



ATENELO CENTRAL BAR OPERATIONS 2007
Legal Ethics
SUMMER REVIEWER

I. PRELIMINARY CONSIDERATIONS

- §1. WHO IS A LAWYER?
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- §4. CAN NON-LAWYERS APPEAR IN COURT?
- §5. SPECIAL RULES FOR LAWYERS IN PUBLIC SERVICE

The requirement of Good Moral Character is a continuing requirement; good moral character is not only a condition precedent for admission to the legal profession, but it must also remain intact [while exercising the profession] in order to maintain one's good standing in that exclusive and honored fraternity.

§1. WHO IS A LAWYER?

A lawyer is one who:

- 1. passed the bar exams,
- 2. taken an oath ,
- 3. registered in the roll of attorneys,
- 4. received a certificate of license to practice law from the Clerk of Court of the Supreme Court.

After Admission he or she must:

- 1. remain an IBP member in good standing by regularly paying IBP dues and other assessments
- 2. pay annual privilege tax
- 3. observe the rules on proper ethics

***Santos v. Llamas (A.C. No. 4749. January 20, 2000)**
The exemption granted by R.A. 7432 to senior citizens from paying individual income tax does not exempt lawyers who are likewise senior citizens from paying IBP dues and privilege tax.

REQUIREMENTS FOR ADMISSION TO THE BAR:

- 1. Citizen of the Philippines
- 2. Resident of the Philippines
- 3. At least 21 years old
- 4. must successfully complete all prescribed courses
- 5. Production QuickTime™ and a TIFF (Uncompressed) decompressor are not supported here. before the Supreme Court satisfactory evidence of:
 - a. Good moral character
 - b. No charges against him, involving moral turpitude, have been filed or are pending in any court in the Philippines.

***Tapucar vs. Tapucar. A.C. No. 4148 (1998)**

§2. WHAT IS CONTEMPLATED BY THE TERM "PRACTICE OF LAW"?

PRACTICE OF LAW – means any activity, in our out of court, which requires the application of law, legal procedure, knowledge, training, and experience.

***Cayetano v. Monsod 201 SCRA 210 (citing 111 ALR 23)**

To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice 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.

***In Re: Argosino (1997)**

The practice of law is a PRIVILEGE granted only to those who possess the STRICT INTELLECTUAL AND MORAL QUALIFICATIONS required of lawyers who are instruments in the effective and efficient administration of justice.

§3. WHY IS IT NECESSARY TO DETERMINE WHETHER OR NOT AN ACTIVITY IS UNDER THE DEFINITION OF PRACTICE OF LAW?

- So as to determine whether the conduct or act of a party is subject to the rules on legal ethics and thus can be regulated by the Supreme Court.
- The Supreme Court has the power to control and regulate the practice of law.

1987 CONSTITUTION, SEC. 5 (5), ARTICLE VIII:

Sec. 5. The Supreme Court shall have the following powers:
 x x x
 (5) Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the

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under privileged.

Although the legislature has plenary powers with respect to legislation, such exercise must not contravene this Constitutional provision. Thus, the requirement of passing another set of exam as a prerequisite for the practice of law in a particular government agency is void.

§4. CAN NON-LAWYERS PRACTICE LAW?

Yes, provided the appearance is not habitual, without compensation but subject to the following:

Non-lawyers authorized to appear in court:

1. **Cases before the MTC** – Party to the litigation, in person OR through an agent or friend or appointed by him for that purpose (*Sec. 34, Rule 138, RRC*)
2. **Before any other court** – Party to the litigation, in person (*Ibid.*)
3. **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
 - b. Of good repute for probity and ability to aid the accused in his defense (*Rule 116, Sec. 7, RRC*).
4. **Legal Aid Program** – 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. **Before the NLRC or any Labor Arbiter**, if:
 - a. They represent themselves, or if
 - b. They represent their organization or members thereof (*Art 222 of the Labor Code, PO 442, as amended*).
6. **Before the Cadastral Court** – under the Cadastral Act, a non-lawyer can represent a claimant (*Act 2259, Sec. 9*).

§5. SPECIAL RULES FOR LAWYERS IN THE PUBLIC SERVICE

are needed to see this picture.

CODE OF PROFESSIONAL RESPONSIBILITY

CANON 6 – These canons shall apply to lawyers in government service in the discharge of their official tasks.

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 of disciplinary action.

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

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

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

PUBLIC OFFICIALS – 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 6713*).

***PCGG v. Sandiganbayan, GR No. 151805 (2005)**

There are, therefore, two possible interpretations of the word 'intervene'. Under the first interpretation, 'intervene' includes participation in a proceeding even if the intervention is irrelevant or has no effect or little influence. Under the second interpretation, 'intervene' only includes an act of a person who has the power to influence the subject proceedings. We hold that this second meaning is more appropriate to give to the word 'intervention' under Rule 6.03 of the Code of Professional Responsibility in the light of its history.

Pertinent statutory provisions regarding this Rule:

Sec. 3 (d) RA 3019 as amended and Sec. 7 (b), RA 6713

Sec 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 practice 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 or within one year after termination.

Section 7 (b) of RA 6713 prohibits officials 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.

x x x

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 (b) (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.

PUBLIC OFFICIALS NOT ALLOWED TO ENGAGE IN PRIVATE PRACTICE OF LAW IN THE PHILIPPINES:

1. Judges and other officials as employees of the Supreme Court (*Rule 148, Sec. 35, RRC*)
2. Officials and employees of the OSG (*Ibid.*)
The OSG is not authorized to represent a public official at any stage of a criminal case.
3. Government prosecutors (*People v. Villanueva, 14 SCRA 109*).
4. President, Vice-President, members of the cabinet, their deputies and assistants (*Art. VIII Sec. 15, 1987 Constitution*).
5. Members of the Constitutional Commission (*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 prohibited by special law

PUBLIC OFFICIALS WITH RESTRICTIONS IN THE PRACTICE OF LAW

1. **Art. VI, Sec. 14, 1987 Constitution**
No Senator as member of the House of Representative may personally appear as counsel before any court of justice as before the Electoral Tribunals, as quasi-judicial and other administrative bodies.
2. **Local Government Code (RA 7160, Sec. 91)**
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 office, 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;
- d. Use property and personnel of the government except when the Sanggunian member concerned is defending the interest of the government.

3. **RA 910, Sec. 1 (as amended)**

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

Misconduct in office as a public official may be a ground for disciplinary action (if it is of such character as to affect his qualification as lawyer or to show moral delinquency).

II. BASIC PRINCIPLES OF ETHICAL BEHAVIOR

§1. THE PRACTICE OF LAW IS NOT TRADE OR CRAFT.

