

## LEGAL AND JUDICIAL ETHICS

CARMELO V. SISON\*

The year under review was a lean year for legal and judicial ethics. Compared with other branches of the law, there was a dearth, both in number and variety, of adjudicated cases. Despite this, the cases amply demonstrated the unswerving resolution of the Supreme Court to exact from the members of the bar the highest standards of professional responsibility. The same observation may be made, *mutatis mutandis*, on cases in judicial ethics with respect to judges. The Court was unsparing in its admonitions and reprimands, even in instances where these were not absolutely necessary.

A most promising development for both the members of the bench and the bar in 1972 was the imminent integration of the Philippine Bar. On December 1, 1972, the Commission on Bar Integration submitted its Report to the Supreme Court,<sup>1</sup> earnestly recommending that the Court ordain the integration of the Philippine Bar as soon as possible through the adoption and promulgation of an appropriate Court Rule. Embodied in the Report were arguments on the constitutionality of Bar Integration, factual data on its practicability and necessity, the views of the rank and file of the Philippine lawyer population, as well as a proposed integration court rule, which was presented in a National Bar plebiscite. As explained by the Commission, integration of the Philippine Bar means the official national unification of the entire lawyer population of the Philippines. Membership and financial support of every attorney are made conditions *sine qua non* for the practice of law and the retention of his name in the Roll of Attorneys in the Supreme Court. Its fundamental purposes, according to the proposed rule<sup>2</sup> are: to elevate the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively.

Thus, it will make it possible according to the Commission, for the legal profession to: (1) render more effective assistance in maintaining the Rule of Law; (2) protect lawyers and litigants against the abuses of tyrannical judges and prosecuting officers; (3) discharge, fully and properly, its responsibility in the disciplining and/or removal of incompetent and unworthy judges and prosecuting officers; (4) shield the judiciary, which

---

\* Assistant Professor, College of Law, University of the Philippines.

<sup>1</sup> Dated November 30, 1972.

<sup>2</sup> Adopted January 16, 1973 by the Supreme Court as Rule 139-A.

traditionally cannot defend itself except within its own forum, from the assaults that politics and self-interest may level at it, and assist it to maintain its integrity, impartiality and independence; (5) have an effective voice in the selection of judges and prosecuting officers; (6) prevent the unauthorized practice of law, and break up any monopoly of local practice maintained through influence or position; (7) establish welfare funds for families of disabled and deceased lawyers; (8) provide placement services, and establish legal aid offices and set up lawyer reference services throughout the country so that the poor may not lack competent legal services; distribute educational informational materials that are difficult to obtain in many of our provinces; (10) devise and maintain a program of continuing legal education for practising attorneys in order to elevate the standards of the profession throughout the country; (11) enforce rigid ethical standards, and promulgate minimum fees schedules; (12) create law centers and establish law libraries for legal research; (13) conduct campaigns to educate the people on their legal rights and obligations, on the importance of preventive legal advice, and on the true functions and duties of the Filipino lawyer; and (14) generate and maintain pervasive and meaningful countryside involvement of the lawyer population in the solution of the multifarious problems that afflict the nation. It is to be hoped that the Rules on Bar Integration, if finally adopted would be implemented with the same degree of enthusiasm and cooperation which attended its birth.

#### *Duty to Courts*

A lawyer is an officer of the Court, and as such, has the prime obligation to assist in the administration of justice. This duty cannot of course be spelled out precisely, because of the contingencies of human behavior and the demands of justice. Broadly, it may be said to consist in observing and maintaining respect due the courts,<sup>3</sup> in upholding their dignity and authority,<sup>4</sup> in obeying their lawful orders,<sup>5</sup> and in dealing with the courts with honesty, truth and candor.<sup>6</sup> Needless to say, where the lawyer's duties to his clients collide with those he owes to the courts, the former should yield to the latter.<sup>7</sup> To avoid any frustration of justice, a lawyer may be required by a court to act as counsel *de officio*. It thus becomes incumbent upon him to exercise the same degree of zeal, fidelity and competence that is expected of any lawyer in the handling of paying causes. This obligation

<sup>3</sup> RULES OF COURT; sec. 20(b), Rule 20, CANONS OF PROFESSIONAL ETHICS, CANON 32.

<sup>4</sup> *In re SOTTO*, 82 Phil. 595 (1949).

<sup>5</sup> *Cf.* Rule 138, sec. 27, RULES OF COURT.

<sup>6</sup> CANONS OF PROFESSIONAL ETHICS; CANON 22, *Cf.* Jessup, *Professional Ideals of Lawyer*, cited in FRANCISCO LEGAL ETHICS 385.

