CHAPTER VIII: LAWYER'S FIDUCIARY OBLIGATIONS

CANON 16 - A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS PROFESSION.

Rule 16.01 - A lawyer shall account for all money or property collected or received for or from the client.
Rule 16.02 - A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.
Rule 16.03 - A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.
Rule 16.04 - A lawyer shall not borrow money from his client unless the client's interest 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.

A. EFFECTS OF FIDUCIARY RELATIONSHIP

GENERALLY

- The relationship of attorney and client is highly fiduciary and strictly confidential requiring utmost good faith, loyalty, fidelity and disinterestedness on the part of the attorney is designed to remove all such temptations and to prevent everything of that kind from being done for the protection of the client.

DEALINGS WITH CLIENT CLOSELY SCRUTINIZED

- A fiduciary relationship exist as a matter of law between attorney and client, which requires all dealings growing out of such relationship to be subject to the closest judicial scrutiny.
- A lawyer is not barred from dealing with his client in business transaction, the same is disfavored and his business dealings must be characterized with utmost honesty and good faith.

ABUSE OF CLIENT'S CONFIDENCE

- A lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.
- A lawyer may not retain the money of one client to force a settlement of the disputed claim of another client against the former. Nor may her obtain money from his client through false pretense or misrepresentation.

REBATES AND COMMISSIONS

- 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.
- A lawyer may not claim the attorney's fees in the concept of damages awarded by the court in favor of his client except when he and his client agreed that whatever amount the court may award as attorney's fees would form part of his compensation.

A LAWYER SHALL NOT BORROW FROM, NOR LEND MONEY TO, CLIENT

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

B. ACCOUNTING OF CLIENT'S FUNDS

A LAWYER SHALL ACCOUNT FOR CLIENT'S FUNDS

- A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.
- A lawyer shall account for all money or property collected or received for or from the client.
- The highly fiduciary and confidential relationship of attorney and client requires hat the attorney should promptly account for all funds and property received or held by him for the client's benefit.
- Money collected by a lawyer in favor of his client must be immediately turned over to them.

A LAWYER SHALL NOT COMMINGLE CLIENT'S FUNDS

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

A LAWYER SHALL DELIVER FUNDS TO CLIENT, SUBJECT TO HIS LIEN

- A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the rules of court.
- The failure of an attorney to return the client's money upon demand gives rise to the presumption that he has misappropriated it for his own use to the prejudice of and in violation of the trust reposed in him by the client.
- The provision grants the lawyer lien over the client's funds in his possession as well as on all judgments and executions he has secured for his client, to satisfy his lawful fees and disbursement.

C. RESTRICTIONS AGAINST BUYING CLIENT'S PROPERTY

PURCHASE OF CLIENT'S PROPERTY IN LITIGATION

- One of the rules protective of the fiduciary relation between lawyer and client is the law prohibiting a lawyer from purchasing, even at a public or judicial auction, either in person or through the mediation of another, any property or interest involved in any litigation in which he may take part by virtue of his profession.
- The law makes the incapacity of the attorney to acquire his client's property in litigation absolute and permanent.

APPLICATION OF RULE

- The rule forbidding an attorney from purchasing his client's property or interest in litigation involves four elements:

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

- Where the value of the property in litigation deeded by a client in favor of his attorney in payment of the latter's fees is greatly more than the worth of the attorney's services, the transfer contravenes the law.

WHERE RULE INAPPLICABLE

- Prohibition does not apply where the property purchased by a lawyer was not involved in litigation, where the sale took place before it became involved in the suit, where the attorney at that time of the purchase was not counsel in the case, where the purchaser of the property in litigation was a corporation even though the attorney was an officer thereof, or where the sale took place after the termination of the litigation.
- An attorney may properly bid on behalf of his client at the auction sale of the client's property in litigation, the restriction not being applicable as his participation is not for his own benefit.

EFFECTS OF PROHIBITED PURCHASE

- The purchase by an attorney of his client's property or interest in litigation is a breach of professional ethics. The attorney, in an appropriate case, may be disciplined for such misconduct. The transaction being categorically prohibited by law is null and void ab initio.

PURCHASE OF CHOSES IN ACTION

- The purpose of the legal maxim is to prevent a lawyer from he temptation to litigate on his own account as a business proposition.
- An attorney may, however, properly acquire choses in action not in his professional capacity but as a legitimate investment.

CHAPTER IX: LAWYER'S DUTY TO PRESERVE CLIENT'S CONFIDENCE

A. PRESERVATION F CLIENT'S CONFIDENCE

DUTY O PRESERVE CLIENT'S CONFIDENCE, GENERALLY

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

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 clients.

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.

- It is the duty of an attorney to maintain inviolate the confidence, and at every peril to himself, to preserve the secret of his client.

DURATION OF DUTY

- The lawyer's duty to maintain inviolate his client's confidence is perpetual. It outlast his professional employment and continues even after the client's death for professional confidence once reposed cannot be divested by the expiration of the professional relationship or by the death of the client.

REASON FOR THE RULE

- Unless the client knows that his attorney cannot be compelled to reveal what is told him, he will suppress what he thinks to be unfavorable facts and the advice which follows ill be useless, if not misleading; lawsuit will be conducted along improper lines, trial will be full of surprises and much useless litigation may arise.
- The purpose of the lawyer-client privilege is to encourage a client to make full disclosure to his attorney and to place unrestricted confidence in him in matters affecting his rights or obligations.
- The prohibition against disclosure of confidential communications is, moreover, designed to preserve the confidential and trust relation which exist between attorney and client.

A LAWYER SHALL NOT USE CLIENT'S SECRETS WITHOUT HIS CONSENT

- The lawyer's duty to preserve the confidence and secrets of his client requires that he shall not, to the advantage 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.

A LAWYER SHALL NOT GIVE INFORMATION FROM HIS FILES

- A lawyer shall not, without the written consent of his client, given information from his files to an outside agency seeking such information for auditing statistical, bookkeeping, accounting, data processing, or any similar purpose.

A LAWYER MAY DISCLOSE AFFAIRS OF CLIENT TO PARTNERS

- A lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client.

A LAWYER SHALL ADOPT MEASURES AGAINST DISCLOSURES OF CLIENT'S SECRETS

- The client's secrets learned by other professionals in the performance of their services to the lawyer or to the latter's client and the reports of these persons or experts are privilege communications.

A LAWYER SHALL AVOID INDISCREET CONVERSATION ABOUT CLIENT'S AFFAIRS

- A lawyer shall avoid indiscreet conversation about a client's affair even with members of his family.

A LAWYER SHALL NOT REVEAL HIS HAVING BEEN CONSULTED

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

B. SCOPE OF ATTORNEY-CLIENT PRIVILEGE

REQUISITES OF PRIVILEGE

- The attorney-client privilege exist where the legal advice of any kind is sought from an attorney in his professional capacity with respect to communication relating to that purpose, made in confidence by the client from disclosure by himself or by the attorney, unless the protection is waived. All the elements inherent in the rule must concur t make the communication privilege against disclosure. This is known as evidentiary privilege.
- Factors essential to establish the existence of an attorney-client privilege:
  1. Where legal advice of any kind is sought;
  2. From a professional legal adviser in his capacity as such;
  3. The communications relating to that purpose;
  4. Made in confidence;
  5. By the client;
  6. Are at his instance permanently protected;
  7. From disclosure by himself or by the legal advisor;
  8. Except the protection be waived.
- In fine, the factors are as follows:
  1. There exist an attorney-client relationship, or a prospective attorney-client relationship, and it is by reason of this relationship that the client made the communication
  2. The client made the communication in confidence.