THUS, A LAWYER MAY NOT ADVERTISE HIS SKILL AS A TRADESMAN DOES.

§1.1. RULE ON ADVERTISEMENTS

§1.2. APPLICABLE CANONS IN EXCEPTED ADVERTISING

§1.3. RULE ON POSSIBLE INDIRECT SOLICITATION

§2. LAWYER AND THE CLIENT RELATIONSHIP.

§2.1. RULES ON AGENCY RELATIONSHIP

§2.2. LAWYER BINDS CLIENT

§2.3. NOTICE TO LAWYER IS NOTICE TO CLIENT

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§2.5.A. RULE ON PURCHASE OF PROPERTY

§2.5.B. CONFIDENTIAL MATTERS BY REASON OF RELATIONSHIP

§2.5.C. CONFLICT OF INTEREST

§2.5.D. INDEPENDENCE OF LAWYER EVEN IF AGENT OF CLIENT

§2.6. TERMINATION OF RELATIONSHIP

§2.7. ATTORNEY'S FEES

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- §3. LAWYER MUST OBEY THE LAW.
- §4. LAWYER MUST BE CANDID AND RESPECTFUL TO COURTS AND TO COLLEAGUES
- §5. LAWYER MUST BE GOOD AGENTS OF JUSTICE
- §5.1 NOT TO ENGAGE IN BARRATRY, SUPPORT ONLY ARGUMENTS WHICH HAVE BASIS IN LAW, ENCOURAGE COMPROMISE OF CASE IF THAT ADMITS OF FAIR SETTLEMENT.
- §5.2 NOT TO REJECT EXCEPT FOR VALID REASONS, THE CAUSE OF THE DEFENSELESS OR OPPRESSED. EVEN IF A LAWYER DOES NOT ACCEPT A CASE, HE SHALL NOT REFUSE TO RENDER LEGAL ADVISE TO THE EXTENT NECESSARY TO SAFEGUARD LATTER'S RIGHTS.
- §5.3 NOT TO DELAY MAN'S CAUSE, NOT ABUSE COURT PROCESS, BUT MUST PROVIDE EFFICIENT SERVICE

§1. THE PRACTICE OF LAW IS NOT TRADE OR CRAFT. THUS, A LAWYER MAY NOT ADVERTISE HIS SKILL AS A TRADESMAN DOES

History: Lawyering in the Inns of Court of England was previously practiced by wealthy people. These practitioners looked down upon all forms of trade and competition. Justice Aquino in a recent lecture remarked that advertising of a lawyer's service is an act in bad taste.

APPLICABLE CANONS – CODE OF PROFESSIONAL RESPONSIBILITY

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

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

What this rule prevents is a market or bargaining attitude.

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.

§1.1. RULE ON ADVERTISEMENTS

General Rule: No advertisements allowed. Lawyers may not advertise their services or expertise nor should not resort to indirect advertisements for

professional employment, such as furnishing or inspiring newspaper comments, or procuring his photograph to be published in connection with causes in which the lawyer has been engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other self-laudation.

The most worthy and effective advertisement possible is the establishment of a well-merited reputation for professional capacity and fidelity to trust.

§1.2. RULE ON EXCEPTED OR PERMISSIBLE ADVERTISEMENTS:

CANON 3 – A lawyer in making known his legal services shall use only true, honest, fair, dignified and objective information or statement of facts.

1. Reputable law lists, in a manner consistent with the standards of conduct imposed by the canons, of brief biographical and informative data, are allowed. (*Ulep vs. Legal Clinic, Inc., 223 SCRA 378*)
2. Ordinary simple professional Card. It may contain only a statement of his name, the name of the law firm which he is connected with, address, telephone number and the special branch of law practiced. (*Id*)
3. A simple 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, is not objectionable. (*Id*)
4. Advertisements or simple announcement of the existence of a lawyer or his law firm posted anywhere it is proper such as his place of business or residence except courtrooms and government buildings.
5. Advertisements or announcement in any legal publication, including books, journals, and legal magazines and in telephone directories.

What are those "consistent with the standards of conduct imposed by the canons" (as mentioned in No. 1 above)?

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

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 communication that said partner is deceased.

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.

These rules mean that advertising is not *malum in se* and what the prohibition tries to prevent is advertising that tends to degrade the dignity of the profession.

§1.3. POSSIBLE ARENAS FOR INDIRECT SOLICITATION

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. Within the prescription of this canon, a lawyer may properly write and sell for publication articles of general nature on legal subjects, and sent upon request his picture for publication with the article in a law journal or submit for publication to a bar association journal an unsolicited article on a legal subject.

What should be guarded against is the violation of ethical principles concerning the:

- (a) proper advertising by a lawyer,
- (b) giving of legal advice to one with whom no attorney-client relationship exists, and
- (c) aiding a layman to engage in unauthorized practice of law.

The giving of legal advice on legal matters through the medium of a newspaper column or radio or television broadcast is improper. It can not be undertaken by a layman because that service constitutes practice of law, nor can it be undertaken by a lawyer because that work involves *direct advertising*. . . and a breach of traditional standards of the profession. (AGPALO, LEGAL ETHICS 114 (2000) *citing* Canons of Professional Ethics, ABA Rules, and U.S. Jurisprudence)

Some businesses which laymen engage are closely associated with the practice of law that their solicitation of business may readily become a means of indirect solicitation for any lawyer associated with them (*Id.*) (ie. accounting firms, Insurance adjusters or real estate dealers).

In any case, Rule 15.08 may be considered.

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.

§2. THE LAWYER AND THE CLIENT RELATIONSHIP.

The lawyer-client relation is premised on the Roman Law Concept of contract of lease of service, at the same time **agency**. But in the modern day understanding of the relationship, the lawyer is more than a mere agent or servant because he possesses special powers of trust and confidence reposed by his client. He is as **independent** as a judge with powers more superior than any other agent.

CHARACTERISTICS OF THE RELATIONSHIP:

1. strictly personal,
2. highly confidential and
3. fiduciary.

§2.1.A RULES REGARDING THE AGENCY RELATION BETWEEN LAWYER AND CLIENT

Honesty when advising client:

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.

SOME DUTIES OF THE LAWYER:

1. 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 duty to advise the latter to acquiesce and submit, rather than traverse the incontrovertible.
2. To resist the whims and caprices of his client, and temper his client's propensity to litigate (this is because he is more than an ordinary agent; he is independent as a judge).
3. To 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 is given by the lawyer to the client.
4. To disclose to the client, at the time of retainer, to 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.

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.

