LEGAL ETHICS

LEGAL ETHICS
The embodiment of all principles of morality and refinement that should govern the conduct of every member of the bar. ***(Justice Moran's Foreword to Malcolm's Legal and Judicial Ethics as cited in Agpalo 2009, p. 2)***

That branch of moral science of which treats of the duties which an attorney owes to the court, to his client, to his colleagues in the profession and to the public. ***(Malcolm, Legal and Judicial Ethics as cited in Agpalo 2009, p. 2)***

A. PRACTICE OF LAW

PRACTICE OF LAW
Means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience. To engage in the practice of law is to perform those acts which are characteristics of the 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. ***(Cayetano vs. Monsod, G.R. No. 100113, September 3, 1991)***

It is not limited to the conduct of cases in court. It includes legal advice and counseling, and the preparation of legal instruments and contracts by which legal rights are secured, which may or may not be

ESSENTIAL CRITERIA DETERMINATIVE OF ENGAGING IN THE PRACTICE OF LAW *(Taken from Justice Padilla's dissent in Cayetano vs. Monsod)*

Code: H-A-C-A

(1) **Habituality.** The term "practice of law" implies customarily or habitually holding himself out to the public as a lawyer. Practice is more than an isolated appearance, for it consists in frequent or customary action, a succession of acts of the same kind. In other words, it is a habitual exercise.
(2) **Application of law, legal principle, practice, or procedure** which calls for legal knowledge, training and experience.
(3) **Compensation.** Practice of law implies that one must have presented himself to be in the active practice and that his professional services are available to the public for compensation, as a source of his livelihood or in consideration of his said services.
(4) **Attorney-client relationship**. Engaging in the practice of law presupposes the existence of lawyer-client relationship. Hence, where a lawyer undertakes an activity which requires knowledge of law but involves no attorney-client relationship, such as teaching law or writing law books or articles, he cannot be said to be engaged in the practice of his profession as a lawyer.

PRACTICE OF LAW AS A PRIVILEGE

The practice of law is not a natural, property or constitutional right but a mere privilege, a privilege clothed with public interest because a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation. ***(In the Matter of the IBP Membership Dues Delinquency of Atty. Marcial A. Edillon (IBP Administrative Case No. MDD-1, A.M. No. 1928, August 3, 1978)***

The practice of law is a privilege accorded only to those who measure up to a certain rigid standards of mental and moral fitness. These standards are neither dispensed with nor lowered after admission. ***(In re: Disbarment Proceedings Against Atty. Diosdado Q. Gutierrez, A.M. No. L-363, July 31, 1962)***

But while the practice of law is a privilege, a lawyer cannot be prevented from practicing law except for valid reasons, the practice of law not being a matter of state's grace or favor. ***(Ex parte Garland, 4 Wall (U.S.) 328, 18 L. ed 366)***

PRACTICE OF LAW AS A PROFESSION, NOT A BUSINESS

Primary characteristics which distinguish the legal profession from a business

(a) A duty of public service, of which emolument is a by-product, and in which one may attain the highest eminence without making much money.
(b) A relation as officer of the court to the administration of justice involving thorough sincerity, integrity, and reliability.
(c) A relation to client in the highest degree fiduciary.
(d) A relation to colleagues at the bar characterized by candor, fairness, and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with their clients. ***(Petition for Authority to Continue Use of the Firm Name "Sycip, Salazar, Feliciano, Hernandez & Castillo, G.R. No. X92-1, July 30, 1979)***

A partnership in the practice of law is a mere relationship or association for such particular purpose. It is not a partnership formed for the purpose of carrying on a trade or business or of

holding property. ***(Petition for Authority to Continue Use of the Firm Name "Sycip, Salazar, Feliciano, Hernandez & Castillo, G.R. No. X92-1, July 30, 1979)***

WHO MAY PRACTICE LAW, GENERALLY.

Any person who has been duly licensed as a member of the bar in accordance with the statutory requirements and who is in good and regular standing is entitled to practice law. ***(Rule 138, Sec. 1, Rules of Court.)***

Law is a noble profession, and the privilege to practice it is bestowed only upon individuals who are competent INTELLECTUALLY, ACADEMICALLY, and equally important, MORALLY. ***(Soriano vs. Dizon, A.C. No. 792, January 25, 2006)***

Persons entitled to practice law, generally:

(1) **Those admitted to the bar**.

This requirement involves various phases consisting of:

- ***(a)*** Furnishing satisfactory proof of educational, moral and other qualification.***(Rule 138, Secs. 2, 5 and 6, Rules of Court)***
- ***(b)*** Passing the bar examinations. ***(Rule 138, Secs. 8, 9, 10, 11 and 14)***
- ***(c)*** Taking the lawyer's oath before the Supreme Court itself. **(Rule 138, Sec. 17, Rules of Court)**
- ***(d)*** Signing the roll of attorneys and receiving from the clerk of court of the Supreme Court a certificate of the license to practice. ***(Rule 138, Secs. 18 and 19, Rules of Court)***

(2) **Those who remain in good and regular standing.** (Continuing requirement for the practice of law)

- *(a) Remain a member of the Integrated Bar of the Philippines.*
- *(b) Regularly pay all IBP membership dues and other lawful assessments as well as the annual professional tax receipt.*
- *(c) Faithfully observe the rules and ethics of the legal profession.*
- *(d) Be continually subject to judicial disciplinary control.*

Qualifications for admission to the practice of law

Every applicant for admission to the practice of law must be**:**

Code: C-R-A-G-M-E

(a) A **c**itizen of the Philippines.
(b) A **r**esident of the Philippines.
(c) At least 21 years of **a**ge.
(d) A person of **g**ood moral character.
(e) Must show that no charges against him involving **m**oral turpitude, are filed or pending in court.
(f) Possess the required **e**ducational qualifications.

(Rule 138, Sec. 2, Rules of Court)

Note: An applicant must have pursued and satisfactorily completed in an authorized and recognized university, college or school

- ☑ A four-year high school course
- ☑ A course of study prescribed for a bachelor's degree in arts or sciences
- ☑ A four-year bachelor's degree in law with completed courses in civil law, commercial law, remedial law, criminal law, public and private international law, political law, labor and social legislation, medical jurisprudence, taxation, and legal ethics.

An applicant who has not completed his pre-legal education or completed the same only after he began his study of law will not be qualified to take the bar examinations, and if by concealment of that fact he is able to take and pass the bar examinations and thereafter is admitted to the bar, his passing the bar examinations will not validate his admission to practice, taking the prescribed course of legal study in the regular manner being as essential as the other requirements for membership in the bar. ***(In the Matter of the Petition for Disbarment of Telesforo Diao vs. Martinez, A.C. No. 244, March 29, 1963)***

(g) **P**ass the bar examinations.

Note: On September 3, 2013 the Supreme Court lifted the so-called "five-strike rule" for bar examinees. The five-strike rule was first implemented in 2005 through Bar Matter No. 1161, a resolution which disqualifies bar examinees who fail the bar five times from taking the exams again.

Note: The Supreme Court, in the exercise of its power to admit applicants to the bar, may likewise prescribe such other qualifications or requirements as it may deem necessary to elevate the standards of the legal profession. The additional qualifications may be apart from whatever qualifications the

legislature may provide in the exercise of its legislative power. ***(In the matter of the Petitions for Admission to the Bar of Unsuccessful Candidates of 1946 to 1953; Albino Cunanan, et. al* G.R. No. L-6784. March 12, 1954)**

APPEARANCE OF NON LAWYERS

GENERAL RULE: Any person who has been duly licensed as a member of the bar in accordance with the statutory requirements and who is in good and regular standing is entitled to practice law. ***(Rule 138, Sec. 1, Rules of Court.)***

EXCEPTIONS:

- **Non-lawyers who can practice law.**

(1) A **law student** who has successfully completed third year of the regular four-year prescribed law curriculum and is enrolled in a recognized law school's clinical legal education program approved by the Supreme Court. ***(Rule 138-A, Sec. 1, Rules of Court)***

Note: Such law student may appear without compensation in any civil, criminal or administrative case before any trial court, tribunal, board or officer, to represent indigent clients accepted by the legal clinic of the law school. ***(Rule 138-A, Sec. 1, Rules of Court)***

Note: The appearance of the law student shall be under the DIRECT supervision and control of a member of the Integrated Bar of the Philippines. ***(Rule 138-A, Sec.2, Rules of Court)***

The phrase "direct supervision and control" requires no less than the physical presence of the supervising lawyer during the hearing. This is in accordance with the threefold rationale behind the Law Student Practice Rule, to wit:

(a) To ensure that there will be no miscarriage of justice as a result of incompetence or inexperience of law students, who not having as yet passed the test of professional competence, are presumably not fully equipped to act as counsels on their own;
(b) To provide a mechanism by which the accredited law school clinic may be able to protect itself from any potential vicarious liability arising from some culpable action by their law students; and
(c) To ensure consistency with the fundamental principle that no person is allowed to practice a particular profession without possessing the qualifications, particularly a license, as required by law. ***(In re: Need that Law Student Practicing Under Rule 138-A Be Actually Supervised During Trial, Bar Matter No. 730, June 13, 1997)***

Note: Any and all pleadings, motions, briefs, memoranda or other papers to be filed, must be signed by the supervising attorney for and in behalf of the legal clinic. ***(Rule 138-A, Sec. 2, Rules of Court)***

(2) A party to a litigation in person OR through the aid of an agent or friend appointed by him for that purpose in cases which the MTC has jurisdiction. ***(Rule 138, Sec. 34, Rules of Court)***

(3) A party to the litigation before any other court. ***(Rule 138, Sec. 34, Rules of Court)***

Note: In numbers 2 and 3 a law student before an inferior court may appear as an agent or friend of a party without the supervision of a member of the bar. ***(In re: Need that Law Student Practicing Under Rule 138-A Be Actually Supervised During Trial, Bar Matter No. 730, June 13, 1997)***

(4) In criminal cases before the MTC and a duly licensed member of the Bar is not available, the court may appoint any person of good repute for probity and ability in the province to defend the accused. ***(Rule 116, Sec. 7, Rules of Court)***

(5) Non-lawyers may appear before the NLRC or any Labor Arbiter only:
- ☑ If they represent themselves; or
- ☑ If they represent their organization or members thereof.

(Art. 222, Labor Code of the Philippines, P.D. 442)

(6) Under the Cadastral Act, any person can represent himself or a claimant before the Cadastral Court. ***(The Cadastral Act, Act 2259, Sec. 9)***

(7) *Any person appointed to appear for the Government of the Philippines in accordance with law (Rule 138, Sec. 33, Rules of Court)*

Note: Three limitations should be observed in order that the appearance of a layman on behalf of another as authorized by law may be reconciled with the rule that admission to the practice is a judicial function and that the practice of law is a lawful activity for members of the bar only.

- **The following are the limitations:**

  (a) A layman should confine his work to non adversary contentions. He should not undertake purely legal work such as the examination or cross-examination of witnesses or the presentation of evidence. ***(Philippine Association of Free Labor Unions vs. Binalbagan Isabela Sugar Co., G.R. No. L-23959, November 29, 1971)***

  (b) The services should not be habitually rendered, habituality being one of the characteristics of the practice of law.

  (c) A layman should not charge or collect attorneys' fees, one of the requisites for payment thereof being the relation of attorney and client which cannot exist between a layman and a person in whose favor representation is made. ***(Philippine Association of Free Labor Unions vs. Binalbagan Isabela Sugar Co., G.R. No. L-23959, November 29, 1971)***

Note: A non-lawyer litigant allowed to appear by himself and conduct his own litigation is bound by the same rules of procedure and evidence as those applicable to a party appearing through counsel. Moreover, he may not be heard to complain later that he has been deprived of the right to the assistance of counsel. ***(Agpalo, Legal and Judicial Ethics, 2009 p. 45)***

Note: The prohibition against the practice of law by a layman is not in conflict with the right of an individual to defend or prosecute a cause in which he is a party. An individual has long been permitted to manage, prosecute and defend his own action, but his representation is not considered to be practice of law. ***(Agpalo, Legal and Judicial Ethics, 2009 p. 45)***

- **Proceedings where lawyers are prohibited from appearing**

  (1) In all katarungan pambarangay proceedings. ***(R.A. 7160, Sec. 415)***

  (2) Small Claims Cases ***(Rules of Procedure of Small Claims Cases)***

- **Sanctions for practice or appearance without authority**

Code: C-E-C-A-D-S

(1) A disbarred attorney until his re-admission or a suspended lawyer during his is prohibited from engaging in the practice of law; and any such person who assumes to be an attorney is liable for **contempt of court** (punishable by fine or imprisonment or both in the discretion of the court.

(2) If the unauthorized practice on the part of a person who assumes to be an attorney causes damage to a party is liable for **estafa.**

(3) A government official forbidden to practice law may be held **criminally liable** for violating Secs. 7(b) and 11 of Republic Act 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees.

Section 7. *Prohibited Acts and Transactions*

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:

(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;

(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or

(3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

Section 11. *Penalties.* - (a) Any public official or employee, regardless of whether or not he holds office or employment in a casual, temporary, holdover, permanent or regular capacity, committing any violation of this Act shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute. Violations of Sections 7, 8 or 9 of this Act shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office.

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

(c) Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with public

officials or employees, in violation of this Act, shall be subject to the same penal liabilities as the public officials or employees and shall be tried jointly with them.

(d) The official or employee concerned may bring an action against any person who obtains or uses a report for any purpose prohibited by Section 8 (D) of this Act. The Court in which such action is brought may assess against such person a penalty in any amount not to exceed twenty-five thousand pesos (P25,000). If another sanction hereunder or under any other law is heavier, the latter shall apply.

(4) An officer or employee of the civil service, who as a lawyer, engages in the practice of law without a written permit from the department head concerned may be held **administratively liable**.
(5) **Disbarment**.
(6) **Suspension.**

PUBLIC OFFICIALS AND PRACTICE OF LAW

PUBLIC OFFICIALS
Includes elective or 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), R.A. No. 6713, Code of Conduct and Ethical Standards for Public Officials and Employees)***

General Rule: The appointment or election of an attorney to a government office disqualifies him from engaging in the private practice of law.

Reason: A public office is a public trust, and a public officer or employee is obliged not only to perform his duties with the highest degree of responsibility, integrity, loyalty and efficiency but also with EXCLUSIVE FIDELITY.

The disqualification is intended to:
- ☑ Preserve public trust in a public office
- ☑ Avoid conflict of interests or a possibility thereof
- ☑ Assure the people of impartiality in the performance of public functions and thereby promote the public welfare.

Public Officials who cannot practice law (Absolute Prohibition)

(1) Judges and other officials and employees of the courts ***(Rule 138, Sec. 5, Rules of Court)***
(2) Officials or employees of the Solicitor General ***(Rule 138, Sec. 5, Rules of Court)***
(3) Government Prosecutors ***(People vs. Villanueva, G.R. No. L-19450, May 27, 1965)***
(4) President, Vice-President, and members of the cabinet and their deputies and assistants ***(Art. VII, Sec. 13, 1987 Constitution)***
(5) Members of Constitutional Commissions ***(Art. IX-A, Sec. 2, 1987 Constitution)***
(6) Ombudsman and his deputies ***(Art. IX, Sec. 8 (2), 1987 Constitution)***
(7) Civil Service Officers or employees whose duties and responsibilities require that their entire time be at the disposal of the government ***(Ramos vs. Rada, A.M. No. 202, July 22, 1975)***
(8) All governors, city and municipal mayors. ***(Sec. 90(a), R.A. No. 7160, Local Government Code)***
(9) Those prohibited by special law.

Exceptions:

Public Officials who can practice law but with restrictions (Relative Prohibition)

(1) A lawyer member of the Legislature is prohibited from appearing as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. ***(Art. VI, Sec. 14, 1987 Constitution)***

Note: What is prohibited is to "personally appear" in court and other bodies. The word "appearance" includes not only arguing a case before any such body but also filing a pleading on behalf of a client as "by simply filing a formal motion, plea, or answer."

(2) Members of the sanggunian may engage in the practice of law except in the following:

(a) They shall not 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) They shall not 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) They shall not collect any fee for their appearance in administrative proceedings involving the local government of which he is an official

(d) They shall not use the property and personnel of the Government except when the sanggunian member concerned is defending the interest of the government. ***(Sec. 90(b), R.A. No. 7160, Local Government Code of the Philippines)***

(3) A civil service officer or employee whose duty or responsibility does not require his entire time to be at the disposal of the Government may engage in the private practice of law provided he can secure a written permit from the head of the department concerned. ***(Sec. 12, Rule XVIII, Revised Civil Service Rules; Ramos vs. Rada, A.M. No. 202, July 22, 1975)***

(4) Retired judge or justice receiving pension from the Government, cannot act as counsel in a 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 the accused of an offense in relation to his office. ***(Sec. 1, R.A. No. 910)***

(5) A former government attorney cannot, after leaving government service, accept engagement or employment in connection with any matter in which he had intervened while in the said service. ***(Rule 6.03, Code of Professional Responsibility)***

Note: Certain local elective officials (like governors, mayors, provincial board members and councilors) are expressly subjected to a total or partial proscription to practice their profession or to engage in any occupation, no such interdiction is made on the punong barangay and the members of the sangguniang barangay. Expressio unius est exclusion alterius. (*Catu vs. Rellosa*, A.C. No. 5738, 19 February 2008)

Lawyers authorized to represent the government

The following are authorized to represent the government:

(1) The **Office of the Solicitor General** shall represent the
- ☑ Government of the Philippines,
- ☑ its agencies and instrumentalities and
- ☑ its officials and agents

in any litigation, proceeding, investigation or matter requiring the services of lawyers. When authorized by the President or head of the office concerned, it shall also represent government owned or controlled corporations. The Office of the Solicitor General shall discharge duties requiring the services of lawyers. ***(Sec. 35, Administrative Code of 1987)***

(2) Deputized provincial or city fiscal. ***(Sec. 35, Administrative Code of 1987)***

(3) Deputized legal officers of the government departments, bureaus, agencies, and offices to assist the Solicitor General in cases involving their respective offices. ***(Sec. 35, Administrative Code of 1987***

(4) *Any person appointed to appear for the Government of the Philippines in accordance with law (Rule 138, Sec. 33, Rules of Court)*

Lawyer's oath

I,_____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines, I will support the Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, 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 courts as to my clients; and I impose upon myself these voluntary obligations without any mental reservation or purpose of evasion. So help me God.

Note: The lawyer's oath is not a mere ceremony or formality for practicing law. It is a condensed code of legal ethics. The significance of the oath is that it not only impresses upon the attorney his responsibilities but it also stamps him as an officer of the court with rights, powers and duties. It is a source of his obligations and its violation is a ground for suspension, disbarment or other disciplinary action. ***(Legal and Judicial Ethics, Agpalo 2009, p. 68)***

B. DUTIES AND RESPONSIBILITIES OF A LAWYER

TO SOCIETY

- ☑ Respect for law and legal processes ***(Canon 1)***
- ☑ Efficient and convenient legal services ***(Canon 2)***
- ☑ True, honest, fair, dignified and objective information on legal services ***(Canon 3)***
- ☑ Participation in the improvement and reforms in the legal system ***(Canon 4)***
- ☑ Participation in the legal education program ***(Canon 5)***
- ☑ Lawyers in Government Service ***(Canon 6)***

CANON 1

A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND 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 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 a controversy if it will admit of a fair settlement.

Rule 1.01 - Duty not to engage in unlawful conduct

Unlawful conduct
Is an act or omission which is against the law. ***(Legal and Judicial Ethics, Agpalo 2009, p. 72)***

An immoral or deceitful conduct is one that involves moral turpitude. ***(Legal and Judicial Ethics, Agpalo 2009, p. 72)***

Immoral conduct
Connotes conduct that shows indifference to the moral norms of society and the opinion of good and respectable members of the community. For such conduct to warrant disciplinary action, the same must be "grossly immoral," that is, it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree. ***(Ui vs. Bonifacio, A.C. No. 3319, June 8, 2000)***

That conduct which is willful, flagrant, or shameless, and which shows a moral indifference to the opinion of the good and respectable members of the community. ***(Arciga vs. Maniwang, A.M. No. 1608, August 14, 1981)***

Not confined to sexual conduct, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity and dissoluteness. ***(Advincula vs. Macabata, A.C. No. 7204, March 7, 2007)***

Moral Turpitude
Means anything which is done contrary to justice, honesty, modesty or good morals, or to any act of vileness, baseness or depravity in the private and social duties that a man owes his fellowmen or to society, contrary to the accepted rule of right and duty between man and man. ***(Legal and Judicial Ethics, Agpalo 2009, p. 106)***

Instances of gross immorality:

(1) Abandonment of wife and cohabiting with another woman. ***(Obusan vs. Obusan, A.M. 1392, April 2, 1984)***
(2) A lawyer who had carnal knowledge with a woman through a promise of marriage which he did not fulfill. **(*Quingwa vs. Puno, A.C. No. 389, February 28, 1987)***
(3) Seduction of a woman who is the niece of a married woman with whom the respondent lawyer had adulterous relations. ***(Royong vs. Oblena, G.R. No. 376, April 30, 1963)***
(4) Delivering bribe money to a judge on request of the clients. ***(Lee vs. Abastillas, A.M. No. RTJ-92-863 and AC. No. 3815, July 11, 1994)***

Rule 1.02 - Duty not to counsel illegal activities

The ethics of the legal profession imposes on all lawyers, as a corollary of their obligation to obey and uphold the constitution and the laws, the duty to promote respect for law and legal

processes and to abstain from activities aimed at defiance of the law or at lessening confidence in the legal system. ***(Legal and Judicial Ethics, Agpalo 2009, p. 74)***

No client corporate or individual, however, powerful nor any cause, civil or political, however important, is entitled to receive nor should any lawyer render any service or advice involving disloyalty to the laws whose ministers we are, or disrespect of the judicial office, which we are bound to uphold, or corruption of any person or persons exercising a public office or private trust, or deception or betrayal of the public. When rendering any such improper service or advice, the lawyer invites and merits stern and just condemnation. Correspondingly, he advances the honor of his profession and the best interests of his client when he renders service or gives advice tending to impress upon the client and his undertaking exact compliance with the strictest principles of moral law. He must also observe and advice his client to observe the statute law, though until a statute shall have been construed and interpreted by competent adjudication he is free and is entitled to advise as to its validity and as to what he conscientiously believes to be its just meaning and extent. But above all a lawyer will find his highest honor in a deserved reputation for fidelity to private trust and to public duty, as an honest man and as a patriotic and loyal citizen. ***(Canon 32, Canons of Professional Ethics)***

Respect for law is gravely eroded when lawyers themselves engage in unlawful practices and brush aside the rules of the IBP formulated for their observance. ***(In re: 1989 IBP Elections, A.M. No. 491, October 6, 1989)***

Rule 1.03 – Duty not to encourage lawsuits

A lawyer owes to society and to the court the duty not to stir up litigation. ***(Legal and Judicial Ethics, Agpalo 2009, p. 74)***

The purpose of the prohibition is to prevent ambulance chasing and barratry. ***(Legal and Judicial Ethics, Agpalo 2009, p. 75)***

> ***Ambulance Chasing*** – (figuratively speaking) the lawyer's act of chasing an ambulance carrying the victim of an accident for the purpose of talking to said victim or relatives and offering his legal services for the filing of a case against the person who caused the accident. ***(Legal Ethics, Pineda 2009, p. 64)***
>
> **Note:** The lawyer is guilty of ambulance chasing whether the act is done by him personally or by person under his employ.

Evils spawned by ambulance chasing

(1) Fomenting of litigation with resulting burdens on the courts and the public
(2) Subordination of perjury
(3) Mulcting of innocent persons by judgments upon manufactured causes of actions
(4) Defrauding of injured persons having proper causes of action but ignorant of legal rights and court procedure

Ambulance Chaser – a lawyer who haunts the hospitals and visits homes of the afflicted, officiously intruding their presence and persistently offering his service on the basis of a contingent fee. ***(Legal Ethics, Pineda 2009, p. 64)***

Barratry – It is the lawyer's act of fomenting suits among individuals and offering his legal services to one of them for monetary motives or purposes. ***(Legal Ethics, Pineda 2009, p. 64)***

General Rule: It is unethical for a lawyer to volunteer legal advice to bring lawsuit.

Exception: Canon 28, Canons of Professional Ethics

> **Note:** It is unprofessional for a lawyer to volunteer advice to bring a lawsuit except in rare cases where ties of blood, relationship or trust make it his duty to do so. ***(Canon 28, Canons of Professional Ethics)***

It is the lawyer's duty to resist the whims and caprices of his client and to temper his client's propensity to litigate. ***(Cataneda vs. Ago, G.R. L-28546, July 30, 1975)***

Rule 1.04 – Duty to encourage amicable settlement

The useful function of a lawyer is not only to conduct litigation but to avoid it where possible, by advising settlement or withholding suit. ***(Legal and Judicial Ethics, Agpalo 2009, p. 75)***

Whenever the controversy will admit of fair judgment, the client should be advised to avoid or end the litigation. ***(Canon 8, Canons of Professional Ethics)***
A lawyer cannot compromise the case of his client without the latter's consent even if he believes that the compromise is for the better interest of the client. ***(Philippine Aluminum Wheels, Inc. vs. FASGI Enterprises, Inc., G.R. No. 137378, October 12, 2000;*** Section 23, Rule 138, Rules of Court***)***

CANON 2

A LAWYER SHALL MAKE HIS LEGAL SERVICES AVAILABLE IN AN EFFICIENT AND CONVENIENT MANNER COMPATIBLE WITH THE INDEPENDENCE, INTEGRITY AND EFFECTIVE-NESS OF THE PROFESSION.

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

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

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 prescribed unless the circumstances so warrant.

Rule 2.01 – Not reject the cause of the defenseless or the oppressed

The duty of a lawyer to accept the cause of the defenseless and the oppressed empowers the court to:

- ☑ require him to render professional services to any party in a case if the party is without means to employ an attorney which services are necessary to protect the rights of such party or secure the ends of justice ***(Rule 138, Sec. 31, Rules of Court)*** , or to
- ☑ designate him as counsel de oficio for an accused if the latter is unable to employ a counsel de parte ***(Rule 116, Secs. 6 and 7)***

Note: A lawyer may refuse to accept the cause of the defenseless or the oppressed for valid reasons (e.g. he is not in the position to carry out the work effectively or competently), Rule 14.03, Canon 14, CPR.

Rule 2.02 – Not refuse to render legal advice

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 the latter's interests, such as advising him what preliminary steps to take, until he shall have secured the services of counsel.

> **Note:** A lawyer must refrain from giving legal advice if the reason for not accepting the case is that he labours under a conflict of interests between him and a prospective client or between a present client and a prospective client. ***(Rule 14.03, Code of Professional Responsibility)***

Rule 2.03 – Not to solicit legal business

- This rule prohibits professional touting.
- The proscription against advertising of legal services or solicitation of legal business aims to preserve the dignity that the practice of law is primarily a form of public service. ***(Legal and Judicial Ethics, Agpalo 2009, p. 119)***

General Rule: Solicitation of legal business not allowed.

Exception: When it is compatible with the dignity of the legal profession, made in a modest and decorous manner.

Examples:

☑ ***Publication in a reputable law list of brief biographical data and informative data.***

-The law list must be a reputable law list published primarily for that purpose; it cannot be a mere supplemental feature of a paper, magazine, trade journal or periodical which is published principally for other purposes.

☑ ***Use of an ordinary simple professional card.***

☑ ***Have his name listed in a telephone directory but not under a designation of special branch of law.***

☑ ***Publication of a simple announcement.***

-The announcement or representation should be in a form which does not constitute a statement or representation of special experience or expertness.

☑ **Write and sell for publication articles of general nature on legal subjects**.

Rule 2.04 – Not to charge rates lower than customarily prescribed

Offering lower rates than that prescribed by others for similar work or service constitutes an unethical practice of indirect solicitation of legal business.

What the rule prohibits is the competition in the matter of charging professional fees for the purpose of attracting clients in favor of the lawyer who offers lower rates. The rule does not prohibit a lawyer from charging a reduced fee or none at all to an indigent or a person who would have difficulty paying the fee usually charged for such services. ***(Comments of the IBP Committee that drafted the Code)***

CANON 3

A LAWYER IN MAKING KNOWN HIS LEGAL SERVICES SHALL USE ONLY TRUE, HONEST, FAIR, DIGNIFIED AND OBJECTIVE INFORMATION OR STATEMENT OF FACTS.

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

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

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.

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.

Rule 3.01 – A lawyer shall not use false statement regarding his qualification or service.

The best advertising possible for a lawyer is a well-merited reputation for professional capacity and fidelity to trust. (***Legal and Judicial Ethics, Agpalo 2009, p. 120)***

A lawyer who uses as his office address the office of his wife who is a judge was found guilty of using a fraudulent, misleading and deceptive address that had no purpose other than to try to impress either the court in which the cases are lodged, or his clients that he has close ties to a member of the judiciary. ***(In re: Atty. Renerio G. Paas, A.M. No. 01-12-02-SC, April 4, 2003)***

Engaging in business or other lawful calling entirely apart from the attorney's practice of law is not necessarily improper. Impropriety arises when the business is of such nature or in such manner as to be inconsistent with the lawyer's duties as a member of the bar. Such inconsistency arises when the business is one that will readily lend itself as a means of procuring professional employment for him, such that it can be used as a cloak for indirect solicitation. ***(Legal and Judicial Ethics, Agpalo 2009, p. 124)***

> **Note:** To avoid such inconsistencies, it is always desirable and usually necessary that the lawyer keeps any business in which he is engaged entirely separate and apart from his practice of the law.

Allowed advertisement. ***(Canon 27, Canons of Professional Ethics)***

> Publication in reputable law lists in a manner consistent with the standards of conduct imposed by those canons of brief biographical and informative data is permissible. Such data must not be misleading and may include only a statement of the lawyer's name and the names of his professional associates; addresses, telephone numbers, cable addresses; branches of the profession practiced; date and place of birth and admission to the bar; schools attended; with dates of graduation, degrees and other educational distinctions; public or quasi-public offices; posts of honor; legal authorship; legal teaching positions; memberships and offices in bar associations and committees thereof, in legal and scientific societies and legal fraternities; the fact of references; and, with their written consent, the names of clients regularly represented. A certificate of compliance with the Rules and Standards issued by the Special Committee on Law Lists may be treated as evidence that such list is reputable.

Prohibited Advertisement. ***(Canon 27, Canons of Professional Ethics)***

It is unprofessional to solicit professional employment by circulars, advertisements, through touters, or by personal communications or interviews not warranted by personal relations. 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 or is engaged or concerning the manner of their conduct, the magnitude of the interest involved, the importance of the lawyer's position, and all other like-laudation, offend the traditions and lower the tone of our profession and are reprehensible; but the customary use of simple professional cards is not improper.

Rule 3.02 – A lawyer shall not use false or misleading firm name.

A law firm may use a deceased partner's name provided it indicates in all its communications that said partner is dead.

Reason for allowing the continued use of the name of a deceased partner: All of the partners by their joint efforts over a period of time contributed to the goodwill attached to the firm name, and this goodwill is disturbed by a change in firm name every time a partner dies.

> The name of the law firm may not necessarily identify the individual members of the firm, and consequently, the continued use of the firm name after the death of one or more partners is not a deception. ***(Comments of the IBP Committee that drafted the Code)***

If a partner in the law firm had been appointed as a judge, his name in the firm should be dropped because he is no longer allowed to practice law. The same is true to a partner who has been appointed or elected to a government position which prohibits private practice of law. ***(Legal Ethics, Pineda 2009, p. 89)***

Filipino lawyers cannot practice law under the name of a foreign law firm, as the latter cannot practice law in the Philippines and the use of the foreign law firm's name is unethical. ***(Dacanay vs. Baker & McKenzie, A.M. No. 2131, May 10, 1985)***

Rule 3.03 – A partner who accepts public office should withdraw from the firm; exception

General Rule: Where a partner accepts public office, he shall withdraw from the firm and his name shall be dropped from the firm name.