     Confidential communication – refers to information transmitted by voluntary act of disclosure between attorney-client n confidence by means which, so far as the client is aware, discloses the information to no third person other than one reasonably necessary for the transmission of the information or accomplishment of the purpose for which it was given.
  3. The legal advice must be sought from the attorney I his professional capacity.

RELATION OF ATTORNEY AND CLIENT

- The attorney-client privilege does not attach to communications made by a client to a person who is not a lawyer, even if such person undertakes to perform legal services and is authorized to appear in the MTC, as his appearance therein is in the character of an agent.
- A communication from a client to lawyer for some purpose other than on account of the attorney-client relation is not privilege.

CONFIDENTIALITY

- The mere relations of attorney and client does not raise a presumption of confidentiality. The client must intend the communication to be confidential.

FORM OR MODE OF COMMUNICATION

- The attorney-client privilege embraces not only oral or written statements but actions, signsor other means of communication.
- There is no particular mode by which a confidential communication shall be made by a client to his attorney.

PERSONS ENTITLED TO CLAIM PRIVILEGE

- An attorney's agent is also the client's subagent and is acting as such for the client – An expert such as an accountant, a scientist, an engineer or physician, who has been hired either by a client or for effective consultation or communication between attorney and client, is covered by the privilege and is precluded from testifying as to any information acquired in the course of his employment.

APPLICATION OF RULE

- The knowledge or information acquired by a lawyer in his professional capacity from his client may either be privilege or not privilege within the meaning of the evidentiary rule against compelling the disclosure of privilege communications.

PRIVILEGE MATTERS

- The work product of a lawyer, such as his effort, research and thought, contained in his files is privileged.
- A document privileged upon delivery o an attorney retains it privilege character in the hands of his client.
- If the identification of a client conveys information which ordinarily would be part of the usual privilege communication between attorney and client, the privilege extends to such identification in the absence of such factors as:
    1. The commencement of litigation on behalf of the client,
    2. The identification relating to an employment of a third person,
    3. The employment of an attorney with respect to future criminal or fraudulent transactions,
    4. The prosecution of a lawyer for a criminal offense.

MATTERS NOT PRIVILEGE

- Any communication between attorney and client which lack any one of the elements that make the attorney-client privilege is not privilege.
- The transmission alone of physical object by a client to his attorney, even if the client intended it to be confidential, does not creat an attorney-client privilege if non in fact exist.
- Contracts relating to attorney's fees are essentially not privileged.

A LAWYER SHALL NOT REVEAL CLIENT'S CONFIDENCE

- A lawyer shall not reveal the confidences or secrets of his client except when authorized by the client after acquainting him of the consequences of the disclosure; when required by law; and when necessary to collect his fees or to defend himself, his employees or associates or by judicial action.
- An opposing counsel in a case, who knows that a third person illegally acquired knowledge or possession of a privileged communication of the other party, may not properly call such third persons to testify as to what the latter learned.

C. EXCEPTIONS TO RULE ON PRIVILEGE

EXCEPTIONS TO RULE AGAINST DISCLOSURE OF CLIENT'S SECRETS

- A lawyer shall not reveal the confidences or secrets of his clients , except:
    1. When authorized by the client after acquainting him of the consequences of the disclosure;
    2. When required by law;
    3. When necessary to collect his fees or to defend himself, his employees or associates or by judicial action.

CLIENT'S WAIVER OF PRIVILEGE

- Since the attorney-client privilege against disclosure of the client's confidence is intended primarily for the client's protection, only the client as a rule can waive the privilege.
- The only instance where the waiver of the client alone is insufficient is when the person to be examined with reference to any privileged communication is the attorney's secretary, stenographer or clerk, in respect to which the consent, too of the attorney is necessary.
- In disbarment proceeding a lawyer may not be permitted to invoke the privilege when the client does not waive it. Nor may a lawyer waive the privilege as an excuse to justify his disclosure or use, in favor of a third party, of his client's secrets.
- By filing a complaint against his attorney or by unreasonably refusing to pay him his attorney's fees, a client waives the privilege in favor of his lawyer who may disclose or use so much of his client's confidences as may be necessary to protect himself or to collect his fees.
- A waiver in part is a waiver in whole for a client may not remove the seal of confidentiality as makes for his advantage and insist that it be privileged as to so much as makes to the disadvantage of his adversary.
- A client who voluntarily delivers a privileged document to a third party or allows the latter to hear his confidential communication lift the veil of its confidentiality and thereby waives the protection of the privilege, and neither he nor his attorney can prevent its disclosure, nor can either of them refuse to be examined in relation thereto.

DISCLOSURE TO PROTECT ATTORNEY'S RIGHTS

- The privilege communication of an attorney and a client exist only for lawful or honest purposes.

COMMUNICATION AS TO CRIME

- The privilege communication between attorney and client may be a shield of defense as to crimes already committed.
- The privilege cannot be used as a weapon of offense to enable a person to carry out a contemplated crime against society.
- Where an attorney has knowledge of the whereabouts of his client who jumped bail pending trial, living elsewhere under an assumed name the attorney may be disciplined for failing to disclose that information to the proper authority.

COMMUNICATIONS AS TO FRAUD

- While a communication relating to a fraud already committed is privileged, a communication seeking advice as to the commission of fraud or the establishment of a false claim is an exception to the privilege. The existence of an unlawful purpose prevents the privilege from attaching.

CHAPTER X: LAWYER'S DUTIES OF FAIR DEALINGS AND AVOIDING

A. FAIRNESS IN DEALINGS WITH CLIENT

DUTY TO BE CANDID, FAIR AND LOYAL ALL DEALINGS WITH CLIENT, GENERALLY

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 the principles of fairness.

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

A LAWYER SHALL ASCERTAIN POSSIBLE CONFLICT OF INTEREST

- 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 connection with the controversy, which in his honest judgement might influence the client in the selection of counsel.

DUTY TO DECLINE EMPLOYMENT

- A lawyer shall decline professional employment even though how attractive the fee offered may be if its acceptance will involve a violation of any of the rules of the legal professionalism.

- A lawyer should not accept employment as an advocate in any matter in which he had intervened while in the government service.

A LAWYER SHALL PRESERVE THE SECRETS OF A PROSPECTIVE CLIENT

- The reason for the rule is 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.

A LAWYER MAY ACT AS A MEDIATOR

- A lawyer, with the written consent of all concerned, to "act as mediator, conciliator or arbitrator in settling dispute.
- The lawyer shall not act as counsel for any of them, otherwise the rule prohibiting representation for conflict of interest will apply.

