LEGAL & JUDICIAL ETHICS REVIEWER
BY: RENE CALLANTA

LAWYER'S OATH:

"I, _____ of _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God."

**** Memorize this and think that you will take this oath after the Bar and it shall be so.***

(Sabi ng mga pumasa na ng BAR dito lang daw sa LAWYER'S OATH umiikot ang mga tanong sa LEGAL ETHICS)

Nature of a Lawyer's Oath:

► The lawyer's oath is not a mere formality recited for a few minutes in the glare of flashing cameras and before the presence of select witness. ***(In re: Arthur M. Cuevas, Jr. 285 SCRA 59, January 27. 1998).***

►The lawyer's oath is not mere facile words, drift and hollow, but a sacred trust that must be upheld and kept inviolable. ***(Sebastian v. Calis, Adm. Case No. 5118, Sept. 9, 1999)***

Duties of Attorneys:

a. to maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines;

b. observe and maintain the respect due to the courts of justice and judicial officers;

c. to counsel or maintain such actions or proceedings only as appear to him as just, and such defenses only as he believes to be honestly debatable under the laws;

d. to employ, for the purpose of maintaining the causes confided to him, such means as only as are consistent with truth and honor, and never seek to mislead the judge as any judicial officer by an artifice or false statement of fact or law;

e. to maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client, and to accept no compensation in connection with his client's business except from him or with his knowledge and approval;

f. to abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;

g. not to encourage either in the commencement or the continuance of an action or proceeding, or delay any man's cause for any corrupt motive or interest;

h. never to reject, for any consideration personal to himself, the cause of the defenseless or oppressed;

i. in the defense of a person accused of a crime, by all fair and honorable means, regardless of his personal opinion as to the guilt of the accused, to present every defense that the law permits, to the end that no person may be deprived of life or liberty, but by due process of law.

PRELIMINARIES

LEGAL ETHICS – It is a branch of moral science which treats of the duties which an attorney owes to the court, to his client, to his colleagues in the profession and to the public as embodied in the Constitution, Rules of Court, the Code of Professional Responsibilities, Canons of Professional Ethics, jurisprudence, moral laws and special laws.

Original Bases of Legal Ethics

1. Canons of Professional Ethics
2. Supreme Court Decisions
3. Statistics
4. Constitution
5. Treaties and Publications

Present Basis of Philippine Legal Ethics – The *Code of Professional Responsibility*. It is the embodiment into the code of the various pertinent and subsisting rules, guidelines and standards on the rule of conduct of lawyers which must be observed by all members of the Bar in the exercise of his profession whether in or out of Court as well as in their public and private lives.

TERMS TO REMEMBER

BAR	vs.	**BENCH**
Refers to the whole body of attorneys and counselors, collectively, the members of the legal profession		Denotes the whole body of judges

Practice of Law - - Any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. To engage in the practice of law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill ***(Cayetano v. Monsod, 201 SCRA 210).***

Bar Admission – act by which one is licensed to practice before courts of a particular state or jurisdiction after satisfying certain requirements such as bar examinations, period of residency or admission on grounds of reciprocity after period of years as member of bar of another jurisdiction (Black Law Dictionary Sixth Edition, p.149).

Lawyer – This is the general term for a person trained in the law and authorized to advise or represent others in legal matters.

Trial Lawyer – A lawyer who personally handles cases in court, administrative agencies or boards which means engaging in actual trial work either for the prosecution or for the defense of cases of clients.

Practising Lawyer – One engaged in the practice of law. All trial lawyers are practicing lawyers, but not all practicing lawyers are trial lawyers.

Client – One who engages the services of a lawyer for legal advice or for purposes of prosecuting or defending a suit in his behalf and usually for a fee.

Attorney-at-Law/Counselor-at-law/lawyer/attorney/counsel/abogado/boceros – that class of persons who are by license officers of the courts, empowered to appear, prosecute and defend, and upon whom peculiar duties, responsibilities and liabilities are developed by law as a consequence ***(Cui v. Cui, 120 Phil. 729).***

Attorney-in-fact – an agent whose authority is strictly limited by the instrument appointing him, though he may do things not mentioned in his appointment necessary to the performance of the duties specifically required of him by the power of attorney appointing him, such authority being necessarily implied. He is not necessary a lawyer.

Counsel *de officio* - a counsel, appointed or assigned by the court, from among members of the Bar in good standing who, by reason of their experience and ability, may adequately defend the accused.

Note: In localities where members of the Bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused. *[Sec. 7 Rule 116, Rules of Court (1985)]*

Attorney *ad hoc* – a person named and appointed by the court to defend an absentee defendant in the suit in which the appointment is made (*Bienvenu v. Factor's Traders Insurance Corp., 33 La. Ann. 209)*

Attorney of Record – one who has filed a notice of appearance and who hence is formally mentioned in court records as the attorney of the party. Person whom the client has named as his agent upon whom service of papers may be made. *(Reynolds v. Reynolds. Cal. 2d580).*

Of Counsel – to distinguish them from attorneys of record, associate attorneys are referred to as "of counsel" (*5 Am. Jur. 261)*

Lead Counsel – The counsel on their side of a litigated action who is charged with the principal management and direction of a party's case.

House Counsel – Lawyer who acts as attorney for business though carried as an employee of that business and not as an independent lawyer.

Amicus curiae – a friend of the court, not a party to the action; is an experienced and impartial attorney invited by the court to appear and help in the disposition of the issues submitted to it. It implies friendly intervention of counsel to call the attention of the court to some matters of law or facts which might otherwise escape its notice and in regard to which it might go wrong.

Amicus curiae par excellence – bar associations who appear in court as amici curiae or friends of the court. Acts merely as a consultant to guide the court in a doubtful question or issue pending before it.

Bar Association – an association of members of the legal profession.

Advocate – The general and popular name for a lawyer who pleads on behalf of someone else.

Barrrister (England) **–** a person entitled to practice law as an advocate or counsel in superior court.

Solicitor (England) – A person prosecuting or defending suits in Courts of Chancery.

Solicitor (Philippines) – A government lawyer attached with the Office of the Solicitor General.

Proctor (England) **–** Formerly, an attorney in the admiralty and ecclesiastical courts whose duties and business correspond to those of an attorney at law or solicitor in Chancery.

***Titulo de* Abogado –** it means not mere possession of the academic degree of Bachelor of Laws but membership of the Bar after due admission thereto, qualifying one for the practice of law.

Admission to the Practice of Law

In re Edillion 84 SCRA 568

The practice of law is not a property right but a mere privilege and as such must bow to the inherent regulatory power of the Court to exact compliance with the lawyer's public responsibilities.

The power of admission to the practice of law is vested by the Constitution in the Supreme Court.

ART. VIII, Sec. 5(5): The Supreme Court shall have the following powers:

(5) Promulgate rules concerning the protection and enforcement pf constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged.

The constitutional power to admit candidates to the legal profession is a judicial function and involves exercise of discretion ***(In re: Almacen 31 SCRA 562).***

The power of the Supreme Court to regulate the practice of law includes:

1. authority to define the term
2. prescribe the qualifications of a candidate to and the subjects of the bar examinations
3. decide who will be admitted to practice
4. discipline, suspend or disbar any unfit and unworthy member of the bar
5. reinstate any disbarred or indefinitely suspended attorney
6. ordain the integration of the Philippine Bar

7. punish for contempt any person for unauthorized practice of law and
8. in general, exercise overall supervision of the legal profession.

In re Cunanan, 94 Phil. 543

*** The Legislature, in the exercise of its police power, may however, enact laws regulating the practice of law to protect the public and promote the public welfare**. But** the legislature may not pass a law that will control the Supreme Court in the performance of its function to decide who may enjoy the privilege of practicing law, and any law of that kind is unconstitutional as an invalid exercise.

***Any legislative or executive judgment substituting that of the Supreme Court in matters concerning the admission to the practice of law or the suspension, disbarment or reinstatement of an attorney infringes upon and constitutes an invalid exercise of the legislative or executive power.

*** The legislature may pass a law prescribing additional qualifications for candidates for admission to practice or filling up deficiencies in the requirements for admission to the bar. Such a law may not, however, be given retroactive effect so as to entitle a person, not otherwise qualified, to be admitted to the bar, nor will such a law preclude the Supreme Court from fixing other qualifications or requirements for the practice of law.

The Supreme Court acts through a Bar Examination Committee to the Exercise of his judicial function to admit candidates to the legal profession.
of legislative power.

Notes on the Bar Examination Committee:

- Composed of one (1) member of the Supreme Court who acts as Chairman and eight (8) members of the bar.
- The 8 members who act as examiners for the 8 bar subjects with one subject assigned to each.
- The Bar Confidant acts as a sort of liason officer between the court and the Bar Chairman on the other hand, and the individual members of the committee on the other. He is at the same time a deputy clerk of court.
- Admission of examinees is always subject to the final approval of the court.

Requirements for all applicants for admission to the Bar:

1. citizen of the Philippines;
2. at least 21 years of age;
3. of good moral character;
    - Good moral character is a continuing qualification required of every member of the Bar, it is not only a qualification precedent to the practice of law. (Narag, 291 SCRA 451, June 29, 1998)
4. Philippine resident;
5. Production before the Supreme Court satisfactory evidence of
   a. good moral character; and
   b. no charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines

Academic Requirements for Candidates:

1. a bachelor's degree in arts or sciences (a.k.a Pre-law course)
2. completed course on
    a. civil law
    b. commercial law
    c. remedial law
    d. public international law
    e. private international law
    f. political law
    g. labor and social legislation
    h. medical jurisprudence
    i. taxation
    j. legal ethics

Requirements Before a Candidate can Engage in the Practice of Law:

I. He must have been admitted to the Bar
   a. Furnishing satisfying proof of educational, moral and other qualifications
   b. Passing the bar
   c. Taking the Lawyer's Oath before the SC
   d. Signing the Attorney's Roll and receiving from the Clerk of Court of the SC a Certificate of the license to practice

II. After his admission to the bar, a lawyer must remain in good and regular standing, which is a continuing requirement to the practice of law. This means that he must:
   a. remain a member of the IBP
   b. regularly pay all IBP membership dues and other lawful assessments, as well as the annual privilege tax
   c. faithfully observe the rules and ethics of the legal profession and
   d. be continually subject to judicial disciplinary control

Privileges of Attorney

The law makes his passing the bar examination equivalent to a first grade civil service eligibility for ay position in the classified service in the government the duties of which require knowledge of law, or a second grade civil service eligibility for any other government position which does not prescribe proficiency in law as a qualification.

PRACTICE OF LAW

> Rule 138, Section 1. ***Who may practice law*** - Any person heretofore duly admitted as a member of the bar, or hereafter admitted as such in accordance with the provisions of this rule, and who is in good and regular standing, is entitled to practice law.

Concept of the Practice of Law

Generally, to engage in the practice is to do any of those acts which are characteristic of the legal profession ***(In re: David, 93 Phil. 46).*** It covers any activity, in or out of court, which requires the application of law, legal principles, practice or procedure and calls for legal knowledge, training and experience ***(PLA vs. Agrava, 105 Phil. 173).***

Cayetano vs. Monsod, 201 SCRA 210

***Practice of Law* means any activity in or out of court which requires the application of law, legal procedure, knowledge, training and experience. *To engage in the practice of law* is to perform those acts which are characteristics of the legal profession. *Generally*, to practice law is to give notice or render any kind of service, which devise or service requires the use, in any degree, of legal knowledge or skill.

People vs. Villanueva, 14 SCRA 111

***Strictly speaking, the word *practice of law* implies the customary or habitual holding of oneself to the public as a lawyer and demanding compensation for his services.

****Private practice* in more than an isolated appearance for it consist of frequent customary actions, a succession of acts of the same kind. An *isolated appearance* may, however, amount to practice in relation to the rule prohibiting some persons from engaging in the exercise of the legal profession.

Ulep vs. Legal Clinic Inc. 223 SCRA 378 (1993)

***In the practice of his profession, a licensed attorney-at-law generally engages in *three principal types of professional activities:*
1. legal advice and instructions to clients to inform them of their rights and obligations

2. preparation for clients of documents requiring knowledge of legal principles not possessed by ordinary layman; and
3. appearance for clients before public tribunals which possess power and authority to determine rights of life, liberty and property according to law, in order to assist in the proper interpretation and enforcement of law.

******Essential criteria enumerated by the C.A. as determinative of engaging in the practice of law:***
1)Habituality
2)Compensation
3)Application of law, legal principle, practice, or procedure
4)Attorney-Client relationship

Non-Lawyers authorized to appear in court:

1. In cases before the MTC, a party may conduct his case or litigation in person, with the aid of an agent or friend appointed by him for that purpose *(Sec. 34, Rule 138, RRC)*.

2. Before any other court, a party may conduct his litigation personally (Ibid)

3. In a criminal case before the MTC in a locality where a duly licensed member of the Bar is not available, the judge may appoint a non-lawyer who is
    a. resident of the province, and
    b. of good repute for probity and ability to aid the accused in his defense *(Rule 116, Sec. 7, RRC*)

4. A senior law student, who is enrolled in a recognized law school's clinical education program approved by the Supreme Court may appear before any court without compensation, to represent indigent clients accepted by the Legal Clinic of the law school. The student shall be under the direct supervision and control of an IBP member duly accredited by the law school.

5. Under the Labor Code, non-lawyers may appear before the NLRC or any Labor Arbiter, if (1) they represent themselves, or if (2) they represent their organization or members thereof *(Art. 222, PO 442, as amended*).

6. Under the Cadastral Act, a non-lawyer can represent a claimant before the Cadastral Court *(Act No. 2259, Sec. 9).*

7. Any person appointed to appear for the government of the Phil. in accordance with law *(Sec. 33 Rule 138).*

Limitations of Appearance of non-lawyers

1. He should confine his work to non-adversary contentions.

2. He should not undertake purely legal work, such as the examination or cross-examination of witnesses, or the presentation of evidence.

3. Services should not be habitually rendered.

4. Should not charge or collect attorneys fees ***(PAFLU vs. Binalbagan Isabela Sugar Co. 42 SCRA 302)***

Q. A and B who are law students entered their appearances before the Municipal Court as private prosecutors in a criminal case. This was disallowed by the trial judge. Is this correct?

A. NO. A non-lawyer may appear as a friend of the party before the Municipal Courts under Section 34, Rule 138 Rules of Court; he may make such appearances either as defense counsel or private prosecutor under the control and supervision of the fiscal. The permission of the fiscal is not necessary for the appearance of a private prosecutor, although if he so wishes, the fiscal may disallow participation in the trial by handling the case personally. ***(Catimbuhan, et al. vs. Hon. Cruz, G.R. No. 51813-14, Nov.29, 1983)***

Public Officials who cannot engage in the private practice of law in the Philippines:

1. Judges and other officials as employees of the Superior Court (*Rule 148, Sec. 35, RRC).*

2. Officials and employees of the OSG (*Ibid).*

3. Government prosecutors ***(Peo v. Villanueva, 14 SCRA 109).***
   - if permitted by their department head should only be in isolated cases involving relatives or close family friends

4. President, Vice-President, members of the cabinet, their deputies and assistants, *(Art. VIII Sec. 15, 1987 Constitution).*

5. Chairmen and Members of the Constitutional Commissions *(Art. IX-A, Sec. 2, 1987 Constitution).*

6. Ombudsman and his deputies *(Art. IX, Sec. 8 (2nd par.), 1987 Constitution).*

7. All governors, city and municipal mayors *(R.A. No. 7160, Sec. 90).*

8. Those who, by special law, are prohibited from engaging in the practice of their legal profession

Q. Can a civil service employee engage in the private practice of law?

A. A civil service officer or employee whose duty or responsibility does not require his entire time to be at the disposal of the government may not engage in private practice of law without the written permit from the head of the department concerned. However, government officials who by express mandate of the law are prohibited from practicing law may not, even with the consent of the department head, engage in the practice of law. If so authorized by the department head, he may, in an isolated case, act as counsel for a relative or close family friend.

A government official forbidden to practice law may be held criminally liable for doing so. An officer or employee of the civil service who, as a lawyer, engages in the private practice of law without a written permit from the department head concerned may be held administratively liable therefor.

Q. The City of Manila hired the services of Atty. Bautista of the ABC Law Offices to represent it in case pending before the RTC. Can Atty. Bautista validly represent it?

A. NO. A local government unit could not hire a private attorney to represent. The provisions of Sec. 1683 complemented by Sec. 3 of the Local Autonomy Law, is clear in providing that only the provincial prosecutor and the municipal attorney can represent a province or municipality. The provision is mandatory. The municipality's authority to employ a private lawyer is expressly limited only to situations where the provincial prosecutor is disqualified to represent it, as when he represents that province against a municipality.

Public Officials with Restrictions in the Practice of Law:

1. Senators and members of the House of Representatives
2. Members of the Sanggunian
3. Retired Justice or judge
4. Civil service officers or employees without permit from their respective department heads ***(Noriega vs. Sison 125 SCRA 293)***

Restrictions in the Practice of Law of Members of the Legislature

No senator or member of the House of Representatives may personally appear as counsel before any courts of justice or before the Electoral Tribunals, or quasi-judicial and other administration bodies xxx *(Art. VI, Sec. 14, 1987 Constitution).*

► A lawyer-member of the legislature is only prohibited from appearing as counsel before any court of justice, electoral tribunals or quasi-judicial and administrative bodies

► The word "appearance" includes not only arguing a case before any such body but also filing a pleading in behalf of a client as "by simply filing a formal motion, plea or answer". ***(Ramos vs. Manalac, 89 PHIL. 270)***

► Neither can he allow his name to appear in such pleading by itself or as part of firm name under the signature of another qualified lawyer because the signature of an agent amounts to signing of a non-qualified senator or congressman, the office of an attorney being originally an agency, and because he will, by such act, be appearing in court or quasi-judicial or administrative body in violation of the constitutional restriction. "He cannot do indirectly what the Constitution prohibits directly." ***(In re: David 93 PHIL. 461)***

Restrictions in the practice of law of members of the Sanngunian

Under the Local Government Code *(R.A. 7180, Sec. 90)*, Sanggunian members may practice their professions provided that *if they are members of the Bar, they shall not*:

a. appear as counsel before any court in any civil case wherein a local government unit or any unit, agency, or instrumentality of the government is the adverse party;
b. appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office;
c. collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and
d. use property and personnel of the Government except when the Sanggunian member concerned is defending the interest of the government.

Restrictions in the practice of law of members of the Judiciary

Under *RA 910, Sec. 1,* as amended, a retired justice or judge receiving a pension from the government, cannot act as counsel in any civil case in which the Government, or any of its subdivision or agencies in the adverse party or in criminal case wherein an officer or employee of the Government is accused of an offense in relation to his office.

Remedies Against Unauthorized Practice

1. Petition for Injunction
2. Declaratory Relief
3. Contempt of Court
4. Disqualification and complaints for disbarment
5. Criminal complaint for estafa who falsely represented to be an attorney to the damage party

Alawi vs. Alauya, A.M. SDC-97-2-P, February 24, 1997

Q. Are persons who pass the Shari'a Bar members of the Philippine Bar?

A. Persons who pass the Shari'a Bar are not full-fledged members of the Philippine Bar, hence may only practice before the Shari'a courts. They are also not entitled to use the title "attorney" as such is reserved to those who, having obtained the necessary degree in the study of law and successfully taken the Bar Examinations, have been admitted to the Integrated Bar of the Philippines and remain members thereof in good standing

Q. Does "scrivening" constitute practice of law?

A. NO. Scrivening or the filling of blanks in a standard or stereotyped forms which involves pure clerical work without need for any legal interpretation. This is not practice of law.

In re: Joaquin, 241 SCRA 405

Appearance *"in propia persona*" is appearance in court by a non-lawyer for himself without the assistance of a member of the Bar. This is sometimes referred to as "*pro se*" practice

While pro se practice is allowed, it is not advisable to do so. Court proceedings are full of technical pitfalls that may entrap a person unschooled in substantive and procedural law.

Need for and Right to Counsel

General Rule: A party litigant needs the assistance of counsel in all proceedings, administrative, civil or criminal.
Exceptions:

1. *Municipal Trial Court* – A party may conduct his litigation in person or with the aid of an agent or friend appointed by him for that purpose or with the aid of an attorney.
2. *Regional Trial Court and Appellate Court* – A party may either conduct his litigation personally or by attorney unless the party is a juridical person in which case it may appear only by attorney.

******* The rule that appearance by counsel is not obligatory applies only in civil and administrative cases. The rule does not apply in criminal cases involving grave and less grave offenses, where an accused must be represented by counsel *de parte* or counsel *de officio* and in which his right is not waivable.

Duty of Public Prosecutor

The primary duty of a public prosecutor is not to convict but to see that justice is done. He should not hesitate to recommend to the court the accused acquittal if the evidence in his possession shows that the accused is innocent.

Role of Private Prosecutor

A private prosecutor may intervene in the prosecution of a criminal action when the offended party is entitled to indemnity and has not waived expressly, reserved or instituted the civil action for damages. There is nothing objectionable about it as long as the public prosecutor is always present at every hearing, retains control thereof, and without allowing the trial in the hands of a private prosecutor.

NOTARY PUBLIC

Facts: Aty. X notarized a deed of sale making it appear that some of the vendors were signatories and parties when in fact these people were already dead prior to the execution of the document. ***(Arrieta v. Llosa, 282 SCRA 248, November 28, 1997)***
Ruling:
►Notarization is not empty, meaningless, routinary act; it is infested with substantial public interest such that only those who are qualified or authorized may act as notaries public.

► Notaries public must observe with the utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

► Faithful observance with utmost respect of the legal solemnity of an oath in an acknowledgment or *jurat* is sacrosanct.

Facts: N accused V of notarizing documents without a commission. In two separate occasions, he notarized deeds of sale of property between the bank he works for and his minor son. At those times he was not commissioned as a notary public. ***(Nunga v. Viray, 306 SCRA, April 30, 1999)***
Ruling:
► Notarization is invested with public interest because it converts private documents to public documents, making such documents admissible in evidence without further proof of the authenticity thereof.

► Notarizing without a commission is a violation of the lawyer's oath to obey the laws (Notarial Law) and by making it appear that he is so authorized is a deliberate falsehood which violates the lawyer's oath and Rule 1.01 (CPR) that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

Remember:
Certification of a Deed (is a proclamation to the world that:)

1. all the parties therein personally appeared before him
2. they are all personally known to him
3. that they were the same persons who executed the instruments
4. he (notary public) inquired into the voluntariness and due execution of the instrument; and
5. that they acknowledged personally before him that they voluntarily and freely executed the same.

Q. What are the grounds for the violation of the commission of a notary public?

A. *The following dereliction of duties on the part of a notary public shall in the discretion of the proper RTC judge, be sufficient ground for the revocation of his commission*.

1. Failure of the notary to keep a notarial register
2. Failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in a manner required by law
3. Failure of the notary to send a copy of the entries to the proper clerk of the RTC within the first 10 days of the month next following
4. Failure of the notary to affix to acknowledgments the date of expiration of his commission, as required by law
5. Failure of the notary to forward his notarial register when filled, to the proper clerk of court
6. Failure of the notary public to make the proper notation regarding community tax certificates
7. Failure of the notary to make report, within a reasonable time, to the proper RTC judge concerning the performance of his duties, as may be required by said judge, and
8. Any other dereliction or act which shall appear to the judge to constitute good cause for removal.

Flores vs. Chua, 306 SCRA 465

Q. Atty. Rodrigo, a notary public, notarized a forged deed of sale. In that notarized document he solemnly declared that the alleged vendor appeared before him and acknowledged to him that the document was the vendor's free act and deed despite the fact that the vendor did not do so as his signature was forged.

A. NO. A notary public cannot plead good faith when notarizing documents without the presence of signatories thereto as this would be a mockery of what the Jurat and Acknowledgment requires.

Where the notary public is a lawyer, a graver responsibility is placed upon his shoulder by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. The C.P.R. also commands him not to engage in unlawful, dishonest, immoral, deceitful conduct and to uphold at all times the integrity and dignity of the legal profession.

INTEGRATED BAR OF THE PHILIPPINES

► National organization of lawyers created on January 16, 1973 under Rule 139-A, Rules of Court and constituted on May 4, 1973 into a body corporate by P.D. No.181

In re: Edillon, 84 SCRA 554 (1978)

The Integration of the Philippine Bar means the unification of the entire lawyer population. This requires (1) membership and (2) financial support of every attorney as condition *sine qua non* to the practice of law and the retention of his name in the Roll of Attorneys of the Supreme Court.

In re: Integration of the Philippines, 49 SCRA 22 (1973)

While Republic Act No. 6397 provides that the "Supreme Court" may adopt rules of courts to effect the integration of the Philippine bar, said law neither confers a new power nor restricts the Court's inherent power but is

mere legislative declaration of the integration of the bar will promote public interest or will "raise the standard of the legal profession, improve the administration of justice and enable the bar to discharge its public responsibility more effectively."

Section 18, By-Laws of the IBP

The following persons are members of the Integrated Bar of the Philippines:
(a) All lawyers whose names were in the Roll of Attorneys of the SC on January 16, 1973; and
(b) All lawyers whose names were included or are entered therein after the said date.

What are the objectives of the integration of the Bar?

- Elevate standards of the legal profession
- Improve the administration of justice
- To enable the bar to discharge its responsibility more effectively

The Integrated Bar is strictly non-political. To maintain its non-political color, no lawyer holding an elective, judicial, quasi-judicial or prosecutory office in the Government or any political subdivision or instrumentality thereof shall be eligible for election or appointment to any position in the Integrated Bar or any chapter thereof. A delegate, governor, officer or employee of the Integrated Bar or an officer or employee of any chapter thereof 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 accepts appointment to any judicial, quasi-judicial or prosecutory office in the Government or any political subdivision or instrumentality thereof.

The deliberative body of the Integrated Bar is the House of Delegates. It is composed of not more than one hundred and twenty members apportioned among all the chapters by the Board of Governors according to the number of their respective members, but each chapter shall have at least one Delegate.

► The Board of governors shall provide the By-Laws for grievance procedure for the enforcement and maintenance of discipline among all members of the IBP, but no action involving the suspension or disbarment of a member of the removal of his name from the Roll of Attorneys shall be effective without the final approval of the S.C.

Q. Is the compulsory membership in the IBP violative of the lawyer's constitutional freedom to associate or corollary right not to associate?

A. NO. Integration does not make a lawyer a member of any group of which he is already a member. He became a member of the bar when he passed the Bar examinations. All that integration actually does in provide an official national organization for the well-defined but unorganized and incohesive group of which every lawyer is already a member. ***(In re: Edillion A.M. 1928)***

Q. May a member of the IBP voluntarily terminate his membership therein?

A. YES, by filing a verified notice to that effect with the Secretary of IBP who shall immediately bring the matter to the attention of the SC. Forthwith, he shall cease to be a member and his name shall be stricken from the Roll of Attorneys.

Q. What is the effect of failure to pay annual membership to the IBP?

A. The failure of any attorney to pay his annual membership dues for six months shall warrant suspension of his membership in the IBP and default of such payment for one year shall be ground for the removal of his name from the Roll of Attorneys.

Q. May a lawyer be disciplined either by the IBP or the Court for failing to pay her obligation to

complainant?

A. NO. A lawyer may not be disciplined either by the IBP or the Court for failing to pay her obligation, a matter in her professional or private capacity. ***(Toledo vs. Abalos)***

Q. Is wanton disregard of the lawful orders of the IBP Commission on Bar Discipline a ground for suspension of a lawyer from the practice of law?

A. YES. A lawyer was suspended from the practice of law for one month due to her wanton disregard of the lawful orders of the IBP Commission on Bar Discipline. ***(Toledo vs. Abalos)***

CODE OF PROFESSIONAL RESPONSIBILITY

CHAPTER I – THE LAWYER AND SOCIETY

CANON 1

A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and for legal processes.

*** Lawyers must not only uphold and obey the Constitution and the laws but also Legal orders or processes of courts

Rule 1.01: A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

People vs. Tuanda, Adm. Case No. 3360 (Jan. 30, 1990)

The nature of the office of an attorney at law requires that she shall be a person of good moral character. This qualification is not only a condition precedent to an admission to the practice of law; its continued possession is also essential for remaining in the practice of law.

Rule 138, Section 27, ROC

The commission of unlawful acts, specially crimes involving moral turpitude, acts of dishonesty in violation of the attorney's oath, grossly immoral conduct and deceit are grounds for suspension or disbarment of lawyers.

Morality as understood in law: This is a human standard based on the natural moral law which is embodied in man's conscience and which guides him to do good and avoid evil.

Moral turpitude: everything which is done contrary to justice, honesty, modesty or good morals.

Immoral conduct has been defined as "that conduct which is willful, flagrant or shameless and which shows a moral indifference to the opinion of the good and respectable members of the community ***(Arciga v. Maniwang, 106 SCRA 591).***

What constitutes **grossly immoral conduct/act?**
– one that is so corrupt and false as to constitute a criminal act so unprincipled or disgraceful as to be reprehensible to a high degree. ***(Figueroa v. Barranca, 275 SCRA 445, July 31, 1997)***

Conviction for crime involving moral turpitude – a number of lawyers have been suspended or disbarred for conviction of crimes involving moral turpitude such as:

1. estafa
2. bribery
3. murder
4. seduction
5. abduction
6. smuggling
7. falsification of public document

Tolosa vs. Cargo, 171 SCRA 21(1989)

As officers of the court, lawyers must only in fact be of good moral character but must also be seen to be of good moral character and living lives in accordance with the highest moral standards of the community. A member of the Bar and officer of the court is not only required to refrain from adulterous relationships or the keeping of mistress, but must also behave as to avoid scandalizing the public by creating the belief that he is flouting such moral standard.

NON-PROFESISONAL MISCONDUCT

Lizaso vs. Amante, 198 SCRA (1991)

x x x misconduct indicative of moral unfitness, whether relating to professional or non-professional matters, justifies suspension or disbarment. x x x an attorney may be removed or otherwise disciplined "not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which showed him unfit for the office and unworthy of the privileges which his license and the law confer to him."

Constantino v. Saludares, 228 SCRA 233 (1993)

While it is true that there was no attorney-client relationship between respondent and complainant, it is well settled that an attorney may be removed or otherwise disciplined not only for malpractice and dishonesty in the profession, but also for gross misconduct not connected with his professional duties, showing him to be unfit for the office and unworthy of the privileges which his license and the law confer upon him.

Some cases of Dishonesty and Deceit which Merited Discipline by the Supreme Court.

1. Misappropriation of client's funds
2. Act of fraudulently concealing dutiable importation or smuggling
3. Giving false statements under oath in an Information Sheet submitted in connection with the lawyer's application for the position of Chief of Police
4. Wanton falsehood made in an *ex parte* petition in court wherein the lawyer attached affidavit of his grandfather and which affidavit he notarized knowing that the supposed affiant is already dead
5. Maneuvering reconveyance of property in the name of a lawyer instead of the client – in a case involving sale with *pacto de retro*
6. Submission or presentation of mutilated copies of certain documents to court for the purpose of deceiving and misleading it
7. Falsification of grades in the Bar Examinations
8. Collecting several thousand pesos on the pretense that counsel would allegedly appeal the complaint's case to the Supreme Court of the United States, and that it was necessary to him to go to Washington, D.C. which he did, knowing that the decision could no longer be appealed because it is already final
9. Introducing someone to buy a piece of land knowing that it is not for sale
10. Delayed failure to account money collected for the client
11. Stealing evidence attached to the court records

Instances of Gross Immorality and the Resulting Consequences:

1. Abandonment of wife and cohabiting with another woman. *Disbarred.*
2. Bigamy perpetrated by the lawyer. *Disqualified from admission to the Bar*
3. A lawyer who had carnal knowledge with a woman through a promise of marriage which he did not fulfill. *Disbarred*.

4. Seduction of a woman who is the niece of a married woman with whom the respondent lawyer had adulterous relations. *Disbarred*.

5. Lawyer arranging the marriage of his son to a woman with whom the lawyer had illicit relations. After the marriage of the woman to the respondents son, he continued his adulterous relations with her. *Disbarred*

6. Lawyer inveigling a woman into believing that they had been married civilly to satisfy his carnal desires. *Disbarred*

7. Lawyer taking advantage of his position as chairman of the college of medicine and asked a lady student to go with him to manila where he had carnal knowledge of her under threat that if she refused , she would flunk in all her subjects. *Disbarred*

8. Concubinage coupled with failure to support illegitimate children. *Suspended indefinitely*

9. Maintaining adulterous relation ship with a married woman. *Suspended indefinitely*

Rule 1.02. A lawyer shall not counsel or abet activities aimed at defiance of the law or at lessening confidence in the legal system.

Canon 32, CPE

A lawyer should not render any service or advice to any client – no matter how powerful or important is the cause – which will involve disloyalty to the laws of the country which he is bound to uphold and obey.

Canon 15, CPE

The great trust of the lawyer is to be performed within and without the bounds of the law. The office of attorney does not permit, much less does it demand of him any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client.

Cosmos Foundry Shop Workers Union vs. Lo Bu, 63 SCRA 321

He was of course expected to defend his client's cause with zeal, but not at the disregard of the truth and in defiance of the clear purpose of labor statutes.

In re:1989 IBP Elections, 178 SCRA 398

Respect for law is gravely eroded when lawyers themselves, who are supposed to be minions of the law, engage in unlawful practices and cavalierly brush aside the very rules that the IBP formulated for their observance.

Rule 1.03. A lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay in a man's cause.

Barratry is the offense of frequently exciting and stirring up quarrels and suits, either at law or otherwise. It is the lawyer's act of fomenting suits among individuals and offering his legal services to one of them.

Canon 28, CPE

It is unprofessional for a lawyer to volunteer advice to bring a lawsuit, except in rare cases where ties of blood, relationship or trust make his duty to do so.

The purpose of the prohibition is to *prevent ambulance chasing*, which refers to solicitation of almost any kind of legal business by laymen employed by an attorney for the purpose or by the attorney himself. For ambulance chasing has spawned recognized evils such as:

a. fomenting of litigation with resulting burdens on the courts and the public;
b. subornation of perjury;
c. mulcting of innocent persons by judgments, upon manufactured causes of actions, and
d. defrauding of injured persons having proper causes actions but ignorant of legal rights and court procedure by means of contracts which retain exorbitant percentages of recovery and illegal charges for court costs and expenses and by settlement made for quick returns of fees and against the just rights of the injured persons.