***Lorenzana Food Corp. vs. Daria, 197 SCRA 428**
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.

But the lawyer owes a higher loyalty to the courts. Thus when a conflict between the client and the court arises, his first duty is to render loyalty and obedience to the courts.

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 ordinary diligence in prosecution or defense of his client's cause.

§2.1.A.1. ATTORNEY'S ACTS BIND THE CLIENT

KINDS OF APPEARANCES:

1. **General appearance** – when the party comes to court either as plaintiff or defendant and seeks general reliefs from the court for satisfaction of his claims or counterclaims respectively.
2. **Special appearance** – when a defendant appears in court solely for the purpose of objecting to the jurisdiction of the court over his person. The aim is the dismissal of the case on the ground of lack of jurisdiction. If the defendant seeks other reliefs, the appearance, even if qualified by the word special, is equivalent to a general appearance.

Generally, appointment of counsel confers a general authority. Thus, acts which are necessary or incidental to the management of the suit or for the accomplishment of a specific purpose are entrusted to him. And the client has a right to expect that his/her counsel will protect his/her interest.

Rule: Negligence or mistakes of counsel will bind the client based on the principle of agency.

Exception: The principle that the rigid rule must yield to the court's duty to render justice must prevail when:

1. there is gross negligence of the lawyer
2. client's meritorious claim or defense has been prejudiced (i.e. non-presentation of a crucial document)
3. there is diligence or absence of gross negligence on the part of the party represented.

RULE 138, RULES OF COURT

Sec. 23. Authority of attorneys to bind clients. -

Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing, and in taking appeals, and in all matters of ordinary judicial procedure. But they cannot, without special authority, compromise their client's litigation, or receive anything in discharge of a client's claim but the full amount in cash.

***Legarda v. CA. 195 SCRA 418, 428 [1991].**

But an acquired right by a third person in good faith may not be disturbed or affected. In such a case, the client will have to suffer, without prejudice however to



commencing an action for damages or for disbarment against the lawyer.

What is the standard in making the lawyer liable?

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.

The lawyer is not an insurer of the result of a case where he is engaged as counsel.

§2.1.A.2. NOTICE TO LAWYER IS NOTICE TO CLIENT

Rule 13, Sec. 2. Filing and service, defined. –

Filing is the act of presenting the pleading or other paper to the clerk of court. Service is the act of providing a party with a copy of the pleading or paper concerned.

COUNSEL OF RECORD -- Attorneys who have no formal appearance are not entitled to notice. However, as long as the lawyer remains listed as counsel of record, there having been no withdrawal or substitution of counsel, notice to him will bind the client.

However, jurisprudence has given a special rule with respect to notice to the Solicitor General.

*Commissioner of Customs v. CA

The Sol. Gen. may deputize other government officials in the prosecution of its cases. In such a case, notice to the deputized agent will not bind the Sol. Gen. until notice is actually received by the Sol. Gen.

But when a government agency, which the Sol. Gen. is tasked to represent, appears is represented by the government agency's internal counsel, then notice to such counsel is deemed notice to the Sol. Gen.

§2.4. PURELY PERSONAL NATURE OF RELATIONSHIP

The purely personal nature of the relationship between lawyer and client prohibits the delegation of work without the client's consent because that is tantamount to delegating the relationship itself.

Thus, a corporation cannot practice law because the personal nature of a relationship, cannot be performed by an artificial person who does not even possess the required moral qualification that entitles a lawyer to remain a member of the legal profession.

APPLICABLE CANONS – CODE OF PROFESSIONAL RESPONSIBILITY

CANON 9 – A lawyer shall not directly or indirectly assist in the unauthorized practice of law.

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.

Rule 9.02 – A lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law, except:

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

A lawyer must not take as partner or associate one who:

1. Is not a lawyer
2. Is disbarred
3. Has been suspended from the practice of law
4. Foreign lawyer, *unless* licensed by the SC.

§2.5 FIDUCIARY DUTY

FIDUCIARY DUTY- is the principle that attorney derives no undue advantage that may operate to the prejudice or cause an occasion for loss of a client.

The relationship between the lawyer and client is one of mutual trust and confidence of the highest degree.

The client can terminate the relation at anytime with or without cause. But the lawyer is entitled to terminate with the consent of the client and the court –if the case is pending.

APPLICABLE CANONS – CODE OF PROFESSIONAL RESPONSIBILITY:

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.



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.

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.

ATTORNEY'S LIENS – RULE 138, RULES OF COURT

Sec. 37. 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 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 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 judgment, 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.

***Lemoine v. Atty. Balon, (AC 5829, October 28, 2003)**

That respondent had a lien on complainant's funds for his attorney's fees did not relieve him of his duty to account for it. The lawyer's continuing exercise of his retaining lien presupposes that the client agrees with the amount of attorney's fees to be charged. In case of disagreement or when the client contests that amount for being unconscionable, however, the lawyer must not be arbitrarily apply the funds in his possession to the payment of his fees. He can file, if he still deems desirable, the necessary action or proper motion with the proper court to fix the amount of such fees.

KINDS OF LIENS

- 1.) *Retaining Lien*: is the right of an attorney to retain possession of a client's documents, money or other property which comes into the hands of the attorney professionally until a general balance due to him for his professional service is paid.
- 2.) *Charging Lien*: is the equitable right of an attorney to have fees and costs due to him for services in a particular suit secured by the judgment or recovery in such suit.

ADDITIONAL GUIDELINES:

1. Attorney's lien is not an excuse for non-remittance of accounting.
2. Notify client if retaining lien shall be implemented.
3. When a lawyer enforces a charging lien against his client, the client-lawyer relationship is terminated.
4. The lawyer cannot disburse client's money to client's creditors without authority.

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.

This 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.

§2.5.A SPECIAL RULE ON LAWYER'S PURCHASE OF CLIENT'S PROPERTY BECAUSE OF FIDUCIARY RELATIONSHIP

***Rubias vs. Batilles, 31 SCRA 120 (1973)**

The following persons are prohibited from acquiring property under litigation by reason of the relation of trust or their peculiar control either directly or indirectly and even at a public or judicial auction:

1. Guardians;
2. Agents
3. Administrators
4. Public officers and employees
5. Judicial officers and employees
6. Prosecuting attorneys and lawyers (Art 1491, NCC)
7. Those specially disqualified by law

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Elements of Article 1491 (Civil Code; *Laig vs. CA, 82 SCRA 294*)

1. There must be an attorney-client relationship
2. The property or interest of the client must be in litigation
3. The attorney takes part as counsel in the case
4. The attorney by himself or through another purchases such property or interest during the pendency of the litigation.
5. This also includes lease and mortgage.

