LEGAL AND JUDICIAL ETHICS

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INTEGRATION OF THE BAR IN THE PHILIPPINES

A Historical Landmark

While there were few decisions and resolutions promulgated in 1973 by the Supreme Court concerning legal and judicial ethics, it was in this year that a historically significant, and, perhaps the most far reaching, resolution was promulgated. The resolution of the Supreme Court in *In re Integration of the Bar of the Philippines*[1] is, indeed, a landmark not only in legal and judicial ethics but in the whole field of judicial administration in the Philippines.

History of Bar Integration in the Philippines

The plan to integrate the bar in the Philippines had a long history before it became a reality in the Philippines. In 1928, the idea of a bar integration in the Philippines was initiated by Justice George Malcolm of the Supreme Court. Also the first Dean of the College of Law of the University of the Philippines, George Malcolm then spoke of the success of the integrated bars in England, Europe and the United States.

In 1934 a bill integrating the bar filed in the House of Representatives did not go beyond that stage. Jose Abad Santos and Claro M. Recto also prodded lawyers to integrate the bar. The idea was revived in 1947 when forty-one representatives of bar associations and prominent legal practitioners, led by Senator Francisco Delgado, Justice Manuel Lim and Dean Leoncio B. Monzon agreed to file a petition in the Supreme Court to integrate the Philippine Bar. No action was taken on said petition. On March 2, 1950, Senators Lorenzo Sumulong and Emiliano Tria Tirona filed Senate Bill No. 83 providing for the creation of a corporation to be known as the "Philippine Integrated Bar". The bill, although reported by the Senate Committee on Justice, remained pending until adjournment of Congress that year.

On May 7, 1958, former Senator Vicente J. Francisco, speaking for the Lawyers League of the Philippines, urged the integration of the Philippine Bar at a conference of judges and lawyers. On June 23, 1962, representatives of fifty three bar associations in the Philippines, in a con-

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[1] Resolution dated January 9, 1973, 49 SCRA 22 (1973).

vention, unanimously resolved to file with the Supreme Court a petition for bar integration. Through a committee composed of Jose Diokno as chairman, and Roman Ozaeta, Jose P. Carag, Eugenio Villanueva, Jr. and Leo Panuncialman, as members, the committee filed on July 11, 1962 a petition praying the Supreme Court to integrate the Bar.[2]

Although manifestations and oral arguments and memoranda for or against the petition were submitted, the Supreme Court held in abeyance its resolution.

Senator Jose Diokno authored Bill No. 79 sometime in 1970 seeking to empower the Supreme Court to integrate the Philippine Bar. This bill also was left unacted by the Senate.

Creation of the Bar Integration Commission

Acting on these previous developments, the Supreme Court, on October 5, 1970, created the Bar Integration Commission, with Justice Fred Ruiz Castro as chairman, and Crisolito Pascual, Jose J. Roy, Justice Conrado Sanchez, Salvador Esguerra, Tecla San Andres Ziga, Feliciano Jover Ledesma as members, and Romeo Vicente as recording secretary. Later the Board of Consultants and an executive officer were named.[3]

On a grant from the Asia Foundation, Justice Fred Ruiz Castro visited and studied the integrated bars in several states of the United States in 1971 to seek answers to some questions that were highly relevant to the integration of the Philippine Bar.

Enactment of Republic Act No. 6397

With the initial support of bar integration in the country, as shown in surveys made by the Bar Integration Commission, the Bar Integration Law (Republic Act No. 6397), sponsored by Congressman Ramon Bagatsing, was enacted by Congress of the Philippines. Said statute which took effect on September 17, 1971, provided that the Supreme Court, within two years from its approval, may adopt rules of court to effect the integration of the Philippine Bar under such conditions as it shall see fit in order to raise the standards of the legal profession, improve the administration of justice, and enable the bar to discharge its public responsibility more effectively.[4]

Report of the Commission on Bar Integration

Since its creation, the Commission conducted a nation-wide campaign to explain the nature of bar integration and its advantages. The Commission also conducted a national poll among all lawyers in the matter of bar integration. Of a total of 15,090 lawyers from all over the archipelago,

[2] Administrative Case No. 526.

[3] See Supreme Court Resolutions of October 5, 1970 and November 16, 1971.

[4] Rep. Act No. 6397 (1971), sec. 1. Said law appropriated ₱500,000 to carry out the purposes of the law.

14,555 (or 96.56 per cent) voted in favor, while only 378 (or 2.51 per cent) voted against, and 157 (or 1.04 per cent) were non-committal.[5] In addition, there were 80 local bar associations and lawyer groups which submitted resolutions of unqualified endorsement and support of bar integration, while not a single bar association expressed opposition thereto. Finally, of the 13,802 individual lawyers who cast their plebiscite ballots on the proposed integration Court Rule drafted by the Commission, 12,855 (or 93.14 per cent) voted in favor thereof, 662 (or 4.80 per cent) voted against it and 285 (or 2.06 per cent) were non-committal.[6]

It must be stated that the overwhelming acceptance of the integration of the Bar has been largely due to the relentless information campaign of the Commission's Chairman Justice Fred Ruiz Castro and the members thereof throughout the country all of whom conducted provincial "forays." Justice Castro also published a regular weekly column "Lawyers' Forum" in *The Manila Times* and later in the *Daily Express*. Radio and television programs were conducted to maximize communication with every member of the bar.

Concept of Bar Integration

The integration of the Philippine Bar means the official national unification of the entire lawyer population of the Philippines. This requires membership of, and financial support from, every attorney as conditions *sine qua non* to the practice of law and the retention of his name in the Roll of Attorneys of the Supreme Court.

Bar integration is fundamentally designed to elevate standards of the legal profession, improve the administration of justice and enable the bar to discharge its public responsibility fully and effectively.

Methods of Bar Integration

Bar integration may be effected by legislative enactment, rules of court, or by a combination of both. In the Philippines, the integration of the bar was ordained under section 13 of Article VIII of the 1935 Constitution conferring on the Supreme Court the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law, and defining the power of Congress to repeal, alter, or supplement such rules.[7] Under Republic Act No. 6397, approved on September 17, 1971, the Supreme Court may adopt rules of court to effect the integration of the Philippine Bar. Likewise the 1973 Philippine Consti-

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[5] The Commission estimated that there are 30,854 lawyers admitted from 1899 to 1972 less 3,169 with no addresses.

[6] Report of the Commission on Bar Integration, submitted to the Supreme Court on December 1, 1972, and dated November 30, 1972. For a condensed edition, see 1 J. INTEG. BAR PHIL., 11 (June, 1973).

[7] CONST., art. VII, sec. 13 (1935).

tution empowers the Supreme Court to "promulgate rules concerning pleading, practice, and procedure in all courts, the admission to the practice of law, and the integration of the Bar, which, however, may be repealed, altered, or supplemented by the National Assembly."[8]

The Issues on Bar Integration

1. Does the Court have the power to integrate the Philippine Bar?
2. Would the integration of the Bar be constitutional?
3. Should the Court ordain the integration of the Bar at this time?

The first issue was resolved by the Court by merely citing the applicable Constitutional provision (Article VIII, Section 13) and Republic Act No. 6397. For that matter, Section 5 (5), Article X of the 1973 Constitution expressly empowers the Supreme Court to integrate the Philippine Bar. Indeed, even without these provisions, it is the inherent power of the Supreme Court to integrate the Bar as part of its constitutional authority over the Bar. Any legislative act is merely declaratory.[9]

As to the second issue, a discussion of the lawyer's constitutional rights of freedom of association and of speech and the nature of the duties exacted from him is relevant.