Cobb-Perez vs. Lantin, 24 SCRA 291

Lawyer's duty is to resist the whims and caprices of his client and to temper his client's propensity to litigate.

Castaneda vs. Ago, 65 SCRA 512

It is the duty of a counsel to advise his client ordinarily a layman to the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, it is his bouden duty to advise the latter to acquiesce and submit, rather than traverse the inconvertible. A lawyer must resist the whims and caprices of his client, and temper his propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy indisputable.

Significance of an Attorney's Signature on a Pleading

Rule 7 Sec.5

Xxx The signature of an attorney constitutes certificate by him that he has read the pleading; 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. Xxx For a willful violation of this rule an attorney may be subjected to appropriate disciplinary action.

Rule 1.04. A lawyer shall encourage his clients to avoid, end or settle a controversy if it will admit of a fair settlement.

A "compromise is as often the better part of justice as prudence is the better part of valor" and a lawyer who encourages compromise is no less the client's "champion in settlement out of court" than he is the client's "champion in the battle of court."

De Yaasi III v. NLRC, 231 SCRA 173 (1994)

The useful function of a lawyer is not only to conduct litigation but also to avoid it whenever possible by advising settlement or withholding suit. xxx He should be a mediator for concord and conciliator for compromise, rather than a virtuoso of technicality in the conduct of litigation.

Melendrez vs. Decena, 176 SCRA 662

A lawyer cannot, without special authority, compromise his client's litigation or receive anything in discharge of the client's claim but the full amount in cash. A compromise entered into without authority is merely unenforceable.

However, a lawyer has the exclusive management of the procedural aspect of the litigation including the enforcement of rights and remedies of the client.

CANON 2

A lawyer shall make his legal services available in an efficient and convenient manner compatible with the independence, integrity and effectiveness of the profession.

Legal services should not only be efficient but should also be available and accessible to those who need them in a manner compatible with the ethics of the profession. A lawyer who accepts professional employment should be in a position to render efficient and effective legal assistance, otherwise he should help find another lawyer who is qualified and able to do so.

Rule 2.01. A lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed.

Canon 4, CPE

A lawyer assigned as counsel for an indigent prisoner must not ask to be excused for any trivial reason and should always exert his best efforts in his behalf.

People vs. Holgado, 85 Phil. 752

The duty of a lawyer to accept the cause of the defenseless and the oppressed empowers the court to require him to render professional services to any party in a case, if the party is without means to employ an attorney and the services of a lawyer are necessary to protect the rights of such party or secure the ends of justice or to designate him as counsel *de officio* for an accused if the latter is unable to employ a counsel *de parte*.

Rule 2.02. In such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the necessary to safeguard the latter's rights.

If the reason for non-acceptance of a case is conflict of interest, a lawyer must refrain from giving legal advice because a lawyer-client relationship is established and may lead to violation of the rule against representing conflicting interests.

Rule 2.03. A lawyer shall not do or permit to be done any act designed primarily to solicit legal business.

The solicitation of employment by an attorney is a ground for disbarment or suspension.

The best advertisement for a lawyer is a well-deserved reputation for competence, honesty and fidelity to private trust and public duty.

Rule 138, Sec. 27, Rules of Court

The law prohibits lawyers from soliciting cases for the purpose of gain, either personally or through paid agents or brokers, and makes the act malpractice.

A lawyer who agrees with a non-lawyer to divide attorney's fees paid by clients supplied or solicited by the non-lawyer is guilty of malpractice, the same being a form of solicitation of cases.

Characteristics which distinguishes the legal profession from business:

1. a duty of public service, of which the emolument is a by-product, and in which one may sustain the highest eminence without making much money;

2. a relation as an "officer of the court" to the administration of justice involving thorough sincerity, integrity, and reliability;

3. a relation to clients in the highest degree of fiduciary;

4. a relation to colleagues at the bar characterized by candor, fairness, and unwillingness to resort to current business methods of advertising and encroachment on their practice or dealing directly with their clients.

Types of advertising or solicitations not prohibited *(Ulep vs. Legal Clinic 223 SCRA 378)*

1. Publication of reputable law lists, in a manner consistent with the standards of conduct imposed by the canons, or brief biographical and informative data.

2. The use of ordinary simple professional card. The card contain only a statement of his name, the name of the law firm which he is connected with, address, telephone no., and special branch of law practiced.

3. Publication or a public announcement of the opening of a law firm or of changes in the partnership, associates, firm name or office address, being for the convenience of the profession.

In re: Tagorda, 53 Phil. 37 (1929)

To allow a lawyer to advertise his talent or skill is to commercialize the practice of law, lower the profession in public confidence and lessen his ability to render efficiently that high character of service to which every member of the bar is called.

It destructive of the honor of a great profession. It lowers the standards of that profession. It works against the confidence of the community in the integrity of the members of the bar. It results in needless litigation and in incenting to strife otherwise peacefully inclined citizens.

Rule 2.04. A lawyer shall not charge rates lower than those customarily prescribed, unless the circumstances so warrant.

What the rule prohibits is the competition in the matter of charging fees for professional services for the purpose of attracting prospective clients in favor of the lawyer who offers lower rates. The rule does not prohibit a lawyer from collecting a reduced or no fee at all from a person who would have difficulty in paying the fee usually charged for the service.(Agpalo)***

CANON 3

A lawyer in making known his legal services shall use only true, honest, fair, dignified and objective information or statement of facts.

Rule 3.01. A lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.

Canon 27 of the Canon of Professional Ethics

The canons of the profession that tell the best advertising possible for a lawyer is well-merited reputation for professional capacity and fidelity to trust, which must be earned as the outcome of character and conduct.

Any false pretense therefore by a lawyer intended to defraud, mislead or deceive to tout on his qualifications or quality of his legal services is unethical – whether done by him personally or through another with his permission.

The proffer of free legal services to the indigent, even when broadcast over the radio or tendered through circulations of printed matter to the general public, offends no ethical rule.

Rule 3.02. In the choice of a firm name, no false, misleading or assumed name shall be used. The continued use of the name of a deceased partner is permissible provided that the firm indicates in all its communications that said partner is deceased.

A group of lawyers who deserve to establish a partnership for general practice of law may adopt a firm name. However, no false name or misleading or assumed name shall be used in the firm name adopted. No name not belonging to any of the partners or associates may be used in the firm name for any purpose.

If a partner died, and continued use of the name is desired by the surviving partners, the name of the deceased may still be used, in all the communications of the law firm, provided there is an indication that said partner is already dead.

The use of a cross after the name of the deceased partner is sufficient indication. It is advisable though that the year of the death be also indicated.

Canon 33, CPE

In the formation of such partnership, no person should be admitted or held out as a member who is not a lawyer. Nor may a group of lawyers hold themselves out as partners when, in fact, they are not or when no partnership actually exists.

B.R. Sebastian Enterprises Inc. vs. Court of Appeals, 206 SCRA 28

Death of a partner does not extinguish the client-lawyer relationship with the law firm.

Antonio vs. Court of Appeals, 153 SCRA 592

Negligence of a member in the law firm is negligence of the firm. When the counsel of records is the Law Firm, the negligence of the lawyer assigned to the case consisting in his leaving for abroad without notifying his colleagues is negligence of the Law Firm.

Dacanay vs. Baker & Mckenzie

Filipino lawyers cannot practice law under the name of a foreign law firm.

Rule 3.03 Where a partner accepts public office, he shall withdraw from the firm and his name shall be dropped from the firm name unless the law allows him to practice law concurrently.

RA 7160, Section 90

Name of partner should be dropped from the firm name when he accepts public office. If a partner in a law firm has accepted a public office, his name shall be removed from the firm name.

Exception: If the law allows him to practice law concurrently while holding the position such as Sanggunian members are subject to certain restrictions.

Rule 3.04. A lawyer shall not pay or give anything of value to representatives of the mass media in anticipation of, or in return for, publicity to attract legal business.

A lawyer who seeks publicity to attract legal business is debasing the legal profession, specially so, if he pays something of value for it.

CANON 4

A lawyer shall participate in the development of the Legal System by initiating or supporting efforts in law reform and in the improvement of the administration of justice.

Canon 40, CPE

An attorney "may with propriety write articles for publications in which he gives information upon the law; but he should not accept employment from such publications to advise inquiries in respect to their individual rights."

CANON 5

A lawyer shall keep abreast of legal development, participate in continuing legal education programs, support efforts to achieve high standards in law school as well as in the practical training of law students and assist in disseminating information regarding the law and jurisprudence.

What is the threefold obligation of a lawyer?

First, he owes it to himself to continue improving his knowledge of the laws;
Second, he owes it to his profession to take an active interest in the maintenance of high standards of high education.
Third, he owes it to the law public to make the law a part of their social consciousness.

De Roy vs. Court of Appeals, 157 SCRA 757

It is the bounden duty of counsel as lawyer in active law practice to keep upbreast of decisions of the Supreme Court particularly where issues have been clarified, consistently reiterated, and published in the advance report of Supreme Court decisions (G.R.s) and in such publications as the Supreme Court Reports Annotated (SCRA) and law journals.

Zualo vs. CFI of Cebu, CA-G.R. No. 27718-R, July 7, 1961

Attorneys should familiarize themselves with the rules and comply with their requirements. They are also chargeable with notice of changes in the rules which have been held as including not only express reglementary provisions but also a regular practice under the Rules of Court.

CANON 6

These canons shall apply to lawyers in government service in the discharge of their official tasks.

Report of IBP Committee, p.30

A lawyer does not shed his professional obligations upon his assuming public office.

However, lawyers who are incumbent judges and magistrates shall be governed in the performance of their official functions by the Code of Judicial Conduct which became effective on October 20, 1989.

Public office - include elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount. ***(Sec. 3(b), RA 6173).***

The law requires the observance of the following norms of conduct by every public official in the discharge and execution of their official duties:

a. commitment to public interest
b. professionalism
c. justness and sincerity
d. political neutrality
e. responsiveness to the public
f. nationalism and patriotism
g. commitment to democracy
h. simple living *(Sec. 4, RA 6713)*

Collantes vs. Renomeron, 200 SCRA 584

If the lawyer's misconduct in the discharge of his official duties as government official is of such a character as to affect his qualifications as a lawyer or to show moral delinquency, he may be disciplined as a member of the Bar on such ground.

Rule 6.01. The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the concealment of witnesses capable of establishing the innocence of the accused is highly reprehensible and is cause for disciplinary action.

State vs. Platon, 40 O.G. 6th Supp. 235

A prosecutor is a quasi-judicial officer and as such, he should seek equal and *impartial* justice. He should be as much concerned with seeing that no man innocent suffers as in seeing that no guilty man escapes.

U.S. vs. Barredo, 32 Phil. 449

A conscious prosecuting official, whose investigations have satisfied him as to the innocence of persons charged with the commission of crime, should not institute criminal proceedings against such persons. In the event that the criminal proceedings have been instituted, and the investigations of the provincial fiscal have satisfied him that the accused person is innocent, or that evidence sufficient to secure conviction will not be forthcoming at the trial despite the exercise of due diligence to that end. It then becomes his duty to advise the court wherein the proceedings are pending as to the result of his investigations, and to move the court to dismiss the proceedings.

Suarez vs. Platon, 69 Phil. 556

The interest of a prosecutor in a criminal prosecution is not to win a case but to see that justice is done. He should see to it that the accused is given a fair and impartial trial and not deprived of any of his statutory or constitutional rights.

* A public prosecutor should recommend the acquittal of the accused whose conviction is on appeal, if he finds no legal basis to sustain the conviction.

Triente vs. Sandiganbayan, 145 SCRA 508

Its role as the People's Advocate in the Administration of Justice to the end that the innocent be equally defended and set free just as it has the task of having the guilty punished.

Rule 6.02. A lawyer in the government shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

If the law allows a public official to practice law concurrently, he must use his public position to feather his law practice. If the law does not allow him to practice his profession, he should not do so indirectly by being a silent partner in a law firm or by securing legal business for a friend or former associate in the active practice of law receiving a share in the attorney's fees for his efforts.

Report of IBP Committee, p.30

Government lawyers, who are public servants owe utmost fidelity to the public service. Public office is a public trust. They do not shed their professional obligation in assuming public positions. They should be more sensitive to their professional obligations as their disreputable conduct is more likely to be magnified in the public eye.

Public officials are required to uphold the public interest over and above personal interest; must discharge their duties with the highest degree of excellence, professionalism, intelligence, and skill; provide service without discrimination; extend prompt, courteous and adequate service to the public; be loyal to the Republic; commit themselves to the democratic way of life and values; and lead modest lives.

It is unethical for a government lawyer to remain secretly connected to a law Firm and solicit cases for the said firm with referral fees or monthly retainers for the purpose.

Gonzales-Austria, et al. vs. Abaya, 176 SCRA 634

A lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. However, if the misconduct of a government official is of such a character as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the Bar upon such ground.

Enriquez Sr. vs. Hon. Gimenez, 107 Phil. 933

Unlike a practicing lawyer who has the right to decline employment, a fiscal cannot refuse the performance of his functions on grounds not provided for by law without violating his oath of office.

Rule 6.03. A lawyer shall not, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while

in said service.

Various ways a government lawyer leaves government service:

1. retirement
2. resignation
3. expiration of the term of office
4. dismissal
5. abandonment

What are the pertinent statutory provisions regarding this Rule? *Sec. 3 (d) RA 3019 as amended and Sec. 7 (b) RA 6713.*

Section 3. Corrupt practice of public officers. In addition to acts or omission of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful;

x x x

(d) accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof within one year after its termination;

Section 7 (b) RA 6713 prohibits public official from doing any of the following acts:

1. own , control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one year prohibition shall likewise apply.

Section 1, Republic Act 910

"it is a condition of the pension provided herein that no retiring justice or judge of a court of record or city or municipal judge during the time that he is receiving said pensions shall appear as counsel in any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein an officer or employee of the Government is accused of an offense committed in relation to his office, or collect any fee for his appearance in any administrative proceedings to maintain an interest adverse to the Government, national, provincial or municipal, or any of its legally constituted officers."

CHAPTER II – THE LAWYER AND THE LEGAL PROFESSION

CANON 7

A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.

Facts: A deed of absolute sale was notarized by the father of the buyer-minor who is also the stockholder and legal counsel for the vendor and was not duly commissioned as notary public of that date. ***(Nunga vs. Viray, Adm. Case No. 4758, April 30, 1999)***

Ruling:

► A lawyer brings honor and integrity to the legal profession by faithfully performing his duties to society, to the Bar, to the courts and to his clients.

► A member of the legal fraternity should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.

Canon 29, CPE

He should expose without fear or favor before the Supreme Court corrupt or dishonest conduct in the profession and should accept without hesitation employment against a lawyer who has wronged his client.

Rule 7.01. A lawyer shall be answerable for knowingly making a false statement or suppressing a material fact, in connection with his application for admission to the bar.

In re Ramon Galang, 66 SCRA 282

That the concealment of an attorney in his application to take the Bar examinations of the fact that he had been charged with, or indicted for an alleged crime, as a ground for revocation of his license to practice law, is well settled.

Rule 138, Sec. 13, RRC

No candidate shall endeavor to influence any member of the committee, and during examinations the candidates shall not communicate with each other nor shall they give or receive any assistance. The candidates who violates this prohibition or any other provision of this rule, shall be barred from the examination, and the same to count as a failure against him, and further disciplinary action, including permanent disqualification, may be taken in the discretion of the court.

Rule 7.02. A lawyer shall not support the application for admission to the bar of any person known by him to be unqualified in respect to character, education, or other relevant attribute.

Canon 29, CPE

A lawyer should aid in guarding the Bar against admission to the profession of candidates unfit or unqualified for being deficient in either moral character or education.

Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct.

Rule 7.03. A lawyer shall not engaged in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Melendrez vs. Decena, 176 SCRA 662

A lawyer who commits an unlawful act though not related to the discharge of his professional duties as a member of the Bar, which puts his moral character is serious doubt, renders him unfit to continue in the practice of law.

In re: Pelaez, 44 Phil. 567

The grounds for disciplinary actions enumerated under the Rules of Court are not exclusive and are so broad as to cover practically any misconduct of a lawyer in his professional or private capacity.

Toloza vs. Cargo, 171 SCRA 21

As officers of the court, lawyers must not only in fact be of good moral character but also be seen of good moral character and leading lives in accordance with the highest moral standards of the community.

CANON 8

A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel.

The golden rule is much more needed in the legal profession than in any other profession for a better administration of justice.

Yulo vs. Yang Chiao Seng, 106 Phil. 110 (1959)

He should not take advantage of the excusable unpreparedness or absence of counsel during the trial of a case.

Canon 9, CPE

A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel, much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel.

Rule 8.01. A lawyer shall not, in his professional dealings, use language which is

abusive, offensive or otherwise improper.

A.B.A. Op. 17 (Jan. 23, 1930)

The fact that one of them conducts himself improperly does not relieve the other from the professional obligation in his relation with him.

Report of IBP Committee, p. 41

Any kind of language which attacks without foundation and integrity of the opposing counsel or the dignity of the court may be stricken off the records or may subject a lawyer to disciplinary action.

Surigao Mineral Reservation Board vs. Cloribel, 31 SCRA 1

Disrespectful, abusive and abrasive language, offensive personality, unfounded accusations or intemperate words tending to obstruct, embarrass or influence the court in administering justice, or to bring it into disrepute have no place in a pleading. Their employment serves no useful purpose and on the contrary constitutes direct contempt or contempt in *facie* curiae.

In re: Gomez, 43 Phil. 376

A lawyer who uses intemperate, abusive, abrasive or threatening language portrays disrespect to the court, disgraces the Bar and invites the exercise by the court of its disciplinary power.

In re: Climaco, 55 SCRA 107

A lawyer's language should be forceful but dignified, emphatic but respectful as befitting an advocate and in keeping with the dignity of the legal profession.

National Security Co. vs. Jarvis

The lawyer's arguments, whether written or oral, should be gracious to both the court and opposing counsel and be of such words as may be properly addressed by one gentleman to another.

Rheem of the Philippines vs. Ferrer, 20 SCRA 441

Lack of want of intention is no excuse for the disrespectful language employed. Counsel cannot escape responsibility by claiming that his words did not mean what any reader must have understood them as meaning.

Rule 8.02. A lawyer shall not, directly or indirectly, encroach upon the professional employment of another lawyer; however, it is the right of the lawyer, without fear or favor, to give proper advice and assistance to those seeking relief against unfaithful or neglectful counsel.

A lawyer should not steal the other lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services. Neither should he disparage another, make comparisons or publicize his talent as a means to feather his law practice.

Laput vs. Remotigue, 6 SCRA 45 (1962)

It is, however, the right of a lawyer, without fear or favor, to give proper advice to those seeking relief against unfaithful or neglectful counsel.

He may properly accept employment to handle a matter which has been previously handled by another lawyer, provided that the other lawyer has been given notice by the client that his services have been terminated.

In re: Soriano, 33 SCRA 801 (1970)

x x x Before taking over a case handled by a peer in the Bar, a lawyer is enjoined to obtain the conformity of the counsel whom he would substitute. And if this cannot be had, then he should, at the very least, give notice to such lawyer of the contemplated substitution.

His entry of appearance in the case without the consent of the first lawyer amounts to an improper encroachment upon the professional employment of the original counsel.

In re: Clemente M. Soriano, 33 SCRA 801 (1970)

A lawyer who has acquired knowledge of the malpractices of a member of a Bar, has the duty to the public and to the legal profession to inform the Supreme Court or the IBP of such malpractices to the end that the malpractitioner be properly disciplined.

Canon 7, CPE

A client's proffer of assistance of additional counsel should not be regarded as evidence of want of confidence, but the matter should be left to the determination of the client.

He should decline association as a colleague if it is objectionable to the original counsel, but if the lawyer first retained is relieved, he may come into the case.

CANON 9

A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law.

Rule 71, sec.3 (e), Revised Rules of Court

The act of pretending or assuming to be an attorney or an officer of the court and acting as such without authority is punishable with contempt of court. The lawyer who assists in an unauthorized practice of law whether directly or indirectly is subject to disciplinary action.

Rule 9.01 A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the Bar in good standing.

Guballa vs. Caguioa, 78 SCRA 302

A lawyer is prohibited from taking as partner or associate any person who is not authorized to practice law – to appear in court or to sign pleadings. A lawyer, who is under suspension from practice of law is not a member of the Bar in good standing. A lawyer whose authority to practice has been withdrawn due to a change in citizenship or allegiance to the country cannot appear before the courts.

Comments of IBP Committee, pp. 47-48

A lawyer can employ lay secretaries, lay investigators, lay detectives, lay researchers, accountants or non-lawyer draftsmen, to undertake any task not involving practice of law. He may also avail himself of the assistance of law students in many of the fields of the lawyer's work, such as the examination of a case law, finding and interviewing witness, examining court records, delivering papers, and similar matters.

Rule 9.02. A lawyer shall not divide or stipulate a fee for legal service with persons not licensed to practice law, <u>except</u>:

- **a. where there is a pre-existing agreement with the partner or associate that, upon the latter's death, money shall be paid over a reasonable period of time to his estate or to persons specified in the agreement; or**
- **b. where a lawyer undertakes to complete unfinished legal business of a deceased lawyer; or**
- **c. where the lawyer or law firm includes non-lawyer employees in a retirement plan, even if the plan is based in whole as in part, on a profit-sharing arrangement.**

Five J Taxi v. NLRC

As a non-lawyer, Pulia is not entitled to attorney's fees even though he is the authorized representative of the respondents to the NLRC. The existence of an attorney's fee imputes an attorney-client relationship. This cannot happen between Pulia and respondents.

CHAPTER III – THE LAWYER AND THE COURTS

CANON 10

A lawyer owes candor, fairness and good faith to the court.

Langen vs. Borkowski, 188 Wis 277, 43 ALR 622 (1925)

A lawyer owes the court the duty to render no service or to do no act

1. which involves disrespect to the judicial office
2. adoption of legal proposition which is not honestly debatable
3. artifice or false statement of fact or law to mislead the court
4. unlawful conspiracy with his client, a third person or a judge tending to frustrate or delay the administration of justice or to secure for his client that which is not legally or justly due him

A.B.A. Op. 280 / Canon 5, 15 of CPE

A lawyer, however, though an officer of the court and charged with the duty of candor and fairness, is not an umpire but an advocate. He is under no duty to refrain from making every proper argument in support of any legal point because he is not convinced of its inherent soundness. His personal belief in the soundness of his cause or of the authorities supporting it is irrelevant.

Muñoz vs. People, 53 SCRA 190

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 to 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 the truth.

Rule 10.01. A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the Court to be mislead by any artifice.

People vs. Manobo, 18 SCRA 30 (1996)

A lawyer should not, in the defense of his client, put a witness on the stand whom he knows will give a false testimony. He should not distort the facts in disregard of the truth and the law nor make improvident arguments based thereon or on the facts on record.

Some Cases of Falsehoods Which Merited Discipline

1. Lawyers falsely stating in a deed of sale that property is free from all liens and encumbrances when it is not so ***(Sevilla vs. Zoleta, 96 Phil. 979);***

2. Lawyers making it appear that a person, long dead, executed a deed of sale in his favor ***(Monterey vs. Arayata, 61 Phil. 820***);

3. Lawyer, encashing a check payable to a deceased cousin by signing the latter's name on the check ***(In re: Samaniego, 90 Phil. 382);***

4. Lawyer falsifying a power of attorney and used it in collecting the money due to the principal and appropriating the money for his own benefit ***(In re: Rusina, 105 Phil. 1328);***

5. Lawyer alleging in one pleading that his clients were merely lessees of the property involved, and alleged in a later pleading that the same clients were the owners of the same property ***(Chavez vs. Viola, G.R. 2152, 19 April 1991***) where there are false allegations in peadlings.

6. Lawyer uttering falsehood in a Motion to Dismiss ***(Martin vs. Moreno, 129 SCRA 315).***

7. Lawyer denying having received the notice to file brief which is belied by the return card ***(Ragacejo vs. IAC, 153 SCRA 462).***

8. Lawyer presenting falsified documents in court which he knows to be false ***(Bautista vs. Gonzales, 182 SCRA 151)*** or introducing false evidence ***(Berrenguer vs. Carranza, 26 SCRA 673).***

9. Lawyer filing false charges or groundless suits ***(Retuya vs. Gorduiz, 96 SCRA 526).***

Art. 184, Revised Penal Code

Any person who shall knowingly offer in evidence a false witness or testimony in any judicial or official proceeding, shall be punished as guilty of false testimony and shall suffer the respective penalties provided in this section.

Rule 10.02. A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of the decision or authority, or knowingly cite as law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

Insular Life Assurance Co. Employees Association v. Insular Life Assurance Co., 37 SCRA 244 (1971)

x x x in citing the Court's decision and rulings, it is the duty of courts, judges and lawyers to reproduce or copy the same word-for-word and punctuation mark-for-punctuation mark. xxx. Article 8 of Civil Code reads: "Judicial

decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." Ever present is the danger that if not faithfully and exactly quoted, the decisions and rulings of the SC may lose their proper and correct meaning, to the detriment of other courts, lawyers and public who may thereby be misled.

Adez Realty v. CA, 215 SCRA 301 (1992)

x x x The legal profession demands that lawyers thoroughly go over pleadings, motions, and other documents dictated or prepared by them, typed or transcribed by their secretaries or clerks, before filing them with the court. If a client is bound by the acts of his counsel, with more reason should counsel be bound by the acts of his secretary who merely follows his orders.

Banogon vs. Zerna, 154 SCRA 593

Lawyers must not intentionally misread or interpret the law to the point of distortion in cunning effort to achieve their purposes.

Rule 10.03. A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Aguinaldo vs. Aguinaldo, 36 SCRA 137

The aim of the lawsuit is to render justice to the parties according to law. Procedural rules are precisely designed to accomplice such a worthy objective. Necessarily, therefore, any attempt pervert the ends for which they are intended deserves condemnation.

Canlas vs. Court of Appeals, 164 SCRA 160

A litigation is not a game of technicalities of which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon merits.

Macias vs. Uy Kim, 45 SCRA 251

Procedural rules are instruments in the speedy and efficient administration of justice. They should be used to achieve such end and not to derail it. Thus, the filing by a lawyer by a multiple petitions regarding the same subject matter constitutes abuse of the court's processes and improper conduct that tends to obstruct and degrade the administration of justice.

Garcia vs. Francisco, 220 SCRA 512 (1993)

A lawyer should not abuse his right of recourse to the courts for the purpose of arguing a cause that had been repeatedly rebuffed. Neither should he use his knowledge of law as an instrument to harass a party nor to misuse judicial processes, as the same constitutes serious transgression of the Code of Professional Responsibility. For while he owes fidelity to the cause of his client, it should not be at the expense of truth and the administration of justice.

Gomez vs. Presiding Judge, 249 SCRA 432 (1995)

As an officer of the court, a lawyer should not misuse the rules of procedure to defeat the ends of justice or unduly delay or impede the execution of final judgment, otherwise he may be subjected to disciplinary sanctions.

CANON 11

A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.

A lawyer is an officer of the court ***(Salcedo vs. Hernandez, 61 Phil. 724).*** He occupies a quasi-judicial office with a tripartite obligation to the courts, to the public and to his clients***.(Cantorne vs. Ducosin, 57 Phil. 23).*** The public duties of the attorney takes precedence over his private duties. His first duty is to the courts. Where duties to the courts conflict with his duties to his clients, the latter must yield to the former ***(Langen vs. Borkowski, 43 ALR 622).***

The respect is not only toward the Justices and Judges but also to other officers of the Courts like Clerk of Court, Sheriffs and other judicial officers who take part in the judicial work.

Facts: A lawyer files groundless administrative charges against a judge who has rendered an unfavorable judgment against him for purposes of harassing said judge and in hopes that such administrative charges will secure a favorable judgment from the appellate courts which have taken cognizance of the latter's appeal. ***(Choa vs. Chiongson, 260 SCRA 477, August 9, 1996).***

Ruling:
► Any criticism against a judge made in the guise of an administrative complaint which is clearly unfounded and implied by ulterior motive will not excuse the lawyer responsible therefore under his duty of fidelity to his client.

► Lawyers, as officers of the court, should not encourage groundless administrative cases against court officers and employees.

Guerrero v. Villamor, 179 SCRA 355 (1989)
x x x The power to punish for contempt should be used sparingly, so much so that judges should always bear in mind that the power of the court to punish for contempt should be exercised for purposes that are impersonal. It is intended as a safeguard not for judges as persons but for the functions that they exercise. x x x Be that as it may, lawyers, on the other hand, should bear in mind their basic duty "to observe and maintain the respect due to the courts of justice and judicial officers and xxx to insist on similar conduct by others.

Abiera v. Maceda, 233 SCRA 520 (1994)
x x x Complainant should be reminded of his primary duty to assist the court in the administration of justice. It bears stressing that the relations between counsel and judge should be based on mutual respect and on a deep appreciation by one of the duties of the other. It is upon their cordial relationship and mutual cooperation that the hope of our people for speedy and efficient justice rests.

De Leon vs. Torres, 99 Phil.463
However erroneous they may be, court orders must be respected by lawyers who are themselves officers of the court.

Rule 11.01. A lawyer shall appear in court properly attired.

Lawyers who appear in court must be properly attired. The traditional attires for male lawyers in the Philippines are the long-sleeve Barong Tagalog or coat and tie. Female lawyers appear in a semi-formal attires. Judges also appear in the same attire in addition to black robes.

The Court can hold the lawyer in contempt of court if he appears not in proper attire.

Rule 11.02. A lawyer shall punctually appear at court hearings.

Counsel may even be held in contempt in coming late in the hearing or trial of case ***(Rule 71, Section 3 (a) RRC)*** or for failing to appear in a trial ***(People vs. Gagul, 2 SCRA 752).***

Cantelang vs. Medina, 91 SCRA 403 (1979)
He owes it not only to his client but to the court and the public as well to be punctual in attendance and to be concise and direct in the trial and disposition of causes.

Rule 11.03. A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

Surigao Mineral Reservation Board vs. Cloribel, 31 SCRA 1 (1970)
A lawyer's language should be forceful but dignified, emphatic but respectful as befitting an advocate and in keeping with the dignity of the legal profession.

A lawyer who uses intemperate, abusive, abrasive or threatening language shows disrespect to the court, disgraces the bar and invites the exercise by the court of its disciplinary power.

Buenaseda vs. Flavier, 226 SCRA 645, 770 (1993)
The language of a lawyer, both oral and written, must be respectful and restrained in keeping with the dignity of the legal profession and with his behavioral attitude toward his brethren in the profession. The use of abusive language by counsel against the opposing counsel constitutes at the same time a disrespect to the dignity of the court justice. Moreover, the use of impassioned language in pleadings, more often than not, creates more heat than light.

Baja vs. Macandog, 158 SCRA 391 (1988)

It must not, however, forgotten that a lawyer pleads; he does not dictate. He should be courageous, fair and circumspect, not petulant or combative or bellicose in his dealings with the court.

Sangalang v. IAC, 177 SCRA 87 (1989)

x x x Atty. Sangco is entitled to his opinion, but not to a license to insult the Court with derogatory statements and recourses to "argumenta ad hominem". x x x Of course, the Court is not unreceptive to comments and critique of its decisions, provided that they are fair and dignified.

Paragas vs. Cruz, 14 SCRA 809

A mere disclaimer of any intentional disrespect by appellant is no ground for exoneration. His intent must be determined by a fair interpretation of the languages by him employed. He cannot escape responsibility by claiming that his words did not mean what any reader must have understood them as meaning.

Zaldivar vs. Gonzales, 166 SCRA 316

The lawyer's duty to render respectful subordination to the courts is essential to the orderly administration of justice. Hence, in the assertion of the client's rights, lawyers – even those gifted with superior intellect, are enjoined to rein up their tempers.

Rule 11.04. A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

Maceda vs. Ombudsman, G.R. No. 102781, April 22, 1993

A lawyer has the duty to defend a judge from unfounded criticism or groundless personal attack. This is irrespective of whether he loses or wins his cases in the sala of a judge.

However, such duty does not prevent a lawyer from filing administrative complaints against erring judges or from accepting cases of clients who have legitimate grievances against them.

In doing so, the complaint must be filed with proper authorities only, that is, with the Supreme Court (through the Office of the Court Administrator), if the case is administrative in nature, or with the Office of the Ombudsman if the complaint is criminal and not purely administrative in nature.

In re: Aguas, 1 Phil. 1

There are times when it is the judge who misbehaved during a court proceeding. The affected lawyer may demand that the incident be made of record. This act of the lawyer is not contemptuous.

People vs. Carillo, 77 Phil. 583

Counsel must be courageous enough to point out errors, arbitrariness, and injustices of courts and judges. The fear of provoking displeasure of the affected judges must not deter them from complying with their civil and legal duty to object to, oppose, and protest against illegal or erroneous judicial decisions, resolutions, acts or conduct. Judges and tribunals are not infallible.

In re: Almacen, 31 SCRA 562 (1970)

X x x Every citizen has the right to comment upon and criticize the actuations of public officers. This right is not dismissed by the fact that the criticism is aimed at a judicial authority, or that it is articulated by a lawyer. Such right is especially recognized where the criticism concerns a concluded litigation, because then the court's actuations are thrown open to public consumption. Courts thus treats with forbearance and restraint a lawyer who vigorously assails their actuations for courageous and fearless advocates are the strands that weave durability into the tapestry of justice. Hence as citizen and officer of the court, every lawyer is expected not only to exercise the right, but also to consider it his duty to expose the shortcomings and indiscretions of courts and judges. But it is the cardinal condition of all such criticism that it shall be bona fide, and shall not spill over the walls of decency and propriety. Post litigation utterances or publications made by lawyers, critical of the courts and their judicial actuations, whether amounting to a crime or not, which transcend the permissible bounds of fair comment and legitimate criticism and thereby tend to bring them into dispute or to subvert public confidence in their integrity and in the orderly administration of justice, constitute grave professional misconduct which may be visited with disbarment or other lesser appropriate disciplinary sanctions by the SC in the exercise of the prerogatives inherent in it as the duly constituted guardian of the morals and ethics of the legal fraternity.

x x x It is not accurate to say, nor is it an obstacle to the exercise of the Court's authority in the premises, that, as Atty. Almacen would have appear, the members of the Court are the "complainants, prosecutors and judges" all rolled up into one in this instance. This is an utter misapprehension, if not a total distortion, not only of the nature of the proceeding at hand but also of the Court's role therein. Accent should be laid on the fact that disciplinary

proceedings like the present are sui generis. Neither purely civil nor criminal, this proceeding is not and does not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be initiated by the court motu proprio. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of the attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor.