General Rule: A lawyer may not purchase, even at a public or judicial auction, in person or through the mediation of another, any property or interest involved in any litigation in which he may take part by virtue of his profession. This prohibition is entirely independent of fraud and such need not be alleged or proven.

Effects:

- a. Malpractice on the part of the lawyer and may be disciplined for misconduct
- b. Transaction is null and void

Exceptions:

1. Property is acquired by lawyer through a contingent fee arrangement
2. Any of the 4 elements of Art. 1491 is missing

§2.5.B. CONFIDENTIALITY

CODE OF PROFESSIONAL RESPONSIBILITY:

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

***Regala vs. Sandiganbayan, 262 SCRA 122 (1996)**
As a rule, a lawyer may not invoke privilege communication to refuse revealing a client's identity.

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. Attorney-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 IS THERE NO PRIVILEGED COMMUNICATION:

1. After pleading has been filed – once filed, the pleading ceases to be a privileged communication; it becomes part of public records.
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
3. When communication sought by client is intended to aid future crime
4. When communication between attorney and client is heard by a third party – third party testimony is admissible as evidence

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.

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. (*Revised Rules of Court*)

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.

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

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.

APPLICABLE LAWS:

A. RULE 130, RULES ON EVIDENCE

Sec. 24 Disqualification by reason of privileged communication.

The following persons cannot testify as to matters learned in confidence in the following cases:

x x x

(b) 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.

B. REVISED PENAL CODE

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 (*Art. 209, Revised Penal Code*)

Rule: Obligation to keep secrets covers only lawful purposes.

1. The mere establishment of a client-lawyer relationship does not raise a presumption of confidentiality. There must be such intent or that the communication relayed by the client to the lawyer be treated as confidential.
2. Prohibition applies, even if the prospective client did not thereafter actually engage the lawyer.
3. The confidential nature of information is lost when a third person obtains the information and releases the same.

Exceptions:

1. Announcements of a client's intention 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

§2.5.C. CONFLICT OF INTEREST

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

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.

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.

RULE ON CONFLICTING INTERESTS

***Nakpil vs. Valdez, 286 SCRA 758**

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.

Rule:

An attorney cannot represent adverse interest.

Exception:

Where the parties consent to the representation after full disclosure of facts.

TESTS IN DETERMINING CONFLICTING INTERESTS:

1. *Conflicting duties:* when on behalf one client, it is the attorney's duty to contest for that which duty to another client requires him to oppose or when the possibility of such situation will develop.
2. *Invitation of suspicion:* Whether or not the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness in double-dealing in the performance thereof. (*Tiana v. Ocampo*)

3. *Use of prior knowledge obtained:* Whether a lawyer will be called upon in his new relation to use against the first client any knowledge acquired on the previous employment. (*U.S. v. Laranja*) Whether the lawyer will now have to oppose an argument he previously espoused for the same person (*Cedo v. PNB*)

***Santos v. Beltran, AC No. 5858 (2003)**

There is a conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is 'whether or not in behalf of one client, it is the lawyer's duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client.' This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used.

Also, there is conflict of interest if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection.

Another test of inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.

Note:

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

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

***Donald Dee vs. CA, 176 SCRA 651**

At a certain stage of the controversy before it reaches the court, a lawyer may represent conflicting interests with the consent of the parties. A common representation may work to their advantage since a mutual lawyer, with honest motivations and impartially cognizant of the parties' disparate

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positions may well be better situated to work out an acceptable settlement.

§2.6. INDEPENDENCE OF THE LAWYER EVEN IF AN AGENT OF CLIENT

Applicable Canon

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

Rule:

Negligence binds client.

Exceptions:

1. Reckless imprudence (deprives client of due process)
2. Results in outright deprivation of one's property through technicality

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.

§2.7. TERMINATION OF SERVICES

Applicable Canons:

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:

- a. When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
- b. When the client insists that the lawyer pursue conduct violative of these 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, and
- 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.

***Hilado vs. David, 84 Phil. 56**

If a person, in respect to his business affairs or troubles of any kind, consults with his attorney in his professional capacity with the view of obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces in such consultation, then the professional employment must be regarded as established.

***Tumbagahan vs. CA, 165 SCRA 485**

The withdrawal as counsel of a client or the dismissal by the client of his counsel must be in a formal petition filed in the case. Attorney-client relationship does not terminate formally until there is withdrawal made of record. Unless properly relieved, counsel is responsible for the conduct of the case.

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.

INSTANCES WHEN A LAWYER CANNOT RECOVER FROM HIS CLIENT:

1. Cannot recover from one who did not employ or authorize his employment, however valuable the results of his services may have been to such person.

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2. Client conducts himself in a manner which tends to degrade his attorney;
3. Client refuses to extend cooperation;
4. 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.

WHEN ATTORNEY-CLIENT RELATIONSHIP IS TERMINATED:

1. Withdrawal of the lawyer under Rule 22.01;
2. Death of the lawyer, unless it is a Law Firm, in which case, the other partners may continue with the case;
3. Death of the client as the relationship is personal, and one of agency
4. Discharge or dismissal of the lawyer by the client, for the right to dismiss a counsel is the prerogative of the client, subject to certain limitations
5. Appointment or election of a lawyer to the government position which prohibits private practice of law;
6. Full termination of the case or case;
7. Disbarment or suspension of the lawyer from the practice of law;
8. Intervening incapacity or incompetence of the client during the pendency of the case, for then the client loses his capacity to contract, or to control the subject matter of the action. The guardian may authorize the lawyer to continue his employment;
9. Declaration of the presumptive death of the lawyer (*art. 390, New Civil Code; art. 41, Family Code*)
10. Conviction for a crime and imprisonment of the lawyer.

§2.8. ATTORNEY'S FEES

APPLICABLE CANON

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:

- 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 or certainty of compensation;
 - i. The character of the employment, whether occasional or established; and
 - 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.

***Peyer vs. Peyer, 77 Phil 366**

Contracts for employment may either be oral or express. It is oral when the counsel is employed without a written agreement – but the conditions and amount of attorney's fees are agreed upon. A written agreement is not necessary to prove a client's obligation to pay attorney's fees.

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** - it is a fee for a specific or particular case or service rendered by the lawyer for a client

Quantum Meruit - 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.

WHEN QUANTUM MERUIT IS RESORTED:

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.

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.

Exception: A lawyer may receive compensation from a person other than his client when the latter has full knowledge and approval thereof. (*Rule 138, sec. 20[e], Revised Rules of Court*)

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.