The integration of the bar means the official unification of the entire lawyer population in the Philippines. This means that every attorney is required to be a member of the integrated bar as an indispensable requirement to his right to practice law. Complete unification is not possible unless it is decreed by an entity with the power to do so, that is the State.

On this score, it is settled that the practice of law is not a vested right but a privilege. Moreover, it is a privilege clothed with public interest, because a lawyer owes duties not only to his client but also to his brethren in the profession, to the courts and to the nation. He takes part in the function of the State in the administration of justice, as an officer of the Court.[10]

As the Commission on Bar Integration has reported, bar integration signifies the setting up by government authority of a national organization

[8] Art. X, sec. 5(5).

[9] *In re* Sullivan, 64 Ariz. 336, 170 P. 2d 614 (1946); *In re* Integrating the Bar, 222 Ark. 35, 259 S.W. 2d 144 (1953); *In re* Shattuck, 208 Cal. 6, 279 P. 998 (1929); Petition of Florida State Bar Association, 134 Fla. 851, 186 So. 280 (1938); Petition of Florida State Bar Association, 40 So. 2d 902 (1949); *In re* Integration of Bar of Hawaii, 50 Hawaii 107, 432 P. 2d 887 (1967); Petition for Integration of Bar of Minnesota, 216 Minn. 195, 12 N.W. 2d 515 (1943); *In re* Unification of Montana Bar Association, 107 Mont. 559, 87 P. 2d 172 (1939); *In re* Integration of the Bar, 5 Wis. 2d 618, 93 N.W. 2d 601 (1958); Integration of Bar Case, 244 Wis. 8, 11 N.W. 2d 604 (1943); Cohen v. Hurley, 366 U.S. 117, 6 L.Ed. 2d 156, 81 S.Ct. 954 (1961).

[10] *In re* Integrating the Bar, 222 Ark. 35, 259 S.W. 2d 144 (1953); *In re* Edwards, 54 Idaho, 676 P. 665 (1928); Commonwealth *ex rel.* Ward v. Harrington, 266 Ky. 41, 98 S.W. 2d 53 (1936); *In re* Integration of State Bar of Oklahoma, 185 Okla. 505, 95 P. 2d 113 (1939); Lathrop v. Donohue, 10 Wis. 2d 230, 102 N.W. 2d 404 (1960).

of the legal profession based on the recognition of the lawyer as an officer of the Court. The Commission declared: "Designed to improve the position of the Bar as an instrumentality of justice and the Rule of Law, integration fosters cohesion among lawyers, and ensures, through their own organized action and participation, the promotion of the objectives of the legal profession x x x."

Purposes of the Integrated Bar

In general, the purposes of the Integrated Bar are:

1. Assist in the administration of justice;
2. Foster and maintain on the part of its members high ideals of integrity, learning, professional competence, public service and conduct;
3. Safeguard the professional interests of its members;
4. Cultivate among its members a spirit of cordiality and brotherhood;
5. Provide a forum for the discussion of law, jurisprudence, law reform, pleading, practice and procedure, and the relations of the Bar to the Bench and to the public, and publish information relating thereto;
6. Encourage and foster legal education;
7. Promote a continuing program of legal research in substantive and adjective law, and make reports and recommendations thereon; and
8. Enable the Bar to discharge its public responsibility effectively.

Integration of the Bar will, among other things make it possible 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 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 service;
9. Distribute educational and 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 fee 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 functions and duties of the Filipino lawyer; and
14. Generate and maintain pervasive and meaningful country-wide involvement of the lawyer population in the solution of the multifarious problems that afflict the nation.[11]

Because the practice of law is a privilege clothed with public interest, it is fair and just that the exercise of that privilege be regulated to assure compliance with the lawyer's public responsibilities. These public responsibilities can best be discharged through collective action. But there can be no collective action without an organized body and no organized body can operate effectively without incurring expenses, hence, it is fair and just that all attorneys be required to contribute to the support of such organized body. Given existing bar conditions, the most efficient means of doing so is by integrating the Bar through a rule of court that requires all lawyers to pay annual dues to the Integrated Bar.[12]

No Curtailment of Freedom of Association

The Supreme Court sustained the view that bar integration does not violate the freedom of the lawyer of his constitutional right to associate or the corollary right not to associate.

Bar integration does not compel the lawyer to associate with anyone. He is free to attend or not to attend any meeting of his integrated bar chapter or vote or refuse to vote in its elections as he chooses. The only compulsion to which he is subjected is the payment of annual dues. He is free as has always been, to voice his views on any subject in any manner he wishes, even though such views be opposed to positions taken by the unified Bar.[13]

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[11] Report of the Commission on Bar Integration.

[12] Report of the Commission on Bar Integration citing *In re* Unification of the New Hampshire Bar, 248 A. 2d 709 (1968); *In re* Gibson, 35 N. Mex. 550, 4 P. 2d 643 (1931).

[13] Report of the Commission.

At any rate, integration does not make a lawyer a member of any group of which he is not already a member. He becomes a member of the Bar when he passes the required examinations. So what integration actually does is to provide an official organization for the well-defined but unorganized and incohesive group of which every lawyer is already a member.[14]

Lastly, the inherent power of the Supreme Court to regulate the Bar includes the authority to integrate the Bar.[15]

The Issue on the Regulatory Fee

On this issue, the Supreme Court held that to prescribe dues to be paid by the members does not mean that the Court levies a tax.

A membership fee in the Integrated Bar is an exaction for regulation, while the purpose of the tax is revenue. If the Court has inherent power to regulate the Bar, it follows that as an incident to regulation, it may impose a membership fee for that purpose. It would not be possible to push through an Integrated Bar program without means to defray the concomitant expenses. Under the doctrine of implied powers, the power of regulation necessarily includes the power to impose such an action.[16]

The only limitation upon the State's power to regulate the Bar is that the regulation does not impose an unconstitutional burden. The public interest promoted by the integration of the Bar far outweighs the inconsequential inconvenience to a member that might result from his required payment of annual dues.[17]

Constitutional Right of Freedom of Speech not Violated

For the Integrated Bar to use a member's dues to promote measures to which said member is opposed would not nullify or adversely affect his freedom of speech.[18]

Since a State may constitutionally condition the right to practice law upon membership in the Integrated Bar, it is difficult to understand why it should become unconstitutional for the Bar to use the member's dues to fulfill the very purposes for which it was established.[19]

Bar Integration Necessary and Practical at this Time

In resolving the third issue, the Supreme Court cited the observations made by the Commission on the successful operation of bar integration in

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[14] Fellers, *Integration of the Bar*, 47 J. AM. JUD. SOC., 257 (1964).

[15] Hill v. State Bar of California, 14 Cal. 2d 732, 97 P. 2d 236 (1939); *In re* Mundy, 202 La. 41, 11 So. 2d 398 (1942); State Bar of California v. Superior Court, 207 Cal. 323, 278 P. 432 (1954); *In re* Integrating the Bar 222 Ark. 35, 259 S.W. 2d 144 (1953); *In re* Unification of Montana Bar Association, 107 Mont. 559, 87 P. 2d 172 (1939); *In re* Integration of State Bar of Oklahoma, 185 Okla. 505, 95 P. 2d 113 (939).

[16] Petition of Florida State Bar Association, 40 So. 2d 902 (1949); *In re* Integration of the Bar of Hawaii, *supra*, note 9; Lathrop v. Donohue, *supra*, note 10.