Exception: The law allows him to practice law concurrently.

Purpose of the rule: To prevent the law firm from using his name to attract legal business and to avoid suspicion of undue influence. ***(Comments of the IBP Committee that drafted the Code)***

Rule 3.04 – A lawyer shall not seek media publicity

Media publicity, as a normal by-product of efficient legal service is not improper. What is improper is for a lawyer to resort to adroit propaganda to secure media publicity for the purpose of attracting legal business. ***(Legal and Judicial Ethics, Agpalo 2009, p. 130)***

Purpose of the rule: Prevent some lawyers from gaining an unfair advantage over others through the use of gimmickry, press agentry or other artificial means. ***(Comments of the IBP Cpmmittee that drafted the Code)***

When a member of the firm, on becoming a judge is precluded from practicing law, his name should not be continued in the firm name. ***(Canon 33, Canons of Professional Ethics)***

CANON 4

A LAWYER SHALL PARTICIPATE IN THE DEVELOPMENT OF THE LEGAL SYSTEM BY INITIATING OR SUPPORTING EFFORTS IN LAW REFORM AND IN THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE.

It is every lawyer's duty to improve the legal system in the country. Through collective efforts, lawyers can contribute to the enhancement of the system by presenting position papers or resolutions for the introduction of pertinent bills in Congress; petitions with the Supreme Court for the amendment for the amendment of the Rules of Court or introduction of New Rules; petitions with the IBP and other forums which have any relevant influence to the system. ***(Legal Ethics, Pineda 2009, p. 93)***

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 LAW STUDENTS AND ASSIST IN DISSEMINATING INFORMATION REGARDING THE LAW AND JURISPRUDENCE.

Three-fold obligation of a lawyer after admission to the practice

(a) (to himself) To continue improving his knowledge of the law
(b) (to the profession) To take an active interest in the maintenance of high standards of legal obligation
(c) (to the public) To make the law a part of its social consciousness ***(Legal and Judicial Ethics, Agpalo 2009, p. 80)***

Attorneys should familiarize themselves with the rules and comply with their requirements. They also are chargeable with notice of changes in the rules which have been held as including not only express reglementary provisions but also a regular practice under the Rules of Court. ***(Zualo vs. CFI of Cebu, CA-G.R. No. 27718-R, July 7, 1961)***

Lawyers must support and encourage efforts for the achievement of high standards in law schools, in the practical training of law students such as those involved in the clinical education program of law schools approved by the Supreme Court. ***(Rule 138-A, Revised Rules of Court)***

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 for disciplinary action.

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

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

The ethical duties provided for in the Code of Professional Responsibility are rendered even more exacting as to the lawyers in the government service because, as government counsel, they have the added duty to abide by the policy of the State to promote a high standard of ethics in public service. ***(Legal and Judicial Ethics, Agpalo 2009, p. 81)***

A lawyer who holds a government position may not be disciplined as a member of the bar for misconduct in the discharge of his duties as a government official. However, if the misconduct also constitutes a violation of the Code of Professional Responsibility or the lawyer's oath or is of such character as to affect his qualification as a lawyer or shows moral delinquency on his part, such individual may be disciplined as a member of the bar for such misconduct. ***(Pimentel, Jr. vs. Llorente, A.C. No. 4680, August 29, 2000)***

Rule 6.01 – A prosecutor shall see to it that justice is done

A public prosecutor is a quasi-judicial officer. He is the "representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case but that justice shall be done. As such, he is in a peculiar and very definite sense the servant of the law, the two-fold aim of which is that guilt shall not escape or innocence suffer. ***(Jose vs. Court of Appeals, G.R. No. L-38581, March 31, 1976)***

Primary duty of a prosecutor: Seek equal and impartial justice.

A public prosecutor should recommend the acquittal of the accused whose conviction is on appeal if he finds no legal basis to sustain the conviction. ***(Triente, Sr. vs. Sandiganbayan, G.R. No. 70332-43, November 13, 1986)***

It is highly reprehensible for a prosecutor to suppress facts capable of establishing the innocence of the accused or to conceal witnesses who can equally establish the accused's innocence in the crime charged. A prosecutor who is guilty of these acts is subject to disciplinary action. ***(Legal Ethics, Pineda 2009, p. 105)***

Rule 6.02 – A lawyer shall not use his public position to promote his private interest

This restriction applies particularly to lawyers in government service who are allowed by law to engage in private law practice

and to those who, though prohibited from engaging in the practice of law, have friends, former associates and relatives, who are in the active practice of law. ***(Legal and Judicial Ethics, Agpalo 2009, p. 89)***

A public official should see to it that his private activity does not interfere with the discharge of his official functions. He should not only avoid all impropriety but should also avoid the appearance of impropriety. ***(Legal and Judicial Ethics, Agpalo 2009, p. 89)***

Rule 6.03 – A lawyer who is a former public official may not accept certain employment

The restriction against a public official from using his public position as a vehicle to promote or advance his private interests extends beyond his tenure on certain matters in which he intervened as a public official. Thus, Rule 6.03 of the Code requires that a "lawyer shall not, after leaving the government service, accept engagement or employment in connection with any matter in which he had intervened while in said service."

Where the "matter" referred to in Rule 6.03, in which the lawyer intervened as a government official in a case is different from the "matter" or case in which he intervenes either as incumbent government official or as a former or retired public officer, there is no violation of Rule 6.03 nor he will be taking inconsistent positions nor will there be representation of conflict of interests, nor violation of Sec. 3(e) of the Anti-Graft Law. ***(General Bank and Trust Co. vs. Ombudsman, G.R. No. 125440, January 31, 2000;*** *PCGG v. Sandiganbayan*, G.R. No. 151805, 12 April 2005***)***

TO THE LEGAL PROFESSION

- ☑ Integrated Bar of the Philippines – Membership and Dues ***(Rule 139-A)***
- ☑ Upholding the dignity and integrity of the profession ***(Canon 7)***
- ☑ Courtesy, fairness and candor towards professional colleagues ***(Canon 8)***
- ☑ No assistance in unauthorized practice of law ***(Canon 9)***

INTEGRATED BAR OF THE PHILIPPINES*(Rule 139-A)*

The Integrated Bar of the Philippines 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 body corporate by P.D. No. 181.

The IBP is essentially a semi-governmental entity, a private organization endowed with certain governmental attributes. While it is composed of lawyers who are private individuals, the IBP exists to perform certain vital public functions and to assist the government particularly in the improvement of the administration of justice, the upgrading of the standards of the legal profession, and its proper regulation.

Statutory Basis

RA 6397. The Supreme Court may adopt rules of court to effect the integration of the Philippine Bar under such conditions as it shall see fit in order to raise the standards of the legal profession improve the administration of justice and enable the bar to discharge its public responsibility more effectively.

Integration does not make a lawyer a member of any group of which he is not already a member. He became a member of the Bar when he passed the Bar examinations. All that integration actually does is to provide an official national organization for the well-defined but unorganized and incohesive group of which every lawyer is already a member. **[*In the matter of the Integration of the Bar of the Philippines, (1973*)]**

GENERAL OBJECTIVES OF THE IBP

(1) To elevate the standards of the legal profession
(2) To improve the administration of justice
(3) To enable the Bar to discharge its public responsibility more effectively.

PURPOSE OF THE IBP

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

Note: The Integrated Bar shall be strictly non-political, and every activity tending to impair this basic feature is strictly prohibited and shall be penalized accordingly. (***Rule 193-A, Sec. 13)***

The basic postulate of the IBP is that it is non-political in character and that there shall be neither lobbying nor campaigning in the choice of the IBP Officers. The fundamental

assumption is that the officers would be chosen on the basis of professional merit and willingness and ability to serve. The unseemly ardor with which the candidates pursued the presidency of the association detracted from the dignity of the legal profession. The spectacle of lawyers bribing or being bribed to vote did not uphold the honor of the profession nor elevate it in the public's esteem. ***[In re 1989 Elections of the IBP, (1989)]***

Note: <u>Election by Exclusion</u>.- Election through 'rotation by exclusion' is the more established rule in the IBP. The rule prescribes that once a member of the chapter would be excluded in the next turn until all have taken their turns in the rotation cycle. Once a full rotation cycle ends and a fresh cycle commences, all the chapters in the region are once again entitled to vie but subject again to the rule on rotation by exclusion. ***[In the Matter of the Brewing Controversies in the Elections of the Integrated Bar of the Philippines, 686 SCRA 791 (2012)]***

MEMBERSHIP and DUES

<u>Statutory Basis</u>
Rules of Court, Rule 139-A, Section 9. **Membership dues.** — Every member of the Integrated Bar shall pay such annual dues as the Board of Governors shall determine with the approval of the Supreme Court. A fixed sum equivalent to ten percent (10%) of the collection from each Chapter shall be set aside as a Welfare Fund for disabled members of the Chapter and the compulsory heirs of deceased members thereof

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Section 10. **Effect of non-payment of dues**. — Subject to the provisions of Section 12 of this Rule, default in the payment of annual dues for six months shall warrant suspension of membership in the Integrated Bar, and default in such payment for one year shall be a ground for the removal of the name of the delinquent member from the Roll of Attorneys.

Membership in the National IBP is mandatory. It is not violative of a lawyer's freedom to choose to associate. ***(In re: Edillion, A.M. No. 1928 August 3, 1978)***

A lawyer does not automatically become a member of the IBP chapter where he resides or works after becoming a full- fledged member of the Bar. He has the discretion to choose the IBP Chapter he wants to join. ***(Garcia v. De Vera, 418 SCRA 27)***

A membership fee in the Integrated Bar is an exaction for regulation, while the purpose of a tax is revenue. If the Court has inherent power to regulate the Bar, it follows that as an incident to regulation, it may impose a membership fee for that purpose. It would not be possible to push through an Integrated Bar program without means to defray the concomitant expenses. The doctrine of implied powers necessarily includes the power to impose such an exaction. ***[In the matter of the Integration of the Bar of the Philippines, (1973)]***

A lawyer can engage in the practice of law only by paying his dues, and it does not matter if his practice is "limited." Moreover, senior citizens are not exempted from paying membership dues. ***[Santos v. Llamas, (2000)]***

We see nothing in the Constitution that prohibits the Court, under its constitutional power and duty to promulgate rules concerning the admission to the practice of law and the integration of the Philippine Bar (Article X, Section 5 of the 1973 Constitution) — which power the respondent acknowledges — from requiring members of a privileged class, such as lawyers are, to pay a reasonable fee toward defraying the expenses of regulation of the profession to which they belong. It is quite apparent that the fee is indeed imposed as a regulatory measure, designed to raise funds for carrying out the objectives and purposes of integration. ***(In re: Edillion, A.M. No. 1928 August 3, 1978)***

There is nothing in the law or rules which allow exemption from payment of membership dues [even if the lawyer is staying abroad]. At most, as correctly observed by the IBP, he could have informed the Secretary of the Integrated Bar of his intention to stay abroad before he left. In such case, his membership in the IBP could have been terminated and his obligation to pay dues could have been discontinued. ***[Letter of Atty. Cecilio Arevalo (2005)]***

NO RETIREMENT IN THE IBP
There is no such thing as retirement in the IBP as understood in labor law. A lawyer, however, may terminate his bar membership after filing the required verified notice of termination with the Secretary of the Integrated Bar. ***(In re: Atty. Jose Principe, Bar Matter No. 543, 20 September 20, 1990).***

Note: Under Rule 139-B. the IBP is given the power to entertain cases of disbarment filed before it, or cases filed before the Supreme Court and referred to it for investigation, report and recommendation. It does not however, have the power to suspend or disbar.

CANON 7

A LAWYER SHALL AT ALL TIMES UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION AND SUPPORT THE ACTIVITIES OF THE INTEGRATED BAR.

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

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

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

Rule 7.01 – No false statement in his application for admission to the bar

In his application for admission to the bar, the applicant must not knowingly make false of statements regarding the requirements for admission to the practice of law. If he passes the bar and he is later found to have made false statements in his application, he may be disbarred for such falsehood. ***(Legal and Judicial Ethics, Agpalo 2009, p. 102)***

An applicant who was not qualified to take the bar exams; but due to his false representations was allowed to take it, luckily passed it, and was thereafter admitted to the Bar was stripped of his license to practice law. ***(Diao vs. Martinez, A.C. No. 244, March 29, 1963)***

When the applicant concealed a charge of a crime against him but which crime does not involve moral turpitude, this concealment nevertheless will be taken against him. It is the fact of concealment and not the commission of the crime itself that makes him morally unfit to become a lawyer. When he made a concealment he perpetrated perjury. ***(In re: Ramon Galang, A.C. No. 1163, August 29, 1975)***

Consequences of knowingly making a false statement or suppression of material fact in the application for admission to the Bar:

- If discovered BEFORE the candidate could take the bar exams – denied permission to take the bar exams
- If discovered AFTER the candidate had passed the exams but BEFORE having taken his oath – not allowed to take the lawyer's oath

If discovered AFTER the candidate had taken his oath – his name will be stricken from the Roll of Attorneys.

Rule 7.02 – A lawyer shall not support unqualified applicant to the bar

A lawyer should aid in guarding the Bar against admission to the profession of candidates unfit or unqualified for being deficient in either moral character or education. ***(Canon 29, Canons of Professional Ethics)***

A lawyer who violates this rule is liable for disciplinary action. The act of supporting the application to the Bar of any person known to him to be unqualified constitutes gross misconduct in office. ***(Rule 138, Sec. 27, Revised Rules of Court)***

A lawyer should not readily execute an affidavit of good moral character in favor of an applicant whom he knows has not lived up to the standard required. ***(Legal and Judicial Ethics, Agpalo 2009, p. 102)***

Rule 7.03 – A lawyer shall not engage in any conduct that adversely reflects his fitness to practice law or discredits the legal profession

A lawyer should endeavour to conduct himself at all times to give credit to the legal profession and to inspire the confidence, respect and trust of his clients and the community. ***(Comments of the IBP Committee that drafted the Code)***

As officers of the court, lawyers must not only in fact be of good moral character but also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. ***(Tolosa vs. Cargo, A.M. No. 2385, March 8, 1989)***

The following are acts which adversely reflect on the lawyer's fitness to practice law:

- ☑ Gross immorality
- ☑ Conviction of a crime involving moral turpitude
- ☑ Fraudulent transactions

Note: Grossly immoral act is one that is so corrupt and false as to constitute a criminal act or so unprincipled or disgraceful as to be reprehensible to a high degree. ***(Reyes vs. Wong, A.M. No. 547, January 29, 1975)***

Examples of gross immorality:

- ☑ Living an adulterous life with a married woman ***(Royong vs. Oblena, G.R. No. 376, April 30, 1963 ; Quingwa vs. Puno, A.C. No. 389, February 28, 1987)***

- ☑ Maintaining illicit relations with his niece ***(Sarmiento vs. Cui, A.C. No. 141, March 29, 1957)***
- ☑ Maintaining illicit relations with the niece of his common law wife ***(Royong vs. Oblena, G.R. No. 376, April 30, 1963)***
- ☑ Abandoning his lawful wife to live with another woman ***(Toledo vs. Toledo, A.C. No. 266, April 27, 1963 ; Obusan vs. Obusan, A.C. No. 1392, April 2, 1984)***
- ☑ Contracting a marriage while his first marriage is still subsisting ***(Santos vs. Tan, A.M. No. 2697, April 19, 1991)***
- ☑ Seducing a woman to have carnal knowledge with her on the basis of misrepresentation that he is going to marry her ***(Bolivar vs. Simbol, A.C. No. 377, April 29, 1966; Almirez vs. Lopez, A.C. No. 481, February 28, 1969)***
- ☑ Having carnal knowledge with a student by taking advantage of his position ***(De los Reyes vs. Aznar, A.M. No. 1334, November 28, 1989)***

Note: An act to be characterized as a grossly immoral conduct will depend on the surrounding circumstances. ***(Royong vs. Oblena, G.R. No. 376, April 30, 1963)***

Note: It is not necessary that there be prior conviction for the offense before a lawyer can be disciplined for gross immorality; it is enough that the act charged, in the language of the law, constitutes a crime. ***(Royong vs. Oblena, G.R. No. 376, April 30, 1963)***

Note: As officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. ***(Legal and Judicial Ethics, Agpalo 2009, p. 105)***

Moral turpitude

Means anything which is done contrary to justice, honesty, modesty or good morals, or to any act of vileness, baseness or depravity in the private and social duties that a man owes his fellowmen or to society, contrary to the accepted rule of right and duty between man and man. ***(Legal and Judicial Ethics, Agpalo 2009, p. 106)***

Note: In general, all crimes of which fraud or deceit is an element or which are inherently contrary to rules of right conduct, honesty or morality in a civilized community, involve moral turpitude.

The issuance of worthless checks constitutes gross misconduct, and puts erring lawyer's moral character in serious doubt, though it is not related to his professional duties as a member of the bar. ***(Vda. De Espino vs. Presquito, A.C. No. 4762, June 28, 2004)***

CANON 8

A LAWYER SHALL CONDUCT HIMSELF WITH COURTESY, FAIRNESS AND CANDOR TOWARD 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.

Rule 8.01 – A lawyer shall use temperate language.

A lawyer should treat the opposing counsel and other lawyers with courtesy, dignity and civility and use only such temperate but forceful language in his pleadings or arguments as befitting an advocate. ***(Legal and Judicial Ethics, Agpalo 2009, p. 109)***

A lawyer's language should be forceful but dignified, emphatic but respectful as befitting an advocate and in keeping with the dignity of the legal profession. ***(Legal Ethics, Pineda 2009, p. 127)***

A lawyer who uses intemperate, abusive, abrasive or threatening language betrays respect disrespect to the court disgraces the Bar and invites the exercise by the court of its disciplinary power. ***(Surigao Mineral Reservation Board vs. Cloribel, G.R. No. L-27072, January 9, 1970)***

Lack or want of intention is no excuse for the disrespectful language employed. Counsel cannot escape responsibility by claiming that his words did not mean what any reader must have understood them as meaning. ***(Legal Ethics, Pineda 2009, p. 129)***

Instances of Disrespectful Language

(1) The lawyer's referral to the Supreme Court as a "civilized, democratic tribunal" but the innuendo would suggest that it is not. ***(Surigao Mineral Reservation Board vs. Cloribel, G.R. No. L-27072, January 9, 1970)***
(2) Labelling a judge as "corrupt" in a motion. ***(Ceniza vs. Sebastian, G.R. No. L-39914, July 2, 1984)***
(3) Calling an adverse counsel as "bobo." ***(Castillo vs. Padilla, A.C. No. 2339, February 24, 1984)***

Rule 8.02 – A lawyer shall not encroach upon the business of another lawyer.

This rule proscribes competition among lawyers in the matter of securing clientele. A lawyer should not steal the other lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services. ***(Legal and Judicial Ethics, Agpalo 2009, p. 111)***

> **Note:** A lawyer should not in any way communicate upon the subject of controversy with a party represented by counsel, much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel. It is incumbent upon the lawyer most particularly to avoid everything that may tend to mislead a party not represented by counsel, and he should not undertake to advise him as to the law. ***(Canon 9, Canons of Professional Ethics)***

Can a lawyer accept a case previously handled by another lawyer? Yes, provided that the other lawyer has been given notice by the client that his services have been terminated.

What if there is no notice of termination by the client? Can another lawyer take over the case? Yes, provided he was able to obtain the conformity of the counsel whom he would substitute or if such cannot be had he should give sufficient notice to the other lawyer the contemplated substitution.

Note: A lawyer's entry of appearance in the case without notice to the first lawyer amounts to an improper encroachment upon the professional employment of the original counsel.

Note: A lawyer subsequently retained as additional counsel should also communicate first with the original counsel before he enters his appearance in the case as this is the ethical thing to do when a lawyer associates with another in a pending litigation.

> *Purpose of the notice*: It will enable the lawyer sought to be changed to assert and protect any right to compensation he may claim or possess. While it may become the duty of the second lawyer to contest such claim, it is equally his duty to extend to the first lawyer every opportunity to have his claim protected. ***(Legal and Judicial Ethics, Agpalo 2009, p. 111)***

Can a lawyer insist that his brother in the profession refuse employment merely because the termination of his services is a breach of contract? No, to hold otherwise would be to deny a litigant the right to be represented at all times by counsel of his choice.

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 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, on a profitable sharing arrangement.

Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The purpose is to protect the public, the court, the client, and the bar from the incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the court.

The lawyer's duty not to assist in the unauthorized practice of law prohibits him from allowing an intermediary to intervene in the performance of his professional obligations. ***(Legal and Judicial Ethics, Agpalo 2009, p. 114)***

Reasons:

- ☑ The responsibilities and qualifications of a lawyer are individual.
- ☑ The lawyer's relation to his client is personal.
- ☑ The lawyer's responsibility to the client is direct.

Rule 9.01 – A lawyer shall not delegate legal work to non-lawyers.

A lawyer shall not delegate to a layman any work which involves the application of law.

> **Reason for this rule:** Public policy demands that legal work in the representation of parties litigant should be entrusted only to those possessing tested qualification and who are sworn to observe the rules and the ethics of the profession. ***(Philippine Association of Free Labor Unions vs. Binalbagan Isabela Sugar Co., G.R. No. L-23959, November 29, 1971)***

Examples of what cannot be delegated:

- ☑ Computation and determination of the period within which to an appeal an adverse judgment
- ☑ Examination of witnesses
- ☑ Presentation of evidence

Note: A lawyer may employ secretaries, investigators, detectives, researchers, accountants, etc. to undertake any task not involving the practice of law.

He may also avail himself of the assistance of law students in many fields of the lawyer's work. ***(Comments of the IBP Committee that drafted the Code)***

A lawyer was made to explain why he should not be disciplined for collaborating and associating in the practice of law with someone who is not a member of the bar. ***(Beltran, Jr. vs. Abad, B.M. No. 139, October 11, 1984)***

Rule 9.02 – A lawyer shall not divide fees with non-lawyers.

General Rule: A lawyer shall not divide or stipulate to divide a fee for legal services with a person not licensed to practice law.

Exceptions:

Code: C-A-R

(1) Where a lawyer undertakes to complete unfinished legal business of deceased lawyer.
(2) 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 persons specified in the agreement.
(3) 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 on a profit sharing agreement.

Note:

- ☑ First two exceptions to the rule represent compensation for legal services rendered by the deceased lawyer during his lifetime which is paid to his estate or heirs.

  In these two cases there is no improper arrangement. Impropriety arises where the effect of the arrangement is

  - ➢ to make the estate or heir a member of the partnership along with the surviving partners, or
  - ➢ where the estate or heir is to receive a percentage of the fees that may be paid from future business of the deceased lawyer's clients

  Why is it improper? Because the fees no longer represent compensation for past services of the deceased lawyer but for future services of the law firm or its surviving partners.

- ☑ The third exception to the rule does not involve, strictly speaking, a division of legal fees with non-lawyer employees. The retirement benefits in the form of pension represent additional deferred wages or compensation for past services of the employees.

TO THE COURTS

- ☑ Candor, fairness and good faith towards the courts ***(Canon 10)***
- ☑ Respect for courts and judicial officers ***(Canon 11)***
- ☑ Assistance in the speedy and efficient administration of justice ***(Canon 12)***
- ☑ Reliance on merits of his cause and avoidance of any impropriety which tends to influence or gives the appearance of influence upon the courts ***(Canon 13)***

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

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

Reasons for exercising candor, fairness, and good faith to the court

- ☑ It is essential for the expeditious administration of justice.
- ☑ It is the very essence of honourable membership in the legal profession.
  (Legal and Judicial Ethics, Agpalo 2009, p. 144)

Rule 10.1 – A lawyer shall do no falsehood.

A lawyer should not conceal the truth from the court, nor mislead the court in any manner, no matter how demanding his duties to his clients may be. His duties to his client should yield to his duty to deal candidly with the court. For no client is entitled to receive from the lawyer any service involving dishonesty to the courts. ***(Comments of the IBP Committee that drafted the Code)***

Instances of falsehood:

(1) Lawyer falsifying a power of attorney and used it in collecting the money due and appropriating the same for his own benefit. ***(In re: Rusiana, A.C. No. 270, March 29, 1974)***

(2) Lawyer presenting falsified documents in court which he knows to be false. ***(Bautista vs. Gonzales, A.M. No. 1625, February 12, 1990)***

(3) Using in pleadings the IBP number of another lawyer. ***(Bongolota vs. Castillo, CBD No. 176, Januar 1, 1995)***

Rule 10.02 – A lawyer should not misquote nor misrepresent.

To knowingly misquote or misrepresent in any of the matters mentioned in this rule is not only unprofessional but contemptuous as well. ***(Legal and Judicial Ethics, Agpalo 2009, p. 146)***

It is not candid nor fair for the lawyer knowingly to misquote the contents of a paper, the testimony of a witness, the language or the argument of opposing counsel, of the language of a decision or a textbook; or with knowledge of its invalidity, to cite as authority a decision that has been overruled or a statute that has been repealed, or in argument to assert as a fact that which has not been proved, or in those jurisdictions where a side has the opening and closing arguments to mislead his opponent by concealing or withholding positions in his opening argument upon which his side then intends to rely. ***(Canon 22, Canons of Professional Ethics)***

A lawyer who deliberately made it appear that the quoted portions, both in his motion for reconsideration and petition, were the findings and rulings of the Supreme Court when in truth the quoted portions were just part of the memorandum of the Court Administrator is guilty of violating this rule. ***(COMELEC vs. Hon. Noynay, et. al, G.R. No. 132365, July 9, 1998)***

In citing the Supreme Court's decisions and rulings, it is the bounden duty of the courts, judges and lawyers to reproduce or copy the same word for word and punctuation mark by punctuation mark. There is a salient and salutary reason why they should do this. Only from this Tribunal's decisions and

rulings do all other courts, as well as lawyers and litigants take their bearings. Thus, ever present is the danger that if not faithfully and exactly quoted, the decisions and rulings of this Court may lose their proper and correct meaning, to the detriment of the other courts, lawyers and the public who may thereby be misled. ***(Insular Life Assurance Co., Ltd. Employees Association vs. Insular Life Assurance Co., Ltd., G.R. No. L-25291, January 30, 1971)***

A lawyer was reminded to be more careful in his dealings with the Court when it was found out that he has not been able to make it clear why there was less than candor to the Court in his allegations regarding the merits of his clients' cases, when it appears rather evident that he was in possession of adverse information or knowledge in regard thereto. ***(The Philippine British Co vs. De Los Angeles, G.R. Nos. L-33720-21, May 21, 1975)***

Rule 10.03 – A lawyer shall not misuse rules of procedure.

This rule is ever timely and should always be inculcated among lawyers because the rules of procedure offer innumerable opportunities and means for delay and to defeat the ends of justice. Procedural rules are instruments in the speedy and efficient administration of justice. They should be used to achieve such end and not to derail it. ***(Legal and Judicial Ethics, Agpalo 2009, p. 147)***

The Court did not ignore the proclivity or tendency of a lawyer who filed several actions covering the same subject matter and sought substantially identical reliefs. The Court considered the lawyer's ability and long experience at the bar, it noted that the filing by him of identical suits for the same remedy is reprehensible and merits rebuke. ***(Macias vs. Uy Kim, et. al, G.R. No. L-31174, May 30, 1972)***

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.

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.

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

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

Canon 11 should constantly remind lawyers that second only to the duty of maintaining allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the land is the duty of all attorneys to observe and respect due to the courts of justice and judicial officers. ***(Legal and Judicial Ethics, Agpalo 2009, p. 149)***

The duty to observe and maintain the respect due to the courts devolves not only upon lawyers but also upon those who will choose to enter the profession. They have the same duty as a member of the bar to observe the respect due the courts, and their failure to discharge such duty may prevent them from being inducted into the office of the attorney. ***(Legal and Judicial Ethics, Agpalo 2009, p. 150)***

Rule 11.01 – A lawyer shall appear in proper attire.

Respect to the court must begin with the lawyer's outward physical appearance in court. Sloppy or informal attire adversely reflects on the lawyer and demeans the dignity and solemnity of court proceedings. ***(Legal and Judicial Ethics, Agpalo 2009, p. 153)***

A lawyer who dresses improperly may be cited for contempt. ***(Legal and Judicial Ethics, Agpalo 2009, p. 153)***

Rule 11.02 – A lawyer shall be punctual.

It is the duty of the lawyer not only to his client, but also to the courts and to the public to be punctual in attendance, and to be concise and direct in the trial and disposition of causes. ***(Canon 21, Canons of Professional Ethics)***

Inexcusable absence from, or repeated tardiness in, attending a pre-trial or hearing may not only subject the lawyer to disciplinary action, but may also prejudice his client who, as a consequence thereof, may be non-suited, declared in default or adjudged liable ex parte, as the case may be. ***(Legal and Judicial Ethics, Agpalo 2009, p. 153)***

Rule 11.03 – A lawyer shall abstain from offensive language or behavior.

A lawyer's language should be forceful but dignified, emphatic but respectful as befitting an advocate and in keeping with the dignity of the legal profession. ***(Surigao Mineral Reservation Board vs. Cloribel, G.R. No. L-27072, January 9, 1970)***

The language of a lawyer, both oral and written, must be respectful and restrained in keeping with the dignity of the legal profession. The use of abusive language by counsel against the opposing counsel constitutes at the same time disrespect to the dignity of the court of justice. ***(Legal and Judicial Ethics, Agpalo 2009, p. 154)***

Want or lack of intention is no excuse for the disrespectful language. At best, it merely extenuates liability (*Paragas vs. Cruz*, 14 SCRA 809; *Zaldivar vs. Gonzalez*, 166 SCRA 316; *Rheem of the Philippines vs. Ferrer*, 20 SCRA 441)

Rule 11.04 – A lawyer shall not attribute to a judge improper motives.

It is the duty of the lawyer to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges, not being wholly free to defend themselves, are peculiarly entitled to receive the support of the bar against unjust criticism and clamor. Whenever there is proper ground for serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievances to the proper authorities. In such cases, but not otherwise, such charges should be encouraged and the person making them should be protected. ***(Canon 1, Canons of Professional Ethics)***

A judge may commit errors or mistakes in his decision. He may, without realizing it, abuse his discretion in the resolution of issues before him. They do not however, justify a lawyer to "attribute to a judge motives not supported by the record or have no materiality to the case." ***(Legal and Judicial Ethics, Agpalo 2009, p. 157)***

The rule does not preclude a lawyer from criticizing judicial conduct. The rule allows such criticism so long as it is supported by the record or is material to the case. His right to criticize the acts of courts and judges in a proper and respectful way and through legitimate channels is well recognized. ***(Legal and Judicial Ethics, Agpalo 2009, p. 157)***

Rule 11.05 – A lawyer shall not criticize the personal or official conduct of the judge

When mistakes, errors and irregularities are committed by judges, wittingly or unwittingly, the aggrieved party is expected to rise to call the attention of the judge about the mistake, error or irregularity. ***(Legal Ethics, Pineda 2009, p. 174)***

When the criticism of judges goes beyond the walls of decency and propriety, the Supreme Court will not hesitate to punish the lawyer for indiscretions. ***(In re: Almacen, G.R. No. L-27654, February 18, 1970)***

Rule 11.06 – A lawyer shall submit grievances to proper authorities.

The duty of the bar to support the judge against unjust criticism and clamor does not, however preclude a lawyer from filing administrative complaints against erring judges or from acting as counsel for clients who have legitimate grievances against them. ***(Legal and Judicial Ethics, Agpalo 2009, p. 158)***

A lawyer may not file an administrative complaint against a judge, which arises from his judicial acts, until the lawyer shall have exhausted judicial remedies which result in the finding that the judge has gravely erred. If a lawyer does so without exhausting such judicial remedies or awaiting the result thereof, he may be administratively held on account thereof. ***(Legal and Judicial Ethics, Agpalo 2009, p. 158)***

An administrative complaint is not an appropriate remedy where judicial recourse is still available, such as a motion for reconsideration, an appeal, or a petition for certiorari, unless the assailed order or decision is tainted with fraud, malice, or dishonesty. (*Santiago III v. Justice Enriquez, Jr. A.M. No. CA-09-47-J*, February 13, 2009)

CANON 12

A LAWYER SHALL EXERT EVERY EFFORT AND CONSIDER IT HIS DUTY TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.