<sup>7</sup> See *Re Nebraska State Bar Assoc.*, 133 Neb. 283 (1937); *State v. Barto*, 202 Wis 329, 232 N.W. 553 (1930).

must be fulfilled, and in the absence of justifiable reasons, would subject him to disciplinary action.

Respondent in *People v. Daban*<sup>8</sup> started as counsel *de parte* for appellant, a death convict in a criminal case. After obtaining 13 extensions (for periods ranging from 10-25 days) to file appellant's brief, he moved to be allowed to retire as counsel *de parte* and to be appointed counsel *de oficio*, as this change would enable him to file a typewritten brief since appellant's father was unable to raise money for printing expenses. At the same time, he assured the Court that a draft of the typewritten brief had been finished. This motion was granted by the Court, but contrary to expectations, respondent continued to request for more extensions, which were granted by the Court. Finally, after the expiration of the period for the last extension, the Court required respondent to explain why no disciplinary action should be taken against him. In reply, respondent averred that his client's escape from prison had made the appeal unnecessary, because it was considered abandoned. The Court refused to accept this explanation, since the notice of appellant's escape was sent to respondent on June 23, 1971, but as early as May 13, 1971, he had manifested to the Court that he had already prepared a draft. There was therefore no excuse for his failure to submit a brief prior to the escape, after having been granted 13 extensions. Besides, the escape of appellant is not a justifiable reason since a death sentence requires automatic review by the Court, which neither the court nor the accused could evade. Adopting the language of Justice Sanchez in *In re Adriano*<sup>9</sup> the Court said:

"It is true that he is a court-appointed counsel. But we do say that as such counsel *de oficio*, he has as high a duty to the accused as one employed and paid by defendant himself. Because as in the case of the latter, he must exercise his best efforts and professional ability in behalf of the person assigned to his care. He is to render effective assistance. The accused expects of him due diligence, not mere perfunctory representation. We do not accept the paradox that responsibility is less where defended party is poor."

Since respondent was truly remiss in his duty, the Court imposed the penalty of suspension from the practice of law in all courts of the Philippines, until further orders from the Court, except for the sole purpose of filing the brief for appellant in the criminal case.

---

<sup>8</sup> G.R. No. L-31429, January 31, 1972, 43 S.C.R.A. 185 (1972).

<sup>9</sup> G.R. No. L-26868, February 27, 1969, 27 S.C.R.A. 106 (1969).

In *People v. Estocada*<sup>10</sup> respondent counsel *de officio*, after securing 27 extensions within which to file appellant's brief, justified his actuations with the explanation that the records of the murder case assigned to him were voluminous, the issues involved difficult and intricate, thus requiring considerable study, and his preoccupation with other cases equally urgent and important. He begged the forgiveness of the Court, and promised that the omission would not be repeated in the future. Together with the explanation, he submitted a 20-page brief. On the face of the brief, the Court gathered that respondent took pains in the defense of his client, but because more than 15 months had elapsed before he could comply with his duty, he was admonished to exercise the utmost care so that a repetition of his failing would be avoided.

The Court likewise admonished respondent counsel *de officio* in *People v. Villar*<sup>11</sup> who failed to file a brief on time. His reason was that he left for Albay on April 28, 1972, four days before the due date of his brief to attend to the settlement of agrarian troubles involving the estate of his late father. On the same date, he gave all the papers of the case and the final draft of the brief to a clerk-typist with instructions to him to type and file the brief on May 2, 1972, or failing that, to request an extension of 5 days. Upon his return, he found out, much to his dismay, that the brief had not been typed, the request for extension not submitted and his clerk-typist had not reported for work. He had to type the manuscript himself and, since he was a slow typist, and had to attend to his other cases, was able to file the brief only on May 22, 1972. The Court was not too impressed with this pretense, for respondent should have taken pains to insure that the brief was ready for filing before he left or failing that, he ought to have asked for postponement. Entrusting such a delicate matter to a clerk-typist, in the opinion of the Court, was a mark of neglect. Further, since it appeared that respondent had a law partner, it was careless on his part not to have sought the assistance of the latter at such a crucial time.

Again in *People v. Casimiro*<sup>12</sup> respondent was reprimanded by the Court for failing to file a brief within the reglementary period. Respondent here stated that after he received the notice to file appellant's brief, he immediately got in touch with the parents of the three appellants but only two of them appeared for a conference. One of the parents informed him that he had already engaged the services of a good lawyer to prepare the brief, and he had taken all the transcripts of the case from the court stenographer; the former also assured him despite his reminder (as to

---

<sup>10</sup> G.R. No. L-31024, February 29, 1972, 43 S.C.R.A. 515 (1972).

<sup>11</sup> G.R. No. L-34092, July 29, 1972, 46 S.C.R.A. 107 (1972).