B. REPRESENTING CONFLICTING INTEREST

A LAWYER SHALL NOT REPRESENT CONFLICTING INTEREST

- There is inconsistency of interest within the meaning of the prohibition when, on behalf of one client, it is the attorney's duty to contend for that which his duty to another client requires him to oppose, or when the possibility of such situation develops.
- The rule against representing conflicting interest applies even if the conflict pertains to the lawyer's private activity or in the performance in a non-professional capacity, and his presentation as a lawyer regarding the same subject matter.
- A lawyer is forbidden from representing a subsequent client against a former client when the subject matter of the present controversy is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client.
- The client's confidence once reposed cannot be divested by the expiration of the professional employment.
- A lawyer shall preserve the confidence and secrets of his client even after the attorney-client relationship is terminated.

EFFECT OF TERMINATION OF RELATION

- The termination of the relation of attorney and client provides no justification for a lawyer to represent an interest adverse to or in conflict with that of the former client.

MATERIALITY OF CONFIDENTIAL INFORMATION

- The bare attorney-client relationship with a client precludes an attorney from accepting professional employment from the client's adversary either in the same case or in different but related action.

FOUNDATION OF, AND REASON FOR, THE RULE

- The stern rule against representation of conflicting interest is founded on principles of public policy and good taste.
- The reason for the prohibition is is found in the relation of attorney and client, which is one of trust and confidence of highest degree.

OPPOSING CLIENTS IN SAME OR RELATED SUITS

- It is improper or a lawyer to appear as counsel for one party against the adverse party who is his client in another totally unrelated action.

NEW CLIENT AGAINST FORMER CLIENT

- A lawyer is forbidden from representing a subsequent client against a former client only when the subject matter of the present controversy is related, directly or indirectly, to the subject matter of the previous litigation in which he appeared for the former client.

CONFLICTING DUTIES

- A lawyer may not undertake to discharge the conflicting duties any more than may he represent antagonistic interest.
- A lawyer may not, as counsel for a client, attack the validity of the instrument prepared by him.

ATTORNEY'S INTEREST VERSUS CLIENT'S INTEREST

- A lawyer should not put himself in a position where self-interest tempts him to do less than his best for his client.

RULE APPLICABLE TO LAW FIRM

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

LIMITATIONS ON GENERAL RULE

- The rule against representation of conflicting interest I subject to certain limitations.
- Where no conflict of interest exist, where the clients knowingly consent to the dual representation or where no true attorney-client relationship is attendant, the prohibition does not apply.

WHERE NO CONFLICT OF INTEREST EXIST

- A lawyer may properly represent a subsequent client against a former client in a matter which is not, in any way, related to the previous controversy in which he appeared for the former client.

WHERE CLIENT KNOWINGLY CONSENT

- A lawyer may at a certain stage of the controversy and before it reaches the court represent conflicting interest with the express written consent of all parties concerned given after full disclosure of facts.

EFFECTS OF REPRESENTATION OF CONFLICTING INTEREST

- The representation by a lawyer of conflicting interest, in the absence of written consent of all parties concerned given after a full disclosure of facts, constitutes professional misconduct which subjects the lawyer to disciplinary action.
- The attorney may also be disqualified from representing the new client upon petition of his former client.
- Two questions must, therefore, be asked: Firstly, dis the attorney change or have the opportunity to change his previous position as counsel for party n championing the cause of the new client? Secondly, did the new client suffered prejudice? An affirmative answer to both may justify the setting aside of the adverse judgement against the new client.
- The attorney's right to be paid for his services rendered in favor of his former client may be affected by the representation of conflicting interest only if the two matters are related and the former client objected to such representation.

CHAPTER XI: AUTHORITY OF ATTORNEY

A. IN GENERAL

POWER TO BIND CLIENT, GENERALLY

- A lawyer must perform his duties to his client within the scope of his authority. The extent of his authority is defined by what is expected of him as provided by law and Rules of Court and/or by the written authority granted him by his client.
- The professional employment of an attorney confers upon him the general authority to do on behalf of his client such acts as are necessary or incidental to the prosecution or management of the suit entrusted to him or the accomplishment of its purpose for which he was retained.
- The employment by itself confers upon the attorney no implied or apparent authority to bind the client on substantial matters.

ATTORNEY AS AGENT OF CLIENT

- The relation of attorney and client is in many respects one of agency, and the general rules of ordinary agency apply to such relation.
- An attorney representing a client in court is, however, more than an agent and has powers different from and superior to those of an ordinary agent, he being an officer of the court with rights, privileges and duties peculiar only to a lawyer.

COLLECTION OF CLAIMS

- An attorney retained by a creditor to enforce a claim has the authority to take all steps necessary to collect it, such as sending a letter of demand requiring payment of the obligation within a specified period or filing the corresponding action in court in the event of the debtor's refusal to pay.
- The client's remedy, in case he has not received the amount due him, is not against the obligor who has already been discharge from his obligation but against his attorney who holds the money in trust for his benefit.
- An attorney cannot without special authority, discharge his client's claim for less than the amount thereof or for the full amount in kind. Nor can he, without special authority, encash or endorse a check or draft payable to his client or deliver the proceeds of claim to a person other than to his client.

ACCEPTANCE OF SERVICE OF SUMMONS

- An attorney has no power to receive or accept on behalf of his client the service of summons in his bare professional capacity.

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DELEGATION OF AUTHORITY

- An attorney may not without the client's consent, express or implied, delegate the confidence and the authority that goes with it to another lawyer.
- Client may ratify an unauthorized delegation or the circumstance of the professional employment may furnish sufficient basis to assign e retainer including the authority implied therefrom.

DELEGATION OF LEGAL WORK

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

B. AUTHORITY TO APPEAR

GENERALLY

- An attorney may not, without being retained or authorized by the court, represent another in court.
- His authority to appear for a client commences only from the time he is retained by the client or by the latter's agent.
- No written authority from the client is necessary to enable a lawyer to represent him in court.

APPEARANCE

- An appearance means the coming into court as a party either as a plaintiff as a defendant and asking relief therefrom.
- Appearance as a counsel is a voluntary submission to the court's jurisdiction by a legal advocate or lawyer professionally engaged to represent and plead the cause of another, such as by actual physical appearance or by filing pleadings in court.
- The orderly conduct of judicial proceedings, however, requires that counsel for a party should file with the court his written appearance in the case.

GENERAL AND SPECIAL APPEARANCE

- General appearance operates as a voluntary submission to the jurisdiction of the court over the person of the defendant and takes the place of or cure any defect in the service of summons upon him.
- Special appearance is one which seeks to contest solely on the jurisdiction of the court over the person of the defendant and which seeks no relief other than the dismissal of the action exclusively on that ground, and which does not operate as a voluntary submission to the jurisdiction of the court over the person of the defendant.

PRESUMPTION OF AUTHORITY

- An attorney is presumed to be properly authorized to represent any cause in which he appears in all stages of the litigation and no written authority is required to authorize him to appear.

PRESUMPTION DISPUTABLE

- The presumption that a attorney is duly authorized to manage a litigation is a disputable one and may be overcome by a clear evidence to the contrary.