Choa vs. Chiongson, 260 SCRA 477 (1996)

The right of a lawyer to comment on a pending litigation or to impugn the impartiality of a judge to decide it is much circumscribed. What he can ordinarily say against a concluded litigation and the manner the judge handed down the decision therein may not generally be said to a pending action. The court, in a pending litigation, must be shielded from embarrassment or influence in its all important duty of deciding the case.

In re: Lozano, 54 Phil. 801

A lawyer envoys a wider latitude of comment on crisis or criticism of the judge's decision or his actuation. It has been held that a newspaper publication tending to impede, obstruct, embarrass or influence the courts in administering justice in a pending case constitutes criminal contempt, but the rule is otherwise after the litigation is ended.

Facts: Atty. X, while trying his client's case, filed several manifestations which contained veiled threats against court. He also imputed that the court should decide in his favor to help dispel the image of the court as being composed of only the elite but who are nonetheless ignorant. ***(In re: Ponciano B. Jacinto, 159 SCRA 471, April 6, 1998)***

Ruling:

► Repeatedly insulting and threatening the Court in a most boorish and insolent manner, making irresponsible charges and insinuations that besmirch the highest tribunal and undermine popular faith in its integrity, reflects a supercilious and contemptuous regard for the Court, which cannot be left unnoticed and unpunished.

Rule 11.05. A lawyer shall submit grievances against a Judge to the proper authorities only.

Const., Art. VIII Sec. 6

The Supreme Court shall have administrative supervision over all courts and personnel thereof.

Maceda v. Vasquez, 221 SCRA 464 (1993)

x x x Art. VII Sec. 6 of the 1987 Constitution exclusively vests in the Supreme Court administrative supervision over all courts and court personnel, from the Presiding Justice of the Court of Appeals down to the lowest municipal court clerk. By virtue of this power, it is only the SC that can oversee the judges' and court personnel's compliance with all laws, and take the proper administrative action against them if they commit any violation thereof. No other branch of the government may intrude into this power, without running afoul of the doctrine of the separation of powers. The Ombudsman cannot justify its investigation of petitioner on the powers granted to it by the Constitution, for such a justification not only runs counter to the specific mandate of the Constitution granting supervisory powers to the SC, but likewise undermines the independence of the judiciary. xxx xxx where a criminal complaint against a judge or other court employee arises from their administrative duties, the Ombudsman must defer action on said complaint and refer the same to the Court for determination whether said judge or court employee had acted within the scope of their administrative duties.

Maglasang v. People, 190 SCRA 306 (1990)

X x x The Supreme Court is supreme – the third great department of government entrusted exclusively with the judicial power to adjudicate with finality all justiciable disputes, public and private. No other department or agency may pass upon its judgment or declare them "unjust". Consequently and owing to the foregoing, not even the President of the Philippines as Chief Executive may pass judgment on any of the Court's Acts.

Urbina vs. Maceren, 57 SCRA 403 (1974)

The duty of the bar to support the judge against unjust criticism and clamor does not, however, preclude a lawyer from filing administrative complaints against erring judges or from acting as counsel for clients who have

legitimate grievances against them. But the lawyer should file charges against the judge before the proper authorities only and only after proper circumspection and without the use of disrespectful language and offensive personalities so as not to unduly burden the court in the discharge of its functions.

CANON 12

A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

Rule 138, S. 20 (g)

It is the duty of attorneys not to encourage suits or delay any man's cause from any corrupt motive or interest.

Const., Art. III, Sec. 16

All persons have the right to speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

People vs. Jardin, 124 SCRA 167

The dilatory tactics of the defense counsel and the failure of both the judge and the fiscal to take effective counter measures to obviate the delaying acts constitute obstruction of justice.

Cantorne vs. Ducosin, 57 Phil. 23 (1932)

Any act on the part of a lawyer that obstructs, perverts or impedes the administration of justice constitutes misconduct and justifies disciplinary action against him

Rule 12.01. A lawyer shall not appear for trial unless he has adequately prepared himself on the law and the facts of his case, and the evidence he will adduce and the order of its profference. He should also be ready with the original documents for comparison with the copies.

A lawyer is not adequately prepared unless he has a mastery of the facts of his case, the law and jurisprudence applicable thereto and upon which he can appropriately anchor his theory or instance. He must have collated every piece of evidence essential to establish his case and essential to demolish the pretense of the opponent's theory and capable of presenting and offering his evidence in an orderly and smooth manner without provoking valid objections.

Villasis vs. Court of Appeals, 60 SCRA 120

A newly hired counsel who appears in a case in the midstream is presumed and obliged to acquaint himself with all the antecedent processes and proceedings that have transpired in the record prior to his takeover.

Martin's Legal Ethics, p. 47, 1988 ed.

Half of the work of the lawyer is done in the office. It is spent in the study and research. Inadequate preparation obstructs the administration of justice.

Rule 12.02 A lawyer shall not file multiple actions arising from the same cause.

Restrictions are intended to prevent ***"forum-shopping"*** (which is the improper practice of going from one court to another in the hope of securing a favorable relief in one court which another court has denied).

Forum Shopping exists when as a result of an adverse opinion in one forum:

a. a party seeks favorable opinion (other than by appeal or certiorari) in another, or
b. when he institutes two or more actions or proceedings grounded on the same cause, on the gamble that one or the other would make a favorable disposition ***(Benguet Electric Corp. vs. Flores 287 SCRA 449, March 12, 1998).***

First Phil. International Bank vs. Court of Appeals, 252 SCRA 259 (1996)

The test in determining whether a party has violated the rule against forum shopping is:

1. whether the elements of *litis pendentia* are present; or
2. whether a final judgment in one case will amount to *res judicata* in the other.

Paredes vs. Sandiganbayan, 252 SCRA 641 (1996)

The mere filing of several cases based on the same incident does not necessarily constitute forum shopping. The question is whether the several actions filed involve the same transactions, essential facts and circumstances. If they involve essentially different facts, circumstances and causes of action, there is no forum shopping.

Garcia vs. Francisco, AC No. 3923, March 30, 1993

A lawyer owes fidelity to the cause of his client but not at the expense of truth and the administration of justice.

By grossly abusing his right of recourse to the courts for the purpose of arguing a cause that had been repeatedly rebuffed, he was disdaining the obligation of the lawyer to maintain only such actions or proceedings, as appear to him to be just and such defenses only as he believes to be honestly debatable under the law. By violating his oath not to delay any man for money or malice, he has besmirched the name of an honorable profession and has proved himself unworthy of the trust reposed to him by law as an officer of the Court.

Three Ways in which the Forum Shopping is Committed:

1. Going from one court to another in the hope of securing a favorable relief in one court, which another court has denied.
2. Filing repetitious suits or proceeding in different courts concerning the same subject matter after one court has decided the suit with finality.
3. Filing a similar case in a judicial court after receiving an unfavorable judgment from an administrative tribunal.

Last par., Sec. 5, Rule 7, ROC

Failure to comply with the requirements for, the submission of a certification against forum shopping in initiatory pleadings shall not be curable by mere amendment of the complaint or other initiatory pleading, but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing.

The submission of a false certification or non-compliance with any of the undertakings in a certification of no forum shopping

1. shall constitute indirect contempt of court
2. without prejudice to the corresponding administrative and criminal actions

If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be:

1. ground for summary dismissal with prejudice; and shall
2. constitute direct contempt, as well as
3. cause for administrative sanctions.

Q. Theresa gave birth to a baby boy by caesarian operation. A week after her discharge from the hospital, she felt incessant pain in her abdomen and, upon consultation with an obstetrician, it was discovered that a medical instrument and a swab of cotton were left inside her abdomen by the doctor who conducted the caesarian operation. Theresa then filed a criminal case against the doctor in the RTC and an administrative case with the Professional Regulations Commissions.

Having been informed of the filing of the case in the RTC of which you were the presiding judge and before the PRC almost simultaneously, how would you dispose of the criminal case in your court?

A. I would proceed with the hearing of the criminal case. There is no forum shopping in this case because the two actions are based on different causes of action. The case before the PRC is based on malpractice while the criminal case in the RTC is based on negligence.

Q. X sustained physical injuries due to a motor vehicle collision between the car he was driving and the public utility bus, requiring her confinement for 30 days at ABC hospital. After her release from the hospital, she filed a crminal complaint against the bus driver for serious physical injuries through reckless imprudence before the Makati Prosecutor's Office. She also filed civil complaint before the Parañaque RTC against the bus driver and operator for compensatory, moral, exemplary and other damages. Aside from the two complaints, she additionally filed an administrative complaint against the bus operator with the LTFRB for cancellation or suspension of the operator's franchise. Would you say that she and her lawyer were guilty of forum-shopping?

A. NO. There is no forum-shopping in the simultaneous filing of criminal case and a civil case in this instance. Art. 33 of the Civil Code allows the filing of an injured party of a civil action for damages entirely separate and distinct from the criminal action in cases of defamation, fraud and physical injuries. There is also no forum-shopping involved in filing administrative complaint against the operator of LTFRB. It is for a different cause of action, the cancellation or suspension of operator's franchise.

Rule 12.03. A lawyer shall not, after obtaining extensions to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Achacoso vs. Court of Appeals, 51 SCRA 424

The court censures the practice of counsels who secures repeated extensions of time to file their pleadings and thereafter simply let the period lapse without submitting the pleading on even an explanation or manifestation of their failure to do so.

There exists a breach of duty not only to the court but also to the client.

Rule 12.04. A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

The aim of a suit is to render justice to the parties according to law and free from the law's delay. Rules of procedure are designed to accomplish such objective. A lawyer should use the rules for this purpose and not for its frustration. The lawyer has the duty to temper his client's propensity to litigate.

If a lawyer is honestly convinced of the futility of an appellate review or appeal in a civil suit he should not hesitate to inform his client that most likely the verdict would not be altered.

Garcia v. Francisco, 220 SCRA 512 (1993)

X x x A lawyer owes fidelity to the cause of his client but not at the expense of truth and the administration of justice. X x x By grossly abusing the right of recourse to the courts for the purpose of arguing a cause that had been repeatedly rebuffed, he was disdaining the obligation of the lawyer to maintain only such actions or proceedings as appear to him to be just and such defenses only as he believes to be honestly debatable under the law. By violating his oath not to delay a man for money or malice, he has besmirched the name of an honorable profession and has proved himself unworthy of the trust reposed in him by law as an officer of the Court.

Perez vs. Lazatin, 23 SCRA 645

Lawyers should not resort to nor abet the resort of their clients, to a series of actions and petitions for the purpose of thwarting the execution of a judgment that has long become final and executory.

People vs. Jardin, 124 SCRA 167

A judge should be quick enough to prevent a lawyer from resorting to dilatory tactics which obstruct the administration of justice.

Rule 12.05. A lawyer shall refrain from talking to his witness during a break or recess in the trial, while the witness is still under examination.

Purpose is to prevent the suspicion that he is coaching the witness what to say during the resumption of the examination. The rationale therefore of this rule is to uphold and maintain fair play with the other party and to prevent the examining lawyer from being tempted to coach his own witness to suit his purpose.

Rule 12.06. A lawyer shall not knowingly assist a witness to misrepresent himself or to impersonate another.

A lawyer may lawfully and ethically interview witnesses in advance of trial as in fact it is his duty as part of his preparation for trial.

Canon 39, CPE

A lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without the consent of opposing counsel or party. He should scrupulously avoid any suggestion calculated to induce the witness to suppress or deviate from the truth, or in any degree to affect his free and untrammeled conduct when appearing at a trial or on the witness stand.

The witness who commits the misrepresentation is criminally liable for *"False Testimony*" either under Art. 181, 182 or 183, Revised Penal Code depending upon the nature of the case. The lawyer who induces a witness to commit false testimony is equally guilty as the witness.

Art. 184, Revised Penal Code

The lawyer who presented a witness knowing him to be a false witness is criminally liable for "Offering False Testimony In Evidence"

The lawyer who is guilty of the above is both criminally and administratively liable.

Subornation of perjury

Subornation of perjury is committed by a person who knowingly and willfully *procures* another to swear falsely and the witness subornated does testify under circumstances *rendering him guilty of perjury* ***(U.S. vs. Ballena, 18 Phil. 382).***

People vs. Bautista, 76 Phil. 184 (1946)

Aside from the fact that the testimony of a witness who admits having been instructed what to say may not be relied upon by the court, a lawyer who presents a witness whom he knows will give a false testimony may be subjected to disciplinary action.

Q. Jaja testified as a witness in case that Atty. Isip is handling. When the case terminated, Jaja asked for her fees from Atty. Isip. Can Jaja compel said counsel to pay her?

A. NO. A lawyer may not pay (or guarantee, or allow the client to pay) the amount to witness other than reasonable reimbursement for their expenses and loss of time.

Of course an expert witness may be paid a reasonable fee for services, both in testifying and pre-trial preparation.

However, under no circumstances may the lawyer agree to pay even an expert witness a fee contingent upon the content of the witness' testimony and/or the outcome of the proceeding.

Rule 12.07. A lawyer shall not abuse, browbeat or harass a witness nor needlessly inconvenience him.

Sec. 3. Rights and obligations of a witness – a witness must answer questions, although his answer may tend to establish a claim against him. However, it is the right of a witness:

1. to be protected from irrelevant, improper, or insulting questions, and from harsh or insulting demeanor;
2. not to be detained longer than the interest of justice requires;
3. not to be examined except only as to matters pertinent to the issue;
4. not to give an answer which will tend to be subject him to penalty for an offensive unless otherwise provided by law;
5. not to give an answer which will tend to degrade his reputation, unless it be to the very fact at issue or to a fact from which the fact in issue would be presumed. But a witness must answer to the fact of his previous final conviction for an offense. ***(Rule 132, Sec. 3, ROC)***

Rule 12.08. A lawyer shall avoid testifying in behalf of his client, except:

a. on *formal matters*, such as mailing, authentication or custody of an instrument and the like; or

b. on *substantial matters*, in cases where his testimony is essential to the end of justice, in which even he must, during hi testimony, entrust the trial of the case to another counsel.

PNB v.Tieng Piao, 57 Phil 337 (1932)

x x x although the law does not forbid an attorney to be a witness and at the same time an attorney in a case, the courts prefer that counsel should not testify as a witness unless it is necessary, and that they should withdraw from the active management of the case.

CANON 13

A lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence, or gives the appearance or influencing the Court.

In prosecuting or defending cases, the lawyer must be guided by the principles of justice. He must rely on the merits of his cases and should avoid using influence and connections to win his cases. His cases must be won because they are meritorious and not because of connections, clout, dominance or influence.

Rule 13.01. A lawyer shall not extend extraordinary attention or hospitality to, nor seek opportunity for, cultivating familiarity with Judges.

Canon 3, CPE

A lawyer should avoid marked attention and unusual hospitality to a judge, uncalled for by the personal relations of the parties, because they subject him and the judge to misconceptions of motives.

Report of IBP Committee, p. 70

In order not to subject both the judge and the lawyer to suspicion, the common practice of some lawyers of making judges and prosecutors godfathers of their children to enhance their influence and their law practice should be avoided by judges and lawyers alike.

Austria vs. Masaquel, 20 SCRA 1247

It is improper for a litigant or counsel to see a judge in chambers and talk to him about a matter related to the case pending in the court of said judge.

Rule 13.02. A lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party.

Cruz v. Salva, 105 Phil 1151 (1951)

X x x Members of the court were greatly disturbed and annoyed by such sensationalism, which may be laid at the door of Salva. In this, he committed a grievous error and poor judgment. His actuations in this regard went well beyond the bounds of prudence, discretion, and good taste. It is bad enough to have such undue publicity when a criminal case is being investigated by the authorities, even when it is being tried in court; but when said publicity is encouraged when the case is on appeal and is pending consideration by this court, the whole thing becomes inexcusable, even abhorrent.

Marcelino vs. Alejandro, 32 SCRA 106

In order to warrant a finding of *"prejudicial publicity"*, there must be an allegation and proof that the judges have been unduly influenced, not simply that they might be, by the "barrage" of publicity.

In re: Gomez, 43 Phil. 376

If the counsel instigated or induced his client to make the public statement or publicity in the media involving a pending case to arouse public opinion and to influence the judge, both the client and the lawyer maybe subjected to contempt of court.

After the case had already been finished, the rule in progressive jurisdictions is that, courts are subject to the same criticism as other people.

In re: Lozano, 54 Phil. 801

In a concluded litigation, a lawyer enjoys a wider latitude of comment on or criticize the decision of s judge or his actuation. Thus, it has been held that a newspaper publication tending to impede, obstruct, embarrass or influence the courts in administering justice in a pending case constitutes criminal contempt, but the rule is otherwise after the litigation is ended.

Rule 13.03. A lawyer shall not brook nor invite interference by another branch or agency in the government in the normal course of judicial proceedings.

Bumanglag vs. Bumanglag, 74 SCRA 92

When a case is already within the jurisdiction of a court, the lawyer should not cause or seek the interference of another agency of the Government in the normal course of judicial proceedings.

CHAPTER IV – THE LAWYER AND THE CLIENT

Regala vs. Sandiganbayan, G.R. No. 105938 (Sept. 20, 1996)

Historically, the nature of the lawyer-client relationship is premised on the Roman Law concepts:

1. *locatio conduction operarum* (contract of lease of services) where one lets his services for compensation and another hires them without reference to the object which the services are to be performed; and
2. *mandato* (contract of agency) whereby a friend on whom reliance could be placed makes a contract in his name but gives up all that he gained by the contract to the person who requested him.

In a modern day understanding of the lawyer-client relationship, an attorney is more than a mere agent or servant because he possesses special powers of trust and confidence reposed on him by his client. He is also as independent as a judge, with powers entirely different from and superior to those of an ordinary agent.

Rule 138, Section 21, Rules of Court

The relation of attorney and client begins from the time an attorney is retained. The term "*retainer*" may refer either of two concepts. It may refer to the act of a client by which engages the services of the attorney:

1. to render legal advice, or
2. to defend or prosecute his cause in court.

It is general or special. A *general retainer* is one the purpose of which is to secure before hand the services of an attorney for any legal problem that may afterward arise. A *special retainer* has reference to a particular case or service.

The word "*retainer*" may also refer to the fee which a client pays to an attorney when the latter is retained known as retaining fee. A *retaining fee* is a preliminary fee paid to insure and secure his future services, to remunerate him for being deprived, by being retained by one party, of the opportunity of rendering services to the other party and of receiving pay from him, and the payment of such fee, in the absence of an agreement on the contrary, is neither made nor received in consideration of the services contemplated; it is apart from what the client has agreed to pay for the services which he has retained him to perform. Its purpose is to prevent undue hardship on the part of the attorney resulting from the rigid observance of the rule forbidding him from acting as counsel for the other party has been retained by or has given professional advice to the opposite party.

Existence of Attorney-Client Relationship

a. *Documentary Formalism* – NOT an essential element in the employment of an attorney, contract may be EXPRESSED OR IMPLIED.

b. *Implied acceptance* – it is sufficient that advice and assistance of an attorney is sought and received in any matter pertinent to his profession; it is enough that a lawyer acceded to a client's request.

Rule 138, Section 21, Rules of Court

An attorney has no power to act as counsel or legal representative for a person without being retained nor may he appear in court for a party without being employed unless by leave of court.

There must be a contract of employment, express or implied, between him and the party he purports to represent or the latter's authorized agent. If he corrupt or willfully appears as an attorney for a party to a case without authority, he may be disciplined or punished for contempt as an officer of the court who has misbehaved in his official transaction. Moreover, neither the litigant whom he purports to represent nor the adverse party may be bound or affected by his appearance unless the purported client ratifies or is estopped to deny his assumed authority.

Dee vs. Court of Appeals, 176 SCRA 651 (1989)

The absence of a written contract will not preclude a finding that there is a professional relationship. Documentary formalism is not an essential element in the employment of an attorney; the contract may be express or implied. It is sufficient, to establish the professional relation, that the advice and assistance of an attorney is sought and received in any matter pertinent to his profession. An acceptance of the relation is implied on the part of the attorney from his acting on behalf of his client in pursuance of a request from the latter. If a person, in respect to his business affairs or any troubles of any kind, consults with his attorney in his professional capacity with the view to obtaining professional advice or assistance and the attorney voluntarily permits or acquiesce in such consultation, as when he listens to his client's preliminary statement of his case or gives advice thereon, then the professional

employment is regarded as established just as effective as when he draws his client's pleading or advocates his client's cause in court.

Termination of a Counsel's Services

1. The withdrawal as counsel of a client or the dismissal by the client of his counsel must be made in a FORMAL PETITION filed in the case (WITHDRAWAL OF RECORD)

2. Atty-client relationship does not terminate formally until there is withdrawal made of record.

3. Unless properly relieved, counsel is responsible for the conduct of the case.

Hilado vs. David, 84 Phil. 569 (1949)

The employment of a law firm is equivalent to the retainer of the member thereof even though only one of them is consulted; conversely, the employment of one member is generally considered as employment of the law firm.

B.R. Sebastian Enterprises, Inc. vs. Court of Appeals, 206 SCRA 28 (1992)

The death of a partner, who was the one handling the case for the law firm, did not extinguish the lawyer-client relationship; the responsibility to continue representation and file required pleading devolve upon the remaining lawyers of the firm, until they have withdrawn from the case, the negligence of the latter binds the client.

Seva vs. Nolan, 64 Phil. 374 (1937)

A wife in any of the instances where she may prosecute or defend an action without the necessity of joining her husband as a party litigant has the authority to engage the services of counsel even without her husband's consent. She cannot, however, bind the conjugal partnership for the payment of the fees of her lawyer without the husband's authority, except in a suit between her and her husband which she is compelled to institute or resist to protect her rights, to a successful conclusion.

CANON 14

A lawyer shall not refuse his services to the needy.

The relation of attorney and client may be created not only by the voluntary agreement between them but also by the appointment of an attorney as counsel *de oficio* for a poor or indigent litigant, and the attorney so appointed has as high a duty to the indigent as to his paying client.

Rule 14.01. A lawyer shall not decline to represent a person solely on account of the latter's

1. **race**
2. **sex**
3. **creed, or**
4. **status of life, or**
5. **because of his own opinion regarding the guilt of said person.**

Rule 1138, S. 20(h). *Duty of attorneys*:
x x x never to reject, for any consideration personal to himself, the cause of the defenseless or oppressed.

Rule 138, s.20 (i).

In the defense of a person accused of a crime, by all fair and honorable means, regardless of his personal opinion to the guilt of the accused to present every evidence that the law permits, to the end that no person may be deprived of life or liberty, but by due process of law.

Rule 14.01 however is not applicable in civil cases *because of obvious reasons. It is the lawyer's duty –*

"(c) To counsel or maintain such actions or proceedings only as appear o him to be just, and such defenses only as he believes to be honestly debatable under the law." ***(Rule 138, section 20 (c), RRC)***

when the lawyer signs a complaint or answer, his signature is deemed a certification by him "that he has read the pleading; that to the best of his knowledge, information and belief, there is *good ground* to support xxx" (***Rule 7, Section 5, ROC)***. For violating this rule, the lawyer may be subjected to disciplinary action.

Rule 14.02. A lawyer shall not decline, except for serious and sufficient cause, an

appointment as counsel *de officio* or as *amicus curiae,* or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.

I. COUNSEL DE OFFICIO

Rule 138, s. 31*. Attorneys for destitute litigants*:

A court may assign an attorney to render professional aid free of charge to any party in case, if upon investigation it appears that the party is destitute and unable to employ an attorney, and that the services of counsel are necessary to secure the ends of justice and to protect the rights of the party. It shall be the duty of the attorney so assigned to render the required service, unless he is excused therefrom by the court for sufficient cause shown.

Rule 116, s.7 *– Appointment of counsel de oficio*

WHO:

1. members of the bar in good standing;
2. any person, resident of the province and of good repute for probity and ability, in localities without lawyers

WHAT CONSIDERED:

1. gravity of offense
2. difficulty of questions that may arise
3. experience and ability of appointee

II. AMICUS CURIAE

Rule 138, s. 36

Experienced and impartial attorneys may be invited by the court to appear as amici curiae to help in the disposition of issues submitted to it.

Definition: bystander; "friend of the court" whose function is "to remind the court or tribunal of some matter which otherwise might escape its notice and in regard to which it might be wrong. One who gives information upon some question of law in regard to which the judge is doubtful or mistaken, or upon a matter of which the court may take judicial cognizance.

Rule 14.03. A lawyer may not refuse to accept representation of an indigent client unless:

a. he is no position to carry out the work effectively or competently;
b. he labors under a conflict of interest between him and the prospective client or between a present client and the prospective client;

The rule involves *indigent* clients who come to a lawyer for legal services. Under Rule 138, Section 31 of the Rules of Court, a judge may assign a lawyer to render a professional service free of charge to any party in a case, if upon investigation, it appears that the party is *destitute* and unable to employ an attorney. The lawyer assigned must render the required legal service unless he is excused therefrom by the court for sufficient of cause shown.

Rule 14.04. A lawyer who accepts the cause of a person unable to pay his professional fees shall observe the same standard of conduct governing his relations with paying clients.

Blanza vs. Arcangel, 21 SCRA 1

If a lawyer volunteers his services to a client, and therefore not entitled to attorney's fees, nevertheless, he is bound to attend to a client's case with all due diligence and zeal. By volunteering his services, he has established a client-lawyer relationship.

CANON 15

A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

As a *general rule*, a client is bound by his counsel's conduct *except* when incompetence of counsel is so great that the defendant is prejudiced and prevented from fairly presenting his defense.

Suarez vs. CA

A lawyer owes absolute fidelity to the cause of his client. He owes his client full devotion to his interest, warm zeal in the maintenance and defense of his rights. In the instant case, Atty. San Luis was unquestionably negligent. His negligence consisted in his failure to attend the hearings, his failure to advise petitioner that he was going abroad and his failure to withdraw properly as counsel for petitioner.

Oparel, Sr. vs. Abara, 40 SCRA 128 (1971)

It demands of an attorney an undivided allegiance, a conspicuous and high degree of good faith, disinterestedness, candor, fairness, loyalty, fidelity and absolute integrity in all his dealings and transactions with his clients and an utter renunciation of every personal advantage conflicting in any way, directly or indirectly, with the interest of his client.

Rule 15.01. A lawyer, in conferring with a prospective client, shall ascertain as soon as practicable whether the matter would involve a conflict or his own interest, and if so, shall forthwith inform the prospective client.

A lawyer has the duty to disclose and explain to the prospective client all circumstances of his relation to the parties and any interest in connection with the controversy, which in his judgment might influence his client, in so far as will enable him to decide whether to accept the case. It is his duty to decline employment in any matter, which may involve conflicting interests.

Sta. Maria vs. Tuazon, 11 SCRA 562

The fact that the respondent has placed his private personal interest over and above that of his clients constitutes a breach of a lawyer's oath, to say at least.

Rule 15.02. A lawyer shall be bound by the rule on privileged communication in respect of matters disclosed to him by a prospective client.

This rule applies even if the prospective client does not thereafter retain the lawyer of the latter declines the employment. The reason for the rule is to make prospective client feel free to discuss whatever wishes with the lawyer without fear that what he tells the lawyer will not be divulged nor used against him and the lawyer to be equally free to obtain information from the prospective client.

Report of IBP Committee, p. 81

The purpose of the attorney-client relationship is two-fold: (a) *First*, to encourage a client to make a full disclosure of the facts of the case to his counsel without fear, and (b) *second*, to allow the lawyer to obtain full information from his client.

Canon 21, CPR

A lawyer shall preserve the confidences and secrets of his client even after the attorney-client relation is terminated.

Rule 130, Section 24 (b) RRC

"An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional employment; nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity.

Requisites of Privileged Communication:

a. There is an attorney-client relationship or a kind of consultancy requirement with a prospective client;
b. The communication was made by the client to the lawyer in the course of the lawyer's professional employment;
c. The communication must be intended to be confidential.

Baldwin vs. Comm. Of Internal Revenue, 125 F 2d 812, 141 LRA 548

The privilege continues to exist even after the termination of the attorney-client relationship. It outlasts the lawyer's engagement. The privileged character of the communication ceases only when waived by the client himself or after his death, by the heir or legal representative.

People vs. Sleeper, 46 Phil. 625

The party who avers that the communication is privileged has the burden of proof to establish the existence of the privilege unless from the face of the document itself, it clearly appears that it is privileged. The mere allegation that the matter is privileged is not sufficient.

The communication (knowledge or information) or the physical object must have been transmitted to the counsel by the client for the purpose of seeking legal advise. Otherwise, there is no privileged communication.

Canon 37, CPE

The privilege is limited or has reference only to communications which are within the ambit of lawful employment and does not extend to those transmitted in contemplation of future crimes or frauds.

However, the information on crimes or frauds already committed falls within the privilege and the lawyer cannot reveal or be compelled to reveal the confidences of the client.

Characteristics of the Attorney-Client Privilege

1. A-C privilege where legal advice is professionally sought from an attorney.
2. The client must intend the above communication to be confidential.
3. A-C privilege embraces all forms of communication and action.
4. As a general rule, A-C privilege also extends to the attorney's secretary, stenographer, clerk or agent with reference to any fact required in such capacity.
5. The above duty is perpetual and is absolutely privileged from disclosure.

Exceptions to A-C Privilege

1. There is consent or waiver or client.
2. Such is required by law.
3. Such is made to protect the lawyer's rights (i.e. to collect his fees or associates or by judicial action).
4. When such communication are made in contemplation of a crime or the perpetuation of a fraud.

Doctrine of imputed knowledge is based on the assumption that an attorney, who has notice of matter affecting his client, has communicated the same to his principal in the course of professional dealings. The doctrine applies regardless of whether or not the lawyer actually communicated to the client what he learned in his professional capacity, the attorney and his client being one judicial person.

Rule 15.03. A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of facts.

Generally, a lawyer may at certain stage of the controversy and before it reaches the court represent conflicting interests with the express written consent of all parties concerned given after disclosure of the facts. The disclosure should include an explanation of the effects of the dual representation, such as the possible revelation or use of confidential information.

A lawyer may not properly represent conflicting interests even though the parties concerned agree to the dual representation where:

1. the conflict is between the attorney's interest and that of a client, or
2. between a private client's interests and that of the government or any of its instrumentalities.

U. S. vs. Laranja, 21 Phil. 500 (1912)

He may not, without being guilty of professional misconduct, act as counsel for a person whose interest conflicts with that of his present or former client nor may he accept employment from a party in the performance of which he may be forced to act in a double capacity or be suspected of divided loyalty.

There are ***three tests to determine conflicting interests***. The first is when, on behalf of one client, it is the attorney's duty to contest for that which his duty to another client requires him to oppose or when this possibility of such situation will develop *(conflicting duties)*. The second test is whether the acceptance of the new relation will prevent a lawyer from the full discharge of his duty of undivided fidelity and loyalty to his client or will invite suspicion of unfaithfulness or double-dealing in the performance thereof *(Invitation of suspicion)*. The third test is whether a

lawyer will be called upon in his new relation to use against the first client any knowledge acquired in the previous employment *(use of prior knowledge obtained)*.

The bare attorney-client relationship with a client precludes an attorney from accepting professional employment from the client's adversary either in the same case or in a different but related action. It is also improper for a lawyer to appear as counsel for one party against the adverse party who is his client in another totally unrelated action. The prohibition applies irrespective of whether the lawyer acquired confidential information. It also applies to the law firm of which he is a member as well as any member, associate, or assistant therein.

The termination of the relation of attorney and client provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client. The reason is that the client's confidence once reposed cannot be divested by the termination of professional employment.

The attorney's secretary, stenographer or clerk who, in such capacity, has acquired confidential information from the attorney's client may not accept employment or, after becoming a member of the bar, represent an interest adverse to that of the attorney's client.

Rule on Conflicting Interests:

It is generally the rule based on sound public policy that attorney cannot represent diverse interest. It is highly improper to represent both sides of an issue. The proscription against representation of conflicting interest finds application where the conflicting interest arise with respect to the same general matter and is applicable however slight such adverse interest may be. It applies although the attorney's intention and motives were honest and he acted in good faith. However, representation of conflicting interest may be allowed where the parties consents to the representation after full disclosure of facts. ***(Nakpil vs. Valdez, 266 SCRA 758, March 4, 1998)***

<u>*Remember:*</u> The test to determine whether there is a conflict of interest in the representation is PROBABILITY, not certainty of conflict.

Pardy vs. Ernst, 143 P 429 (1914)

A lawyer is forbidden from representing a subsequent client against a former client only when the subject matter of the present controversy is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client. *Conversely*, he may properly act as counsel for a new client, with full disclosure to the latter, against a former client in a matter wholly unrelated to that of the previous employment, there being in that instance to conflict of interests.

Hilado vs. David, 84 Phil. 571

To constitute professional employment it is not essential that the client should have employed attorney professionally on any previous occasion *** It is not necessary that any retainer should have been paid, promised, or charged for; neither is it material that the attorney consulted did not afterward undertake the case about which the consultation was had. If a person in respect to his business affairs or troubles of any kind, consult with his attorney in his professional capacity with the view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established. xxx

The mere relation of attorney and client ought to preclude the attorney from accepting the opposite party's retainer in the same litigation regardless of what information was received by him from his client.

Where a lawyer is disqualified or forbidden from appearing as counsel in a case because of conflict of interests, the law firm of which he is a member as well as any member, associate or assistant therein is similarly disqualified or prohibited from so acting.

Nathan vs. Capule, 91 Phil. 640

An attorney who accepts professional employment in the very case in which his former client is the adverse lawyer, and utilizing against the latter papers, knowledge and information obtained in the course of his previous employment is guilty of misconduct. The fact that he had retired from the first case prior to accepting the second case against the former client, does not relieve him from his obligation of fidelity and loyalty to the latter.

In re: De la Rosa

Even though the opposing clients, after full disclosure of the fact, consent to the attorney's dual representation, the lawyer should, when his clients cannot see their way clear to settling the controversy amicably, retire the case.

Instances when a Lawyer is Considered having Conflicting Interests

1. As an employee of a corporation whose duty is to attend legal affairs, he cannot join a labor

union of employees in that corporation.
2. As a lawyer who investigated an accident as counsel for an insurance, he cannot represent the injured person.
3. As a receiver of a corporation, he cannot represent the creditor.
4. As a representative of the obligor, he cannot represent the obligee.
5. As a lawyer representing a party in a compromise agreement, he cannot be subsequent lawyer representing another client who seeks to nullify the agreement.