<sup>12</sup> G.R. No. L-33416, June 29, 1972, 45 S.C.R.A. 555 (1972).

the consequence of failure to file a brief) that their counsel would file the brief. Even conceding good faith on his part, the Court nevertheless said that he knew that the period for filing the brief was running and the Court expected that he would take care of the matter since he was counsel of record. He should have informed the Court of the developments and requested that he be allowed to withdraw as counsel.

Counsel's explanation in failing to file brief within the time prescribed was likewise found unsatisfactory by the Court in *People v. Blancas*<sup>13</sup> since he did not inform the Court of the alleged decision of appellant's parents to seek executive clemency instead of pursuing the appeal and in failing to file a motion which would free him from his obligation to file appellant's brief. The Court therefore reprimanded respondent, and warned him that a repetition of such behavior would be penalized with more severity. It further noted with concern the improper conduct of counsel who failed to file a brief on time, and waited to be required by the Court to show cause why they should not be subjected to disciplinary action. "Such conduct," said the Court, "does not speak well of the earnestness and zeal with which they are called upon to defend their clients' rights nor of their application of their privilege and duty as officers of the court to do their share so that the administration of justice be attended to well and efficiently."

The justification assigned by respondent-counsel *de parte* in *People v. Tigulo*<sup>14</sup> for his failure to file a brief on time, went this way: after receiving the notice to file brief, he conferred with the family of appellant Velasquez, particularly his brother-in-law Canaveral, who said that they were no longer interested in pursuing the appeal; that on February 8, 1972, he prepared a notice to withdraw the appeal which he requested Canaveral to mail to the Supreme Court and to the Solicitor General; that it was only on March 2, 1972 that he came to know that the same was not mailed and that the parents of appellant Velasquez had changed their mind and had decided to adopt the brief of the other appellant as their brief; and that he filed a manifestation of these facts before the Court on March 7, 1972, attested to by an affidavit of Canaveral. The Court found counsel's plea for exculpation far from persuasive. Considering that his client was charged with a serious offense and notice was sent to him to file appellant's brief, it expected counsel to apprise the Court of any development that would discharge him from such obligation. On the contrary, he kept the Court in the dark as to the alleged decision

<sup>13</sup> G.R. No. L-34104, June 15, 1972, 45 S.C.R.A. 405 (1972).

<sup>14</sup> G.R. No. 34334, May 12 1972, 45 S.C.R.A. 1 (1972).

of the family not to pursue the appeal and of its apparent change of mind in adopting the brief of the other appellant as their own. According to the Court, it was not enough for counsel to assert that certain pleadings were prepared; it was incumbent on him to take necessary steps to file them. He failed to do these, and further failed to inform the Court of later developments. What aggravated respondent's case was that if he had been diligent in the defense of his client, he would have been aware that as far back as February 21, 1972, his client requested the Clerk of Court for the appointment of a counsel *de officio* which he repeated in a handwritten note dated March 17, 1972, resulting in the designation of counsel *de officio* for him. The motion for withdrawal of appeal, with a manifestation that his client was accepting the brief of the co-appellant as his own, came later. He could have thus avoided a misrepresentation of what was in his client's mind if he took the trouble of paying him a visit or writing to him. Respondent was therefore severely reprimanded and warned that a repetition of such misconduct would be penalized with more severity.

A generalization which can be derived from all the foregoing cases, is the proposition that counsel, whether *de parte* or *de officio* will be subject to the disciplinary action if he should fail to file a brief during the reglementary period or within the periods of extension granted by the Court unless: (a) his failure is justified by valid and convincing reasons, satisfactory to the Court (b) even if his explanations should provide satisfactory grounds for exculpation, he so should inform the Court, prior to the expiration of the period within which to file the brief, or within a reasonable time thereafter, before a show-cause order is issued by the Court; (c) that, together with the explanation for delay he should submit the required brief which shows on its face careful study, research and preparation, and not a pro-forma compliance; and (d) that if the client should decide not to prosecute the appeal, to ask the Court to be discharged as attorney of record.

*Ocampo v. Domingo*<sup>15</sup> involved a lawyer, who upon false information furnished by his client filed a petition before the Supreme Court to restrain the execution of a judgment of a lower court. He there made the allegation, verified by his client, that the latter had not been summoned (to answer the complaint) and had been completely unaware of the lower court's judgment against him. The truth however was that two weeks before the filing of the petition the sheriff served on his client the writ of execution, and the latter requested deferment of the execution, with a promise written on the reverse side of the writ to vacate the premises

---

<sup>15</sup> G.R. No. L-27632, February 28, 1972, 43 S.C.R.A. 286 (1972).

