LEGAL AND JUDICIAL ETHICS

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LEGAL ETHICS

The field of legal ethics is bounded, as it were, by a four-fold relation. Both the law and practice have established the lawyer's relation to the courts, to his clients, to the bar and to the public. The norms bearing on these have their positive source in the Rules of Court, judicial decisions and the Canons of Professional Ethics. The Canons of Professional Ethics for lawyers in the Philippines were adopted by the Philippine Bar Association in 1917 and again in 1946; and these were derived from the Canons of the American Bar Association of 1908.[1] The Canons have been cited and applied by the Supreme Court in disciplinary cases of lawyers and constitute, to a large measure, the ethical guide to the conduct of the lawyer's professional affairs.

Duty to courts

A lawyer is an officer of the court and as such, a vital instrumentality in the administration of justice. As a votary of the law, it is his sworn duty, commanded by the Rules of Court[2] and the Canons of Professional Ethics[3] to uphold the dignity and authority of the courts. Conduct which promotes distrust in the administration of justice or undermines the people's confidence in the courts is a violation of this duty.

Disrespect towards courts, whether by word or deed, has been dealt with under either of two concepts. Although some cases do not appear to distinguish between the two, yet, because of their different purposes, it would seem necessary that they be kept separate. The first is through the exercise of the disciplinary power by the Supreme Court, and its object is to safeguard and preserve the ethics of the legal profession by removing or suspending a member whose misconduct has proved himself unfit to be entrusted with the responsibilities of a lawyer.[4] The other concept is through the court's (Supreme Court or inferior court) contempt power, the proceed-

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1 Malcolm, Legal and Judicial Ethics 8.

2 Rules of Court, Rule 138.

3 Canon 1, Canons of Professional Ethics.

4 *In re* Almacen, G.R. No. 27654, February 18, 1970, 31 SCRA 562 (1970).

ings for which is criminal in nature[5] but administered on the preservative, not vindictive principle.[6] Its purpose is to vindicate the court's authority and to safeguard the functions it exercises.

In *Surigao Mineral Reservation Board v. Cloribel*,[7] a lawyer was found guilty of contempt for the use of disrespectful language in his motions: (1) In a motion for reconsideration, he referred to the Supreme Court as a "civilized, democratic tribunal," but by innuendo suggested it was not; (2) in a motion to inhibit, he (a) characterized the Court's decision as "false, erroneous and illegal" in a presumptuous manner; (b) accused two justices for being interested in the decision of the case, without any basis in fact and asked the other members of the court to inhibit themselves because of favors or benefits received from any of the petitioners including the President; (c) warned the Court that loss of confidence for the Tribunal or a member of the Court should not be allowed to happen in our country" although "the process has already begun"; and (d) mentioned the Court's "unjudicial favoritism" for petitioners without any factual or legal basis. The Court overruled the plea that disrespectful language was necessary for the defense of his client since, a client's cause "does not permit a lawyer to cross the line between liberty and license." Stressing the primacy of the lawyer's duty to the courts, the Court pointed out that

> "Lawyers must always keep in perspective the thought that '[s]ince lawyers are administrators of justice, oath-bound servants of society, their first duty is not to their clients, as many suppose, but to the administration of justice; to this, their clients' success is wholly subordinate; and their conduct ought to and must be scrupulously observant of law and ethics.'"

More dramatic but unfortunately more vituperative was the criticism hurled at the Supreme Court in *In re Almacen*.[8] The respondent here filed a "Petition to Surrender Lawyer's Certificate of Title" in protest against what he alleged "a great injustice committed against his client by this Supreme Court", a tribunal "peopled by men who are calloused to our pleas for justice, who ignore without reasons their own applicable decisions and commit culpable violations of the Constitution with impunity." After asserting that "justice, as administered by the present members of the Supreme Court is not only blind, but also deaf and dumb," he vowed to argue his client's cause "in the people's forum," so that "the people may know of the

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[5] Benedicto v. Cañada, G.R. No. 20292, November 27, 1967, 21 SCRA 1066 (1967).

[6] Commissioner of Immigration v. Cloribel, G.R. No. 24139, August 31, 1967, 20 SCRA 1241; Lualhati v. Albert, G.R. No. 37430, August 22, 1932, 57 Phil. 86 (1932); Villavicencio v. Lukban, 39 Phil. 778 (1919); *In re* Quirino, 76 Phil. 630 (1946); People v. Rivera, 91 Phil. 354 (1952); Austria v. Masaquel, G.R. No. 22536, August 31, 1967, 20 SCRA 1247 (1967).

[7] G.R. No. 27072, January 9, 1970, 31 SCRA 1 (1970).

[8] *Supra*, note 4.

silent injustices committed by this Court," and that "whatever mistakes, wrongs and injustices that were committed must never be repeated." The petition ended with a prayer that the Clerk of Court be ordered to receive his certificate with the reservation that in the event he regains his faith and confidence in the Court, he may retrieve his title and assume the practice of his profession. The contents of this petition were disclosed to the press; and parts of which were published. Respondent's grievance arose from a Supreme Court's *minute resolution* which denied his petition for review of a Court of Appeals resolution. The Court of Appeals resolution denied his motion for reconsideration of its decision dismissing his appeal, on the ground that his motion for reconsideration did not contain a notice of time and place of hearing. Hence the period of appeal had lapsed and the appeal was not perfected.

The Supreme Court admitted that there had been criticisms against its practice of rejecting petitions by minute resolutions; and adverted to suggestions that the Court should state the facts and the law and give reasons for the denial. However, it noted that most petitions rejected by the Court were utterly frivolous or failed to withstand critical scrutiny; and by and large, it had been generous in giving due course to petitions for *certiorari*. The practice is necessary, reasoned the Court, for if every case were accepted or a full opinion written for every rejected petition, the Supreme Court would be unable to carry out effectively its constitutional burden, which should be limited to "only those cases which present questions whose resolutions will have immediate importance beyond the particular facts and parties involved." [9] Having acquitted itself of the criticism, the Court proceeded to evaluate respondent's unprecedented act.