[17] Lathrop v. Donohue, *supra*, note 10.

[18] Lathrop v. Donohue, 367 U.S. 820, 6 L.Ed. 2d 1191, 81 S.Ct. 1826 (1961).

[19] *Ibid.*

other jurisdictions such as in the United States, Canada and England. Unification is the best way to create an effective machinery to discipline members of the Bar. As an official agency, the Integrated Bar enjoys an influence in society that the ordinary Bar association can never have. Greater unification provides a forum for the members of the Bar, thus inviting participation. Every lawyer has a vote, and the opinion of every lawyer can be quickly canvassed.

Unification also means greater facilities and services as it provides a sizeable budget which will make possible better financing of bar programs. Furthermore, the integrated Bar's roster of members will be a simple device for identifying who is or who is not an authorized practitioner. The profession will become more cohesive as the unification is a way of sharing cost among all who enjoy the benefits, and will provide the needed cohesion in the legal profession. Lastly, only a unified Bar can effectively function to discharge properly and fully the obligations of the profession to its members, to the courts and to the public.[20]

New Rule (Rule 39-A) Organizing the Integrated Bar

Thus the Supreme Court, forthwith, promulgated Rule 139-A of the Rules of Court which took effect on January 16, 1973, providing for the organization of the official body known as the "Integrated Bar of the Philippines" to be composed of all persons whose names appear or may hereafter be included in the Roll of Attorneys of the Supreme Court. For a more effective administration, the Philippines is divided into nine regions under which provincial or city chapters are organized.

The new Rule stresses the fundamental objectives of the Integrated Bar which 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.[21]

To insure the accomplishment of said purposes, the Rule provides, among other things, that the Integrated Bar shall be strictly non-political, and expressly prohibits every activity tending to impair this basic feature.[22]

To safeguard the Integrated Bar from any political or official influence, the Rule provides that lawyers holding any elective, judicial, quasi-judicial, or prosecutory office in the Government are not eligible for any elective or appointive position in the Integrated Bar.

On the other hand, any officer or employee of the Integrated Bar shall be considered *ipso facto* resigned from his position as of the moment he files his certificate of candidacy for any elective public office or ac-

[20] Report of the Commission on Bar Integration.
[21] Sec. 2.
[22] Sec. 13.

cepts appointment to any judicial, quasi-judicial or prosecutory office in the Government or any political subdivision or instrumentality thereof.[23]

For the enforcement and maintenance of discipline among members of the Integrated Bar, by-laws for grievance procedures have been provided for by the Board of Governors. Any suspension or disbarment of a member or the removal of a member from the Roll of Attorneys is subject to the approval of the Supreme Court.[24]

By Presidential Decree No. 181, the Integrated Bar of the Philippines was constituted as a body corporate with all the powers of a juridical body.

Subsequently, the first annual convention of the House of Delegates was held on March 17, 1973 when the national officers were duly elected. With retired Justice J.B.L. Reyes elected as first President, the Integrated Bar of the Philippines was formally inaugurated at the Maharlika Hall, Malacañang, Manila.[25]

LEGAL ETHICS

Standards of Judicial and Legal Ethics under the Integrated Bar

With this new official body now organized precisely to elevate the standards of the legal profession, improve the administration of justice, and enable the Bar to discharge its public responsibility more effectively, the Supreme Court in 1973 imposed several disciplinary measures against lawyers and judges for their failure to live up to the expectations due from them.

Duties of Lawyers to the Court

Thus in *Achacoso v. Court of Appeals*,[26] the Court censured the practice of counsels who secure extensions of time to file their pleadings and thereafter simply let the period lapse without submitting the pleading or manifestation of their failure to do so.

In this case, when called upon to show cause why no disciplinary action should not be taken against him, the counsel explained that he was retained on a piece-work basis with the verbal understanding that all expenses for the preparation of pleadings and the cost of services of a stenographer-typist shall be furnished in advance by petitioner; that in spite of the fact that he tried to contact petitioner, he failed to do so because petitioner was always out of his office. Counsel then pleaded that he had not the least intention of delaying the administration of justice and much less

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[23] *Ibid.*

[24] Rule 139-A, sec. 12.

[25] Addresses during the inauguration were delivered by President Ferdinand Marcos, *A New Frontier in the Quest for Justice*, 1 J. INTEG. BAR PHIL. 52 (June, 1973); J.B.L. Reyes, *Prospects of the Integrated Bar*, 1 J. INTEG. BAR PHIL. 58 (June, 1973); Castro, *A Stone for the Pillar*, 1 J. INTEG. BAR PHIL. 62 (June, 1973)

[26] G.R. No. L-35867, June 28, 1973, 51 SCRA 424 (1973).

trifling with the resolutions and orders of the Court; that the inability of said counsel to submit the reply within the third extension granted him by the Court was due to supervening circumstances which could not be attributed to him.

The Supreme Court found counsel's explanation far from satisfactory. according to the Court, if indeed counsel was not in a position to finance the necessary expenses for preparing and submitting the reply, on account of his client's failure to advance the sum of ₱500 as agreed upon between them, then counsel could have filed a timely reply on petitioner's behalf. His inaction unduly delayed the Court's prompt disposition of the case after the filing by respondents on February 8, 1973 of their comments on the petition showing its lack of merit.

Counsel was forthwith reprimanded with the warning that repetition of the same or similar acts would be dealt with more severely.[27]

The Court in a similar case also found unsatisfactory the explanation of counsel who alleged that he was suffering from hypertension as an excuse for his failure to file his client's brief on time. Even if he were disabled to prepare his brief, ruled the Court, he could have easily so informed the Court in due time.[28]

If only to stress the importance of the duty of the lawyer to comply with his duties to his clients, the Supreme Court, in *People v. Macellones*,[29] censured the counsel for his failure to file the brief for the two accused, even if said accused subsequently withdrew their appeal. After the counsel failed to file the brief on April 28, 1972 when it was due, he was, by a court resolution, fined ₱200 on August 17, 1972. In the same resolution, he was granted an additional period of thirty days within which to do so. When the due date came, no brief was forthcoming. With frantic efforts on his part, he was able to convince his clients to withdraw their appeals.

Notwithstanding his efforts in prevailing upon his clients to withdraw their appeal, counsel was not completely absolved from neglecting to comply with his duty to the court and his clients. Such conduct, said the Court, betrayed a failure to exert that "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights, and the exercise of his utmost learning and ability".[30]

What was worse in the actuation of counsel was his lack of respect for and obedience to the highest Tribunal of the land. While he was counsel *de parte*, he should have asked his clients to allow him to withdraw, so

[27] Achacoso v. Court of Appeals, *supra*.
[28] People v. Tan, G.R. No. L-22697, November 2, 1965, 15 SCRA 252 (1965).
[29] G.R. No. L-33639, February 28, 1973, 49 SCRA 529 (1973).
[30] Citing Canon 15 of the Canons of Legal Ethics.

that they could secure the services of another lawyer alive to his responsibility and responsive to his duty.[31]

The Court was more emphatic in stressing the duty of a lawyer to act with energy and dispatch in filing the brief for his client in *People v. Vicente.*[32]

Several extensions were granted to a counsel *de oficio.* On the last extension, counsel was given a warning that no further extension would be allowed. Yet an *ex parte* petition for another extension was again filed which finally exhausted the patience of the Court so much so that a resolution suspending both counsels *de oficio* from the practice of law until further orders of the Court, except to file the brief for the appellant within 15 days, was made. The Court noted that in all the pleadings for extension of time to file the brief, the usual reason given was the "pressure of work attending to the actual hearing of various civil and criminal cases, long pending in various courts of Baguio City and Benguet."