DISCLOSURE OF AUTHORITY

- An attorney is presumed to be duly authorized to represent a party in a case, the presiding judge may, on motion of either party in a case, the presiding judge may, on motion of either party and on reasonable ground thereof being shown, require him who assumes the right o appear in the case to produce or prove his authority and to disclose, whenever pertinent to any issue, the name of the person who employed him.

EFFECTS OF UNAUTHORIZED APPEARANCE

- A party who has not authorized an attorney to represent him is not bound by the attorney's appearance in the case nor by the judgement rendered therein.
- The attorney may be cited for contempt as an officer of the court who has misbehaved in his official transactions.
- Adverse party who has been force to litigate as a defendant by the unauthorized action on the part of the attorney for the plaintiff may, on that ground, move for the dismissal of the complaint.
- An attorney for his personal protection, should enter into a written retainer or secure from his client a written authority to represent him in court.

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RATIFICATION OF UNAUTHORIZED APPEARANCE

- The unauthorized appearance of an attorney in a case may be ratified by the party concerned either expressly or impliedly.
- Ratification retroacts to the date of the attorney's first appearance and validates the action taken by him.
- The principle of implied ratification by silence requires the concurrence of 3 requisites namely:
    1. That the party represented by the attorney is of age or competent or if he suffers from any disability, e has a duly appointed guardian or legal representative;
    2. That the party or his guardian, as the case may be, is aware of the attorney's representation;
    3. That he fails to promptly repudiate the assumed authority.

C. CONDUCT OF LITIGATION

GENERALLY

- A lawyer has authority to bind the client in all matters of ordinary judicial procedure.
- An attorney can bind his client on substantial matter only with the client's express or implied consent.

DETERMINATION OF PROCEDURAL QUESTIONS

- A lawyer has been retained to prosecute or defend an action has the implied authority o determine what procedural steps to take which, in his judgement, will best serve the interest of his client.

MAKING ADMISSION

- The admission may be express o implied; it may be in a pleading or motion or orally in open court.
- An implied admission by counsel may take the form of his failure to deny specifically the material allegations of the adverse party or to traverse under oath the due execution and authenticity of actionable documents or the claim of usury; or his submission of the case for decision upon the verified complaint and verified answer without the introduction of evidence.
- A lawyer as private prosecutor cannot, without special power, admit that his client, the offended party, suffered no damage arising from the crime as it deprives his client of that special interest which entitles him to intervene in the criminal action.

ENTERING TO STIPULATIONS

- A lawyer has the general or implied authority to agree or stipulate upon the facts involved in a litigation even without he prior knowledge or consent of his client.
- A stipulation does not require proof. In the absence of any other evidence, the duty of the court is to render judgement strictly on the basis of the stipulation, it may not disregard a fact solemnly agreed by counsel as true or decline to give it its manifest legal effect in adjudicating he rights of the parties.
- A party may be relieved of the legal effects of the stipulation made by his attorney only:
    1. When he is allowed to withdraw therefrom the consent of the other party;
    2. When the court, upon showing of palpable mistake, permits hm to withdraw from the stipulation;
    3. When what the lawyer agreed is that a witness, if presented in court, would testify as stated by the adverse attorney.

AGREEMENT AS TO WHAT WITNESS WOULD TESTIFY

- A lawyer may stipulate only as to facts but not as to the manner the facts are to be offered.

COMPROMISE OF CAUSE OF ACTION

- A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.
- The only elements necessary to a valid compromise are the reality of the claim and bona fides of the compromise. In the absence of statutory requirement, no particular form of agreement is essential to its validity.

EFFECT OF WANT OF SPECIAL AUTHORITY

- A compromise executed by counsel without special authority or consent on the part of the client does not bind the latter.
- A compromise entered into by the client's attorney without having been authorized to do so by the client has been invariably described as null and void ab initio, or unenforceable.

RATIFICATION OF UNAUTHORIZED COMPROMISE

- A client may ratify an unauthorized compromise entered into by his counsel either expressly or tacitly.
- What constitutes a length of time sufficient to raise a presumption of ratification depend upon the circumstances of each case. It has been held that the lapse of two years, eight years or ten years from the time the client became aware of the unauthorized compromise made the presumption attain the stature of moral certainty.
- A corporate client may ratify an unauthorized compromise only through its board of directors or any of its officers authorized to settle the action.
- Ratification by a client of n unauthorized compromise may also be implied from the fact that he receives the benefits of the settlement with knowledge thereof.
- A client may not be permitted to reject a compromise when it suits him or to accept it when it , too, suits him.

CONFESSION OF JUDGEMENT

- A lawyer may not confess judgement against his client except with the knowledge and at the instance of the client.

DISMISSAL OF ACTION OR WITHDRAWAL OF APPEAL

- A lawyer has no authority to dismiss his client's case with prejudice even if he does not believe that his client is entitled to prevail in the action.
- A lawyer requires a special authority before he can dismiss his client's cause with prejudice.
- A lawyer has no implied authority to waive his client's rights to appeal nor to withdraw a pending appeal.

CLIENT'S RIGHT TO DISMISS OR COMPROMISE ACTION

- The right of a lawyer to compensation or services rendered cannot have a higher standing than the right of the client o dismiss his cause or settle his litigation.
- The existence of valid agreement between a client and his counsel for payment of a large portion of amounts recovered in the litigation in the case of success as attorney's fees will not prevent the client from unilaterally dismissing or compromising his action.

LIMITATIONS ON CLIENT'S RIGHT

- The client's right to dismiss or settle his action is not absolute.
- The dismissal or the compromise by the client of his cause may not defeat the attorney's right to a just compensation for his services either for the full amount of the agreed fees if the client's action is in bad faith or for a reasonable sum based on quantum meruit if there is no fraud on the part of the client.

AUTHORITY AFTER JUDGEMENT

- The power of an attorney after the rendition of judgement is more restricted.
- An attorney has the authority to bind his client in taking an appeal, such step being a procedural measure to relieve the client of the effects of a adverse judgement.
- Any lawyer who obtains a favorable judgement for his client has a continuing authority to enforce the judgement.
- After the judgement has become final, an attorney who has been employed merely for the purpose of the litigation has no authority to alter or modify the judgement in a material particular, or to actor appear in a proceeding which has been brought to obtain such alteration or modification, even though the alteration appears to be beneficial to his client.

D. MATTERS IMPUTED TO CLIENT

KNOWLEDGE ACQUIRED BY ATTORNEY

- The doctrine of imputed knowledge is based on the assumption that an attorney, who has notice of matters affecting his client, has communicated the same to his principal in the course of professional dealings.

NOTICE TO COUNSEL AS NOTICE TO CLIENT

- The service of any written notice upon a party who has appeared by attorney or attorneys shall be made upon his attorney or one of them, unless service upon the party himself is ordered by the court.
- The attorney to whom service of notice is to be made refers to the counsel of record or one who in writing has entered a formal appearance or given his name and address as the designated lawyer for a party in a case.

- Where no notice of withdrawal or substitution of counsel is shown, notice to counsel of record is for all purposes notice to the client.
- The right to be notified through counsel may be waived either by the attorney or his client.