Effects of Representing Adverse Interests
1. Disqualification as counsel of new client on petition of former client.
2. Where such is unknown to, becomes prejudicial interests of the new client, a judgment against such may, on that ground be set aside.
3. A lawyer can be held administratively liable through disciplinary action and may be held criminally liable for betrayal of trust.
4. The attorney's right to fees may be defeated if found to be related to such conflict and such was objected to by the former client, or if there was a concealment and prejudice by reason of the attorney's previous professional relationship with the opposite party.

Rule 15.04. A lawyer may, with the written consent of all concerned, act as mediator, conciliator or arbitrator in settling disputes.

A lawyer's knowledge of the law and his reputation for fidelity may make it easy for the disputants to settle their differences amicably. However, the lawyer should not act as counsel to any of them.

Report of IBP Committee, p. 82

Consent in writing is required to prevent future controversy on the authority of the lawyer to act as mediator or arbitrator. *However*, a lawyer who acts as mediator, conciliator or arbitrator or arbitrator in settling a dispute, cannot represent any of the parties to it.

Rule 15.05. A lawyer, when advising his client, shall give a candid and honest opinion on the merits and probable results of the client's case, neither overstating nor understating the prospects of the case.

Canon 8, CPE

Before answering his client's question, a lawyer should endeavor to obtain full knowledge of his client's cause. It is only after he shall have studied the case that he should advise his client on the matter.

If a lawyer finds that his client's suit is totally devoid of merit or that of the pending civil action against him is wholly defenseless, which is his function and duty to find out, he should so inform his client and dissuade him, in the first instance, from filing the case or advise him, in the second instance, to compromise or submit rather than traverse the incontrovertible. If on the other hand, he finds that his client's cause is fairly meritorious, he should refrain from making bold and confident assurances of success.

A careful investigation and examination of the facts must first be had before any legal opinion be ventured by the lawyer to the client.

Castañeda vs. Ago, 65 SCRA 507

"It is the duty of a counsel to advise his client, ordinarily a layman to the intricacies and vagaries of the law, on the merit or lack of merit of his case. If he finds that his client's cause is defenseless, then it is his bounden duty to advise the latter to acquiesce and submit, rather than traverse the inconvertible. A lawyer must resist the whims and caprices of his client, and temper his client's propensity to litigate. A lawyer's oath to uphold the cause of justice is superior to his duty to his client; its primacy is indisputable."

Choa vs. Chiongson, 253 SCRA 371 (1996)

His client is entitled to and he is bound to give a candid and honest opinion on the merit or lack of merit of his client's case, neither overstating nor understating the prospect of the case. It is likewise incumbent upon him to give his client an honest opinion on the probable results of the case, with the end in view of promoting respect for the law and the legal processes.

Periquet vs. NLRC, 186 SCRA (1990)

As officers of the court, counsels are under obligation to advise their clients against making untenable and inconsistent claims. Lawyers are not merely hired employees who must unquestionably do the bidding of the client,

however unreasonable this may be when tested by their own expert appreciation of the facts and applicable law and jurisprudence. *Counsel must counsel.*

Rule 15.06. A lawyer shall not state or imply that he is able to influence any public official, tribunal or legislative body.

It is improper for a lawyer to show in any way that he has connections and can influence any tribunal or public official, judges, prosecutors, congressmen and others, specially so if the purpose is to enhance his legal standing and to entrench the confidence of the client that his case or cases are assured of victory.

Rule 15.07. A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

A lawyer should use his best efforts to restrain and prevent his client from doing those things, which he himself ought not to do; and if the client persists in such wrong doing, the lawyer should terminate their relation.

Art. 19 of the Civil Code

"every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith."

Conge vs. Deret, C.A.-G.R. No. 08848-CR., March 25, 1974

A lawyer who advise his client not to obey the order of the courts is guilty of contempt and misconduct.

Cabilan vs. Ramolete, 192 SCRA 674

As counsel of record, a lawyer has control of the proceedings and whatever steps his client takes should be within his knowledge and responsibility.

Rule 15.08 A lawyer who is engaged in another profession or occupation concurrently with the practice of law shall make clear to his client whether he is acting as a lawyer or in another capacity.

Report of the IBP Committee, p. 84

"The lawyer should inform the client when he is acting as a lawyer and when he is not, because certain ethical considerations governing the client-lawyer relationship may be operative in one case and not in the other."

CANON 16

A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

Art. 1491, Civil Code

The following persons cannot acquire or purchase, even at public or judicial auction, either in person or through the mediation of another.

(5) lawyers, with respect to the property and rights which may be the object of any litigation in which they take part by virtue of their profession."

Elements of Art. 1491:

1. Attorney-client relationship
2. Property or interest is in litigation
3. Attorney takes part as counsel in the case
4. Purchase, acquisition by attorney, by himself or through another, during pendency of litigation

* includes mortgage of property in litigation to lawyer. In this case, acquisition is merely postponed until foreclosure but effect is the same. It also includes assignment of property ***(Ordonio v. Eduarte, 207 SCRA 229)***

Take note of the following instances when Art.1491 is not applicable:

1. When attorney is not counsel in case involving the same property at the time of acquisition.

2. When purchaser is a corporation, even if the attorney was an officer thereof. ***(Tuazon v. Tuazon, 88 Phil. 42)***

3. When sale took place after termination of litigation, *except* if there was fraud or abuse of confidential information or where lawyer exercised undue influence.

4. Where property in question is stipulated as part of attorney's fees, *provided that*, the same is contingent upon the favorable outcome of litigation and, provided further, that the fee must be reasonable.

Aya vs. Bigornia, 57 Phil. 20

The moneys collected by an attorney for his client belong to the client. Consequently, the lawyer is under obligation to hold in trust all moneys and properties of his client that may come into his possession. The moneys collected by a lawyer in pursuance of a judgment in favor of his client are held in trust for the client.

Maxiom vs. Manila Railroad Co., 44 Phil. 597 (1928)

A lawyer may not accumulate distinct causes of action in himself by assignment from hundreds of small claimants and sue in his name for the benefit of the client's directly interested.

A. B. A. Op. 225 (July 12, 1941)

An attorney may, however, properly acquire *choses in action* not in his professional capacity but as a legitimate investment.

Q. Atty. X is a lawyer in a falsification case filed against the latter. While undergoing trial in the said criminal case, PNB foreclosed the two-hectare Riceland belonging to A. The land was sold at public auction to Atty. X as the highest bidder. Did Atty. X violate the provision under the Civil Code regarding purchase of property under litigation?

A. NO. In the absence of the requisites under Art. 1491 of the Civil Code, the prohibition will not operate. In this case, the riceland was not the subject of litigation.

Q. Atty. X appeared as counsel for plaintiff in a damage suit. Judgment was rendered in favor of the plaintiff, and to satisfy the award, a parcel of land was levied upon which was sold at auction sale. Plaintiff assigned one-half of his interest to Atty. X in accordance with their contingent contract of attorney's fees. Is the assignment a violation of Art. 1491 of the Civil Code and Canon 12 prohibiting purchase by lawyer of property under litigation?

A. NO. The lot was not the subject matter of the litigation. It was acquired by the client in the execution sale ***(Guevarra vs. Calalang, 117 SCRA)***

Rule 16.01. A lawyer shall account for all money or property collected or received for or from the client.

Notes:

1. Lawyers are bound to promptly account for money received by them on behalf of their clients and failure to do so constitutes professional misconduct.
2. The fact that a lawyer has a lien for fees on money on his hands collected for his clients does not relieve him from the duty of promptly accounting for the funds received.
3. However, delivery of funds is subject to lawyer's lien.

Agpalo

- when the lawyer withholds and refuses to deliver the funds and property received by him for his client, he breaches the trust reposed to him.
- That a lawyer has a lien does not relieve him from the obligation to make a prompt accounting.

- Cannot unilaterally appropriate client's money to pay his atty.'s fees.

- May not in the absence of authority from his client, disburse the money collected for his client in favor of persons who may be entitled thereto.

In re: Tuazon, 11 SCRA 562 (1964)

His act of collecting unreasonable fees may amount to a retention of his client's funds and constitute professional indiscretion and misconduct.

Rule 16.02. A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

- Should not commingle a client's money with that of other clients and with his private funds, nor use the client's money for his personal purposes without the client's consent.

In re: Bamberger, 49 Phil. 962

The high fiduciary and confidential relation of attorney and client requires that the lawyer should promptly account for all the funds received or held by him for the client's benefits.

The lawyer is not relieved of the obligation to make a proper accounting even if he has an attorney's lien over the client's moneys or funds in his possession.

CBA, Code of Professional Conduct, Commentary 1, p. 24

The lawyer in under strict obligation to label and identify his client's property and keep it separate and apart from his own.

Rule 16.03. **A lawyer shall deliver the funds and property of his client when due or upon demand. *However*, he shall have a lien on the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and the execution he has secured for his client as provided for in the Rules of Court.**

Rule 136 ***Sec. 37.*** *Attorney's Liens.: An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until this lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof. He shall also have a lien to the same extent upon all judgments for the payment of money, and executions issued in pursuance of such judgments, which he has secured in a litigation of his client, from and after the same when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering judgment, or issuing such executions, and shall have caused written client and would have to enforce his lien and secure the payment of his fees and disbursements.*

Lawyer's retaining lien

A lawyer shall have a lien over the client's funds and may apply so much thereof to satisfy his lawful fees and disbursements but must give prompt notice to his client for the latter's advertisement.

Charging liens

For the further protection of the lawyer, he shall also have a lien to the extent of his attorney's fees and legal disbursements on all judgments and executions he has secured for his client as provided for in the Rules ***(Rule 138, Sec. 37, Revised Rules of Court).***

In re: David, 84 Phil. 627

The lawyer's failure to deliver upon demand gives rise to the presumption that he has misappropriated the funds for his own use to the prejudice of the client and in violation of the trust reposed in him.

- Immediate repayment by the lawyer of the client's money of property after demand and before the institution by the client of disbarment proceedings will show good faith and negate fraudulent intent.

Matute vs. Matute, 33 SCRA 35

"Under Rule 138, Section 37 of the Rules of Court, the attorney cannot be compelled to surrender the documents in his possession without prior proof that his fees have been duly satisfied. But if it be entirely indispensable for the court to gain possession are held by him in the course of his employment as counsel, *it can require surrender thereof by requiring the client or claimant to first file proper and adequate security for the lawyer's compensation."*

Llamas vs. Encarnacion, CA-G.R. No. 31920-R, August 18, 1965

When a lawyer enforces a charging lien against his client, the client-lawyer relationship is terminated.

Dumandag vs. Lumaya, 197 SCRA 303 (1991)

A lawyer who fails to account his client's money may be disbarred or suspended indefinitely from practice of law.

Rule 16.04. **A lawyer shall not borrow money from his client *unless* the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client *except*, when in the interest of justice, he has to advance necessary expenses in a legal matter**

he is handling for the client.

- While a lawyer may borrow money from his client where the latter's interests are fully protected, he should not abuse client's confidence by delaying payment

- If the lawyer lends money to the client in connection with the client's case the lawyer in effect acquires an interest in the subject matter of the case or an additional stake in its outcome, either of which may lead the lawyer to consider his own recovery rather than that of the client or to accept a settlement which might take care of his interest in the verdict to the sacrifice of that client.

Not prohibited: advances for necessary expenses

Prohibited: ***Champertous contracts*** – lawyer assumes all expenses and reimbursement in contingent on outcome of case. (like gambling)

Bautista vs. Gonzales, 182 SCRA 155

The lawyer may lend money to a client, when it is necessary in the interest of justice to advance necessary expenses in a legal matter he is handling for the client. The advances made shall be subject to reimbursement. Otherwise, if the lawyer spends for all legal expenses, his contract of legal employment might become champertous, if his attorney's fees will be payable in kind. *Champertous contracts are void.*

CANON 17

A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

Santiago vs. Fojas, 248 SCRA 68 (1995)

No lawyer is obliged to act either as adviser or advocate for every person who may wish to become his client. He has the right to decline employment, except as prescribed in Canon 14 of the Code of Professional Responsibility. But once he agrees to take up the cause of the client, the lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed in him. He owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability. No fear or judicial disfavor or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum, the client is entitled to the benefit of any and every remedy and defense that is authorized by law, and he may expect his lawyer to assert every such remedy or defense.

Cantillller v. Potenciano, 180 SCRA 246 (1989)

x x x x x x When a lawyer takes a client's cause, he thereby covenants that he will exert all effort for its protection until its final conclusion. The failure to exercise due diligence and the abandonment of a client's cause make such a lawyer unworthy of the trust which the client has reposed on him.

Fidelity to the cause of the client is the essence of the legal profession. As such. The duty of fidelity requires the existence of the attorney and client relationship. Once the relationship exists, the Supreme Court will not hesitate to enforce compliance with standards of honorable dealing set by law, by means of reprimands, fines, suspension, disbarment, and other disciplinary measures.

Lorenzana Food Corporation vs. Daria, Adm. Case No. 2736, May 27, 1991

An attorney owes loyalty to his client not only in the case in which he has represented him but also after the relation of attorney and client has terminated.

CANON 18

A lawyer shall serve his client with competence and diligence.

It is the lawyer's duty to safeguard client's interests. It begins from retainer until effective discharge from case or final disposition of the whole subject matter of litigation.

Suarez v. CA, 220 SCRA 274 (1993)

xxx xxx A client may reasonably expect that his counsel will make good his representations xxx xxx and has the right to expect that his lawyer will protect his interests during the trial of the case. For the general employment of an attorney to prosecute or defend a cause or proceeding ordinarily vests in a plaintiff's attorney the implied authority to take all steps or do all acts necessary or incidental to the regular and orderly prosecution or management of the

suit, and in a defendant's attorney the power to take such steps as it deems necessary to defend the suit and protect the interests of the defendant xxx xxx.

Blaza vs. Court of Appeals, 182 SCRA 461

The legal profession demands a lawyer that degree of vigilance and attention expected of a good father of a family and should adopt "the norm of practice expected of men of good intentions.

Rule 18.01. A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render. However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Islas vs. Platon, 47 Phil. 162

When a lawyer accepts a case, whether for a fee or not, his acceptance is an implied representation:

1. that he possess the requisite degree of academic learning, skill and ability in the practice of his profession;
2. that he will exert his best judgment in the prosecution or defense of the litigation entrusted to him;
3. that he will exercise reasonable and ordinary care and diligence in the pursuit or defense of the case; and
4. that he will take steps as will adequately safeguard his client's interests.

However well meaning he may be, a lawyer cannot ask another lawyer to collaborate with him in a particular case without the consent of the client. The fiduciary nature of attorney-client relationship prohibits this.

Garcia vs. Flores, 101 Phil. 781 (1951)

It should be stressed that what a lawyer may not delegate in the absence of he client's consent is the confidence reposed in him, as distinguished from the work involved therein. A lawyer has the implied power to delegate to his associate or assistant attorney, under his supervision and responsibility, part or the whole of the legal work required to be performed in the prosecution or defense of the client's cause.

Robinson vs. Villafuerte, 18 Phil. 121 (1911)

A lawyer may not, however, delegate to any layman any work which involves a study of the law or its application, such as the computation and determination of the period within which to appeal an adverse judgment, the examination of witnesses or the presentation of evidence.

Rule 18.02. A lawyer shall not handle any legal matter without adequate preparation.

Bautista vs. Rebueno, 81 SCRA 535

A lawyer must keep himself constantly abreast with the trend of authoritative pronouncements and developments in all branches of the law.

Javellana vs. Lutero, 20 SCRA 717 (1967)

The full protection of the client's interests requires no less than a mastery of the applicable law and facts involved in a case, regardless of the nature of the assignment and keeping constantly abreast of the latest jurisprudence and developments in all branches of the law.

Legarda vs. CA, G. R. No. 94457, March 18, 1991

A lawyer should give adequate attention, care and time to his cases. This is the reason why a practicing lawyer should accept only so many cases he can handle. Once he agrees to handle a case, he should undertake the task with dedication and care. If he should do any less then he is not true to his oath as a lawyer.

Rule 18.03. A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

If by reason of the lawyer's negligence, actual loss has been caused to his client, the latter has a cause of action against him for damages. However, for the lawyer to be held liable, his failure to exercise reasonable care, skill and diligence must be proximate cause of the loss.

Suarez vs. Court of Appeals, 220 SCRA 274 (1993)

By agreeing to be his client's counsel, he represents that he will exercise *ordinary diligence* or that reasonable degree of care and skill having reference to the character of the business he undertakes to do, to protect the client's interests and take all steps or do all acts necessary therefore, and his client may reasonably expect him to discharge his obligations diligently.

Phil. Bank of Commerce vs. Aruego, C.A.-G.R. No. 28274, June 18, 1965

The legal profession is a jealous mistress which demands of a lawyer that degree of vigilance and attention expected of a good father of a family. A lawyer is required to exercise ordinary diligence or that a reasonable degree of care and skill having reference to the character of the business he undertakes to do, as any member of the bar similarly situated commonly possesses and exercises.

Adarne vs. Aldaba, 83 SCRA 735

An attorney is not required to exercise extraordinary diligence but only a reasonable degree of care and skill, having reference to the character of the business he undertakes to do.

In re: Filart, 40 Phil. 205

An attorney is not expected to know all the laws. He is not liable for disbarment for an honest mistake or error. He is not an insurer of the result in a case where he is engaged in as a counsel. Only ordinary care and diligence are required of him.

Lawell vs. Goroman, 57 Am. St., rep. 662

The degree of care and skill required of the lawyer is not affected however by the fact that the lawyer's services are rendered gratuitously.

Vivero vs. Santos, 98 Phil. 500 (1956)

The client is bound by his counsel's conduct, negligence and mistake in handling the case, or in the management of the litigation and in the procedural technique, and he cannot be heard to complain that the result might have been different had his lawyer proceeded differently.

Cruz vs. Hugo, 66 Phil. 102 (1938)

The rule presupposes the existence of an attorney-client relationship and of a pending case, and refers only to matters pertaining to the conduct of such case.

Visitacion vs. Manit, 27 SCRA 523 (1969)

The attorney's duty to safeguard the client's interests commences from his retainer until his defective release from the case or the final disposition of the whole subject matter of the litigation.

Instances of Negligence of Attorneys

1. Failure of counsel to ask for additional time to answer a complaint resulting in a default judgment against his client *(Mapua vs. Mendoza, 45 Phil. 424).*

2. Failure to bring suit immediately. When the belated suit was filed, the defendant had already become insolvent and recovery could no longer be had. The lawyer was declared liable to the client *(Filinvest Land vs. CA, 182 SCRA 664).*

3. Failure to ascertain date of receipt from post office of notice of decision resulting in the non-perfection of the appellant's appeal *(Joven-De Jesus vs. PNB, 12 SCRA 447).*

4. Failure to file briefs within the reglementary period *(People vs. Cawili, 34 SCRA 728).*

5. Failure to attend to trial without filing a motion for postponement or without requesting either of his two partners in the law office to take his place and appear for the defendants *(Gaerlan vs. Bernal, G.R. No. L-4049, Jan. 28, 1952).* Failure to appear at pre-trial *(Agravante vs. Patriarca, 183 SCRA 113).*

6. Failure of counsel to notify clients of the scheduled trial which prevented the latter to look to another lawyer to represent them while counsel was in the hospital *(Ventura vs. Santos, 59 Phil. 123).*

7. Failure to appear simply because the client did not go to counsel's office on the date of the trial as was agreed upon *(Alcoriza vs. Lumakang, Adm. Case No. 249, November 21, 1978).*

8. Failure to pay the appellate docket fee after receiving the amount for the purpose *(Capulong vs. Alino, 22 SCRA 491).*

9. Failure to take action to have adverse decision reconsidered *(PHHC vs. Tiongco, 207 SCRA 153)* or failure to appeal the adverse decision (F*rancisco, Jr. vs. Bosa and Bandong, 205 SCRA 722).*

10. Failure to notify the court of counsel's change of address resulting in failure to receive judicial orders to the prejudice of the client *(Juane vs. Garcia, 25 SCRA 801)*

11. Failure to take necessary precaution to insure that he receives all court notices and processes promptly (*Javier vs. Madamba, Jr., 174 SCRA 495).*

12. Failure to present evidence *(Gonzales vs. Presiding Judge of Branch I, RTC of Bohol, 186 SCRA 101)*.

13. Failure to file the required position paper which prejudiced client's cause *(Lorenzana Food Corp. vs. Daria, 197 SCRA 249).*

Instances where the client is not bound by counsel's negligence:
(a) In the case of an irresponsible lawyer who totally forgot about the case and failed to inform his client of the decision, the Supreme Court held that the client should not be bound by the negligence of the counsel. *(Republic vs. Arro, 150 SCRA 630)*

(b) A party is not bound by the actions of his counsel in case the gross negligence of the counsel resulted in the client's deprivation of his property without due process *(Legarda vs. Court of Appeals, 195 SCRA 418).*

(c) "Where there is something fishy and suspicious about the actuations of the former counsel of petitioners in the case at bar, in the case he did not give any significance at all to the processes of the court, which has proven prejudicial to the rights of said clients, under a lame and flimsy explanation that the courts processes just escaped his attention, it is held that the said lawyer deprived his clients of their day in court *(PHHC vs. Tiongco, 12 SCRA 471).*

(d) Application of the rule, "results in the outright deprivation of one's property through a technicality." *(Escudero vs. Dulay, 158 SCRA 69, 78)*

(e) In the case of an irresponsible lawyer who totally forgot about the case and failed to inform his client of the decision, the Supreme Court held that the client should not be bound by the negligence of the counsel. *(Republic vs. Arro, et al., 150 SCRA 630)*

(f) A party is not bound by the actions of his counsel in case the gross negligence of the counsel resulted in the client's deprivation of his property without due process. *(Legarda vs. Court of Appeals, 195 SCRA 418)*

(g) The Supreme Court set aside the dismissal of the appeal for the failure to file the appellant's brief on time, it appearing that the appellant's former counsel had abandoned him and could not be contacted despite earnest efforts. *(Aguilar vs. Court of Appeals, et al.,250 SCRA 371)*

(h) The Supreme Court set aside the trial court's order, the same being due to the trial counsel's blunder in procedure and gross negligence of existing jurisprudence. *(Escudero vs. Dulay, 158 SCRA 69)*

(i) IT was once ruled that the unconscionable failure of a lawyer to inform his client of the receipt of the court order and the motion for execution and to take the appropriate action against either or both to protect his client's rights amounted to connivance with the prevailing party which constituted extrinsic fraud. *(Bayog vs. Natino, 258 SCRA 378)*

Rule 18.04. A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Baker vs. Humprhey, 101 US 494, 25 L ed 1065 (1879)
It is the duty of an attorney to advise his client promptly whenever he has any information to give which is important that the client receive.

Oparel vs. Abaria, 40 SCRA 128 (1971)
The client is entitled to the fullest disclosure of the mode or manner by which his interest is defended or why certain steps are taken or omitted.

Alcala vs. De Vera, 56 SCRA 30
In failing to inform his client of the decision in the civil case handled by him, the lawyer failed to exercise such skill, care and diligence as men of the legal profession commonly possess and exercise in such matters of professional employment. The relationship of lawyer-client being one of confidence, there is ever present the need for

the client's being adequately and fully informed and should not be left in the dark as to the mode and manner in which his interests are being defended.

CANON 19
A lawyer shall represent his client with zeal within the bounds of the law.

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save the rules of law, legally applied. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law, and he may expect his lawyer to assert every such remedy or defense.

Legarda vs. Court of Appeals, 195 SCRA 418 (1991)

In the discharge of his duty of entire devotion to the client's cause, a lawyer should present every remedy or defense authorized by law in support of his client's cause, regardless of his personal views.

Choa vs. Chiongson, 260 SCRA 477 (1996)

While a lawyer owes absolute fidelity to the cause of his client, full devotion to his genuine interest, and warm zeal in the maintenance and defense of his rights, he must do so only within the bounds of law.

Maglasang vs. People, 190 SCRA 306

A lawyer's duty is not to his client but to the administration of justice; *to that end, his client's success is wholly subordinate;* and his conduct ought to and must always be scrupulously observant of law and ethics.

People vs. Irisuillo, 82 Phil. 1 (1948)

While a lawyer may, in accordance with the canons of the profession and his duty to aid in the administration of justice, properly decline to handle a *civil suit* when he is convinced that it is intended to harass or injure the opposite party or to work oppression or wrong, an attorney for the defense in a *criminal action* has the right and the duty to render effective legal assistance to the accused, irrespective of his personal opinion as to the guilt of his client.

Rule 19.01. **A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.**

Rule 138, s.20 (d):

xxx to employ, for the purposes of maintaining the causes confided to him, such means only as are consistent with truth or honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.

Surigao Mineral Resevation Board vs. Cloribel, 31 SCRA 1 (1970)

A lawyer should use his best efforts to restrain and to prevent his client from those things which he himself ought not to do, particularly with reference to the conduct toward the court, judicial officer, witness and suitor; and IF the client persists in such wrongdoing, the lawyer should terminate their relation.

Lacsamana vs. dela Peña, 58 SCRA 22

A lawyer shall employ such means only as are consistent with truth and honor. Thus, he should not offer evidence any document which he knows is false nor present any witness whom he knows will perjure. He should make such defense only as he believes to be honestly debatable under the law.

Rule 19.02. **A lawyer who has received information that his client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon the client to rectify the same, and failing which he shall terminate the relationship with such client in accordance with the Rules of Court.**

Canon 21, CPR

A lawyer should not allow his client to perpetuate fraud. *However*, the lawyer shall not volunteer the information about the client's commission of the fraud to anyone for that will run counter to his duty to maintain at all times the client's confidences and secrets.

Rule 19.03. **A lawyer shall not allow his client to dictate the procedure in handling the case.**

The professional employment of an attorney merely confers upon him the general authority to do on behalf of his client such acts as are necessary or incidental to the prosecution or management of the suit entrusted to him OR the accomplishment of its purpose for which he was retained.

The employment itself confers upon the attorney no implied or apparent authority to bind the client on substantial matters:

1. the cause of action,
2. the claim or demand sued upon, and
3. the subject matter of the litigation

are substantial matters which the attorney may not impair, novate, compromise, settle, surrender or destroy without the client's consent or authority.

Control of Proceedings

In the *matters of law*, it is the client who yields to the lawyer and not the lawyer yielding to the client. The basis of this rule is that the lawyer is better trained and skilled in law. *Cause of action, claim or demand, and subject of litigation are within client's control*. Hence, the attorney may not impair, settle or compromise without client's knowledge and consent. However, proceedings to enforce the remedy are within the exclusive control of the attorney. In fine, in the *matters of procedure*, lawyer in control, and as to the subject matter, the client is in control.

Caballero vs. Deiparine, 60 SCRA 136 (1974)

A lawyer should endeavor to seek instruction from his client on any substantial matter concerning the litigation, which may require decision on the part of the client, such as whether to compromise the case or to appeal an unfavorable judgment. He should, moreover, give his client the benefit of sound advice on any such similar matters and comply with the client's lawful instructions relative thereto.

Canon 8, CPE

While it is a lawyer's duty to comply with the client's lawful request, he should resist and should never follow any unlawful instruction of his client. In the matters of law, it is the client who should yield the lawyer and not the other way around.

Cosmos Foundry Shop Worker's Union v. Lo Bu, 63 SCRA 313 (1975)

xxx xxx Atty. Bustamante was expected to defend his client's cause with zeal, but not at the disregard of the truth and in defiance of the clear purpose of the labor statutes. He ought to remember that his obligation as an officer of the court, no less than the dignity of the profession, requires that he should not act like an errand-boy at the beck and call of his client, ready and eager to do his bidding. If he fails to keep the admonition in mind, he puts into serious question his good standing in the bar.

Dick vs. U.S., 70 ALR 90

The rule speaks of procedure only. The lawyer can for instance

1. choose the proceedings he will institute in the pursuit of his client's case;
2. he will determine the witnesses to be presented in court
3. he can enter into stipulations of fact, though not of law
4. he can agree to advance the date of hearing or to continue the case
5. he can waive objections to evidence as he may deem fit.

In brief, in matters of procedure, where he is skilled, he is in control but not as to the subject matter of the case.

Bagsa vs. Nagramada, 11 Phil. 174 (1908)

Generally, the authority of an attorney to make admissions is limited to the action in which he is retained; *consequently*, admissions made by him on behalf of a client in one case are not binding upon the same client in another suit, *except* when the attorney has been expressly authorized to make the admission or the subsequent litigation is related to the previous controversy.

*** A lawyer cannot, without special authority, compromise his client's litigation or receive anything in discharge of the client's claim but the full amount thereof in cash ***(Melendrez vs. Decena, 176 SCRA 662)***. A compromise entered into without authority is merely unenforceable. It can be ratified by the client, if he so desires. However, a lawyer has the exclusive management of the procedural aspect of the litigation including the enforcement of rights and remedies of the client. Thus, when a case is submitted for decision on the evidence so far presented, the counsel for private respondents acted within the scope of his authority as agent and lawyer in negotiating for favorable terms for his client. ***(Mobil Oil Philippines vs. Yabut, 208 SCRA 523)***

CANON 20
A lawyer shall charge only fair and reasonable fees.

Rule 138 s.24: An attorney shall be entitled to have and recover from his clients no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney.

1. ***Right to compensation*** – In the absence of an express contract [for attorney's fee], payment of attorney's fees may be justified by virtue of the innominate contract of *facio ut des* (I do and you give) which is based on the principle that "no one shall enrich himself at the expense of another" ***[Corpuz v. CA, G.R. No. L-40424, June 30, 1980]***

2. ***Attorney's fees as contract and as items of damages*** - These are two commonly accepted concepts of attorney's fees, the so-called ordinary and extraordinary. In its *ordinary concept*, an attorney's fee is the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis of the compensation is the fact of his employment by and his agreement with the client. In its *extraordinary concept,* an attorney's fee is an indemnity for damages ordered by the court to be paid by the losing party in a litigation. The basis of this is any of the cases provided by law xxx xxx [Art. 2208, Civil Code], and is payable not to the lawyer as additional compensation or as part thereof [***Traders Royal Bank Employees Union-Independent v.NLRC, G.R. No. 120592, March 14, 1997].***

3. ***Charging Lien*** – the right which the attorney has upon all judgments for the payment of money, and execution in pursuance of such judgments, obtained in favor of the client, to secure reimbursement for advances made and payment of attorney's fees.

4. ***Retaining Fees –*** a preliminary fee paid to ensure and secure a lawyer's future services, to remunerate him for being deprived, by being retained by one party, of the opportunity of rendering services to the other party, and of receiving pay from him.

Jesalva vs. Bautista, 105 SCRA Phil. 348 (1959)

The right of a lawyer to be paid a reasonable compensation for his services does not give him such a superior interest in the action as to preclude the client from settling his case.

Gorospe vs. Gochangco, 106 Phil. 425 (1974)

Being primarily an officer of the court charged of the duty of assisting the court to render impartial justice what a lawyer may collect as his fees is always subject to judicial control.

Albano v. Coloma, 21 SCRA 411 (1967)

xxx xxx Counsel who is worthy of his hire is entitled to be fully compensated for his services. With his capital consisting solely of his brains and with his skill, acquired at tremendous cost not only in money but in the expenditure of time and energy, he is entitled to the protection of any judicial tribunal against any attempt on the part of a client to escape payment of fees.

Quirante v. IAC, SCRA 769 (1989)

xxx xxx The counsel's claim for attorney's fees may be asserted either in the very action in which the services in question have been rendered, or in a separate action. If the *first alternative* is chosen, the court may pass upon said claim, even if its amount were less than the minimum prescribed by law for the jurisdiction of said court, upon the theory that the right to recover atty.'s fees is but an incident of the case in which the services of counsel have been rendered. It also rests on the assumption that the court trying the case is to a certain degree already familiar with the nature and extent of the lawyer's services. The rule against multiplicity of suits will in effect be subserved. What is being claimed here as attorney's fees by petitioner however different form atty.'s fees as an item of damages provided for under Art. 2208 of the CC, wherein the award is made in favor of the litigant, not of his counsel, and the litigants, not his counsel is the judgment creditor who may enforce the judgment for atty.'s fees by execution. Here the petitioner's claims are based on alleged contract for professional services, with them as the creditors and the private respondents as the debtors. In filing motion for confirmation of atty.'s fees, petitioners chose to assert their claims in the same action. This is also a proper remedy under our jurisprudence.

Tanhueco v. De Dumo, 172 SCRA 774 (1989)

xxx xxx Money is collected by an attorney for his client constitute trust funds and must be immediately paid over to the client. The fact that lawyer has a lien fees on money in his hand collected for his client does not relieve him from his duty promptly to account for the money's received: his failure to do so constitutes professional misconduct. The attorney-client relationship has always been regarded as of special trust and confidence. An attorney must exercise utmost food faith and fairness in all his relationships vis-à-vis client. Respondent fell short of this standard when he failed to render an accounting for the amount actually received by him and when he refused to turn over any portion of such amount received by him on behalf of his client upon the pretext that his attorney upon his client, the court must and will protect the aggrieved party.

Mendoza-Parker v. CA, 231 SCRA 250 (1994)

xxx xxx The CA, in the exercise of its jurisdiction to review the decisions of lower courts fixing the attorney's fees, can and did determine whether the attorney's fees fixed by said courts are reasonable under the circumstances. After taking into consideration the various factors to guide the courts in the fixing of such fees, an appellate court can reduce the attorney's fees stipulated by the parties in a contract for professional services or awarded by the lower court to levels which it deems reasonable. In the absence of any agreement as to the amount of attorney's fees, the courts are authorized to determine such amount to be paid to the attorney as a reasonable compensation for his professional services. A lawyer, being an officer of the court, is placed under judicial control with regard to the reasonableness of the amount of the attorney's fees demanded by him from his client.

Corpuz v. CA, 98 SCRA 424 (1980)

xxx xxx The absence of an express contract for attorney's fees is no argument against the payment of such fee considering their close relation which signifies mutual trust and confidence between them. Moreover, the payment of attorney's fees to David may also be justified by vitrtue of the innominate contract of "*facio ut des*" (I do you give) which is based on the principle that "no one shall unjustly enrich himself at the expense of another."