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

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

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 judgement or misuse Court processes.

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

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

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

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

a) on formal matters, such as the mailing, authentication or custody of an instrument, and the like, or
b) on substantial matters, in cases where his testimony is essential to the ends of justice, in which event he must, during his testimony, entrust the trial of the case to another counsel.

Canon 12 is a reminder that a lawyer is, first and foremost, an officer of the court. His duties to the court are more significant than those which he owes to his client. His first duty is not to his client but the administration of justice. ***(Legal and Judicial Ethics, Agpalo 2009, p. 159)***

Rule 12.01 – A lawyer should come to court adequately prepared.

Non-observance of this rule can have the following consequences:

- ☑ Postponement of the pre-trial or hearing.
- ☑ The judge may consider the client non-suited or in default.
- ☑ The judge may consider the case submitted for decision without the client's evidence.

Please note A.M. No. 12-8-8-SC or the Judicial Affidavit Rule.

Rule 12.02 – A lawyer shall not file multiple actions.

A lawyer not only owes to his client the duty of fidelity, but more important, he owes the duty of good faith and honourable dealing to the judicial tribunal before which he practices his profession. Inherent in that duty is the obligation to assist the court in the speedy disposition of cases. ***(Legal and Judicial Ethics, Agpalo 2009, p. 161)***

Forum Shopping – is the improper practice of

- ☑ going from one court to another in the hope of securing a favourable relief in one court which another court has denied, or the
- ☑ filing of repetitious suits or proceedings in different courts concerning substantially the same subject matter
- ☑ filing a similar case in another forum after an adverse opinion in another forum

Simply put, forum shopping exists when

- ☑ two or more actions involve the same transactions, essential facts, and circumstances, and raise identical causes of action, subject matter, and issues
- ☑ the elements of litis pendentia are present or
- ☑ where a final judgment in one case will amount to res judicata in the other

Note: The filing of successive suits as part of an appeal or a special civil action does not constitute forum shopping because such remedy is a recognized and authorized remedy under the Rules of Court.

Section 5, Rule 7 of the Rules of Court

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 theretofore 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

(a) shall constitute indirect contempt of court,
(b) 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

(a) summary dismissal with prejudice and
(b) shall constitute direct contempt, as well as
(c) a cause for administrative sanctions

- The principle applies not only with respect to suits filed in courts but also in connection with litigations commenced in courts while administrative proceeding is pending, in order to defeat administrative processes and in anticipation of an unfavorable administrative ruling and a favourable court ruling. ***(Crisostomo vs. Securities and Exchange Commission, G.R. Nos. 89095 & 89555, November 6, 1989)***

The new Rules of Court require that a certification against shopping be made on initiatory pleading, omitting therefrom "applications" which was required under Circular No. 04-94. There being no such mention of "applications" in the new Rules of Court, in effect amending the mentioned circular, applications for search warrant need not contain a non-forum certification. ***(Kenneth Roy Savage/K Angelin Export Trading vs. Taypin, G.R. No. 134217, May 11, 2000)***

The rule against forum shopping and the requirement that a certification to that effect be complied with in the filing of complaints, petitions, or other initiatory pleadings in all courts and agencies applies to quasi-judicial bodies. ***(Maricalum Mining Corp. vs. National Labor Relations Commission, et. al, G.R. No. 124711, November 3, 1998)***

Who signs the Certification against Forum Shopping?

General Rule: It must be signed by the client and not by the counsel. Otherwise, it is equivalent to non-compliance with the Rules of Court and is defective.

Exception: When the counsel, clothed with the special power of authority to do so, attests in the certification that he has personal knowledge of the facts stated and gives justifiable reasons why the party himself cannot sign the same. (*Mary Louise Anderson v. Enrique Ho*, G.R. No. 172590. January 7, 2013)

Rule 12.03 – A lawyer shall file his pleadings within the period.

Failure to file a pleading, memorandum, or brief within the original or extended period constitutes a breach of duty not only to the court but also to the client. The lawyer's failure to make an explanation constitutes discourtesy to the court. ***(Legal and Judicial Ethics, Agpalo 2009, p. 169)***

The Court censures the practice of counsels who secure repeated extensions of time to file their pleadings and thereafter simply let the period lapse without submitting the pleading or even an explanation of manifestation of their failure to do so. ***(Achacoso vs. Court of Appeals, G.R. No. L-35867, June 28, 1973)***

Where a lawyer's motion for extension of time to file a pleading, memorandum or brief has remained unacted by the court, the least that is expected of him is to file it within the period asked for (*Roxas vs. Court of Appeals*, 156 SCRA 253)

Rule 12.04 – A lawyer shall not delay nor impede execution of judgment.

The aim of a lawsuit is to render justice to the parties according to law. Procedural rules are precisely designed to accomplish such a worthy objective. Necessarily, therefore, any attempt to pervert the ends for which they are intended deserves condemnation. ***(Aguinaldo vs. Aguinaldo, et. al, G.R. No. L-30362, November 26, 1970)***

If a lawyer is honestly convinced of the futility of an appeal he should not hesitate to inform his client. He should temper his client's desire to seek appellate review of such decision for it will only increase the burden on appellate tribunals, prolong litigation, and expose his client to useless expenses of suit. ***(Arangco vs. Baloso, G.R. No. L-28617, January 31, 1973)***

Rule 12.05 – A lawyer shall not talk to a witness during recess.

The duty of a lawyer to assist in the speedy and efficient administration of justice includes the duty to refrain "from talking to his witness during a break or recess in the trial, while the witness is still under examination." ***(Rule 12.05, Code of Professional Ethics)***

Purpose of the rule: To avoid any suspicion that he is coaching the witness what to say during the resumption of the examination. ***(Legal and Judicial Ethics, Agpalo 2009, p. 173)***

Rule 12.06 – A lawyer shall not assist a witness to misrepresent

A lawyer should avoid any such action as may be misinterpreted as an attempt to influence the witness what to say in court. A lawyer who presents a witness whom he knows will give a false testimony may be subjected to disciplinary action. ***(Legal and Judicial Ethics, Agpalo 2009, p. 174)***

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

The lawyer who presented a witness knowing him to be a false witness is criminally liable for "Offering False Testimony in Evidence" under Art. 184 of the RPC.

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

Rule 12.07 – A lawyer shall not harass a witness

A lawyer should always treat adverse witnesses and suitors with fairness and due consideration, and he should never minister to the malevolence or prejudices of a client in the trial or conduct of a cause. The client cannot be made the keeper of the lawyer's conscience in professional matter. He has no right to demand that his counsel shall abuse the opposite party or indulge in offensive personalities. Improper speech is not excusable on the ground that it is what the client would say if speaking in his own behalf. ***(Canon 18, Canons of Professional Ethics)***

Under the Rules of Court, it is one of the duties of a lawyer, "To abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause with which he is charged." ***(Rule 138, Section 20(f), Revised Rules of Court)***

See also Rights of a Witness under Section 3, Rule 132, Rules of Court

Rule 12.08 – A lawyer shall avoid testifying for a client

General Rule: A lawyer cannot testify in behalf of his client.
Exceptions:

(1) On formal matters, such as mailing authentication or custody of an instrument, and the like.
(2) On substantial matters, in cases where his testimony is essential to the ends of justice, in which event he must, during his testimony, entrust the trial of the case to another counsel.

The underlying reason for the impropriety of a lawyer acting in such dual capacity lies in the difference between the function of a witness and that of an advocate.

Function of a witness – to tell the facts as he recalls them in answer to questions.

Function of an advocate – that of a partisan.

It is difficult to distinguish between the zeal of an advocate and the fairness and impartiality of a disinterested witness. The lawyer will find it hard to disassociate his relation to his client as an attorney and his relation to the party as a witness. ***(Legal and Judicial Ethics, Agpalo 2009, p. 175)***

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.

Improper acts of a lawyer which give the appearance of influencing the court to decide a case in a particular way lessen the confidence of the public in the impartial administration of justice, and should be avoided. ***(Comments of the IBP Committee that drafted the Code)***

Rule 13.01 – A lawyer shall not extend hospitality to a judge.

The unusual attention and hospitality on the part of a lawyer to a judge may subject both the judge and the lawyer to suspicion. For this reason, the common practice of some lawyers making judges and prosecutors godfathers of their children to enhance their influence and their law practice should be avoided by lawyers and judges alike. ***(Comments of the IBP Committee that drafted the Code)***

Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations of the parties, subject both the judge and the lawyer to misconstructions of motive and should be avoided. A lawyer should not communicate or argue privately with the judge as to the merits of a pending cause and deserves rebuke and denunciation for any device or attempt to gain from a judge special personal consideration or favor. A self-respecting independence in the discharge of professional duty, without denial or diminution of the courtesy and respect due the judge's station, is the only proper foundation for cordial personal and official relations between bench and bar. ***(Canon 3, Canons of Professional Ethics)***

It is improper for a litigant or counsel to see a judge in chambers and talk to him about a matter related to the case pending in the court of said judge. ***(Austria vs. Masaquel, G.R. No. L-22536, August 31, 1967)***

Rule 13.02 – A lawyer shall not publicly discuss pending cases.

Newspaper publication by a lawyer as to pending or anticipated litigation may interfere with a fair trial in the courts and otherwise the due administration of justice. Generally, they are to be condemned. If the extreme circumstances of a particular case justify a statement to the public, it is unprofessional to make it anonymous. An ex parte reference to the facts should not go beyond quotation from the records and papers on file in the court; but even in extreme cases it is better to avoid an ex parte statement. ***(Canon 20, Canons of Professional Ethics)***

The right of a lawyer to comment on a pending litigation or to impugn the impartiality of a judge to decide it is much circumscribed. The court in a pending litigation, must be shielded from embarrassment or influence in its all important duty of deciding the case. ***(Legal and Judicial Ethics, Agpalo 2009, p. 178)***

Once litigation is concluded the judge who decided it is subject to the same criticism as any other public official because then his ruling becomes public property and is thrown open to public consumption. ***(Legal and Judicial Ethics, Agpalo 2009, p. 178)***

A lawyer was held to have violated Rule 13.02 when he admittedly caused the holding of a press conference where he made statements against an order of a court. ***(In re: Suspension of Atty. Rogelio Bagabuyo, A.M. No. 7006, October 9, 2007)***

Rule 13.03 – A lawyer shall not invite judicial interference.

Reason: A lawyer who brooks or invites interference by another branch or agency of government in the normal course of judicial proceedings endangers the independence of the judiciary. **(Comments of the IBP Committee that drafted the Code)**

A lawyer was reprimanded for gross ignorance of the law and the Constitution in having asked the President to set aside by decree the Court's decision which suspended him from the practice of law. ***(Bumanlag vs. Bumanlag, 74 SCRA 92)***

TO THE CLIENTS

- ☑ Availability of service without discrimination ***(Canon 14)***
  - Services regardless of a person's status
  - Services as counsel de oficio
  - Valid grounds for refusal
- ☑ Candor, fairness and loyalty to clients ***(Canon 15)***
  - Confidentiality rule
  - Privileged communications
  - Conflict of interest
  - Candid and honest advice to clients
  - Compliance with laws
  - Concurrent practice of another profession
- ☑ Client's moneys and properties ***(Canon 16)***
  - Fiduciary relationship
  - Commingling of funds
  - Delivery of funds
  - Borrowing or lending

- ☑ Fidelity to client's cause ***(Canon 17)***
- ☑ Competence and diligence ***(Canon 18)***
  - Adequate protection
  - Negligence
  - Collaborating counsel
  - Duty to apprise client
- ☑ Representation with zeal within legal bounds ***(Canon 19)***
  - Use of fair and honest means
  - Client's fraud
  - Procedure in handling the case
- ☑ Attorney's fees ***(Canon 20)***
  - Acceptance fees
  - Contingency fee arrangements
  - Attorney's liens
  - Fees and controversies with clients
  - Concepts of attorney's fees
    - ➢ Ordinary concept
    - ➢ Extraordinary concept
- ☑ Preservation of client's confidences ***(Canon 21)***
  - Prohibited disclosures and use
  - Disclosure, when allowed
- ☑ Withdrawal of services ***(Canon 22)***

CANON 14

A LAWYER SHALL NOT REFUSE HIS SERVICES TO THE NEEDY.

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

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

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

a) he is in no position to carry out the work effectively or competently;

b) he labors under a conflict of interest between him and the prospective client or between a present client and the prospective client;

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.

Canon 14 and its implementing rules of the Code of Professional Responsibility provide the exception to the general rule and emphasize the lawyer's public responsibility of rendering legal services to the needy and the oppressed who are unable to pay attorney's fees.

Two reasons for the rule:

(1) The poor and the needy are the persons who, when in trouble, need most of the services of a lawyer but hesitate to secure such services because they cannot afford to pay counsel's fees or fear they will be refused for their inability to compensate the lawyer.
(2) One of the objectives of the IBP is to make legal services fully available for those who need them.

Rule 14.01 – A lawyer shall not decline to represent unpopular clients.

Regardless of his personal feelings, a lawyer should not decline representation because a client or a cause is unpopular or community reaction is adverse. ***(Legal and Judicial Ethics, Agpalo 2009, p. 200)***

It is the right of the lawyer to undertake the defense of a person accused of crime, regardless of his personal opinion as to the guilt of the accused; otherwise, innocent persons, victims only of suspicious circumstances, might be denied proper defense. Having undertaken such defense, the lawyer is bound, by all fair and honorable means, to present every defense that the law of the land permits, to the end that no person may be deprived of life or liberty but by due process of law. ***(Canon 5, Canons of Professional Ethics)***

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 said person is guilty of the charge or charges filed against him. ***(Legal Ethics, Pineda 2009, p. 218)***

The lawyer should not "brand his clients as the culprits." Such act of discrimination amounts to unprofessionalism. ***(Francisco vs. Portugal, A.C. No. 6155, March 14, 2006)***

Rule 14.02 – A lawyer shall not decline appointment by the court or by the IBP.

The relation of attorney and client may be created by

- ☑ Voluntary agreement between them
- ☑ Appointment of an attorney as counsel de oficio for a poor or indigent litigant

It shall be the duty of the attorney so assigned to render the required service, unless he is excused therefrom by the court for sufficient cause shown. ***(Legal and Judicial Ethics, Agpalo 2009, p. 178)***

Rule 14.03 – A lawyer may refuse to represent indigent on valid grounds.

General Rule: A lawyer is not obliged to act as legal counsel for any person who may wish to become his client.

Exception: Appointment as counsel de oficio or amicus curiae, or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.

Exception to the exception: Serious and sufficient cause

(1) **Lack of competence.** He is in no position to carry out the work effectively or competently;
(2) **Conflict of Interests**. He labors under a conflict of interest between him and the prospective client or between a present client and the prospective client;

Rule 14.04 – A lawyer shall observe the same standard for all clients.

The purpose of the legal profession is to render public service and secure justice for those seek its aid. The gaining of a livelihood is only a secondary consideration.

The fact that a lawyer merely volunteered his legal services or that he was a mere counsel de oficio neither diminishes the degree of professional responsibility owed to his client. ***(Blaza vs. Arcangel, A.C. No. 492, September 5, 1967)***

Every case a lawyer accepts deserves full attention, diligence, skill, and competence regardless of its importance and whether he accepts it for a fee or for free. It bears emphasis that a client is entitled to the benefit of any and every remedy and defense that is authorized by the law and expects his lawyer to assert every such remedy or defense. ***(Sarenas vs. Ocampos, A.C. No. 4401, January 29, 2004)***

CANON 15

A LAWYER SHALL OBSERVE CANDOR, FAIRNESS AND LOYALTY IN ALL HIS DEALINGS AND TRANSACTIONS WITH HIS CLIENTS.

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

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

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

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

Rule 15.06 - A lawyer shall not state or 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 principles of fairness.

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

Rule 15.01 – A lawyer shall ascertain possible conflict of interests

It is the duty of a lawyer to disclose and explain to a prospective client all circumstances of his relations to the parties and any interest in or in connection with the controversy, which in his

honest judgment might influence the client in the selection of counsel. ***(Canon 16, Canons of Professional Ethics)***

A lawyer may not accept employment from another in a matter adversely affecting any interest in his former client with respect to which confidence has been reposed. ***(Canon 6, Canons of professional Ethics)***

A lawyer should not accept employment as an advocate in any matter in which he had intervened while in the government service. ***(Rule 6.03, Code of Professional Responsibility)***

A lawyer should not, after his retirement in a public office or employment, accept employment in connection with any matter which he has investigated or passed upon while in such office. ***(Canon 36, Canons of Professional Ethics)***

Lawyers are prohibited from representing conflicting interests in a case. The lawyer's act of appearing and acting as counsel for the complainants against the PNB, that had appointed him bank attorney and notary public, constitutes malpractice. ***(Mejia vs. Reyes, A.C. No. 378, March 30, 1962)***

In case of conflict of interests of a lawyer and his client, the lawyer shall give preference to the client's interests. ***(Legal Ethics, Pineda 2009, p. 233)***

Rule 15.02 – A lawyer shall preserve the secrets of a prospective client

Matters disclosed by a prospective client to a lawyer are protected by the rule on privileged communication even if the prospective client does not thereafter retain the lawyer or the latter declines employment. ***(Legal and Judicial Ethics, Agpalo 2009, p. 195)***

Reason for the rule: To make the prospective client free to discuss whatever he wishes with the lawyer without fear that what he tells the lawyer will not be divulged nor used against him, and for the lawyer to be equally free to obtain information from the prospective client. ***(Comments of the IBP Committee that drafted the Code)***

Related to this rule is Rule 21.01 of the same Code. Rule 21.01 provides for the exceptions to the prohibition in Rule 15.02, to wit:

(a) When the revelation is authorized by the client after having been acquainted of the consequences of disclosure;
(b) When the revelation is required by law;
(c) When necessary to collect the lawyer's fees or to defend himself, his employees or associates or by judicial action

Parties entitled to invoke the privilege

(1) The client
(2) The lawyer
(3) The lawyer's secretary, stenographer, or clerk who acquired confidential communication in such capacity, save only when the client and the attorney jointly consent thereto ***(Rule 130, Sec. 21(b), Revised Rules of Court)***

Limitations of the Privileged Communication

(1) The communication or the physical object must have been transmitted to the counsel by the client for the purpose of seeking legal advice. Otherwise, there is no privileged communication.
(2) The privilege is limited or has reference only to communications which are within the ambit of lawful employment and does not extend to those transmitted in contemplation of future crimes or frauds.
(Legal Ethics, Pineda 2009, p. 241)

Note: The rule on privileged communication is applicable to students under the law student practice rule or Rule 138-A. ***(Legal Ethics, Pineda 2009, p. 246)***

Rule 15.03 – A lawyer shall not represent conflicting interests, exception

Reason for this rule: The rule aims not only to bar the dishonest practitioner from fraudulent conduct but also to prevent the honest practitioner from putting himself in a position where he may be required to choose between conflicting duties. ***(Legal Ethics, Pineda 2009, p. 252)***

General Rule: A lawyer shall not represent conflicting interests

Exception: There is written consent of all concerned given after full disclosure of facts

Conflicting Interests – exists when there is an inconsistency in the interests of two or more opposing parties.

> **Note:** The test is whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim but it is his duty to oppose it for the other client. ***(Canon 6, Canons of Professional Ethics)***

Tests to determine conflict of interest:

(1) When a lawyer is duty-bound to fight for an issue or claim in behalf of one client and, at the same time, to oppose that claim for the other client.

> **Note:** In this case, a lawyer shall be liable criminally for the offense of "betrayal of trust by an attorney" punishable under Art. 209 of the Revised Penal Code

(2) When the acceptance of a new relation would prevent the full discharge of the lawyer's duty of undivided fidelity and loyalty to the client or invite suspicion of unfaithfulness or double-dealing in the performance of that duty.

(3) When the lawyer would be called upon in the new relation to use against a former client any confidential information acquired through their connection or previous employment.

(Legal Ethics, Pineda 2009, p. 247)

Types of Conflict of Interest

1. Concurrent or multiple representations - generally occurs when a lawyer represents clients whose objectives are adverse to each other, no matter how slight or remote such adverse interest may be.
2. Sequential or successive representation – involves representation of a present client who may have an interest adverse to a prior or former client of the firm.

NOTE: What is material in determining whether there is a conflict of interest in the representation is probability, not certainty of conflict.

Rule 15.04 – A lawyer may act as mediator, conciliator, or arbitrator

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

Rule 15.05 – A lawyer shall give candid advice on the merits of the case

It is incumbent upon a lawyer to give a candid and honest opinion on the merits and probable results of his client's case with the end in view of promoting respect for the law and the legal processes. ***(Choa vs. Chiongson, MTJ-95-1063, February 9, 1996)***

Rule 15.06 – A lawyer shall not undertake influence-peddling

It is improper for a lawyer to show in any way that he has connections and can influence any tribunal or public official specially so if the purpose is to enhance his legal standing and to entrench the confidence of the client that his case or cases are assured of victory. Such a display of influence whether factual or imaginary does not only undermine our judicial and legal systems but also degrades our courts for dangerous oppression is created in cases that are won not on the merits but on the magnetic pull of influential connections. ***(Legal Ethics, Pineda 2009, p. 265)***

Rule 15.07 – A lawyer shall perform duty within the law

A lawyer is required to represent his client within the bounds of law. The Code of Professional Responsibilty enjoins him to employ only fair and honest means to attain the lawful objectives of his client. He may use any arguable construction of the law or rules which is favourable to his client. But he is not allowed to knowingly advance a claim or defense that is unwarranted under existing law. ***(Legal and Judicial Ethics, Agpalo 2009, p. 209)***

Rule 15.08 – A lawyer who is engaged in another profession or occupation must make clear on which capacity he is acting

It is not uncommon for lawyers to combine law practice with some other occupation. The fact of being a lawyer does not preclude him from engaging in business, and such practice is not necessarily improper. Impropriety arises when the business is of such a manner as to be inconsistent with the lawyer's duties as a member of the Bar. ***(Comments of the IBP Committee that drafted the Code)***

A party's engagement of his counsel in another capacity concurrent with the practice of law is not prohibited, so long as the roles being assumed by such counsel is made clear to the client. The only reason for this clarification requirement is that certain ethical considerations operative in one profession may not be so in the other. ***(New Sampaguita Builders Construction, Inc. vs. Philippine National Bank, G.R. No. 148753, July 30, 2004)***

CANON 16

A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

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

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

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

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

Rule 16.01 – A lawyer shall account for client's funds

A lawyer may receive money or property for or from his client in the course of his professional relationship with his client. The lawyer holds such property or money in trust and he is under obligation to make an accounting thereof. ***(Legal and Judicial Ethics, Agpalo 2009, p. 251)***

When a lawyer unjustly retains in his hands money of his client after it has been demanded, he may be punished for contempt. ***(Legal Ethics, Pineda 2009, p. 273)***

A lawyer was disbarred for having used the money of his clients without the consent of the latter. ***(Businos vs. Ricafort, A.C. No. 4349, December 22, 1997)***

Rule 16.02 – A lawyer shall not commingle client's funds

A lawyer should not commingle a client's money with that of other clients and with his private funds, nor use the client's money for his personal purposes without the client's consent. ***(Legal and Judicial Ethics, Agpalo 2009, p. 256)***

The relationship between a lawyer and a client is highly fiduciary; it requires a high degree of fidelity and good faith. Money or other trust property of the client coming into the possession of the lawyer should be reported by the latter and accounted for promptly and should not, under any circumstances, be commingled with his own or be used by him. ***(Espiritu vs. Cabredo IV, A.C. 5831, January 23, 2003)***

Rule 16.03 – A lawyer shall deliver funds to client, subject to his lien

A lawyer who obtained possession of the funds and properties belonging to his client in the course of his professional employment shall deliver the same to his client when

(a) they become due, or
(b) upon demand.

The lawyer's failure to deliver upon demand gives rise to the presumption that he has misappropriated the funds for his own use to the prejudice of the client and in violation of the trust reposed in him. ***(Schulz vs. Flores, A.C. No. 4219, December 8, 2003)***

A lawyer shall have a lien over the client's funds and may apply so much thereof to satisfy his lawful fees and disbursements but must give prompt notice to his client for the latter's advisement. This authority is applicable to the lawyer's retaining lien. ***(Legal Ethics, Pineda 2009, p. 277)***

The Revised Rules of Court provides the procedure of enforcing attorney's liens –

> **Section 37.** *Attorneys' liens*. — An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the

satisfaction thereof. He shall also have a lien to the same extent upon all 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 the 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 the caused written notice thereof to be delivered to his client and to the adverse paty; 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 just fees and disbursements.

Rule 16.04 – A lawyer shall not borrow from, nor lend money to, client.

This rule against borrowing of money by a lawyer from his client is intended to

(1) prevent the former from taking advantage of his influence over the latter
(2) assure the lawyer's independent professional judgment
(Comment of the IBP Committee that drafted the Code)

A lawyer was disbarred for asking a client for a loan and then failing to pay the same. ***(Frias vs. Lozada, A.C. 6656, December 13, 2005)***

General Rule: A lawyer is not allowed to borrow money from his client.

Exception: The lawyer is allowed to borrow money from his client provided the interests of the client are fully protected by the nature of the case or by independent advice.

General Rule: A lawyer may not lend money to a client.

Exception: When it is necessary in the interest of justice to advance necessary expenses in a legal matter he is handling for the client.

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.

Fidelity to the cause of the client is the essence of the legal profession. Without this fidelity, the profession will not survive. ***(Legal Ethics, Pineda 2009, p. 283)***

The lawyer owes "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability," to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavor or public popularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of any and every remedy and defense that is authorized by the law of the land, and he may expect his lawyer to assert every such remedy or defense. But it is steadfastly to be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of attorney does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery, he must obey his own conscience and not that of his client. ***(Canon 15, Canons of Professional Ethics)***

It is a duty of a lawyer at the time of retainer to disclose to the client all the circumstances of his relations to the parties and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidence forbids also subsequent acceptance of retainers or employment from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed. ***(Canon 6, Canons of Professional Ethics)***

An attorney owes loyalty to his client not only in the case in which he has represented him but also after the relation of attorney and client has terminated. It is not a 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. ***(Lorenzana Food Corporation vs. Daria, A.C. No. 2736, May 27, 1991)***

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 there with 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 client's request for information.

Competence- the sufficiency of lawyer's qualifications 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.

Diligence – the attention and care required of a person in a given situation and is the opposite of negligence.

The practice of law does not require extraordinary diligence (*exactissima diligentia*) or that "extreme measure of care and caution which persons of unusual prudence and circumspection use for securing and preserving their rights." All that is required is ordinary diligence (*diligentia*) or that degree of vigilance expected of a *bonus pater familias*. ***(Edquibal vs. Ferrer, A.C. 5687, February 3, 2005)***

Rule 18.01 – A lawyer shall not legal service he is not qualified to render.

General Rule: A lawyer is directed not to undertake legal service which he knows or should know he is not qualified or competent to render.

Exception: If his client consents, the lawyer can take as collaborating counsel another lawyer who is competent on the matter.

A lawyer who is part of the Public Attorney's Office cannot practice law. His acceptance of attorney's fees from outside clients is a violation of Canon 1 and Rule 18.01 of the Code of Professional Responsibility. ***(Ramos vs. Imbang, A.C. No. 6788, August 23, 2007)***

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

The adequate preparation required of the lawyer in handling of a case covers a wide dimension in law practice. It includes among other virtues, sufficient knowledge of the law and jurisprudence, ability in trial technique and high proficiency in the formulation of pleadings. ***(Legal Ethics, Pineda 2009, p. 292)***

Rule 18.03 – A lawyer shall not neglect a legal matter entrusted to him.

The legal profession demands of a lawyer that degree of vigilance and attention expected of a good father of a family. ***(PBC vs. Aruego, CA—G.R. No. 28274, June 18, 1965)***

A lawyer has no right to waive his client's right to appeal. His failure to perfect an appeal within the prescribed period constitutes negligence and malpractice proscribed by Rule 18.03, Canon 18, of the Code of Professional Responsibility. ***(Reontoy vs. Ibadlit, A.C. CBD No. 190, January 28, 1998)***

If by reason of the lawyer's negligence actual loss has been caused to his client, the latter has a cause of action against him for damages. However, for the lawyer to be held liable, his failure to exercise reasonable care, skill and diligence must be the proximate cause of the loss. ***(Legal Ethics, Pineda 2009, p. 295)***

Instances of negligence of Attorneys:

(1) Failure of counsel to ask for additional time to answer a complaint resulting in a default judgment against his client ***(Santiago vs. Fojas, A.M. No. 4103, September 7, 1995)***

(2) Failure to file briefs within the reglementary period ***(Mariveles vs. Mallari, A.M. No. 3294, February 17, 1993)***

(3) Failure to appear simply because the client did not go to counsel's office on the date of the trial ***(Alcoriza vs. Lumakang, A.M. No. 249, November 21, 1978)***

(4) Failure to present evidence ***(Gonzales vs. Presiding Judge of Branch I, RTC of Bohol, G.R. No. 75856, June 4, 1990)***

Rule 18.04 – A lawyer shall keep the client informed of the status of his case

The client has the right to be fully informed of the status of the case particularly on the important movement or developments therein. Vis-à-vis this right, the lawyer has the corresponding

duty to notify his client of the important orders or decisions not yet known to the client. ***(Legal Ethics, Pineda 2009, p. 301)***

A lawyer was suspended from the practice of law for his failure to inform his clients of the scheduled trial of the case, which trial, the clients failed to attend. ***(Avelino vs. Palana, A.M. No. 405, May 31, 1971)***

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, perpetrated a fraud upon a person or tribunal, shall promptly call upon the client to rectify the same, and failing which he shall terminate the relationship with such client in accordance with the Rules of Court.

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

A lawyer's duty is not to his client but to the administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of the law and ethics. ***(Maglasang vs. People, G.R. No. 90083, 4 October 1990)***

Rule 19.01 – A lawyer shall employ fair and honest means to attain the objectives of his client

A lawyer should put up defenses only which he believes to be honestly debatable under the law. ***(Rule 138, Sec. 20(d), Revised Rules of Court)***

The lawyer can present every remedy or defenses authorized by law in support of his client's cause, regardless of his own personal views. ***(Canon 15, Canons of Professional Ethics)***

The lawyer should not file or threaten to file any unfounded or baseless cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client. ***(Legal Ethics, Pineda 2009, p. 308)***

Rule 19.02 – A lawyer shall not allow his client perpetuate fraud

A lawyer should do his best efforts to restrain and to prevent his client from perpetrating acts which he himself ought to do, particularly with reference to their conduct towards the courts, judicial officers and witnesses. If the client persists in such wrongdoings, the lawyer should terminate their relation. ***(Canon 16, Canons of Professional Ethics)***

If in the cause of the employment of the lawyer in a case, he discovers or receives information that his client has perpetuated a fraud upon a person or tribunal, he shall promptly advise the client to rectify the same, and if the client refuses to heed the lawyer's advise for rectification, the lawyer must withdraw from the case. ***(Legal Ethics, Pineda 2009, p. 310)***

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

Reason for the rule: A lawyer is trained and skilled in the law. The client has no knowledge of procedure and necessarily entrusts this to the attorney he employs. ***(Legal Ethics, Pineda 2009, p. 311)***

In matters of law, it is client who yields to the lawyer and not the lawyer yielding to the client. The lawyer must not accede, but instead must resist his client's unlawful requests or instructions. ***(Anderson vs. Cardeno, A.C. 3523, January 17, 2005)***

When the client's requests are proper and lawful, the lawyer has the duty to oblige. Thus on matters of compromise, the client's instructions are generally followed. ***(Legal Ethics, Pineda 2009, p. 313)***

Even if a lawyer believes that the appeal of his client is frivolous, he cannot move to dismiss the appeal without the consent of his client. His remedy is to withdraw from the case. ***(People vs. Pagaro, Minute Resolution, G.R. No. 93026-27, July 24, 1991)***

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 form the service;

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.