In their motion to lift the order of suspension, both counsels acknowledged their fault in not having heeded the warning issued by the Court that no further extension would be granted after the fourth extension. In tendering their apology they pledged that henceforth they would redouble their efforts and exert the due and proper diligence in the performance of their functions required of members of the bar.

With such an acknowledgment, the court in a spirit of leniency, granted their plea. The Court, however, admonished the counsels with a lecture on the duties of counsel to the court, the client and the public. There ought to be an awareness on the part of both respondents that the trust imposed on counsel, in accordance not only with the Canons of Legal Ethics but with the soundest traditions of the profession, would require fidelity on their part. Speaking for the court, Mr. Justice Fernando said: "Such a betrayal, as did happen in this case, when lawyers who were counsel *de parte* and who presumably had been duly recompensed even if in an insufficient manner, by the mere devise of having their responsibility transformed into that of counsel *de oficio,* did thereafter seek further unjustified delay in what they ought to have done in the first place is not to be easily condoned. Their duty to their client, to this Tribunal and the general public, arising from their highly significant role in the administration of justice, cannot be satisfied except on a showing that the preparation and the filing of the brief for an accused is attended to with energy, promptness and with dispatch. There is need also for diligence and the necessary quantum of learning, unfortunately commodities at times rather scarce. Nor does it reflect favorably on counsel's norm of conduct if, on the assumption that they really were saddled with so many cases to be attended to in

[31] *Ibid.*
[32] G.R. No. L-35243, May 25, 1973, 51 SCRA 94 (1973).

inferior courts, they did feel free to ignore and disregard the repeated resolutions of this Tribunal. That is not only plain, inexcusable ignorance of the relative standing of the courts in our constitutional system. It is an affront to common sense."[33]

In *People v. Camano*,[34] due to the failure of a lawyer to file his comment as required by a resolution of the Supreme Court, this Tribunal had another occasion to reiterate its rulings in the *Macellones* and *Vicente* cases. Ruling on the excuse of the lawyer for an alleged oversight, the Court said that it had been confronted of late with instances of lack of awareness of a member of the bar as to the duties owing a judicial tribunal. It had not allowed such occasion to pass without their attention being called and in certain instances without the imposition of the corresponding penalty. In the case at bar, respondent attorney was admonished if only to make it plain to him that carelessness, especially in connection with an order of the Court, was not to be tolerated.

The solemn duty of a lawyer even merely as counsel *de oficio* to exercise the utmost care and diligence in the performance of his duty as an officer of the Court was emphasized in *People v. Silvestre*.[35] In this case, the accused, charged with a capital offense (robbery in band with homicide and rape) pleaded guilty, and, forthwith, the trial court imposed the death penalty.

As found by the Supreme Court, from a mere cursory reading of the record, the trial judge failed to take the essential measures which said Court, in a long line of decisions, has prescribed to warn lawyers and trial courts against the improvident entry of a plea of guilty by an accused. First, the trial court did not at all ascertain for itself whether the defendant, Silvestre, completely understood the full meaning, significance and implication of his plea of guilty, and, second, it did not receive evidence for the purpose of establishing the guilt and the precise degree of culpability of the defendant notwithstanding the plea of guilty.

What was worse was that the actions of the court and counsel were all too hasty. It appeared that when the previously appointed counsel *de oficio* did not show up at the arraignment, the court simply appointed one of the lawyers then present to act as counsel *de oficio* "for the arraignment only," as if the duties of an attorney to his accused client could be conveniently segmented and the segments farmed out to whomsoever may catch the fancy of the court. Moreover it took only ten minutes for the newly appointed counsel *de oficio* to study the complicated and serious charge of robbery in band with homicide and rape. To the Court, the counsel *de oficio* did not appear to have taken his duties to the accused with the seriousness and concern expected of a conscientious advocate and officer of the court.

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[33] People v. Vicente, G.R. No. L-35243, May 25, 1973, 51 SCRA 94 (1973).
[34] G.R. Nos. L-36662-63, November 29, 1973, 54 SCRA 197 (1973).
[35] G.R. No. L-33821, June 22, 1973, 51 SCRA 286 (1973).

The court ruled: "In the period of ten minutes that passed from his appointment as counsel *de oficio* to his declaration to the court *a quo* of his almost instant readiness to proceed with the arraignment of the two accused, he summarily did away with the need of conscientiously scrutinizing the entire record of the case and interviewing his clients fully on the circumstances of the crime charged. It is Atty. Guyo's dangerous and ill-advised brand of counselling that can conceivably send innocent men to prison, if not to their death, or doom guilty persons to suffer more than their just measure of punishment and retribution."

Accordingly, the decision appealed from was set aside and the case was remanded to the court *a quo* for new arraignment and further proceedings.

Indeed the Court has ruled on several occasions that it is the duty of counsel to warn the accused about the consequences of pleading guilty.[36] As it is, counsels *de oficio,* although now compensated from government funds, usually take the line of least resistance by encouraging the accused, with the promise that a light penalty will be imposed by the Court, to plead guilty to a lesser offense. On this score, the Supreme Court has cautioned all courts against frequent appointment of the same attorney as counsel *de oficio,* for two basic reasons: first, it is unfair to the attorney concerned, considering the burden of his regular practice, that he should be saddled with too many *de oficio* cases; and, second, the compensation provided for by section 32 of Rule 138 of the Rules of Court might be considered by some lawyers as a regular source of income, something which the Rule did not envision.[37] Nevertheless, although a lawyer for an indigent prisoner, an attorney is called upon to live up to the standards of professional ethics by exerting his best efforts.[38]

In cases of a similar nature, the Supreme Court in fact imposed disciplinary action on the lawyer for his failure to file the brief for his client.[39]

In *Casals v. Cusi, Jr.,*[40] a more severe disciplinary action was imposed on a lawyer for acts which the Court considered as improper conduct and abuse of the Court's good faith. The Court severly castigated the counsel for his manifest gross disrespect for the Court's processes and willful disregard of his solemn duty to conduct himself with all good fidelity to the Court and for tending to embarrass gravely the administration of justice.

In this case, the Court found unsatisfactory the attorney's explanation for his having allowed his extended period to lapse without submitting the required comment or extending to the Court the courtesy of any

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[36] People v. Abejero, G.R. No. L-13470, March 27, 1961, 1 SCRA 804 (1961).

[37] People v. Daeng, G.R. No. L-34091, January 30, 1973, 49 SCRA 221 (1973).

[38] People v. Estebia, G.R. No. L-26868, February 27, 1969, 27 SCRA 106 (1969).

[39] People v. Aguilar, G.R. No. L-20147, February 28, 1963, 7 SCRA 468 (1963); People v. Cawili, G.R. No. L-30543, August 31, 1970, 34 SCRA 728 (1970).

[40] G.R. No. L-35766, July 12, 1973, 52 SCRA 58 (1973).

explanation or manifestation for his failure to do so. His inaction unduly prevented and delayed for a considerable period the Court's prompt disposition of the petition. Worse, when this was noted and the Court required his explanation, said explanation was found to be devious and unworthy of belief since it was contradicted by his own previous representations of record as well as by the "supporting" documents submitted by him therewith. The unsatisfactory explanation given by the lawyer as against the pleadings of record evidenced a willful disregard of his solemn duty as an attorney to employ in the conduct of a case "such means only as are consistent with truth and honor, and never seek to mislead [the courts] by an artifice or false statement."