and to pay all back rentals. Counsel here, according to the Court "has failed to live up to his exacting responsibility as an officer of the Court to exert the utmost diligence that the petition prepared by him state the facts truthfully and accurately, as well as to deal with the courts in all good faith and candor<sup>16</sup> in that he failed upon receipt of respondent's documented answer, to file the necessary rectification of the false allegation in his petition and enable the Court to dismiss forthwith the petition." Counsel explained that he filed the petition after conferring with his client, who later verified the same; that sometime thereafter a new car which he bought on installment was stolen, which caused him to be confused and to neglect his cases as he was very busy trying to locate his car for several months; that as a result he had hypertension and could not attend the hearing set for August 30, 1967 due to his hypertension and cardiac insufficiency, prompting him to ask his client to get a new lawyer and that he regrets that he failed to file his notice of withdrawal of appearance as he neglected the same due to his illness. He subsequently asked for and obtained several extensions of time to locate his client, but failed, thus showing that he, too, was misled by him. The Court found some mitigation in respondent's explanation but faulted him for failing, upon receipt of the other party's documented answer to his petition to ascertain the truth from his client and to make the necessary rectification of the false allegations in his sham petition. For this neglect he was found guilty of contempt of Court and sentenced to pay a fine of ₱100. However, taking note of the mitigating circumstances cited by him and of his yet untarnished personal record, the Court took no further disciplinary action other than an admonition to respondent to take the utmost care that the allegations in any petition or complaint signed by him state the facts truthfully, with warning of more severe action in case of future misconduct.

*Chan Kian v. Angsin*<sup>17</sup> was another occasion where the Court noted with regret counsel's failure to inform the Court of Appeals of the developments of the case, which would have rendered the principal issue moot and academic, thus obviating the necessity of the appellate court certifying the case to the Supreme Court on a question of law. The Court observed that if counsel faithfully complied with their duty to deal with the Court with truth and candor, and promptly made the proper manifestation, the case could have been disposed of by the Court of Appeals and thus the Court's time, which was needed to dispose of meritorious cases, could not have been wasted.

<sup>16</sup> Citing *LBTB Co. v. Cadio*, G.R. No. L-28725, March 12, 1968, 22 S.C.R.A. 287 (1968) and *Cruz v. GSIS*, G.R. No. L-21286, February 28, 1969, 27 S.C.R.A. 174 (1969).

<sup>17</sup> G.R. No. L-28131, February 28, 1972, 43 S.C.R.A. 295 (1972).

The respondent in *People v. Estebia*<sup>18</sup> was originally sentenced to pay a fine of P500 by the Supreme Court for failure to comply with its resolution of September 25, 1967 with the warning that upon further non-compliance with the said resolution, more drastic disciplinary action would be taken against him. On February 27, 1969, the Court resolved to suspend respondent for 1 year for not obeying the Court resolution requiring compliance with its orders. This subsequent resolution was interpreted by respondent to mean that his failure to pay the fine of P500 would result in more drastic action and that the imposition of one year suspension served to supersede the P500 fine previously imposed. He paid the fine, however, as soon as he became aware that his interpretation was mistaken. He therefore implored the Court to view his failure to pay the fine not as a willful non-compliance but as having arisen from an honest mistake. The Court accepted the explanation saying:

"It is not inherently implausible. It partakes of an element that is essentially human, all too human, of an individual responding to the urge of resolving every doubt in his favor. Lawyers, of course as members of a learned profession, are expected to display a greater degree of objectivity, not to say analytical skill. Nonetheless, between an inaccurate appreciation of the real tenor of a court resolution and an attitude of defiance, there is quite a gap. The conduct of respondent all things considered, cannot fairly be said to manifest the latter."

Moreover, since respondent humbly acknowledged his past errors, accepted as just the judgment of suspension, and thereafter exerted efforts to live up to the demands of the legal profession, the Court considered the incident closed.

In *Enriquez v. Abdulwahid Bidin*<sup>19</sup> a Supreme Court Resolution directing the issuance of a writ of preliminary injunction sought by petitioner in the case was sent by the Clerk of the Supreme Court to petitioner's counsel upon the latter's telegraphed request. One of respondents counsel sought confirmation of the telegram as news of the Court's resolution had been circulated over the radio and in the local newspapers. Complying with the request, the Clerk confirmed the issuance of the Court resolution. Subsequently, respondents' counsel complained to the Court that the Clerk's office had sent notices only to petitioner and "there seemed to exist an unsavory tie which links the herein petitioner with some people in Supreme Court in a manner deliberately if not maliciously designed to prejudice the lawful interests of your respondents." The Clerk of Court submitted a report and answer, recounting that his office

<sup>18</sup> G.R. No. L-26868, December 27, 1972, 43 S.C.R.A. 356 (1972).