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 work performed and responsibility assumed.

Rule 20.03 - A lawyer shall not, without the full knowledge and consent of the client, accept any fee, reward, costs, commission, interest, rebate or forwarding allowance or other compensation whatsoever related to his professional employment from anyone other than the client.

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

Rule 20.01 – A lawyer shall be guided accordingly in determining his fees

Two concepts of attorney's fees:

1. Ordinary – the reasonable compensation paid to the lawyer for the legal services he had rendered in favor of his client. The basis of this compensation is the fact of employment by the client.

2. Extraordinary – an indemnity for damages ordered by the court to be paid by the losing party to the prevailing party in a litigation in cases authorized by law and is payable not to the lawyer but to the client unless there is an agreement that the award shall pertain to the lawyer as an additional compensation or as part thereof.

In determining his fees, a lawyer shall be guided by the following factors:

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

The fact of employment as lawyer by the client constitutes the legal basis of the lawyer's rights to demand payment for his services. No formal contract is necessary to effectuate employment. ***(Legal Ethics, Pineda 2009, p. 316)***

Quantum meruit – means "as much as he has deserved", a legal mechanism in legal ethics which prevents an unscrupulous client from running away with the fruits of the legal services of a counsel without paying therefor.

Recovery of attorney's fees on the basis of quantum meruit is authorized when:

(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 fees stipulated 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 the lawyer and client disregard the contract for attorney's fees
(Legal Ethics, Pineda 2009, p. 326)

When fee is reasonable – The fee is reasonable if it is within the capacity of the client to pay, and is directly commensurate with the value of the legal services rendered. ***(Legal Ethics, Pineda 2009, p. 340)***

When fee is unconscionable – To be unconscionable, the amount contracted for must be such that no man in his right senses would offer on the one hand and no honest fair man would accept on the other. ***(Legal Ethics, Pineda 2009, p. 340)***

Rule 20.02 – A lawyer shall be entitled to division of fees

General Rule: When lawyer's jointly represent a common client for a given fee without any express agreement on how much each will receive, they will share equally as they are considered special partners for a special purpose.

Exceptions:

(1) If there are specific contracts for the payment of the fees of each lawyer, the contracts shall prevail unless found unconscionable.
(2) If the lawyers were engaged at different stages of the case, and there are no specific contracts executed, the lawyer who bore the brunt of the prosecution of the case to its successful end is entitled to the full amount of his fees despite the fact that the client has retained another lawyer as "exclusive" counsel who appeared only after the rendition of a favorable judgment.
(3) If another counsel is referred to the client, and the latter agrees him to take him as collaborating counsel, and there is no express agreement on the payment of his attorney's fees, the said counsel will receive attorney's fees in proportion to the work performed. ***(Legal Ethics, Pineda 2009, p. 345-346)***

Compensation to an attorney for merely recommending another lawyer is improper. This practice if allowed and abetted, will commercialize the legal profession for the recommending lawyers will be acting like "agents" for others. ***(Legal Ethics, Pineda 2009, p. 347)***

Rule 20.03 – A lawyer shall not accept any compensation from anyone other than the client

Reason for the rule: To secure the fidelity of the lawyer to his clients' cause and to prevent a situation in which the receipt by him of a rebate or commission from another with the client's business may interfere with the full discharge of his duty to his client. ***(Legal Ethics, Pineda 2009, p. 348)***

There should be no room for suspicion on the part of the client that his lawyer is receiving compensation in connection with the case from third persons with hostile interests. ***(Comments of the IBP Committee that drafted the Code)***

Compensation – includes any fee, reward, costs, commission, interest, rebate, forwarding allowance or any other benefits received from any other person in relation to the lawyer's employment in a case.

General Rule: A lawyer may not receive compensation other than his client.

Exception: When the client has full knowledge and approval. ***(Rule 138, Sec. 20(e), Revised Rules of Court)***

Rule 20.04 – A lawyer shall avoid controversies concerning his compensation

General Rule: A lawyer should avoid the filing of any case against clients for the enforcement of his attorney's fees.

Exception: To prevent
- ☑ Imposition
- ☑ Injustice, or
- ☑ Fraud

- A lawyer should avoid controversies over fees with his client and should try to settle amicably any differences on the subject. ***(Comments of the IBP Committee that drafted the Code)***

When proper, the lawyer can pursue judicial actions to protect or collect attorney's fees due to him. He has two options:

(a) **In the same case:** The lawyer may enforce his attorney's fees by filing an appropriate motion or petition as an incident in the main action where he rendered legal services.
(b) **In a separate civil action:** The lawyer may also enforce his attorney's fees by filing an independent separate action for collection of attorney's fees. ***(Legal Ethics, Pineda 2009, p. 351)***

There should never be an instance where a lawyer gets as attorney's fees the entire property in litigation. It is unconscionable for the victor in litigation to lose everything he won to the fees of his own lawyer. ***(Licudan vs. CA, G.R. No. 91958, January 24, 1991)***

CANON 21

A LAWYER SHALL PRESERVE THE CONFIDENCE AND SECRETS OF HIS CLIENT EVEN AFTER THE ATTORNEY-CLIENT RELATION IS TERMINATED

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.

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 similar purpose.

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.

Confidence – refers to information protected by the attorney-client privilege under the Revised Rules of Court (Rule 130, Sec. 21(b)). ***(Comments of the IBP Committee that drafted the Code)***

Secret – refers to the other information gained in the professional relationship that the client has requested to be held inviolate or the disclosure of which would be embarrassing or would likely be detrimental to the client. ***(Comments of the IBP Committee that drafted the Code)***

Reason for the Canon: To encourage and inspire clients to tell all about the facts of their cases. ***(Legal Ethics, Pineda 2009, p. 357)***

Rule 21.01 – A lawyer shall not reveal the confidences and secrets of his client

The lawyer is only excused from the duty of preserving his client's confidences and secrets in these instances:

(a) When authorized by the client after acquainting him of the consequences of disclosure

Note: If the client had authorized his lawyer after having been fully informed of the consequences to reveal his confidences or secrets, there is a waiver on the part of the said client to invoke the attorney-client privilege. This waiver is sufficient.

However, the waiver of the client is not sufficient if the witness to be examined in regard to the privileged communication is the lawyer's secretary, stenographer or clerk involving facts acquired in such capacity. In such a situation, the consent of the attorney is also required. ***(Rule 130, Sec. 24(b), Revised Rules of Court)***

(b) When required by law

Note: When the law directs the lawyer to reveal the confidences and secrets of the client, the law prevails. The privilege cannot be utilized as a weapon to frustrate the administration of justice or the enforcement of the laws. ***(Legal Ethics, Pineda 2009, p. 358)***

Reason: The lawyer cannot be professionally consulted on the commission of future crimes and frauds. Hence, he is not estopped from making disclosures to proper authorities.

However, information on crimes and frauds *already committed* falls within the privilege and the lawyer cannot reveal or be compelled to reveal the confidences of the client. ***(Legal Ethics, Pineda 2009, p. 360)***

(c) When necessary to collect his fees or to defend himself, his employees or associates or by judicial action

Note: This exception is intended for the protection of the lawyer's rights, his employees or associates – whose rights cannot be suppressed by the use of the

privilege. The lawyer however is permitted only to make disclosures which are necessary for his action or defense and not go beyond which are necessary for his action. ***(Legal Ethics, Pineda 2009, p. 360-361)***

Rule 21.02 – A lawyer shall not use client's secrets without his consent

General Rule: A lawyer, who acquired information from a client in the course of his legal employment, is prohibited from making use of such information, whether it is privileged or not.

Exception: If the client with full knowledge of the circumstances consents to the use thereof.

Exception to the Exception: In matters of unprivileged information, the lawyer may be judicially compelled to make a disclosure even if the client objects

Rule 21.03 – A lawyer shall not give information from his files

General Rule: A lawyer shall not give information from his files to an outside agency seeking information for auditing, statistical, bookkeeping, accounting, data processing or any similar purpose.

Exception: If the client gives his written consent.

Rule 21.04 – A lawyer may disclose affairs of client to partners

General Rule: If a client engaged a law firm as counsel, and a lawyer of the firm is assigned to the case, the lawyer may disclose the affairs of the client to the partners or associates.

Exception: The client has prohibited the lawyer from doing so.

Note: In a law firm, partners or associates usually consult one another involving their cases and some work as a team. Consequently, it cannot be avoided that some information about the case received from the client may be disclosed to the partners or associates. ***(Legal Ethics, Pineda 2009, p. 363)***

Rule 21.05 – A lawyer shall adopt measures against disclosures of client's secrets

To maintain the confidentiality of the client's confidences and secrets, the lawyer must adopt measures as will prevent those working under him from making disclosures or using said confidences and secrets. ***(Legal Ethics, Pineda 2009, p. 363)***

The lawyer is obliged to exercise care in selecting and training his employees so that the sanctity of all confidences and secrets of his clients may be preserved. ***(Comments of the IBP Committee that drafted the Code)***

Rule 21.06 – A lawyer shall avoid indiscreet conversation about client's affairs

A lawyer must not only preserve the confidences and secrets of his clients in his law office but also outside including his home. He should avoid committing calculated indiscretion, that is, accidental revelation of secrets obtained in his professional employment. ***(Legal Ethics, Pineda 2009, p 364)***

Rule 21.07 – A lawyer shall not reveal his having been consulted

General Rule: If a lawyer was consulted about a particular case, he should not reveal to others the matter subject of consultation.

Exception: When lawyer will be placed in a situation of representing of conflicting interests if he does not disclose the consultation to the next person consulting him on the same matter.

CANON 22

A LAWYER SHALL WITHDRAW HIS SERVICES ONLY FOR GOOD CAUSE AND UPON NOTICE APPROPRIATE IN THE CIRTUMSTANCES.

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 public office; and

g) Other similar cases.

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

Termination of attorney-client relationship

Code: W-D³-A-F-D-I-D-C

(1) **W**ithdrawal of the lawyer under Rule 22.01

Note: Notice of withdrawal without conformity of client is a mere scrap of paper. The lawyer remains bound to the case of the client. ***(Pioneer Insurance and Surety Corp. vs. De Dios Transportation Co., Inc and De Dios Marikina Transit Corp., G.R. No. 147010, July 18, 2003)***

(2) **D**eath of the lawyer, unless it is a law firm, in which case, the other partners may continue with the case

General Rule: A contract for legal services, being personal, terminates upon the death of the lawyer.

Exception: If the lawyer is a member of a law firm, the death of the attending attorney will not terminate the relationship.

Exception to the exception: When there is understanding that the legal services were to be rendered only by the said attorney.

Note: Dissolution of a law firm or a law partnership does not terminate the relation and obligations of the partners to the clients who have previously engaged the partnership to represent them. ***(Legal Ethics, Pineda 2009, p. 374-375)***

(3) **D**eath of the client

Note: The relation of the attorney and the client is terminated by the death of the client. In the absence of a retainer from the personal representative of his deceased client, the attorney has, after the death of the latter, no further power or authority to appear or take any further action on behalf of the deceased. ***(Legal Ethics, Pineda 2009, p. 374)***

Note: The lawyer must report to the court the death of his client within 30 days. ***(Sec. 16, Rule 3, Revised Rules of Court)*** Failure to do so may merit disciplinary action.

(4) **D**ischarge or dismissal of the lawyer by the client

Note: While the right of the client to terminate the relation is absolute, the right of an attorney to withdraw or terminate the relation other than for sufficient cause, is considerably restricted. ***(Legal Ethics, Pineda 2009, p. 375)***

(5) **A**ppointment or election of a lawyer to a government position which prohibits private practice of law
(6) **F**ull termination of the case or cases
(7) **D**isbarment or suspension of the lawyer from the practice of law
(8) **I**ntervening incapacity or incompetency of the client during the pendency of the case
(9) **D**eclaration of the presumptive death of the lawyer
(10) **C**onviction for a crime and imprisonment of the lawyer
(Legal Ethics, Pineda 2009, p. 379-380)

Note: It is the duty of the lawyer to inform the court of the termination of the attorney-client relationship – except only in nos. 2 and 6.

Rule 22.01 – Instances when a lawyer may withdraw his services

Cases when a lawyer may withdraw from a case he is handling

(1) When the client pursues an illegal or immoral course of conduct
(2) When the client insists that the lawyer pursue conduct violative of the canons and rules
(3) When his inability to work with co-counsel will not promote the best interest of the client

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

Rule 22.02 – A lawyer who withdraws or is discharged shall immediately turn over all papers and property of the client and cooperate with his successor

Duty of a discharged lawyer or one who withdraws

(1) Immediately turn over all papers and property to which the client is entitled
(2) Cooperate with the succeeding lawyer in the orderly transfer of the case

Note: The turnover of all papers and property is subject to the lawyer's retainer lien.

- This rule applies only to retaining lien. It cannot apply to a charging lien which arises only after counsel shall have secured a favorable money judgment for the client. The rule contemplates of a lawyer who withdrew from the case or is discharged without finishing the case. ***(Legal Ethics, Pineda 2009, p.382)***

Retaining Lien – is a passive lien and may not be actively enforced. It amounts to a mere right to retain the papers as against the client until the lawyer is fully paid. ***(Legal Ethics, Pineda 2009, p. 382)***

Charging Lien – this is the equitable right of the attorney to have the fees due him for services in a particular suit secured by the judgment or recovery in such suit. ***(Legal Ethics, Pineda 2009, p. 383)***

C. SUSPENSION, DISBARMENT AND DISCIPLINE OF LAWYERS (RULE 139-B, RULES OF COURT)

NATURE AND CHARACTERISTICS OF DISCIPLINARY ACTIONS AGAINST LAWYERS

a) *Sui generis*
b) Prescription

Disciplinary Proceedings against Lawyers are *SUI GENERIS.—* A disbarment proceeding is a class by itself. It is *sui generis.* It has the following characteristics:

1. It is neither a civil nor a criminal proceeding. It is not—and does not involve—a trial of an action or a suit, but is rather an investigation by the Court in the conduct of its officers. Not being intended to inflict punishment, it is no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor. x x x Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. **[*In Re: Almacen, supra*] *see also: In re: Montagne and Dominguez, 3 Phil 557; In re: Laureta, 148 SCRA 422; Atty. De Vera v. Commissioner Ernesto Pineda, 213 SCRA 434; Cojuangco, Jr. v. Palma, 438 SCRA 306.***

2. Double jeopardy cannot be availed of in disbarment proceedings against an attorney. Disbarment does not partake of a criminal proceeding. Thus a lawyer who was found guilty of falsification of public documents cannot put up the defense of double jeopardy in the disbarment proceeding filed against him which is based on the same facts as the criminal case **[De Jesus- Paras v. Vailoces, Adm. Case No. 439 (1961)].**

3. It can be initiated *motu proprio* by the Supreme Court or by the IBP. It can be initiated without a complainant.

The withdrawal of complaints CANNOT divest the Court of its jurisdiction… The Court's interest in the affairs of the Judiciary is of paramount concern. For sure, *public interest is at stake in the conduct and actuations of officials and employees of the Judiciary*. ***[Chan v. Algeria (2010)]***

4. It can proceed regardless of interest of the complainants , if the facts proven so warrant. **[Go v. Candoy, 21 SCRA 439]**

5. It is imprescriptible. Unlike ordinary proceedings, it is not subject to the defense of prescription. The ordinary statutes of limitations have no application to disbarment proceedings. ***[Calo v. Degamo, 20 SCRA 1162; Frias v. Bautista-Lozada, 489 SCRA 349; Heck v. Santos, 423 SCRA 329].***

Note: An unexplained long delay in filing of an administrative case creates suspicion in the motives of complainant. Thus, in ***Salamanca v. Bautista, 8 SCRA 459*** and ***Valdez v. Valera, 81 SCRA 426***, the delay, among other factors, was favorably considered and respondents were exonerated.

6. It is conducted confidentially being confidential in nature until its final determination ***(Rule 139-B, Sec. 18, Rules of Court)***

Note: The confidentiality of the proceedings is a privilege which MAY BE WAIVED by the lawyer in whom and for the protection of whose personal and professional reputation. It is vested, as by presenting the testimony in a disbarment case or using it as impeaching evidence in a civil suit. ***[Villalon, Jr. v. IAC, 144 SCRA 443]***

THREE-FOLD PURPOSE OF THE CONFIDENTIALITY
(1) To enable the court to make its investigation free from any extraneous influence or interference

(2) To protect the personal and professional reputation of attorneys from baseless charges of disgruntled, vindictive, and irresponsible persons or clients by prohibiting the publication of such charges pending their final resolution [*Albano v. Coloma, AC No. (1967)*]

(3) To deter the press from publishing the charges or proceedings based thereon for even a verbatim reproduction of the complaint against an attorney in a newspaper may be actionable.

7. It is itself due process of law. **[*In re: Montagne & Dominguez, 3 Phil. 557]***

8. Whatever has been decided in a disbarment case cannot be a source of right that may be enforced in other action, like action for reconveyance and damages. ***[Esquivias v.CA, 272 SCRA 803]***

9. In *pari delecto rule* is not applicable. ***[Morfel v. Aspiras, 100 Phil 586; Po Cham v. Pizarr, 467 SCRA 1; Samaniego v. Ferrer, 555 SCRA 1]***

10. Pendency of a criminal case does not pose a prejudicial question in disbarment cases. ***[Calo v. Degamo, A.C. No. 516 (1967)]***

11. Monetary claims cannot be granted except restitution and return of monies and properties of the client given in the course of the lawyer-client relationship.

It bears to stress that a case of suspension or disbarment is sui generis not meant to grant relief to a complainant in a civil case but is intended *to cleanse the ranks of the legal profession of its undesirable members in order to protect the public and the courts.* **[*Itong v. Florenido, (2011)*]**

OBJECTIVES OF SUSPENSION AND DISBARMENT

(1) To compel the attorney to deal fairly and honestly with the court and his client, requiring him to be competent, honorable, and reliable;
(2) To remove from the profession a person whose misconduct has proven himself unfit for the duties and responsibilities belonging to the office of an attorney;
(3) To punish the lawyer;
(4) To set an example or warning for the other members of the bar;
(5) To safeguard the administration of justice from dishonest and incompetent lawyers;
(6) To protect the public and the court from the misbehavior of its officers.

Note: The purpose of disbarment is not meant as a punishment to deprive an attorney of a means of livelihood. ***[Geeslin v. Navarro, A.C. No. 2033 (1990)]***

Grounds for Disbarment
Rule 138, Sec. 27, Revised Rules of Court

(1) Deceit - fraudulent and deceptive misrepresentation, artifice, or device used by one or more persons to deceive and trick another. There must be false representation as a matter of fact.
(2) Malpractice, or other gross misconduct in office.

Legal Malpractice - consists of failure of an attorney to use such skill, prudence, and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of tasks which they undertake, and when such failure proximately causes damage, it gives rise to an action in tort **[*Tan Tek Beng v. David, AC No. 1261]***

The Code of Professional Responsibility mandates that a lawyer shall serve his client with competence and diligence, shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable and in addition, to keep the client informed of the status of his case. A lawyer's lethargy from the perspective of the Canons is both unprofessional and unethical showing lack of diligence and inattention to his duties as a lawyer and warrants disciplinary sanction. ***[Sps Arcing v. Atty. Cefra (2013)]***

Gross Misconduct - any inexcusable, shameful, or flagrant unlawful conduct on the part of the person concerned in the administration of justice which is prejudicial to the rights of the parties or to the right determination of a cause, a conduct that is generally motivated by a predetermined, obstinate, or intentional purpose **[*Yumol v. Ferrer Sr.(2005)]***

(3) Grossly immoral conduct

(4) Conviction of a crime involving moral turpitude.

Note: There must be a conviction. Hence, the mere existence of criminal charges against the lawyer cannot be a ground for his disbarment or suspension.

(5) Violation of lawyer's oath
(6) Willful disobedience of any lawful order of a superior court.
(7) Corruptly or willfully appearing as an attorney for a party to case without an authority to do so.

Other Statutory Grounds

(1) Acquisition of an interest in the subject matter of the litigation, either through purchase or assignment [*Art 1491, New Civil Code*]
(2) Breach of professional duty, inexcusable negligence, or ignorance, or for the revelation of the client's secrets [*Art. 208, Revised Penal Code*]
(3) Representing conflicting interests [*Art. 209, Revised Penal Code*]

The statutory enumeration of the grounds for disbarment or suspension is not to be taken as a limitation on the general power of courts to suspend or disbar a lawyer. The inherent power of the court over its officers cannot be restricted. [***Quingwa v. Puno (1967)]***

Lawyer's Misconduct in his Private Capacity

A lawyer may be disbarred for any misconduct, whether in his professional or private capacity. Any interested person or the court motu propio may initiate disciplinary proceedings. **[*Marcelo v. Javier, A.C. No. 3248, (1992)*]**

Misconduct Before or Incident to Admission

The fact that he lacked any of the qualifications for membership in the bar as the time he took his oath is a ground for his disbarment ***[Lim v. Antonio, (1971)]***

Misconduct Committed Outside Philippine Jurisdiction

If he commits misconduct outside Philippine jurisdiction, which is also a ground for disciplinary action under Philippine law, he may be suspended or disbarred in this country [**Agpalo]**

The judgment, resolution or order of the foreign court or disciplinary agency shall be prima facie evidence of the ground for disbarment or suspension ***[Supreme Court Resolution dated 21 February 1992 amending Sec 27, Rule 138, Revised Rules of Court]***

Officers Authorized to INVESTIGATE Disbarment Cases

(1) Supreme Court
(2) IBP through its Commission on Bar Discipline or authorized investigators
(3) Office of the Solicitor General

Note: The power to disbar is EXCLUSIVELY vested in the Supreme Court.

The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter of Board of Officers, or at the instance of any person, initiate and prosecute charges against erring attorneys including those in the government service. ***[Rule 139-B, Sec. 1, Rules of Court]***

All charges against Justices of the CA and the Sandiganbayan, and Judges of the Court of Appeals and lower courts, even if lawyers are jointly charged with them, shall be filed with the SC, and such charges, if filed with the IBP, shall immediately be forwarded to the SC for disposition and adjudication. ***[Sec. 1,Supra. as amended in B.M. 1960]***

Complaints for disbarment may not lie against impeachable officers of the government during their tenure. They may only be removed from office by impeachment for and conviction of certain offenses. ***[Cuenco v. Fernan, 158 SCRA 29 (1988)]***

Disbarment should not be decreed where any punishment less severe such as reprimand, suspension or fine would accomplish the end desired. **[*Amaya v. Tecson, 450 SCRA 510*]**

Suspension and Disbarment of Lawyers Holding Government Offices

General Rule: A lawyer who holds a government office MAY NOT be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official.

Exception: If the misconduct of the government official is of such a character as to affect his qualification as a lawyer or to show moral delinquency, then he may be disciplined as a member of the Bar upon such ground.

Quantum of Proof; Applicability of Presumption of Innocence

The Court has consistently held that in suspension or disbarment proceedings against lawyers, the lawyer enjoys the presumption of innocence, and the burden of proof rests upon the complainant. The evidence required in the suspension or disbarment proceedings is *preponderance of evidence*. In case the evidence of the parties are equally balanced, the equipoise doctrine mandates a decision in favor of the defendant. **(*Siao Aba et al v. Atty. De Guzman Jr et al (2011)*)**

PROCEEDINGS

PROCEDURE FOR SUSPENSION OR DISBARMENT OF ATTORNEYS BY THE IBP
PROCEDURE FOR SUSPENSION OR DISBARMENT OF ATTORNEYS (RULE 139-B) BY THE SUPREME COURT MOTU PROPIO

Suspension	By division – one year or less
	En banc – more than one year
Fine	Division – P10,000 or less
	En banc – more than P10,000
Suspension and Fine	En banc - If suspension exceeds 1 year OR fine exceeds P10,000

In case of two or more suspensions: Service will be successive, not simultaneous

An investigating judge cannot dismiss a case. The investigating judge's authority is only to investigate, make a report and recommendation on the case to be submitted to the SC for final determination **[*Garciano v. Sebastian (1994)*]**

APPLICATION OF THE DOCTRINE OF RES IPSA LOQUITOR

This principle applies to both judges and lawyers. Judges had been dismissed form the service *without the need of a formal investigation* because *based on the records*, the gross misconduct or inefficacy of the judges clearly appears **[*Uy v. Mercado (1987)*]**

The same principle applies to lawyers… when it appears that the lawyer conducted himself in a manner which exhibits his blatant disrespect to the court, or his want of good moral character… may be disbarred or suspended without need of a trial-type proceeding. **[*Prudential Bank v. Castro, (1986)*]**

AVAILABLE DEFENSES

The purpose and nature of disbarment proceedings make the number of defenses available in civil and criminal cases INAPPLICABLE in disciplinary proceedings. The Statute of Limitations is NOT a defense therein.

PRESCRIPTION

The two year prescriptive period for initiating a suspension or disbarment proceeding against a lawyer should be construed to mean two years from date of discovery of the professional misconduct [*Isenhardt v. Atty. Real, (2012)]*

CIVIL LIABILITY

(1) Client is prejudiced by lawyer's negligence and misconduct.
(2) Breach of fiduciary obligation
(3) Civil liability to third persons
(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 secrets
(3) Representing adverse interests
(4) Introducing false evidence
(5) Misappropriating client's funds (estafa)
(6) Libel except if statements are connected with the relevant, pertinent, and material to the cause in hand or the subject of the inquiry

CONTEMPT OF COURT

It is exercised on preservative and not on vindictive principles and on corrective rather than the retaliatory idea of punishment. It is criminal in nature.
The power to punish for contempt is inherent in all courts. It is essential in the observance of order in judicial proceedings and to enforce judgment, orders and writs..

ACTS OF A LAWYER CONSTITUTING CONTEMPT

(1) Misbehavior as officer of court
(2) Disobedience or resistance to court order
(3) Abuse or interference with judicial proceedings
(4) Obstruction in administration of justice
(5) Misleading courts
(6) Making false allegations, criticisms, insults, veiled threats against the courts
(7) Aiding in unauthorized practice of law (suspended or disbarred)
(8) Unlawful retention of client's funds
(9) Advise client to commit contemptuous acts

POWER TO DISCIPLINE LAWYERS; SUSPENSION OF ATTORNEY BY THE COURT OF APPEALS OR A REGIONAL TRIAL COURT.

The Court of Appeals or Regional Trial Court may suspend an attorney from practice for any of the causes named in *Rule 138, Section 27* until further action of the Supreme Court in the case.

FORMS OF DISCIPLINARY MEASURES

(1) *Warning* – an act or fact of putting one on his guard against an impending danger, evil consequences or penalties.
(2) *Admonition* – a gentle or friendly reproof, mild rebuke, warning or reminder, counseling, on a fault, error or oversight; an expression of authoritative advice.
(3) *Reprimand* – a public and formal censure or severe reproof, administered to a person in fault by his superior officer or a body to which he belongs. It is imposed on a minor infraction of the lawyer's duty to the court or client
(4) *Suspension* – a temporary withholding of a lawyer's right to practice his profession as a lawyer for a certain period or for an indefinite period of time.
(a) Definite
(b) Indefinite – qualified disbarment; lawyer determines for himself for how long or how short his suspension shall last by proving to court that he is once again fit to resume practice of law.
(5) *Censure* – official reprimand.
(6) *Disbarment* – the act of the Philippine Supreme Court in withdrawing from an attorney the privilege to practice law. The name of the lawyer is stricken out from the roll of attorneys.
(7) *Interim Suspension* – the temporary suspension of a lawyer from the practice of law pending imposition of final discipline. It includes:
(a) Suspension upon conviction of a serious crime.
(b) Suspension when the lawyer's continuing conduct is likely to cause immediate and serious injury to a client or public.
(8) *Probation* – a sanction that allows a lawyer to practice law under specified conditions.

MODIFYING CIRCUMSTANCES
Extent of disciplinary action depends on attendance of mitigating or aggravating circumstance.

(1) The presence of mitigating circumstances may justify suspension instead of disbarment, and censure or reprimand instead of suspension.
(2) Inverse rule applies where aggravating circumstances are present.

MITIGATING CIRCUMSTANCES

(1) Absence of a prior disciplinary record
(2) Absence of a dishonest or selfish motive;
(3) Personal or emotional problems;
4) Timely good faith effort to make restitution or to rectify consequences of misconduct;
(5) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
(6) Inexperience in the practice of law;
(7) Character or reputation;
(8) Physical or mental disability or impairment;
(9) Delay in disciplinary proceedings;
(10) Interim rehabilitation;
(11) Imposition of other penalties or sanctions;
(12) Remorse;
(13) Remoteness of prior offenses. (IBP Guidelines 9.32)
(14) Others:
(a) Good Faith;
(b) Want of intention to commit a wrong;
(c) Lack of material damage to the complaining witness;
(d) Desistance of complainant;
(e) Error in judgment;
(f) Honest and efficient service in various government positions;
(g) Ready admission of the infraction coupled with explanation and plea for forgiveness;
(h) Clean record of professional service in the past;
(i) Rendered professional services out of pure generosity;
(j) Punished in another capacity for a misconduct for which he now faces a disbarment proceeding;
(k) Old Age & long membership (may also be an aggravation depending on the circumstance);

AGGRAVATING CIRCUMSTANCES
(1) Prior disciplinary offenses;
(2) Dishonest or selfish motive;
(3) A pattern of misconduct;
(4) Multiple offenses;
(5) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;
(6) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
(7) Refusal to acknowledge wrongful nature of conduct;
(8) Vulnerability of victim;
(9) Substantial experience in the practice of law;
(10) Indifference to making restitution. (*IBP Guidelines 9.22*)
(11) Others:
(a) Abuse of authority or of attorney-client relationship;
b) Sexual intercourse with a relative;
(c) Making the institution of marriage a mockery;
(d) Charge of gross immorality;
(e) Previous punishment as member of the bar;
(f) Defraud upon the government;
(g) Use of knowledge or information, acquired in the course of a previous professional employment, against a former client.

EFFECT OF EXECUTIVE PARDON

(1) *Conditional* – The disbarment case will not be dismissed on the basis thereof.
(2) *Absolute, before conviction* – The disbarment case will be dismissed. Absolute pardon by the President may wipe out conviction as well as offense itself and the grant thereof in favor of a lawyer is a bar to a proceeding for disbarment against him based solely on commission of such offense.
    (a) The reason is that the respondent lawyer, after the absolute pardon, is as guiltless and innocent as if he never committed the offense at all.
(3) *Absolute, after conviction* – If absolute pardon is given to lawyer after being disbarred for conviction of a crime, it does not automatically entitle him to reinstatement to the bar. It must be shown by evidence aside from absolute pardon that he is now a person of good moral character and fit and proper person to practice law. In case of a conditional pardon, there will be a remission of unexpired period of sentence.

EFFECT OF SUSPENSION OR DISBARMENT

(1) Cannot practice law without being held liable for contempt of court
(2) Disbarred for violation of the suspension order
(3) If holding a government office which requires membership in the bar, dismissal from such office but this rule does not apply to impeachable officials

However, the suspended or disbarred lawyer may appear as counsel for himself, the same not being practice of law but the exercise of a right.

A judgment of suspension or disbarment is always subject to change or modification by the court.

EFFECT OF DESISTANCE OF COMPLAINANT

The desistance of complaint or his withdrawal of the charges against a lawyer does not deprive the court of the authority to proceed to determine the matter. Nor does it necessarily result in the dismissal of the complainant , except when, as consequence of withdrawal or desistance, no evidence is adduced to prove the charges. **[*Bolivar v. Simbal, 16 SCRA 623 (1966); Mortel v. Aspiras, 100 Phil 586 (1956); National Mines & Allied Workers Union v. Real, 101 SCRA 609 (1980); Banaag v. Salindong, 127 SCRA 476 (1984)]***

EFFECTS OF COMPROMISE AGREEMENTS

Dismissal of the administrative case is not warranted despite a compromise agreement or of the fact that a complainant forgave a respondent lawyer.