The Court thus considered as unpardonable the lawyer's brazen lie in assuring the Court, after a lapse of over six months which he let pass without submitting the required comment, that as of December 8, 1972 the said comment had already been prepared by him and was only to be typed on clean paper. The same counsel in his explanation still brazenly asked the Court for a further period to submit respondents' comment which supposedly had been readied by him for submittal six months ago. His cavalier action and attitude, according to the Court, manifested gross disrespect for the Court's processes and tended to embarrass gravely the administration of justice.

It was in *Pajares v. Abad Santos*[41] where the Court reminded attorneys that "[t]here must be more faithful adherence to Rule 7, Section 5 of the Rules of Court which provides that 'the signature of attorney constitutes a certificate by him that he has read the pleading and that to the best of his knowledge, information and belief, *there is good ground to support it; and that it is not interposed for delay*' and expressly admonishes that 'for a willful violation of this rule an attorney may be subjected to disciplinary action.' "

The Court further reminded a lawyer of his solemn oath upon his admission to the Philippine Bar, that he would do no falsehood and conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity to the courts and his clients.

Citing a previous ruling,[42] the Court held: "Time and again, lawyers have been admonished to remember that they are officers of the court, and that while they owe their clients the duty of complete fidelity and the utmost diligence, they are likewise held to strict accountability insofar as candor and honesty towards the court is concerned."

In previous cases, the Supreme Court had suspended lawyers from the practice of law for failure to file appellants' briefs in criminal cases, despite

[41] G.R. No. L-29543, November 29, 1969, 30 SCRA 748 (1969).

[42] Berenguer v. Carranza, Adm. Case No. 716, January 30, 1969, 26 SCRA 673 (1969).

repeated extensions of time obtained by them, with the admonition that "the trust imposed on counsel in accordance not only with the canons of legal ethics but with the soundest traditions of the profession would require fidelity on their part".[43]

The attorney's duty of prime importance is to observe and maintain the respect due to the courts of justice and judicial officers.[44] In addition to the respect due to the court, the lawyer must maintain his personal integrity which is not merely satisfied by the fact that he escapes the penalties of the criminal law. Good moral character includes at least common honesty.[45]

Accordingly, a lady lawyer was held accountable for her failure to live up to that exacting standard expected of counsel, more specifically with reference to a duty owing to the High Tribunal. In *Muñoz v. People,*[46] it appeared that in preparing a petition for *certiorari* to review a decision of the Court of Appeals, a lady lawyer attributed to said Court findings of facts in reckless disregard, to say the least, of what in truth was its version as to what took place.

During a hearing when she was ordered to appear, while her demeanor was respectful, she nevertheless gave the impression that what she had done was hardly deserving of any reproach. It was as if she was serenely unconcerned and she was even evasive in her answers to intensive questioning by the Court.

In spite of the joint apology she filed together with a senior member of the law firm to which she belonged, counsel was severely censured if only to emphasize the Canon of Professional Ethics on candor and fairness. According to the Court, the burden cast on the judiciary would be intolerable if it could not take at face value what is asserted by counsel. The time that will have to be devoted just for the task of verification of allegations submitted could easily be imagined. Even with due recognition then that counsel is expected to display the utmost zeal in defense of a client's cause, it must never be at the expense of deviation from truth.[47]

As the Court of Appeals said in a similar case in 1948, it is unnecessary to remind counsel that over and above his duty to his client, the lawyer owes to the court absolute candor and fairness and that an effort to mislead the courts of justice is a serious breach of ethics and official duty.[48] A lawyer is an officer of the court. He is a minister in the

[43] People v. Vicente, G.R. No. L-35243, May 25, 1973, 51 SCRA 94 (1973).

[44] Cruz v. Government Service Insurance System, G.R. No. L-21286, February 28, 1969, 27 SCRA 174 (1969).

[45] Royong v. Oblena, Adm. Case No. 376, April 30, 1963, 7 SCRA 859 (1963), citing *In re* Del Rosario, 52 Phil. 399 (1928).

[46] G.R. No. L-33672, September 28, 1973, 53 SCRA 190 (1973).

[47] Muñoz v. People, *supra*, note 46.

[48] People v. Yap Song Khe, CA-G.R. No. 1925-R, September 30, 1948, 46 O.G. 2651 (June, 1950).

temple of justice. Good faith to and honorable dealing with judicial tribunals before whom he practices are primary obligations on his part. His high vocation demands that he deal with the courts with truthfulness, candor and frankness. He should not trifle with court proceedings. It is his duty to help create a climate essential to the prompt and proper dispatch of the cases in which he appears as counsel. And when a pleading of his echoes the hollow sound of hypocrisy, he should not expect the court to act favorably on his prayer therein contained.[49]

On this score the Court has held that good moral character of a lawyer includes his common honesty.

The greater care and devotion to be exercised by the lawyer to the cause of the client was further stressed by the Court in *Velez v. Velez,*[50] where counsel was reminded of his duty and care before filing actions. According to the Court, counsel must be informed of all the relevant circumstances and thereafter, he must make a careful study of every matter bearing on the possible success, or lack of it, of a litigation which he would initiate. Moreover, it is the duty of the lawyer to exert his utmost effort to press the claim of his client and in his duty to the court, as an officer thereof, to exercise the utmost candor. What is more, a lawyer has not lived up to the high standards of the profession, if he lays himself open to the legitimate suspicion that he does not measure up to that degree of sincerety and honesty that is expected of every member of the bar in his dealings with the judiciary.[51]

Duty of Attorneys to Clients-Authority to Bind Clients

Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation or receive anything in discharge of a client's claim but the full amount in cash.[52] The Civil Code expressly provides that a special power of attorney is necessary, among other cases, to compromise and to renounce the right to appeal from a judgment.[53]

In *Vicente v. Geraldez,*[54] the Supreme Court ruled that a compromise agreement signed only by the lawyers of the petitioners and by the lawyers of the private respondent corporation was not binding on the respondent corporation. It was not disputed that the lawyers of respondent corporation

[49] Palaypayon v. Formalejo, CA-G.R. Nos. 17184-85-R, May 9, 1957, 53 O.G. 5258 (Aug., 1957).

[50] G.R. No. L-28873, July 31, 1973, 52 SCRA 190 (1973).

[51] *Ibid.*

[52] RULES OF COURT, Rule 138, sec. 23; See Dorego v. Perez, G.R. No. L-24922, January 2, 1968, 22 SCRA 8 (1968).

[53] CIVIL CODE, art 1878(3).

[54] G.R. Nos. L-32473 & L-32483, July 31, 1973, 52 SCRA 210 (1973).

had not submitted to the Court any written authority from their client to enter into a compromise.

As the Court had said in a previous case,[55] while the Rules do not expressly state that the special authority to the attorney must be in writing, the Court has every reason to expect that, if not in writing, the same be duly established by evidence other than the self-serving assertion of counsel himself that such authority was verbally given him. What was more, the client in this case was a juridical person and the law provides the particular form in which such persons may compromise.

Form of Authority to Compromise for Corporation

Article 2033 of the New Civil Code provides that juridical persons may compromise only in the form and with the requisites which may be necessary to alienate their property.

Under the Corporation Law, the power to compromise or settle claims in favor of or against a corporation is ordinarily and primarily committed to its Board of Directors. This right is implied in the Board's power to manage the affairs of the corporation according to the Directors' honest judgment and discretion. But the mere verbal assertion of counsel that he was authorized to compromise is not sufficient to bind the client.