Metropolitan Bank and Trust Company v. CA, 181 SCRA 367 (1990)

1. A *charging lien,* to be enforceable as security for the payment of attorney's fees, requires as a condition sine qua non a judgment for money and execution in pursuance of such judgment secured in the main action of the attorney in favor of his client. A lawyer may enforce his right to fees by filing the necessary petition as an incident in the main action in which his services were rendered when something dismissed upon the initiative of the plaintiff. The dismissal order neither provided for any money judgment nor made any monetary award to any litigant, much less in favor of petitioner who was a defendant therein. This being so, private respondent's supposed charging lien is without any legal basis.

2. A petition for recovery of attorney's fees, either as a separate civil suit or as an incident in the main action, has to be prosecuted and the allegations established as any other money claim. Hence, the obvious necessity of a hearing is beyond cavil. But, as in the exercise of any other right conferred by law, the proper legal remedy should be availed of and the procedural rules duly observed to forestall the possibility of abuse or prejudice.

Cadalin v. POEA, 238 SCRA 721 (1994)

xxx xxx A statement of claim for a charging lien shall be filed with the court or administrative agency which renders and executes the money judgment secured by the lawyer for his clients. The lawyer shall cause written notice to be delivered to his clients and to the adverse parties.

Rule 20.01. A lawyer shall be guided by the following factors in determining his fees:

- **a. The time spent and the extent of the services rendered or required;**
- **b. The novelty and difficulty of the questions involved;**
- **c. The importance of the subject matter;**
- **d. The skill demanded;**
- **e. The probability of losing other employment as a result of acceptance of the proffered case;**
- **f. The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;**
- **g. The amount involved in the controversy and the benefits resulting to the client from the services;**
- **h. The contingency of certainty of compensation;**
- **i. The character of the employment, whether occasional or established; and**
- **j. The professional standing of the lawyer.**

Two Concepts of Attorney's Fees

In its **ordinary concept**, an attorney's fee is the reasonable compensation paid to a lawyer for the legal services he has rendered to a client. The basis of this compensation is the fact of employment by the client.

In its **extraordinary concept**, an attorney's fee is an indemnity for damages ordered by the court to be paid by the losing party to the prevailing party in a litigation. The basis of this is any of the cases authorized by law and is payable not to the lawyer but to the client – unless they have agreed that the award shall pertain to the lawyer as additional compensation or as part thereof.

The Rules of Court provides under Rule 138, s.24 only three factors:

a. the importance of the subject matter of controversy;
b. the extent of the services rendered; and
c. the professional standing of the attorney.

Under Rule 138, s.24 it is also provided that the court is not bound by the opinion of attorney's as expert witness as to proper compensation and that written contract shall control the amount paid unless found by the court to be unconscionable or reasonable.

According to jurisprudence, the court may also take into consideration the client's capacity to pay.

Kinds of Payment which may be stipulated upon:

a. A fixed or absolute fee which is payable regardless of the result of the case;
b. A contingent fee that is conditioned to the securing of a favorable judgment and recovery of money or property and the amount of which may be on a percentage basis;
c. A fixed fee payable per appearance;
d. A fixed fee computed by the number of hours spent;
e. A fixed fee based on a piece of work;
f. A combination of any of the above stipulated fees.

Kinds of Retainer Agreement on Attorney's fees:

1. *General Retainer or Retaining Fee* – It is paid to a lawyer to secure his future services as general counsel for any ordinary legal problem that may arise in the ordinary business of the client and referred to him for legal action

2. *Special Retainer* – That is a fee for a specific case or service rendered by the lawyer for a client

Compensation to which Lawyer is Entitled Depending on His Capacity

1. *Counsel de Parte* – He is entitled to a reasonable attorney's fees agreed upon or in the absence thereof, on quantum meruit basis.

2. *Counsel de Oficio* – The counsel may not demand from the accused attorney's fees even if he wins the case. He may however collect from the government funds if available based on the amount fixed by the court.

3. *Amicus Curiae* – He is not entitled to attorney's fees.

QUANTUM MERUIT *(AS MUCH AS HE DESERVES)*

► The basis of determining the lawyer's professional fees in the absence of a contract, but recoverable by him from the client

► *He shall be entitled to receive what he merits for his services*

***QUANTUM MERUIT* IS AUTHORIZED WHERE:**

a. there is no express contract for attorney's fees agreed upon between the lawyer and the client;
b. when although there is a formal contract of attorney's fees, the stipulated fees are found unconscionable or unreasonable by the court;
c. when the contract for attorney's fees is void due to purely formal matters or defects of execution;
d. when the counsel, for justifiable cause, was not able to finish the case to its conclusion;
e. when lawyer and client disregard the contract of attorney's fees
f. when there is a contract but no stipulation as to attorney's fees

Guides in Determining Attorney's Fees in Quantum Meruit Basis

a. *Time spent and Extent of the Services Rendered* – A lawyer is justified in fixing higher fees when the case is so complicated and requires more time and efforts to finish it.

b. *Novelty and Difficulty of Questions Involved* – When the questions in a case are novel and difficult, greater efforts, deeper study and research, are bound to burn the lawyer's time and stamina considering that there are no local precedents to rely upon.

c. *Importance of Subject Matter* – The more important the subject matter or the bigger value of the interest or property in litigation, the higher is the attorney's fee.

d. *Skill demanded of the Lawyer* – The totality of the lawyer's experience provides him the skill and competence admired in lawyers.

Bermejo vs. Sia, 59940-CV, September 30, 1983, IAC

If the client prevents the successful prosecution or defense of the action, the lawyer will be entitled to recover on a quantum meruit basis or to the full amount as fixed in a valid written agreement if the client acted in bad faith.

Champertous Contracts ***(void***) – Lawyer stipulates with his client that in the prosecution of the case, he will bear all the expenses for the recovery of things or property being claimed by the client and the latter agrees to pay the former a portion of the thing/property recovered as compensation.

	CONTINGENT CONTRACT		***CHAMPERTOUS CONTRACT***
1.	Contingent fee is payable in cash.	1.	Payable in kind only
2.	Lawyers do not undertake to pay all expenses of litigation	2.	Lawyers undertake to pay all expenses of litigation
3.	Not prohibited	3.	Void

Advantages of a Written Contract

1. It is conclusive as to the amount of compensation.
2. In case of unjustified dismissal of an attorney, he shall be entitled to recover from the client full compensation stipulated in the contract *(RA 636).*

Situations when Counsel cannot Recover the Full Amount despite Written Contract for Attorney's Fees

1. When the services called for were not performed as when the lawyer withdrew before the case was finished. He will be allowed only by reasonable fees.

2. When there is a justified dismissal of the attorney, the contract will be nullified and payment will be on the basis of quantum meruit only. A contrary stipulation will be invalid.

3. When the stipulated attorney's fees are unconscionable i.e. when it is disproportionate compared to the value of services rendered and is revolting to human conscience.

4. When the stipulated attorney's fees are in excess of what is expressly provided by law.

5. When the lawyer is guilty of fraud or bad faith toward his client in the matter of his employment.

6. When the counsel's services are worthless because of his negligence.

7. When contract is illegal, against morals or public policy.

8. Serving adverse interest unless lawyer proves that it was with the consent of both parties.

ATTORNEYS FEES AS DAMAGES

General Rule:

Attorney's fees as damages are not recoverable. An adverse decision does not *ipso facto* justify their award in favor of the winning party.

Exceptions:

Attorney's fees in the concept of damages may be awarded in any of the following circumstances:

1. when there is no agreement;
2. when exemplary damages are awarded;
3. when defendant's action or omission compelled plaintiff to litigate;
4. in criminal cases of malicious prosecution;
5. when the action is clearly unfounded;
6. when defendant acted in gross and evident bad faith;
7. in actions for support;
8. in cases of recovery of wages;
9. in actions for indemnity under workmen's compensation and employee's liability laws;
10. in a separate civil action arising from a crime;
11. when at least double costs are awarded (*costs of suit does not include attorney's fees*);
12. when the court deems it just and equitable; and
13. when a special law so authorizes.

Jones vs. Hortiguela, 64 Phil. 179 (1937)

As a general rule, the person who had no knowledge of, or objected to, the lawyer's representation may not be held liable for attorneys fees even though such representation redounded to his benefit. The objection to the lawyer's appearance should, however, be raised before and not after beneficial services shall have been rendered by the lawyer, otherwise the party who benefited from the lawyer's representation may be required to pay counsel fees.

Oroso vs. Hernaez, 1 Phil. 77

A lawyer who rendered services to a party who did not employ him nor authorize his employment, cannot recover compensation even if his services redounded to the benefit of such party.

Fernandez vs. Bello, 107 SCRA 1140

The duty of courts is not alone to see that lawyers act in a proper and lawful manner; it is also their duty to see that lawyers are paid their just and lawful fees.

There should be a professional contract, express or implied, between a lawyer and his client and the lawyer should have rendered services pursuant thereto before he may be entitled to counsel fees.

Perez vs. Scottish Union Nat. Ins. Co.. 76 Phil. 320

The income of the lawyer is not a safe criterion of his professional ability. Many very good lawyers earn but small incomes while lawyers of inferior ability may prosper financially. Neither is the length of time a lawyer has practiced a reliable measure of his ability; his competency must be judged by the character of his work.

Baca vs. Padilla, 190 P. 730, 11 ALR 1188 (1920)

The nullity of a professional contract which results from the illegality of the object sought to be achieved by the performance of the professional services precludes a lawyer from recovering his fees for such services.

Gorospe vs. Gochangco, 106 Phil. 425 (1959)

The unconscionability of the amount of fees stipulated in a professional contract renders the contract invalid. The circumstance that the client knowingly entered into such contract does not estop him from questioning its validity, for estoppel does not validate a contract that is prohibited by law or is against public policy.

Medina vs. Bautista, 12 SCRA 1 (1964)

The simultaneous representation by a lawyer of opposing parties to a controversy, in the absence of a client's consent to the dual representation made after full disclosure of the facts, negates the lawyer's right to receive compensation from both of them. If the dual representation is improper, then the claim for attorney's fees for services rendered by the lawyer in that dual capacity is also improper.

CONTINGENT FEE

Felicer vs. Madrilejos, 51 Phil. 24

A ***contingent fee contract*** is one which stipulates that the lawyer will be paid for his legal services only if the suit or litigation ends favorably to the client.

Miles vs. Cheyanne Country , 96 Neb 703

A contract for a contingent fee is an agreement in writing in which the fee, usually a fixed percentage of what may be recovered in the action, and is made to depend upon the success in the effort to enforce or defend a supposed right.

Ulanday vs. Manila Railroad Co., 45 Phil. 540 (1923)

A contingent fee contract is generally valid and binding, unless it is obtained by fraud, imposition or suppression of facts, or the fee is so clearly excessive as to amount to an extortion.

Licudan vs. Court of Appeals, 193 SCRA 293

"xxx When it is shown that a contract for a contingent fee was obtained by undue influence exercised by the attorney upon his client or by any fraud or imposition, or that the compensation is clearly excessive, the Court must and will protect the aggrieved party

Francisco vs. Matias, 10 SCRA 89

Acceptance of an initial fee before or during the progress of the litigation does not detract from the contingent nature of the fees, as long as the bulk thereof is made dependent upon the successful outcome of the action.

Director of Lands vs. Ababa, 88 SCRA 513

Art. 1491 prohibits only the sale or assignment between the lawyer and his client, of property which is the subject of litigation.

"A contract for a contingent fee is not covered by Art. 1491 because the transfer or assignment of the property must take place during the pendency of the litigation takes effect only after the finality of a favorable judgment.

Counsels not entitled to fees*:*

a. counsel de officio unless court orders compensation (rule 138, s.32);
b. PAO lawyers – cannot collect from litigants;
c. Local elective officials appearing in a provincial/city/municipal tribunals or administrative agencies of province/city/municipality of which he is an elective official (RA 5185, s.6)

Ledesma vs. Climaco, 57 SCRA 473 (1974)

In the absence of law allowing compensation, the lawyer designated as counsel *de oficio* neither violates the constitutional restriction against the taking of property without remuneration or the due process of law nor imposes upon the government the obligation to pay him his fees.

Rule 138, Section 32, Rules of Court

The Rules of Court provides a token compensation for attorney *de oficio*. Subject to the availability of funds as may be provided by law, the court may, in its discretion, order an attorney employed as counsel *de oficio* to be compensated in such sum as the court may reasonably fix, which shall not be less than thirty pesos in any case nor more than fifty pesos in light felonies; one hundred pesos in less grave felonies; two hundred pesos in grave felonies other than capital offenses; and five hundred pesos in capital offenses

Rule 20.02. A lawyer shall, in cases of referral, with the consent of the client, be entitled to a division of fees in proportion to the work performed and responsibility assumed.

Note: This is not in the nature of a broker's commission.

Amalgamated Laborer's Assn. Vs. CIR, 22 SCRA 1226

When two or more lawyers representing common clients have a professional break-up during the pendency of the case, their attorney's fees shall be shared in amounts to be determined by the court.

Rule 20.03. A lawyer shall not, with the full knowledge and consent of the client, accept any fee, reward, costs, commission, interest, rebate or forwarding allowance or other compensation whatsoever related to his professional employment from anyone other than the client.

.***Report of IBP Committee, p. 112***

"(T)here should be no room for suspicion on the part of the client that his lawyer is receiving compensation in connection with the case from third persons with hostile interests."

Rule 138, Sec. 20 (e), ROC

The only exception whereby a lawyer may receive relative compensation from a person other than his client is when the latter has full knowledge and approval thereof.

Diaz vs. Kapunan, 45 Phil. 848 (1932)

Whatever a lawyer receives from the opposite party in the service of his client belongs to the client, in the absence of his client's consent made after full disclosure of the facts.

Recto vs. Harden, 100 Phil. 427 (1956)

A lawyer may not claim the attorney's fees in the concept of damages awarded by the court in favor of his client, *except* when he and his client have agreed that whatever amount the court may award as attorney's fees would form part of his compensation.

Rule 20.04. A lawyer should avoid the filing of any case against clients for the enforcement of his attorney's fees <u>except to prevent</u>

a. imposition
b. injunction
c. fraud

Judicial actions to recover attorney's fees:

a. file an appropriate motion or petition as an incident in the main action where he rendered legal services;
b. file a separate civil action for collection of attorney's fees.

Otto vs. Gmur, Inc., 55 Phil. 627 (1931)

A lawyer may enforce his right to fees by filing the necessary petition as an incident of the main action in which his services were rendered only:

1. when something is due the client in the action from which the fee is to be paid; or
2. when the client settles or waives his cause in favor of the adverse party in fraud of the lawyer's claim for compensation.

Lacson vs. Reyes, 182 SCRA 729 (1990)

Since the petition is in the nature of an action by counsel against his client for attorney's fees, he should pay the docket or filing fees therefor to enable the court to acquire jurisdiction over the claim.

Retuya vs. Gorduiz, 96 SCRA 529

"Controversies with clients concerning compensation are to be avoided by the lawyer so far as shall be compatible with his self-respect and with his right to receive reasonable recompense for his services; and lawsuits with clients should be resorted to only to prevent injustice, imposition or fraud."

When proper, the lawyer can pursue judicial actions to protect or collect attorney's fees due to him. *He has two options*:

e. *In the <u>same case</u>*. He may enforce his attorney's fees by filing an appropriate motion or petition as an incident in the main action where he rendered legal services. This is also to avoid multiplicity of suits. Further, the court trying the main case is the best position to determine the nature and extent of the lawyer's services. Such action however is not proper if the client recovered nothing in the main case. The motion or the petition must be filed with the court *before* the judgment had been satisfied or before the proceeds were delivered to the client.

f. *In a <u>separate civil action</u>*: The lawyer may also enforce his attorney's fees by filing an independent separate action for collection of attorney's fees.

Caballero vs. Deiparine, 60 SCRA 136 (1974)

The right of a lawyer to recover from his client a reasonable compensation for services already performed may be affected or negated by misconduct on his part, such as carelessness or negligence in the discharge of his duties, misrepresentation or abuse of the client's confidence or unfaithfulness in representing his client's cause.

An independent civil action to recover attorney's fees is necessary where:

1. The main action is dismissed or nothing is awarded

2. The court has decided that it has no jurisdiction over the action or has already lost it

3. The person liable for attorney's fees is not a party to the main action

4. The court reserved to the lawyer the right to file a separate civil suit for recovery of attorney's fees

5. The subject services are not connected with the subject litigation

6. The judgment debtor has fully paid the judgment creditor and the lawyer has not taken any legal step to have his fees paid directly to him from the judgment proceeds.

The law prohibits the charging of attorney's fees in the following circumstances:

(a) "When the executor or administrator is an attorney, he shall not charge against the estate any professional fees for legal services rendered by him." *(Sec. 7, Rule 85, Rules of Court)*

(b) "No attorney's fees, negotiation fees or similar charges of any kind arising from any collective bargaining negotiations or conclusions of a collective agreement shall be imposed on any member of the contracting union. Any contract, agreement or arrangements of any sort to the contrary shall be null and void." *(par. B, Art. 222; Labor Code, as amended)*

(c) No attorney pursuing or in charge of the preparation of filing of any claim for benefit under the provisions of the Labor Code of the Philippines relative to Employees' Compensation shall demand or charge for his service any fee, and any stipulation to the contrary shall be null and void. *(Art. 203, Labor Code, as amended)*

CANON 21

A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relation is terminated.

Confidence – refers to information by the attorney-client privilege .

Secret – refers to the other information gained in the professional relationship that the client has regulated to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client.

Rule 130, Sec. 21 (b), RRC

"An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advise given thereon in the course of professional employment, nor can an attorney's secretary, stenographer, or clerk he examined, without the consent of the client and his employees, concerning any fact the knowledge of which he has been acquired in such capacity."

Disclosure of client's identity, when covered by the privilege

As a matter of public policy, a client's identity is not privileged. However, there are exemptions of the rule, such as:

3. where a strong probability exists that revealing the client's name would implicate that client in the very activity for which sought the lawyer's advice
4. where disclosure would open the client to civil liability
5. where the government's lawyers have no case against the client unless, by revealing the client's name, the said name would furnish the only link that would form the chain of testimony necessary to convict the client

The duty to preserve the client's secrets arises from the moment the attorney-client relationship is established.

A client's communication intended for a third party is not privileged.

Canon 37, CPE

It is the duty of an attorney to divulge the communication of his client as to his announced intention to commit a crime to the proper authorities to prevent the act or to protect the person against whom it is threatened.

Clark vs. United States, 28 9 U.S. 1, 77 L ed 993 (1933)

While a communication relating to a fraud already committed is privileged, a communication seeking advice as to the commission of a fraud or the establishment of a false claim is an exception to the privilege.

Hilado v. David, 84 Phil.569 (1949)

xxx xxx There is already an attorney-client relationship between Mrs. Hilado and Atty. Francisco when Mrs. Hilado submitted her documents and asked for advise and when Atty. Francisco gave her such advise. Mere relation of attorney and client ought to preclude the attorney from accepting the opposite party's retainer in the same litigation regardless of what information was received by him from his first client.

Uy Chico v. Union Life, 29 Phil.163 (1915)

xxx xxx The testimony of plaintiff's counsel is not privileged. It in fact concerns the dealings of the plaintiff's attorney with a third person. The very essence of the veil of secrecy is that such communications are not intended for the information of third persons or to be acted upon by them, but for the purpose of advising the client as to his rights. Thus, communication made by a client to his attorney for the purpose of its being communicated to a third person is essentially inconsistent with the confidential relation.

In re: Hamilton, 24 Phil. 100 (1913)

A letter sent by lawyer to a person soliciting professional employment from him and volunteering information is not a confidential communication within the meaning of the privilege.

Barton vs. Leyte Asphalt Mineral Oil CO., 64 Phil. 938 (1924)

Attorney-client privilege is not destroyed by the fact that a third person may have overheard a communication intended to be confidential nor by the circumstance that other attorneys represented the client. *But* as to a third person who may have overheard a confidential communication, the privilege does not as a rule apply.

United States vs. Kovel, 296 F2d 918, ALR 2d 116 (1961)

An expert such as an accountant, a scientist, an engineer or a physician, who has been hired either by a client or an attorney for an effective consultation or communication between attorney and client, is covered by the privilege and is precluded from testifying as to even any information acquired in the course of his employment.

Brown vs. Saint Paul City R. Co., 62 NW2d 688 (1963)

The attorney-client privilege is intended primarily for the protection of the client and incidentally in consideration for the oath and honor of the attorney. Hence, the client is entitled primarily to assert the privilege, and any other person to whom the privilege extends cannot be compelled to disclose any confidential communication without consent.

Alexander vs. United States, 138 C.S. 353, 34 L ed 954 (1891)

A distinction should be drawn between a crime or fraud already committed by a client on the one hand and a crime or fraud being committed or is about to be committed on the other hand. Any communication by a client to his counsel in his professional capacity with respect to former comes within the privilege but not with reference to the latter.

Radiant Burners vs. American Gas Ass'n., supra.

The communication must have been transmitted by a client to an attorney for the purpose of seeking legal advice. *Consequently*, papers and documents handed to an attorney for custodial purposes only or for some business or personal services and assistance do not require the character of a privileged communication, and neither the client nor the attorney can invoke the privilege to prevent their disclosure.

Natam vs. Capule, 91 Phil. 644, (1952)

The lawyer's duty to maintain inviolate his client's confidence is perpetual. It outlasts his professional employment and continues even after the client's death for professional confidence once reposed cannot be divested by the expiration of the professional relationship or by the death of the client.

An attorney is forbidden after the severance of the relation to do either of two things he may not do anything which will injuriously affect his former client nor may he at any time disclose or use against him any knowledge or information acquired by virtue of the professional relationship.

Rule 21.01. A lawyer shall not reveal the confidence or secrets of his clients <u>except:</u>

- **a. when authorized by the client after acquainting him of the consequences of the disclosure;**
- **b. when required by law;**

c. **when necessary to collect his fees as to defend himself, his employees or associates or by judicial action**

Art. 209. Betrayal of Trust by an attorney or solicitor. Revelation of secrets.

In addition to the proper administrative action, the penalty of *prision correccional* in its minimum period, of a fine ranging from P200 to P1000, or both, shall be imposed upon an attorney at law or solicitor who, by any malicious break of professional duty as an inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the alter learned by him in his professional capacity.

The same penalty shall be imposed upon an attorney at law or solicitor who, having undertaken the defense of a client, or having received confidential information from said client in a case, shall undertake the defense of the opposing party in the same case, without the consent of the first client *(Art. 209, RPC).*

A.B.A. Op. 202 May 25, 1940

A lawyer who acquired confidential communication from a corporate client concerning past wrongful acts of its corporate officers may disclose them to its directors but not to others except to prevent the commission of fraud to defend himself against unjust charges. Since a corporate client acts through its board of directors, disclosure of the latter would be to the client itself and not to a third party.

Hamil & Co. vs. England, 50 Mo. App. 338

The client cannot also invoke the privilege, if the communication relayed to the lawyer involves the commission of *future* fraud or crime.

Canon 37, CPE

Unless the revelation by a lawyer of his client's confidence falls under any of the exceptions, the disclosure by a lawyer of his client's confidence or its use to his advantage or to the disadvantage of the client without the latter's consent constitutes breach of trust sufficient to warrant imposition of disciplinary sanction against him.

A.B.A. Ops. 19 (Jan. 23, 1930) and 250 (June 26, 1943)

An attorney suing a client for attorney's fees may also disclose or use the confidential communication of his client, if such disclosure or use is necessary to enable him to secure his rights. The client may not be permitted to take advantage of the attorney-client privilege to defeat the just claim of his lawyer growing out of the attorney-client relationship. The attorney should, however, avoid any disclosure which is not necessary to protect his rights.

Rule 21.02. A lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, *unless* the client with full knowledge of the circumstances consents thereto.

Orient Ins. Co. vs. Revilla, 54 Phil. 919 (1930)

A client may waive the protection of the privilege either personally or through his attorney. His attorney, retained in a case, has the implied authority to waive the privilege concerning any procedural matter involved in the case, as by calling his client to testify on a privileged communication or by introducing in evidence part of a privileged document.

Natan vs. Capule, 91 Phil. 640

If the lawyer makes the prohibited disclosure – that is, the revelation does not fall under any of the exceptions – he will be subjected to disciplinary action for breach of trust.

Canon 37, CPE

If an attorney is accused by his client of misconduct in the discharge of his duty, he may disclose the truth in respect to the accusation, including the client's instructions or the nature of the duty which his client expected him to perform. *Similarly*, if an attorney is charged by a third person in connection with the performance of his duty to his client, he may also disclose his client's confidence relative thereto.

Rule 21.03. A lawyer shall not, without the written consent of his client, give information from the files to an outside agency seeking such information for auditing statistical, bookkeeping, accounting, data processing, or any other similar purpose.

Note: The client's consent must be in writing.

People vs. SyJuco, 64 Phil. 667

Since it has been proven that the cabinet belongs to a lawyer and that he keeps the records of his client therein, the lower court cannot order the opening of said cabinet. To do so is in violation of his rights as an attorney. It would be tantamount to compelling him to disclose his client's secrets.

Rule 21.04. A lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client.

Note:

Disclosure to firm partners or associates generally allowed because professional employment of a law firm is equivalent to retainer of members thereof.

In a law firm, partners or associates usually consult one another involving their cases and some work as a team. Consequently, it cannot be avoided that some information about the case received from the client may be disclosed to the partners or associates.

Rule 21.05. A lawyer shall adopt such measures as may be required to prevent those whose services are utilized by him, from disclosing or using confidences or secrets of the client.

The prohibition against a lawyer from divulging the confidences and secrets of his clients will become a futile exercise, if his secretary or staff are given the liberty to do what is prohibited of the lawyer.

Report of IBP Committee, p. 119

The lawyer is obliged to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved.

Rule 21.06. A lawyer shall avoid indiscreet conversation about a client's affairs even with members of his family.

Not every member of the lawyer's family has the proper orientation and training for keeping client's confidences and secrets. Hence, it is the better practice for lawyers to be always careful and reserved about the secrets of their clients which they must keep inviolate.

Rule 21.07. A lawyer shall not reveal what he has been consulted about in a particular case *except* to avoid possible conflict of interest.

If a lawyer was consulted about a particular case, and irrespective of whether or not he was thereafter hired as counsel, should not reveal to others the matter subject of consultation.

Rule 15.03, CPR

The exception is when the lawyer will be placed in a situation of representing conflicting interests if he does not disclose consultation. Otherwise, if he remains silent, he may be violating the rule against representing conflicting interests.

CANON 22

A lawyer shall withdraw his services only for good cause and upon notice appropriate in the circumstances.

WITHDRAWAL BY LAWYER

GENERALLY, a lawyer lacks the unqualified right to withdraw once he has taken a case.

- BY his acceptance, he has impliedly stipulated that he will prosecute the case to conclusion.
- This is especially true when such withdrawal will work injustice to a client or frustrate the ends of justice.

An EXCEPTION, however, is his right to retire from the case before its final adjudication, which arises only from:

1. The client's written consent or
2. For a good cause

Written Consent of the Client

The withdrawal in writing of a lawyer as counsel for a party, with the client's written conformity, *does not* require the approval of the court to be effective, *especially* if the withdrawal is accompanied by a formal appearance of a new counsel.

WITHDRAWAL BY CLIENT

A client has the right to discharge his attorney at any time with or without a cause or even against his consent. The existence or non-existence of a just cause is important only in determining the right of an attorney to compensation for services rendered.

Some Limitations on Client's Right to Withdraw:

1. When made with justifiable cause , it shall negate the attorney's right to full payment of compensation
2. The attorney may, in the discretion of the court, intervene in the case to protect his right to fees
3. A client may not be permitted to abuse his right to discharge his counsel as an excuse to secure repeated extensions of time to file a pleading or to indefinitely avoid a trial

Cabildo vs. Navarro, 54 SCRA 26 (1973)

The discharge of an attorney or his substitution by another without justifiable cause shall not negate the attorney's right to full payment of compensation as agreed in writing OR, in the absence of a written retainer, to a reasonable amount based on *quantum merit*.

Notice of discharge:

It is not necessary between client and attorney. But insofar as the court and the adverse party is concerned, the severance of the relation of attorney and client is not effective until:

- a notice of discharge by the client or a manifestation clearly indicating that purpose is filed with the court and
- a copy thereof served upon the adverse party.

If the client has not filed a notice of discharge, the duty of the attorney, upon being informed by his client that his services have been dispensed with, is to file:

- a notice of withdrawal with the client's conformity or
- an application to retire from the case he being released from professional responsibility only after his dismissal or withdrawal is made of record.

Palanca vs. Pecson, 94 Phil. 419 (1954)

The discharge of a lawyer by his client without a valid cause before the conclusion of the litigation does not negate the lawyer's right to recover payment for his services. However, the discharge may or may not affect the amount of compensation depending upon the existence or absence of a valid written contract for professional services up to the date of his dismissal.

Ro vs. Nañawa, 27 SCRA 1090 (1969)

A client may dismiss his action even without or against the consent of his counsel. But he may not, by taking such step, deprive his counsel of what is due him as attorney's fees for services rendered in the absence of waiver on the part of his lawyer. If the dismissal of the action is in good faith and is based on an honest belief that the client has no void cause, the lawyer may recover only the reasonable worth of his services, except when the fee is contingent in which case there will be no recovery.

If on the other hand the dismissal of the action by the client is in bad faith and is intended to defraud the lawyer of his compensation, the lawyer will be entitled to full amount stipulated in a valid written contract or, in the absence of such contract, a reasonable value of his services based on *quantum meruit*. The lawyer's consent to the dismissal of the action does not necessarily negate his right to compensation unless such consent, in the circumstances of the case, amounts to waiver of his right thereto.

Arambulo v.CA, 228 SCRA 589 (1993)

xxx xxx Since the withdrawal was with the client's consent, no approval thereof by the trial court was required because a court approval is indispensable only if the withdrawal is without the client's consent. Under the first sentence of Rule 138, Section 26, the retirement is completed once the withdrawal is filed in court. No further action thereon by the court is needed other than the mechanical act of the clerk of court of entering the name of the new counsel in the docket and of giving notice thereof to the adverse party. The failure of the clerk of court to do either does not affect the validity of the retirement.

The appearance of the new counsel, Atty. Pineda, did not likewise require the approval of the court. An appearance may be made by simply filing a formal motion, plea or answer, or through the formal method, *viz*., by delivering to the clerk of court a written direction ordering him to enter the appearance of the counsel.

Rule 22.01. A lawyer may withdraw his services in any of the following cases:

a. when the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
b. when the client insist that the lawyer pursue conduct violative of this canons and rules;
c. when his inability to work with co-counsel will not promote the best interest of the client;
d. when the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
e. when the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
f. when the lawyer is elected or appointed to a public office;
g. other similar cases.

Withdrawal Without Client's Consent

Procedure for Withdrawal:

1. A lawyer must file a petition for withdrawal in court,
2. serve a copy of this petition upon his client and the adverse party at least 3 days before the date set for hearing

Note:

a. He should present his petition well in advance of the trial of the action to enable the client to secure the services of another lawyer.

b. If the application is filed under circumstances that do not afford a substitute counsel sufficient time to prepare for trial or that work prejudice to the client's cause, the court may deny his application and require him to conduct the trial.

A lawyer should not presume that the court will grant his petition for withdrawal. Until his withdrawal shall have been proved, the lawyer remains counsel of record who is expected by his client as will as by the court to do what the interests of his client require.

Mercado vs. Ubay, 187 SCRA 720

An attorney is presumed to be properly authorized to represent any cause in which he appears, and no written power of attorney is required to authorize him to appear in court for his client.

Rule 138, Section 26, Rules of Court

A lawyer may also retire at anytime from any action or special proceeding without the consent of his client should the court, on notice to the client and the attorney and on hearing, determine that he ought to be allowed to retire. The application for withdrawal must be based on a good cause.

Section 21, Rule 138, ROC

If counsel appears in a case without any formal notice of appearance which usually bears the written conformity of the client, he may be required on Motion of a party and on reasonable grounds to produce or prove his authority to appear for the client. It is contemptuous to appear for a party without having been employed as lawyer.

Aquino vs. Blanco, 79 Phil. 647

A lawyer who is appointed as a Judge or Justice ceases to be in practice by operation of law. The same rule applies to a lawyer who is appointed as Fiscal who upon his qualification simultaneously ceases as counsel for this client. Hence, notice to him after his qualification is not notice to client.

Dalisay vs. Goyo, CA-G.R. No.43519-R Sept. 12, 1974

It is the duty of the lawyer to inform the court, if he is appointed to a position which prohibits practice of law.

5 Am. Jur. 282

In the absence of a retainer from the personal representative of his deceased client, the attorney has, after the death of the latter, no further action on behalf of the deceased.

Section 16, Rule 3, ROC

Upon the death (incapacity or incompetency) of the client, it is the duty of the lawyer to inform the court immediately of such event, and to give the name and residence of his executor, administrator, guardian or other legal representative.(within 30 days)

Visitacion vs. Manit, 27 SCRA 523

An attorney who could not get the written consent of his client must make an application to the court, for the relation does not terminate formally until there is a withdrawal of record. Counsel has no right to presume that the court would grant his withdrawal and therefore must still appear on the date of hearing.

Riconada Telephone Company, inc. vs. Buenviaje, 184 SCRA 701

The right of a client to terminate the authority of his counsel includes the right to make a change or substitution at any stage of the proceedings. *To be valid, any such change or substitution must be made:*

a. upon written application;
b. upon written consent of the client;
c. upon written consent of the attorney to be substituted;
d. in case the consent of the attorney to be substituted cannot be obtained, there must be at least a proof of notice that the motion for substitution has been served upon him in the manner prescribed by the rules.

Cortez vs. Court of Appeals, 83 SCRA 31

The attorney-client relation does not terminate formally until there is a withdrawal made of record; at least so far as the opposite the party is concerned, the relation otherwise continues until the end of the litigation. Unless properly relieved, the counsel is responsible for the conduct of the case.

Re: Heirich, 140 NE2d 825, 67 ALR2d 827 (1957)

A contract of professional employment terminates upon the death of an attorney. For that reason, the personal representative of the deceased attorney has no right to assign pending cases to another lawyer of his choice as the matter is for the client to decide. But the death of a partner in a law firm does not severe the professional employment between the law firm and the client, and the remaining partners in the law firm continue to assume professional responsibility in the pending litigation.

Rule 22.02. A lawyer who withdraws or is discharged shall, subject to a retainer lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor for the proper handling of the matter.