Rationale:

(1) The Court's disciplinary authority is not dependent on or cannot be frustrated by the private arrangements entered into by the parties; otherwise, the prompt and fair administration of justice, as well as the discipline of court personnel, will be undermined.
(2) Public interest is at stake in the conduct and actuations of the officials and employees of the Judiciary.
(3) The Court's interest in the affairs of the Judiciary is a paramount concern that bows to no limits. **[*Benigno Reas v. Carlos Relacion, (2011)]***

EFFECT OF DEATH OF LAWYER DURING PENDENCY OF DISCIPLINARY ACTION AGAINST HIM

(1) Action rendered moot and academic.
(2) Court may still resolve the case on its merit in order to clear publicly the name of the lawyer.

DISCIPLINE OF FILIPINO LAWYERS PRACTICE IN FOREIGN JURISDICTIONS

The rule is that a Philippine lawyer may practice law only in the country. He may, however, be admitted to the bar in a foreign country, where he practices law in both countries. If he commits a misconduct outside Philippine jurisdiction, which is also a ground for disciplinary action under Philippine law, he may be suspended or disbarred in this country.

The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts provided for in Sec. 27, Rule 138 of the Revised Rules of Court, as amended.***[In Re: Suspension from the Practice of Law in the Territory of Guam of Atty. Leon G. Maquera, 435 SCRA 417]***

D. READMISSION TO THE BAR

READMISSION TO THE BAR
It is the restoration in disbarment proceedings to a disbarred lawyer the privilege to practice law.

The sole object of the court is *to determine whether or not the applicant has satisfied and convinced the court by positive evidence* that the effort he has made toward the rehabilitation of his character has been successful**. [*In re Rusiana,(1974)*]**

In order that there is reinstatement, the following must be taken into consideration:

(1) The applicant's character and standing prior to disbarment;
(2) The nature or character of the misconduct for which he is disbarred;
(3) His conduct subsequent to disbarment [*Cui v. Cui, 1964*]
(4) His efficient government service [*In Re: Adriatico,(1910)*]
(5) The time that has elapsed between disbarment and the application for reinstatement and the circumstances that he has been sufficiently punished and disciplined [*Prudential Bank v. Benjamin Grecia, (1986)*]
(6) Applicant's appreciation of significance of his dereliction and his assurance that he now possesses the requisite probity and integrity;
(7) Favorable endorsement of the IBP and local government officials and citizens of his community, pleas of his loved ones [*Yap Tan v. Sabandal, 1989]*

LAWYERS WHO HAVE BEEN SUSPENDED
GUIDELINES FOR LIFTING THE ORDER OF SUSPENSION
xxx

(3) Upon expiration of the period of suspension, respondent shall file a Sworn Statement with the Court, through the Office of the Bar Confidant, stating therein that he or she has desisted from the practice of law and has not appeared in any court during the period of his or her suspension;
(4) Copies of the Sworn Statement shall be furnished to the Local Chapter of the IBP and to the Executive Judge of the courts where the respondent has pending cases handled by him or her, and/or where he or she has appeared as counsel;
(5) The Sworn Statement shall be considered as proof of respondent's compliance with the order of suspension. xxx [*Maniago v. De Dios, (2010*)]

LAWYERS WHO HAVE BEEN DISBARRED
Guidelines in resolving requests for judicial clemency of disbarred laywers

(1) There must be proof of remorse and reformation. These include testimonials of credible institutions and personalities.
(2) Sufficient time must have lapsed from the imposition of the penalty to ensure a period of reformation.
(3) The age of the person asking for clemency must show that he still has productive years ahead of him that can be put to good use by giving him a chance to redeem himself.
(4) There must be a showing of promise (intellectual aptitude, contribution to legal scholarship, etc), and potential for public service.
(5) Other relevant factors to justify clemency. [Re: Letter of Judge Diaz (2007)]

Note: A previously disbarred lawyer who is given absolute pardon by the President is not automatically reinstated, he must still file a petition for reinstatement with the SC.

LAWYERS WHO HAVE BEEN REPATRIATED
Lawyers who reacquire their Philippine citizenship should apply to the SC for license or permit to practice their profession. [*Sec. 5(4), RA 9225*]

EFFECTS OF REINSTATEMENT
(1) Recognition of moral rehabilitation and mental fitness to practice law;
(2) Lawyer shall be subject to same law, rules and regulations as those applicable to any other lawyer;
(3) Lawyer must comply with the conditions imposed on his readmission.

E. MANDATORY CONTINUING LEGAL EDUCATION

PURPOSE

Purpose of the MCLE
Continuing legal education is required to ensure that, throughout their career, members of the Integrated Bar will:

(1) Keep abreast with law and jurisprudence
(2) Maintain the ethics of the profession
(3) Enhance the standards of the practice of law **(*Rule 1, Section 1*)**

REQUIREMENTS OF COMPLETION OF THE MCLE

Members of the IBP not exempt under Rule 7 shall complete every three (3) years at least thirty-six (36) hours of continuing legal education activities approved by the MCLE Committee. The 36 hours shall be allocated according to the following:

Subject	*Number of Hours*
Legal Ethics	At least six (6) hours
Trial and Pretrial Skills	At least four (4) hours
Alternative Dispute Resolution	At least five (5) hours
Updates on Substantive and Procedural Law, and Jurisprudence	At least nine (9) hours
Legal Writing and Oral Advocacy	At least four (4) hours
International Law and International Conventions	At least two (2) hours
Such subjects as may be prescribed by the MCLE Committee	Six (6) hours

COMPLIANCE

Initial Compliance Period

The initial compliance period shall begin not later than three (3) months from the adoption of Bar Matter 850. Except for the initial compliance period for members admitted or readmitted after the establishment of the program, all compliance periods shall be for thirty-six (36) months and shall begin the day after the end of the previous compliance period. ***(Rule 3, Section 1)***

Compliance Groups

Members of the IBP not exempt from the MCLE requirement shall be divided into three (3) compliance groups, namely:

(a) Compliance Group 1. - Members in the National Capital Region (NCR) or Metro Manila are assigned to Compliance Group 1.

(b) Compliance Group 2. - Members in Luzon outside NCR are assigned to Compliance Group 2.

(c) Compliance Group 3. - Members in Visayas and Mindanao are assigned to Compliance Group 3.

Nevertheless, members may participate in any legal education activity wherever it may be available to earn credit unit toward compliance with the MCLE requirement. ***(Rule 3, Section 2)***

Compliance Period of Members Admitted or Readmitted after Establishment of the Program

Members admitted or readmitted to the Bar after the establishment of the program shall be assigned to the appropriate Compliance Group based on their Chapter membership on the date of admission or readmission.

The initial compliance period after admission or readmission shall begin on the first day of the month of admission or readmission and shall end on the same day as that of all other members in the same Compliance Group.

(a) Where four (4) months or less remain of the initial compliance period after admission or readmission, the member is not required to comply with the program requirement for the initial compliance.

(b) Where more than four (4) months remain of the initial compliance period after admission or readmission, the member shall be required to complete a number of hours of approved continuing legal education activities equal to the number of months remaining in the compliance period in which the member is admitted or readmitted. Such member shall be required to complete a number of hours of education in legal ethics in proportion to the number of months remaining in the compliance period. Fractions of hours shall be rounded up to the next whole number. (***Rule 3, Section 3***)

EXEMPTIONS
The following are exempted from the MCLE:

(1) The President and the Vice President of the Philippines, 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 members of the judiciary, incumbent 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 Department of Justice;
(5) The Solicitor General and the Assistant Solicitors General;
(6) The Government Corporate Counsel, Deputy and Assistant Government Corporate Counsel;
(7) The Chairmen and Members of the Constitutional Commissions;
(8) The Ombudsman, the Overall Deputy Ombudsman, the Deputy Ombudsman and 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 ten (10) years in accredited law schools;
(11) The Chancellor, Vice-Chancellor and members of the Corps of Professors and Professional Lecturers of the Philippine Judicial Academy; and
(12) Governors and Mayors. ***(B.M. No. 850, rule VII, sec. 1)***

Others

- **The following Members of the Bar are likewise exempt:**

(a) Those who are not in law practice, private or public.

(b) Those who have retired from law practice with approval of the IBP Board of Governors. ***(Rule 7, Section 2)***

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 a procedure to be established by the MCLE Committee. **(*Rule 7, Section 3*)**

CHANGE OF STATUS

The compliance period shall begin on the first day of the month in which a member ceases to be exempt under Sections 1, 2, or 3 of this Rule and shall end on the same day as that of all other members in the same Compliance Group. **(*Rule 7, Section 4*)**

PROOF OF EXEMPTION

Applications for exemption from or modification of the MCLE requirement shall be under oath and supported by documents. **(*Rule 7, Section 5*)**

SANCTIONS

NON-COMPLIANCE FEE
A member who, for whatever reason, is in non-compliance at the end of the compliance period shall pay a non-compliance fee. **(*Rule 13, Section 1*)**

LISTING AS DELINQUENT MEMBER

A member who fails to comply with the requirements after the sixty (60) day period for compliance has expired, shall be listed as a delinquent member of the IBP upon the recommendation of the MCLE Committee.

The investigation of a member for non-compliance shall be conducted by the IBP's Commission on Bar Discipline as a fact-finding arm of the MCLE Committee. **(*Rule 13, Section 2*)**

ACCRUAL OF MEMBERSHIP FEE AGAINST A DELINQUENT MEMBER
Membership fees shall continue to accrue at the active rate against a member during the period he/she is listed as a delinquent member. **(*Section 3*)**

Note: *Bar Matter No. 1922 - Re: Recommendation of the Mandatory Continuing Legal Education (MCLE) Board to Indicate in All Pleadings Filed with the Courts the Counsel's MCLE Certificate of Compliance or Certificate of Exemption.*

(1) Due to the diminishing interest of the members of the Bar in the MCLE requirement program as noted in the Letter of Justice Eduardo Nachura, the Court resolved, upon the recommendation of the Committee on Legal Education and Bar Matters, to *REQUIRE practicing members of the bar to INDICATE in all pleadings filed before the courts of quasi-judicial bodies, the number and date of issue of their MCLE Certificate of Compliance or Certificate of Exemption*, as may be applicable, for the immediately preceding compliance period.

(2) ***Failure to disclose*** **the required information would cause *the dismissal of the case and the expunction of the pleadings* from the records.**

MANDATORY LEGAL AID SERVICE (Bar Matter 2012)

PURPOSE
This Rule seeks to enhance the duty of lawyers to society as agents of social change and to the courts as officers thereof by helping improve access to justice by the less privileged members of society and expedite the resolution of cases involving them. Mandatory free legal service by members of the bar and their active support thereof will aid the efficient and effective administration of justice especially in cases involving indigent and pauper litigants. **(Sec. 2)**

SCOPE
All practicing lawyers are required to render a minimum of sixty (60) hours of free legal aid services to indigent litigants in a year. Said 60 hours shall be spread within a period of twelve (12) months, with a minimum of five (5) hours of free legal aid services each month. However, where it is necessary for the

practicing lawyer to render legal aid service for more than five (5) hours in one month, the excess hours may be credited to the said lawyer for the succeeding periods. Clerks of Court and the IBP Legal Aid Chairperson of the IBP Chapter are designated to coordinate with a lawyer for cases where he may render free legal aid service.

The following lawyers are excluded in the term "practicing lawyer":

1. Government employees and incumbent elective officials not allowed by law to practice;
2. Lawyers who by law are not allowed to appear in court;
3. Supervising lawyers of students enrolled in law student practice in duly accredited legal clinics of law schools and lawyers of non-governmental organizations (NGOs) and peoples organizations (POs) like the Free Legal Assistance Group who by the nature of their work already render free legal aid to indigent and pauper litigants and
4. Lawyers not covered under subparagraphs (1) to (3) including those who are employed in the private sector but do not appear for and in behalf of parties in courts of law and quasi-judicial agencies.

Note: Indigent and pauper litigants are those whose gross income and that of their immediate family do not exceed an amount double the monthly minimum wage of an employee and those who not own any real property. They are exempt from payment of docket fees and lawful fees as well as transcripts of stenographic notes.

PENALTIES

A penalty of Php 4,000 shall be imposed on the lawyer who fails to meet the required minimum number of hours of legal aid service each year required by the IBP without satisfactory explanation. The lawyer shall have a "not in good standing" status and shall not be allowed to appear in court or any quasi-judicial body as counsel for a period of 3 months. A lawyer who fails to comply with the duties in the Rule for at least 3 consecutive years shall be subject to disciplinary proceedings and may be suspended from the practice of law for 1 year.

Note: "Not in good standing" status shall subsist even after the lapse of the three-month period until and unless the penalty shall have been paid.

F. NOTARIAL PRACTICE (A.M. No. 02-8-13-SC, as amended)

Notary Public or a notary – is any person commissioned to perform official acts of:

(1) Acknowledgements;
(2) Oaths and affirmations;
(3) Jurats;
(4) Signature witnessing;
(5) Copy certifications; and
(6) Any other act authorizes in the rules

Purpose:

- ☑ To verify the personal appearance of affiant and the genuineness of signature.
- ☑ To authenticate document and verify due execution, making document admissible in evidence without proof of authenticity.

Notarization is not an empty, meaningless, routinary act. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. A notarial document is by law entitled to full faith and credit upon its face. *Courts, administrative agencies and the public at large must be able to rely upon the acknowledgement executed by a notary public.* ***[Baylon v. Almo, (2008)]***

QUALIFICATIONS OF A NOTARY PUBLIC

A notary public:

(a) Must be a citizen of the Philippines;
(b) Over 21 years of age;
(c) A resident in the Philippines for at least one (1) year and maintains a regular place of work or business in the city or province where the commission is to be issued;
(d) Member of the Philippines Bar (in good standing, with clearances from the Office of the Bar Confidant of the SC and the IBP); and
(e) Must not have been convicted in the first instance of any crime involving moral turpitude. ***(A.M. No. 02-8-13-SC, Rule III, sec. 1)***

Note: When there are no persons with the necessary qualifications OR where there are qualified persons but they refuse appointment, a notary public does NOT have to be a lawyer.

The following persons may be appointed as notaries:

(1) Those who have passed the studies of law in a reputable university
(2) A clerk or deputy clerk of court for a period of not less than two years

But the **rules now** require that notaries must be members of the Philippine Bar. Hence the Supreme Court, upon the recommendation of the Sub-Committee on Revision of Rules Governing Notaries Public, no longer approves requests from non-lawyers for appointment as notaries. ***[Tirol, Desk-Book for Philippine Notaries (2014)]***

Term of office of a Notary Public

A notarial commission is granted by an *executive judge* after *petition* of the lawyer, and is good for *two years commencing on the 1st day of January of the year in which the commission is made UNLESS earlier revoked or the notary public has resigned according to these Rules and the Rules of Court*. ***[Rule III, Sec. 11]***

POWERS AND LIMITATIONS

Authority of a Notary

What can be notarized: A notary can notarize any document, upon request of affiant.

Sec. 1. Powers. – A notary public is

(a) Empowered to perform the following material acts:

(1) Acknowledgments;
(2) Oaths and affirmations;
(3) Jurats;
(4) Signature witnessings;
(5) Copy certifications; and
(6) Any other act authorized by these rules

(b) Authorized to certify the affixing of a signature by thumb or mark on an instrument or document presented for notarization if:

(1) The thumb or other mark is affixed in the presence of the notary public and two (2) disinterested and unaffected witnesses to the instrument or document;
(2) Both witnesses sign their own names in addition of the thumb or other mark;
(3) The notary public writes below the thumb or other mark: "Thumb or Other Mark affixed by (name and addresses of witnesses) and undersigned notary public"; and
(4) The notary public notarizes the signature by thumb or other mark through an acknowledgement, jurat, or signature witnessing

(*c) Authorized to sign on behalf of a person who is physically unable to sign or make a mark on an instrument or document if:*

(1) The notary public is directed by the person unable to sign or make a mark to sign on his behalf;
(2) The signature of the notary public is affixed in the presence of two disinterested and unaffected witnesses to the instrument or document;
(3) Both witnesses sign their own names;
(4) The notary public writes below his signature: "Signature affixed by notary in presence of (names and addresses of person and two (2) witnesses)" ; and
(5) The notary public notarizes his signature by acknowledgement or jurat.

PROHIBITIONS

Aside from the prohibition that a notary public shall not perform a notarial act outside his regular place of work or business, the following shall also prohibit the notary public from performing a notarial act if the person involved as signatory to the instrument or document:

(1) Is not in his presence personally at the time of the notarization; and
(2) In not personally known to him or otherwise identified by the notary public through competent evidence of identity as defined by the Rules. ***[Rule II, Sec. 2 ([b)]***

IRREGULARITY IN PERSON
Disqualifications

(1) If notary is personally a party to the instrument ***[Villarin v Sabate, AC No. 3224, Feb. 2000]***
(2) If he will receive as an indirect and direct result any commission, fee, advantage, right, title, interest, cash, property, or other consideration in excess of what is provided in these rules
(3) If notary is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal up to the fourth degree ***[Rule IV, Sec. 3]***

Citing *Albano v. Mun. Judge Gapusan, A.M. No. 1022-MJ, (1976)*, the Court ruled that a notary public should not facilitate the disintegration of marriage and the family by encouraging the separation of the spouses and extrajudicially dissolving the conjugal partnership through the notarization of a "Kasunduan Ng Paghihiwalay." ***[Espinosa v. Omaña (2011)]***

MANDATORY REFUSAL TO NOTARIZE

(1) If the transaction is unlawful or immoral
(2) If the signatory shows signs that he does not understand consequences of the act, per the notary's judgment

(3) If the signatory appears not to act of his own free will, per the notary's judgment
(4) If the document or instrument to be notarized is considered as an improper document by these Rules

***Note*:** Improper Instrument/Document is a blank or incomplete instrument or document without appropriate notarial certification **[*Rule IV, Sec. 6*]**

EFFECTS OF NOTARIZATION

(1) The notary in effect proclaims to the world:

(a) That all parties therein personally appeared before him
(b) That they are personally known to him
(c) That they are the same persons who executed the instrument
(d) That he inquired into the voluntariness of the execution of the instrument; and
(e) That they acknowledged personally before him that they voluntarily and freely executed the same

(2) Converts a private document into a public one and renders it admissible in court without further proof of its authenticity

(3) Documents enjoy a presumption of regularity. It constitutes prima facie evidence of facts which give rise to their execution and of the date of said execution, but not of the truthfulness of the statements

Reason: The law assumes that the act which the officer witnessed and certified to or the date written by him is not shown to be false since notaries are public officers

PUNISHABLE ACTS

The Executive Judge shall cause the prosecution of any person who:

(1) Knowingly acts or otherwise impersonates a notary public
(2) Knowingly obtains, conceals, defaces, or destroys the seal, notary register, or official records of a notary public
(3) Knowingly solicits, coerces, or in any way influences a notary public to commit official misconduct ***[Rule XII, Sec. 1]***

By respondent's reckless act of notarizing the Deed of Absolute Sale without ascertaining the vendors signatories thereto were the very same persons who executed it and personally appeared before him to attest to the contents and the truth of what were stated therein. [***Aquino v. Manese (2003*)]**

Respondent notarized the Special Power of Attorney, purportedly bearing the signature of Benitez, on Jan. 4, 2001 or more than two months after the latter's death. Clearly, the respondent lied and intentionally perpetuated an untruthful statement. **[*Sicat v Ariola (2005)*]**

Respondent antedated a document in order to exculpate someone from being convicted of the Anti-Dummy Law, which is a violation of Rule 1.01 of Canon 1 of the Code of Professional Responsibility as well as the 2004 Rules on Notarial Practice. **[*Mondejar v. Rubia (2006)]***

NOTARIAL REGISTER

- **Notarial Register –** A chronological official notarial register of notarial acts consisting of a permanently bound book with numbered pages. There must only be one active register at any given time.

- **Entries in the Notarial Register**

(1) For every notarial act, the notary shall record in the notarial register at the time of notarization the following:

(a) Entry number and page number;
(b) Date and time of day of the notarial act;
(c) Type of notarial act; the title or description of the instrument, document or proceeding;
(d) The name and address of each principal;
(e) The competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;
(f) The name and address of each credible witness swearing to or affirming the person's identity;
(g) The fee charged for the notarial act;
(h) The address where the notarization was performed if not in the notary's regular place of work or business; and
(i) Any other circumstance the notary public may deem of significance or relevance.

(2) Circumstances of any request to inspect or copy an entry in the notarial register, including

(a) The requester's name,
(b) Address
(c) Signature
(d) Thumb mark or other recognized identifier, and
(e) Evidence of identity.

The reasons for refusal to allow inspection or copying of a journal entry shall also be recorded.

(3) When the instrument or document is a contract, the notary public shall keep an original copy thereof as part of his records and enter in said records a brief description of the substance thereof and shall give to each entry a consecutive number, beginning with number one in each calendar year. He shall also retain a duplicate original copy for the Clerk of Court.

(4) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.

(5) In case of a protest of any draft, bill of exchange or promissory note, the notary public shall
  (a) Make a full and true record of all proceedings in relation thereto and
  (b) Shall note therein whether the demand for the sum of money was made, by whom, when, and where, whether he presented such draft, bill or not, whether notices were given, to whom and in what manner; where the same was made, when and to whom and where directed; and of every other fact touching the same.

(6) At the end of each week, the notary public shall certify in his notarial register the number of instruments or documents executed, sworn to, acknowledged, or protested before him; or if none, this certificate shall show this fact.

(7) A certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required.

Official signature – signed by hand, not by facsimile stamp or printing device, and at the time of the notarization

Official seal – two-inch diameter seal with the words "Philippines", attorney's name at the margin and the roll of attorney's number.

For vendors, the sale of the seal may only be upon judicial authority, for a period of 4 years.

For buyers, a certified copy of the commission is necessary for purchase. One seal per certificate.

The act of a lawyer notarizing a Special Power of Attorney *knowing that the person who allegedly executed it is dead is a serious breach* of the sacred obligation imposed upon him by the Code of Professional Responsibility, specifically Rule 1.01 of Canon 1. **[*Sicat v. Arriola, (2005)*]**

A lawyer is guilty of misconduct in the performance of his *duties if he fails to register in his notarial register* the affidavits-complaints which were filed in an administrative case before the Civil Service Commission. **[*Aquino v. Pascua, (2007)***

JURISDICTION OF NOTARY PUBLIC AND PLACE OF NOTARIZATION (Rule IV, Sec. 11)

General Rule: A notary public may perform notarial acts only in his regular place of work or business.

Exception: However, a notary public may perform notarial acts at the request of the parties at the following places, provided that these places are within the territorial jurisdiction of the court that issued the notarial commission:

(1) In public offices, convention halls and other places where oaths of office are administered;
(2) Public function areas in hotels and similar areas used for the signing of instruments or documents requiring notarization;
(3) Hospitals and other medical institutions where a part to an instrument is confined for treatment; and
(4) Any place where a party to the instrument requiring notarization is under detention.

The act of notarizing documents outside one's area of commission is not to be taken lightly. Aside from being a violation of Sec. 11 of the 2004 Rules on Notarial Practice, it also partakes of malpractice of law and falsification. ***[Laquindanum v. Quintana, AC No. 7036 (2009)***

Note: Notary may Notarize Instruments which refer to properties located outside his territorial jurisdiction. *"What is important under the Notarial Law is that the notary public concerned has authority to acknowledge the document executed within his territorial jurisdiction."****[Sales v. CA, 211 SCRA 858,865 (1992)]***

REVOCATION OF COMMISSION *(Rule XI Sec. 1)*.

An Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:

(1) fails to keep a notarial register;
(2) fails to make the proper entry or entries in his notarial register concerning his notarial acts;
(3) fails to send the copy of the entries to the Executive Judge within the first ten (10) days of the month following;
(4) fails to affix to acknowledgments the date of expiration of his commission;
(5) fails to submit his notarial register, when filled, to the Executive Judge;
(6) fails to make his report, within a reasonable time, to the Executive Judge concerning the performance of his duties, as may be required by the judge;
(7) fails to require the presence of a principal at the time of the notarial act;
(8) fails to identify a principal on the basis of personal knowledge or competent evidence;
(9) executes a false or incomplete certificate under Section 5, Rule IV;
(10) knowingly performs or fails to perform any other act prohibited or mandated by these Rules; and
(11) commits any other dereliction or act which in the judgment of the Executive Judge constitutes good cause for revocation of commission or imposition of administrative sanction.

A defective notarization will strip the document of its public character and reduce it to a private instrument. Consequently, when there is a defect in the notarization of a document, the clear and convincing evidentiary standard normally attached to a duly- notarized document is dispensed with, and the measure to test the validity of such document is preponderance of evidence. ***(Meneses v. Venturozo, G.R. No. 172196, 19 October 2011)***

COMPETENT EVIDENCE OF IDENTITY (*Rule II. Sec. 12)*

Competent Evidence of Identity – refers to the identification of an individual based on:

(1) At least *one current identification document* issued by an official agency bearing the photograph and signature of the individual; or

(2) The *oath or affirmation* of:

(a) One credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual,

(b) Two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.

Competent evidence of identity may consist in either:

(a) An identification document; or
(b) The oath or affirmation of one or two credible witness, depending on the circumstances, who is/are not privy to the instrument, document or transaction.***[Tirol, Desk-Book for Philippine Notaries (2014)]***

Note: The foregoing pronouncements of the Court [in Cable Star Inc. v. Cable BOSS (2008); Sigma v. Inter-Alia (2008); De la Cruz v. Dimaano (2008)] show that non-compliance with the Rules affect the notarial act itself, i.e. the document will not be considered a public document. ***[Tirol, supra.]***

Do the Rules Prohibit the Presentation of Cedulas?

Despite several Supreme Court decisions which declare that a residence certificate is no longer considered a competent evidence of identity, "It appears that the laws requiring the presentation of the cedulas have not been repealed by subsequent legislative enactments. And so these laws remain valid until the present (Article 7, Civil Code), notwithstanding the Rules' silence insofar as ceduals are concerned."

But the Rules' silence on the matter of cedulas should not be taken as proof that these are now unnecessary. And in any case, there is no conflict between the Rules and the law requiring the presentation of cedula. The requirement for the presentation of competent evidence of identity does not abridge or expand the scope of the laws affecting notarial practice since its purpose is to protect the integrity of the notarial act.

Clearly, the laws affecting notarial practice and the Rules can be applied simultaneously, and thus harmonized. In short, the presentation of a competent evidence of identity, if required, will not bar the presentation of the cedula, and vice-versa.***[Tirol, supra.]***

If the notary public personally knows the affiant, he need not require them to show their valid identification cards. This rule is supported by the definition of "jurat" under Sec. 6, Rule II of the 2004 Rules on Notarial Practice. ***(Jandoquile v. Revilla, A.C. No. 9514, 10 April 2013)***

Notaries public must observe utmost care in complying with formalities intended to ensure the integrity of the notarized document and the act it embodies. In this case, the respondent violated the Rules on Notarial Practice when he notarized three documents presented to him by a complainant whose identity is not personally known to him and yet he did not require proof of identity from the said person. ***[Gonzales v. Padiernos (2008)]***

SANCTIONS *(Rule XI Sec. 1.)*

Revocation and Administrative Sanctions. –
xxx

(c) Upon verified complaint by an interested, affected or aggrieved person, the notary public shall

(1) be required to file a verified answer to the complaint.
(2) If the answer of the notary public is not satisfactory, the Executive Judge shall conduct a summary hearing.
(3) If the allegations of the complaint are not proven, the complaint shall be dismissed.

(4) If the charges are duly established, the Executive Judge shall impose the appropriate administrative sanctions

II. JUDICIAL ETHICS

Judicial Ethics
It is a branch of moral science which treats of the right and proper conduct to be observed by all judges and magistrates in trying and deciding controversies brought to them for adjudication which conduct must be demonstrative of impartiality, integrity, competence, independence and freedom from improprieties.

A. Sources

The following are the sources of judicial ethics:

1. New Code of Judicial Conduct for the Philippine Judiciary (2004);

"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 Ethics and the Code of Judicial Conduct shall be applicable in a suppletory character**."

2. Code of Judicial Conduct (September 5, 1989);
3. Provisions of the 1987 Constitution (Art. VIII, Art. XI, Art. III);
4. New Civil Code:

Art. 9. No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.

Art. 27. Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against he latter, without prejudice to any disciplinary administrative action that may be taken.

Art. 739. The following donations shall be void:
xxx
(3) Those made to a public officer or his wife, descedants and ascendants, by reason of his office.

Art. 1491. The following persons cannot acquire by purchase, even at a public or judicial auction, either in person or through the mediation of another:
xxx
(4) Public officers and employees, the property of the State or of any subdivision thereof, or of any government-owned or controlled corporation, or institution, the administration of which has been intrusted to them; this provision shall apply to judges and government experts who, in any manner whatsoever, take part in the sale;

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected withthe administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession.

Art. 2029. The court shall endeavor to persuade the litigants in a civil case to agree upon some fair compromise.

Art. 2032. The court's approval is necessary in compromises entered into by guardians, parents, absentee's representatives, and administrators or executors of decedent's estates.

5. Rules of Court (Rules 71, 135, 137, 139-B, 140);
6. Revised Penal Code:

Art. 204. Knowingly rendering unjust judgment. — Any judge who shall knowingly render an unjust judgment in any case submitted to him for decision, shall be punished by prision mayor and perpetual absolute disqualification.

A judge is expected to know the jurisdictional boundaries of courts and quasi-judicial bodies like the COMELEC as mapped out by the Constitution and statutes and to act only within said limits.By annulling complainant's proclamation as the duly

elected punong barangay, despite being aware of the fact that his court had no power to do so, not only is respondent guilty of grave abuse of authority,knowingly rendering an **unjust order**, gross ignorance of the law and procedure, and bias and partiality, he also manifests unfaithfulness to a basic legal rule as well as injudicious conduct. (***RIMEO S. GUSTILO vs. HON. RICARDO S. REAL, SR.,*** **A.M. No. MTJ-00-1250. February 28, 2001)**

If the decision rendered by the judge is still on appeal, the judge cannot be disqualified on the ground of knowingly rendering an unjust judgment. **(*Gahol vs. Riodigue,* 64 SCRA 494)**

Note: It is also worth mentioning that the provisions of Article 204 of the Revised Penal Code as to "rendering knowingly unjust judgment" refer to an **individual judge** who does so "in any case submitted to him for decision" and has **no application to the members of a collegiate court such as the Sandiganbayan or its divisions**, who reach their conclusions in consultation and accordingly render their collective judgment after due deliberation. It also follows, consequently, that a charge of violation of the Anti-Graft and Corrupt Practices Act on the ground that such a collective decision is "unjust" cannot prosper. ***(Ethelwoldo E. Fernandez, Antonio A. Henson & Angel S. Ong Vs. Court of Appeals Asso. Justices Ramon M. Bato, Jr., Isaias P. Dicdican,*** **A.M. OCA IPI No. 12-201-CA-J. February 19, 2013*)***

Art. 205. Judgment rendered through negligence. — Any judge who, by reason of inexcusable negligence or ignorance shall render a manifestly unjust judgment in any case submitted to him for decision shall be punished by arresto mayor and temporary special disqualification.

Art. 206. Unjust interlocutory order. — Any judge who shall knowingly render an unjust interlocutory order or decree shall suffer the penalty of arresto mayor in its minimum period and suspension; but if he shall have acted by reason of inexcusable negligence or ignorance and the interlocutory order or decree be manifestly unjust, the penalty shall be suspension.

Note: An **Interlocutory Order** is an order which is issued by the court between the commencement and the end of a suit or action and which decides some point or matter, but which, however, is not a final decision of the matter in issue.

Art. 207. Malicious delay in the administration of justice. — The penalty of prision correccional in its minimum period shall be imposed upon any judge guilty of malicious delay in the administration of justice.

Acceptance of gifts given by reason of the office of the judge is indirect bribery (Art. 211, RPC) and when he agrees to perform an act constituting a crime in connection with the performance of his official duties in consideration of any offer, promise, gift or present receive by such officer, he is guilty of direct bribery (Art. 210, RPC).