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 ATTORNEY'S FEES:

1. When he withdraws before the case is finished
2. Justified dismissal of attorney (payment: in *quantum meruit* only)
3. 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) – it is when 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 in a judicial action to recover attorney's fees:

- a. In same case: Enforce attorney's fees by filing an appropriate motion or petition as an



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- incident to the main action where he rendered legal services.
- b. In a separate civil action.

Note:

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.

§3. LAWYER MUST OBEY THE LAW.

Judicial decisions form part of the law of the land (Civil Code)

Applicable Cannons

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes

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

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.

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

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 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 insists that the lawyer pursue conduct violative of these canons and rules;

§4. LAWYER MUST BE CANDID AND RESPECTFUL TO THE COURTS AND THEIR COLLEAGUES

§4.1. CANDOR TO COURTS

CANON 10 – A Lawyer owes candor, fairness and good faith to the court.

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 misled by any artifice.

Rule 10.02 – A lawyer shall not knowingly misquote or misrepresent the contents of the paper, the language or the argument of opposing counsel, or the text of a decision of 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 approved.

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

§4.2. LAWYER SHOULD PROMOTE RESPECT TO COURTS

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.

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

A lawyer may NOT wear outlandish or colorful clothing to court.

As an officer of the court and in order to maintain the dignity and respectability of the legal profession, a lawyer who appears in court must be properly attired. Consequently, the court can hold a lawyer IN CONTEMPT of court if he does not appear in proper attire. Any deviation from the commonly accepted norm of dressing in court (barong or tie, *not both*) is enough to warrant a citing for contempt.

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

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

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Rule 11.04 – A lawyer shall not attribute to a judge motives not supported by the record or having no materiality to the case.

***In Re: Almacen, 31 SCRA 562**

A lawyer, both as an officer of the court and as a citizen, may criticize in properly respectful terms and through legitimate channels the act 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.

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 of influencing the court.

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

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.

Rule 13.03 – A lawyer shall not brook or invite interference by another branch or agency of the government in the normal course of judicial proceedings

The judge has the corresponding duty not to convey or permit others to convey the impression that they are in a special position to influence the judge.

Discussing cases with the judge privately should be avoided.

TEST TO DETERMINE WHEN PUBLIC STATEMENT IS CONTEMPTUOUS:

The character of the act done and its direct tendency to prevent and obstruct the discharge of official duty.

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. Lawyer is equally guilty as the client if he induces the latter to cause the publicity.

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

SEC. 3, RULE 138 of the RULES OF COURT

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 any answer which will tend to subject him to a penalty for an offense unless otherwise provided by law, or
5. Nor to give 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.

§4.3. RESPECT TO COLLEAGUES

Applicable canons:

CANON 8 – A lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues, and shall avoid harassing tactics against opposing counsel.

Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

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

§5. LAWYER MUST BE GOOD AGENTS OF JUSTICE

- §5.1. NOT TO ENGAGE IN BARRATRY, SUPPORT ONLY ARGUMENTS WHICH HAVE BASIS IN LAW, ENCOURAGE COMPROMISE OF CASE IF THAT ADMITS OF FAIR SETTLEMENT.**

Applicable canons:

CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for



law and for legal processes

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

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

§5.2. NOT TO REJECT EXCEPT FOR VALID REASONS, THE CAUSE OF THE DEFENSELESS OR OPPRESSED. EVEN IF A LAWYER DOES NOT ACCEPT A CASE, HE SHALL NOT REFUSE TO RENDER LEGAL ADVICE TO THE EXTENT NECESSARY TO SAFEGUARD LATTER'S RIGHTS.

Applicable Canons

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.

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

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

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

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 14.01 is applicable only in criminal cases. In criminal cases, a lawyer cannot decline to represent an accused or respondent because of his opinion that the said person is guilty of the charge or charges filed against him. In representing the accused or respondent, the lawyer must only use means which are fair and honorable. (*Rule 138, sec. 20[f], Revised Rules of Court*)

Rule 14.01 is not applicable in civil cases because "(c) To counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law." (*Rule 138, sec. 20[c], Revised Rules of Court*)

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 it." (*Rule 7, sec. 3, Revised Rules of Court*) 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 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:

- a. He is not in position to carry out the work effectively and competently.
- 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.

***Canoy v. Ortiz A.C. 5485, March 16, 2005**

Lawyers who devote their professional practice to representing litigants who could ill afford legal services deserve commendation. However, his mantle of public service will not deliver the lawyer, no matter how well meaning, from the consequences of negligent acts. It is not enough to say that all pauper litigants should be assured of legal representation. They deserve quality representation as well.

§5.3. NOT TO DELAY MAN'S CAUSE, NOT ABUSE COURT PROCESS, BUT MUST PROVIDE EFFICIENT SERVICE

APPLICABLE CANONS:

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

Rule 11.02 – A lawyer shall punctually appear at court hearings

CANON 12 – A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

***Economic Insurance Co., Inc. v. Uy Realty Co.**



It is understandable for a party in the situation to make full use of every conceivable legal defense the law allows it. In the appraisal, however, of such attempts to evade liability to which a party should respond, it must ever be kept in mind that procedural rules are intended as an aid to justice, not as means for its frustration. Technicalities should give way to the realities of the situation.

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

Newly hired counsel: must acquaint himself with all the antecedent proceedings and processes that have transpired in the record prior to his takeover.

If presenting documentary exhibits, he must be ready with the originals for the purpose of comparison with copies thereof.

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

FORUM SHOPPING – omission to disclose pendency of appeal or prior dismissal of his case by a court of concurrent jurisdiction with intent of seeking a favorable opinion.

***Benguet Electric Corp. v. Flores, 287 SCRA 449 (1998)**

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.*

RULES OF COURT

Rule 7, Sec. 5. Certification against forum shopping. – The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not commenced any action or filed any claim involving the same issues in any court, tribunal, or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a

complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed. Failure to comply with the foregoing requirements 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 therein shall constitute indirect contempt of court, 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 ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

APPLICABLE CANONS

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

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

Asking for extension of time must be in good faith.

III. OTHER PROVISIONS

- §1. LIABILITIES OF LAWYERS
- §2. ADMINISTRATIVE LIABILITIES OF LAWYERS
- §3. LIABILITIES OF JUDGES
- §4. REINSTATEMENT OF LAWYERS
- §5. PARDON
- §6. SELF DEVELOPMENT AND CONTRIBUTION TO SOCIETY

§1. LIABILITIES OF LAWYERS

CIVIL LIABILITY

1. Client is prejudiced by lawyer's negligence or misconduct
2. Breach of fiduciary obligation
3. Civil liability to third persons

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4. Libelous words in pleadings; violation of communication privilege
5. Liability for costs of suit (*treble costs*) - when lawyer is made liable for insisting on client's patently unmeritorious case or interposing appeal merely to delay litigation

CRIMINAL LIABILITY

1. Prejudicing client through malicious breach of professional duty
2. Revealing client's secrets
3. Representing adverse interests
4. Introducing false evidence
5. Misappropriating client's funds (*estafa*). *Estafa* is also committed in unauthorized practice of law.

