appeals, it was contended that the lower court violated the rule against a stay of a denial of a motion for disqualification. The Court held that the rule against appeal and stay of proceedings, is not applicable in a criminal case where the offended party or the prosecution seeks the disqualification of the judge, and the latter, deciding in favor of his competency proceeds to try the case, and acquits the accused. This should be evident, according to the Court, because in such an eventuality, the offended party and the prosecution would have no right to appeal in view of the rule against double jeopardy, and there is no plain, speedy and adequate remedy in the ordinary course of law, to contest the validity of the judge's ruling on the motion for disqualification. But if the accused seeks the disqualification, the general restriction against appeal or stay of the proceedings would apply,

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[53] See People v. Lopez, *supra*, note 47.
[54] RULES OF COURT, Rule 137, sec. 2.
[55] See Pimentel v. Salanga, *supra*, note 47; Talisay-Silay Milling Co. Inc. v. Teodoro, 91 Phil. 101 (1952); People v. Lopez, *supra*, note 47.
[56] G.R. No. 23710, September 30, 1969.

as it does in civil cases; for in the event of his conviction, he can raise the correctness of the judge's ruling on appeal from the decision on the merits. On the other hand, he would have no cause for complaint if he is acquitted.

Turning to the petitioners allegation that the law firm headed by the father of the judge was not counsel of record in the criminal case, the Court said that, while technically it is so, it would be in the best interest of justice if the judge should inhibit himself, considering that the law firm was counsel of the accused during the preliminary investigation of the fiscal's office but later withdrew after the case was assigned by raffle to Judge Paredes.