NOTICE TO ONE AS NOTICE TO OTHER COUNSEL; EXCEPTIONS

- If a party appears by two or more attorneys of record, notice to one attorney is notice to the others as well as to the client, even though the lawyer upon whom service is made is only a deputy of the other.
- The solicitor general is the lawyer of the Republic and the officials sued in their official capacities.
- Notice of legal processes on the deputized counsel is not binding until the notice is actually received by the solicitor general.

EXCEPTIONS TO RULE THAT NOTICE TO COUNSEL IS NOTICE TO CLIENT

- The rule that notice to counsel is notice to client may be relaxed if its strict application might foster dangerous collusion to the detriment of justice.
- Service of notice upon the party instead of upon his attorney is valid if ordered by the court.

MODE OF SERVICE OF NOTICE

- Personal service is made by delivering personally copy to e party's counsel, or by leaving it is in his office with his clerk or with a person having charged thereof and asking that its receipt be acknowledge.
- Service to the party is made only if the party is not represented by counsel or if service to the party is ordered by the court, for service to the party who is represented by counsel and not to the latter is not a valid service.
- Personal service is complete upon actual delivery.
- Service by ordinary mail is complete upon the expiration of 10 days after mailing, unless the court otherwise provides.
- Service by registered mail is complete upon actual receipt by the addressee, or after 5 days from the date he received the first notice of the postmaster, which date is earlier.

PERSONAL SERVICE PREFERRED; EXPLANATION REQUIRED

- Service and filing of pleadings and other papers should be done by personal service, and resort to other modes of service and filing is the exception.

MISTAKE OR NEGLIGENCE OF COUNSEL BINDING UPON CLIENT

- The client is bound by his counsel's conduct, negligence and mistake in handling the case, or in the management of the litigation and in procedural technique, and he cannot be heard to complain that the result might have been different had his lawyer proceeded differently.
- The mistake or negligence of counsel may result in a dismissal of his client's action, or appeal, a rendition of n unfavorable judgement against him or a loss of his right to appeal.
- The following mistakes or negligence have been held to be binding upon the client: (check page 360-361)
- The mistake of counsel in the conduct of the proceedings as a result of his ignorance, inexperience or incompetence does not constitute a ground for a new trial.
- A client who suffers prejudice by reason of his counsel's inexcusable negligence in the discharge of his duty may, however, file an action for damages against him. He may also institute a disbarment proceeding. Both actions can proceed independently of the other.

EXCEPTIONS TO THE RULE THAT NEGLIGENCE OF COUNSEL BINDS CLIENT

- The general that the client is bound by the mistake or negligence of his counsel is subject to exceptions.
- The exceptions to the general rule includes cases where reckless or gross negligence of counsel deprives the client of the due process law, or when the application of the rule results in the outright deprivation of one's property through technicality.
- Illustrative of the rule that where the incompetence or negligence of counsel has been held so great as to have deprived the client of due process and to entitle him to another opportunity to prove his claim or defense are the following cases (check pages 367-368).

CHAPTER XII: TERMINATION OF ATTORNEY'S AUTHORITY AND CHANGE OF COUNSEL

A. TERMINATION OF COUNSEL'S AUTHORITY

GENERALLY

- The relation of attorney and client may be terminated by the client, b the lawyer or by the court, or by reason of circumstances beyond the control of the client or the lawyer.
- A client has absolute right to discharge his attorney at any time with or without cause or even against his consent.
- The existence or non-existence of a just cause is important only in determining the right of an attorney to compensation for services rendered.

LIMITATIONS ON CLIENT'S RIGHT

- The discharge of an attorney or his substitution by another without justifiable cause shall not negate the attorney's right to full payment of compensation as agreed in writing r, in the absence o a written retainer, to a reasonable amount based on quantum meruit.

NECESSITY OF NOTICE OF DISCHARGE

- No formal notice of discharge by the former to the latter is necessary.
- Any act of the client indicating an unmistakable purpose to terminate the relation is sufficient.
- Any judicial notice sent to counsel is binding upon the client even though as between them the professional relation has long terminated.

EFFECT OF DISCHARGE OF ATTORNEY

- The authority of an attorney to represent a client ceases upon is dismissal by the client and its recording in the case.

DEATH OR INCAPACITY OF CLIENT

- As the relation of attorney and client is personal and one of agency, it terminates upon the death of the client.
- The relation of attorney and client also terminates upon the incapacity of a client during he pendency of the litigation, the reason being that the client loses the legal capacity to contract or control the subject matter of the action.
- Whenever a party to a pending case dies, becomes incapacitated or incompetent, it shall be the duty of his attorney to inform the court promptly of such death, incapacity or incompetency and to give the name and residence of his executor, administrator, guardian or other legal representative.
- Party refers to a natural and not a juridical person, such as a duly registered partnership. Hence, the death of a partner does not necessarily terminate the attorney-client relationship.

A LAWYER SHALL WITHDRAW ONLY FOR GOOD CAUSE

- A lawyer may decline to accept a case except when designated as counsel de oficio and although his client my dismiss him at any time, he lacks the unqualified right to withdraw once he has taken one.
- A lawyer may not withdraw or be permitted to withdraw as counsel in a case if such withdrawal will work injustice to a client or frustrate the ends of justice.
- The withdrawal in writing of a lawyer as counsel for a party, with the client's written conformity, does not require the approval of the court to be effective.
- A lawyer may also retire at any time from any action or proceeding without the consent of his client should the court, on notice to the client and the attorney and on hearing, determine that h ought to be allowed to retire. The application for withdrawal must be based on a good cause.

GROUNDS FOR WITHDRAWAL WITHOUT CLIENT'S CONSENT

- A lawyer may withdraw from the case for a good cause without the client's consent but with the approval of the court.
- The application for withdrawal must be based on good cause namely:

    1. When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
    2. When the client insist that the lawyer pursue conduct violative of the canons and rules of professional ethics;
    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;
7. Other similar case.

- A lawyer is justified in withdrawing from the case if his client insist upon an unjust or immoral course in the conduct of his case or persist ver his remonstrance in presenting frivolous defenses.
- A lawyer may not continue employment when he discovers that his obligation to preserve the client's confidence prevents the performance of his full duty to his former or to his present client, especially when his legal representation is challenged on that ground.
- In criminal proceeding, counsel for the accused should not ask to be relieved from his professional responsibility on mere trivial ground. Nor may he retire from the action because the accused has confessed to him his guilt.

PROCEDURE FOR WITHDRAWAL

- A lawyer who desires to retire from an action without the written consent of his client must file a petition for withdrawal in court.
- He must serve a copy of his petition upon his client and the adverse party at least 3 days before the date set for hearing, otherwise the court may treat the applications a mere scrap of paper.

DEATH OF ATTORNEY

- A contract of professional employment terminates upon the death of an attorney.
- The personal representative of the deceased attorney has no right to assign pending cases to another lawyer of his choice as a matter is for the client to decide.
- The death of a partner in a law firm does not severe the professional employment between the law firm and the client and the remaining partners in the law firm continue to assume professional responsibility in the pending litigation. Neither does the dissolution of a law firm in itself bring about that result.