CONTEMPT OF COURT

A. KINDS OF CONTEMPT

1. **Direct** - 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; punished summarily.
2. **Indirect** - one committed away from the court involving disobedience of or resistance to a lawful writ, process, order, judgment or command of the court, or tending to belittle, degrade, obstruct, interrupt or embarrass the court.
 - a. **Civil** - failure to do something ordered by the court which is for the benefit of a party.
 - b. **Criminal** - any conduct directed against the authority or dignity of the court.

***Halili vs. CIR, 136 SCRA 112**

The exercise of the power to punish contempt has a twofold aspect, namely (1) the proper punishment of the guilty party for his disrespect to the court or its order; and (2) to compel his performance of some act or duty required of him by the court which he refuses to perform.

A civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein; and a criminal contempt is conduct directed against the authority and dignity of a court or of a judge, as in unlawfully assailing or discrediting the authority or dignity of a court or of a judge, or in doing a duly forbidden act.

Where the punishment imposed, whether against a party to a suit or a stranger, is wholly or primarily to protect or vindicate the dignity and power, either by fine payable to the government or by imprisonment, or both, it is deemed a judgment in criminal case.

Where the punishment is by fine directed to be paid to a party in the nature of damages for the wrong inflicted, or by imprisonment as coercive measure to enforce the performance of some act for the benefit of the party or in aid of the final judgment or decree rendered in his behalf, the contempt judgment will, if made before final decree, be treated as in the nature of an interlocutory order, or, if made after final decree, as a remedial in nature, and may be reviewed only on appeal from the final decree, or in such other mode as is appropriate to the review of judgments in civil cases.

The question of whether the contempt committed is civil or criminal, does not affect the jurisdiction or the power of a court to punish the same.

B. ACTS CONSTITUTING CONTEMPT:

1. Misbehavior
2. Disobedience
3. Publication concerning pending litigation
4. Publication tending to degrade the court; disrespectful language in pleadings
5. Misleading the court or obstructing justice
6. Unauthorized practice of law
7. Belligerent attitude
8. Unlawful retention of client's funds

***People vs. Godoy, 243 SCRA 64**

The power to punish for contempt and the power to disbar are separate and distinct, and that the exercise of one does not exclude the exercise of the other.

§2. ADMINISTRATIVE LIABILITIES OF LAWYERS

Disbarment: It is a quasi-summary proceeding instituted and prosecuted before an appropriate court for the purpose of depriving an attorney of his license to practice his profession by reason of some misconduct. (Ballantine Law Dictionary)

Suspension: It is the act of court prohibiting an attorney from practicing law for a certain definite period.

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 an attorney;
3. To punish the lawyer;



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4. To set an example or a warning for the other members of the bar;
5. To safeguard the administration of justice from incompetent and dishonest lawyers;
6. To protect the public

CHARACTERISTICS OF DISBARMENT

PROCEEDINGS:

1. Neither a civil nor criminal proceedings;
2. Double jeopardy cannot be availed of in a disbarment proceeding;
3. It can be initiated *motu proprio* by the SC or IBP. It can be initiated without a complaint;
4. It is imprescriptible;
5. Conducted confidentially;
6. It can proceed regardless of the interest of the lack thereof on the part of the complainant;
7. It constitutes due process.

GROUND FOR DISBARMENT:

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 attorney for a party to case without authority to do so (Sec. 27, Rule 138, RRC)

PROCEDURE FOR DISBARMENT:

1. Institution either by:
 - a. The Supreme Court, *motu proprio*, or
 - b. The IBP, *motu proprio*, or
 - c. Upon verified complaint by any person
2. Six copies of the verified complaint shall be filed with the Secretary of the IBP or Secretary of any of its chapter and shall be forwarded to the IBP Board of Governors.
3. Investigation by the National Grievance investigators.
4. Submission of investigative report to the IBP Board of Governors.
5. Board of Governors decides within 30 days.
6. Investigation by the Solicitor-General
7. SC renders final decision for disbarment/suspension/ dismissal.

Presumption of Innocence:

In the absence of contrary proof, the presumption is that the lawyer is innocent of the charges and has performed his duty as an officer of the court in accordance with his oath.

Quantum Proof:

The proof required is CLEAR, CONVINCING and SATISFACTORY evidence.

Burden of Proof:

The burden rests on the COMPLAINANT, the one who instituted the suit

OFFICERS AUTHORIZED TO INVESTIGATE IN THE DISBARMENT CASES:

1. Supreme Court
2. IBP through its Commission on Bar Discipline or authorized investigator
3. Office of the Solicitor General

MITIGATING CIRCUMSTANCES IN DISBARMENT:

1. Good faith in the acquisition of a property of the client subject of litigation (*In re: Ruste, 70 Phil. 243*)
2. Inexperience of the lawyer (*Munoz v. People, 53 SCRA 190*)
3. Age (*Lantos v. Gan, 196 SCRA 16*)
4. Apology (*Munoz v. People, 53 SCRA 190*)
5. Lack of Intention to slight or offend the Court (*Rheem of the Philippines, Inc. v. Ferrer, 20 SCRA 441*).

§3. LIABILITIES OF JUDGES

ADMINISTRATIVE LIABILITIES:

Grounds for administrative sanctions against judges (Sec. 67 of the Judiciary Act of 1948):

- 1.) *serious misconduct* – implies malice or wrongful intent, not mere error of judgment, judicial acts complained of must be corrupt or inspired by an intention to violate the law, or were in persistent disregard for well-known legal rules
- 2.) *inefficiency* – implies negligence, incompetence, ignorance, and carelessness, when the judge fails to observe in the performance of his duties that diligence, prudence and circumspection which the law requires in the rendition of any public service

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PROCEDURE FOR FILING AN ADMINISTRATIVE COMPLAINT (RULE 140 OF THE REVISED RULES OF COURT):

1. Complaint in writing, setting forth clearly the facts and circumstances relied upon and sworn to and supported by affidavits and documents
2. Service or dismissal- if the charge is with merit, a copy will be served upon the respondent, requiring him to answer within ten (10) days from the date of service, if not or the answer shows to the satisfaction of the court that the charges are not meritorious, it will be dismissed which must followed by an answer within 10 days from date of service
3. Hearing
4. Report filed with the Supreme Court of findings accompanied by evidence and documents

CRIMINAL LIABILITIES

Malfeasance under the RPC:

- a. Knowingly Rendering Unjust Judgment (Art. 204, RPC)
- b. Judgment Rendered Through Negligence (Art. 205, RPC)

§4. REINSTATEMENT

REINSTATEMENT – the restoration in disbarment proceedings to a disbarred lawyer the privilege to practice law.