5 Am. Jur. 392

A *retaining lien* is a passive lien and may not be actively enforced. It amounts to a mere right to retain the papers as against the client until the lawyer is fully paid.

Myers vs. Miller, 117 ALR 977

This is the equitable right of the attorney to have the fees due him for services in a particular suit secured by the judgment or recovery in such suit. The object of this lien is to protect the claim on the fruits of the lawyer's labor.

	RETAINING LIEN	**vs.**	**CHARGING LIEN**
1.	Nature	Passive Lien. It cannot be actively enforced. It is a general lien.	Active Lien. It can be enforced by execution. It is a special Lien
2.	Basis	Lawful possession of papers, documents, properly belonging to client.	Securing of a favorable money judgment for the client.
3.	Coverage	Covers only papers, documents and property in the lawful possession of the attorney by reason of his professional employment.	Covers all judgments for the payment of money and executions issued in pursuance of such judgments.
4.	Effectivity	As soon as the attorney gets possession of the papers documents or property	As soon as the claim for attorney's fees had been entered into the records of the case.
5.	Notice	Client need not be notified to make it	Client and adverse party must be notified to

		effective	make it effective.
6.	Applicability	May be exercised before judgment or execution or regardless thereof.	Generally, it is exercisable only when the attorney had already secured a favorable judgment for his client.

Requisites of a Retaining Lien

1. there exists a client-lawyer relationship;
2. that the claims for attorney's fees are not satisfied; and
3. that counsel is in possession of the subject papers, documents and funds. It is still required that
4. his *possession be lawful.* Otherwise, the lawyer cannot exercise his right as a retaining lien.

Requisites of a Charging Lien

1. Existence of a client-lawyer relationship;
2. Favorable judgment secured by the counsel for his client which judgment is a *money judgment*;
3. Noting into the records of the case through the filing of an appropriate motion of the statement of the lawyer's claim for attorney's fees with copies furnished to the client and the adverse party

Metropolitan Bank & Trust Company vs. Court of Appeals, 181 SCRA 367

A *charging lien*, to be enforceable as security for the payment of attorney's fees, requires as a condition *sine qua non* a judgment for money and execution in pursuance of such judgment secured in the main action by the attorney in favor of his client.

A charging lien presupposes that the attorney has secured a favorable money judgment for his client. Xxx xxx. A charging lien under Section 37, Rule 138 of the Revised Rules of Court is limited only to money judgments and not to judgments for the annulment of a contract or for delivery of real property as in the instant case.

Sarmiento vs. Montagne, 4 Phil. 1 (1959)

The retaining lien does not attach to funds, documents and papers which come into the lawyer's possession in some other capacity, such as an agent of the client's spouse or as a mortgagee or trustee.

Matute vs. Matute, 33 SCRA 35 (1970)

The attorney's retaining lien, once it was lawfully attached to funds, documents and papers of the client, is uncontestable, and the court may not compel him to surrender them without prior proof that his fees and disbursements have been duly satisfied.

Ampil vs. Agrava, 34 SCRA 370 (1970)

If however, it is indispensable that the court should gain possession of the documents that have come to the attorney and are held by him in the course of his employment as counsel, over which he has chosen to exercise his right of retention, the court may require the surrender thereof upon the client's posting of an adequate bond or security to guarantee payment of the lawyer's fees.

Jesus-Alano vs. Tan, 106 Phil. 554 (1959)

The lawyer need not file an action in court to enforce his retaining lien to recover his fees and disbursements if what he retains in the exercise of his lien refers to funds or money of the client that lawfully comes into his possession and the client does not dispute his claim for attorney's fees and the amount thereof. In such case, the lawyer may lawfully apply the client's funds in satisfaction of his claim for attorney's fees and disbursements.

Macondray & Co. vs. Jose, 66 Phil. 590 (1938)

The attorney's charging lien takes place from and after the time the attorney has caused a notice of his lien to be duly entered in the record of the case.

Candelario vs. Cañizares, 4 SCRA 738 (1962)

Should the client dispute the attorney's right to or the amount of attorney's fees, the court should hear the parties and determine from the evidence submitted by them the lawyer's right to a charging lien as well as the amount thereof before it can order the recording of the lien.

Ulanday vs. Manila Railroad Co., 45 Phil. 540 (1923)

The attorney's charging lien, once duly recorded, attaches to the judgment for the payment of money and the executions issued in pursuance of such judgment. It also attaches to the proceeds of the judgment in favor of the

client because a judgment for money is only as valuable as the amount that may be realized therefrom. It likewise attaches to the proceeds of a compromise settlement.

The generally accepted rule is that an attorney's charging lien may be assigned or transferred without the preference thereof being extinguished except when the assignment carries with it a breach of the attorney's duty to preserve his client's confidence inviolate.

LIABILITIES OF A LAWYER

In re: Julian T. Publico, 102 SCRA 722

Membership in the Bar is a privilege burdened with conditions. By far, the most important of them is mindfulness that a lawyer is an officer of the court.

In re Parazo, 82 Phil. 230

The legal profession unlike any other calling is subservient to the court. Courts have the inherent power to adopt proper and adequate measures to preserve their integrity and render possible facilitate the exercise of their functions. Including the investigation of charges of error, abuse or misconduct of their officials and subordinates, including lawyers.

People vs. Andan, CA-G.R. No. 3173-R, May 17, 1949

Membership in the Bar being merely a privilege, the same may be suspended or removed from the lawyer for reasons provided in the Rules, law and jurisprudence. The actuations of lawyers are subject to scrutiny at all times. The professional activities as well as the lawyer's private lives, in so far as the latter may reflect unfavorably upon the good name and prestige of the profession and the courts, may at *anytime* be the subject of inquiry by the proper authorities.

ADMINISTRATIVE LIABILITIES OF LAWYERS

Tobias vs. Veloso, 100 SCRA 177

A **warning**, in ordinary parlance, has been defined as an 'act or fact of putting one on his guard against an impending danger, evil consequences or penalties', while an **admonition** refers to a gentle or friendly reproof, mild rebuke, warning or reminder, counseling, on a fault, error or oversight, an expression of authoritative advice or 'warning'. *They are not considered as penalties*. A **reprimand,** on the other hand, is of a more severe nature, and has been defined as a public and formal censure or severe reproof, administered to a person in fault by his superior officer or a body to which he belongs. It is more than just a warning or an admonition.

Suspension is the temporary withholding of the lawyer's right to practice his profession as a lawyer of a certain period or for an indefinite period of time.

Disbarment is the act of the Supreme Court in withdrawing from any attorney the right to practice law. The name of the lawyer is stricken out from the Roll of Attorneys. And he does not have the right to put in his name even the prefix "Atty.". Neither can he sign pleadings even if he does not personally appear in court.

Section 27, Rule 138, ROC

Who has the power to discipline errant lawyers?

The Supreme Court has the full authority and power warn, admonish, reprimand, suspend and disbar a lawyer.

Section 16, Rule 139-B, Rules of Court

The Court of Appeals and the Regional Trial Courts are also empowered to warn, admonish, reprimand, and suspend an attorney who appears before them from the practice of law for any of the causes mentioned in Section 27 of Rule 138, ROC. But they cannot disbar a lawyer.

Balasabas vs. Aquilisan, 106 SCRA 489

An RTC Judge cannot summarily suspend a lawyer as punishment for committing an indirect contempt. That is not allowed under Section 6, Rule 71 of the Rules of Court.

Royong vs. Oblena, 7 SCRA 859

The power to suspend or disbar a lawyer is *judicial* in nature and can be exercised only by the courts. It cannot be defeated by the legislative or executive departments. While the legislature may provide in statute that certain acts may require disbarment, such statute cannot restrict the general power of the court over attorneys who are its officers.

A **disbarment proceeding** is a class by itself (*SUI GENERIS*). It has the following **characteristics**:

1. It is neither a civil nor a criminal proceeding.
2. Double jeopardy cannot be availed of in a disbarment proceeding against an attorney.
3. It can be initiated *motu propio* by the Supreme Court or by the IBP. It can be initiated without a complainant.
4. It can proceed regardless of interest or lack of interest of the complainants. If the facts proven so warrant.
5. It is imprescriptible.
6. It is conducted confidentially being confidential in nature until its final determination.
7. It is itself due process of law.

Siervo vs. Infante, 73 SCRA 35

The power to disbar attorneys must always be exercised *with great caution* and only in clear cases of misconduct which *seriously* affects the standing and character of the lawyer as an officer of the court and member of the Bar.

Main Objectives of Disbarment and Suspension

1. To compel the attorney to deal fairly and honestly with his clients;
2. 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 the attorney;
3. To punish the lawyer although not so much so as to safeguard the administration of justice;
4. To set an example or a warning for the other members of the bar;
5. To safeguard the administration of justice from incompetence and dishonesty of lawyers;
6. To protect the public.

Grounds for Suspension or Disbarment of Members of the Bar

1. deceit;
2. malpractice, or other gross misconduct in office;
3. grossly immoral conduct;
4. conviction of a crime involving moral turpitude;;
5. violation of oath of office;
6. willful disobedience of any lawful order of a superior court;
7. corrupt or willful appearance as an attorney for a party to case without authority to do so

1. **DECEIT** is a fraudulent and deceptive misrepresentation, artifice or device used by one or more persons to deceive and trick another, who is ignorant of the facts to the prejudice and damage of the party imposed upon. There must be false representation as a matter of fact.

Cases of DECEIT

a. Misappropriation of client's fund *(Capulong vs. Alino, 22 SCRA 491)*
b. Falsification of grades in the Bar Examination *(In re: Del Rosario, 52 SCRA 399)*
c. Maneuvering reconveyance of property in the name of the lawyer instead of the client in a case involving sale with pacto de retro *(Imbuido vs. Fidel Mangonan, 4 SCRA 760)*

2. **MALPRATICE** refers to any malfeasance or dereliction of duty committed by a lawyer.

LEGAL MALPRACTICE consists of failure of an attorney to use such skill, prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of tasks which they undertake, and when such failure proximately causes damage, it gives rise to an action in tort *(Tan Tek Beng vs. David, 126 SCRA 389).*

Cases of Malpractice

a. Failure of lawyer to appeal in allowing the period of appeal to lapse *(Toquib vs. Tomol, Adm. Case No. 554, Jan. 3, 1969)*
b. Preparation by a notary-public of a false affidavit *(Vda. De Guerrero vs. Hernando, 68 SCRA 76)*
c. Abandonment of client's cause *(In re: Yanger, 56 Phil. 691)*

3. **IMMORAL CONDUCT** – that conduct that is willful, flagrant or shameless and which shows a moral indifference to the opinion of the good and respectable members of the community.

   It is difficult to state with precision and to fix an inflexible standard at what is "grossly immoral conduct" or to specify the moral delinquency and obliquity which render a lawyer unworthy of continuing as member of the community.

   In the case of ***Arciga vs. Maniwang (106 SCRA 591)***, mere intimacy between a lawyer and a woman with no impediment to marry each other voluntarily cohabited and had two children, is neither so corrupt as to constitute a criminal act nor so unprincipled as to warrant disbarment or disciplinary action against the man as a member of the bar.

4. **MORAL TURPITUDE** imports an act of baseness, vileness or depravity in the duties which one person owes to another or to society in general, which is contrary to the usual accepted and customary rule of right and duty which a person should follow.

Crimes involving Moral Turpitude:

estafa, bribery, murder, bigamy, seduction, abduction, concubinage, smuggling, falsification of public document,and violation of B.P. 22

5. **WILLFUL DISOBEDIENCE OF ANY LAWFUL ORDER OR SUPERIOR COURT**

   The resistance or defiance to the order of the court must be willful.

   A lawyer who is directed to do something, such as surrender records, to appear as counsel de oficio, to comment on a matter pending with the court, may be disciplined for willful disobedience of the order ***(Santos vs. CA, 198 SCRA 806).***

In re: Pelaez, 44 Phil. 567

The grounds under the Rules are not exclusive and are so broad as to cover practically any misconduct of a lawyer in his professional or private capacity.

Mortel vs. Aspiras, 100 Phil. 532 (1918)

Any misconduct on the part of a lawyer in his professional or private capacity which shows him to be wanting in moral character may justify his suspension or removal from office even though the law does not specify the act as a ground for disciplinary action.

In re: Diao, 7 SCRA 475 (1963)

A lawyer may be disbarred for misrepresentation of false pretense relative to requirements for admission to practice. The fact that a lawyer lacked any of the qualifications for membership in the bar at the time he took his oath is a ground for his disbarment.

In re: Sotto, 38 Phil. 532 (1918)

The general rule is that lawyer should not be suspended or disbarred, and the court may not ordinarily assume jurisdiction to discipline him, for misconduct in his non-professional or private capacity. *Where, however,* the misconduct outside of the lawyer's professional dealings is so gross a character as to show him to be morally unfit for the office and unworthy of the privilege which his license and the law confer on him, the court may be justified in suspending or removing him from the office of attorney.

Reyes vs. Wong, 63 SCRA 667 (1975)

An act of personal immorality on the part of a lawyer in his private relation with the opposite sex may put his moral character in doubt. *However*, to justify suspension or disbarment, the act must not only be immoral, it must be grossly immoral as well. A ***grossly immoral act***, is one that is so corrupt and false as to constitute a criminal act or so unprincipled or disgraceful as to be reprehensible to a high degree.

PROCEEDINGS FOR DISBARMENT, SUSPENSION, AND DISCIPINE OF ATTORNEYS :

- ► Proceedings for disbarment, suspension and discipline of attorneys may be taken by the Supreme Court motu proprio or by the IBP upon the verified complaint of any person

- ► IBP Board of Governors may motu proprio or upon referral by the SC or by a Chapter Board of Officers or at the instance of any person, initiate and prosecute proper charges against erring attorneys including those in government.

- ► The complaint shall estate clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate such facts.

- ► Six copies of the verified complaint shall be filed with the Secretary of IBP or Secretary of any of its Chapters who shall forthwith commit the same to the IBP Board of Governors for assignment to an investigator.

Officers authorized to Investigate Disbarment Cases

a. Supreme Court,
b. IBP through its Commission on Bar Discipline or authorized investigators, and
c. Office of the Solicitor General

The Court of Appeals and Regional Trial Courts can investigate and take action only against lawyers who appear for litigants in cases pending before them.

Procedure in Disbarment and Other Disciplinary Proceedings

1. Complaint, in writing and duly sworn to, is filed with the Supreme Court *(sec.1)*

2. If found meritorious, a copy thereof shall be served on the respondent and he shall be required to comment within 10 days of service *(sec. 6)*

3. Upon filing of respondent's comments or expiration of the period for filing comment, the Supreme Court either refers to matter to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation, or assigns a Justice of the Court of Appeals (if respondent is an RTC judge) or a judge of the RTC (if respondent is a judge of an inferior court) to investigate and hear the charges *(sec.7)*

4. After hearings, the investigating justice or judge submits a report of findings of fact, conclusions of law and recommendations to the Supreme Court *(sec.8)*

5. The Supreme Court takes action as the facts and the law may warrant *(sec. 9)*

Proceedings shall be private and confidential but a copy of the decision or resolution of the Court shall be attached to the record of the judge in the Office of the Court Administrator. *(sec. 11)*

Who can file a disbarment case against a lawyer?

Any person aggrieved by the misconduct of a lawyer may file the corresponding administrative case with the proper forum. Or, any person even if not aggrieved but who knows of the lawyer's misconduct, unlawful or unethical act may initiate the proceedings. A disbarment case involves no private interests.

The Supreme Court or the IBP may *motu propio* initiate proceedings when they perceive acts of lawyers which deserve sanctions or when their attention is called by any one and a probable cause exists that an act has been penetrated by a lawyer which requires disciplinary sanctions.

Confidentiality of Disbarment or Suspension Proceedings

To avoid the unnecessary ruin of a lawyer's name, disciplinary proceedings are directed to be confidential (or closed door) until their final determination.

Mitigating Circumstances in Disbarment

1. Good faith in the acquisition of a property of the client subject of litigation;
2. Inexperience of the lawyer;
3. Age;
4. Apology;
5. Lack of intention to slight or offend the Court

Q. Can RTC judge designated by SC to investigate administrative charge against MTC judge dismiss the case?

A. NO. The investigating judge's authority is only to investigate, make a report and recommendation on the case to be submitted to the SC for final determination ***(Graciano vs. Sebastian, 231 SCRA 588)***

Zaldivar vs. Sandiganbayan, 1 Feb. 1989

Q. Is indefinite suspension of a lawyer a cruel punishment?

A. NO. Indefinite suspension gives the lawyer the key to the restoration of his right by giving him a chance to purge himself in his own good time of his contempt of misconduct by acknowledging his misconduct, exhibiting appropriate repentance, and demonstrating his willingness and capacity to live up to the exacting standards required of every lawyer.

Synder's Case, 76 ALR 666

Disbarment proceedings may be anchored on acts committed in or out of court.

Lim vs. Antonio, 41 SCRA 44

Considering the serious consequence of disbarment or suspension, it has been consistently held that clearly preponderant evidence is required to justify the imposition of either penalty.

In re: De Guzman, 55 SCRA 139

In disbarment proceedings, the burden of proof rests upon the complaint. To be made the basis for suspension or disbarment of lawyer, the charge against him must be established by convincing proof. The record must disclose as free from doubt case which compels the exercise by this Court of its disciplinary powers. The dubious character of the act done as well as the motivation thereof must be clearly demonstrated.

Boliver vs. Simbol, 16 SCRA 623

Any person may bring to this Court's attention the misconduct of any lawyer, and action will usually be taken regardless of interest or lack of interest of the complainant, if the facts proven so warrant. The power to discipline lawyers of the court – may not be cut short by a compromise and withdrawal of charges.

Mortel vs. Aspiras, 100 Phil. 586

In a disbarment proceeding, it is immaterial that the complainant is in *pari delicto* because this is not a proceeding to grant relief to the complainant, but one to purge the law profession of unworthy members, to protect the public and the courts.

Applicability of the Rule of Prejudicial Question, when proper

If the subject matter of the complaint is also the subject of or is intertwined in the subject matter of another pending case, and the resolution of which is determinative of the guilt or innocence of the respondent in the disbarment case, the disbarment proceedings may be dismissed for being premature or it may be held in abeyance pending the final determination of the other case.

Principle of Res Ipsa Loquitor Applicable to Lawyers and Judges

People vs. Valenzuela, 135 SCRA 712

Under this principle, judges had been dismissed from the service without need of formal investigation because based on the records, the gross misconduct of inefficiency of the judges clearly appears.

Prudential Bank vs. Castro, 156 SCRA 604

The same principle had been applied to lawyers. Thus, if on the basis of the lawyer's comment or answer to a show-cause Order of the Supreme Court. It appears that the lawyer has so conducted himself in a manner which exhibits his blatant disrespect to the Court, or his want of good moral character of his violation of the attorney's oath, the lawyer may be suspended or disbarred without need of a trial-type proceeding.

EFFECTS OF PARDON

In re: Rovero, 101 SCRA 803

If during the pendency of a disbarment proceeding, the respondent was granted executive pardon, the dismissal of the case on that *sole* basis will depend on whether the executive pardon is absolute or conditional. If the pardon is absolute or unconditional, the disbarment case will be dismissed.

However, if the executive pardon is conditional, the disbarment case will not be dismissed on the basis thereof.

d. by the complainant

Cordova v. Cordova, 179 SCRA 680 (1989)

The most recent reconciliation between complainant and respondent does not excuse and wipe away the misconduct and immoral behavior of respondent carried out in public, and necessarily adversely reflecting upon him as a member of the Bar and upon the Philippine Bar itself. An applicant for admission to membership in the bar is required to show that he is possessed of good moral character. That requirement is not exhausted and dispensed with upon admission to membership in the bar. On the contrary, that requirement persists as a continuing condition for membership in the Bar in good standing.

e. by the state

1)*through absolute pardon

In re: Lontok

Where proceedings to strike an attorney's name from the rolls are founded on, and depend alone, on a statute making the fact of conviction for a felony ground for disbarment, it has been held that a pardon operates to wipe out the conviction and is a bar to any proceeding for disbarment of the attorney after the pardon has been granted. But where proceedings to disbar an attorney are founded on the professional misconduct involved in a transaction which has culminated in a conviction of felony, it has been held that while the effect of pardon is to relieve him of the penal consequences of his act, it does operate to constitute proof that the attorney does not possess a good moral character and is not a fit or proper person to retain his license to practice law.

2)*through conditional pardon

In re: Guttierez, 5 SCRA 661 (1962)

The pardon granted to respondent here is not absolute but conditional, and they merely remitted the unexecuted portion of his term. It does not reach the offense itself.

REINSTATEMENT

Reinstatement, Concept

In disbarment proceedings, reinstatement means the restoration to a disbarred lawyer, the privilege to practice law. It is nothing more than readmission to membership in the Bar.

To be reinstated, there is still a need for the filing of an appropriate petition with the Supreme Court.

Cui vs. Cui, 11 SCRA 755

Reinstatement to the roll of attorneys wipes out the restrictions and disabilities resulting from a previous disbarment.

In re: Vailoces, 117 SCRA 1 (1982)

x x x True it is that plenary pardon extended to him by the President does not itself warrant his reinstatement. "Evidence of reformation is required before applicant is entitled to reinstatement, notwithstanding the attorney has received a pardon following his conviction, and the requirement of reinstatement had been held to be the same as for original admission to the bar, except that the court may require a greater degree of proof than in an original evidence."

In re: Rovero, supra.

To be reinstated to the practice of law, it is necessary that the respondent must like any other candidate for admission to the bar, satisfy the Court that he is a person of good moral character and a fit and proper person to practice law.

Note in all cases: Good moral character is not only a condition precedent to admission to the practice of law but is a continuing requirement.

What must be determined in an application for reinstatement?
In re: Rusiana, 56 SCRA 240

The sole object of the court upon an application for reinstatement to practice, by one previously disbarred, is to determine whether or not the applicant has satisfied and convinced the Court by positive evidence that the effort he has made toward the rehabilitation of his character has been successful, and therefore, he is entitled to be readmitted to a profession which is intrinsically an office of trust.

Criterion for Reinstatement
Prudential Bank vs. Benjamin Grecia, 192 SCRA 381

The criterion for reinstatement has been stated as follows: Whether or not the applicant shall be reinstated rests to a great extent in the sound discretion of the court. The court action will depend, generally speaking, on whether or not it decides that the public interest in the orderly and impartial administration of justice will be conserved by the applicant's participation therein in the capacity of an attorney and counsel at law. The applicant must, like a candidate for admission to the Bar, satisfy the Court that he is a person of good moral character – a fit and proper person to practice law. The Court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the charge for which he was disbarred, his conduct subsequent to the disbarment, and the time that has elapsed between the disbarment and the application for reinstatement.

CONTEMPT OF COURT

In re: Kelly, 35 Phil. 944 (1916)

The power to punish for contempt or to control, in the furtherance of justice, the conduct of ministerial officers of the court, including lawyers and all other persons in any manner connected with a case before it, is inherent in all courts.

KINDS OF CONTEMPT:

1. **Direct contempt**, which is punished summarily, consists of misbehavior in the presence of or so near a court or judge as to interrupt or obstruct the proceedings before the court or the administration of justice.
2. An **indirect** or **constructive contempt** is one committed away from the court involving disobedience or resistance to a lawful writ, process, order, judgment or command of court, or tending to belittle, degrade, obstruct, interrupt or embarrass the court.

3. A **civil contempt** is the failure to do something ordered by the court which is for the benefit of a party.

4. A **criminal contempt** consists of any conduct directed against the authority or dignity of the court.

In a direct contempt, no formal charge is necessary and the proceeding is summary in nature. A punishment for direct contempt by a superior court is not appealable, but may be reviewed only on a petition for certiorari on the ground of grave abuse of discretion or of lack of jurisdiction on the part of the judge.

In any indirect contempt, the law requires that there be a charge in writing duly filed in court and an opportunity to the person charged to be heard by himself or counsel. The charge may be made by the fiscal, by the judge or even by a private person. An order by the court requiring a person to show cause why he should not be cited for contempt for some contumacious acts and giving him full opportunity to appear and defend himself is sufficient. A formal information by the prosecuting officer is not necessary.

ACTS CONSTITUTING CONTEMPT

1. misbehavior as an officer of the court;
2. disobedience of resistance to a lawful order of the court;
3. abuse of or unlawful interference with the judicial proceedings;
4. obstruction in the administration of justice;
5. misleading the courts or making false allegations;
6. criticisms, insults or veiled threats against the court;
7. aiding in the unauthorized practice of law ;
8. unlawful retention of the client's funds; and

9. advising his client to commit, as the client by such advice did commit, a contemptuous act

PUNISHMENT: A lawyer found guilty of contempt of court may be penalized by FINE, IMPRISONMENT or BOTH in the discretion of the court.

Proof of actual damage not needed:

Proof of actual damage sustained by a court of the judiciary in general is NOT essential for a finding of contempt, or for the application of the disciplinary authority of the Court; what is at stake in cases of this kind is the INTEGRITY of the judicial institutions of the country in general, and of the Supreme Court in particular. ***(Zaldivar v. Gonzales, 166 SCRA 316, October 7, 1988)***

CIVIL LIABILITIES

Art. 32, Civil Code

Any public officer or employee or any private individual, who directly or indirectly obstructs, defeats and violates or in any manner impedes or impairs the civil rights and liberties of persons shall be liable for damages.

Alcala vs. De Vera, 56 SCRA 30 (1974)

All that is required of a lawyer, in the performance of his duties to his client, is to exert that degree of vigilance and attention expected of a good father of a family, or such degree of care and ordinary diligence as any member of the bar similarly situated is expected to exercise.

Isaac vs. Mendoza, 89 Phil. 279 (1951)

A client is bound by the acts, even mistakes, of his counsel in the realm of procedural technique. However, if the client is prejudiced by his lawyer's negligence or misconduct, he may recover damages against his counsel, *provided the following requisites are present:*

1. attorney-client relationship;
2. want of reasonable care and diligence; and
3. injury sustained by the client as the proximate result thereof

Daroy vs. Legaspi, 65 SCRA (1975)

The lawyer is under obligation to make an accounting of such funds that come into his possession. His failure to return the client's money or property after demand gives rise to the presumption that he has misappropriated the same to his personal benefit and makes him civilly liable in favor of the client, apart from his criminal or administrative responsibility arising therefrom.

LIBEL

The generally accepted rule is that lawyers are exempted from liability for libel or slander for words, otherwise defamatory, published in the course of judicial proceedings, provided that the statements are connected with, or relevant, pertinent, material to, the cause in hand or the subject of inquiry.

Q. Miss Marallag, through counsel, filed a petition for the issuance of the writ of preliminary injunction, enjoining Mr. Cajucom from enforcing the writ of execution awarded by the lower court in a case of forcible entry against the latter. The SC denied the petition. In the Motion for Reconsideration, the counsel of Ms. Marallag in her pleading alleged libelous statement against the SC justices, which statements were irrelevant to the petition. Was the move of the counsel proper? Explain.

A. NO. The generally accepted rule is that lawyers are exempted from liability for libel or slander for words, otherwise defamatory, published in the course of judicial proceedings, provided that the statements are connected with, relevant, pertinent or material to, the cause in hand or the subject of inquiry. In order that the matter alleged in a pleading may be privileged, it need not be in every case material to the issues presented by the pleadings. The pleadings should contain but plain and concise statement of the material facts, and if the pleader goes beyond the requirements of the law and alleges irrelevant matter which is libelous, he loses his privilege. ***(In re: Laureta, 148 SCRA 422)***

CRIMINAL LIABILITY

Art. 209, RPC

A lawyer who, for any malicious breach of professional duty or inexcusable negligence or ignorance, shall prejudice his client or reveal any of the secrets of the latter learned by him in his professional capacity, may be held criminally liable therefor.

Two acts are penalized, to wit:

a. causing prejudice to client through malicious breach of professional duty or through inexcusable negligence or ignorance, and
b. revealing the client's secret learned in the lawyer's professional capacity through malicious breach of professional duty or through inexcusable negligence or ignorance.

Art. 172, RPC

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with intent to cause such damage, shall use any false document may be held criminally liable therefor.

Medina vs. Bautista, 12 SCRA 1 (1975)

A lawyer who misappropriates his client's funds may be held liable for estafa.

SPECIAL DISABILITIES OF LAWYERS

Elements: ***(Art. 1491, NCC)***

a. there must be an attorney-client relationship
b. the property or interest of the client must be in litigation
c. the attorney takes part as counsel in the case
d. the attorney by himself or through another purchases such property or interest during the pendency of the litigation.

Laig vs. Court of Appeals (1978)

A lawyer may not be disciplined for purchasing his client's property that is not in litigation, or for acquiring it at a time when he was not nor had ceased to be the client's counsel or when the litigation had terminated.

Regalado Daroy vs. Esteben Abecia, 298 SCRA 239

The prohibition in Art. 1491 does not apply to the sale of a parcel of land acquired by a client to satisfy a judgment in his favor, to his attorney as long as the property was not subject of the litigation. For indeed, while judges, prosecuting attorneys and others connected with the administration of justice are "prohibited from acquiring property or rights in litigation or levied upon in execution" the prohibition with respect to attorneys in a case extends only to property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

JUDICIAL ETHICS

Judicial Ethics – branch of moral science which treats of the right and proper conduct to be observed by all judges and magistrates in trying and deciding controversies brought to them for adjudication which conduct must be demonstrative of impartiality, integrity, competence, independence and freedom from improprieties.

Sources of Judicial Ethics

6. Code of Judicial Conduct
7. The Constitution (Arts. VIII, IX and III);
8. Civil Code (Arts. 9, 20, 27, 32, 35, 739, 1491, 2005, 2035, 2046);
9. Revised Rules of Court (Rules 71, 135, 137, 139B, 130);
10. Revised Penal Code (Arts. 204, 205, 206, 207);
11. Anit-Graft and Corrupt Practices Act (RA 3019);
12. Canons of Judicial Ethics (AO# 162);
13. Code of Professional Responsibility;
14. Judiciary Act of 1948 (RA 296);
15. Judiciary Reorganization Act of 1980 (BP 129);
16. Supreme Court Decisions;
17. Foreign Decisions;
18. Opinions of Authorities;
19. SC Circulars

In Re: Sotto, 82 Phil. 595

The Supreme Court of the Philippines is, under the Constitution, the last bulwark to which the Filipino people may go to obtain relief for the grievances or protection of their rights when these are trampled upon, and if the people lose their confidence in the honesty and integrity of the members of this Court and believe that they cannot have justice therefrom, they might be driven to take the law into their hands, and disorder and perhaps chaos might be the result. As a member of the bar and an officer of the courts, Atty. Vicente Sotto, like any other, is duty bound to uphold the dignity and authority of this Court, to which he owes fidelity according to the oath he has taken as such attorney, and not to promote distrust in the administration of justice. Respect to the courts guarantees the stability of other institutions, which without such guaranty would be resting on a very shaky foundation.

Luque vs. Kayanan, 29 SCRA 173

It is the duty of both counsel and judge to maintain, not to destroy, the high esteem and regard for courts. Any act on the part of one or the other that tends to undermine the people's respect for, and confidence in, the administration of justice is to be avoided.

In re: Almacen, 31 SCRA 578

Courts and judges are not sacrosanct. They should and expect critical evaluation of their performance. For like the executive and the legislative branches, the judiciary is rooted in the soil of democratic society, nourished by the periodic appraisal of the citizen's whom it is expected to serve.

DEFINITIONS:

Court – a board or other tribunal which decides a litigation or contest

Judge – a public officer who, by virtue of his office, is clothed with judicial authority, a public officer lawfully appointed to decide litigated questions in accordance with law.

De Jure Judge – one who is exercising the office of judge as a matter of right; an officer of a court who has been duly and legally appointed, qualified and whose term has not expired.

De Facto Judge – an officer who is not fully invested with all the powers and duties conceded to judges, but is exercising the office of a judge under some color of right.

Qualifications of SC members:

3. Natural born Citizen of the Philippines;
4. At least 40 years of age;
5. Must have been for at least 15 years a judge of a lower court or engaged in the practice of law (Sec. 7 (1), Art. VIII, 1987 Constitution)

QUALIFICATIONS OF RTC JUDGES

1. Natural-born citizen of the Philippines;
2. At least 35 years of age;
3. For at least 10 years has been engaged in the practice of law in the Phil. or has held public office in the Phil. requiring admission to the practice of law as an indispensable requisite.

QUALIFICATIONS OF MTC JUDGES

1. Natural-born citizen of the Philippines;
2. At least 30 years of age;
3. For at least 5 years has been engaged in the practice of law in the Phil. or has held public office in the Phil. requiring admission to the practice of law as an indispensable requisite.

Q. In his written application for the office of MTC judge, B failed to disclose that he had two criminal cases pending against him. Concerned citizens of the town charged him with conduct prejudicial to the service. May he be dismissed even if he was later acquitted of all charges in the criminal cases?

A. Yes. Every prospective appointee to the judiciary must apprise the appointing authority of every matter bearing on his fitness for judicial office, including such circumstances as may reflect on his integrity and probity. The act of concealing 2 criminal cases against him is clear proof of his lack of the said qualifications and renders him unworthy to sit as a judge. His later being acquitted is immaterial for he is not being chastened for having had a pending criminal case at the time of his application, but for his dishonesty in seeking that office. ***(Gutierrez v. Belan, 294 SCRA 1)***

CODE OF JUDICIAL CONDUCT

PREAMBLE

An honorable, competent and independent judiciary exists to administer justice and thus promote the unity of the country, the stability of government, and the well-being of the people.

Courts are established to adjudicate peacefully controversies between individual parties for the ascertainment, enforcement and redress of private rights, or for the punishment of wrongs done to the public.

CANON 1
A judge should uphold the integrity and independence of the judiciary

Rule 1.01. A judge should be the embodiment of competence, integrity, and independence.

Talens-Dabon v. Arceo, A.M. No. RTJ-96-1336, July 25, 1996
xxx xxx judges and justices, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and private lives.

Arban vs. Borja, 143 SCRA 634
A judge is the visible representation of the law and more importantly of justice. As such, he should avoid even the slightest infraction of the law. The nature of a judge's position demands equanimity, prudence, fortitude and courage.

The rule projects that judges are the personification of proficiency (competence) in law, of incorruptibility (integrity) and of impartiality and non-subservience (independence).