<sup>19</sup> G.R. No. L-29620, October 12, 1972, 47 S.C.R.A. 183 (1972).

had fully served both parties with notices within the regular period and through the customary manner established by settled practice and procedure and "when the clerk wires notices of resolutions, it is an act of courtesy and public service at the request and expense of the party concerned, even though such requests impose additional burden upon the employees and funds of the Court . . .". He further stated that by the baseless, wild and irresponsible charges, counsel for respondents had maliciously cast doubts upon the integrity of the Supreme Court and its administrative machinery and prayed that counsel should be required to show cause why they should not be subject to disciplinary action for the statements. Counsel made a narration of facts, which led him to make the statement, and declared his honest intention of preserving the dignity and integrity of the Court. The Court found that counsel's misconception was due to Zamboanga City's distance from Manila and the deficiencies of the mail service as well as to his failure to file a similar request as the petitioner's counsel, to be advised by wire, collect, of the Court's action on petitioner's motion for preliminary action. Under the circumstances, it considered an admonition with warning to respondent's counsel sufficient to uphold the ends of justice.

In *Macias v. Uy Kim*<sup>20</sup> counsel was rebuked by the Court for having the proclivity of filing several actions covering the same subject matter in seeking substantially identical relief, thus unduly burdening the courts. It could have regarded with some understanding by the Court if counsel was neophyte, but considering appellant's ability and long experience at the bar, his act of filing identical suits for the same remedy was deemed by the Court reprehensible.

## DISBARMENT AND SUSPENSION

### *Disbarment*

Does the Supreme Court have jurisdiction to entertain and decide a complaint for disbarment against a Justice of the Court of Appeals? The question was answered by the Court in the affirmative in the *Espejo-Ty v. San Diego*.<sup>21</sup> In this case, a verified complaint for disbarment was filed before the Supreme Court charging a Justice of the Court of Appeals with acts allegedly constituting serious misconduct, namely, misconduct as a bar examiner and falsification of a public document. The Court ruled that it has the power to exclude from the roll of attorneys the unfit and unworthy members of the bar, such power being inherent, continuing,

<sup>20</sup> G.R. No. L-31174, May 30, 1972, 45 S.C.R.A. 251 (1972).

<sup>21</sup> G.R. Adm. Case No. 169-J, June 29, 1972.

plenary, and existing independently of statute. Relying on American authorities<sup>22</sup> it declared that even if a member of the bar holds a position in the judiciary, such fact does not deprive the Court of its inherent power to discipline him in his capacity as member of the bar, since a judge is no less a member of the bar as an attorney in the practice of his professions, notwithstanding the existence of statutory provisions on the causes and the procedure for removal from office of the members of the judiciary. But while the Supreme Court may order the disbarment of a justice of the Court of Appeals, since the law provides that he can only be removed by impeachment, it is the Legislature, and the Legislature alone, in the exercise of its power of impeachment that can dismiss a Justice of the Court of Appeals.

As to the merits of the complaint for disbarment, the Court, after carefully going over the pleadings, and documents attached thereto, as well as matters of which it took judicial notice, arrived at the conclusion that there was no ground for declaring that respondent had committed acts constituting gross misconduct in office as a lawyer or that she violated her oath as lawyer, as would warrant her removal from the roll of attorneys.

The first specification of the complaint alleged that respondent violated the law and disregarded the time-honored tradition of *delicadeza* of the judiciary, by accepting and discharging the duties of bar examiner, knowing that her son-in-law was an examinee, and by giving the former, who obtained 45% in Civil Law the grade of 91% in Commercial Law, thereby enabling him to obtain a general average of 74.5%. This charge was deemed by the Court to be equivalent to "gross misconduct in office" as attorney pursuant to Section 27 of Rule 138 of the Rules of Court. Although respondent was aware that her son-in-law was one of the examinees, the Court said that Rule 138, Section 12 of the Rules of Court does not provide for any disqualification of a bar examiner, unlike Rule 137, Section 1, which provides for the disqualification of a judicial officer to sit in any case in which he is related to either party within the sixth degree of consanguinity or affinity. Even if the bar examinations were part of the proceedings of the Supreme Court, this examinations does not make a bar examiner a judicial officer within the purview of Section 1, Rule 137 of the Rules of Court.

The failure of respondent to observe *delicadeza* is not, under the law a legal ground for the disbarment of a lawyer, since its observance is a voluntary act on the part of a person, depending on his discretion. Hence, it cannot be said that respondent committed a misconduct or violated

---

<sup>22</sup> *In re Stolen*, 53 A.L.R. 2d 306 (1927); *In re Burton*, 67 Utah 188, 246 Pac. 188 (1926).