The power of the Supreme Court to reinstate is based on its constitutional prerogative to promulgate rules on the admission of applicants to the practice of law. (art. VIII, sec. 5[5], 1987 Constitution).

***Prudential Bank vs. Benjamin Grecia, 192 SCRA 381**

Criterion: *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. Whether or not the applicant shall be reinstated rests on the discretion of the court.*

***Cui vs. Cui, 11 SCRA 755**

Reinstatement to the roll of attorneys wipes out the restrictions and disabilities resulting from a previous disbarment.

The Supreme Court, in addition to the required rehabilitation of the applicant for reinstatement may require special conditions to be fulfilled by the applicant.

§5. PARDON

Q: Is a disbarred lawyer due to conviction for a crime automatically reinstated to the practice of law upon being pardoned by the President?

A: To be reinstated, there is still a need for the filing of an appropriate petition with the Supreme Court. (*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.

§.6. CONTRIBUTION TO SOCIETY AND SELF DEVELOPMENT

CANON 4 – A lawyer shall participate in the improvement of the legal system by initiating or supporting efforts in law reform and in the administration of justice.

- Ex: 1. *Presenting position papers or resolutions for the introduction of pertinent bills in Congress;*
2. *Petitions with the Supreme Court for the amendment of the Rules of Court.*

CANON 5 – A lawyer shall keep abreast of legal developments, participate in continuing legal education programs, support efforts to achieve high standards in law schools as well as in the practical training of students and assist in disseminating information regarding the law and jurisprudence.

Q: What is the Integrated Bar of the Philippines?

A It is the national organization of lawyers created on 16 January 1973 under Rule 139-A, Rules of Court, and constituted on 4 May 1973 into a corporate body by Presidential Decree No. 181.

OBJECTIVES OF INTEGRATION OF THE BAR:

1. To elevate the standards of the legal profession

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2. To improve the administration of justice
3. To enable the Bar to discharge its responsibility more effectively.

THE THREE-FOLD OBLIGATION OF A LAWYER:

1. He owes it to himself to continue improving his knowledge of the laws;
2. He owes it to his profession to take an active interest in the maintenance of high standards of legal education;
3. He owes it to the lay public to make the law a part of their social consciousness.

Bar Matter 850

MANDATORY CONTINUING LEGAL EDUCATION (Adopting the Rules on the Continuing Legal Education for Members of the Integrated Bar of the Philippines) August 8, 2000

Pertinent Provisions:

Purpose:

Required of members of the IBP to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.

Commencement of MCLE:

Within two (2) months from the approval of these Rules by the SC, the IBP shall commence the implementation of the MCLE.

REQUIREMENTS OF COMPLETION OF MCLE:

Members of the IBP, unless exempted under Rule 7, shall complete every 3 years at least 36 hours of continuing legal education activities. *The 36 hours shall be divided as follows:*

- a. 6 hours – legal ethics
- b. 4 hours – trial and pretrial skills
- c. 5 hours – alternative dispute resolution
- d. 9 hours – updates on substantive and procedural laws and jurisprudence
- e. 4 hours – legal writing and oral advocacy
- f. 2 hours – international law and international conventions
- g. remaining 6 hours – such other subjects as may be prescribed by the Committee on MCLE.

COMPLIANCE PERIOD:

The initial compliance period shall begin not later than 3 months from the adoption of the IBP of the Rules.

3 Compliance Groups shall be designated:

1. Compliance Group 1 – Members in the NCR (Metro Manila)
2. Compliance Group 2 – Members in Luzon
3. Compliance Group 3 – Members in Visayas and Mindanao

CREDIT UNITS:

For every class of credit, a corresponding number of credit units shall be assigned.

CLASSES OF CREDITS:

1. **Participatory Credit** – attending approved education activities like seminars, conventions, symposia, and the like; speaking or lecturing, or assigned as panelist, reactor, or commentator, etc. in approved education activities; teaching in law school or lecturing in bar review classes.
2. **Non-participatory** – preparing, as author or co-author, written materials (e.g. article, book or book review) which contribute to the legal education of the author member, which were not prepared in the ordinary course of his practice or employment; editing a law book, law journal or legal newsletter.

PARTIES EXEMPTED FROM THE MCLE:

1. The President, Vice-President and the Secretaries and Undersecretaries of Executive Departments;
2. Senators and Members of the House of Representatives;
3. The Chief Justice and Associate Justices of the Supreme Court, incumbent and retired Justices of the judiciary, incumbent members of the Judicial and Bar Council and incumbent court lawyers covered by the Philippine Judicial Academy program of continuing judicial education;
4. The Chief State Counsel, Chief State Prosecutor and Assistant Secretaries of the Dept. of Justice;
5. The Solicitor General and the Assistant Solicitor General;
6. The Government Corporate Counsel, Deputy and Assistant Government Corporate Counsel;
7. The Chairman and Members of the Constitutional Commissions;
8. The Ombudsman, the Overall Deputy Ombudsman, the Deputy Ombudsmen and

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the Special Prosecutor of the Office of the Ombudsman;

9. Heads of government agencies exercising quasi-judicial functions;
10. Incumbent deans, bar reviewers and professors of law who have teaching experience for at least 10 years in accredited law schools;
11. The Chancellor, Vice-Chancellor and members of the Corps of Professional and Professorial Lecturers of the Philippine Judicial Academy; and
12. Governors and Mayors.

OTHER PARTIES EXEMPTED:

1. Those who are not in law practice, private or public;
2. Those who have retired from law practice with the approval of the IBP Board of Governors.

Good Cause for exemption from or modification of requirement:

A member may file a verified request setting forth good cause for exemption (such as physical disability, illness, post-graduate study abroad, proven expertise in law, etc.) from compliance with or modification of any of the requirements, including an extension of time for compliance, in accordance with procedure to be established by the Committee on MCLE.

Proof of exemption:

Applications for exemption from or modification of the MCLE requirement shall be under oath and supported by documents.