Lopez vs. Fernandez, 99 SCRA 603
Justice Malcolm identified good Judges in his *ponencia* in *Borromeo vs. Mariano (41 SCRA 322)* as "men who have a mastery of the principles of law, who discharge their duties in accordance with law, who are permitted to perform the duties of the office undeterred by outside influence, and who are independent and self-respecting human units in a judicial system equal and coordinate to the other two departments of government". the judiciary needs judges who read, study, and ponder – judges who personify learning and equanimity.

Abad vs. Bleza, 145 SCRA 603
"xxx Even in the remaining years of his stay in the judiciary, he should keep abreast with the changes in the law and with the latest decisions and precedents. Service in the judiciary means a continuous study and research on the law from beginning to end. xxx"

Geotina vs. Gonzales, 41 SCRA 66
A judge in the performance of his duties should strive at all times to be "wholly free, disinterested, impartial and independent."

Buenavista, Jr. vs. Garcia, 187 SCRA 599
A judge who displays ignorance of or indifference to the law, erodes public confidence in the competence and fairness of the courts. He commits a disservice to the cause of justice.

Rule 1.02. A judge should administer justice impartially and without delay.

Tan, Jr. vs. Gallardo, 73 SCRA 315
It is undisputed that the sole purpose of courts of justice is to enforce the laws uniformly and impartially without regard to persons or their circumstances or the opinions of men. Judges should not only appear impartial. It must be obvious, therefore, that while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave confidence in their impartiality.

Gutierrez vs. Santos, 112 Phil. 184
A party litigant is entitled to no less than the cold neutrality of an impartial judge.

Martinez vs. Gironella, 65 SCRA 245 (1975)
A judge should not only render a just , correct and impartial decision but should do so in such a manner as to be free from any suspicion as to its fairness and impartiality and as to his integrity.

Canon 6, Canons of Judicial Ethics

The requirement that judges must decide cases within the specified periods is intended to prevent delay in the administration of justice. For justice delayed is often justice denied.

Rule 1.03. A judge should be vigilant against any attempt to subvert the independence of the judiciary and resist any pressure from whatever source.

In re: Cunanan et al., 94 Phil. 534

If laws are passed which subvert the independence of the judiciary, judges must be wary and should declare at the first opportunity, the unconstitutionality of the law. The Constitution did not confer on Congress the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys-at-law.

In re: Garcia, 2 SCRA 984

The Executive Department may not encroach upon the constitutional prerogative of the Supreme Court to promulgate rules for admission to the practice of law in the Philippines.

CANON 2

A Judge should avoid impropriety and the appearance of impropriety in all activities

Alazas vs. Reyes, 131 SCRA 445

A judge's official conduct and his behavior in the performance of judicial duties should be free from the appearance of impropriety and must be beyond reproach.

Cabrera vs. Pajares, 142 SCRA 127

Members of the judiciary should display not only the highest integrity but must at all times conduct themselves in such a manner as to be beyond reproach and suspicion. He should be studiously careful to avoid even the slightest infraction of the law.

Palang vs. Zosa, 58 SCRA 776

Because appearance is as important as reality in the performance of judicial functions, like Ceasar's wife, a judge must not only be pure but beyond suspicion.

Dawa, et al v. De Asa, Adm. Matter No. MTJ-98-1144, July 22, 1998

The people's confidence in the Judicial system is founded not only on the magnitude of legal knowledge and the diligence of the members of the bench, but also on the highest standard of integrity and moral uprightness they are expected to possess. More than simply projecting an image of probity, a judge must not only appear to be a "good judge"; he must also appear to be a "good person."

Ferrer v. Maramba, Adm. Matter No. MTJ-93-795, May 14, 1998

Xxx xxx Use of physical violence and intemperate language in public reveals a marked lack of judicial temperament and self-restraint, traits which, besides the basic equipment of learning in the law, are indispensable qualities of every judge.

Rule 2.01. A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

Note: Rule refers to behavior in public and private life.

Javier v. De Guzman, Jr., Adm. Matter No. RTJ-89-380, December 19, 1990

A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, *but also in the everyday life,* should be beyond reproach. Xxx xxx That a judge' official life cannot simply be detached or separated from his personal existence and that upon a Judge's attributes depend the public perception of the Judiciary

Makalintal v. The, A. M. RTJ-89-380, December 19, 1990

Decisions of court need not only be just but must be perceived to be just and completely free from suspicion or doubt both in its fairness and integrity.

Rule 2.02. A judge should not seek publicity for personal vainglory.

Judges must avoid publicity for personal vanity or self-glorification. If lawyers are prohibited from making public statements in the media regarding a pending case to arouse public opinion for or against a party *(Rule 13.02, CPR)* and from using or permitting the use of any undignified or self-laudatory statement regarding their qualifications

or legal services. *(Rule 3.01, CPR)*, with more reasons should judges be prohibited from seeking publicity for vanity or self-glorification.

Go vs. Court of Appeals, 206 SCRA 165

A judge must not be moved by a desire to cater to public opinion to the detriment of the administration of justice.

Rule 2.03. A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of social office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

A judge like any other human beings lives in continuous interpersonal relationships in the family, in the Church, in the community and others. Whatever is the thread of the relationship, he should not allow it to influence his judicial conduct and performance of duties.

San Juan v. Bagalasca, A. M. No. RTJ-97-1395, December 22, 1997

A judge's note to the register of deeds, requesting that the issuance of the TCT be expedited, "gives ground for suspicion that she is utilizing the power or prestige of her office to promote the interest of others."

Padilla v. Zantua, Jr., Adm. Matter No. MTJ-93-888, October 24, 1994

Constant company with a lawyer tends to breed intimacy and camaraderie to the point that favors in the future may be asked from the judge which he may find hard to refuse. Xxx This eventuality may undermine the people's faith in the administration of justice.

Gallo v. Cordero, Adm. Matter No. MTJ-95-1035, June 21, 1995

Privately meeting with accused in the absence of a complaint or the latter's counsel opens a judge to charges partiality and bias. It is of no moment that the judge intention was merely to apprise the accused of his constitutional rights.

Rule 2.04. A judge shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

Office of the Court Administrator v. De Guzman, jr., A. M. No. RTJ-93-1021, January 31, 1997

The act of interference by a judge with a case pending in the sala of another judge (e.g. by approaching the latter on behalf of a party litigant) clearly tarnishes the integrity and independence of the judiciary and subverts the people's faith in our judicial process. Xxx xxx judges are held to higher standards of integrity and ethical conduct than attorneys or other persons not invested with the public trust.

Montalban vs. Canonoy, Adm. Case No. 179-J, March 15, 1971

When the actuations of a judge are assailed on grounds other than legal ones, and imputing to the judge personal motives, the judge cannot be blamed if he takes personal interest in trying to disprove the imputations.

Santiago vs. Court of Appeals, 184 SCRA 690 (1990)

In a special proceeding, the judge whose order is under attack in the appellate court is merely a nominal party. Consequently, the judge himself or as petitioner should not file a petition for review seeking a reinstatement of his challenged order, he being not an active combatant but one imbued with the duty of detachment.

CANON 3

A judge should perform official duties honestly, and with impartiality and diligence.

ADJUDICATIVE RESPONSIBILITIES

Rule 3.01 A judge shall be faithful to the law and maintain professional competence.

A judge being the visible representative of the law must be a model for uprightness, fairness and honesty, and should be extra-careful to avoid even the slightest infraction of the law for that will set a bad and demoralizing examples to others.

Lopez vs. Fernandez

Competence is a mark of a good judge. He should not stop studying for the law is dynamic. It grows and grows. Consequently, the judge should be conversant with the law and its amendments.

Ajeno vs. Inserto, 7 SCRA 166

Even in the remaining years of his stay in the judiciary he should keep abreast with the changes in the law and with the latest decision and precedents. Service in the judiciary means a continuous study and research on the law from beginning to end.

De la Cruz v. Concepcion, Adm. Matter No. RTJ-93-1062, August 25, 1994

To constitute gross ignorance of the law, the subject decision, order or actuation of the judge in the performance of his official duties must not only be contrary to existing law and jurisprudence but, most importantly, he must be moved by bad faith, fraud, dishonesty or corruption.

People v. Gacott, Jr., G. R. No. 116049, March 20, 1995

Failure to check citations of pleadings is inexcusable negligence. Xxx xxx Judges should be reminded that courts are duty bound to take judicial notice of all the laws of the land (sec. 1 Rule 129). Being trier of facts, judges are presumed to be well-informed of existing laws, recent enactments and jurisprudence, in keeping with their sworn duty as members of the bar and bench to keep abreast of legal developments.

Rule 3.02 In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.

The court's findings of facts must not be based on the personal knowledge of the judge but upon the evidence presented and offered in the case. If a judge has personal knowledge, he must offer himself a witness and let the case be transferred to another judge.

Guidelines for Efficient Rendition of Judgment Or Judicial Opinion

1. The Judge should observe the usual and traditional method of dispensing justice, which requires that he should hear both sides with patience and understanding before he should render a decision ***(Casttillo vs. Juan, 62 SCRA 124).***

2. The judge should decide a case impartially on the basis of the evidence presented and shall apply the applicable law as his guides ***(Bondoc vs. De Guzman, 57 SCRA 135*)**.

3. The judge should state clearly and distinctly the facts and the law on which he based his judgment

4. The judge disposing of controverted cases should indicate his reasons for his opinions or conclusions to show that he did not disregard or overlook the serious arguments of the parties' counsel.

5. The judge should make his decisions or opinions brief but complete in all the essentials.

6. If the personal view of the judge contradict the applicable doctrine promulgated by the Supreme Court, nonetheless, he should decide the case in accordance with that doctrine and not in accordance with his personal views.

7. The judge should decide cases promptly, that is, within the period required by law.

8. The signed judgment must be unconditionally filed with the Clerk of Court to have it considered within the 90-day deadline for rendering judgments.

9. Extreme care should be made in the making of the dispositive portion of the decision for that is the part of the decision which is to be implemented.

Canon 18, CJE

In deciding cases, a judge should apply the law to particular instances. He violates his duty as a minister of justice under a government of laws and not of men if he seeks to do what he may personally consider substantial justice in a particular case and disregards the law as he knows it to be binding upon him.

Albert vs. Court of First Instance of Manila, 23 SCRA 948 (1968)

If he feels that a law or doctrine enunciated by the Supreme Court is against his way of reasoning or his conscience, he may state his personal opinion on the matter but should decide the case in accordance with law or jurisprudence.

Director of Prisons v. Ang Cho Kio, G. R. No. L-30001, June 23, 1970

xxx xxx decision of a court should contain only opinion that is relevant to the question that is before the court for decision. xxx courts are not concerned with the wisdom or morality of the laws, but only in the interpretation and application of the law.

Canon 17, CJE

In disposing of controverted cases, a judge should indicate the reasons for his action in opinions showing that he has not disregarded or overlooked serious arguments of counsel. He should show his full understanding of the case, avoid the suspicion of arbitrary conclusion, promote confidence in his intellectual integrity and contribute useful precedent to the growth of the law.

People v. Veneracion, G. R. No. 119987-88, October 12, 1995

Xxx xxx "obedience to the rule of law forms the bedrock of our system of justice. If judges, under the guise of religious or political beliefs were allowed to roam unrestricted beyond boundaries within which they are required by law to exercise the duties of their office, the law becomes meaningless. A government of laws, not of men excludes the exercise of broad discretionary powers of those acting under is authority. Under this system, judges are guided by the Rule of Law, and ought to protect and enforce it without fear or favor, or even the interference of their own personal beliefs."

Turqueza vs. Hernando, 97 SCRA 483 (1980)

A judge whose order is challenged in an appellate court does not have to file any answer or take active part in the proceeding unless expressly directed by the appellate court. He is merely a nominal party to the case. It is the duty of the private respondent to appear and defend both in his behalf and in behalf of the court or judge whose order or decision is at issue. The judge should not waste his time taking an active part in the proceeding which relates his official actuations in a case, but should apply himself to his principal task of hearing and adjudicating the cases in his court.

Rule 3.03. A judge shall maintain order and proper decorum in the court.

The judge is one who looks, talks and dresses like one with decency and respectability. He is a complete gentleman (or gentlelady) proficient in law, upright, fearless, honest and dedicated to the cause of law as dispenser of justice.

Proceedings in the court must be conducted formally and solemnly. The atmosphere must be characterized with honor and dignity befitting the seriousness and importance of a judicial trial.

Rule 3.04. A judge should be patient, attentive and courteous to lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts for the litigants.

In addressing counsel, litigants, or witnesses, the judge should avoid a controversial tone (Canon 14, CJE) or a tone that creates animosity. He should be considerate of witnesses and others in attendance in his court (Canon 9, CJE).

Royeca vs. Animas, 71 SCRA 1 (1976)

A judge without being arbitrary, unreasonable or unjust may endeavor to hold counsel to a proper appreciation of their duties to the courts, to their clients and to the adverse party and his lawyer, so as to enforce due diligence in the dispatch of business before the court. He may utilize this opportunities to criticize and correct unprofessional conduct of attorneys, brought to his attention, but he may not do so in an insulting manner.

In re: Almacen, 31 SCRA 577

As citizen and officer of the court, every lawyer is expected not only to exercise the right but also to consider it his duty to expose the shortcomings and indiscretions of courts and judges.

Rule 3.05. A judge shall dispose of the court's business promptly and decide cases within the required periods.

Punctuality is a joint responsibility of both judges and lawyers, including court personnel like the stenographers and interpreters.

A case is deemed submitted for decision not from the time the stenographic notes were transcribed. A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.

Castro vs. Malazo, 99 SCRA 165

We must once more impress upon the members of the Judiciary their sworn duty of administering justice without undue delay under the time-honored precept that justice delayed, is justice denied.

Moya v. Tensuan, Adm. Matter No. 2507-CFI, August 10, 1981

Judges must be cautioned that it is not the date of signing the decision but the date of receipt of the Clerk of Court that must be reckoned from the date of submission of the case for decision in order to comply with the 90-day period xxx.

Salvador v. Salamanca, Adm. Matter No. R-177-MTJ, September 24, 1986

Judges should decide cases even if the parties failed to submit memoranda within the given periods. Non-submission of memoranda is not a justification for failure to decide cases. The filing of memoranda is not a part of the trial nor is the memorandum itself an essential, much less indispensable, pleading before a case may be submitted for decision.

Query of Judge Danilo M. Tenerife, Admin. Matter No. 94-5-42-MTC, March 20, 1996

Delay in the transcription of stenographic notes by a stenographic reporter under the judge's supervision and control cannot be considered a valid reason for delay in rendering judgment xxx xxx A judge cannot be allowed to blame his court personnel for his own incompetence or negligence xxx xxx Precisely, judges are directed to take down notes of salient portions of the hearing and proceed in the preparation of decisions without waiting for the transcribed stenographic notes, the 90-day period for deciding cases should be adhered to.

Bolalin v. Occiano, A. M. No. MTJ-96-1104, January 14, 1997

If the case load of the judge prevents the disposition of cases within the prescribe period, he should ask for a reasonable extension of time from the Supreme Court.

Rivera v. Lamorena, A.M. No. RTJ-97-1391, October 16, 1997

Xxx xxx The delay in resolving motions and incidents pending before a judge within the reglementary period of ninety (90) days fixed by the Constitution and the law is not excusable and constitutes gross inefficiency.

Supreme Court almost always grants requests for extension of time to decide cases. A heavy caseload may excuse a judge's failure to decide cases within the reglementary period; but not his or her failure to request an extension of time which to decide the same on time, (i.e. before the expiration of the period to be extended.

Q. Judge X failed to act on a motion to dismiss a case. He contends that the delay was brought about by the failure of his staff to present him the ex-parte motion to resolve. Is the contention of Judge X valid?

A. A judge cannot take refuge behind the inefficiency or mismanagement by court personnel. Proper and efficient court management is as much as his responsibility. It is also his duty to organize and supervise the court personnel to ensure the prompt and efficient dispatch of business.

Rule 3.06. While a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during the trial, it should always be borne in mind that undue interference may prevent the proper presentation of the cause or the ascertainment of truth.

Valdez vs. Aquilizan, 133 SCRA 150

A judge may properly intervene to expedite and prevent unnecessary waste of time. He may intervene to profound clarificatory questions, but should limit himself only to clarificatory questions and not to ask searching questions after the witness had given direct testimony.

People vs. Catindihan, 97 SCRA 679

When a judge may intervene to clear some obscurity or prevent waste of time, the same must be done with considerable circumspection.

There will be undue interference if the judge will extensively profound questions to the witnesses, which will have the effect of or will tend to build or bolster the case for one of the parties.

Canon 14, CJE

A judge should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to an unnecessary display of learning or a premature judgment.

(Canons of Judicial Ethics) – *interference in conduct of trial.*

While a judge may properly intervene in a trial of a case to promote expedition and prevent unnecessary waste of time, or to clear up some obscurity, nevertheless, he should bear in mind that his undue interference, impatience, or participation in the examination of witness, or a severe attitude on his part towards witnesses, especially those who are excited or terrified by the unusual circumstances of trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

Judges are not mere referees like those of a boxing bout… they should have as mush interest as counsel in the orderly and expeditious presentation of evidence, calling the attention of counsel to points at issue that are overlooked, directing them to ask the question that would elicit the facts on the issues invoked, clarifying ambiguous remarks of witnesses ***(People vs. Ihasan, 129 SCRA 695).***

Rule 3.07. A judge should abstain from making public commitments on any pending or impending case and should require similar restraint on the part of the court personnel.

A judge must hear both sides before he should attempt to make any conclusion on the issues of a case – which conclusion could be the basis of his written judgment. It is dangerous for a judge to make comments, specially publicly, of pending cases before his court or even impending cases such as those publicly known and anticipated to be filed in court having been subjected of wide publicity or sensationalized in the media.

ADMINISTRATIVE RESPONSIBILITIES

Rule 3.08. A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

The judge is the administrator of his court. He is responsible for the administrative management thereof. He supervises the court personnel to ensure prompt and efficient dispatch of business in his court.

Request of Judge Eduardo F. Cartagena, A.M. no. 95-9-98-MCTC, December 4, 1997

Requests for permission to travel abroad on official time should not be presumed granted by the Supreme Court. Xxx xxx A judge who departs for abroad without the knowledge, let alone the permission, of the Court violates Memorandum Order No. 264 which mandates the requests for permission to travel abroad from members and employees of the judiciary should be obtained from the Supreme Court.

Buenaventura vs. Benedicto, 38 SCRA 71

The Supreme Court found the inclination of the respondent judge to leniency in the administrative supervision of his employees an undesirable trait.

Shan vs. Aguinaldo, 117 SCRA 32

For his failure to perform his duties, the judge cannot use as excuse the negligence or malfeasance of his own employees.

Nidua vs. Lazaro, 174 SCRA 581

The employees are not guardians of the judge's responsibilities.

Instead of being obstructive, he should help facilitate the performance of the administrative functions of other judges and court personnel. He must coordinate and cooperate with the other judges specially judges of higher courts and other judges gearing toward an efficient and prompt dispensation of justice.

Ysasi vs. Fernandez, 26 SCRA 395

Judges should respect the orders and decisions of an appellate court. Refusal to honor and injunctive order of the Supreme Court constitutes contempt.

Hernandez vs. Colayco, 64 SCRA 480

Judges should respect resolutions of the Supreme Court.

Vivo vs. Cloribel, 18 SCRA 713

They should take cognizance of settled rulings of the Supreme Court.

De Leon vs. Salvador, 36 SCRA 567

Judges should not interfere with the orders and decisions of judges of co-equal courts.

Rule 3. 09. A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of burdens, and require at all times the observance of high standards of public service and fidelity.

Tan v. Madayag, Adm. Matter No. RTJ-93-995, March 11, 1994

A judge cannot take refuge behind the inefficiency or mismanagement of his court personnel. Proper and efficient court management is definitely his responsibility.

Canon 8, Canons of Judicial Ethics

A judge must properly organize in court to ensure prompt and convenient dispatch of its business.

SC Circular No. 13 dated July 31, 1987, par. 4 (a)

A judge should closely supervise court personnel so that adequate precautions are taken in sending out subpoenas, summons and court processes to ensure that they are timely served and received.

The judge must require his personnel to observe at all times the observance of high standards of public service and fidelity, which he could well do, by example.

Paredes vs. Padua, A.M. CA-91-3-P (May 17, 1993)

Court personnel must adhere to the high ethical standards to preserve the Court's good name and standing.

Rule 3.10. A judge should take or initiate appropriate disciplinary measure against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

The judge may summarily punish any person including lawyers and court personnel, for *direct* contempt for misbehavior committed in the presence of or so near a court or a judge as to obstruct or interrupt the proceedings before the same (Rule 71, RRC). He may also punish any person for *indirect* contempt after appropriate charge and hearing who is guilty of the acts enumerated under Section 3, Rule 71 of the Rules of Court.

Every court has the inherent power among others, to preserve and enforce orders in its immediate presence, to compel obedience to its judgments, orders and processes and to control, in furtherance of justice, the conduct of its ministerial officers ***(Section 5, Rule 135, RRC).***

Dallay-Papa vs. Almora, 110 SCRA 376

Although a judge has the power to recommend for appointment court personnel, however, he has no power to dismiss them. The power to dismiss a court employee is vested in the Supreme Court.

Rule 3.11. A judge should appoint commissioners, receivers, trustees, guardians, administrators, and others on the basis of merit and qualifications avoiding nepotism and favoritism. Unless otherwise allowed by law, the same criterion should be observed in recommending the appointment of court personnel. Where the payment of just compensation is allowed, it

should be reasonable and commensurate with the fair value of services rendered.

Canon 11, CJE

In appointing such persons, he must be guided strictly by merits and qualification of the applicants – that is, on the basis of their character, ability and competency. There must be no room for nepotism and favoritism.

Art. 244, Revised Penal Code

Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualification therefore shall be guilty of unlawful appointment punishable with imprisonment and fine.

DISQUALIFICATIONS

Rule 3.12. A judge should take no part in a proceeding where the judge's impartiality might be reasonably questioned. These cases include, among others, proceedings where:

a. the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;
b. the judge served as executor, administrator, guardian, trustee or lawyer of the case of matters in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;
c. the judge ruling in a lower court is a subject of review;
d. the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;
e. the judge knows that the judge's spouse or child has a financial interest as heirs, legatee, auditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceedings, or any other interest that could be substantially affected by the outcome of the proceeding.

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.

In every instance, the judge shall indicate the legal reason for inhibition.

Mateo vs. Villaluz, 50 SCRA 18, Castillo vs. Juan, 62 SCRA 127

A litigant is entitled to no less than the cold neutrality of an impartial judge. Due process cannot be satisfied in the absence of that degree or objectivity on the part of a judge sufficient to reassure litigants of his being fair and just.

When the judge has personal knowledge of disputed evidentiary facts, he will lose that degree of objectivity. The tendency will be for him to decide the case based on his personal knowledge and not necessarily on the basis of the evidence presented and offered by the parties. His objectivity is therefore impaired. Consequently, the rule of fairness demands of him that he should take no part in the case and let another judge hear and decide it.

Gutierrez vs. Santos, 112 Phil. 184 (1961)

The rule on disqualification of a judge, whether compulsory or voluntary, to hear a case finds its rationale in the salutary principle that no judge should preside in a case which he is not wholly free, disinterested, impartial and independent, which is aimed at preserving the people's faith and confidence in the courts of justice.

Aparicio vs. Andal, 175 SCRA 569 (1989)

The mere filing of an administrative case against a judge is not a ground for disqualifying him from hearing the case. For if on every occasion the party apparently aggrieved would be allowed to either stop the proceeding in order to await the final decision on the desired disqualification, or demand the immediate inhibition of the judge on the basis alone of his being so charged, many cases would have to be kept pending or perhaps there would not be enough judges to handle all the cases pending in all courts. The Court has to be shown, other than the filing of the administrative complaint, acts or conduct of the judge clearly indicative of arbitrariness or prejudice before the latter can be branded the stigma of being biased or partial.

Cf. Austria vs. Masaquel, 20 SCRA 1247

A judge should disqualify himself when a former associate served as counsel in the case during their association.

Ignacio vs. Villaluz, 90 SCRA 16

Due process requirements cannot be satisfied in the absence of that degree of objectivity on the part of a judge sufficient to reassure litigants of his being fair and just.

Government vs. Heirs of Abella, 49 Phil. 374

A petition to disqualify a judge must be filed before rendition of judgment by the judge.

Alexander Howden vs. Collector of Internal Revenue, 13 SCRA 601

It must first be presented to him for his determination. It cannot be raised for the first time on appeal.

Admn. Matter: Constante Pimentel, 85 SCRA 41

The objection of the competency of a judge must be filed with him in writing but not in an unverified letter. The judge will then determine his competency.

Pimentel vs. Salanga, 21 SCRA 160

Xxx If a litigant is denied a fair and impartial trial, induced by the judge's bias or prejudice, we will not hesitate to order a new trial, if necessary, in the interest of justice.

Joaquin vs. Barreto, 25 Phil. 28

If the judge disqualifies or inhibits himself, he must state the legal reason therefore. This is important because, if any party wishes to question the Order, the appellate court can take cognizance thereof and can review the soundness or unsoundness of the reason for disqualification or inhibition.

Albos v. Alaba, Adm. Matter NO. MTJ-1517, March 11, 1994

A judge is bound never to consider lightly a motion for his inhibition that questions or puts to doubt, however insignificant, his supposed predilection to a case pending before him. While he must exercise great prudence and utmost caution in considering and evaluating a challenge to his impartiality, he is expected, nevertheless, to act with good dispatch. Any delay, let alone an inaction, on his part can only fuel, whether justified or not, an intensified distrust on his capability to render dispassionate judgment on the case.

Parayno v. Meneses, G.R. No. 112684, April 26, 1994

Xxx A judge may, in the exercise of his sound discretion, inhibit himself voluntary from sitting in a case, but it should be based on good sound or ethical grounds, or for just and valid reasons. Xxx it is the judge's sacred duty to administer justice without fear or favor.

DISQUALIFICATION	**INHIBITION**
1. Rule on disqualification numerates the grounds under which any judge or judicial officer is disqualified from acting as such an the express enumeration therein of such grounds exclude the others.	1. Rule does not expressly enumerate the specific grounds for inhibition but merely gives a broad basis thereof, i.e. good, sound or ethical grounds.
2. Rule gives the judicial officer no discretion to try to sit in a case.	2. Rule leaves the matter of inhibition to the sound discretion of the judge.

Q. Judge X is a deacon in the INK church. Y, a member of the same religious sect belonging to the same INK filed a case against Z who belongs to the El Shaddai Charismatic group. The case was raffled to Judge X's sala. The lawyer of Z filed a motion to disqualify Judge X on the ground that since he and the plaintiff belonged to the same religious sect, Judge X would possess the cold neutrality of an impartial judge. Judge X denied the motion since the reason involved for his disqualification was not among the grounds for disqualification under the Rule of Code of Judicial Conduct. Was Judge X's denial of motion for inhibition well-founded?

A. YES. The fact that the Judge X and litigant Y both belong to INK while litigant Z belongs to El Shaddai group, is not mandatory ground for disqualifying Judge X from presiding over the case. The motion for his inhibition is addressed to his sound discretion and he should exercise the same in a way the people's faith in the courts of justice is not impaired.

REMITTAL OF DISQUALIFICATION

Rule 3.13. A judge disqualified by the terms of Rule 3.12 may, instead of withdrawing from the proceeding, disclosure on the record the basis of qualification. If, based on such disclosure, the parties and lawyers independently of the judge's participation, all agree in writing that the reason for inhibition is immaterial or insubstantial, the judge may then participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

The judge must maintain and preserve the trust and faith of the parties litigants. He must hold himself above reproach and suspicion. At the very first sign of lack of faith and trust to his actions, whether well grounded or not, the Judge has no other alternative but inhibit himself from the case.

Note: xxx a judge, otherwise disqualified by the terms of 3.12 has the option of inhibiting himself from the proceedings or simply disclosing the presence of any of the grounds enumerated in Rule 3.12. The parties and their lawyer may agree, in writing, to allow the judge to participate in the proceeding.

CANON 4:

A judge may, with due regard to official duties, engage in activities to improve the law, the Legal System and the Administration of justice.

PARTICIPATION IN PRIVATE DEALINGS

Rule 4.01. A judge may, to the extent that the following activities do not impair the performance of judicial duties or cast doubt on the judge's impartiality:

a. speak, write, lecture, teach, or participate activities concerning the law, the legal system and the administration of justice;
b. appear at a public hearing before a legislative or executive body on matters concerning the law, the legal system or the administration of justice and otherwise consult with them on matters concerning the administration of justice;
c. serve on any organization devoted to the improvement of the law, the legal system or the administration of justice.

Ultimately the decision to engage in the aforementioned activities will depend upon the sound judgment of the judge as he is in the best position to know his ability, competence and weaknesses.

Albos v. Alaba, supra

Xxx xxx judges are, as they should be, encouraged to engage in any lawful enterprise that may help bring about an improved administration of justice. But, as that it may, judges must not allow themselves to be thereby distracted from the performance of their judicial tasks which must remain at all times to be their foremost and overriding concern.

CANON 5

A judge should regulate extra-judicial activities to minimize the risk of Conflict with Judicial Duties

A VOCATIONAL, CIVIC AND CHARITABLE ACTIVITIES

Rule 5.01. A judge may engage in the following activities provided that they do not interfere with the performance of judicial duties or detract from the dignity of the court:

a. write, lecture, teach, speak on non-legal subjects;
b. engage in the arts, sports and other special recreational activities;
c. participate in civic and charitable activities;
d. serve as an officer, director, trustee, or non-legal advisor of a non-political educational, religious, charitable, fraternal or civic organization.

If they opt to engage in such activities, they must learn how to manage their time in such manner that their judicial responsibilities do not falter and suffer.

Judges cannot serve as officers or advisers of political aggrupations and organizations established for profit. Judges must refrain from partisan political activities and organizations for profit. Otherwise, he will be forced to advance the interests of these organizations through the use of his office or influence.

Canon 24, CJE

While judges may participate in civic and charitable activities, they are not allowed to solicit donations for such activities. He should not use the power of his office or the influence of his name to promote the business interests of others. He should not solicit for charities.

Q: S was a judge and the publisher/columnist for a tabloid, he was also a writer for another paper. G charged him with using his columns to ventilate his views. He has repeatedly used insulting and inflammatory language against the governor, provincial prosecutor and legal adviser. Decide.
A: While S has the right to free speech, his writing of vicious editorials compromises his duties as judge in the impartial administration of justice. They reflect on his office and on the officers he ridicules. The personal behavior of a judge in his professional and everyday life should be free from the appearance of impropriety as such conduct erodes public confidence in the judiciary. ***(Galang vs. Santos, 307 SCRA 562).***

FINANCIAL ACTIVITIES

Rule 5.02. A judge shall refrain from financial and business dealings:
1. that tend to reflect adversely on the courts impartiality;
2. that interfere with the proper performance of judicial activities; or
3. that increase involvement with lawyers or persons likely to come before the court.

Note: Interpreting the above rule, judges therefore, are not prohibited from having financial and business dealings. *However*, they must ever be mindful of circumstances described in the same rule which could render their financial and business dealings unethical.

Canon 25, CJE

A judge should abstain from making personal investments which are apt to be involved in litigation in his court; and, after accession to the bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss.

Buenaventura vs. Benedict, 38 SCRA 71

Section 24 of the Canons of Judicial Ethics requires a judge to refrain from private business ventures or charitable enterprises so as not to give occasion any suspicion that he utilizes the power of his office or the influence of his name for the success of such undertakings or to give rise to any situation wherein his personal interest might conflict with the impartial performance of his official duties.

Macariola vs. Asuncion, 14 SCRA 81

Xxx there is no provision in both in 1935 and 1973 Constitutions of the Philippines, nor is there an existing law expressly prohibiting members of the Judiciary from engaging or having interest in any lawful business.

The 1987 Constitution and the Judiciary Reorganization Act of 1980 have no provisions prohibiting judges from engaging in business.

Javier vs. De Guzman, 192 SCRA 434 (1991)

He violates this canon where he lends money at conscionable interests and files suit for collection at the place where he is judge, to enable him to take advantage of his position. Such action merits severe reprimand.

Rule 5.03. Subject to the provisions of the proceeding rule, a judge may hold and manage investments but should not serve as an officer, director, manager, advisor, or employee of any business except as director of a family business of the judge.

Note: xxx that a judge is allowed to remain a director of the judge's family business, but not to serve as officer, manager, advisor, or employee thereof.

Q: E posted an advertisement on the RTC bulletin board for waitress and singers to work at his restaurant. He was later caught when a reporter from "Hoy Gising!" taped an interview which revealed that he intended to operate a drinking pub with scantily clad waitresses. Decide.

A: A judge should avoid impropriety and even the mere appearance of impropriety. He should also refrain from financial or business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or increase involvement with lawyers or litigants. He should also manage his financial interests so as to minimize the number of cases giving grounds for disqualification. Finally, the halls of justice should not be used for unrelated purposes. ***(Dionisio vs. Escano, 302 SCRA 411)***

Under RA 3019:*Sec. 3. Corrupt practices of public officers*. In addition to acts or omission of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared as unlawful:

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity or in which he is prohibited by any law from having any interest.

PROHIBITION UNDER THE REVISED PENAL CODE

Art. 215. Prohibited Transactions*.* The penalty of *prision correccional.* In its minimum period or a fine ranging from P200 to P1,000 or both shall be imposed upon any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.

Art. 216. Possession of Prohibited interest by public officer*.* The penalty of *arresto mayor* in its medium period to *prision correccional* in its minimum period, or a fine ranging from P200 to P1,000 or both shall be imposed upon a public officer who, directly or indirectly, shall become interested in any contract or business which it is his official duty to intervene.

Rule 5.04. A judge or any immediate member of the family shall not accept a gift, bequest, favor or loan from anyone except as may be allowed by law.

It is a good policy for any judge to advise his immediate relatives of this prohibition. It is equally advisable that a judge should warn his relatives from being engaged or used from being intermediaries by party-litigants who have pending cases in his court.

Acceptance of gifts given by reason of the office of the judge is *indirect bribery (Art. 211, RPC)* and when he agrees to perform an act constituting a crime in connection with the performance of his official duties in consideration of any offer, promise, gift or present received by such offer, he is guilty of *direct bribery (Art. 210, RPC).*

Section 14, R.A. 3019

The judge is liable criminally or directly or indirectly receiving gifts, present or other pecuniary or material benefit, for himself or for another under conditions provided in Section 2, (b) and (c) of the law.
Exception: Excepted are unsolicited gifts or presents of small value offered or given as a mere ordinary token of gratitude or friendship according to local custom or usage.