Section 1 of Rule 137 of the Rules of Court. While the Court preferred that respondent should have disclosed that her son-in-law was a bar examinee, yet "a feeling of extreme delicacy on the part of an officer is not a circumstance that would constitute legal disqualification for him to act in the performance of his duty."<sup>23</sup>

The act of respondent in giving her son-in-law 91% in Commercial Law did not constitute misconduct either, since it cannot be assumed that she had committed an act of favoritism towards her son-in-law, the presumption being, that she had regularly performed her duty as bar examiner. Further, the records showed that her son-in-law was a bright student and had a high proficiency in Commercial Law (Bar review grade, 1.25). Complainant did not allege that the examinee's composition in Commercial Law did not merit 91%. On the other hand, except for a grade of 45% in Civil Law he obtained good grades in other subjects, and only after two petitions, the last having been filed by the examinee together with other examinees did the Supreme Court resolve that those who obtained a general average higher than 74.5% but got less than 50% in other subjects, was he admitted to the practice of law. The Court then concluded that it cannot be said that respondent had taken advantage of her position, since she was not aware nor could she have been aware of the grades of her son-in-law in other subjects until the results were reported by the Court by Committee of Examiners.

The second specification of the complaint accused the respondent of falsifying a public document while acting as judge. It was alleged that she dismissed a criminal case, on the ground that when it was called for trial the fiscal moved for dismissal because the offended party, (husband of the complainant) had manifested lack of interest in prosecuting the case, with knowledge that no such motion was presented by the fiscal or any manifestation submitted by complainant in that case. When complainant referred her charges, the respondent had already been nominated to the Court of Appeals, and it was in the Commission on Appointments that she filed her complaint in opposition to her being confirmed. The charges were the very same charges presented to the Supreme Court. The sub-committee on Justice of the Commission on Appointments after hearing, found that both charges were not substantiated and recommended the confirmation of the appointment. This was given full faith and credit by the Court. After stating that the power of the Supreme Court should not be exercised in an arbitrary or despotic manner, and that serious consequences should follow only where there is a clear preponderance of evidence against respondent, the Court forthwith dismissed the complaint.

---

<sup>23</sup> Citing *People v. Lopez*, G.R. No. L-1243, April 14, 1947, 78 Phil. 286 (1947); *Talisay Silay Milling Co., Inc. v. Teodoro*, G.R. Nos. L-4579 & 4674, March 31, 1952, 91 Phil. 101 (1952).

The disbarment of a lawyer is not intended as punishment. Rather, its object is to protect the administration of justice. Specifically, disbarment seeks to compel the attorney to deal fairly and honestly with his client and to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to the office of an attorney.<sup>24</sup> These objectives cannot of course be achieved if respondent should die while disbarment proceedings are in progress. The Court would then have no recourse but to dismiss the complaint. In *Mateos v. Wisco*<sup>25</sup> respondent, a member of the bar and Assistant City Fiscal of Quezon City was charged with (1) failing to return jewelry worth ₱1,000 which he was under obligation to sell within 3 months from September 13, 1962 and to turn over the proceeds thereof or to return the jewelry despite repeated demands; (2) inducing complainant to extend a loan of ₱6,000 to a certain Mrs. Mercado, allegedly a good friend of his, secured by a mortgage which he did not register; (3) failing to register another mortgage to the same party to secure a loan of ₱16,000. The charges were denied specifically by respondent in a 40-page pleading, arguing that all these were usurious transactions. The complainant was referred to the Solicitor General for investigation, but the latter recommended dismissal of the complaint, since respondent had died in the course of the investigation. The recommendation was accepted by the Court.

In *Santos v. Villafuerte*<sup>26</sup> respondent was charged with having participated in a fraudulent transaction in that (1) he notarized an instrument executed on July 18, 1960 by a decedent, called "*Paghabatibati sa Labas ng Hukuman na May Kaloob Pala*" naming the complainant, her sisters and Apolonio Reyes among others as beneficiaries (2) on November 11, 1962, Reyes, with intent to defraud complainant and his sisters with the direct intervention of respondent made it appear in a public instrument that the decedent executed an instrument entitled "*Bilibang Tuluyan ng Karapatan sa Lupa*" allegedly in favor of Reyes, again ratified by respondent, where the signature of the decedent was forged as found by the National Bureau of Investigation (3) as a result, complainant and her sisters were deprived of a parcel of land mentioned in the falsified document. On consideration of the evidence, the Court held that the aforementioned signature was genuine, the NBI finding having been based on a comparison with only one specimen of decedent's genuine signature; whereas the genuineness of the questioned signature was confirmed by the testimony of respondent and other witnesses, and the dissimilarities between the first

---

<sup>24</sup> 6 MORAN COMMENTS ON THE RULES OF COURT 242 (1970 ed.) citing *Strong v. Mundy*, 52 N.J. Eq. 833, 31 Atl. (1895), and *Ex-Parte Brownsal Cowp.* 829, 83 Eng. Reprint; 6 C.J. 581.