First, the Court drew out respondent's motive, by stating that his negligence caused the forfeiture of the appeal, but that he shifted the consequences of his carelessness to the Supreme Court and made of it a "whipping boy" while assuming the posture of a martyr by offering to surrender his certificate. At the same time, respondent vilified the Court and inflicted his "exacerbating rancor" on its members.

Secondly, citing authorities, the Court recognized the right and the duty of a lawyer as citizen and officer of the Court, to expose the shortcomings and indiscretions of courts but nevertheless declared that a requisite condition of such criticism is that it should be *bona fide* and should not spill over the bounds of decency and propriety. Intemperate and unjust criticism, the Court declared, is a gross violation of the duty of respect to courts, a misconduct which subjects a lawyer to disciplinary action. "A lawyer's investiture into the legal profession," it continued, "places upon his shoul-

[9] Quoting Mr. Chief Justice Vinzon of the United States Supreme Court.

ders no burden more basic, more exacting and more imperative than that of respectful behavior toward the Court." At this juncture, the Court presented a formidable array of parallel foreign precedents establishing the doctrine that

> "Post-litigation utterances or publications, made by lawyers, critical of the courts and their judicial actuations, whether amounting to a crime or not, which transcend the permissible bounds of fair comment and legitimate criticism and thereby tend to bring them into disrepute or to subvert public confidence in their integrity and in the orderly administration of justice, constitute grave professional misconduct which may be visited with disbarment or other lesser appropriate disciplinary sanctions by the Supreme Court in the exercise of the prerogatives inherent in it as the duly constituted guardian of the morals and ethics of the legal fraternity."

Thirdly, the Court held that the rule invoked by respondent that the power of contempt may be exercised against scurrilous remarks or malicious innuendoes only during the pendency of a case and not after its conclusion has been reversed. Respondent could as much be liable for contempt for statements and actuations made after judgment in his client's appeal had attained finality, as if it had been perpetrated during the pendency of the appeal.

Lastly, considering the vicious language and scurrilious innuendoes in respondent's petition and later in his answer and oral argumentation, which served no other purpose but to gratify his spite, attract public attention to himself and brought the Court and its members into disrepute and destroyed public confidence in them to the detriment of the orderly administration of justice, the Court was driven to impose the penalty of indefinite suspension—a penalty to last until respondent had proven to the Court's satisfaction that he is once more fit to resume the practice of law.

A fiscal, in *Delgra v. Gonzales*,[10] who objected to a translation made by a court interpreter and pressed for its correction, even after his objection had been overruled was held in contempt by the trial judge and committed to prison. On *certiorari*, the Supreme Court found, after examining the transcript of the proceedings, that the fiscal, while deferring to the lower court's authority to rule on the question, sought permission to speak but the judge refused to allow him to speak fully. As contempt of court presupposes a contumacious attitude, a flouting or arrogant belligerence, a defiance of the court [11] and absent any statement in the transcript constituting an affront to the dignity of the court, the Supreme Court absolved the fiscal of misbehavior, particularly, that of obstructing and interrupting court pro-

[10] G.R. No. 24981, January 30, 1970, 31 SCRA 237 (1970).

[11] Matutina v. Buslon, G.R. No. 14637, August 24, 1960, 60 O.G. 2349 (April, 1964).

ceedings. It is true of course, that the proceedings were interrupted since the witness could not continue testifying because of the fiscal's insistence on a ruling. But the Court construed this actuation as within the fiscal's right, and not an undue imposition; for the inaccuracy that he tried to point out was material and substantial—it was productive of a succeeding misleading question. The Court likewise dismissed the judge's submission that the fiscal was defiant in his "offensive expressions" and "aggressive gestures" as generalities and conclusions of law.

The power of contempt being drastic and extraordinary [12] should be resorted to only when necessary in the interest of justice. Hence, behavior tainted with disrespect towards a judge engaged in the pursuit of a claim for transportation allowance is not a proper object of contempt whether direct or constructive. In *Buyco v. Zosa,*[13] the petitioners who were auditor, treasurer and assistant treasurer of Ozamiz City were adjudged in contempt for their non-approval of a district judge's claim for transportation allowance to which, under a resolution of the city council of Ozamiz City, the latter was allegedly entitled. From the judge's assessment of petitioners' conduct, attending the non-approval "was a shabby, disrespectful, unmitigated harassment and ridicule and exposure to public contempt he was subjected to by petitioners who made him go back and forth to Ozamiz City looking like a beggar and a mendicant." According to the Supreme Court, the processing of the vouchers for the judge's allowance was not officially connected with the administration of justice or the functions of his office, and therefore the petitioners were not under a strict obligation to render him the same degree of obeisance or submission as are due the court. If some measure of deference were lacking in their attitude, there was not enough ground for the judge to invoke his power of contempt, especially since the petitioners' objection was grounded in some administrative regulation. And the fact that the alleged offensive disallowance by the petitioners reached the judge (without their fault or intention) in the course of a trial of a criminal case thus resulting in the judge's embarassment and forcing him to cancel the proceedings was ascribed to the judge's own making. It is not, the Court concluded, the personal or private degrading of the judge that is contumacious, but the degrading of the administration of justice.