ACCEPTANCE OF INCOMPATIBLE OFFICE

- A lawyer who accepts a public office ceases, by operation of law, to engage in private law practice and becomes disqualified from continuing to represent a client in those cases which the law prohibits him from doing so or requires his entire time to be at the disposal of the government.

B. CHANGE OR SUBSTITUTION OF COUNSEL

CHANGE OF COUNSEL

- A client may change his counsel in a pending case in any of three ways:
  1. He may discharge his attorney at any time with or without cause and thereafter employ another lawyer who may then enter his appearance.
  2. The attorney himself may initiate the move by withdrawing his appearance either with the written consent of his client or with leave of court on some justifiable ground.
  3. Substitution of counsel in the form of an application for that purpose.

REQUIREMENTS FOR SUBSTITUTION

- A proper substitution of counsel requires:
  1. A written application for substitution;
  2. Written consent of the client;
  3. Written consent of the attorney to be substituted;
  4. There must be filed with the application proof of service of notice of the application upon the attorney to be substituted.
- A verbal substitution of counsel, impliedly granted by the judge, contravenes the requirements of substitution.

DEFECTIVE SUBSTITUTION AND EFFECTS THEREOF

- A substitution of counsel which does not comply with all of its requirements is defective.
- A substitution which does not comply with the required formalities is ineffective to effect a change of counsel or to terminate his authority.

EMPLOYMENT OF ADDITIONAL COUNSEL

- A client has the right to have as many lawyers as he can afford.
- Professional courtesy requires that a lawyer who has been retained as collaborating counsel in a case should at least communicate with the counsel of record before entering his appearance.

CHAPTER XIII: COMPENSATION OF ATTORNEY

A. RIGHT TO ATTORNEY'S FEES

GENERALLY

- There are 2 concepts of attorney's fees. The ordinary concept refers to the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter. The other concept is the amount of damages which the court may award to be paid by the losing party to the prevailing party.

RIGHT TO PROTECTION OF COUNSEL FEES

- The fact that the practice of law is not a business and the attorney plays a vital role in the administration of justice underscores the need to secure him his honorarium lawfully earned as a means to preserve the decorum and respectability of the legal profession.

REQUISITES FOR RIGHT TO ACCRUE

- The right of a lawyer to a reasonable compensation for his services requires the existence of an attorney-client relationship and the rendition by the lawyer of services to the client.
- The presence of these requisites is essential to the accrual of the lawyer's right to attorney's fees.

WRITTEN AGREEMENT

- A written agreement is not necessary to establish a client's obligation to pay attorney's fees.
- The client's obligation to pay attorney's fees arises from the inanimate contract of facias ut des (I do and you give) which is based on the principle that no one shall unjustly enrich himself at the expense of another.

QUANTUM MERUIT

- Quantum Meruit means as much as the lawyer deserves or such amount which his services merit.
- Recovery of attorney's fees on the basis of quantum meruit is authorized:
    1. When there is no express contract for payment of attorney's fees;
    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 defects of execution;
    4. When the lawyer, for justifiable cause, was not able to finish the case to its conclusion;
    5. When the lawyer and the client disregard he contract for attorney's fees,
    6. When the client dismissed his counsel before the termination of the case or the latter withdrew therefrom for valid reasons.
- The doctrine of quantum meruit is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.

WHO IS LIABLE FOR ATTORNEY'S FEES

- A lawyer is entitled to have and receive the just compensation for services rendered at the special instance and request of his client and as long as he is honestly and in good faith trying to serve and represent the interest of his client, the latter is bound to pay him just fees.
- Only the client who engaged the services of counsel either personally or through an authorized agent is liable for the attorney's fees.

LIABILITY OF PERSONS BENEFITED BY COUNSEL'S SERVICES

- A person who has no knowledge of, or objected to, the lawyer's representation may not be held liable for attorney's fees even though such representation redounded to his benefit.

LIABILITY OF ASSIGNEE

- Since an assignee of all interest pendente lite usually steps into the shoes f the assignor and acquires all the of the latter's rights and obligations in the action, the assignee may be held liable or counsel fees from out of the proceeds of a favorable judgement.
- That the obligation gives the assignee the right to intervene in the matter of fixing the amount of fees which may be a proper charge against the judgement rendered in the action.

LIABILITY IN LABOR CASE

- A lawyer who represents a union and its members and with whom he has a retainer for payment of a fixed percentage of amounts recovered from the company is entitled to be paid his fees not only by the union member but by the non-union members as well who derive benefits from his services.
- Attorney's fees in labor cases may not be more than what the law provides and they may not be

checked off from any amount due the employees without their written consent.

LIABILITY IN DERIVATIVE SUITS

- The counsel fees may be properly charged against corporate funds.
- But as any stockholder may file a derivative suit on behalf of the corporation, any other stockholder may intervene and oppose the grant of such fees as a charge against funds of the corporation.

LIABILITY IN RECEIVERSHIP PROCEEDINGS

- The assets under receivership may be liable for the fees of a lawyer employed by a receiver to help him the discharge of his duties.

LIABILITY IN TRUSTEESHIP OR GUARDIANSHIP PROCEEDINGS

- The rule is that a trustee may be indemnified out of the trust estate for his expenses in rendering and proving his accounts and for the counsel fees in connection therewith.

LIABILITY IN ESTATE PROCEEDINGS

- To hold the estate ultimately liable for attorney's fees requires that the person to whom the services were rendered was at the time the executor or administrator and the services ere rendered to him in that capacity.

WHO ARE ENTITLED TO OR TO SHARE IN ATTORNEY'S FEES

- The lawyer who has been engaged by a client is the one entitled to have and recover no more than a reasonable compensation for his services.
- The right of a lawyer to share in the professional fees rest on services performed or on his being, based on an agreement, a partner of another or in a law firm.

NON-LAWYER NOT ENTITLED TO FEES

- An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services requires the existence of an attorney-client relationship as a condition to the recovery of attorney's fees.
- A non-lawyer cannot, therefore, recover attorney's fees even if there is a law authorizing him to represent an litigant in court.

RESTRICTIONS ON SOME LAWYERS TO CHARGE FEES

- A lawyer who is absolutely disqualified from engaging in the private practice of law by reason of his government position may neither practice law nor, should he do so illegally, charge attorney's fees for such services.
- A local sanggunian member who is a lawyer may appear as counsel in any administrative proceeding involving the local government unit in which he is an official, he is prohibited from collecting any fee for his appearance therein.

RIGHT TO COUNSEL DE OFICIO TO FEES

- A court may require a lawyer to render professional services in favor of an indigent litigant.
- The rules of court provide a token compensation for an attorney de officio. Subject to the availability of funds as may be provided by law the court may, in its discretion, order an attorney employed as counsel de officio to be compensated in such sum as the court may reasonably fix, which shall not be less than 30 pesos in any case nor more than 50 pesos n light felonies; 100 pesos in less grave felonies; 200 pesos in grave felonies other than capital offenses; and 500 pesos in capital offenses.

ATTORNEYS CONDUCT AFFECTING HIS RIGHT TO FEES

- The right of a lawyer to recover from his client a reasonable compensation for services already performed may be affected or negated by misconduct on his part, such as carelessness or negligence in the discharge of his duties, misrepresentation or abuse of the client's confidence or unfaithfulness in representing his client's cause.