7. Anti-Graft and Corrupt Practices Act (RA 3019);

Note: Under RA 3019, the judge is liable criminally for directly or indirectly receiving gifts, present or other pecuniary or material benefit for himself or for another under conditions provided in Section 2, b and c of the law.

EXCEPTION: Excepted are unsolicited gifts or presents of small value offered or given as a mere ordinary token of gratitude or friendship according to local custom or usage (Section 14 RA 3019).

8. Canons of Judicial Ethics (DOJ Administrative Order No. 162, August 1, 1946);
9. Code of Professional Responsibility;
10. Judiciary Act of 1948 (RA 296);
11. Supreme Court decisions;
12. Foreign decisions on legal ethics which are relevant and persuasive;
13. Opinions of authorities in Legal and Judicial Ethics;
14. Special Laws (RA 910, June 20, 1953)

Note: Under the provisions of RA 910, as amended, a Justice who reaches age 70 is entitled to full retirement benefits with no length of service required.

Sec. 1. No retiring justice or judge of a court of record or city or municipal judge during the time that he is receiving said pension shall appear as counsel in any court:

1. In any **civil case** where the government or any of its subdivisions or instrumentalities is an adverse party;
2. In any **criminal case**, where an officer or employee of the government is accused of an offense committed in relation to his official function;
3. Or collect any fee for his appearance in any **administrative proceedings** to maintain an interest adverse to the government.

15. Administrative Orders and Supreme Court Circulars.

DEFINITION OF TERMS

Q: Who is a judge?
A: "*Judge*" means any person exercising judicial power, however designated; A public officer who, by virtue of his office, is clothed with judicial authority, a public officer lawfully appointed to decide litigated questions in accordance with law.

Q: Who are included as a judge's family?

A: "*Judge's family*" includes a judge's spouse, son, daughter, son-in-law, daughter-inlaw, 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.

Q: Who is a De Jure Judge?
A: One who is exercising the office of judge as a matter of right; an officer of a court who has been duly and legally appointed, qualified and whose term has not expired.

Q: Who is a De Facto Judge?
A: One who in good faith continues to act and is recognized by common error after the abolition of his court by statute is deemed judge *de facto* of the new court which succeeds to the jurisdiction of that presided over by him; An officer who is not fully invested with all the powers and duties conceded to judges, but is exercising the office of judge under some color of right.

Q: What are the general qualifications of all judges and magistrates?
A: A Member of the Judiciary must be a person of proven:

1. competence
2. integrity
3. probity
4. independence

Q: What are the specific qualifications of all judges and magistrates?
A: QUALIFICATIONS OF SC MEMBERS:

1. Natural born citizen
2. At least 40 years of age
3. Must have been for at least 15 years a judge of a lower court or engaged in the practice of law [*Sec. 7 (1), Art. VIII, 1987 Constitution*]

A2: Sec. 7. The Presiding Justice and the Associate Justice of Collegiate Courts shall have the same qualifications as those provided in Constitution for Justice of the Supreme Court. (Judiciary Reorganization Act of 1980)

A3: Sec. 15. No persons shall be appointed Regional Trial Judge unless:

1. He is a natural-born citizen of the Philippines;
2. At least thirty-five years of age; and
3. For at least ten years, has been engaged in the practice of law in the Philippines or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (Judiciary Reorganization Act of 1980)

A4: Sec. 26. No person shall be appointed judge of a Metropolitan Trial Court, Municipal Trial Court, or Municipal Circuit Trial Court unless:

1. He is a natural-born citizen of the Philippines;
2. At least 30 years of age; and
3. For at least five years, has been engaged in the practice of law in the Philippines, or has held a public office in the Philippines requiring admission to the practice of law as an indispensable requisite. (Judiciary Reorganization Act of 1980)

Bangalore Draft

Significance of the New Code

It updates and correlates the Code of Judicial Conduct and the Canons of Judicial Ethics and stresses the Philippines' solidarity with the universal clamor for a universal code of judicial ethics.

Superseding effect of the New Code on the Canons of Judicial Ethics and the Code of Judicial Conduct

- did not completely repeal the old Canons of Judicial Ethics (Administrative Order No. 162) adopted in the Philippines and the Code of Judicial Conduct of 1989;
- only when the New Code has specific provisions or concepts covering those found in the Canons of Judicial Ethics and the Code of Judicial Conduct that the latter are considered superseded to that extent.

in the absence of specific provisions, or deficiency in the New Code that can be applied to a given situation, the Canons of Judicial Ethics and the Code of Judicial Conduct shall apply suppletorily [See, Agpalo's *Legal and Judicial Ethics*].

Q: What are the principles serving as the foundation of the Bangalore Draft?
A:

1. A **competent, independent, and impartial judiciary** is essential if the courts are to fulfill their role in **upholding constitutionalism and the rule of law**;
2. **Public confidence** in the judicial system and in the moral authority and integrity of the judiciary is of utmost importance in a modern democratic society;
3. It is essential that judges, individually and collectively, **respect and honor judicial office as a public trust and strive to enhance and maintain confidence in the judicial system**.

(The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002)

At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity recognized ***the need for a code against which the conduct of judicial officers may be measured.***

The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and ***Chief Justice Hilario Davide of the Supreme Court of the Philippines.***

New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)

In case of deficiency or absence of specific provisions in this New Code, the Canons of Judicial Ethics and the Code of Judicial Conduct shall be applicable in a **suppletory** character.

Effectivity Date: **June 1, 2004**, following its publication not later than May 15, 2004 in two newspapers of large circulation in the Philippines to ensure its widest publicity.

Promulgation: **April 27, 2004**

CANONS

Independence
Integrity
Impartiality
Propriety
Equality
Competence and Diligence

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.

Q: What is independence?

A: It means freedom from the influence, guidance, or control of others.

Q: How does this differ from the 1989 Code of Judicial Conduct?

A: The new Canon 1 deals solely with the matter of **judicial independence** as a "pre-requisite to the rule of law" and a "fundamental guarantee of a fair trial" and not primarily with the **institutional independence** of the judiciary.

- As a person, a judge must be free from influences of other persons **(Individual independence)**
- As the court, no branch of the government or agencies thereof could dictate upon it in the performance of its judicial duties **(Institutional independence)**

MEMORY AID FOR SECTIONS UNDER CANON 1:

1. Independent judicial function (Sec. 1)
2. Outside pressure (Sec. 2)
3. Influencing outcome of litigation (Sec. 3)
4. Influence on judicial conduct (Sec. 4)
5. Independence from executive and legislative (Sec. 5)
6. Independence from society and particular parties (Sec. 6)
7. Safeguards for judicial independence (Sec. 7)
8. Promote Public confidence (Sec. 8)

SECTION 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.

The highest degree of independence is required of judges. Once a judge gives in to pressures from whatever source, that judge is deemed to have lost his independence and is considered unworthy of the position.

A judge acted improperly when she rendered rulings based on directives she received from a government official. By her appointment to the office, the public has laid on respondent their confidence that she is mentally and morally fit to pass upon the merits of their varied contentions. For this reason, they expect her to be **fearless in her pursuit to render justice, to be unafraid to displease any person**, interest or power and to be **equipped with a moral fiber strong enough to resist the temptations** lurking in her office. **(*Ramirez vs. Corpuz-Macandog* A. M. No. R-351-RTJ, September 26, 1986)**

In this case the judge acted under the pressure of a rally staged by the complainant and sympathizers. The High Court ruled that the pressure of a rally demanding the issuance of a warrant of arrest against the accused is not a sufficient excuse for the unjustified haste in respondent judge's act of fixing a bail without

a hearing. **(*Libarios vs. Dabalos* A.M. No. RTJ-89-286, July 11, 1991)**

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

In this case, the respondent judge of the Regional Trial Court (RTC) wrote a letter to a lower court judge of the Municipal Trial Court (MTC) judge seeking to influence him to hear a case and even intimating that he issue an order of acquittal. The High Court ruled that a judge who tries to influence the outcome of a litigation pending before another court not only subverts the independence of the judiciary but also undermines the people's faith in its integrity and impartiality. (*Sabitsana Jr. vs. Villamor* A.M. No. 90-474, October 4, 1991)

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

The interference in the decision-making process of another judge is a breach of conduct so serious as to justify dismissal from service based only on a preponderance of evidence. (*The Court Administrator vs. Hermoso, et al.,* A.M. No. R-97-RTJ, May 28, 1987)

SECTION 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.

When a judge is related to one of the parties within the sixth degree of consanguinity or affinity, his disqualification is mandatory. This provision is intended to ensure that judges are spared from potential influence of family members by disqualifying them even before any opportunity for impropriety presents itself. (*Rivera vs. Barro*, A.M. No. 2003-CTJ, February 28, 1980)

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.

Judicial independence is the reason for leaving exclusively to the Court the authority to deal with internal personnel issues, even if the court employees in question are funded by the local government. Because a reasonable person could conclude that the LGU maintained some influence over the MTC judge, under the New Code of Judicial Conduct, respondent judge's actions created an improper connection with an executive/administrative body – the LGU. (*Bagatsing vs. Herrera* L-34952, July 25, 1975)

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.

Judges should not fraternize with litigants and their counsel. In fact, they should make a conscious effort to avoid them in order to avoid the perception that their independence has been compromised.

In this case, the Court ruled that "[r]espondent's act of sending a member of his staff to talk with complainant and show copies of his draft decisions, and his act of meeting with litigants outside the office premises beyond office hours violate the standard of judicial conduct required to be observed by members of the Bench*." (Tan vs. Rosete,* A.M. No. MTJ-04-1563, September 8, 2004 (formerly A.M. OCA IPI No. 02-1207-MTJ)

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

The Code of Judicial Conduct mandates judges to administer justice without delay and directs every judge to dispose of the court's business promptly within the period prescribed by the law and the rules. Delay ultimately affects the image of the judiciary. Failure to comply with the mandate of the Constitution and of the Code of Judicial Conduct constitutes serious misconduct, which is detrimental to the honor and integrity of a judicial office. Inability to decide a case despite the ample time prescribed is inexcusable, constitutes gross inefficiency, and warrants administrative sanction of the defaulting judge. (*Salud vs. Alumbres,* A.M. No. RTJ-00-159, June 23, 2003)

Note: *Section 7 requires judges to encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance* ***judicial independence*** *while the focus of Section 8 is on* ***inspiring public confidence****.*

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.

A judge should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to promptly and properly administer justice. He must view himself as a priest, for the administration of justice is akin to a religious crusade. (*Dimatulac, et al. vs. Villon, et al.,* G.R. No. 127107, October 12, 1998)

Q: Who are "good judges"?
A: Those who have "mastery of the principles of law, who discharge their duties in accordance with law, who are permitted to perform the duties of the office undeterred by outside influence, and who are independent and self-respecting human

units in a judicial system equal and coordinate with the other two departments of the government." (*Borromeo vs. Marian,* G.R. No. 16808, January 3, 1921)

CANON 2
INTEGRITY

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

Q: What is integrity?
A: It is a steadfast adherence to a strict moral or ethical code. It is moral uprightness, honesty and honourableness.

Q: What are the virtues of a judge with integrity?
A:

1. Impartiality
2. Propriety
3. Equality
4. Independence

Note: *The New Code of Judicial Conduct has separated the values of integrity and independence, emphasizing the need for judges to maintain a life of personal and professional integrity in order to properly carry out their judicial functions.*

Judges must be models of uprightness, fairness and honesty. (*Rural Bank of Barotac Nuevo, Inc. vs. Cartagena,* G.R. No. A.M. No. 707-MJ, July 21, 1978)

MEMORY AID FOR SECTIONS UNDER CANON 2

1. Conduct above reproach (Sec. 1)
2. Reaffirm people's faith (Sec. 2)
3. Disciplinary action (Sec. 3)

SECTION 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.

In the judiciary, moral integrity is more than a cardinal virtue; it is a necessity. (*Fernandez vs. Hamoy*, A.M. No. RTJ-04-1821, August 12, 2004)

Judges have been penalized for:

1. fraternizing with litigants and/or lawyers (*Dela Cruz vs. Bersamin*, A.M. No. RTJ-00-567, July 25, 2000)
2. demanding and/or accepting bribes (*Tan vs. Rosete*, A.M. No. MTJ-04-1563, September 8, 2004)
3. altering orders (*Rallos vs. Gako*, A.M. No. RTJ-98-1484, March 18, 2000)
4. delay in rendering decisions (*Fernandez vs. Hamoy*, A.M. No. RTJ-04-1821, August 12, 2004)
5. sexual harassment of employees (*Dawa vs. De Asa*, A.M. No. MTJ-98-1144, July 22, 1998)
6. ignorance of the law (*Macalintal v. Teh*, A.M. No. RTJ-93- 1375, October 16, 1997)
7. keeping and/or flaunting a mistress (*In Re Judge Marcos*, A.M. No. 97-253-RTC, July 6, 2001)
8. inebriated behaviour (*Lachica vs. Flordeliza*, A.M. No. MTJ-9-921, March 4, 1996)
9. frequenting casinos and cock fights (*City of Tagbilaran vs. Hontanosas*, A.M. No. MTJ- 98-1169, November 29, 2002)
10. **not wearing a black robe** (*Chan vs. Majaducon*, A.M. No. RTJ-02-1697, October 15, 2003)

It is not commendable, proper or moral for a judge to be perceived as going out with a woman not his wife. Such is a blemish to his integrity and propriety, as well as to that of the Judiciary. (*Anonymous Vs. Judge Rio C. Achas, MTCC Branch 2, Ozamiz City, MIsamis Occidental*, A.M. No. MTJ-11-1801. February 27, 2013)

Those who don the judicial robe must observe judicial decorum which requires magistrate to be at all times temperate in their language, refraining from inflammatory or excessive rhetoric or from resorting to language of vilification. The respondent's use of vulgar language has no place in the court. The frequent nocturnal gimmicks also impair the respect due to her as a Judge. Furthermore, borrowing money from her staff is not illegal per se but this is an unbecoming conduct of a judge because she exerted moral ascendancy over her staff. (Armi M. Flordeliza, et al. vs. Judge Julia A. Reyes, A.M. No. MTJ-06-1625, September 18, 2009)

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.

Judges must not only render just, correct and impartial decisions, but must do so in a manner free of any suspicion as to their fairness, impartiality and integrity. (*Rallos vs. Gako*, A.M. No. RTJ-98-1484, March 17, 2000)

A judge must not only be honest but also appear to be so; not only be a good judge, but also a good person. (*Dawa vs. De Asa*, A.M. No. MTJ-98-1144, July 22, 1998)

While judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such a manner that the parties before them should have confidence in their impartiality. (*Sibayan-Joaquin vs. Javellana*, A.M. No. RTJ- 00-1001, November 13, 2001)

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.

Judges should not be lenient in the administrative supervision of employees. As an administrator, the judge must ensure that all court personnel perform efficiently and promptly in the administration of justice. (*Ramirez vs. Corpuz-Macandog*, A. M. No. R-351-RTJ, September 26, 1986)

Respondent Judge cannot hide behind the inefficiency of her court personnel. The Code of Judicial Conduct obliges a judge to properly supervise the court personnel to ensure the prompt and efficient dispatch of business and to require at all times the observance of high standards of fidelity to duty. Respondent judge is the master of her own domain, and she must assume the responsibility that goes with it. (*Arnel V. Manzon vs. Judge Norma C. Perello*, A.M. No. RTJ-02-1686, May 7, 2004)

Oftentimes, leniency provides the court employees the opportunity to commit minor transgressions of the laws and slight breaches of official duty ultimately leading to vicious delinquencies. The respondent judge should constantly keep a watchful eye on the conduct of his employees. He should realize that big fires start small. His constant scrutiny of the behavior of his employees would deter any abuse on the part of the latter in the exercise of their duties. Then, his subordinates would check that any misdemeanor will not remain unchecked. (*Buenaventura vs. Benedicto* Adm. Case No. 137-J, March 27, 1971)

Q: To whom is the power to dismiss vested?
A: Although a judge has the power to recommend for appointment court personnel, however, he has no power to dismiss them. The power to dismiss a court employee is vested with the Supreme Court.

RE: REQUEST FOR GUIDANCE/CLARIFICATION ON SECTION 7, RULE III OF **REPUBLIC ACT NO. 10154** REQUIRING **RETIRING GOVERNMENT EMPLOYEES TO SECURE A CLEARANCE** OF PENDENCY/NON-PENDENCY OF CASE/S **FROM THE CIVIL SERVICE COMMISSION.**

Section 6, Article VIII of the 1987 Philippine Constitution exclusively vests in the Supreme Court **administrative supervision over all courts and court personnel**. As such, it oversees the court personnel's compliance with all laws and takes the proper administrative action against them for any violation thereof. As an adjunct thereto, it keeps in its custody records pertaining to the administrative cases of retiring court personnel.

In view of the foregoing, the Court rules that the subject provision – which requires retiring government employees to secure a prior clearance of pendency/non-pendency of administrative case/s from, among others, the CSC – **should not be made to apply to employees of the Judiciary.** (A.M. No. 13-09-08-SC October 1, 2013)

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.

MEMORY AID FOR SECTIONS UNDER CANON 3

1. Judicial duties free from bias (Sec. 1)
2. Promote confidence, impartiality (Sec. 2)
3. Minimize instances of disqualification (Sec. 3)
4. Public comments; pending and impending case (Sec. 4)
5. Disqualifications (Sec. 5)
6. Remittal of disqualifications (Sec.6)

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

An alumnus of a particular law school has no monopoly of knowledge of the law. For a judge to determine the fitness or competence of a lawyer primarily on the basis of his alma mater is clearly an engagement in an argumentum *ad hominem*. In the case, the judge questions the capability and credibility of the complainant just because he was not a graduate from UP Law School. The Court has reminded members of the bench that even on the face of boorish behavior from those they deal with, they ought to conduct themselves in a manner befitting gentlemen and high officers of the court. (*Atty. Melvin D.C. Mane vs. Judge Medel Arnaldo B. Belen* A.M. No. RTJ-08-2119, June 30, 2008)

The concern is not only with the judge's actual decision but the manner in which the case is decided. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to his fairness and as to his integrity. It is the duty of all judges not only to be impartial but also to "appear impartial." (*Geotina vs. Gonzales,* G.R. No. 26310, September 30, 1971)

Q: What is the Extra-Judicial Source Rule?
A: A principle in the United States which provides that to sustain a claim of bias or prejudice, the resulting opinion must be based upon an extrajudicial source: that is, some influence other than the facts and law presented in the courtroom.

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.

The intendment of the above provision of the Rules of Court is not difficult to find. Its rationale is predicated in the long standing precept that no judge should handle a case in which he might be perceived, rightly or wrongly, to be susceptible to bias and impartiality. His judgment must not be tainted by even the slightest suspicion of improbity or preconceived interest. The

rule is aimed at preserving at all times the faith and confidence in courts of justice by any party to the litigation. (*Urbanes, Jr. vs. Court of Appeals*, G.R. No. 117964, March 28, 2001)

A judge should, in pending or prospective litigation before him, be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course. He must not only render a just, correct and impartial decision but should do so in such a manner as to be free from any suspicion as to his fairness, impartiality and integrity. (*SANGGUNIANG BAYAN OF TAGUIG, METRO MANILA vs. Judge SANTIAGO G. ESTRELLA*, A.M. No. 01-1608-RTJ. January 16, 2001)

Respondent's act of sending a member of his staff to talk with complainant and show copies of his draft decisions, and his act of meeting with litigants outside the office premises beyond office hours violate the standard of judicial conduct required to be observed by members of the Bench. They constitute gross misconduct which is punishable under Rule 140 of the Revised Rules of Court. (*Office of the Court Administrator vs. Judge Roberto S. Javellana,* et al.A.M. No. RTJ-02-1737, September 9, 2004)

A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. (*Pimentel vs. Salanga*, G.R. No. L-27934, September 18, 1967)

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.

Q: What is the "duty to sit?"
A: There is a possibility that no judge would be available to decide a case because judges with jurisdiction over the case would opt to recuse from the case. Hence, it is imperative that **judges ensure that they would not be unnecessarily disqualified from a case**. This is referred to as the "duty to sit." It is imposed because permitting judges to disqualify themselves for frivolous reasons or for no reason at all would contravene public policy by unduly delaying proceedings, increasing the workload of other judges, and fostering impermissible judge-shopping.

The majority view is that **the rule of disqualification of judges must yield to demands of necessity**. Simply stated, the rule of necessity means that a judge is not disqualified to sit in a case if there is no other judge available to hear and decide the case. In other words, when all judges would be disqualified, disqualification will not be permitted to destroy the only tribunal with power in the premises. The doctrine operates on the principle that a basic judge is better than no judge at all. Under such circumstances, it is the duty of the disqualified judge to hear and decide the controversy, however disagreeable it may be. (*Parayno vs. Menese,* G.R. No. 112684, April 26, 1994)

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.

Judges should avoid side remarks, hasty conclusions, loose statements or gratuitous utterances that suggest they are prejudging a case. Judges should be aware that the media might consider them a good and credible source of opinion or ideas, and therefore should refrain from making any comment on a pending case. Not only is there danger of being misquoted, but also of compromising the rights of the litigants in the case.

In this case, a judge was disqualified from trying a criminal case because he met with the complainants in chambers and advised them to settle with the accused because their case was weak. (*Martinez vs. Giorenella,* No. L-37635, July 22, 1975)

However, the Supreme Court has recently held that judges and justices are not disqualified from participating in a case simply because they have written legal articles on the law involved in the case. (*Chavez vs. Public Estates Authority*, G.R. No. 133250, May 6, 2003)

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;

The bias and prejudice must be shown to have stemmed from an extra-judicial source and result in an opinion on the merits on some basis other than the evidence presented. (*Aleria, Jr. vs. Velez,* G.R. No. 127400 November 16, 1998)

The manner and attitude of a trial judge are crucial to everyone concerned, the offended party, no less than the accused. It is not for him to indulge or even to give the appearance of catering to the at-times human failing of yielding to first impressions. It must be obvious to the parties as well as the public that he follows the traditional mode of adjudication requiring that he hears both sides with patience and understanding to keep the

risk of reaching an unjust decision at a minimum. What has been said is not merely a matter of judicial ethics. **It is impressed with constitutional significance.** (*Castillo vs. Juan,* Nos. L-39516-17, January 28, 1975)

> (b) The judge previously served as a lawyer or was a material witness in the matter in controversy;

A judge may be disqualified if he was formerly associated with one of the parties or their counsel. (*Austria vs. Masaquel,* No. L-22536, August 31, 1967)

A judge was disqualified for notarizing the affidavit of a person to be presented as a witness in a case before him. (*Mateo vs. Villaluz,* Nos. L-34756-59, March 31, 1973)

> (c) The judge, or a member of his or her family, has an economic interest in the outcome of the matter in controversy;

A municipal judge who filed complaints in his own court for robbery and malicious mischief against a party for the purpose of protecting the property interests of the judge's co-heirs, and then issued warrants of arrest against the party, was found guilty of **serious misconduct** and ordered dismissed from the bench before he was able to recuse himself. The Supreme Court held that "his subsequent inhibition from the cases which he filed in his own court does not detract from his culpability for he should have not taken cognizance of the cases in the first place – the evil that the rule on disqualification seeks to prevent is the denial of a party of his right to due process." (*Oktubre vs. Velasco,* A.M. No. MTJ 02-1444, July 20, 2004)

> (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;

A judge is **automatically disqualified** from sitting in a case in which the judge previously served as a lawyer. This restriction extends to judges who served as lawyers in closely related cases. Recusal is also mandated when the judge's former law partner or associate served as a lawyer in the matter while the judge was practicing with the lawyer. Finally, a judge may not sit in a case in which the judge has been a material witness. (*Lewis v. State*, 565 S.E.2d 431, Ga. 2002)

Note: Exception under the Old Code. When the estate, trust, ward or person for whom he will act as executor, administrator, trustee, guardian,
fiduciary is a member of the immediate family—which is limited to the spouse and relatives within the 2nd degree of consanguinity—provided that the judge's services as fiduciary shall not interfere with the performance of his judicial functions.

> (e) The judge's ruling in a lower court is the subject of review;

An Associate Justice of the Court of Appeals refused to inhibit himself from reviewing the decision in a case which he had partially heard as a trial judge prior to his promotion, on the ground that the decision was not written by him. **The Supreme Court upheld his refusal**, but nevertheless commented that he "should have been more prudent and circumspect and declined to take on the case owing to his earlier involvement in the case. The Court has held that a judge should not handle a case in which he might be perceived, rightly or wrongly, to be susceptible to bias and prejudice." (*Sandoval vs. Court of Appeals*, G.R. No. 106657, August 1, 1996)

> (f) The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or

In this case, a Municipal Trial Court judge was dismissed for taking cognizance of a criminal complaint lodged by his brother, and issuing a warrant of arrest. (*Garcia vs. De La Pena,* A.M. No. MTJ-92-637, February 9, 1994)

The purpose of the prohibition is to prevent not only a conflict of interest but also the appearance of impropriety on the part of a judge. The failure of respondent judge to inhibit himself in the case of his uncle constitutes an abuse of his authority and undermines public confidence in the impartiality of judges. **(DATU INOCENCIO C. SIAWAN vs. JUDGE AQUILINO A. INOPIQUEZ, JR., A.M. No. MTJ-95-1056. May 21, 2001)**

> (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;

Q: Illustrate the distinction of direct and indirect interest.
A: If a judge's relative is a partner at the law firm representing one of the litigants in the case before the judge, that relative might receive direct pecuniary benefit resulting from a favorable outcome of the litigation. Thus, the relative's interest is sufficiently **direct** to require recusal.

Note: While United States jurisprudence has distinguished between direct and indirect interest, **there is no equivalent Philippine jurisprudence on the matter**. This rule is intended to ensure judges'impartiality by preventing situations in which a judge must consider familial interests in the conflicts before him or her.

Q: What is economic interest?
A: It refers to the necessities of life like wealth and proprietary rights. If the judge or member of his family stands to gain or lose

some economic benefits in the dispute when finally decided, he must disqualify himself because partiality will take the better of him. Otherwise, public confidence in the judicial system will be eroded.

The reasons for disqualification cited in Canon 3, Section 5 are "not limited to" these circumstances. Strict compliance with the rules on disqualification is required. The petition to disqualify a judge must be filed **before rendition of the judgment**, and cannot be raised on appeal. Otherwise, the parties are deemed to have waived any objection regarding the impartiality of the judge. (*Marfil vs. Cuachon*, A.M. No. 2360-MJ, August 31, 1981)

SEC. 6. A judge disqualified as stated above may, instead of withdrawing from the proceeding, disclose 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.

The decision to continue hearing the case, despite the existence of reasons for disqualification should be:

(a) coupled with a ***bona fide disclosure*** *to the parties-in-litigation*; and

(b) subject to ***express acceptance by all the parties*** of the cited reason as not material or substantial. Absent such agreement, the judge may not continue to hear the case.

The judge should disclose on the record the basis for his disqualification. Perhaps prompted by a cultural sense of delicadeza, some magistrates state only "personal reasons" as the ground for inhibiting themselves. However, such vague reasoning is not acceptable, as it would effectively place voluntary disqualification at the whim of the judge. This kind of latitude is not the intended effect of the rule.

The first paragraph of Rule 137, Section 1 is the rule on **disqualification.** It enumerates the grounds under which any judge or judicial officer is disqualified from acting as such, and the explicit enumeration of the specific grounds therein does not exclude others. Disqualification of a judge is **mandatory** if any of the listed grounds exists.

RULE 137
DISQUALIFICATION OF JUDICIAL OFFICERS

SECTION 1. Disqualification of judges.—No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

CANON 4
PROPRIETY

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

MEMORY AID FOR SECTIONS UNDER CANON 4

1. Avoidance of Impropriety (Sec. 1)
2. Acceptance of Personal Restrictions (Sec. 2)
3. Avoidance of Controversy (Sec. 3)
4. Not participate in cases where he may be impartial (Sec. 4)
5. Not to allow the use of his residence by other lawyers (Sec. 5)
6. Freedom of Expression (Sec. 6)
7. Be informed of his financial interests (Sec. 7)
8. Influence of Judicial Conduct (Sec. 8)
9. Confidential Information (Sec. 9)
10. Engage in other activities (Sec. 10)
11. Practice of Profession (Sec. 11)
12. Form associations (Sec. 12)
13. Gifts, Requests, Loans (Sec. 13)
14. Gifts, Requests, Loans by staff (Sec. 14)
15. Permissible tokens and awards (Sec. 15)

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

The Philippine courts have also acknowledged the irrelevance of the judge's perception of impropriety. In this case, the Court gave a reprimand with warning to Judge Dojillo for sitting beside the counsel for Dojillo's brother in the hearing of an election protest filed by the latter. The Court was not convinced by Dojillo's defense that he intended only to give moral support. As a judge, he should have known family concerns are only secondary to preserving the integrity of the judiciary as a whole. (*Vidal v. Dojillo,* A.M. No. MTJ-05-1591, July 14 2005)

Acts done by a judge which are not illegal but are still violations of the Code of Judicial Ethics:

(a) Hearing cases on a day when the judge was supposed to be on official leave;

(b) Hearing a motion while on vacation, in the judge's room dressed in a polo jacket;

(c) Photos showing the judge and one of his subordinates coming out of a hotel together, despite absence of clear evidence of sexual congress;

(d) Making a joking remark to a litigant suggesting that the latter prove he harbored no ill feelings towards the judge;

(e) Making a comment after conducting a marriage ceremony that the bride and groom should sexually satisfy each other so that they will not go astray.

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.

A judicial officer is subject to scrutiny for both public and private conduct. Such scrutiny is an unavoidable consequence of occupying a judicial position. (*Cañeda vs. Alaan* A.M. No. MTJ-01-1376, January 23 2002)

Dignified conduct is best described as conduct befitting men and women possessed of temperance and respect for the law and for others. Thus, the Supreme Court rebuked judges who made sexually suggestive advances to women, including inviting ladies to go with the judge and his companions to the beach, (*Mariano v. Gonzales,* 114 SCRA 112) writing letters asking a married woman to come to the judge's *sala* after five o'clock in the evening, (*Hadap v. Lee)* and assigning a female stenographer to the judge's chambers. (*Ritual v. Valencia)* A judge was similarly disciplined for confronting a former boyfriend and his female companion in a restaurant, and giving false and misleading information to the police. (*In re Williams,* 777 A.2d 323 N.J. 2001)

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.

A judge is commanded at all times to be mindful of the high calling of a dispassionate and impartial arbiter expected at all times to be a "cerebral man who deliberately holds in check the tug and pull of purely personal preferences which he shares with his fellow mortals." Judges should refrain from inviting counsel for one side into their chambers after or prior to sessions in court without disclosing to the other counsel the reason for such meetings, being aggressive in demeanor towards a lawyer appearing before them, and making public comments, or allowing court staff to make comments, on pending cases. (*Office of the Court Administrator vs. Paderanga* A.M. No. RTJ-01-1660, August 25 2005)

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.

This rule rests on the principle that no judge should preside in a case in which the judge is not wholly free, disinterested, impartial and independent. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to fairness and integrity. The purpose is to preserve the people's faith and confidence in the courts of justice.

Even when judges do not intend to use their position to influence the outcome of cases involving family members, it cannot be denied that a judge's mere presence in the courtroom, (*Vidal vs. Dojillo* A.M. No. MTJ-05-1591, July 14 2005) or even writing letters to an administrative body conducting an investigation pursuant to the exercise of quasi-judicial functions (*Perez vs. Costales* A.M. No. RTJ-04-1876 February 23 2005) tend to **give rise to the suspicion that influence is being used**.

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.

The rationale for this section is the same as that of Section 3. The high tribunal held that it was inappropriate for a judge to have entertained a litigant in his house particularly when the case is still pending before his *sala*. (*J. King and Sons v. Hontanosas,* 438 SCRA 264)

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.

While judges are not expected to live a hermit-like existence or cease functioning as citizens of the Republic, *they should remember that they do not disrobe themselves of their judicial office upon leaving their salas*. In the exercise of their civil liberties, they should be circumspect and ever mindful that their continuing commitment to upholding the judiciary and its values places upon them certain implied restraints to their freedom.