As officer of the court, a lawyer certifies, by virtue of his signature on the pleadings, that there is good ground to support them and that these were not interposed for delay. The conduct of counsel in *Orbe v. Inting*[14] and *Equitable Banking Corporation v. Liwanag* [15] in making a frivolous appeal to delay the prompt resolution of his case and to prolong litigation

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[12] Gamboa v. Teodoro, G.R. No. 4893, May 13, 1952, 91 Phil. 270 (1952).
[13] G.R. No. 25800, August 31, 1970, 34 SCRA 710 (1970).
[14] G.R. No. 28998, August 31, 1970, 34 SCRA 579 (1970).
[15] G.R. No. 28335, March 30, 1970, 31 SCRA 293 (1970).

was condemned by the Court; and this entailed the sentence on counsel to pay treble costs, following several precedents.[16]

ATTORNEY-CLIENT RELATIONS

The duties which a lawyer owes to his client may be reduced to two main classes. He is bound, in the first place, to exercise the utmost care, skill and knowledge in the maintenance of his client's cause. The Canons of Professional Ethics provide that he owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied."[17] But while the standards set by these norms seem rather high and out of the ordinary, those imposed by the courts have been more modest. The lawyer, according to authorities, has the duty of exercising only that knowledge, skill and ability ordinarily possessed and exercised by members of his profession.[18] This implies that he should possess a *reasonable* knowledge of well-settled rules of law as will enable him to perform his duties, and that he should exercise *reasonable* skill and diligence in attending to the cause entrusted to him.[19]

Secondly, since the essence of the relation is fiduciary, he is bound, in all his dealings with his client, to maintain the utmost good faith, honesty, integrity, fairness and fidelity. Again this duty of fidelity is not absolute. It must be performed within the bounds of the law: it is not permissible to use illegal or dishonest means for the maintenance of the client's cause. Thus, the lawyer is enjoined by the Rules of Court to employ only honorable and honest means in the maintenance of his client's cause.[20] Likewise, the Canons stipulate that he should raise only such defense as he believes to be honestly debatable under the law.[21]

Duty of fidelity

In *In re Palanca,*[22] the relations between the lawyer and the client reached a high level of mutual trust that at a certain period, simultaneously with their professional relation, the client leased to the lawyer a 1,328 hectare agricultural land for ten years. A year after this contract, the

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[16] Uypuangco v. Equitable Banking Corp., G.R. No. 26679, April 30, 1969, 27 SCRA 1272 (1969); J. P. Juan and Sons, Inc. v. Lianga Industries, Inc., G.R. No. 25137, July 28, 1969, 28 SCRA 807 (1969); Pajares v. Abad Santos, G.R. No. 29543, November 29, 1969, 30 SCRA 748, (1969).

[17] Sec. 15

[18] McCullough v. Sullivan, 102 N. J. 381, 132 A. 102, 43 A.L.R. 928 (1926).

[19] *In re* Woods, 158 Tenn. 383, 13 S.W. 2d 800, 62 A.L.R. 904 (1929).

[20] Rule 128, sec. 20.

[21] Canon 15.

[22] G.R. Adm. Case No. 927, September 28, 1970, 35 SCRA 75 (1970).

client brought an action for rescission on the ground of alleged default in the payment of rentals. Thereafter, he charged his lawyer of gross misconduct consisting of several counts. The first count related to a *estafa* case filed by another against the client, in regard to which the client instructed his lawyer, the respondent herein, to offer ₱10,000 payable in installments, in settlement for the dismissal of the case. After an initial rejection, the lawyer allegedly informed the client of the success in the negotiations by leaving ₱5,000 with the court in which the action was pending. Subsequently however, a warrant for the arrest of the client was issued in the same *estafa* case, allegedly because the lawyer had not deposited the sum stipulated. Upon the evidence, the Court found the charge devoid of merit, since the lawyer never gave the assurance of settlement but merely reported a continuing attempt to get a fair bargain. Moreover, if a warrant of arrest was issued, no blame could be imputed to the lawyer since his services were implicitly terminated when the client sued him before that time. Although this suit was for rescission of the lease contract between the lawyer and the client, the Court held that this conflict of interest became incompatible with the mutual trust and confidence essential to every lawyer-client relation.

The second and third counts were based on a statement of disbursements submitted by the lawyer to the client. It was alleged that the lawyer fraudulently charged ₱5,000 (supposed to be deposited with the Dumaguete City Court) to his rental account with the client and falsely represented having paid ₱866.50 to another. The Court took the view that this statement was but a memorandum of expenses which the lawyer considered as chargeable to the client. Being tentative, it was subject to the latter's approval. In relation to their lease contract, it is but one aspect of the lawyer's contractual obligation, the breach of which is equivalent only to a contractual wrong and did not affect his office as lawyer.

In the final count, a confidential list of creditors which the client was supposed to have supplied the lawyer for carrying out the terms of payment in the lease contract was allegedly disclosed by the lawyer to parties whose interests were adverse to him (the client). This indicated, in the Court's mind, that the list was delivered not because of the professional relation then existing between them but because of their existing lease agreement; and if there is any violation of confidence, it would partake more of a private wrong than of a breach of fidelity. Further, the client failed to controvert the lawyer's claim that there was no such a confidential list; and since it formed part of the complaint in an action for rescission, it had already been transformed into a public record. Being satisfied that there was no misconduct in office by the lawyer, the Court forthwith dismissed the case.

In *In re Arafiles*,[23] respondent sent a letter to his clients deliberately misrepresenting to them that he had been working on their case in the Bureau of Immigration; that there was too much red tape in that office and that the people at the Bureau were demanding money from him for the release of their papers. He promised action on the papers if his clients would send him ₱1,000 or even ₱800 in the meantime. Upon being required by the Supreme Court to answer the charge against him, respondent readily pleaded guilty, and begged for leniency. This admission and plea for leniency, coupled with a promise to reform, induced the Supreme Court to impose the relatively light penalty of suspension from the practice of law for three months.

