

Chapter IV

The Lawyer and the Client

CANON 14 – A Lawyer shall not refuse his services to the needy.

Rule 14.01 – A lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person.

Rule 14.02 – A lawyer shall not decline, except for serious and sufficient cause, an appointment as counsel *de officio* or as *amicus curae* or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.

Rule 14.03 – A lawyer may refuse to accept representation of a client if:

1. a. He is not in position to carry out the work effectively and competently.
2. b. He labors under conflict of interest between him and the prospective client or between a present client and the prospective client.

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.

- **Duties to Client:**

1. owe utmost learning and ability
2. maintain inviolate the confidence of the client
3. disclose all circumstances/interest regarding the controversy
4. undivided loyalty
5. not reject cause of defenseless and oppressed
6. candor, fairness and loyalty
7. hold in trust money or property
8. respond with zeal to the cause of the client

- **Appointment of *Amicus Curae***

1. by application to the judge
2. the judge on his own initiative may invite the lawyer
3. no right to interfere with or control the condition of the record, no control over the suit

- Cannot refuse on the ground of insufficient of compensation or lack of it

CANON 15 – A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with 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 with another client or his own interest, and if so, shall forthwith inform the prospective client.

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

Rule on Revealing Client's Identity

- **General Rule:** A lawyer may not invoke privilege communication to refuse revealing a client's identity. (*Regala vs. Sandiganbayan, 262 SCRA 122, September 20, 1996*)

Exceptions:

1. When by divulging such identity, it would implicate the client to that same controversy for which the lawyer's services were required.
 2. It would open client to civil liability
 3. The disclosure of such identity will provide for the only link in order to convict the accused, otherwise, the government has no case.
- Requisites of Privileged Communication:
 1. Atty.-client relationship (or a kind of consultancy relationship with a prospective client
 2. Communication made by client to lawyer in the course of lawyer's professional employment
 3. Communication is intended to be confidential (see Rule 130, Sec. 21(b), Rules of Court)
 - When communication is not privileged:
 1. after pleading has been filed
 2. communication intended by the client to be sent to a third person through his counsel (it loses its confidential character as soon as it reaches the hands of third person)
 - Even if the communication is unprivileged, the rule of ethics prohibits him from voluntarily revealing or using to his benefit or to that of a third person, to the disadvantage of the client, the said communication unless the client consents thereto.
 - This is applicable to students under the Student Practice Law Program

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

Rule on Conflicting Interest

It is generally the rule based on sound public policy that an attorney cannot represent adverse 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 arises 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 consent to the representation after full disclosure of facts. (*Nakpil vs. Valdez*, 286 SCRA 758).

- **General Rule:**An attorney cannot represent adverse interest.
- **Exception:**Where the parties consent to the representation after full disclosure of facts.
- *The TEST in determining Conflicting Interest:* The test is whether or not the acceptance of a new relation will prevent an attorney from the full discharge of his duty of individual fidelity and loyalty to his client or invite suspicion of unfaithfulness in double-dealing in the performance thereof.(*Tiana vs. Ocampo*)

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

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.

Rule 15.06 – A lawyer shall not state nor imply that he is able to influence any public official, tribunal or legislative body.

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

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.

- Lawyers should refrain from giving any advice unless they have obtained sufficient understanding of their client's cause. A careful investigation and examination of the facts must first be had before any legal opinion be given by the lawyer to the client.
- To avoid breach of legal ethics, a lawyer should keep any business, in which is engaged in concurrently with the practice of law, entirely separate and apart from the latter.

CANON 16 – A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

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

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.

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 over 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 executions he has secured for his client as provided for the Rules of Court.

Attorneys' 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 his 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 judgements for the payment of money, and executions issued in pursuance of such judgements which he has secured in a litigation of his client, from and after the time when he shall have caused a statement of his claim of such lien to be entered upon the records of the court rendering such judgement, or issuing such execution, and shall have caused written notice thereof to be delivered to his client and to the adverse party; and he shall have the same right and power over such judgments and executions as his client would have to enforce his lien and secure the payment of his fees and disbursements. (Sec, 37, Rule 138, RRC)

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 the legal matter he is handling for the client.

- Attorney's lien is not an excuse for non- rendition of accounting
- Cannot disburse client's money to client's creditors without authority.
- 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.
- Notify client if retaining lien shall be implemented
- When a lawyer enforces a charging lien against his client, the client-lawyer relationship is terminated.
- The principle behind Rule 16.04 is to prevent the lawyer from taking advantage of his influence over the client or to avoid acquiring a financial interest in the outcome of the case.