The Supreme Court once ruled, however, that although Article 1878 of the New Civil Code expressly requires a special power of attorney in order that one may compromise an interest of another, it is neither accurate nor correct to conclude that its absence renders the compromise agreement void. In such a case, the compromise is merely unenforceable.[56] Moreover, if it appears that a compromise agreement was entered into without the specific authority of the client, but the client became aware of the compromise and the judgment thereon and fails to repudiate it promptly, he will not be heard to contest its validity.[57] In the same way, a miscalculation or misappreciation of the legal import of the compromise agreements, where the party is assisted by counsel, will not provide a basis for setting aside the agreement on the grounds of mistake or error.[58]

Withdrawal of Attorney from Case.

The improper withdrawal of a lawyer from a case has always posed problems among lawyers and their clients. The general rule is that an attorney may withdraw at any time from any action or special proceeding by the written consent of his client filed in court. He may also

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[55] Home Insurance Co. v. United States Lines Co., G.R. No. L-25593, November 15, 1967, 21 SCRA 863 (1967).

[56] Duñgo v. Lopena, G.R. No. L-18377, December 29, 1962. 6 SCRA 1007 (1962).

[57] Acenas v. Sison, G.R. No. L-17011, August 30, 1963, 8 SCRA 711 (1963); Rivero v. Rivero, 59 Phil. 15 (1933).

[58] Periquet v. Reyes, G.R. No. L-23886, December 29, 1967, 21 SCRA 1503 (1967). On this score, see Annot. on *The Role of an Attorney in a Compromise Agreement*, 52 SCRA 232 (1973).

retire without the consent of his client should the court on notice to client and on hearing determine that the attorney ought to be allowed to retire.[59] Thus, while the right of the client to terminate the relation is absolute, the right of an attorney to withdraw or terminate the relation other than for sufficient cause is considerably restricted. For among the fundamental rules of legal ethics is the principle that an attorney who undertakes to conduct an action impliedly stipulates to carry it to its termination. He is not at liberty to abandon the case without reasonable cause. More than that, he has to get the consent of either the client or the court and for a valid cause determined by the court.

Thus in *G. A. Machineries, Inc. v. Januto*[60] the Supreme Court found that the withdrawal of defendant-appellant's counsel of record in the Court of First Instance of Manila was not only defective but also ineffective. In this case the counsel in question simply backed out without getting defendant-appellant's written consent or express leave of court. The counsel wrote a letter to the Clerk of Court without indicating a written consent of his client. There was no showing either that his withdrawal was approved by the court. Hence, when the case was called for trial, the counsel was still the attorney on record. While he had a request to withdraw as counsel the Court had not acted on it. And he was not supposed to presume that the Court would favorably act on his request. His failure to appear during the trial was found by the Court to be inexcusable negligence, ultimately imputable to defendant-appellant, his client.[61] The Court cited the ruling in *Guanzon v. Aragon*,[62] where an attorney was reprimanded for his failure to appear for hearing simply because he assumed that the relationship of attorney and client had been terminated by the client when the latter took from him the papers in order to file a mandamus case. This assumption of counsel ran counter to Rule 127, Section 24 (now Section 26, Rule 138) which provides that an attorney may only retire from a case either by written consent of his client or by permission of the court after due notice and hearing, in which event the attorney should see to it that the name of the new attorney be recorded in the case. The Court went on to rule in the *Guanzon* case that failure to observe such procedure cannot be considered as excusable negligence on the part of counsel and much less a basis for relief under Rule 38 of the Rules of Court.[63]

A different situation arose, however, in the withdrawal of counsel in the cases of *Republic v. Court of First Instance of Lanao del Norte Branch*

[59] RULES OF COURT, Rule 138, sec. 26; Baquiran v. Court of Appeals, G.R. No. L-14551, July 31, 1961, 2 SCRA 873 (1961).

[60] G.R. No. L-27958, March 31, 1973, 50 SCRA 1 (1973).

[61] *Ibid.*

[62] 107 Phil. 315 (1960).

[63] See Annot. on *The Rule on Substitution or Employment of Additional Counsel*, 51 SCRA 22 (1973).

II,[64] *Central Bank of the Philippines v. Tandayag,*[65] and the *Development Bank of the Philippines v. Tandayag*[66] where the Supreme Court found it justifiable for the trial court to have relieved a lawyer from continuing his appearance in an action even without hearing the client. In these three cases, the Court found a situation where the client stopped having any contact with the lawyer, who thereby was left without the usual means which are indispensable in the successful or, at least, proper defense of the client's cause, such as actual knowledge of relevant facts, the identity of usable witnesses, pertinent documents and other evidence, not to speak of the money needed for even the minimum of litigation expenses and the possible advances of attorneys fees. "Understandably," the Court said, "no responsible lawyer can be expected to do justice to any cause under such conditions, and, it would be an unjust imposition to compel him to continue his services in relation thereto."

The Court reiterated the proper procedure in case of withdrawal of attorney of record and substitution thereof by new counsel in the case of *Ong Ching v. Ramolete.*[67] In order that there may be a valid substitution of attorney in a given case, there must be (a) a written application for substitution; (b) a written consent of the client; and (3) a written consent of the attorney to be substituted. In case the consent of the attorney to be substituted cannot be obtained, there must at least be proof that notice of the motion for substitution has been served upon him in the manner prescribed in the rules.[68] The *Ong Ching* case, did not exactly involve the substitution of attorney, but merely the employment of an additional counsel. What appeared in this case was that a counsel filed a motion for reconsideration which, however, did not indicate that said motion was filed in collaboration with the attorney on record nor did it state that he was replacing said original counsel. It has been ruled on this point that the mere appearance by a new attorney does not mean that the authority of the first attorney has been withdrawn.[69]

At any rate the Court held that while it may be desirable in the interest of an orderly conduct of judicial proceedings that a counsel for a party should file with the Court his formal written appearance in the case, before filing any pleading therein, or mention in his pleading that he is submitting the same in collaboration with the counsel of record, the mere circumstance that such acts were not done does not warrant the conclusion that the pleading filed by such counsel has no legal effect whatsoever.[70]

[64] G.R. N. L-33949, October 23, 1973, 53 SCRA 317 (1973).
[65] G.R. No. L-33986, October 23, 1973, 53 SCRA 317 (1973).
[66] G.R. No. L-34188, October 23, 1973, 53 SCRA 317 (1973).
[67] G.R. No. L-35356, May 18, 1973, 51 SCRA 13 (1973).
[68] U.S. v. Borromeo, 20 Phil. 189 (1911); Ramos v. Potenciano, G.R. No. L-19436, November 29, 1963, 9 SCRA 589 (1963).
[69] Aznar v. Norris, 3 Phil. 636 (1904).
[70] Ong Ching v. Ramolete, *supra*, note 67.

As the Court held in a similar case, no valid substitution of attorneys was effected by the mere filing, after hearing had commenced, of a notice of appearance by a different attorney purporting to represent the defendants, there having been no formal application for or consent to the substitution by or notice of any such application to, the prior attorney of record.[71]

Attorney's Fees

The propriety and extent of attorneys fees to be awarded in a litigation was brought up in *Zulueta v. Pan American World Airways, Inc.*[72] This was a case for damages against the defendant airline firm for breach of contract of carriage as a common carrier. It appeared that defendant common carrier did not only fail to comply with its obligation to transport plaintiff to Manila, but also acted in a manner calculated to humiliate him, to chastise him, to make him suffer and cause him inconvenience by leaving him on Wake Island in the expectation that he would be stranded there. Aside from the exemplary damages, an award of attorneys fees in the sum of ₱75,000 was granted to plaintiff.