Duty of diligence

For entering an appearance after a case had already become final, the Supreme Court in *In re Soriano*[24] found a lawyer not only "grossly remiss and inexcusably precipitate" but also wanting in the reasonable care which every member of the Bar must exercise. In this case, Atty. Soriano entered his appearance in *PHHC v. Mencias*,[25] as "chief counsel of record" for respondent Tiburcio, one year and eight months after final judgment had been rendered in the case. Explaining his behavior, he alleged that in the first week of October, 1969, respondent Tiburcio, on his own behalf and of the other respondents engaged his services in the *PHHC* case and in *Varsity Hills v. Mariano*.[26] Tiburcio supposedly informed him that the *Varsity Hills* case was set for hearing by the Supreme Court on October 27, 1969, while the *PHHC* case was still pending and its date of hearing was yet undetermined. He also allegedly relied on the assurance of an acquaintance, Atty. Dalangpan that these cases were pending before the Supreme Court. The Court refused to lend credence to this explanation but instead gave stress to his failure to verify the status of the case, which duty was dictated by the circumstances, in keeping with the reasonable vigilance expected of the members of the legal profession. According to the Court, the lawyer's act of filing an appearance besides being an unmitigated absurdity in itself and an unwarranted annoyance to the Court is a sore deviation from normal judicial processes. Moreover, it detracted from the faith which should be accorded final judgments of courts of justices and generated in the mind of the public an illusory belief that something more can be done toward overturning a final judgment.

Failure to submit brief by counsel *de parte* within the reglementary period was the occasion of a reprimand in *People v. Cawili*.[27] The lawyer

[23] G.R. Adm. Case No. 960, September 24, 1970, 35 SCRA 61 (1970).
[24] G.R. No. 24114, June 30, 1970, 33 SCRA 801 (1970).
[25] G.R. No. 24114.
[26] G.R. No. 30546.
[27] G.R. No. 30543, August 31, 1970, 34 SCRA 728 (1970).

in this case sought to minimize his non-feasance by alleging that his client was in a state of indigence, resulting in the non-payment of his services and his assumption of part of the expenses entailed in the defense e.g., printing of the brief. He also advanced the cavalier opinion that a mere review of the case will readily show that the lower court's decision is contrary to law and the evidence. This explanation did not warrant full exculpation, according to the Court's measure, since the lawyer could have sought permission to file a mimeographed brief, or at the very least informed the Court of his difficulties. Sympathizing on the other hand in his travails, the Supreme Court merely reprimanded respondent and admonished him to be more careful in the fulfillment of his obligations to his clients and to the Court.

The lawyer owes to his client the duty of adopting a system whereby he can be sure of receiving promptly all judicial notices sent to him.[28] Failure to do so, is inexcusable negligence, and may cause an appeal to be dismissed, as happened in *Babala v. Court of Appeals*.[29] Counsel in this case failed to take his registered letter from the post office despite two notices sent to him, on the pretext he did not employ a clerk in his office, being unable to pay one, since he was a "small practitioner." This excuse was found by the Court unacceptable and thus the dismissal of his appeal by the Court of Appeals was affirmed.

The well-established rule that notice to counsel of record is notice to his client is reiterated in *de Guzman, Jr. v. Santos*.[30] An appeal was taken by the plaintiff in this case on the theory that the judgment in Civil Case No. 6512 was void for lack of notice to him. This contention was rejected by the Supreme Court upon proof that notice was sent by the clerk of court and served on his counsel of record. In fact, said the Supreme Court, service of notice would have been defective had it been made on the client instead of to the lawyer.[31]

In *Fojas v. Navarro*[32] a copy of the Court of Appeal's decision which was posted by registered mail and addressed to respondent's counsel of record was not called for by the latter despite three notices. Service was effected, held the Court, at the expiration of the fifth day after the postmaster's first notice and the decision became final 15 days thereafter, in accordance with section 10 of Rule 51 of the Rules of Court. A subsequent filing of appearance in the appellate court by new counsel retained

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[28] Enriquez v. Bautista, 79 Phil. 22 (1947); Baring v. Cabahug, G.R. No. 23229, July 20, 1967, 20 SCRA 696 (1967); Colcol v. Philippine Bank of Commerce, G.R. No. 23117, November 17, 1967, 21 SCRA 890 (1967).

[29] G.R. No. 23065, February 16, 1970, 31 SCRA 397 (1970).

[30] G.R. No. 22636, June 11, 1970, 33 SCRA 464 (1970).

[31] Citing Elli v. Ditan, G.R. No. 17444, June 30, 1962, and Palad v. Cui, 28 Phil. 44 (1914).

[32] G.R. No. 26365, April 30, 1970, 32 SCRA 476 (1970).

by respondent will not serve as a valid substitution of attorney, unless the procedure prescribed by Rule 138, Section 26 is followed, hence the attorney on record prior to the filing of the appearance of the new counsel should be regarded as the lawyer entitled to be notified of all notices. The substitution of attorneys in order to be effective must observe the following requisites:[33] (1) written application for substitution (2) written consent of the client and (3) written consent of the attorney to be substituted, or at least notice of motion for substitution served on him. Thus the mere unexplained disappearance from the scene and the total silence of the prior counsel of record as occurred in this case did not serve to set aside the service on respondent nor allow him to seek reconsideration (thru new counsel) of the decision, since judgment had already become final.