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.

- No fear of judicial disfavor or public popularity should restrain him from full discharge of his duty.

- It is the duty of the lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties and any interest in, or connection with, the controversy which might influence the client in the selection of counsel.
- The lawyer owes loyalty to his client even after the relation of attorney and client has terminated. It is not good practice to permit him afterwards to defend in another case other persons against his former client under the pretext that the case is distinct from and independent of the former case.

CANON 18 – A lawyer shall serve his client with competence and diligence.

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.

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

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

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.

- *Competence*: sufficiency of lawyer’s qualification to deal with the matter in question and includes knowledge and skill and the ability to use them effectively in the interest of the client.
- A lawyer must keep himself constantly abreast with the trend of authoritative pronouncements and developments in all branches of law.
- There must be extraordinary diligence in prosecution or defense of his client’s cause.
- If a lawyer errs like any other human being, he is not answerable for every error or mistake, and will be protected as long as he acts honestly and in good faith to the best of his skill and knowledge.
- Lawyer is not an insurer of the result in a case where he is engaged in the counsel.

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

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

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

- **General Rule:** Negligence binds client

Exception: Reckless imprudence (deprives client of due process)

Results in outright deprivation of one's property through technicality

- Must not present in evidence any document known to be false; nor present a false witness.
- Negative pregnant is improper since it is an ambiguous pleading (improper if in bad faith and the purpose is to confuse the other party)

In defense: present every defense the law permits.

- Lawyer should do his best efforts to restrain and to prevent his clients from perpetrating acts which he himself ought not to do. Or else, withdraw. But lawyer shall not volunteer the information about the client's commission of fraud to anyone – counter to duty to maintain client's confidence and secrets.

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

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

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

- **Kinds of Payment which may be stipulated upon:**

1. a fixed or absolute fee which is payable regardless of the result of the case
2. 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
3. a fixed fee payable per appearance
4. a fixed fee computed by the number of hours spent
5. a fixed fee based on a piece of work

- Attorney's Fees

1. *Ordinary attorney's fee* -the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The basis for this compensation is the fact of his employment by and his agreement with the client.
2. *Extraordinary attorney's fee* – an indemnity for damages ordered by the court to be paid by the losing party in litigation. The basis for this is any of the cases provided for by law where such award can be made, such as those authorized in Article 2208 of the Civil Code, 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.

- **How attorney's fees may be claimed by the lawyer:**

1. It may be asserted either in the very action in which the services of a lawyer had been rendered or in a separate action.
2. A petition for attorney's fees may be filed before the judgment in favor of the client is satisfied or the proceeds thereof delivered to the client.
3. The determination as to the propriety of the fees or as to the amount thereof will have to be held in abeyance until the main case from which the lawyer's claim for attorney's fees may arise has become final. Otherwise, the determination of the courts will be premature.

- **Kinds of Retainer Agreements on Attorney's fees:**

1. *General Retainer* or *Retaining Fee* – it is the fee 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

- *Quantum Meruit* –it means “as much as he deserves”, and is used as the basis for determining the lawyer's professional fees in the absence of a contract, but recoverable by him from his client.

- *Quantum Meruit* is resorted to where:

1. there is no express contract for payment of attorney's fees agreed upon between the lawyer and the client;

2. when although there is a formal contract for attorney's fees, the stipulated fees are found unconscionable or unreasonable by the court.
 3. When the contract for attorney's fees is void due to purely formal matters or defects of execution
 4. When the counsel, for justifiable cause, was not able to finish the case to its conclusion
 5. When lawyer and client disregard the contract for attorney's fees.
- Skill: length of practice is not a safe criterion of professional ability.

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.

Rule 20.03 – A lawyer shall not, without 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.

Rule 20.04 – A lawyer shall avoid controversies with clients concerning his compensation and shall resort to judicial action only to prevent imposition, injustice or fraud.