<sup>25</sup> G.R. Adm. Case No. 613 May 25, 1972, 45 S.C.R.A. 72 (1972).

<sup>26</sup> G.R. Adm. Case No. 596, February 29, 1972, 43 S.C.R.A. 326 (1972).

and second signature were attributable to the circumstance that the first signature was written while decedent was in relatively good health and the other, while decedent was already sick and bedridden. Being convinced that the allegation of forgery and the charge of connivance were not substantiated with sufficient evidence, the Court exonerated respondent but admonished him to be more careful in the performance of his duties as notary public.

#### *Reinstatement*

*In re Puno*<sup>27</sup> concerned a petition by respondent for the lifting of a Supreme Court disbarment decree of February 28, 1967 for immoral conduct, because since then, he had striven to lead and had led an exemplary life despite hardship suffered by him and his family, which fact was attested by public officials and civic organizations of Zamboanga. The latter also certified that his behavior was proper and irreproachable during the past four years. Complainant in the original disbarment petition expressed no objection to the petition provided respondent supports her child. Since the Court was of the opinion that respondent had proved his moral reform, evinced his willingness to atone for his misconduct and to lead an upright and irreproachable life, it ordered his reinstatement to the practice of law subject to the condition that he will formally acknowledge his child, now in the care of the mother, and that he will provide a minimum monthly amount of ₱125.00 for his support.

## JUDICIAL ETHICS

#### *Complaint to be dismissed if not substantiated.*

A judge in *Tobias v. Ericta*<sup>28</sup> was charged by the offended party in a criminal case with partiality in favor of the accused and lack of legal expertise. The Supreme Court could have dismissed the complaint, even on a casual reading of its contents, but since the Department of Justice endorsed it, decided to require comment from the judge. It appeared that the accused in the criminal case pleaded guilty to an information imputing a crime designated by the fiscal as "robbery hold-up" and after proving the mitigating circumstance of drunkenness, were sentenced to a penalty one degree lower than that imposed by law, but within the allowed range. The judge was legally empowered to impose as low a penalty as four months and one day imprisonment but instead he sentenced the accused to one year. Thus the Court opined that the judge was not exactly lenient. To

<sup>27</sup> G.R. Adm. Case No. 389, January 31, 1972, 43 S.C.R.A. 54 (1972).

<sup>28</sup> GR. Adm. Case No. 242-J, July 29, 1972, 46 S.C.R.A. 83 (1972).

complainant's claim that he had evidence of recidivism and the use of motor vehicle against the defendants, the Court said that he should have so informed the fiscal before the filing of the information, so that these could have been properly alleged in the information.

As to the grievance that the judge (1) did not notify the complainant of the arraignment nor sent him a copy of the decision, and (2) found the accused guilty of robbery merely, while the information charged "robbery hold-up," the Court said that the sending of the notice and the decision were not required by law, and as regards the last, that the judge used the appropriate legal terminology, the fiscal being imprecise when he added the term "hold-up."

Finally, on the charge that the judge, allegedly out of ignorance, failed to sentence the accused to suffer subsidiary imprisonment in case of their inability to pay the civil liability, the Court pointed out, quoting the Solicitor General, that with the approval of Republic Act No. 5465 amending Article 39 of the Revised Penal Code, subsidiary imprisonment could be imposed only in the event of failure to pay the fine. Thus it was evident that the judge was free from blame.

This was not the end of the case however, since the judge in his answer evinced unhappiness in having to answer a complaint, which on its face betrayed ignorance of elementary legal doctrines. Addressing itself to the point, the Court, through Mr. Justice Fernando declared:

"Such reaction, while understandable is not justifiable. The constitutional right to a petition, to enable the citizen to air his grievances, would certainly be emasculated if the response of the governmental body to which it is addressed is one of indifference. The fate of the people and the supremacy of the Constitution would thereby be sorely tested. What is worse, a safety valve against a violent reaction would be closed. This Constitutional guarantee requires then that complaints against officialdom be seriously attended to. Where meritorious, the remedy could be supplied. If found to be devoid of substance, the party charged is vindicated with the complainant having the satisfaction of at least having been listened to. There is thus fidelity to what the Constitution ordains."

In *Tolentino v. Colayco*,<sup>29</sup> the Court dismissed an administrative complaint against a judge of a Court of First Instance for being ridiculously incredible, frivolous and flimsy. The Court found that the complaint was filed because the respondent judge denied the petition of counsel, disqualifying him from hearing two criminal cases. In moving for a reconsideration of the order, counsel attached an affidavit of complainant stating that he heard rumors that the judge had received a bribe in two election

---

<sup>29</sup> G.R. Adm. Case No. 174-J, January 28, 1972, 43 S.C.R.A. 40 (1972).

cases decided by him. The judge then required complainant why they should not be cited for contempt, but the latter failed to appear. When later required by the judge, they again failed to appear to prove the alleged bribery. Their next move was to file the administrative complaint against the judge to which was attached the affidavits of two persons who stated that they saw the respondent receive the bribe money. Upon receiving copy of the complaint the respondent inhibited himself from further acting in the two criminal cases.