Compensation

A lawyer is entitled to reasonable compensation for services rendered to his client. Any attempt on the latter's part of escape his just obligation will not be sanctioned by the courts.[34] But it is not the case that the amount of professional fees are left entirely to the lawyer's discretion; rather, as officer of the Court, the latter, upon taking of his oath, submits to the power of the court to regulate his right to charge professional fees.[35] Where the amount stipulated is unconscionable the court will ignore the stipulation and allow only the recovery of the reasonable value of his services.[36] In *Meralco Workers Union v. Gaerlan*[37] respondent, a member of the bar and a clerk-typist in the Engineering Department of Meralco, signed and filed all the pleadings and appeared for the union in all the hearings and other proceedings in Case No. 7-IPA, a case involving the exercise of compulsory arbitration power by the Court of Industrial Relations (CIR), in which the Industrial Court approved a Collective Bargaining Agreement between the Company and the Union. Seven years later, respondent filed in Case No. 731-ULP a motion for execution and notice of attorney's lien. The latter case was an unfair labor practice case by the Union against the Company for the reinstatement of a dismissed employee, and for an order requiring the Company to bargain collectively in good faith with the Union by implementing the Collective Bargaining Agreement referred to in Case No. 7-IPA. This charge was dismissed by the Court of Industrial Relations, which court, *inter alia* enjoined the parties to the

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[33] U.S. v. Borromeo, 20 Phil. 189 (1911); Ramos v. Potenciano, G.R. No. 19436, November 29, 1963.

[34] Cf. Justice Fernando in Albano v. Coloma, G.R. Adm. Case No. 528, October 11, 1967.

[35] Cruz v. Court of Industrial Relations, G.R. No. 18277, August 31, 1963, 62 O.G. 6439 (Sept., 1966).

[36] Rule 138, sec. 24; Bachrach v. Golingco, 29 Phil. 138 (1919); Francisco v. Matias, G.R. No. 16349, January 31, 1964.

[37] G.R. No. 24505, April 30, 1970, 32 SCRA 419 (1970).

Agreement to comply with its provisions. Petitioner claimed that the CIR had no authority to resolve respondent's claim for attorney's fees, which should be the subject of an ordinary civil action. Overruling this contention, the Supreme Court held that the claim for attorney's fees cannot be entertained in Case No. 731-ULP, inasmuch as the CIR had no jurisdiction to enforce the collective bargaining agreement; but it may be determined in Case No. 7-IPA which was within the jurisdiction of that court, and such jurisdiction covers all incidental matters connected with the main issue, such as the professional fees due to the lawyer. There was nothing in the record sufficient to overcome the Union's contention that there had been no formal hearing on the lawyer's motion and that it had not been given sufficient opportunity to present evidence. Considering that the attorney's fees claim may reach ₱400,000 — an amount which may not be justified by the nature of the professional services rendered, the Supreme Court reversed the CIR's order granting the motion without prejudice to the filing of the claim in Case No. 7-IPA, where it should be resolved after a full hearing.

In a concurring opinion, Justice Teehankee noted that in many cases regarding attorney's fees, the Industrial Court had summarily granted the attorney's claim for stipulated contingent fees ranging from 20% to 30% of the total monetary benefits accruing to the workers, without considering its reasonableness. He enjoined the Industrial Court therefore, in conducting the hearing on the attorney's fees to heed the Supreme Court's admonition that the counsel fees should be fixed on a *quantum meruit* basis whenever the fees stipulated appear excessive, unconscionable or unreasonable. On *quantum meruit,* Rule 138, Section 24 provides three criteria: (1) importance of subject matter of the controversy; (2) extent of services rendered (3) professional standing of attorney. These factors have been amplified in *Delgado v. De la Rama.*[38] Additional factors include, the novelty and difficulty of the questions involved, the customary charges of the bar for

[38] The Court stated that: "The circumstances to be considered in determining the compensation of an attorney may be found in the textbooks, and are: the amount and character of the services rendered; the labor, time, and trouble involved; the nature and importance of the litigation or business in which the services were rendered; the responsibility imposed; the amount of money or the value of the property affected by the controversy, or involved in the employment; the skill and experience called for in the performance of the services; the professional character and social standing of the attorney; the results secured; and whether or not the fee is absolute or contingent, it being a recognized rule that an attorney may properly charge a much larger fee when it is to be contingent than when it is not. The financial ability of the defendant may also be considered by the jury, not to enhance the amount above a reasonable compensation, but to determine whether or not he is able to pay a fair and just compensation for the services rendered, or as an incident in ascertaining the importance and gravity of the interests involved in the litigation. But what is a reasonable fee must in a large measure depend upon the facts of each particular case, and be determined like any other fact in issue in a judicial proceeding. While opinions are receivable and entitled to due weight, the courts are also well qualified to form an independent judgment on such questions and it is their duty to do so. (6 C.J., pp. 750-752.)"

similar services and the character of the employment, whether casual or for an established client. He further pointed out that in labor cases, although hundreds or thousands of workers may be involved in the controversy, thus giving rise to the large amounts collectible, the case is generally the same, and does not cause the exertion of special and additional services and efforts. In proportion to the number of workers involved, if the litigation is supported by workers union dues, it would thus appear that a 20% or 30% fee from the resulting monetary benefit would be unreasonable.

Retaining lien

A protection, hammered by tradition, which the Rules of Court affords a lawyer who has not been paid his compensation is the so-called retaining lien. Under section 37 of Rule 138, an attorney has a "lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof." The retaining lien of counsel in *Matute v. Matute*[39] was upheld over a probate court order requiring the surrender of 17 certificates of title to the clerk of court for safe keeping. These titles were possessed by the lawyer in the course of his professional relations with the client and held by him in the exercise of his retaining lien for services rendered. Adopting the doctrine enunciated in several cases,[40] the Court said that this right is incontestible, and the attorney cannot be compelled to surrender the muniments of title without prior proof that his fees had been duly satisfied. The courts, in the exercise of their supervisory authority over attorneys as officers of the court, are bound to respect and preserve the attorney's lien as a necessary means to preserve the decorum and respectability of the profession. Should it be indispensable for a court to gain possession of the documents, their surrender can only be compelled if the client or the claimant is first required to give adequate security for the lawyer's compensation.[41] The probate court was therefore in error when it compelled surrender without providing for security for the payment of the lawyer's fees. A side question also arose because of the lawyer's claim that he "is from time to time also in possession of the 17 titles belonging to the estate." The rule is that the retaining lien is dependent on possession and does not attach to anything not in the attorney's hands. It exists only so long as the attorney retains possession of the subject matter and expires when the possession ends.[42] Disposing of the question, the Court relied on the

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[39] G.R. No. 27832, May 28, 1970, 33 SCRA 35 (1970).