In impugning the award of attorney's fees, defendant contended that no penalty should be imposed upon the right to litigate. Moreover, attorneys fees should be awarded in exceptional cases only.

The general rule is that attorney's fees may be recovered when exemplary damages are awarded.[73]

Attorney's fees may now be recovered when the defendant's acts or omissions have compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.[74]

The same ruling was rendered in *Koh v. Court of Appeals*[75] where the Supreme Court sustained an award of ₱2,000 as attorney's fees on the ground that a certain measure of pecuniary burden had been borne by the respondent on account of the filing of the case.

In several other cases, the Supreme Court also sustained awards of attorneys fees as damages if defendant acted in gross and evident bad faith in refusing to satisfy plaintiff's valid and demandable claim, or where the court deemed it just and equitable that attorney's fees be recovered.[76]

On other occasions, however, the Supreme Court denied the right of defendant to collect attorney's fees where plaintiffs' cause of action was not

[71] Olivares v. Leola, 97 Phil. 253 (1955). On this score, see Annot. on *Appearance of Attorney*, 30 SCRA 963 (1969).
[72] G.R. No. L-28589, January 8, 1973, 49 SCRA 1 (1973).
[73] CIVIL CODE, art. 2208.
[74] Reyes v. Yatco, 100 Phil. 964 (1957); Plaridel v. Galang, 100 Phil. 679 (1957); Guitarte v. Sabaco, 107 Phil. 437 (1960).
[75] G.R. No. L-29641, November 29, 1973, 54 SCRA 134 (1973).
[76] Jimenez, v. Bucoy, G.R. No. L-10221, 103 Phil. 40 (1958); Fores v. Miranda, 105 Phil. 266 (1959); Ledesma v. Realubin, G.R. No. L-18335, July 31, 1963, 8 SCRA 608 (1963); Ramirez v. Sy Chit, G.R. No. L-22022, December 26, 1967, 21 SCRA 1364 (1967); Firestone Tire & Rubber Co. v. Ines Chaves & Co., Ltd., G.R. No. L-17106, October 19, 1966, 18 SCRA 356 (1966).

so frivolous or untenable as to amount to gross and evident bad faith.[77]

Prohibition Against Purchase by Lawyer

Under Article 1491 of the Civil Code, a lawyer is prohibited from acquiring by purchase, even at a public or judicial sale, the property and rights which may be the object of any litigation in which they may take part by virtue of their profession. The prohibition stands whether the acquisition is made in person or through the mediation of another and even if the acquisition is by assignment.[78]

The rule is designed to protect the confidential relations that necessarily exist between attorney and client. Aware of the financial necessities of the client, the lawyer has the advantage of dictating his terms.

In the case of *Rubias v. Batiller,*[79] this rule on prohibition was applied in a purchase made when plaintiff was counsel of his father-in-law in a land registration case involving the property in dispute. The Court cited Article 1491 of the Civil Code which prohibits certain persons, by reason of the relation of trust or their peculiar control over the property, from acquiring such property either directly or indirectly and even at public or judicial auction, as follows: (1) guardians; (2) agents; (3) administrators; (4) public officers and employees; (5) judicial officers and employees, prosecuting attorneys, and lawyers; and (6) others specially disqualified by law.

The criterion of nullity of such prohibited contracts under Article 1459 of the Spanish Civil Code (Article 1491 of the New Civil Code) as a matter of public order and policy as applied by the Supreme Court of Spain to administrators and agents in its decisions should certainly apply with greater reason to judges, judicial officers, fiscals and lawyers under paragraph 5 of the codal article.

Following the rationale of the prohibition, the Supreme Court held the sale of such nature as null and void because of public policy considerations. Such prohibited contracts are definite and permanent and cannot be cured by ratification. The public interest and public policy remain paramount and do not permit of compromise or ratification. In this respect, the permanent disqualification of public and judicial officers and lawyers grounded on public policy differs from the first three cases of guardians, agents and administrators (Article 1491, Civil Code), as to whose transactions, it has been opined, that they may be "ratified" by means of and in "the form of a *new contract,* in which case its validity shall be determined only by the circumstances at the time of execution of such new contract. The causes of nullity which have ceased to exist cannot impair

[77] Rizal Surety & Insurance Co. v. Court of Appeals, G.R. No. L-23729, May 16, 1967, 20 SCRA 61 (1967); Sveriges Angfartygs Assurans Forening v. Qua Chee Gan, G.R. No. L-22146, September 5, 1967, 21 SCRA 12 (1967).

[78] Hernandez v. Villanueva, 40 Phil. 775 (1920); *In re* Calderon, 7 Phil. 427 (1907).

[79] G.R. No. L-35702, May 29, 1973, 51 SCRA 120 (1973).

the validity of the new contract. Thus, the object which was illegal at the time of the first contract, may have already become lawful at the time of the ratification or second contract; or the service which was impossible may have become possible; or the intention which could not be ascertained may have been clarified by the parties. The ratification or second contract would then be *valid from its execution;* however, it does *not* retroact to the date of the first contract."

It may be stated though that Article 1491 of the Civil Code does not prohibit a lawyer from acquiring a certain percentage of the value of the property in litigation that may be awarded to his client. A contingent fee based on such value is allowed.[80] Moreover, the prohibition does not apply where the interest in the property had been acquired by the attorney before the property became the subject matter of litigation.[81]

JUDICIAL ETHICS

In the running of a just government, one of the essential requisites is to have a judiciary that has the absolute trust and confidence of the people. Thus the canons of judicial ethics emphasize the judge's duty to act on the merits of the case and to avoid situations and actions that tend to weaken his impartiality and objectivity.

To maintain that high standard of judicial conduct, especially so now that the Supreme Court has the administrative supervision over all lower court judges, the Supreme Court has admonished several judges and called their attention to their obligation under the Rules of Court and the Canons of Judicial Ethics.

Disqualification of Judges

The underlying principle of the rules on the disqualification of judges is that no judge should preside in a case in which he is not wholly free, disinterested, impartial, and independent. Next in importance to the duty of rendering a righteous judgment is that of doing it in such a manner as will beget no suspicion against the fairness and integrity of the judge. In general, litigants are entitled to have a hearing before, and a determination by, an impartial tribunal, free from bias, prejudice, and interest.

Thus section 1, Rule 137 of the Rules of Court provides: No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested 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,

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[80] Recto v. Harden, 100 Phil. 427 (1956).

[81] Del Rosario v. Millado, Adm. Case No. 724, January 31, 1969, 26 SCRA 700 (1969).

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."

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.

It is a fundamental principle that due process cannot be achieved in the absence of objectivity on the part of a judge.

In *Mateo, Jr. v. Villaluz,*[82] the Supreme Court restated the rule that due process cannot be satisfied in the absence of that degree of objectivity on the part of the judge sufficient to reassure litigants of his being fair and just. The parties must have that legitimate expectation that the decision arrived at would be the application of the law to the facts as found by a judge who does not play favorites. Citing a series of decisions[83] where the Court had said that every litigant is entitled to nothing less than the cold neutrality of an impartial judge, the Court made it clear to judges that outside the causes enumerated in section 1 of Rule 137 of the Rules of Court, they should disqualify themselves if there are other causes that could conceivably erode the trait of objectivity in a case. It was on this score that when the Rules of Court was revised, an additional paragraph was added: "A judge may, in the exercise of is sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above."[84]

Speaking for the Court, Justice Fernando said: "It is well, therefore, that if any such should make its appearance and prove difficult to resist, the better course for a judge is to disqualify himself. That way, he avoids being misunderstood. His reputation for probity and objectivity is preserved. What is even more important, the ideal of an impartial administration of justice is lived up to. Thus is due process vindicated. There is relevance to what was said by Justice Sanchez in Pimentel v. Salanga, drawing 'attention of all judges to appropriate guidelines in a situation where their capacity to try and decide a case fairly and judiciously comes to the fore by way of challenge from any one of the parties. A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of cir-

[82] G.R. Nos. L-34756-59, March 31, 1973, 50 SCRA 18 (1973).