WITHDRAWAL OF COUNSEL FROM THE CASE

- The lawyer's unceremonious withdrawal from or abandonment of the action which prejudices the client negates his right to compensation for services rendered in the action.
- The withdrawal of a counsel who has so far done his work faithfully in accordance with the prescribed procedure does not affect his right to fees for services rendered in the case.
- If the withdrawal is with the client's written conformity, it is presumed, in the absence of evidence to the contrary, that he and his client have mutually agreed to terminate his services

and to compensate him for such services up to the date their relationship is terminated.

REPRESENTATION OF ADVERSE INTERESTS

- The simultaneous representation by a lawyer of the opposing parties to a controversy, in the absence of the clients consent to the dual representation made after full disclosure of the facts, negates the lawyer's right to receive compensation from both of them.
- The lawyer's acceptance of employment from a new client against a former client in a matter which is related to the former controversy precludes recovery of fees from the former client only if the latter objected to the representation.

LAWYER'S RIGHT UNAFFECTED BY CLIENT'S CONDUCT

- A client cannot, in the absence of the lawyer's fault, consent or waiver, deprive the lawyer of his just fees already earned.

ATTORNEY'S DISCHARGE BY CLIENT

- The discharge of a lawyer by his client without a valid cause before the conclusion of the litigation does not negate the lawyer's right to recover payment for his services.
- If the fee stipulated in a valid written contract is contingent and the lawyer is unlawfully dismissed before the conclusion of the action, he may recover the reasonable value of his services thus rendered; but if the contingency occurs or the client prevents its occurrence by dismissing, settling or waiving his cause, the lawyer may be entitled to the full amount agreed in the contract.
- The lawyer should, however, question his discharge entitle him to recover under the contract, otherwise he will be allowed recovery only on a quantum meruit basis.
- The discharge of a lawyer for cause does not necessarily deprive the lawyer of his right to be paid for his services.

CLIENT'S DISMISSAL OF ACTION

- A client may dismiss his action even without or against the consent of his counsel.
- If the dismissal of the action is in good faith and is based on an honest belief that the client has no valid cause, the lawyer may recover only the reasonable worth of his services, except when the fee is contingent in which case there will be no recovery.

CLIENT'S COMPROMISE OF ACTION

- A client cannot, by entering into a compromise agreement, deprive his lawyer of his fees in the absence of a waiver on the part of the lawyer.

B. CONTRACT FOR ATTORNEY'S FEES

GENERALLY

- A contract of professional services may either be oral or in writing. The fee stipulated may be absolute or contingent; it may be a fixed percentage of the amount recovered in the action.
- A written retainer has distinct advantages over an oral contract. A written contract generally controls the amount thereof.

KINDS OF RETAINER: GENERAL AND SPECIAL

- A general retainer is the fee paid to a lawyer to secure his future services as general counsel for any ordinary legal problem that may arise in the routinary business of the client and referred to him for legal action. Its purpose is to prevent undue hardship on the part of an attorney resulting from the rigid observance of the rule forbidding representation of conflicting interest.
- Special retainer fee is an addition to what the client has agreed to pay him for services which he has been employed to perform, the fee which the client will pay his lawyer for a specific matter. A special retainer is a fee for a specific case handled or special service rendered by the lawyer.
- Counsel fees which are obligations of a client in favor of his lawyer should be distinguish from attorney's fees I the concept of damages, the latter being part of the damages which the court may award in favor of the prevailing party.

VALIDITY OF CONTRACT

- A contract for professional services becomes the law between the parties when stipulations therein are not contrary to law, good morals, good customs, public policy or public order.
- An agreement stipulating an amount which is more than what a law has authorized is also invalid.

EFFECT OF NULLITY OF CONTRACT

- The nullity of professional contract which results from the illegality of the object sought to be achieved by the performance of the professional services precludes a lawyer from recovering his fees for such services.

EFFECT OF UNCONSCIONABILITY OF AMOUNT

- Attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services and that a written contract for services and that a written contract for services shall control the amount to be paid thereof unless found by the court to be unconscionable or unreasonable.

CONTINGENT FEE CONTRACT

- A contract for a contingent fee is an agreement in writing in which the fee, usually a fixed percentage of what may be recovered in the action, is made to defend a supposed right.
- In a contingent fee contract, the lawyer gets paid for his services only if he wins the case for the client unless the client prevents the successful prosecution or defense of the action, in which case the lawyer will be entitled to recover on a quantum meruit basis or to the full amount as fixed in a valid agreement if the client acted in bad faith.
- A continent fee arrangement is a contract between a lawyer and a client in which the lawyer's professional fee, usually a fixed percentage of what may be recovered in the action, is made to depend upon the success of the litigation.
- A lawyer cannot charge his client a contingent fee or a percentage of the amount recovered as his fees in the absence of an express agreement to that effect.

VALIDITY OF CONTINGENT FEE

- A contingent fee is not prohibited by law and is impliedly sanctioned. Its validity depends, in large measure, upon the reasonableness of the amount fixed as a contingent fee under the circumstances of the case.
- A contingent fee contract is generally valid and binding, unless it is obtained by fraud, imposition or suppression of facts, or the fee is so clearly excessive as to amount to an extortion.

EFFECT OF AGREEMENT TO PAY LITIGATION EXPENSES

- Champertry is an agreement by a lawyer to conduct the litigation on his own account to pay the expenses thereof or to save his client therefrom and to receive as his fee a portion of the proceeds of judgement is obnoxious to the law.
- An agreement between a lawyer and his client does not provide for reimbursement of litigation expenses paid by him is against public policy, especially if the lawyer has agreed to carry on the action at his expense in consideration of some bargain to have a part of the thing in dispute.

CONSTRUCTION OF PROFESSIONAL CONTRACT

- General rule is to adopt such construction as would be more favorable to the client even if it would work prejudice to the lawyer.
- A lawyer who prepares a contract of professional services is presumed to have seized up the entire situation before entering into the agreement.
- Words inserted by a client in his own handwriting in a contract for attorney's fees are to be taken in his favor, the insertion being presumed to have been made for his benefit.

C. MEASURE OF COMPENSATION

AMOUNT FIXED IN VALID CONTRACT

- Amount of attorney's fees due is that stipulated In the written retainer agreement which is conclusive as to the amount of the lawyer's compensation.

AMOUNT BASED ON QUANTUM MERUIT

- Quantum meruit means as much as a lawyer deserves.
- The doctrine of quantum meruit is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.
- The court will fix the amount of attorney's fees on quantum meruit basis in any of the following instances:

1. The agreement as to counsel fees is invalid for some reason other than the illegality of the object of performance;
2. The amount stipulated n the contract is unconscionable;
3. No agreement as to fees exist between the parties;
4. The client rejects the amount fixed in the contract as unconscionable and is found to be so;
5. Some act or event has precluded the lawyer from concluding the litigation without fault on his part; and
6. The client has dismissed his counsel or the latter has withdrawn from the case for a valid reason.