In the charge for bribery, it was alleged that respondent accepted money in consideration of favorable decisions that he rendered in two election cases. The affidavits of the witnesses averred that while in the premises of a Franciscan Convent in Tagaytay City, they heard a stranger say (to the judge) that he had brought ₱50,000 for the cases decided, opened his portfolio and showed its contents (bundles of money) to the judge. The latter allegedly got the portfolio, and told the former that he will release a favorable decision to the interested party. This was vehemently denied by the judge, as being "utterly contrary to nature, reason and common sense." To this the Court agreed, saying that the story was ridiculously incredible, and that "the members of the Court are not so naive and gullible as to take seriously the fantastic story narrated by the two affiants."

On the charge that respondent requested one of the parties in an election case to ask Undersecretary Campos to intercede for him to secure a loan from the Government Service Insurance System, respondent countered that complainant had twisted the facts, the true happening was that when the Undersecretary learned he was intending to apply for a loan, he offered to help, and told him to send the application papers to his law firm; but respondent did not send the papers. One of the parties in the election case, a follower of the Undersecretary, later presented himself to respondent and offered to file the papers in the GSIS, but respondent refused the offer. The former lost the election case and his opponent was declared winner.

Complainant also accused the judge of partiality and prejudice, in that he chided counsel who were private prosecutors in two criminal cases, pending before respondent's court for having petitioned the Department of Justice to transfer the cases to the Circuit Criminal Court; and for making representations with the Department for the recall of the latter's order of transfer, at the same time informing counsel in the two cases that he was bent on granting bail to the accused. Respondent admitted that he chided counsel for their behavior, not for making the petition but for putting him in a bad light before the Secretary of Justice since it was there alleged that the transfer was necessary because "there was an urgent need for the expeditious termination of the case" and in not furnish-

ing him a copy of the petition as a matter of courtesy. Respondent also denied the charge of his having made representations with the Department of Justice for the recall of its order, citing portions of the record showing he did not care whether the criminal cases were tried by him or another judge.

On the accusation that he showed partiality when he told the lawyers that he was granting bail to the accused, respondent stated that he called counsel to chambers and adverted to the tension prevailing because of the number of armed bodyguards present in the proceedings. He enjoined them not be influenced by partisan considerations, and appealed to them to present their evidence without delay. He then warned them that if they should resort to dilatory tactics he might be inclined to grant bail to the accused. The Supreme Court considered the entire explanation satisfactory, and dismissed the administrative complaint.

#### *Municipal Judge cannot engage in notarial work*

Under existing law, a municipal judge may not act as notary public except in the character of notary public *ex officio*, and then only within the limits of his territorial jurisdiction. A judge of a Court of First Instance in *In re Pelugna*<sup>80</sup> directed the cancellation of the notarial commission of a municipal judge on the basis of an opinion of the Secretary of Justice that a municipal judge may not under any circumstances engage in notarial work except in an *ex officio* capacity. The municipal judge appealed to the Supreme Court, arguing that the order of the district judge was unjustified because as municipal judge, he is allowed by law to engage in the practice of law, and there is no legal prohibition against the performance of functions of a notary public outside of the territorial jurisdiction of the municipality in which he is municipal judge. The Court denied the appeal on two grounds: First, Republic Act No. 6031<sup>81</sup> increasing the salaries of municipal judge had withdrawn the previous legal authorization of these officials to pursue any other vocation, including the practice of law. Circular No. 37 of the Department of Justice implementing this law expressly prohibited municipal judges from the private practice of law or from giving professional advice to clients. Secondly, the Revised Administrative Code<sup>82</sup> prohibits municipal judges from acting as notaries public except in the character of the duties of *ex officio* notaries public and places the limitation that these shall be exercised only within their respective jurisdictions. Thus even before the passage of Republic Act No. 6031, while municipal judges were permitted under Section 77 of the Judiciary Act to pursue any other occupation or calling after office

<sup>80</sup> G.R. No. L-29321, February 29, 1972, 43 S.C.R.A. 446 (1972).

<sup>81</sup> Amended section 82 of the Judiciary Act.

<sup>82</sup> Secs. 235 & 242.

hours, such authorization excluded engaging in the work of a regular notary public. Even prior to the amendment, the Court pointed out, this authorization did not carry with it permission to engage in the practice of law, for while a notary public is required to be a lawyer or one who has completed a law course, a notarial commission is not a prerequisite to the practice of law.