[83] Gutierrez v. Santos, G.R. No. L-15824, May 30, 1961, 2 SCRA 249 (1961); Del Castillo v. Javelona, G.R. No. L-16742, September 29, 1962, 6 SCRA 146 (1962); People v. Gomez, G.R. No. L-22345, May 29, 1967, 20 SCRA 293 (1967); Austria v. Masaquel, G.R. No. L-22636, August 31, 1967, 20 SCRA 1247 (1967); Zaldivar v. Estenzo, G.R. No. L-26065, May 3, 1968, 23 SCRA 533 (1968); Geotina v. Gonzales, G.R. No. L-26310, September 30, 1971, 41 SCRA 66 (1971).

[84] RULES OF COURT, Rule 137, sec. 1, 2nd par.

cumstance reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act or withdraw from a suit where that party or counsel is involved. He could in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decisions to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substance to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.' "

In the *Mateo, Jr. v. Villaluz* case, the defendant in a criminal case moved to disqualify the presiding judge on the ground that an extra-judicial statement purportedly made by an additional witness was subscribed and sworn to before said respondent judge. It turned out, that the same witness repudiated said written statement alleging that he was threatened by a government agent to execute said statement. Since the respondent judge would have to pass upon the repudiation, the petitioner moved to disqualify him. The respondent judge, however, turned down the plea, hence the petition to the Supreme Court.

Commenting on the refusal of the judge, the Court expressed the opinion that "[t]he imperfections of human institutions being such, what is fit and proper is not always achieved. The invitation to judges to disqualify themselves is not always heeded. For that matter, it is not always desirable that they should do so. It could amount in certain cases to their being recreant to their trust."

The more important principle, however, is that all suitors are entitled to nothing short of the cold neutrality of an independent and impartial tribunal. If there is a possibility of a trial being tainted by partiality, the Court can step in to assure respect for the demands of due process. This the Supreme Court did in the *Mateo* case. While the discretion in the first instance belongs to the trial judge, its exercise is subject to the corrective authority of the Supreme Court. In the instant case, the issue was whether the circumstances of a party, having subscribed before respondent judge an extra-judicial statement purporting to describe the manner in

which an offense was committed and later repudiated by him as the product of intimidation in the course of his having been asked to testify against petitioners, would suffice to negate that degree of objectivity the Constitution requires.

In holding for the disqualification, the Supreme Court said: "Respondent Judge could not be totally immune to what apparently was asserted before him in such extrajudicial statement. Moreover, it is unlikely that he was not in the slightest bit offended by the affiant's turnabout with his later declaration that there was intimidation by a government agent exerted on him. That was hardly flattering to respondent Judge. It is not only that. His sense of fairness under the circumstances could easily be blunted. The absence of the requisite due process element is thus noticeable. There is this circumstance even more telling. It was he who attested to its due execution on October 1, 1971 wherein Rolando Reyes admitted his participation in the crime and in addition implicated petitioners. At that time, their motion for dismissal of the charges against them was pending; its resolution was deferred by respondent Judge until after the prosecution had presented and rested its evidence against affiant, who was himself indicted and tried for the same offense, but in a separate proceeding. It cannot be doubted then that respondent Judge in effect ruled that such extra-judicial statement was executed freely. With its repudiation on the ground that it was not so at all, coercion having come into the picture, there is apparent the situation of a judge having to pass on a question that by implication had already been answered by him. Such a fact became rather obvious. For respondent Judge was called upon to review a matter on which he had previously given his opinion. It is this inroad in one's objectivity that is sought to be avoided by the law on disqualification. The misgivings then as to the requirement of due process for 'the cold neutrality of an impartial judge' not being met are more than justified. Hence the conclusion reached by us."

What is more, the Court advised trial court judges to limit themselves to the task of adjudication and to leave to others the role of notarizing declarations. The less an occupant of the bench fritters away his time and energy in tasks more incumbent on officials of the executive branch, the less the danger of his being a participant in any event that might lend itself to the interpretation that his impartiality has been compromised.

Apparently heeding the advice of the Supreme Court in *Mateo, Jr. v. Villaluz,* the same Judge (Onofre Villaluz) voluntarily inhibited himself from trying the case on the ground that before the criminal case was filed in his court, he already had personal knowledge of the same. This time petitioners challenged the resolution of the judge inhibiting himself.

The Court sustained the respondent judge and ruled that he had not committed any abuse of discretion.

While it is true that personal knowledge of the case pending before him is not one of the causes for disqualification enumerated in section 1 of Rule 137 of the Rules of Court, paragraph 2 of said section authorizes the judge "in the exercise of his sound discretion, [to] disqualify himself from sitting in a case, for just or valid reasons other than those mentioned [in paragraph 1.]"

The Supreme Court, through Mr. Justice Makasiar, went on to trace the development of the new Rule authorizing a judge to inhibit himself from trying a case for just and valid reasons. Before the amendment in 1964, a judge could not voluntarily inhibit himself on grounds of extreme delicacy,[85] or prejudice or bias or hostility,[86] or that he is a paid professor of law in a college owned by one of the litigants.[87] Not even if the judge himself took great interest and active part in the filing of the criminal charge to the extent of appointing the fiscal when the regular fiscal refused to file the information.[88]

It was in 1961 when the Court sustained the inhibition of a judge from trying a case on the ground that he earlier expressed an opinion in a letter addressed by him as counsel, a fact which might in some way or another influence his decision and prevent him from rendering an impartial judgment.[89] In 1967, the Court also affirmed the voluntarily disqualification of a judge due to bias and prejudice engendered by the fact that the judge "has lost all respect in the manner the special prosecutor . . . has been prosecuting the case,[90] or when the lawyer for a litigant was his former associate.[91]

The Supreme Court thus commended the respondent judge in heeding the ruling in *Geotina v. Gonzalez*[92] and the *Mateo* case.

Having voluntarily inhibited himself from trying the case, the respondent judge had the discretion likewise to transfer the case to another sala within one of the Courts of First Instance of Rizal.[93]

[85] Joaquin v. Barretto, 25 Phil. 281 (1913).
[86] Benusa v. Torres, 55 Phil. 737 (1931).
[87] Talisay-Silay Milling Co. v. Teodoro, 91 Phil. 101 (1952).
[88] Tayko v. Capistrano, 53 Phil. 866 (1928).
[89] Gutierrez v. Santos, G.R. No. L-15824, May 30, 1961, 249 (1961).
[90] People v. Gomez, G.R. No. L-22345, May 29, 1967, 20 SCRA 293 (1967).
[91] Austria v. Masaquel, G.R. No. L-22536, August 31, 1967, 20 SCRA 1247 (1967).
[92] G.R. No. L-26310, September 30, 1971, 41 SCRA 66 (1971).
[93] Umale v. Villaluz, G.R. No. L-33508, May 25, 1973, 51 SCRA 84 (1973).