The use of expletives is frowned upon by the Supreme Court. The court reprimanded a judge who used expletives like "*putris*" and "*putang ina,*" even thought they were not directed to any particular individual. (*Re Judge Edmundo Acuna,* 464 SCRA 250) In another case, the court found that the judge displayed unbecoming behaviour by sarcastically commenting upon a complainant's ability to read English and using phrases such as "moronic attitude," "stupid," and "*putang inamo*" to describe the complainant. (*Seludo v. Fineza,* 447 SCRA 73)

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

A judge shall refrain from financial and business dealings that

tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or increase involvement with lawyers or persons likely to come before the court. (*Catbagan v. Barte,* 455 SCRA 1)

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.

This rule has two parts. The first is that a judge may not use judicial office to advance private interests. The second is that a judge may not give the impression that he or she can be influenced to use the judicial office to advance the private interests of others.

In this case, the respondent judge took advantage of his position as a Makati Regional Trial Court judge by filing in the Makati court a collection case in which he and his wife were the complainants. The Court ruled that although a stipulation in the contract gave the judge, as creditor, choice of venue, the judge had nonetheless fallen short of what is expected of him as a judicial officer. The Court explained that the reason for the ruling of impropriety was that peculiar Philippine psyche, personality and culture would lead the public, and in particular the judge's adversary in the collection case, to suspect that the judge would use the choice of venue as a means to exert influence in favor of himself. This is precisely the reason behind this particular section of the new Code. (*Javier vs. de Guzman,* A.M. No. RTJ-89-380, December 19 1990)

A judge was found liable for gross misconduct when he made phone calls to the station commander on behalf of a family friend who had been detained, and asked her bailiff to look into the status of the car that had been left in the parking lot when the friend had been arrested. (*Manansala III vs. Asdala*, A.M. No. RTJ-05-1916, May 10 2005)

Respondent judge cited complainant in contempt of court because **complainant parked his superior's vehicle at the parking space reserved for respondent judge**. A magistrate must exhibit that hallmark of judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge. Respondent judge should not have allowed himself to be annoyed to a point that he would even waste valuable court time and resources on a trivial matter. (Venancio Inonog vs. Judge Francisco B. Ibay, A.M. No. RTJ-09-2175, July 28, 2009)

A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment. Judge Malanyaon needs to be reminded that his judicial identity does not terminate at the end of the day when he takes off his judicial robes. (*Hon. Julieta A. Decena, et al. vs. Judge Nilo A. Malanyaon,* A.M. No. RTJ-02-1669, April 14, 2004)

Q: What is ticket-fixing?
A: It is a misconduct in which judges impermissibly take advantage of their position to avoid traffic violations.

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.

The Court reiterates the common sense rule that once retired, judges may no longer decide cases. Neither may they, or even their successors, promulgate decisions written while they were still in office. In short, once retired, they can no longer write or promulgate decisions, orders or other actions proper only to incumbents. (J. King & Sons Company, Inc. vs. Judge Agapito L. Hontanosas, Jr., A.M. No. RTJ-03-1802, September 21, 2004)

When a judge released a draft of her decision to a party, that conduct was found to be not just a simple breach of confidentiality but a scheme to make the party "negotiate" for increases in the monetary awards to be given by the judge. (*Centrum Agri-Business Realty Corp. v. Katalbas-Moscardon,* 247 SCRA 145)

It is improper for a judge to allow his wife to have access to court records which are necessarily confidential, as this practice may convey the impression that she is the one who can influence the judge's official functions. (*Gordon v. Lilagan,* 361 SCRA 690)

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.

This section allows the judge to participate in legal academia and public discourse on legal matters with the proviso that **there shall be no interference in the performance of the judge's primary functions** with respect to his or her jurisdiction.

In the landmark case of *In Re: Designation of Judge Rodolfo U. Manzano,* (A.M. No. 88-7-1861-RTC, October 5 1988) a judge

sought the Court's permission to accept membership in the Ilocos Norte Provincial Committee on Justice, an administrative body. The Court denied his request, ruling that allowing the judge's membership would be a violation of the constitutional provision on the discharge by members of the judiciary of administrative functions in quasi-judicial or administrative agencies. (Section 12, Art. VIII)

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

This prohibition is based on the inherent incompatibility of the rights, duties and functions of the office of an attorney with the powers, duties and functions of a judge. (*Carual v. Brusola,* 317 SCRA 54)

Philippine courts not only prohibit judges from overtly representing clients as counsel of record, (*Candia v. Tagabucha,* 79 SCRA 52) but also from acting more subtly in a way more befitting an advocate than a judge. For example, a judge may not meet with a complainant to give him advice. (*Contreras v. Solis,* 260 SCRA 570)

A judge may not involve himself in any activity that is an aspect of the private practice of law. His acceptance of an appointment to the Bench inhibits him from engaging in the private practice of law, regardless of the beneficiary of the activity being a member of his immediate family. He is guilty of conduct unbecoming of a judge otherwise. (*SONIA C. DECENA and REY C. DECENA vs. JUDGE NILO A. MALANYAON*, A.M. No. RTJ-10-2217, April 8, 2013)

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

This rule also recognizes the difference between membership in associations of judges and membership in associations of other legal professionals. While attendance at lavish events hosted by lawyers might create an appearance of impropriety, participation in a **judges-only organization** does not.

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.

This section should be read in conjunction with **Section 7(d) of R.A. 6713** which prohibits public officials from soliciting or accepting gifts. According to this provision:

Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of money value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

Receiving money from a party litigant is the kind of ***gross and flaunting misconduct*** on the part of the judge, who is charged with the responsibility of administering the law and rendering justice. [*Ompoc v. Torre (1989)*]

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.

This section complements the previous section and assures that what the judge cannot do directly, may not be done indirectly through the use of employees or staff members. In *Dulay vs. Lelina*, (A.M. No. RTJ-99-1516, July 14 2005) the Court suspended the respondent judge for six months for allowing his daughters to accept a business partnership offered by persons with pending cases before his court.

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.

***General Rule*:** Judges and members of their families **cannot** accept gifts, award or benefit

***Exception*:** Subject to legal requirements like public disclosure, *may* accept gifts provided that it might not reasonably be perceived as intended to influence judge.

Section 7(d) of R.A. 6713 allows the following:

(a) Gift of nominal value tendered and received as a souvenir or mark of courtesy;

(b) Scholarship or fellowship grant or medical treatment;

(c) Travel grants or expenses for travel taking place entirely outside the Philippines (such as allowances, transportation, food and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interest of the Philippines, and permitted by the head office, branch or agency to which the judge belongs.

Q: What is a gift?

A: "Gift" refers to a thing or a right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof. It shall not include an unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee. *(Sec. 3 (c), RA*

No. 6713)

Q: What is a loan?
A: Loan" covers both simple loan and commodatum as well as guarantees, financing arrangements or accommodations intended to ensure its approval. *(Sec. 3 (c), RA No. 6713)*

CANON 5
EQUALITY

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

MEMORY AID FOR SECTIONS UNDER CANON 5

(a) Understand the diversity in society (Sec. 1)
(b) Not to manifest bias or prejudice (Sec. 2)
(c) Not to differentiate (Sec. 3)
(d) Not to influence staff (Sec. 4)
(e) Attitude to parties appearing in court (Sec. 5)

This is a new Canon not found in the previous two Philippine Codes of Judicial Conduct. It expands the measures to promote equality required by international human rights agreements. Those agreements advocate a universal application of law and non-discrimination between the sexes. The United Nations Charter and the International Bill of Rights, both of which the Philippines has ratified, affirm the equality of all human beings and establish a norm of "full respect of human rights and for fundamental freedom for all without distinction as to race, sex, language or religion." (U.N. Charter, Chapter 1, Art. 1(3); Universal Declaration of Human Rights, Arts. 1 and 2; the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights)

Moreover, the Philippines ratified the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on August 5, 1981, which requires party states to recognize the important economic and social contributions of women to the family and to society. It stresses the need for a change in attitude, through education of both men and women, to accept equality of rights and responsibilities and to overcome prejudices and practices based on stereotyped roles.

SECTION 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.

In Judge Dojillo's case, he should be more cautious in his choice of words and use of gender-fair language. Thus, there was no reason for him to emphatically describe Concepcion as a "lesbian" because the complained acts could be committed by anyone regardless of gender orientation. Furthermore, statements like *"I am a true man not a gay to challenge a girl and a lesbian like her,"* "*the handiwork and satanic belief of dirty gossiper,*" and "*the product of the dirty and earthly imagination of a lesbian and gossiper*" were uncalled for. (*Judge Jaime L. Dojillo, Jr. vs. Concepcion Z. Ching*, A.M. No. P-06-2245, July 31, 2009)

Judges may not use derogatory or condescending language in their judgment when dealing with a rape complaint. (*Iglesia ni Kristo v. Gironella*, A.M. No. 2440-CFI, July 25, 1981)

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.

When a judge advised an accused of the best course of action at arraignment, it appeared that the judge was taking sides with the accused. This behavior may create the impression that the sentence meted out to the accused is – in colorful vernacular – "*lutong macao*." (*Espayos v. Lee*, A.M. No. 1574-MJ, April 30, 1979)

A judge should be the embodiment of competence, integrity and independence and should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. Respondent judge failed to provide any legitimate reason for the issuance of the Orders on a Saturday evening when the courts were already closed nor was he able to justify his failure to comply with due process requirements, resulting in the unwarranted arrest and incarceration of powerless individuals. (*PANES, JR. vs. JUDGE OSCAR E. DINOPOL, RTC, Br 24, KORONADAL CITY, A.M. OCA-I.P.I. No. 07-2618-RTJ February 12, 2013)*

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.

A judge's duty to observe courtesy to those who appear before him is not limited to lawyers. The said duty also includes being courteous to litigants and witnesses. Respondent's conduct towards Consuelo Aznar leaves a lot to be desired. As stated in the complaint, respondent ordered Consuelo Aznar to go back to her house to get the original documents in five minutes or he would dismiss the case. Respondent did not offer any explanation to this charge against him. Respondent's act in this instance smacks of judicial tyranny. (*Atty. Gloria Lastimosa-Dalawampu vs. Judge Raphael B. Yrastorza, Sr.*, A.M. RTJ-03-1793, February 5, 2004)

Judges must also be concerned with the public's impression of the judiciary. When judges of the same court fight with each other, slap their personnel in public, or commit acts of sexual

harassment, the image of the judiciary is impaired. (*Navarro v. Tormis*, A.M. No. MTJ-00-1937, April 27, 2004)

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.

Judges should organize their courts to ensure the prompt and convenient dispatch of business and should not tolerate misconduct by clerks, sheriffs and other assistants who are sometimes prone to expect favors or special treatment due to their professional relationship with the judge. All personnel involved in the dispensation of justice should conduct themselves with a high degree of responsibility. (*Mataga v. Rosete*, A.M. No. MTJ-03-1488, October 13, 2004)

SEC. 5. Judges shall 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.

Judges have the duty to prevent lawyers from abusing witnesses with unfair treatment. Witnesses have the following rights and obligations as provided for in **Rule 132, section 3 of the Revised Rules of Court**:

(1) To be protected from irrelevant, improper or insulting questions and from a harsh or insulting demeanor;

(2) Not to be detained longer than the interests of justice require

(3) Not to be examined except as to matters pertinent to the issues before the court;

(4) Not to give an answer which will tend to subject him to a penalty for an offense unless otherwise provided by law; or

(5) Not to give an answer which will tend to degrade the witness' reputation, but a witness must answer the fact of any previous final conviction for a criminal offense.

CANON 6

COMPETENCE AND DILIGENCE

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

MEMORY AID FOR SECTIONS UNDER CANON 6

(a) Duties take precedence (Sec. 1)
(b) Perform administrative duties (Sec. 2)
(c) Maintain professional competence (Sec. 3)
(d) Be informed about the law (Sec. 4)
(e) Prompt decision making (Sec. 5)
(f) Maintain order in proceedings (Sec. 6)
(g) Not to engage in conduct contrary to duties (Sec. 7)

Q: What is diligence?
A: It is the quality of a person characterized by his earnest willingness and capability to promptly do or undo what is required by the nature of the obligation or duty in accordance with existing rules.

It carries with it the elements of:
1. perseverance;
2. industry;
3. quickness ; and
4. carefulness

NOTE: Diligence is the opposite of negligence.
Competence is more on the intellectuality; while diligence, on the performance.

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

A judge should not recuse himself simply to avoid sitting on difficult or controversial cases.

"The administration of justice is a sacred task ... and [u]pon assumption to office, a judge ceases to be an ordinary mortal. He becomes the visible representation of the law and more importantly, of justice." [*Office of the Court Administrator v. Gines (1993)*]

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.

In the instant case, respondent judge impeded the speedy disposition of cases by his successor on account of missing records of cases. This fact reflects an inefficient and disorderly system in the recording of cases assigned to his sala. *Proper and efficient court management is as much the judge's responsibility for the Court personnel are not the guardians of a Judge's responsibilities*. A judge is expected to ensure that the records of cases assigned to his sala are intact. There is no justification for missing records save fortuitous events. The loss of not one but eight records is indicative of gross misconduct and inexcusable negligence unbecoming of a judge. [*Longboan v. Polig (1990)*]

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.

The respondent judge has utterly failed to live up to the standard of competence required of him. His erroneous application of the Indeterminate Sentence Law committed not just once or twice but in at least seventeen (17) instances is a compelling evidence of his gross ignorance of the law. (*The Officers and Members of the IBP Baguio-Benguet Chapter, et al. vs. Fernando Vil Pamintuan*, A.M. No. RTJ-02-1691, January 16, 2004)

The maxim "ignorance of the law excuses no one" has special application to judges. (*Espiritu v. Javellanos*, 280 SCRA 579 (1997) As advocates of justice and visible representation of the law, the public expects judges to be conversant with the developments of law and jurisprudence and proficient in their application or interpretation of it. (*Almonte v. Bien*, 461 SCRA 218 2005) It is imperative that judges be well-informed of basic legal principles.

Good faith and absence of malice or corruption are sufficient defenses to charges of ignorance of the law. However, the Supreme Court admonished that "good faith of fallible discretion inheres only within the perimeter of tolerable judgment and does not apply where the issues are so simple and the applicable legal principles evident and basic as to be beyond possible margin of error. *(Poso v. Mijares*, 387 SCRA 485, 507, 2002)

The Court held that the failure to apply elementary rules of procedure constitutes gross ignorance of the law and procedure. Neither good faith nor lack of malice will exonerate respondent because, as previously noted, the rules violated were basic procedural rules. All that was needed for respondent to do was to apply them. Unfortunately, in this case the Judge chose not to. The Judge failed to resolved unlawful detainer and forcible entry case according express legal provisions on periods of rendition of judgments. (*Danilo David S. Mariano vs. Judge Jose P. Nacional,* A.M. No. MTJ-07-1688, February 10, 2009)

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

Within its own territory, the Philippines has the obligation to respect the civil and political rights recognized by the International Covenant on Civil and Political Rights without discrimination as to national origin, among other factors — an obligation that binds both its citizens and foreign nationals within its jurisdiction.

As judges are front-liners in the dispensation of justice, it is imperative they keep abreast with the changes and developments in law and jurisprudence. As judges are apostles of the law, their ignorance of the law is impermissible and inexcusable. (*Atty. Audie C. Arnado vs. Judge Marino S. Buban*, A.M. No. MTJ-04-1543, May 31, 2004)

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

The essence of the judicial function is expressed in ***Section 1, Rule 124 of the Revised Rules of Court*** which provides that "Justice shall be impartially administered without unnecessary delay." This principle permeates the whole system of judicature, and supports the legitimacy of the decrees of judicial tribunals.

In this case, respondent judge was found guilty of **gross inefficiency** for having failed to resolve the ejectment case within the prescribed 30-day period after the filing of the parties' respective Position Papers, pursuant to Rule 70 of the Rules of Court and the 1991 Revised Rules on Summary Procedure. The Supreme Court took into consideration the judge's candid admission and acceptance of his infraction as factors in imposing only a fine and also took into account his **age and frail health**, although these factors **did not in any way absolve him from liability or excuse him from diligently fulfilling his duties**. (*Atty. Manuel J. Jimenez, Jr. Vs. Presiding Judge Michael M. Amdengan, Municipal Trail Court, Angono Rizal,* A.M. No. MTJ-12-1818. February 13, 2013)

The Supreme Court ruled that, "We have always reminded judges that the Court is not unmindful of the circumstances that may delay the disposition of the cases assigned to them. Thus, the Court remains sympathetic to seasonably filed requests for extension of time to decide cases. Unfortunately, no such requests were made by Judge Fuentes III until the judicial audit was conducted by the OCA and a directive was issued to him by the Court." (*Office of the Court Administrator Vs. Judge Fernando G. Fuentes,* A.M. No. RTJ-13-2342/A.M. No. RTJ-12-2318. March 6, 2013)

Clearly, Judge Villegas' contumacious conduct and blatant disregard of the Court's mandate for more than three years amounted to studied defiance and downright insubordination. A magistrate's delay in rendering a decision or order and failure to comply with this Court's rules, directives and circulars constitute less serious offenses under Rule 140, Section 9 of the Rules of Court. (*Office of the Court Administration vs. Judge Franklin A. Villegas*, A.M. No. RTJ-00-1526, June 3, 2004)

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.

The respondent judge was guilty of committing acts unbecoming of a judge and abuse of authority when he shouted invectives and threw a chair at the complainant, resulting in wrist and other injuries to the complainant. [*Briones v. Ante, Jr. (2002)*]

The respondent judge was found guilty of serious misconduct and inefficiency by reason of habitual tardiness. He was fined and suspended for judicial indolence. [*Yu-Asensi v. Villanueva (2000)*]

Besides possessing the requisite learning in the law, the Supreme Court has emphasized that "a magistrate must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge. *(Rodriguez v. Bonifacio*, 344 SCRA 519 [2000])

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

In *Beso v. Daguman,* (323 SCRA 566, 2000) a judge neglected his duty when he failed to exercise extra care in ensuring that records of the cases and official documents in his custody were intact. The Supreme Court reiterated that "judges must adopt a system of record management and organize their dockets in order to bolster the prompt and efficient dispatch of business.

DISCIPLINE OF MEMBERS OF THE JUDICIARY

MEMBERS OF THE SUPREME COURT IMPEACHMENT

Statutory Basis
1987 Constitution, Art. X, Section 2. The President, the Vice-President, the **Members of the Supreme Court**, the Members of the Constitutional Commissions, and the Ombudsman may be removed from office on impeachment for, and conviction of, **culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust**. All other public officers and employees may be removed from office as provided by law, but not by impeachment

ETHICAL LESSONS FROM FORMER CHIEF JUSTICE CORONA

Overview of Chief Justice Corona's impeachment
December 12, 2011.

A. The House of Representatives charged Chief Justice Corona with eight articles of impeachment alleging (1) betrayal of public trust; (2) graft and corruption; and (3) culpable violation of the Constitution.

Articles of Impeachment Filed by the House of Representatives:

Article I: Partiality and subservience in cases involving the Arroyo administration;

***Article II*: Failure to disclose to the public his Statement of Assets and Liabilities;**

Article III: Flip-flopping decisions in final and executory cases *(Flight Attendants and Stewards Association of the Philippines (FASAP) vs. Philippine Airlines)* creating excessive entanglement with Former President Arroyo, and discussing with litigants regarding the cases pending before the Supreme Court (Lejano vs. People or the Vizconde massacre case);

Article IV: Betrayal of public trust and/or committed culpable violation of the Constitution when it blatantly disregarded the principle of separation of powers by issuing a status quo ante order against the House of Representatives in the case concerning the impeachment of then Ombudsman Merceditas Navarro-Gutierrez;

Article V: Gerrymandering in the case of the 16-newly created cities and promotion of Dinagat into a province;

Article VI: Improper investigation in the plagiarism case of Associate Justice Mariano del Castillo;

Article VII: *Granting a temporary restraining order to Former President Arroyo and husband Mike Arroyo after the DOJ prevented them to go out of the country;*

Article VIII: *Graft and corruption when he failed and refused to account for the judiciary development fund and special allowance for the judiciary collections.*

B. On *January 16, 2012*. The Senate, sitting as an impeachment court began the trial.

C. The prosecution dropped articles I, IV, V, VI, VII, VIII, leaving only **Articles II and III** as their grounds for impeachment.

The Second Article alleges that Corona "failed to disclose to the public his statement of assets, liabilities, and net worth" in violation of section 17, Article XI of the Constitution as well as the Anti-Graft and Corrupt Practices Act (R.A. 3019).

Section 17, Article XI provides that, "A public officer or employee shall, upon assumption of office and as often thereafter as may be required by law, submit a declaration under oath of his assets, liabilities, and net worth. In the case of the President, the Vice-President, the Members of the Cabinet, the Congress, the Supreme Court, the Constitutional Commissions and other constitutional offices, and officers of the armed forces with general or flag rank, the declaration shall be disclosed to the public in the manner provided by law."

D. On *May 29, 2012,* the Senate found Chief Justice Corona guilty under Article II of the Articles of impeachment for his failure to declare his true statements of assets, liabilities and net worth. After 20 senators voted in favor of impeachment under this ground, the Senate no longer voted under Article III.

Quantum of Evidence Used

The impeachment is sui generis, it is neither purely political or criminal so it does not require proof beyond reasonable doubt. In the course of the impeachment trial, the senator-judges expressed differing views. Some argued that it requires "clear and convincing proof," while some argued that it needs "preponderance of evidence."

The so-called conflict of laws between R.A. Nos. 6713 and 6426 is more illusory than real. Section 8 of R.A. No. 6426 merely prohibits the examination, inquiry or looking into a foreign currency deposit account by an entity or person other than the depositor himself. But there is nothing in R.A. No. 6426 which prohibits the depositor from making a declaration on his own of such foreign currency funds, especially in this case where the Constitution mandates the depositor who is a public officer to declare all assets under oath. xxx I am equally aware of the tremendous pressure weighing heavily upon all the members of this Court as we had to come to a decision on this case, one way or the other. But to render a just verdict according to my best lights and my own conscience is a sacred duty that I have sworn to perform. **(Senator Juan Ponce Enrile on rendering a guilty verdict)**

The Constitution provides that in all criminal prosecutions, the accused shall be presumed innocent, until the contrary is proved. The burden of proof is on the prosecution. How much proof is necessary? In other words, what is the standard of proof? I have adopted the very high standard of "overwhelming preponderance of evidence." My standard is very high, because removal by conviction on impeachment is a stunning penalty, the ruin of a life. xxx Assuming for the sake of argument that there is a preponderance of evidence for the prosecution, the preponderance is not overwhelming. **(Senator Miriam Defensor-Santiago on voting to acquit)**

Yale professor Charles Black however wrote that "the Senate has traditionally left the choice of the applicable standard of proof to each individual senator."

Public Proceedings

All proceedings of the impeachment trial are public because of the national interest involved in the issue. The people through their representatives are to decide for the outcome of the impeachment. [*Bag-ao*]

LOWER COURT JUDGES AND JUSTICES

STATUTORY BASIS

1987 Constitution, Art. VIII, Section 11

The members of the Supreme Court and judges of lower courts shall hold office during a good behavior until they reach the age of seventy years or become incapacitated to discharge the duties of their office. The Supreme Court en banc shall have the power to discipline judges of lower courts, or order their dismissal by a vote of majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

Well entrenched is the rule that a judge may not be administratively sanctioned for mere errors of judgment in the absence of showing of any bad faith, fraud, malice, gross ignorance, corrupt purpose, or a deliberate intent to do an injustice on his or her part. Moreover, as a matter of public policy, a judge cannot be subjected to liability for any of his official acts, no matter how erroneous, as long as he acts in **good faith**. (*Narciso G. Dulalia v. Judge Afable E. Cajigal, RTC, Br. 96, Quezon City,* A.M. No. OCA IPI No. 10-3492-RTJ, December 4, 2013)

***General Rule*:** A judge is not liable administratively, civilly or criminally when he acts within his power and jurisdiction.

This frees the judge from apprehension of personal consequences to himself and to preserve the integrity and independence of the judiciary.

***Exception*:** Serious misconduct; inefficiency; gross and patent, or deliberate and malicious error; bad faith.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is **substantial evidence** or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. Well-entrenched is the rule that substantial evidence, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the erring employee. (EXECUTIVE JUDGE HENEDINO P. EDUARTE vs. ELIZABETH T. IBAY, A.M. No. P-12-3100, November 12, 2013)

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.

MISCONDUCT

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or a standard of behaviour. In order to constitute an administrative offense, it should relate to or be connected with the performance of the official functions of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be established. (*RE: COMPLAINT OF LEONARDO A. VELASCO AGAINST ASSOCIATE JUSTICES FRANCISCO H. VILLARUZ, JR., ALEX L. QUIROZ, AND SAMUEL R. MARTIRES OF THE SANDIGANBAYAN*, A.M. OCA IPI No. 10-25-SB-J, January 15, 2013)

Judge Hurtado's failure to return the money he received from Neri while he was still a clerk a court constitutes simple misconduct. (*Epifania M. Neri vs. Judge Barulio L. Hurtado, Jr.,* A.M. No. RTJ-00-1584, February 18, 2004)

Respondent Judge averred that he was constrained to reverse himself on the motion for reconsideration due to the death threats he had received. The Code of Judicial Conduct commands that a judge must not succumb to attempts to influence his judgment and must resist any pressure from whatever source in order to uphold the integrity and independence of the Judiciary. The Court finds respondent Judge guilty of MISCONDUCT. (*Emiliana M. Garcia vs. Florencio P. Bueser*, A.M. No. RTJ-03-1792, March 10, 2004)

SERIOUS MISCONDUCT

For serious misconduct to obtain, the judicial act/s complained of should be corrupt or inspired by an intention to violate the law or persistent disregard of well-known legal precepts. (*GEOFFREY BECKETT vs. JUDGE OLEGARIO R. SARMIENTO, JR., RTC Br 24 CEBU CITY,* A.M. No. RTJ-12-2326, January 30, 2013)

If a judge is to be disciplined for a grave offense, the evidence against him should be competent and derived from direct knowledge. Presumptions and hearsays are not substantial evidence for immorality and conduct to the best interest of the service. (*Margie Corpus Macias vs.Judge Joaquin S. Macias*, A.M. No. RTJ-01-1650, September 29, 2009)

To dismiss a judge for what may be considered as serious offenses under the Code, there must be, ideally, reliable evidence to show that the judicial acts complained of were ill-motivated, corrupt or inspired by a persistent disregard of well-known rules. (*Corazon R. Tanjuanco vs. Judge Ireneo L. Gako*, .M. No. RTJ-06-2016, March 23, 2009)

SERIOUS INEFFICIENCY

Prompt disposition of cases is attained basically through the efficiency and dedication to duty of judges. If they do not possess these traits, delay in the disposition of cases is inevitable to the prejudice of litigants. (*Esterlina Acuzar vs. Judge Gaydifredo T. Ocampo* A.M. No. MTJ-02-1396, March 10, 2004)

In this case, respondent judge was found guilty of gross inefficiency for having failed to resolve the ejectment case within the prescribed 30-day period after the filing of the parties' respective Position Papers, pursuant to Rule 70 of the Rules of Court and the 1991 Revised Rules on Summary Procedure. The Supreme Court took into consideration the judge's candid admission and acceptance of his infraction as factors in imposing only a fine and also took into account his age and frail health, although these factors did not in any way absolve him from liability or excuse him from diligently fulfilling his duties. (Atty. Manuel J. Jimenez, Jr. Vs. Presiding Judge Michael M. Amdengan, A.M. No. MTJ-12-1818, February 13, 2013)

Judge Hurtado was only able to promulgate the decision in one (1) criminal case, leaving seventy (70) more undecided. He was utterly remiss in the performance of his duties. His lackadaisical attitude towards the disposition of cases pending in his court constitutes gross inefficiency, neglect of duty and serious misconduct to the detriment of the honor and integrity of the judiciary. (Report on Judicial Audit, A.M. No. 02-8-441-RTC, March 3, 2004)

Without a doubt, Judge Carbonell's failure to decide several cases within the reglementary period, without justifiable and credible reasons, constituted gross inefficiency, warranting the imposition of administrative sanctions. (*RE: FAILURE OF FORMER JUDGE ANTONIO A. CARBONELL TO DECIDE CASES SUBMITTED FOR DECISION AND TO RESOLVE PENDING MOTIONS IN THE REGIONAL TRIAL COURT, BRANCH 27, SAN FERNANDO, LA UNION*, A.M. No. 08-5-305-RTC, July 9, 2013)

While judges should not be disciplined for inefficiency on account merely of occasional mistakes or errors of judgments, it is highly imperative that they should be conversant with fundamental and basic legal principles in order to merit the confidence of the citizenry. *(JESUS D. CARBAJOSA vs. JUDGE HANNIBAL R. PATRICIO,* A.M. No. MTJ-13-1834, October 2, 2013)

ERROR OR IGNORANCE OF LAW

Judges are expected to strive for excellence in the performance of their duties. As exemplars of law and justice, they are mandated to embody competence, integrity and independence. Verily, they owe it to the public to know the very laws they are supposed to apply to controversies. They are called upon to exhibit **more than a cursory acquaintance of the statutes and procedural laws**. Anything less would constitute gross ignorance of the law. (Dario Manalastas vs. Judge Rodrigo R. Flores, A.M. No. MTJ-04-1523, February 6, 2004)

After years of service in the judiciary, judges are expected to have become already conversant with the Rules, which they apply and rely on every day in court. Years of service in the bench simply negate any notion that a judge could be grossly ignorant of procedural laws. (P/Supt. Alejandro Gutierrez, et al. vs. Judge Godofredo G. Hernandez, Sr. A.M. No. MTJ-06-1628, June 8, 2007)

It must be stressed that as a matter of policy, the acts of a judge in his judicial capacity are not subject to disciplinary action. He cannot be subjected to liability — civil, criminal or administrative — for any of his official acts, no matter how erroneous, as long as he acts in **good faith**. Only judicial errors tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice will be administratively sanctioned. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. (Ethelwoldo E. Fernandez, Antonio A. Henson & Angel S. Ong Vs. Court of Appeals Asso. Justices Ramon M. Bato, Jr., Isaias P. Dicdican, A.M. OCA IPI No. 12-201-CA-J. February 19, 2013)

Unfamiliarity with the Rules of Court is a sign of incompetence. Basic procedural rules must be at the palm of his hands. A judge must be acquainted with legal norms and precepts as well as with procedural rules. Thus, this Court has been consistent in ruling that when the law is so elementary, for a judge not to be aware of it constitutes gross ignorance of the law. (Prosecutor Jorge D. Baculi vs. Judge MedelArnaldo B. Belen, A.M. No. RTJ-09-2176, April 20, 2009)

Inefficiency implies negligence, ignorance and carelessness. A judge would be inexcusably negligent if he failed to observe in the performance of his duties that diligence, prudence and circumspection which the law requires in the rendition of any public service. [*In re: Climaco, (1974)*]

RULE 140: DISCIPLINE OF JUDGES OF REGULAR AND SPECIAL COURTS AND JUSTICES OF THE COURT OF APPEALS AND THE SANDIGANBAYAN

Sec. 1. How instituted. – Proceedings for the discipline of judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted motu proprio by the Supreme Court or upon a verified complaint, supported by affidavits of person who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct.

Sec. 2. Action on the complaint. – If the complaint is sufficient in form and substance, a copy thereof shall be served upon the respondent, and he shall be required to comment within ten (10) days from the date of service. Otherwise, the same shall be dismissed.

Sec. 3. By whom complaint investigated. – Upon the filing of the respondent's comment, or upon the expiration of the time for filing the same and unless other pleadings or documents are required, the Court shall refer the matter to the Office of the Court Administrator for evaluation, report, and recommendation or assign the case for investigation, report, and recommendation to a retired member of the Supreme Court, if the respondent is a Justice of the Court of Appeals and the Sandiganbayan, or to a Justice of the Court of Appeals, if the respondent is a Judge of a Regional Trial Court or of a special court of equivalent rank, or to a Judge of the Regional Trial Court if the respondent is a Judge of an inferior court.