Ompoc vs. Torres, 178 SCRA 15

It is a serious misconduct for a judge to receive money from a litigant in the form of loans which he never intended to pay back. Even if the judge intends to pay, it is an act of impropriety to take a loan from a party-litigant.

VOID DONATIONS UNDER THE CIVIL CODE

Donations given to a judge or to his wife, descendants or ascendants by reason of his office are void (Art. 739, Civil Code). Ownership does not pass to the donee. Money or property donated is recoverable by the donor, his heirs or creditors.

Rule 5.05. No information acquired in a judicial capacity shall be used or disclosed by a judge in any financial dealing or for any other purpose not related to judicial activities.

The judge may be liable for violation of Section 3 (k) of R.A. No. 3019

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his personal position to authorized persons, or releasing such information in advance of its authorized release due.

Violation of the Rule may also lead to *"revelation of secrets by an officer"* or to *"revelation of the secrets of a private individual*" punishable by Arts. 229 and 230 of the Revised Penal Code respectively.

FIDUCIARY ACTIVITIES

Rule 5.06. A judge should not serve as the executor, administrator, trustee, guardian or any other fiduciary, *except* for the estate, trust, or person of a member of the immediate family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of immediate family" shall be limited to the spouse and relatives within the second degree of consanguinity. As a family fiduciary, a judge shall not:

1. **serve in proceeding that might come before the court of said judge; or**
2. **act as such as contrary to Rule 5.02 to 5.05.**

Note: The relationship mentioned is by consanguinity and not by affinity.

PRACTICE OF LAW AND OTHER PROFESSION

Rule 5.07. A judge shall not engage in the private practice of law. Unless prohibited by the Constitution or law, a judge may engage in the practice of any other profession provided that such practice will not conflict or tend to conflict with judicial functions.

What is basically prohibited as judges is to practice law. Judges however, may engage in other lawful professions (other than the practice of law) as long as they are not prohibited by the Constitution or by law. Even then, judges must still refrain from engaging in such other professions if such engagement will conflict with their judicial functions.

Dia-Anonuevo vs. Bercacio, 68 SCRA 81

"The rule disqualifying a municipal judge from engaging in the practice of law seeks to avoid the evil possible use of the power and influence of his office to affect the outcome of a litigation where he is retained as counsel. Compelling reasons of public policy lie behind this prohibition, and judges are expected to conduct themselves in such a manner as to preclude suspicion that they are representing the interests of party-litigant. The practice of law is not limited to the conduct of cases in court or participation in court proceedings but also includes preparation of pleadings or papers in anticipation of a litigation, and giving of legal advice to clients or persons needing the same."

A. B. A. Op. 143 (May 9, 1935)

A judge should not engage in the practice of private law, nor permit a law firm, of which he was formerly an active member, to continue to carry his name in the firm name because that might create the impression that the firm possesses an improper influence with the judge and in consequence, tend to impel those in need of legal services in connection with matters before the judge employ them.

Balayon Jr. vs. Judge Ocampo, A.M. No. MTJ-91-619 (January 29, 1993)

It is well settled that municipal judges may not engage in notarial work except as notaries as public ex-officio. As notaries public-officio, they may engage only in the notarization of documents connected with the exercise of their official functions. They may not, as such notaries public officio, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyance, which bear no relation to the performance of their functions as judges.

However, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, the Supreme Court ruled that MTC and MCTC judges assigned to municipalities or circuits with lawyers or notaries public may, in their capacity as notaries public ex-officio, perform any act within the competency of a regular notary public, **provided that**:

1. all notarial fees charged be for the account of the Government and turned-over to the municipal treasurer and

2. certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

FINANCIAL DISCLOSURE

Rule 5.08 A judge shall make full financial disclosure as required by law.

Every public officer, including judges are required to file a true, detailed and sworn statement of assets and liabilities including statement of the amounts and services of income, the amounts of their personal and family expenses and the amount of income taxes paid for the next preceding calendar year.

EXTRA-JUDICIAL APPOINTMENTS

Rule 5.09 A judge shall not accept appointment or designation to any agency performing quasi-judicial or administrative functions.

Section 12, Art. VIII, 1987 Constitution

The members of the Supreme Court and of other courts established by law shall not be designated to any agency performing *quasi-judicial* or *administrative* functions.

POLITICAL ACTIVITIES

Rule 5.10 A judge is entitled to entertain personal views on political questions. But to avoid suspicion of political partisanship, a judge shall not make political speeches, contribute to party funds, publicly endorse candidates for political office or participate in other partisan political activities.

Canon 27, CJE

A judge, as a citizen is entitled to entertain political views on political issues. However, to avoid suspicion of political partisanship, he should not make political speeches, contribute funds, publicly endorse candidates for political office or participate in political partisan activities.

Vistan vs. Nicolas, 201 SCRA 524

For having held himself out as a congressional candidate while still a member of the Bench, Respondent took advantage of his position to boost his candidacy, demeaned the stature of his office, and must be pronounced guilty of gross misconduct.

COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT

All judges shall comply strictly with this Code.

LIABILITIES OF JUDGES

Section II, Art. VIII, 1987 Constitution

The members of the Supreme Court and judges of lower courts shall hold office during a good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court *en banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of majority of the Members who actually took part in the deliberations on the issues in the case and voted therein.

ADMINISTRATIVE LIABILITIES

Grounds for administrative cases against Judges:

1. serious misconduct
2. inefficiency

In re: Impeachment of Horilleno, 43 Phil. 212

Misconduct implies malice or a wrongful intent, not a mere error of judgment. "*For serious misconduct to exist*, there must be a reliable evidence showing that the judicial acts complained of were corrupt or were inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules."

In re: Climaco, Adm. Case no. 134-J (Jan. 21, 1974) 55 SCRA 107

Inefficiency implies negligence, ignorance and carelessness. A judge would be inexcusably negligent if he failed to observe in the performance of his duties that diligence, prudence and circumspection which the law requires in the rendition of any public service.

a. Serious misconduct or inefficiency:

Misconduct – wrongful intention and not mere error in judgment ***(Raquiza vs. Castaneda, 82 SCRA 235)***

Serious Misconduct – exists when the judicial act complained of is corrupt or inspired by an intention to violate the law or a persistent disregard of well-known legal rules***. (Galangi vs. Macli-ing, Adm. Matter No. 75-DJ, Jan. 17, 1978)***

Serious Inefficiency – an example is negligence in the performance of duty, if reckless in character ***(Lapena vs. Collado, 76 SCRA 82).***

Q: Upon retirement, B left 7 criminal cases and 3 civil cases undecided within the 90-day period required by Section 15, Article VII of the Constitution. He says it was due to serious illness. May he be disciplined?

A: Members of the bench have a duty to administer justice without undue delay. Failure to do so within the reglamentary period constitutes a neglect of duty warranting administrative penalties. If hindered by illness, a judge should inform the Office of the Court Administrator and ask for additional time in order to avoid the sanctions. However, if there is no malice or bad faith, and the judge is prevented by factors beyond his control, the penalty will be mitigated. ***(Re: Cases Left Undecided by Judge Narciso M. Bumanglag Jr., 306 SCRA 50).***

b. **Error or Ignorance of Law**:
- Error or mistake must be gross or patent, malicious, deliberate or in bad faith.
- Must act fraudulently, corruptly or with gross ignorance.

Caveat: not every error or mistake of a judge in the performance of his duties make him liable therefore. To hold the judge administratively accountable for every erroneous ruling or decision he renders, assuming he has erred, would be nothing short of harassment and would make his position unbearable. ***(Secretary of Justice vs. Marcos, 76 SCRA 301).***

Aurillo vs. Francisco, 235 SCRA 238 (1994)

If the law is so elementary, not to know it or to act as if one does not know it, constitutes ignorance of the law. A judge who disregards basic rules and settled jurisprudence shows gross ignorance of law. Ignorance of the law, which everyone is bound to know, excuses no one – not even judges. *Ignorantia juris quod quisque scire tenetur non excusat.*

Bengzon vs. Adaoag, 250 SCRA 344 (1995)

To warrant a finding of ignorance of the law and abuse of authority, the error must be so gross and patent as to produce an inference of ignorance or bad faith or that the judge knowingly rendered an unjust decision. The error must be grave and on so fundamental a point as to warrant condemnation of the judge as patently ignorant or negligent.

Buenaventura vs. Garcia, 187 SCRA 598 (1990)

A judge who dismissed a rape case upon desistance of the 11-year-old rape victim and who allowed compromise of said case with his intervention by the accused paying the victim is guilty of gross ignorance of the law and knowingly rendering an unjust judgment, liable for dismissal from the service, for as judge he should have known that the victim's consent in a statutory rape is invalid and the compromise is an admission of guilt and his participation therein is unbecoming of a judge.

State Prosecutors vs. Muro, 251 SCRA 111 (1995)

Egregious legal error, legal error motivated by bad faith, or a continuing pattern of legal error, on the part of a judge does amount to misconduct which may be subject to discipline. A legal error is egregious and serious enough to amount to misconduct when judges deny individuals their basic or fundamental rights, such as when defendants were not advised of their constitutional rights to counsel, coerced to plead guilty, sentenced to jail when only a fine is provided by law, sentenced to jail for a period longer than the maximum sentence allowed by law, or when defendant or the prosecution was denied a full and fair hearing. A judge's act of *motu proprio* dismissing a criminal case for violation of foreign exchange restrictions, without waiting for the defense to file a motion to quash or without affording the prosecution the opportunity to be heard on the matter, constitutes gross ignorance of law calling for his dismissal.

Revita vs. Rimando, 98 SCRA 619 (1980)

A judge may not be disciplined for error of judgment, unless there is proof that the error was attributable to a conscious and deliberate intent to perpetrate an injustice. For as a matter of public policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity are not subject to disciplinary action, even though such acts are erroneous. This does not mean, however, that he should not evince due care in performing his adjudicatory prerogatives.

Filipinas Bank vs. Tirona-Liwag, 190 SCRA 834 (1990)

Good faith and absence of malice, corrupt motives or improper consideration are sufficient defenses protecting a judicial officer charged with ignorance of the law and promulgation of an unjust decision from being held accountable for errors of judgment on the premise that no one called upon to try the facts or interpret the law in the administration of justice can be infallible.

Vistan v. Nicolas, Adm. Matter No. MTJ-87-79, September 13, 1991

Judges may be disciplined only by the Supreme Court. The applicable procedural rule is Rule 140, Rules of Court.

Procedure (Rule 140)

6. Complaint, in writing and duly sworn to, is filed with the Supreme Court *(sec.1)*

7. If found meritorious, a copy thereof shall be served on the respondent and he shall be required to comment within 10 days of service *(sec. 6)*

8. Upon filing of respondent's comments or expiration of the period for filing comment, the Supreme Court either refers to matter to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation, or assigns a Justice of the Court of Appeals (if respondent is an RTC judge) or a judge of the RTC (if respondent is a judge of an inferior court) to investigate and hear the charges *(sec.7)*

9. After hearings, the investigating justice or judge submits a report of findings of fact, conclusions of law and recommendations to the Supreme Court *(sec.8)*

10. The Supreme Court takes action as the facts and the law may warrant *(sec. 9)*

Proceedings shall be private and confidential but a copy of the decision or resolution of the Court shall be attached to the record of the judge in the Office of the Court Administrator. *(sec. 11)*

.***Suerte vs. Ugbinar, 75 SCRA 69 (1977)***

Impeachment proceedings against judges are penal in nature and are governed by the rules applicable to criminal cases. The charges must, therefore, be proved beyond reasonable doubt.

Principle of Res Ipsa Loquitor (the things speak for itself)

A judge may be dismissed even without formal investigation, if based on the records, his liability is clear and unquestionable.

Note: The doctrine of *res ipsa loquitor* does not and cannot dispense with the twin requirement of due process, i.e. notice and the opportunity to be heard. It merely dispenses with the procedure laid down In Rule 140 of the Rules of Court.

Q. May Judge Bautista be disciplined by the Supreme Court based solely on a complaint filed by the complainant and the answer of respondent Judge? If so, under what circumstances? What is the rationale behind this power of the Supreme Court?

A. Yes, where the facts of record sufficiency provide the basis for the determination of the lawyer's administrative liability he may be disciplined or disbarred by the SC without further inquiry or investigation. A pre-trial hearing is not necessary the respondent having been fully heard in his pleading.

The principle or doctrine applies to both judges or lawyers. Judges had been dismissed from

the service without need for a formal investigation because base on the records, the gross misconduct of inefficiency of the judges clearly appears. ***(Uy vs. Mercado, 154 SCRA, 567)***

WITHDRAWAL, DESISTANCE, RETIREMENT or PARDON

Anguluan vs. Taguba, 93 SCRA 179

The withdrawal of the case by the complainant, or the filing of an affidavit of desistance or the complainant's loss of interest does not necessarily cause the dismissal thereof. *Reason*: To condition administrative actions upon the will of every complainant who for one reason or another, condones a detestable act is to strip the Supreme Court of its supervisory power to discipline erring members of the judiciary.

Espayos vs. Lee, 89 SCRA 478

Desistence will not justify the dismissal of an administrative case if the records will reveal that the judge had not performed his duties.

Pesole vs. Rodriguez, 81 SCRA 208

In certain cases, the acceptance by the President of respondent's courtesy resignation does not necessarily render the case moot or deprive Us of the authority to investigate the charges. xxx Each case is to be resolved and in the context of the circumstances present thereat. Thus, we explained: "The court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. xxx If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he has served well and faithfully: if guilty, he deserves to receive corresponding censure and a penalty proper and imposable under the situation."

Office of the Court Administrator v. Sumilang, et al., A.M. No. MTJ-94-989, April 18, 1997

Where a judge who has been found guilty of gross misconduct and conduct unbecoming a judge retires during the pendency of the action the proper penalty must be imposed, in lieu of removal from office, is forfeiture of all retirement benefits.

Monsanto vs. Palanca, 126 SCRA 45 (1982)

Abolition of a respondent judge's judicial position does not necessarily render the administrative case for acts committed during his incumbency moot and academic, nor preclude his being held-liable in his present judicial position, where the charges are so serious that they affect his competency and integrity of a judge.

Icasiano v. Sandiganbayan, G. R. No. 95642; May 28, 1992

Administrative proceedings against judges are distinct from criminal proceedings. Hence, prosecution in one is not a bar to the other. Xxx xxx When the Supreme Court acts on complaints against judges, it acts as personnel administrator, imposing discipline and not as a court judging justiciable controversies.

Note, therefore, that the administrative proceedings for the removal of the erring judge and criminal proceedings against him for the same offense can proceed independently of each other.

Maceda v. Vasquez, G.R. No. 102781, April 22, 1993

Where a criminal complaint against a judge or other court employee arises from their administrative duties as judge or as a court employee, the Ombudsman before whom a complaint is filed, must defer action on such complaint and refer this to the Supreme Court for determination whether said judge or court employee had acted within the scope of his administrative duties.

Bartolome v. de Borja, 71 SCRA 153

While dismissal of criminal case does not absolve respondent judge from a charge that he acted irregularly in the performance of his official duties, administrative proceedings are "in the nature highly penal in character and are to be governed by the rules of law applicable to criminal cases. The charges must, therefore, be proved beyond a reasonable doubt."

Balayon vs. Ocampo, 218 SCRA 13 (1993)

There must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by an intention to violate the law, or were in persistent disregard of well-known legal rules.

Del Callar v. Salvador, A.M. No. RTJ-97-1369, February 17. 1997

Judges may not be held administratively liable for every error or mistake in the performance of their duties. To merit disciplinary action, the error or mistake must be gross or patent, malicious, deliberate, or in bad faith. In the absence of proof of the contrary, erroneous decisions or orders are presumed to have been issued in good faith.

Secretary of Justice vs. Bullecer, supra. 61 SCRA 13 (1974)

Like misconduct, inefficiency as a ground for disciplinary action must be serious or one which is weighty or momentous and not trifling. Negligence in the performance of duty, if reckless in character, could amount to serious or inexcusable inefficiency.

Salcedo vs. Inting, 91 SCRA 19

To warrant disciplinary action, the act of the judge must have a direct relation to the performance of his official duties. It is necessary to separate the character of the man from the character of the officer.

Cabillo vs. Celis, 83 SCRA 620

The charge against him must be established by convincing proof. The records must show as free from any doubt a case which compels the imposition of disciplinary action. Xxx xxx for a judge to be rendered capable in any administrative proceeding, there should be a clear and sufficient evidence of his misconduct.

Raquiza vs. Castaneda, Jr., 81 SCRA 236

The rules even in an administrative case demands that even if respondent judge should be disciplined for grave misconduct or any grave offense, the evidence presented against him should be competent and derived from direct knowledge, and that before a judge could be faulted, it should be only after due investigation and based on competent proofs, no less. This is all the more so when as in this case the charges are penal in nature.

Icasiano v. Sandiganbayan, supra

Note: This pronouncement must be taken with caution in the light of other Court pronouncements on the nature of administrative proceedings in relation to criminal proceedings, i.e., that while the latter requires proof beyond reasonable doubt, the former requires only substantial evidence.

Instances of Serious Misconduct Which Merited Discipline by the Supreme Court:

1. Failure to deposit funds with the municipal treasurer or produce them despite his promise to do so *(Montemayor vs. Collado, 107 SCRA 258).*

2. Misappropriation of fiduciary funds (proceeds of cash bail bond) by depositing the check in his personal account, thus converting the trust fund into his own use *(Barja vs. Beracio, 74 SCRA 355).*

3. Extorting money from a party-litigant who has a case before his court *(Haw Tay vs. Singayao, 154 SCRA 107)*.

4. Solicitation of donation for office equipment *(Lecaroz vs. Garcia)*.

5. Frequent unauthorized absences in office *(Municipal Council of Casiguruhan, Quezon vs. Morales, 61 SCRA 13).*

6. Falsification of Certificate of Service to collect salary *(Secretary of Justice vs. Legaspi, 107 SCRA 233).*

7. Declaring Wednesdays as non-session days which the judge declared as his "mid-week pause" *(In re: Echiverri, 67 SCRA 467).*

8. Indefinite postponement for several years of a criminal case pending in his sala *(Bulan vs. Cardenas, 101 SCRA 788)*.

9. Judge poking his gun to another in a restaurant while in a state of intoxication *(De la paz vs. Inutan, 64 SCRA 540)*.

10. Pistol-whipping the complainant on the latter's left face without any justification *(Arban vs. Borja, 143 SCRA 634)*.

11. Acting as counsel and/or attorney–in-fact for all the parties with opposing interests on a parcel of land in pursuance of his personal self-interest *(Candia vs. Tagabucba, 79 SCRA 51)*.

12. Using intemperate language unbecoming of a judge *(Santos vs. Cruz, 100 SCRA 538).*

13. Failure to reply to a show cause resolution of the Supreme Court *(Longboan vs. Polig, 186 SCRA 557).*

14. Inaction by judge which is tantamount to partiality in favor of one party *(Ubarra vs. Tecson, 134 SCRA 4)*.

15. Serious act of dishonesty in appropriating the money of complainants for his personal use *(Sarmiento vs. Cruz, 65 SCRA 289)*.

16. Preparation and notarization of an immoral and illegal agreement providing for the personal separation of husband and wife *(Selanova vs. Mendoza, 64 SCRA 69).*

17. Decision not prepared personally by the judge *(Lim vs. Vacante, 69 SCRA 376).*
18. Sitting in a case where he is legally disqualified by reason of the appearance of his nephew-in-law as counsel for the defendant *(Evangelista vs. Baes, 61 SCRA 475).*

19. Failure to inform the Supreme Court that he had two serious criminal cases when he accepted his appointment as RTC Judge *(Office of the Court Administrator vs. Estacion, Jr., 181 SCRA 33)*.

20. Notarizing a special power of attorney in the absence of the principal *(Evalla vs. Mago, 76 SCRA 122)*.

21. Allowing a clerk-messenger to promulgate decisions of acquittal in criminal cases *(Buenaventura vs. Benedicto, 38 SCRA 71)*.

22. Borrowing money from a litigant which the judge never intended to pay back *(Ompoc vs. Torres, 178 SCRA 14)*.

23. Signing of two irreconciliable decisions on the same day *(People vs. Elpedis, 112 SCRA 1).*

24. Delay in transmitting the records to the CFI (RTC) upon conclusion of the preliminary investigation *(Cusit vs. Jurado, 102 SCRA 633).*

25. Allowing withdrawal of cash bail bond without allowing its substitution with proper bond *(Cabangon vs. Valena, 107 SCRA 21).*

26. Imposing excessive bail *(Sunga vs. Salud, 109 SCRA 253)*.

27. Using prisoners for personal purposes *(Hadap vs. Lee, 114 SCRA 559)*.

28. Acting on application for bail during the judge's period of suspension *(Reyes vs. Faderan, 186 SCRA 547)*.

29. Commission of grave abuse of discretion – which means such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction *(Imutan vs. CA, 102 SCRA 286).*

30. Assignig cases without the benefit of raffle in violation of Circular No. 7 (as amended) of the Supreme Court *(Inciong vs. De Guia, 154 SCRA 93)*.

31. Refusal of a judge to furnish counsel with a copy of the transcript and order dictated in open court *(Tamo vs. Gironella, 73 SCRA 613)*.

32. Encashing government checks *(Office of the Court Administrator vs. Bartolome, 203 SCRA 333).*

Instances of Gross Inefficiency Which Merited Discipline by the Supreme Court

1. Delay in the disposition of cases in violation of the Canon that a judge must promptly dispose of all matters submitted to him. With or without the transcripts of stenographic notes, the 90-day period for deciding cases or resolving motions must be adhered to *(Balagot vs. Opinion, 195 SCRA 429).*

2. Unduly granting repeated motions for postponement of a case *(Araza vs. Reyes, 64 SCRA 347).*

3. Unawareness of or unfamiliarity with the application of the Indeterminate Sentence Law and the duration and graduation of penalties *(In re: Paulin, 101 SCRA 605).*

4. Reducing to a ridiculous amount (Php6,000.00) the bail bond of the accused in a murder case thus enabling him to escape the toils of the law *(Soriano vs. Mabbayad, 67 SCRA 385).*

5. Imposing the penalty of subsidiary imprisonment on a party for failure to pay civil imdemnity in violation of R.A. 5465 *(Monsanto vs. Palarca, 126 SCRA 45).*

6. Issuing a warrant of arrest in a case which is clearly civil in nature *(Serafin vs. Lindayag, 67 SCRA 166).*

7. Failure to dismiss a complaint which has prescribed *(Anguluan vs. Taguba, 93 SCRA 179).*

8. Imposing the wrong penalty to the crime charged and proven *(San Luis vs. Montejo, 4 SCRA 645).*

9. Failure to comply with the basic prerequisites for issuance of search warrant *(Secretary of Justice vs. Marcos, 76 SCRA 301)*.

10. Dismissing a criminal case on the principle of in *pari delicto* – a civil law principle *(Ubarra vs. Mapalad, A.M.No. MTJ-91-622, March 22, 1993).*

Aquino vs. Luntok, 184 SCRA 177 (1990)

Where a judge has issued a temporary restraining order, he should promptly act on the application for issuance of preliminary injunction within the 20-day life of temporary restraining order, and while a writ of preliminary injunction issued after the 20-day period is valid, the failure of the judge to resolve the application for injunction within said period may subject him to disciplinary action.

Castano vs. Escano, 251 SCRA 174 (1995)

Judges should not be disciplined for inefficiency on account merely occasional mistakes or errors of judgment. However, when the inefficiency springs from a failure to consider the basic and elementary a rule, a law or principle, the judge is either too incompetent and undeserving of the position and title he holds or he is too vicious that his oversight or omission was deliberately done in bad faith and in grave abuse of juridical authority. In both instances, the judge's dismissal from the service is in order.

In re: Petition for Dismissal of Judge Dizon, supra.

A judge who has been previously dismissed from the service for manifestly erroneous decision in a criminal case through gross incompetence and gross ignorance of the law may be reinstated where there is no clear indication that he was inspired by corrupt motives or reprehensible purpose to set the guilty free.

CIVIL LIABILITIES OF JUDGES IN RELATION TO THEIR OFFICIAL FUNCTIONS

Forbes vs. Chuoco Tiaco and Crossfield, 16 Phil. 534

Whenever and wherever a judge of a court of superior jurisdictions exercises judicial functions, he will not be personally liable in civil damages for the result of his action, utterly regardless of whether he ever had jurisdiction of the subject matter of the action or not.

Bridley vs. Fisher, 80 U.S. 335

Judges of courts of superior or general jurisdiction are not liable in civil actions for their judicial acts, even when such acts are in excess of their jurisdiction and are alleged to have been done maliciously or corruptly.

Art. 32, last par., New Civil Code

The responsibility for damages is not however demandable of judges except when the act or omission of the judge constitutes a violation of the Penal Code or penal statute.

Art. 20, Civil Code

A judge who willfully or negligently renders a decision causing damages to another, shall indemnify the latter for the same.

Art. 27 Civil Code

A judge is also civilly liable for damages, if in refusing or neglecting to decide a case without a just cause, a person suffered material or moral loss without prejudice to any administrative action that may be taken against him.

CRIMINAL LIABILITIES OF JUDGES

Maceda vs. Hon. Ombudsman Conrado Vasquez ,G.R. No. 102781, April 22, 1993

Criminal complaints against judges such as for violations of the Anti-Graft and Corrupt Practices Act and the Revised Penal Code should be filed with the Office of the Ombudsman and not with the Supreme Court.

Judges being public officers are subject to the jurisdiction of the Ombudsman who can investigate and prosecute them for violations of the criminal laws, conformably with the provisions of the Constitution.

However, if there are administrative questions relevant to the investigation of the criminal responsibility of judges and court personnel, the same should first be referred to the Supreme Court. The Supreme Court must determine first whether or not a judge or a court employee acted within the scope of his administrative duties.

a) Knowingly Rendering Unjust Judgment (ART.204,RPC)

Elements:

1. That the offender is a judge.
2. That he renders a judgment in a case submitted to him for decision.
3. That the judgment is unjust.
4. That the judge knows that his judgment is unjust.

** It must be shown beyond cavil that the judgment or order is unjust as being contrary to law so as not supported by the evidence, and that the judge rendered it with conscious and deliberate intent to do an injustice. ***(Rodrigo vs. Quijano, 79 SCRA 10)***

De la Cruz v. Concepcion

The gist of the offense therefore is an unjust judgment be rendered maliciously or in bad faith, that is, knowing it to be unjust. Xxx xxx Mere error therefore in the interpretation or application of the law does not constitute the crime. The nature of the administrative charge of knowingly rendering an unjust judgment is the same as the criminal charge. Thus xxx xxx it must be established that respondent judge rendered a judgment or decision not supported by law and/or evidence and that he must be actuated be hatred, envy, revenge, or greed or some other similar motive.

In re: Climaco, 55 SCRA 107

In order that a judge may be liable for knowingly rendering an unjust judgment, it must be shown beyond reasonable doubt that the judgment is unjust as it is contrary to law or is not supported by evidence, and the same was made with conscious and deliberate intent to do an injustice.

Buenavista vs. Garcia, 187 SCRA 598

To be guilty of knowingly rendering unjust judgment, it is necessary that the judgment or order was rendered with conscious and deliberate intent to perpetrate an injustice. And the *test to determine whether the judgment or order is unjust*, may be inferred from the circumstance that it is contrary to law or is not supported by evidence. A judgment may be said unjust when it is manifestly against the law and contrary to the weight of evidence. An unjust judgment is one contrary to the standards of rights and justice or standards of conduct prescribed by the law.

Gahol vs. Riodigue, 64 SCRA 494

If the decision rendered by the judge is still on appeal, the judge cannot be disqualified on the ground of "Knowingly Rendering An Unjust Judgment".

b) Judgment Rendered Through Negligence (Art. 205, RPC)

Elements:

1. That the offender is a judge.
2. That he renders a judgment in a case submitted to him for decision.
3. That the judgment is manifestly unjust.
4. That it is due to his inexcusable negligence or ignorance.

Manifestly Unjust Judgment

It is one which is so patently against the law, public order, public policy, and good morals that a person of ordinary discernment can easily sense its invalidity and injustice.

In re: Climaco, 55 SCRA 107

To hold a judge liable for the rendition of a manifestly unjust judgment by reason of inexcusable negligence or ignorance, it must be shown, according to Groizard, that although he has acted without malice, he failed to observe in the performance of his duty, that diligence, prudence and care which the law is entitled to exact in the rendering of any

public service. *Negligence and ignorance are inexcusable if they manifest injustice in which cannot be explained by a reasonable interpretation.* Inexcusable mistake only exists in the legal concept when it implies a manifest injustice, that is to say, such injustice which cannot be explained by a reasonable interpretation, even though there is a misunderstanding or error of the law applied, yet in the contrary it results, logically and reasonably, in a very clear and undisputable manner, in notorious violation of the legal precept.

** It must be clearly shown that although he has acted without malice, he failed to observe in the performance of his duty the diligence, prudence and care which the law requires from a public official. Negligence and ignorance are inexcusable if they imply a manifest injustice which cannot be explained by a reasonable interpretation***, (In re Climaco, 55 SCRA 107).***

c) Knowingly Rendering An unjust Interlocutory Order (Art. 206, RPC)

Elements:

1. That the offender is a judge;
2. That he performs any of the following acts:
   a. knowingly renders unjust interlocutory order or decree; or
   b. He renders manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance

* An **Interlocutory Order** is an order which is issued by the court between the commencement and the end of a suit or action and which decides some point or matter, but which, however, is not a final decision of the matter in issue.

d) Maliciously Delaying the Administration of Justice (Art. 207, RPC)

Elements:

1. That the offender is a judge;
2. That there is a proceeding in his court;
3. That he delays the administration of justice;
4. That the delay is malicious, that is, the delay is caused by the judge with the deliberate intent to inflict damage on either party in the case

Revised Penal Code, Reyes, p. 208 1981 Ed.

To make the judge liable, the act must be committed maliciously with deliberate intent to prejudice a party in the case. Mere delay without notice in holding trials or rendering judgments does not necessarily bring the judge within the operation of this law.

e) Malfeasance Under Anti-Graft and Corrupt Practices Act

Section 3, (e) RA No. 3019

A judge is criminally liable for causing an undue injury to a person or giving any private party an unwarranted benefit, advantage or preference in the discharge of his official function through manifest partially, evident bad faith and gross inexcusable negligence.

Sabitsana, Jr. vs. Villamor, 202 SCRA 435

In administrative proceedings which are not based on violation of criminal or penal statutes, mere preponderance of evidence suffices to hold the judge administratively liable. An instance of this is a judge's interference in a suit pending in another court.

BRIBERY DIRECT OR INDIRECT

Acceptance of gifts given by reason of the office of the judge is indirect bribery (Art. 211, RPC) and when he agrees to perform an act constituting a crime in connection with the performance of his official duties in consideration of any offer, promise, gift or present receive by such officer, he is guilty of direct bribery (Art. 210, RPC).

ANTI-GRAFT AND CORRUPT PRACTICES ACT

Under RA 3019, the judge is liable criminally for directly or indirectly receiving gifts, present or other pecuniary or material benefit for himself or for another under conditions provided in Section 2, b and c of the law.

EXCEPTION: Excepted are unsolicited gifts or presents of small value offered or given as a mere ordinary token of gratitude or friendship according to local custom or usage (Section 14 RA 3019).

JUDICIAL IMMUNITY

Revita vs. Rimando, 98 SCRA 619

"As a matter of public policy, in the absence of fraud, dishonesty and corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action, even though such acts are erroneous."

Castanos vs. Escano, 251 SCRA 174 (1995)

As a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous. He cannot be subjected to liability – civil, criminal, administrative – for any of his official acts, no matter how erroneous, so long as he acts in good faith. In such a case, the remedy of the aggrieved party is not to file an administrative complaint against the judge but to elevate the error to the higher court for review and correction.

POWER AND LIABILITIES OF MEMBERS OF THE SUPREME COURT

Power of the Supreme Court Over Judges of the Lower Courts

The Supreme Court has administrative supervision over all courts and the personnel thereof (*Section 6, Art. VIII, 1987 Constitution*). The Court *en banc* has the power to discipline all judges of lower courts including Justices of the Court of Appeals. It may even dismiss them by a majority vote of the members who actually took part in the deliberations of the issues in the case and voted thereon *(Section 11, Art. VIII, 1987 Constitution*).

Justices of the Supreme Court can only be Removed by Impeachment

There is no specific law or rule which provides for a system of disciplining an erring Member of the Supreme Court by the Court itself acting *en banc*. The Justices of the Supreme Court are among the declared impeachable officers under the Constitution. Thus, they can only be removed by impeachment unlike judges of the lower courts who can be removed under Rule 140 of the Rules of Court. As impeachable officers, the Justices of the Supreme Court may only be removed in accordance with the constitutional mandates on impeachment.

Cuenco vs. Fernan, 158 SCRA 29

Members of the Supreme Court must, under Article VIII (7) (1) of the Constitution, be members of the Philippine Bar and may be removed from office only by impeachment (Art. XI (2), Constitution). To grant a complaint for disbarment of a member of the Court during the Member's incumbency, would in effect be to circumvent and hence to run afoul of the Constitutional mandate that Members of the Court may be removed from office only by impeachment for and conviction of certain offense listed in Article XI (2) of the Constitution. Precisely, the same situation exists in respect of the Ombudsman and his deputies [Art. XI (8) in relation to Art. XI (2), id], a majority of the members of the Commission on Audit who are not certified public accountants [Art. XI (D) (1) (1), id.] all of whom are constitutionally required to be members of the Philippine Bar.

Zaldivar vs. Gonzales, 166 SCRA 316

Under the Cuenco ruling, only the Justices of the Supreme Court shall not be subjected to disbarment proceedings during their incumbency. They can be subjected to disbarment proceedings during their incumbency only after they shall have been duly impeached by Congress.

However, judges and magistrates of the lower courts may be subjected to disbarment proceedings. If they are found guilty and are suspended from the practice of law or are disbarred as members of the bar, they are also suspended or dismissed as judges. The reason for this is that membership in the bar is an (*indispensable qualification* for the position of judgeship, thus the suspension or loss thereof during the judge's term of office, justifies his automatic suspension or dismissal therefrom.