[40] Rustia v. Abeto, 72 Phil. 133 (1941); Rotea v. Delupio, 67 Phil. 330 (1939); Daluz v. Fontanosa, G.R. Adm. Case No. 403, September 30, 1963, 9 SCRA 14 (1963).

[41] Rustia v. Abeto, *supra*, note 40.

[42] Vda. de Caiña v. Victoriano, 105 Phil. 194 (1959).

finding of the probate court that the lawyer had admitted that he was in possession of the titles, and that the stated possession "from time to time" of the doclments should be construed to mean that the attorney came into its possession at different times, a circumstance that does not impair his right of retention until the payment of his professional fees.

Suppose, however, the certificates of title belonging to a client, come to the possession of his lawyer, but subsequently, by virtue of a compromise agreement judicially approved, the properties covered by these are conveyed to other persons, is the retaining lien lost? It is not, under the rule laid down in *Ampil v. Agrava.*[43] The position of the lawyer in such a situation is similar to that of a creditor who holds an attachment lien over the properties, and the client-debtor must discharge the lien before he can dispose the properties of a third person free of such lien. A different rule obtains if the title to the property is the very subject in dispute in the case, and the court determines that the client's adversary is rightfully entitled to it. In this latter case, the title to the property could not be said to be the properties of the client, over which the lawyer may claim a retaining lien. The Supreme Court likewise underscored the nature of a retaining lien as a passive right, which cannot be actively enforced, as distinguished from a charging lien, which is a specific lien for compensation on the funds or judgment a lawyer has reovered for his client in a particular case. The charging lien covers only the services rendered by a lawyer in the action in which the judgment was obtained and takes effect, under the Rules, after the lawyer has caused a statement of his claim to be entered on the records of the particular action with written notice thereof to his client and to the adverse party. It grants the lawyer the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his fees and disbursements. On the other hand, the retaining lien is a general lien for the balance of the account between the attorney and his client and applies to the documents and funds of the client which may come into the attorney's possession in the course of his employment, regardless of the outcome, favorable or adverse, of the cases he may have handled for the client. Summarizing the attitude of courts towards these two liens, the Court said:

> "Called upon at all times to exert utmost zeal with unstinted fidelity in upholding his client's cause and subject to appropriate disciplinary action if he should fail to live up to such exacting standard, the attorney in return is given the assurance through his liens — retaining and charging — that collection of his lawful fees and disbursements is not rendered difficult, if not altogether thwarted, by an unappreciative client. He is thereby given an effective hold on his client to assure payment of his services in keeping with his dignity as an officer of the Court."

[43] G.R. No. 27394, July 31, 1970, 34 SCRA 370 (1970).

DISBARMENT AND SUSPENSION

Disbarment, being the equivalent of the death penalty on a lawyer's professional life, or suspension, a modified form thereof, is not to be applied without convincing proof of the lawyer's misconduct. Respondent in *Toquib v. Tomol, Jr.*[44] was previously suspended by the Supreme Court from the practice of law for one year for gross negligence. By complainant's testimony he failed to notify his client (complainant's father) of the taking of his deposition, and as a result, an adverse judgment was rendered against him. Subsequently, respondent also failed to notify the former of the lower court's decision, which led to the loss of his right to appeal. Moving for reconsideration of this disciplinary action taken against him, respondent stated that after his motion to have the deposition of his client taken was granted by the lower court, he notified complainant (his client's son) who was present in court, of the date set; and that he appeared at the appointed time before the Justice of the Peace of Hinunangan, Leyte, the court where the deposition was to be taken, which could be reached only after a long trip by land and sea. As this trip would have been completely senseless, without the deponent's presence, the Supreme Court indulged in the presumption that respondent had duly notified his client, through the latter's son, (the complainant) of the date and place for the taking of the deposition, and therefore had reasonable grounds to expect that the defendant would be present. The question of whether notice of the judgment was duly served on respondent was also not free from doubt. From the evidence, the decision was received by the postmaster of Hinunangan who was not connected with respondent's law office; and respondent who was then the town mayor, denied that he authorized the former to receive registered letters addressed to him. Further, the postmaster testified that he delivered the letter to the municipal secretary and there was no evidence that the latter thereafter delivered the decision to the respondent. Considering that punishment by disbarment or suspension will deeply affect a lawyer's professional life, the Court ruled that neither should be imposed unless a case against the respondent is free from doubt, not only as to the act charged but also as to his motive. Here, the question of whether or not respondent actually received the decision is debatable, and as far as the record disclosed, he had no motive to maliciously refrain from advising his client of the decision and to take steps to protect his client's interest. Nevertheless, respondent was found guilty of negligence in the performance of his duty, for his over-all conduct. He was thus reprimanded, with the warning that any similar misconduct will be punished more drastically.

In the same manner, suspension or disbarment was not imposed in *Samonte v. Rodrigo, Jr.*[45] where the respondent notarized a will, the acknowl-

[44] G.R. Adm. Case No. 554, March 25, 1970, 32 SCRA 157 (1970).
[45] G.R. Adm. Case No. 930, December 17, 1970.

edgment clause of which recited that the testator exhibited his residence certificate when in truth he did not, in the light of the fact that respondent acted in good faith, and readily admitted the truth. An admonition was deemed by the Court sufficient if only to remind respondent and other notaries public of the delicate nature of their sworn duties.