Sec. 4. Hearing. – The investigating Justice or Judge shall set a day of the hearing and send notice thereof to both parties. At such hearing the parties may present oral and documentary evidence. If, after due notice, the respondent fails to appear, the investigation shall proceed ex parte.

The Investigating Justice or Judge shall terminate the investigation within ninety (90) days from the date of its commencement or within such extension as the Supreme Court may grant.

Sec. 5. Report. – Within thirty (30) days from the termination of the investigation, the investigating Justice or Judge shall submit to the Supreme Court a report containing findings of fact and recommendation. The report shall be accompanied by the record containing the evidence and the pleadings filed by the parties. The report shall be confidential and shall be for the exclusive use of the Court.

Sec. 6. Action. – The Court shall take such action on the report as the facts and the law may warrant.

Sec. 12. Confidentiality of proceedings. – Proceedings against Judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan shall be private and confidential, but a copy of the decision or resolution of the court shall be attached to the record of the respondent in the Office of the Court Administrator.

GROUNDS

Sec. 7. Classification of charges. – Administrative charges are classified as serious, less serious, or light.

Sec. 8. Serious charges. – Serious charges include:

(1) Bribery, direct or indirect;

(2) Dishonesty and violations of the Anti-Graft and Corrupt Practices Law (R.A. No. 3019);

(3) Gross misconduct constituting violations of the Code of Judicial Conduct;

(4) Knowingly rendering an unjust judgment or order as determined by a competent court in an appropriate proceeding;

(5) Conviction of a crime involving moral turpitude;
(6) Willful failure to pay a just debt;
(7) Borrowing money or property from lawyers and litigants in a case pending before the court;
(8) Immorality;
(9) Gross ignorance of the law or procedure;
(10) Partisan political activities; and
(11) Alcoholism and/or vicious habits.

Sec. 9. Less Serious Charges. – Less serious charges include:
(1) Undue delay in rendering a decision or order, or in transmitting the records of a case;
(2) Frequently and unjustified absences without leave or habitual tardiness;
(3) Unauthorized practice of law;
(4) Violation of Supreme Court rules, directives, and circulars;
(5) Receiving additional or double compensation unless specifically authorized by law;
(6) Untruthful statements in the certificate of service; and
(7) Simple Misconduct.

Employees of the judiciary should be living examples of uprightness not only in the performance of official duties but also in their personal and private dealings with other people so as preserve at all times the good name and standing of the courts in the community. In this case, the complaint's claim against the respondent is a just debt, whose existence and justness the respondent himself admitted. The Court finds respondent Judge Manuel T. Sabillo of the Municipal Circuit Trial Court of Lamitan, Basilan GUILTY of willful failure to pay a just debt under Section 8, Rule 140 of the Rules of Court. (*Victoriano G. Manlapaz Vs. Judge Manuel T. Sabillo, MCTC, Lamitan, Basilan*, A.M. No. MTJ-10-1771. February 13, 2013)

Criminal complaints against judges such as for violations of the Anti-Graft and Corrupt Practices Act and the Revised Penal Code should be filed with the Office of the Ombudsman and not with the Supreme Court. Judges being public officers are subject to the jurisdiction of the Ombudsman who can investigate and prosecute them for violations of the criminal laws, conformably with the provisions of the Constitution.

However, if there are administrative questions relevant to the investigation of the criminal responsibility of judges and court personnel, the same should first be referred to the Supreme Court. The Supreme Court must determine first whether or not a judge or a court employee acted within the scope of his administrative duties. (*Maceda vs. Hon. Ombudsman Conrado Vasquez,* G.R. No. 102781, April 22, 1993*)*

Under Section 1 of Rule 140 of the Rules of Court, anonymous complaints may be filed against judges, but they must be supported by public records of indubitable integrity. Courts have acted in such instances needing no corroboration by evidence to be offered by the complainant. Thus, for anonymous complaints, the burden of proof in administrative proceedings which usually rests with the complainant, must be buttressed by indubitable public records and by what is sufficiently proven during the investigation. If the burden of proof is not overcome, the respondent is under no obligation to prove his defense. (Anonymous Vs. Judge Rio C. Achas, MTCC Branch 2, Ozamiz City, MIsamis Occidental, A.M. No. MTJ-11-1801. February 27, 2013)

AUTOMATIC CONVERSION OF ADMINISTRATIVE CASES AGAINST CA AND SANDIGANBAYAN JUSTICES AND LOWER COURT JUDGES

Administrative cases against CA, Sandiganbayan justices, and lower court judges where the charges constitute misconduct for members of the Bar, shall also be considered as disciplinary action against the judge. The respondent shall be required to comment or show cause why he should not be suspended, disbarred or sanctioned as a member of the Bar. [*A.M. NO. 02-9-02 SC*]

Justices and Judges are also protected from baseless and unfounded administrative complaints
- The Supreme Court promulgated A.M. No. 03-10-01-SC – Resolution Prescribing Measures to Protect Members of the Judiciary from Baseless and Unfounded Administrative Complaints.
- Complainant may be required to show cause why he should not be held in contempt of court. If the complainant is a lawyer, he may further be required to show cause why he or she should not be administratively sanctioned as a member of the Bar and as an officer of the court.

IMPEACHMENT ETHICAL ASPECTS

Chief Justice Corona was the first justice of the Supreme Court to be impeached and convicted. He was found guilty for culpable violation of the Constitution and/or betrayal of public trust for not correctly declaring his Statements of Assets, Liabilities and Net worth (SALN).

The *prosecution* alleges that he inaccurately declared his peso and dollar deports, and real estate properties.

The *defense* argues that CJ Corona did not declare his dollar deposits (around $2.4M) and peso deposits (P105 M) because of the banking secrecy and foreign currency deposit units laws. Corona also said that some undeclared assets are also co-mingled funds that he does not own solely.

Q: What must be disclosed?

A:

1. A true and detailed and sworn statement of assets
2. Liabilities
3. Statement of accounts and services of income
4. Amounts of their personal and family expenses
5. Amount of income tax paid for the next preceding calendar year

Q: When is this filed?
A: Within 30 days after assuming office and thereafter on or before the 15th day of April following the close of every calendar year, as well as upon expiration of his term of office, or upon resignation, or separation from office.

Q: What are the effects of such violation?
A:

Violation of R.A. 3019 and Sec. 17. Art. XI of the 1987 Constitution

Section 7. *Statement of assets and liabilities.* Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: Provided, That public officers assuming office less than two months before the end of the calendar year, may file their statements in the following months of January.

Power of the Supreme Court Over Judges of the Lower Courts

The Supreme Court has administrative supervision over all courts and the personnel thereof (Section 6, Art. VIII, 1987 Constitution). The Court en banc has the power to discipline all judges of lower courts including Justices of the Court of Appeals. It may even dismiss them by a majority vote of the members who actually took part in the deliberations of the issues in the case and voted thereon (Section 11, Art. VIII, 1987 Constitution).

Justices of the Supreme Court can only be Removed by Impeachment

There is no specific law or rule which provides for a system of disciplining an erring Member of the Supreme Court by the Court itself acting en banc. The Justices of the Supreme Court are among the declared impeachable officers under the Constitution. Thus, they can only be removed by impeachment unlike judges of the lower courts who can be removed under Rule 140 of the Rules of Court. As impeachable officers, the Justices of the Supreme Court may only be removed in accordance with the constitutional mandates on impeachment.

SANCTIONS IMPOSED BY THE SUPREME COURT ON ERRING MEMBERS OF THE JUDICIARY

Sec. 11. Sanctions. –
(A) If the respondent is guilty of a **serious charge**, any of the following sanctions may be imposed:

(1) Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
(2) Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
(3) A fine of more than P20,000.00 but not exceeding P40,000.00

(B) If the respondent is guilty of a **less serious charge**, any of the following sanctions shall be imposed:

(1) Suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or
(2) A fine of more than P10,000.00 but not exceeding P20,000.00.

(C) If the respondent is guilty of a **light charge**, any of the following sanctions shall be imposed:

(1) A fine of not less than P1,000.00 but not exceeding P10,000.00 and/or
(2) Censure;
(3) Reprimand;
(4) Admonition with warning.

The ground for the removal of a judicial officer should be established **beyond reasonable doubt**. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption or incompetence. The general rules with regard to admissibility of evidence in criminal trials apply. (Lilia Tabang, et al. vs. Atty. Glenn C. Gacott, A.C. No. 6490, September 29, 2004)

INSTANCES OF SERIOUS MISCONDUCT WHICH MERITED DISCIPLINE BY THE SUPREME COURT:

(a) Failure to deposit funds with the municipal

treasurer or produce them despite his promise to do so [*Montemayor v. Collado (1981)*]

(b) Misappropriation of fiduciary funds (proceeds of cash bail bond) by depositing the check in his personal account, thus converting the trust fund into his own use [*Barja v. Beracio (1976)*].

(c) Extorting money from a party-litigant who has a case before his court [*Haw Tay v. Singayao (1988)*].

(d) Solicitation of donation for office equipment [*Lecaroz v. Garcia (1981)*].

(e) Frequent unauthorized absences in office [*Municipal Council of Casiguruhan, Quezon v. Morales (1974)]*.

INSTANCES OF GROSS INEFFICIENCY WHICH MERITED DISCIPLINE BY THE SUPREME COURT

(a) Delay not only reinforces the belief of the people that the wheels of justice in this country grind slowly; it also invites suspicion, however unfair, of ulterior motives on the part of the judge. Judges should always be mindful of their duty to render justice within the periods prescribed by law. *(Murphy Chu, et al. vs. Hon. Mario B. Capellan,* A.M. No. MTJ-11-1779 July 16, 2012)

(b) Delay in the disposition of cases in violation of the Canon that a judge must promptly dispose of all matters submitted to him. With or without the transcripts of stenographic notes, the 90-day period for deciding cases or resolving motions must be adhered to. [*Balagot v. Opinion (1991)*]

(c) Unduly granting repeated motions for postponement of a case. [*Araza v. Reyes (1975)*]

(d) Unawareness of or unfamiliarity with the application of the Indeterminate Sentence Law and the duration and graduation of penalties. [*In re: Paulin (1980)*]

(e) Reducing to a ridiculous amount (P6,000.00) the bail bond of the accused in a murder case thus enabling him to escape the toils of the law. [*Soriano v. Mabbayad (1975)*]

(f) Imposing the penalty of subsidiary imprisonment on a party for failure to pay civil indemnity in violation of R.A. 5465. [*Monsanto v. Palarca (1983)*]

CONDUCT:

Administrative cases against lower court judges and justices are automatically treated as disbarment cases. In administrative proceedings, the quantum of proof necessary for a finding of guilt is **substantial evidence** or such relevant evidence as a reasonable mind may accept as adequate to support a conclusion. In this case, the complainants had not only failed to substantiate the allegations in their complaint; they had, in fact, opted to withdraw the same. Accordingly, the presumption of regularity in the performance by the respondents of their duties must prevail. (*Inocencio D. Ebero, et al. vs. Makati City Sheriffs Raul T. Camposano*, et al. A.M. No. P-04-1792, March 12, 2004)

EFFECT OF WITHDRAWAL, DESISTANCE, RETIREMENT OR PARDON

The *withdrawal of the case by the complainant, or the filing of an affidavit of desistance or the complainant's loss of interest does not necessarily cause the dismissal thereof*. Reason: To condition administrative actions upon the will of every complainant who for one reason or another, condones a detestable act is to strip the Supreme Court of its supervisory power to discipline erring members of the judiciary. [*Anguluan v. Taguba, (1979)*]

Desistance will not justify the dismissal of an administrative case if the records will reveal that the judge had not performed his duties. [*Espayos v. Lee (1979)*]

DISQUALIFICATIONS OF JUSTICES AND JUDGES

COMPULSORY DISQUALIFICATION

[*Section 1 (1), Rule 137, Rules Of Court*]

No judge or judicial officer shall sit in any case in which:

(a) He, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise; or

(b) He is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law; or

(c) He has been executor, administrator, guardian, trustee or counsel; or

(d) He has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

The relationship of the judge with one of the parties may color the facts and distort the law to the prejudice of a just decision. Where this is probable or even only possible, due process demands that the judge inhibit himself, if only out of a sense of *delicadeza.* [*Javier v. Commission on Elections (1996)*]

The rationale behind Sec. 1, Rule 137 on disqualification of judges is to preserve public faith in the judiciary's fairness and objectivity to ally suspicions and distrust as to a possible bias and prejudice in favor or a party coming into play. [*Hacienda Benito, Inc. v. Court of Appeals (1987*)]

VOLUNTARY DISQUALIFICATION

[*Section 1 (2), Rule 137, ROC*]

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

A judge may not be legally prohibited from sitting in a litigation, but when circumstances appear that will induce doubt as to his honest actuations and probity in favor of either party, or incite such state of mind, he should conduct a careful examination. He should exercise his discretion in a way that people's faith in the Courts of Justice is not impaired. The better course for the judge under such circumstances is to disqualify himself. [*Borromeo-Herrera v. Borromeo (1987)]*

Neither is the mere filing of an administrative case against a judge a ground for disqualifying him from hearing the case, 'for if on every occasion the party apparently aggrieved would be allowed to either stop the proceedings in order to await the final decision on the desired disqualification, or demand the immediate inhibition of the judge on the basis alone of his being so charged, many cases would have to be kept pending or perhaps there would not be enough judges to handle all the cases pending in all the court. (***GERMAN WENCESLAO CRUZ, JR. vs. JUDGE DANIEL C. JOVEN, Municipal Circuit Trial Court, Sipocot, Camarines Sur*, A.M. No. MTJ-00-1270 January 23, 2001)**

Intimacy or friendship between a judge and an attorney of record of one of the parties to a suit is no ground for disqualification. That one of the counsels in a case was a classmate of the trial judge is not a legal ground for the disqualification of the said judge. To allow it would unnecessarily burden other trial judges to whom the case would be transferred… But if the relationship between the judge and an attorney for a party is such that there would be a natural inclination to prejudice the case, the judge should be disqualified in order to guaranty a fair trial. [*Query of Executive Judge Estrada (1987)*]

POWERS AND DUTIES OF COURTS & JUDICIAL OFFICERS

NATURE OF OFFICE OF THE JUDGE

Justices and judges must ever realize that they have no constituency, serve no majority or minority but serve only the public interest as they see it in accordance with their oath of office, guided only by the Constitution and their own conscience and honor. [*Galman v. Sandiganbayan (1986*)]

A judge must not be moved by a desire to cater to public opinion to the detriment of the administration of justice. The previous Code of Judicial Conduct specifically warned the judges against seeking publicity for personal vainglory. Vainglory, in its ordinary meaning, refers to an individual's excessive or ostentatious pride especially in one's own achievements. Even no longer explicitly stated in the New Code of Judicial Conduct, judges are still proscribed from engaging in self-promotion and indulging their vanity and pride by Canons 1 (on Integrity) and 2 (on Propriety) of the New Code. (*Gerlie M. Uy and Ma. Consolacion T. Bascug vs. Judge Erwin B. Javellana*, A.M. No. MTJ-07-1666, September 5, 2012)

PROMPT AND IMPARTIAL ADMINISTRATION OF JUSTICE

[*Sec. 1, Rule 135 ROC*]

***General Rule*:** Courts of justice shall always be open for the filing of any pleading, motion or other papers, for the trial of cases, hearing of motions, and for the issuance of orders or rendition of judgments. Justice shall be impartially administered without necessary delay.

***Exception*:** Legal holidays

Art. VIII, Sec. 15, 1987 Constitution
(1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within twenty-four months from date of submission for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all lower courts.
xxx
(3) Upon expiration of the corresponding period, a certification to this effect signed by the Chief Justice or the presiding judge shall forthwith be issued and a copy thereof attached to the record of the case or matter, and served upon the parties. The certification shall state why a decision or resolution has not been rendered or issued within said period.
(4) Despite the expiration of the applicable mandatory period, the court, without prejudice to such responsibility as may have incurred in consequence thereof, shall decide or resolve the case or matter submitted thereto for determination, without further delay.

Judges should decide cases even if the parties failed to submit memoranda within the given period. Non-submission of memoranda is not a justification for failure to decide cases. [*Salvador v. Salamanca (1986*)]

PUBLICITY OF PROCEEDINGS AND RECORDS

The sitting of every court of justice shall be public, but any court may, in its discretion, exclude the public when the evidence to be adduced is of such nature as to require their exclusion in the interest of morality or decency. The records of every court of justice shall be public records and shall be available for the inspection of any interested person, at all proper business hours, under the supervision of the clerk having custody of such records, unless the court shall, in any special case, have forbidden their publicity, in the interest of morality or decency. [*Sec. 2, Rule 135 ROC*]

PROCESS OF SUPERIOR COURTS

Process issued from a superior court in which a case is pending to bring in a defendant, or for the arrest of any accused persons, or to execute any order or judgment of the court, may be enforced in any part of the Philippines. [*Sec. 3, Rule 135 ROC*]

PROCESS OF INFERIOR COURTS
[*Sec. 4, Rule 135 ROC]*

General Rule: The process of inferior courts shall be enforceable within the province where the municipality or city lies. It shall not be served outside the boundaries of the province in which they are comprised

Exceptions:
(1) Except with the approval of the judge of first instance of said province; and
(2) Only in the following cases:

(a) An order for the delivery of personal property lying outside the province is to be complied with;

(b) An attachment of real or personal property lying outside the province is to be made

(c) The action is against two or more defendants residing in different provinces; and

(d) The place where the case has been brought is that specified in a contract in writing between the parties, or is the place of the execution of such contract as appears therefrom.

Writs of execution issued by inferior courts may be enforced in any part of the Philippines without any previous approval of the judge of first instance.
Criminal process may be issued by a justice of the peace or other inferior court, to be served outside his province, when the district judge, or in his absence the provincial fiscal, shall certify that in his opinion the interests of justice require such service.

INHERENT POWERS OF THE COURTS
Every court shall have power:

(a) To preserve and enforce order in its immediate presence

(b) To enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;

(c) To compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of court, in a case pending therein;

(d) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;

(e) To compel the attendance of persons to testify in a case pending therein;

(f) To administer or cause to be administered oaths in a case pending therein, and in all other cases where it may be necessary in the exercise of its powers;

(g) To amend and control its process and orders so as to make them conformable to law and justice;

(h) To authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original, and to restore, and supply deficiencies in its records and proceedings. [*Sec. 5, Rule 135 ROC*]

MEANS TO CARRY JURISDICTION INTO EFFECT
When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears conformable to the spirit of said law or rules. [*Sec. 6, Rule 135 ROC*]

TRIALS AND HEARINGS; ORDERS IN CHAMBERS
All trials upon the merits shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a judge in chambers, without the attendance of the clerk or other court officials. [*Sec. 7, Rule 135 ROC*]

INTERLOCUTORY ORDERS OUT OF PROVINCE
A judge of first instance shall have power to hear and determine, when within the district through without his province, any interlocutory motion or issue after due and reasonable notice to the parties. On the filing of a petition for the writ of habeas corpus or for release upon bail or reduction of bail in any CFI, the hearings may be had at any place in the judicial district which the judge shall deem convenient. [*Sec. 8, Rule 135 ROC*]

SIGNING JUDGMENTS OUT OF PROVINCE
Whenever a judge appointed or assigned in any province or branch of a Court of First Instance in a province shall leave the province by transfer or assignment to another court of equal jurisdiction, or by expiration of his temporary assignment, without having decided a case totally heard by him and which was argued or an opportunity given for argument to the parties or their counsel, it shall be lawful for him to prepare and sign his decision in said case anywhere within the Philippines. He shall send the same by registered mail to the clerk of the court where the case was heard or argued to be filed therein as of the date when the same was received by the clerk, in the same manner as if he had been present in court to direct the filing the of the judgment. If a case has been heard only in part, the Supreme Court, upon petition of any of the parties to the case and the recommendation of the respective district judge, may also authorize the judge who has partly heard the case, if no other judge had heard the case in part, to continue hearing and to decide said case notwithstanding his transfer or appointment to another court of equal jurisdiction. [*Sec. 9, Rule 135 ROC*]

COURT RECORDS & GENERAL DUTIES OF CLERK STENOGRAPHER

ARMS AND GREAT SEAL OF THE SUPREME COURT
[*Sec. 1, Rule 136 ROC*]
Arms - Paleways of two pieces *azure* and *gules* superimposed a balance or center with two tablets containing the commandments of God or on either side; a chief *argent* with

three mullets or equidistant from each other; in point of honor, ovoid *argent* over all the sun, rayonnant or with eight major and minor rays.

Great Seal - Circular in form, with the arms as described above and a scroll *argent* with the following inscription: *Lex Populesque*, and surrounding the whole a garland of laurel leaves in or; around the garland the text Supreme Court, Republic of the Philippines.

ARMS AND SEAL OF THE COURT OF APPEALS
Same as that of the Supreme Court; only difference is that the seal shall bear around the garland the text Court of Appeals, Republic of the Philippines.

ARMS AND SEAL OF THE COURT OF FIRST INSTANCE
Same as that of the Supreme Court; only difference is that the seal shall bear around the garland the text Court of First Instance, the name of the province, Republic of the Philippines.

STYLE OF PROCESS
Process shall be under the seal of the court from which it issues, be styled Republic of the Philippines, Province or City of _____ to be signed by the clerk and bear date that day it actually issued. [*Sec. 2, Rule 136 ROC*]

CLERK'S OFFICE
The clerk's office, with the clerk or his deputy in attendance, shall be *open during business hours on all days except Sundays and legal holidays*. The clerk of the Supreme Court and that of the Court of Appeals shall keep office at Manila and all papers authorized or required to be field, therein shall be filed at Manila. [*Sec. 3, Rule 136 ROC*]

ISSUANCE BY CLERK OF PROCESS
The clerk of a superior court shall issue under the seal of the court all ordinary writs and process incident to pending cases, the issuance of which does not involve the exercise of functions appertaining to the court or judge only; and may, under the direction of the court or judge, make out and sign letters of administration, appointments of guardians, trustees, and receivers, and all writs and process issuing from the court. [*Sec. 4, Rule 136 ROC*]

DUTIES OF THE CLERK IN THE ABSENCE OR BY DIRECTION OF THE JUDGE
In the absence of the judge, the clerk may perform all the duties of the judge in receiving applications, petitions, inventories, reports, and the issuance of all orders and notices that follow as a matter of course under these rules, and may also, when directed so to do by the judge, receive the accounts of executors, administrators, guardians, trustees, and receivers, and all evidence relating to them, or to the settlement of the estates of deceased persons, or to guardianships, trusteeships, or receiverships, and forthwith transmit such reports, accounts, and evidence to the judge, together with his findings in relation to the same, if the judge shall direct him to make findings and include the same in his report. [*Sec. 5, Rule 136 ROC*]

CLERK SHALL RECEIVE PAPERS AND PREPARE MINUTES
The clerk of each superior court shall receive and file all pleadings and other papers properly presented, endorsing on each such paper the time when it was filed, and shall attend all of the sessions of the court and enter its proceedings for each day in a minute book to be kept by him. [*Sec. 6, Rule 136 ROC*]

SAFEKEEPING OF PROPERTY
The clerk shall safely *keep all records, papers, files, exhibits and public property committed to his charge*, including the library of the court, and the seals and furniture belonging to his office. [*Sec. 7, Rule 136 ROC*]

GENERAL DOCKET
The clerk shall keep a general docket, each page of which shall be numbered and prepared for receiving all the entries in a single case, and shall enter therein all cases, numbered consecutively in the order in which they were received, and, under the heading of each case and a complete title thereof, the date of each paper filed or issued, of each order or judgment entered, and of each other step taken in the case so that by reference to a single page the history of the case may be seen. [*Sec. 8, Rule 136 ROC*]

JUDGMENT AND ENTRIES BOOK
The clerk shall keep a judgment book containing a copy of each judgment rendered by the court in order of its date, and a book of entries of judgments containing at length in chronological order entries of all final judgments or orders of the court. [*Sec. 9, Rule 136 ROC*]

EXECUTION BOOK
The clerk shall keep an execution book in which he or his deputy shall record at length in chronological each execution, and the officer's return thereon, by virtue of which real property has been sold. [*Sec. 10, Rule 136 ROC*]

CERTIFIED COPIES
The clerk shall prepare, for any person demanding the same, a copy certified under the seal of the court of any paper, record, order, judgment, or entry in his office, proper to be certified, for the fees prescribed by these rules. [*Sec. 11, Rule 136 ROC*]

OTHER BOOKS AND DUTIES
The clerk shall keep such other books and perform such other duties as the court may direct. [*Sec. 12, Rule 136 ROC*]

INDEX
The general docket, judgment book, entries book and execution book shall be indexed in alphabetical order in the names of the parties, and each of them. If the court so directs, the clerk shall keep two or more of either or all of the books and dockets above-mentioned, separating civil from criminal cases, or

actions from special proceedings, or otherwise keeping cases separated by classes as the court shall deem best. [*Sec. 13, Rule 136 ROC*]

TAKING OF RECORD FROM THE CLERK'S OFFICE
[*Sec. 14, Rule 136 ROC*]
***General Rule*:** No record shall be taken from the clerk's office without an order of the court except as otherwise provided by these rules.
***Exception*:** The Solicitor General or any of his assistants, the provincial fiscal or his deputy, and the attorneys de officio shall be permitted, upon proper receipt, to withdraw from the clerk's office the record of any cases in which they are interested.

UNPRINTED PAPERS
All unprinted documents presented to the superior courts of the Philippines shall be written on paper:
(a) Of good quality
(b) 12 and 3/8 inches long
(c) 8 ½ inches wide
(d) Not less than 1 ½ inch top and left-hand side margins

Papel catalan, of the first and second classes, legal cap, and typewriting paper of such weight as not to permit the writing of more than one original and two carbons at one time, will be accepted, provided that such paper is of the required size and of good quality.

Documents written with ink shall not be of more than twenty-five lines to one page.

Typewritten documents shall be written double-spaced. One side only of the page will be written upon, and the different sheets will be sewn together, firmly, by five stitches in the left-hand border to facilitate the formation of the *expediente*, and they must not be doubled. [Sec. 15, Rule 136 ROC]

PRINTED PAPERS
All papers required by these rules to be printed shall be printed with:
(a) Black ink
(b) On unglazed paper
(c) Pages 6 inches wide, 9 inches
(d) In pamphlet form
The type used shall not be smaller than 12 pts.
The paper used shall be of sufficient weight to prevent the printing upon one side from being visible upon the other. [*Sec. 16, Rule 136 ROC*]

STENOGRAPHER
It shall be the duty of the stenographer who has attended a session of a court either in the morning or in the afternoon, to deliver to the clerk of court, immediately at the close of such morning or afternoon session, all the notes he has taken, to be attached to the record of the case; and it shall likewise be the duty of the clerk to demand that the stenographer comply with said duty. The clerk of court shall stamp the date on which such notes are received by him. When such notes are transcribed the transcript shall be delivered to the clerk, duly initialed on each page thereof, to be attached to the record of the case.

Whenever requested by a party, any statement made by a judge of First Instance, or by a commissioner, with reference to a case being tried by him, or to any of the parties thereto, or to any witness or attorney, during the hearing of such case, shall be made of record in the stenographic notes. [*Sec. 17, Rule 136 ROC*]

DOCKET AND OTHER RECORDS OF INFERIOR COURTS.
Every municipal and city judge shall keep a well-bound book labeled docket, in which he shall enter for each case:

(a) The title of the case including the names of all the parties;
(b) The nature of the case, whether civil or criminal, and if the latter, the offense charged;
(c) The date of issuing preliminary and intermediate process including orders of arrest and subpoenas, and the date and nature of the return thereon;
(d) The date of the appearance or default of the defendant;
(e) The date of presenting the plea, answer, or motion to quash, and the nature of the same;
(f) The minutes of the trial, including the date thereof and of all adjournments;
(g) The names and addresses of all witnesses;
(h) The date and nature of the judgment, and, in a civil case, the relief granted;
(i) An itemized statement of the costs
(j) The date of any execution issued, and the date and contents of the return thereon;
(k) The date of any notice of appeal filed, and the name of the party filing the same.

A municipal (or city) judge may keep two dockets, one for civil and one for criminal cases. He shall also keep all the pleadings and other papers and exhibits in cases pending in his court, and shall certify copies of his docket entries and other records proper to be certified, for the fees prescribed by these rules. It shall not be necessary for the municipal (or city) judge to reduce to writing the testimony of witnesses, except that of the accused in preliminary investigations. [*Sec. 18, Rule 136 ROC*]

ENTRY ON DOCKET OF INFERIOR COURTS.
[*Sec. 19, Rule 136 ROC*]
Each municipal (or city) judge shall, at the beginning and in front of all his entries in his docket, make and subscribe substantially the following entry:

A docket of proceedings in cases before, _____, municipal judge (or city judge) of the municipality (or city) of_____, in the province of_____, Republic of the Philippines.

Witness my signature,

_____

Municipal Judge (or City Judge)

LEGAL FEES

MANNER OF PAYMENT
Upon filing of the pleading or other application which initiates an action or proceeding, the fees prescribed therefor shall be paid in full. [*Sec. 1, Rule 141 ROC*]

FEES IN LIEN
Where the court in its final judgment awards a claim not alleged, or a relief different from, or more than that claimed in the pleading, the party concerned shall pay the additional fees which shall constitute a lien on the judgment in satisfaction of said lien. The clerk of court shall assess and collect the corresponding fees. [*Sec. 2, Rule 141 ROC*]

PERSONS AUTHORIZED TO COLLECT LEGAL FEES
[Sec. 3, Rule 141 ROC]
Except as otherwise provided in this rule, the officers and persons hereinafter mentioned, together with their assistants and deputies, may demand, receive, and take the several fees hereinafter mentioned and allowed for any business by them respectively done by virtue of their several offices, and no more. All fees so collected shall be forthwith remitted to the Supreme Court. The persons herein authorized to collect legal fees shall be accountable officers and shall be required to post bond in such amount as prescribed by the law.

(a) Clerks of the Supreme Court, CA, CTA, and Sandiganbayan (Sec.4)
(b) Clerks of RTCs (Sec. 7)
(c) Clerks of Court of First Level Courts (Sec. 8)
(d) Sheriffs, Process Servers and other persons serving processes (Sec. 10)
(e) Stenographers (Sec. 11)
(f) Notaries (Sec. 12)
(g) Other officers taking depositions (Sec. 13)

It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period. [*Sun Life Insurance Office LTD., v. Asuncion (1989)*]

COSTS

RECOVERY OF COSTS [RULE 142]

PREVAILING PARTY
Unless otherwise provided in these rules, costs shall be allowed to the prevailing party as a matter of course, but the court shall have power, for special reasons, adjudge that either party shall pay the costs of an action, or that the same be divided, as may be equitable. No costs shall be allowed against the Republic of the Philippines unless otherwise provided by law. [*Sec. 1, Rule 142 ROC*]

DISMISSED APPEAL OR ACTION
If an action or appeal is dismissed for want of jurisdiction or otherwise, the court nevertheless shall have the power to render judgment for costs, as justice may require. [*Sec. 2, Rule 142 ROC*]

FRIVOLOUS APPEAL
Where an action or an appeal is found to be frivolous, double or treble costs may be imposed on the plaintiff or appellants, which shall be paid by his attorney, if so ordered by the court. [*Sec. 3, Rule 142 ROC*]

FALSE ALLEGATIONS
An averment in a pleading made without reasonable cause and found untrue shall subject the offending party to the payment of such reasonable expenses as may have been necessarily incurred by the other party by reason of such untrue pleading. The amount of expenses so payable shall be fixed by the judge in the trial, and taxed as costs. [*Sec. 4, Rule 142 ROC*]

NON-APPEARANCE OF WITNESS
If a witness fails to appear at the time and place specified in the subpoena issued by any inferior court, the costs of the warrant of arrest and of the arrest of the witness shall be paid by the witness if the court shall determine that his failure to answer the subpoena was willful or without just excuse.
[Sec. 12, Rule 142 ROC]