NON-COMPLIANCE PROCEDURES:

1. What constitutes non-compliance
 - a. Failure to complete education requirement within the compliance period
 - b. Failure to provide attestation of compliance or exemption
 - c. Failure to provide satisfactory evidence of compliance (including evidence of exempt status) within the prescribed period
 - d. Failure to satisfy the education requirement and furnish evidence of such compliance within 60 days from receipt of non-compliance notice
 - e. Failure to pay non-compliance fee within the prescribed period
 - f. Any other act or omission analogous to any of the foregoing or intended to

circumvent or evade compliance with the MCLE requirements.

2. Members failing to comply will receive a Non-Compliance Notice stating the specific deficiency and will be given 60 days from date of notification to file a RESPONSE.

CONSEQUENCES OF NON-COMPLIANCE:

1. A member who fails to comply with the requirements after the 60-day period shall be LISTED AS DELINQUENT MEMBER by the IBP Board of Governors upon recommendation of the Committee on MCLE.
2. The listing as a delinquent member is administrative in nature but shall be made with notice and hearing by the Committee on MCLE.

COMMITTEE ON MANDATORY CONTINUING LEGAL EDUCATION

Composition: Standing Committee of Five (5) Members

1. Retired Justice of the SC – Chairman, nominated by the SC
2. IBP National President – Vice-Chair
3. 3 other members – nominated by the Philippine Judicial Academy, UP Law Center and Association of Law Professors, respectively.

Members of the Committee shall be of proven probity and integrity and shall receive compensation as may be determined by the SC. The initial terms of each of the 3 members shall be 5, 4 and 3 years respectively.

Effectivity: 15 September 2000, following its publication in 2 newspapers of general circulation.

NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY

A.M. No. 03-05-01-SC
Promulgated: April 27, 2004
Affectivity: June 1, 2004

CANON 1 INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.



Sec.1. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat, or interference, direct or indirect, from any quarter or for any reason.

Sec.2. In performing judicial duties, judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.

Sec.3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

Sec.4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial 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.

Sec.5. judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

Sec.6. Judges shall be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.

Sec.7. Judges shall encourage and uphold safeguards from the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

Sec.8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

QuickTime™ and a
TIFF (Uncompressed) decompressor
are needed to see this picture.

CANON 2 INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

Sec.1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

Sec.2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Sec.3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

CANON 3 IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Sec.1. Judges shall perform their judicial duties without favor, bias or prejudice.

Sec.2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

Sec.3. Judges shall, so far as is reasonable, so conduct themselves as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases.

Sec.4. Judges shall not knowingly, while a proceeding is before, or could come before, them make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

Sec.5. Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where:

- (a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;



- (b) The judge previously served as a lawyer or was a material witness in the matter in controversy;
- (c) The judge, or a member of his or her family, has an economic interest in the outcome of the matter in controversy;
- (d) The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter 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;
- (e) The judge's ruling in a lower court is the subject of review;
- (f) The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree; or
- (g) The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings;

Sec.6. A judge disqualified as stated above may, instead of withdrawing from the proceeding, disclosing on the records the basis of disqualification. If based on such disclosure, the parties and lawyers independently of the judge's participation, all agree in writing that the reason for the inhibition is immaterial or unsubstantial, the judge may then participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceedings.

CANON 4 PROPRIETY

Propriety and the appearance of property are essential to the performance of all the activities of a judge.

Sec.1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

Sec.2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

Sec.3. Judges shall, in their personal relations with individual members of the legal

profession who practice regularly in their court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality.

Sec.4. Judges shall not participate in the determination of a case in which any member of their family represents a litigant or is associated in any manner with the case.

Sec.5. Judges shall not allow the use of their residence by a member of the legal profession to receive clients of the latter or of other members of the legal profession.

Sec.6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

Sec.7. Judges shall inform themselves about their personal fiduciary financial interests and shall make reasonable effort to be informed about the financial interests of members of their family.

Sec.8. Judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.

Sec.9. Confidential information acquired by judges in their judicial capacity shall not be used or disclosed by for any other purpose related to their judicial duties.

Sec.10. Subject to the proper performance of judicial duties, judges may:

- (a) Write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;
- (b) Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
- (c) Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

Sec.11. Judges shall not practice law whilst the holder of judicial office.



Sec.12. Judges may form or join association of judges or participate in other organizations representing the interests of judges.

Sec.13. Judges and members of their families shall neither ask for nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.

Sec.14. Judges shall not knowingly permit court staff or others subject to their influence, direction or authority, to ask for or accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done in connection with their duties or functions.

Sec.15. Subject to law and to any legal requirements of public disclosure, judges may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

CANON 5 EQUALITY

Ensuring equality of treatment to all before the courts is essential to the performance of the judicial office.

Sec.1. Judges shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, color, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes.

Sec.2. Judges shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

Sec.3. Judges shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

Sec.4. Judges shall not knowingly permit court staff or others subject to his or her influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

Sec.5. Judges shall not require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

CANON 6 COMPETENCE AND DILIGENCE

Competence and diligence are prerequisites to the due performance of judicial office.

Sec.1. The judicial duties of a judge take precedence over all other activities.

Sec.2. Judges shall devote their professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

Sec.3. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control, to judges.

Sec.4. Judges shall keep themselves informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

Sec.5. Judges shall perform all judicial duties, including the delivery of reserved decisions efficiently, fairly and with reasonable promptness.

Sec.6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.

Sec.7. Judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.

DEFINITIONS

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In this Code, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

“*Court staff*” includes the personal staff of the judge including law clerks.

“*Judge*” means any person exercising judicial power, however designated.

“*Judge’s family*” includes a judge’s spouse, son, daughter, son-in-law, daughter-in-law, and any other relative by consanguinity or affinity within the sixth civil degree, or person who is a companion or employee of the judge and who lives in the judge’s household.

This Code, which shall hereafter be referred to as the *New Code of Judicial Conduct for the Philippine Judiciary*, supersedes the Canons of Judicial Ethics and the Code of Judicial Conduct heretofore applied in the Philippines to the extent that the provisions or concepts therein are embodied in this Code: *Provided however*, that in case of deficiency or absence of specific provisions in this New Code, the Canons of Judicial Conduct shall be applicable in a supplementary character.

This Code shall take effect on the 1st day of June 2004, following its publication not later than 15 May 2004 in 2 newspapers of large circulation in the Philippines to ensure its widest publicity.

Promulgated this 27th day of April 2004.

(Signed)
HILARIO G. DAVIDE, JR.
Chief Justice

ATTORNEY’S OATH

“I, _____, 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 willingly nor wittingly promote or sue any groundless, false or unlawful suit, or 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 court as to my clients; and I impose upon myself this voluntary obligations without any mental reservation or purpose of evasion. So help me God.”