JUDICIAL ETHICS

Judicial norm of conduct

The Canons of Judicial Ethics require that a judge's official conduct should be free from impropriety, and his personal behavior, not only on the bench but also in every day life, should be beyond reproach.[46] Conduct therefore, which exhibits gross disrespect to the Supreme Court is subject to disciplinary action.

In *Barrera v. Barrera*,[47] the Supreme Court was presented with a unique case of a judge who accused the Court of delegating to its Clerk a power which under the Rules of Court pertained to the Chief Justice. This was done in the context of his awareness of a decision[48] of the Supreme Court on the point under controversy which he refused to apply on the ground that it was obsolete and no longer authoritative. The respondent judge, applying literally the provisions of the Rules of Court[49] dismissed a case, which was then pending in the branch of the court at the time he assumed office, for 14 months. He justified the dismissal on the theory that after the lapse of 3 months from the first day of trial on the merits, he lost control of the case, the period being beyond the limit imposed by the Rules and this, even in the face of his knowledge of a Supreme Court decision that the provision is directory not mandatory. It was his submission that under Section 22, not even the Chief Justice could legally authorize the judge to continue hearing the case, in virtue of the rule that in order for a period to be extended, the petition for extension should be filed before its expiration. Complaining that the Clerk of the Supreme Court, upon petition of counsel of plaintiff, had been extending to him the power to continue trying the case, he raised the question whether "the phrase 'by authority of the Chief Justice' has given enough legal power and authority to the said employee of the Supreme Court to in turn give power and authority to the undersigned trial judge to

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[46] Canons of Judicial Ethics, Canon 3.

[47] G.R. No. 31589, July 31, 1970, 34 SCRA 98 (1970).

[48] Barrueco v. Abeto, 71 Phil. 7 (1940). This case interpreted Rule 22, sec. 3 (formerly Rule 31, sec. 4) as mandatory rather than directory.

[49] Rule 22, sec. 3 provides:

> "SEC. 3. *Adjournment and postponements.* — A court may adjourn a trial from day to day, and to any stated time, as the expeditious and convenient transaction of business may require, but shall have no power to adjourn a trial for a longer period than one month for each adjournment, nor more than three months in all, except when authorized in writing by the Chief Justice of the Supreme Court."

continue trying the case even if it had already been dismissed." On being asked to explain why he should not be cited for contempt, respondent judge expressed his lack of knowledge of the offended party in the proceedings. If it was the entire Court, his argument went, then he was free from responsibility since he did not disobey any order of the Court; if the Chief Justice, he was equally blameless since he was only expressing his honest opinion; and if the clerk of court, he could not be held in contempt for the latter's erroneous communication. With a note of defiance, respondent ended by quoting Dolores Ibarruri's words: "Better to die on one's feet than to live on one's knees." While the Court made clear that disciplinary action was taken against the judge not because of the thoughts or opinion expressed by him nor of the manner in which he gave expression to his thoughts, it made capital of the recklessness with which he hurled the baseless allegation that the clerk of the Supreme Court was permitted to exercise an authority which belonged to the Chief Justice. Justice Fernando, speaking for the Court, said:

> "He did speak with all the valor of ignorance. Nor did he retreat from such an indefensible stand in the face of his being informed that what the Clerk did was solely in accordance with what was previously decided by this Court, which certainly will not tolerate, anybody else, much less a subordinate, to speak and act for itself. This gross disrespect shown to this Court has no justification. The misdeed of respondent judge is compounded by such an accusation apparently arising from his adamantine conviction that a doctrine of this Court that fails to meet his approval need not be applied. No inferior court judge, to repeat, can be permitted to arrogate unto himself such a prerogative at war with everything that the rule of law stands for."

In *Reyes v. Arca*,[50] a judge refused to enforce a final decision of the Supreme Court, first by denying a motion to cite the losing party for contempt, for failure to make the deposit of rentals pursuant to the judgment and secondly, by declining to issue a writ of execution to enforce the decision. Such repeated refusal was held contumacious, and the Court, adopting the observation it made in *Shioji v. Harvey* said:[51]

> "If each and every Court of First Instance could enjoy the privilege of overruling decisions of the Supreme Court, there would be no end to litigation, and judicial chaos would result. A becoming modesty of inferior courts demands a conscious realization of the position that they occupy in the interrelation and operation of the integrated judicial system of the nation."

The retirement, however of the judge during the pendency of the action, prevented the Supreme Court from calling him to account.

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[50] G.R. No. 28234, September 30, 1970, 35 SCRA 247 (1970).
[51] 43 Phil. 333, 337 (1922).

Dismissal of complaint

Under the Judiciary Act, a judge of Court of First Instance may be removed for serious misconduct and inefficiency.[52] To convict a judge for serious misconduct, it must be shown that the acts complained of were corrupt or inspired by an intention to violate the law or were in persistent disregard of well-known legal rules.[53]