- Unauthorized counsel: Not entitled to attorney's fees.
- Stipulation regarding payments of attorney's fees is not illegal/immoral and is enforceable as the law between the parties provided such stipulation does not contravene law, good morals, etc.
- When counsel cannot recover full amount despite written contract for attorneys' fees:
 1. When he withdraws before the case is finished
 2. justified dismissal of attorney (payment: in *quantum meruit* only)
- The reason for the award of attorney's fees must be stated in the text of the decision; otherwise, if it is stated only in the dispositive portion of the decision, the same must be disallowed on appeal.
- Even though the interest or property involved is of considerable value, if the legal services rendered do not call for much efforts there is no justification for the award of high fees.
- *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.
- Compensation to an attorney for merely recommending another lawyer is improper (agents)
- Attorney's fees for legal services shared or divided to non-lawyer is prohibited. Division of fees is only for division of service or responsibility.
- A lawyer should try to settle amicably any differences on the subject. A lawyer has 2 options. Judicial action to recover attorney's fees:

1. In same case: Enforce attorney's fees by filing an appropriate motion or petition as an incident to the main action where he rendered legal services.
2. In a separate civil action.

CANON 21 – A lawyer shall preserve the confidences and secrets of his client even after the attorney-client relation is terminated.

- *Confidence* – refers to information protected by the attorney-client privilege (RRC)
- *Secret* – refers to 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.
- 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 employees, concerning any fact the knowledge of which has been acquired in such capacity (Rule 130, Sec. 21 (b), RRC)
- The mere establishment of a client-lawyer relationship does not raise a presumption of confidentiality. There must be an intent or that the communication relayed by the client to the lawyer be treated as confidential.

Rule 21.01 – A lawyer shall not reveal the confidences or secrets of his client except:

1. **a. When authorized by the client after acquainting him of the consequences of the disclosure:**
 2. **b. When required by law;**
 3. **c. When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.**
- When properly authorized after having been fully informed of the consequences to reveal his confidences/secrets, then there is a valid waiver.
 - 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, or a fine ranging from P200 to P1000, or both, shall be imposed upon any attorney at law or solicitor who, by any malicious break of professional duty as inexcusable negligence or ignorance, shall prejudice his client, or reveal any of the secrets of the latter 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 his first client (Rule 209, RPC)

- General Rule: Obligation to keep secrets covers only lawful purposes
- Exceptions:

1. announcements of intention of a client to commit a crime
2. client jumped bail and lawyer knows his whereabouts; or client is living somewhere under an assumed name
3. communication involves the commission of future fraud or crime but crimes/frauds “already committed” falls within the privilege.

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.

Rule 21.03 – A lawyer shall not, without the written consent of his client, give information from his files to an outside agency seeking such information for auditing, statistical, bookkeeping, accounting, data processing, or any other similar purposes.

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.

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.

Rule 21.06 – A lawyer shall avoid indiscreet conversation about a client’s affairs even with members of his family.

Rule 21.07 – A lawyer shall not reveal that he has been consulted about a particular case except to avoid possible conflict of interest.

- Avoid committing calculated indiscretion – accidental revelation of secrets obtained in his professional employment.
- Prohibition applies, even if the prospective client did not thereafter actually engage the lawyer.

CANON 22 – A lawyer shall withdraw his services only for good cause and upon notice appropriate in the circumstances.

Rule 22.01 – A lawyer may withdraw his services in any of the following cases:

1. a. When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
2. b. When the client insists that the lawyer pursue conduct violative of these canons and rules;
3. c. When his inability to work with co-counsel will not promote the best interest of the client;

4. d. When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
5. e. When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
6. f. When the lawyer is elected or appointed to a public office, and
7. g. Other similar cases

Rule 22.02 – A lawyer who withdraws or is discharged shall subject to a retaining lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter, including all information necessary for the proper handling of the matter.

	Retaining Lien	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, property 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. When Lien takes effect	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 effective	Client and adverse party must be notified to 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

- In withdrawal as counsel for a client, an attorney may only retire from a case either by written consent of his client or by permission of the court after due notice and hearing, in which event the attorney should see to it that the name of the new attorney is recorded in the case.
- 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.
- Requirements for the Substitution of Counsel in a Case:
 1. written application
 2. written consent of client
 3. written consent of attorney to be substituted

4. if 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.
- A lawyer cannot recover compensation from one who did not employ or authorize his employment, however valuable the results of his services may have been to such person. In similar cases, no compensation when:
 1. client conducts himself in a manner which tends to degrade his attorney;
 2. client refuses to extend cooperation;
 3. client stops having contact with him.
 - The right of a client to terminate a lawyer is absolute. Such termination may be with or without cause.