Azucena v. Muñoz [54] concerned a judge who was accused of (1) unlawful disposal of property in *custodia legis,* (2) unlawful refusal to return the property to its rightful owner, (3) unlawful defiance of a final decision of the Court of Appeals, and (4) unlawful infliction of damages on complainant. The charges, except the third, revolved on the issue of whether the judge acted illegally in having a jeep seized by issuing a search warrant and denying complainant's motion for the return of the jeep. This act was held valid by the Court of Appeals, on a petition for *certiorari* filed by complainant, for the reason that the warrant of seizure was issued on the basis of an affidavit that the jeep was stolen; and the latter was the subject of a criminal complaint for theft in the Office of the Provincial Fiscal. The order of the judge authorizing the return of the jeep to its supposed owner was likewise held valid. With respect to the charge of unlawful refusal to return the property to its rightful owner after the criminal case was dismissed by the fiscal, the judge was not held guilty because of the rule that the question of ownership is not to be determined on a criminal process but in a civil action, and this, according to the investigator, might have been in the mind of the judge when he denied the motion to return the jeep to the complainant without prejudice to the civil action in the proper court. That the judge deliberately ignored a final order ordering the latter to return the jeep to the complainant within 15 days from entry of final judgment of the Court of Appeals, turned out to be predicated on an erroneous impression of complainant. The decision was received by the branch clerk of court who merely attached it to the records without informing the respondent judge about it. But when complainant's counsel wrote to the judge about the decision, the latter issued an order requiring the delivery of the jeep to complainant; and after being informed that the possessor of the jeep had died, issued another order directed to the heirs of the deceased to release the jeep. Hence, it could not be said that he willfully defied the order of the Court of Appeals. In view of these findings, the Court accepted the investigator's recommendation that the Judge be absolved from all the charges.

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[52] Sec. 67.
[53] *In re* Impeachment of Horrilleno, 43 Phil. 212 (1922).
[54] G.R. Adm. Case No .130-J, June 30, 1970, 33 SCRA 722 (1970).

A judge cannot also be disciplined if the charges against him are not proved by satisfactory evidence. In *Espinas v. Quicho*,[55] the Supreme Court dismissed the complaint of a litigant in a land registration case who alleged that he lost the case because he had not complied "with a request of the judge"; that it took the judge more than 90 days to decide the case; that he received his pay despite pending cases undecided or untouched even after the expiration of 90 days; that there are 'common rumors' that the judge fraternizes with lawyers who have pending cases in his court and even goes with them to nightspots and that these lawyers have been favored in respondent's decisions. Answering the complaint, the judge pleaded inadequacy and lack of personnel, and denied the charges of fraternization and other misbehavior. The Court ordered the dismissal of the case, considering that the charges were filed 3 years after the rendition of the judgment in the land registration case and that the complainant failed to introduce evidence in support of his allegations regarding the judge's behavior. This was however without prejudice to the action in another administrative case relating to the collection of salaries by the judge notwithstanding the existence of several cases pending decision for over 90 days.

Likewise, in *del Castillo v. Climaco*[56] the complaint was dismissed, as recommended by the investigator, where the charges were not substantiated by evidence. On the charge that respondent had intentionally delayed hearing a case for partition because the lawyer for the defendants, who was himself one of them, was a friend of the former, the investigator found absolutely no proof which showed in what way respondent delayed the case, but that the judge and the lawyer simply were members of the Rotary Club of Bacolod. On the second charge, that he compelled plaintiffs to mark their documentary evidence at once, and to indicate the pages of the record where the documents were found, instead of following the usual procedure, and leaving the court, and continuing to conduct the proceeding by telephone, respondent admitted that he abruptly adjourned the trial because counsel for the plaintiff had indicated that he had about twenty exhibits to be marked and offered as exhibit. But very little progress was made, as the records were voluminous, and so plaintiff's counsel was directed to make use of the remaining time with the marking of the exhibits. There was nothing wrong with this procedure, according to the investigator, and at any rate respondent adjourned the hearing at 3:25 p.m. Regarding the charge that respondent tried to coerce plaintiff to enter into a compromise with defendants, knowing that there was no prospect for it, the respondent admitted that since the parties to the case were his close relatives, he exerted efforts to achieve a compromise. This actuation was held not improper since the law[57] expressly directs that the litigants be advised to

[55] G.R. Adm. Case No. L-165-J, August 31, 1970, 34 SCRA 644 (1970).
[56] G.R. Adm. Case No. 141-J, August 31, 1970, 34 SCRA 507 (1970).
[57] Civil Code, art. 222.

compromise their differences especially if they are members of the same family.

Disqualification of judges

The only grounds for disqualification of judges are those enumerated in Rule 137,[58] so that an indirect imputation of partiality or bias, being not one of the grounds enumerated will not serve to disqualify a judge, according to *Velez v. Court of Appeals*.[59] Neither would a justice of the Court of Appeals be disqualified from hearing a criminal case where his son was employed as counsel for one of the accused (who was later discharged as a state witness) in the preliminary investigation of the case, and a first cousin of the wife appeared as counsel for the same accused, although the latter was later acquitted, as held in *Pulido v. Court of Appeals*.[60] This is so, because all the intervention and interest of the attorneys ceased when their client was discharged and it became immaterial to them or to the Justice whether or not the testimony of the state witness would be believed by the trial court. Such appearance could not induce bias in the Justice who voted on the affirmance of the conviction of the remaining accused on appeal. The *Pulido* case also held that a justice is not disqualified from sitting in a criminal case although he sat as chief of the Legal Staff of the Office of the President in the administrative investigation of the accused for his peculation, since his opinion is irrelevant to the criminal case, which was prosecuted by the fiscal's office. His opinion would be at most advisory to the President and following the rule laid down in the Emergency Powers cases, such advisory opinion constitutes no ground for judicial disqualification.[61]

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[58] Rules of Court; People v. Lopez, 78 Phil. 286 (1947) Section 1, Rule 137 provides:

> "Section 1. *Disqualification of judges.* — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interest as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
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> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."

[59] G.R. No. 24703, July 31, 1970, 34 SCRA 109 (1970).

[60] G.R. No. 28217, July 31, 1970, 34 SCRA 230 (1970).

[61] Rodriguez v. Treasurer, G.R. No. 3054, September 16, 1949, 45 O.G. 4457 (1949).