WHERE AGREEMENT IS INVALID

- The nullity of a professional contract will preclude the lawyer from recovering his compensation for services rendered only if such invalidity proceeds from the illegality of the object of performance or of the service performed.
- If the invalidity of the contract is due to a mere formal defect in its execution, the lawyer may recover the reasonable value of his services on quantum meruit basis.

WHERE AMOUNT STIPULATED IS UNCONSCIONABLE

- The court will fix counsel fees on quantum meruit basis whenever the amount thereof as stipulated between the parties or sought to be recovered by a lawyer for his services is unconscionable.
- Unconscionable fee is the amount which under the circumstances surrounding the case, constitutes an over exaggeration of the worth of the lawyer's services.

WHERE THERE IS NO EXPRESS CONTRACT

- The court will fix the amount on quantum meruit basis, since the absence of an express agreement as to fees will not deprive a lawyer of his right thereto unless he has agreed to render service gratuitously.

WHERE ATTORNEY AND CLIENT DISREGARD CONTRACT

- A lawyer presents a claim for more than the amount fixed in the contract and the client not only rejects such claim but also questions the reasonableness of the amount fixed therein, both of them are deemed to have impliedly disregarded the contract and place themselves in the position as thought there is no express stipulation as to the attorney's fees. In such a case, the lawyer's compensation will be determined on quantum meruit basis.

FACTORS TAKEN INTO ACCOUNT

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 service rendered or required;
(b) the novelty and difficulty of the questions involved;
(c) The importance of the subject matter;
(d) The skill demanded;
(e) The probability of losing other employment as a result of acceptance of the proffered case;
(f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;
(g) The amount involved in the controversy and the benefits resulting to the client from the 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 case of referral, with the consent of the client, be entitled to a division of fees in proportion to the work performed and responsibility assumed.

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

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

WHERE COUNSEL IS PRECLUDED FROM CONCLUDING LITIGATION

- A lawyer who, without any fault any fault, is prevented by his client from concluding the litigation may be entitled to recover his fees merely quantum meruit basis in cases where there is no written contract f professional services, the lawyer in spite of the existence of a written agreement never questioned his discharge by the client, or the client dismissed or settled his action with the lawyer's acquisence.

NATURE OF SERVICES

- The value of the lawyer's services is in large measure determined by the nature, quality and quantity of such services.
- A lawyer's competence is measured by the character of his work.
- The time employed is not in itself an appropriate basis for fixing the amount of compensation. However, the length of employment which runs for years is significant as the longer the period of employment the more work it entails and the lesser opportunity the lawyer has for other profitable retainers.

SKILL AND STANDING OF ATTORNEY

- The skill, experience and standing of a lawyer bear a direct proportion to the amount of attorney's fees to which he may be entitled for his services.
- The ability, skill and competence of a lawyer must not be measured by his income.
- The lawyer's competence and ability must be judged by the character and quality of his work and services not only in the field of law but in other fields of public and private endeavors as well.
- The skill and standing of the lawyer must be duly proved.

VALUE OF INTEREST INVOLVED

- The bigger the size or the value of the interest or property involved in a litigation the higher the attorney's fees is.
- The higher the stakes the more the case is hotly litigated and the greater the efforts the lawyer exerts.
- Even in the interest involved is of a considerable value but calls for no extra efforts, there will be no justification for awarding a high compensation for the lawyer's services.

LOSS OF OPPORTUNITY FOR OTHER EMPLOYMENT

- A client should compensate his lawyer for being deprived of the chance to earn legal fees from a client from others b reason of his employment as his counsel.
- A lawyer may lose the opportunity for other employment in two ways, the acceptance of a retainer from a client will preclude a lawyer from appearing for others in cases likely to arise out of the transaction in view of the prohibition against representation of adverse interest.

DIFFICULTY OF ISSUES INVOLVED

- In fixing the attorney's fees, the court takes into account the novelty or difficulty of the questions involved in the action as well as the demands on his part on those questions.

TEST CASE

- Test case is usually litigated with energy and diligence even if the actual amount is made to depend on the favorable outcome of the test case.
- Fairness and justice require that the lawyer's fees be not limited to a reasonable proportion of the amount in the test case but on the totality of the amounts in all the actions dependent upon the result of the test case.

RESULTS SECURED

- The importance to a client of is lawyer's services depends upon the successful outcome of the litigation.

CAPACITY OF CLIENT TO PAY

- The financial ability of a client to pay may also be considered in determining the amount of fees not to enhance the same above what is reasonable but to ascertain whether or not the client is able to pay a fair and just compensation for the services rendered.

STATUTORY LIMITATION AS TO FEES

- The legislature, in the exercise of its police power, may by law prescribe the limit of the amount of attorney's fees which a lawyer may charge his client.
- Attorney's fees may be charged against the union fund in an amount to be agreed upon by the parties. Any contract, agreement or arrangement of any sort to the contrary shall be null and void.

FEES IN CASES OF REFERRAL

- A lawyer shall, in cases of referral, with the consent of his client, be entitled to a division of fees in proportion to the work performed and responsibility assumed.

A LAWYER SHALL NOT RECEIVE FEE FROM ANOTHER WITHOUT CIENT'S CONSENT

- The general rule is that a lawyer should receive compensation for his services in a case only from his client and not from other person.
- A corollary of the foregoing rule is the principle that whatever a lawyer receives from the opposite party in the service of his client belongs to the client.

A LAWYER SHALL AVOID CONTROVERSIES WITH CLIENTS CONCERNING HIS FEES

- A lawyer to avoid controversies with clients concerning his compensation and to resort to judicial action only to prevent imposition, injustice or fraud.
- Suits to collect fees should be avoided, and only where the circumstances imperatively require should a lawyer resort to lawsuit to enforce payment of his fees.

D. PROCEDURE TO RECOVER FEES

GENERALLY

- A lawyer may take judicial action to protect his right to fees either in the main action where his services where rendered or in an independent civil suit against his client.

LAWYER'S APPLICATION TO PAY HIS FEES

- A lawyer may apply so much of the client's funds that come to his possession as may be necessary to satisfy his fees and disbursements, giving notice promptly thereafter to his client.

PETITION AS INCIDENT OF MAIN ACTION

- A lawyer may enforce his right to fees by filing the necessary petition as an incident of the main action in which his services were rendered only when something is due the client in the action from which the fee is to be paid or when the client settles or waives his cause in favor of the adverse party in fraud of the lawyer's claim for compensation.
- Where a judgement has become final without requiring payment of attorney's fees, a motion for payment of attorney's fees filed therein is improper and the grant thereof by the court is void, as the court cannot amend its final decision. The lawyer's remedy is to file a separate and independent action to recover his fees.

INDEPENDENT CIVIL ACTION

- A lawyer can enforce his right to a reasonable compensation for services rendered in an independent civil action in cases where:
    1. He court trying the main action in which the lawyer's services were rendered dismissed the client's action or awarded nothing to the client;
    2. The court that decided the main litigation has no jurisdiction over the action or has already lost it;
    3. The person liable for attorney's fees s not a party in the main action;
    4. The court reserved to the lawyer the right to file a separate civil suit for the recovery of his fees;
    5. The services for which the lawyer seeks payment were rendered in connection with a matter not in litigation;
    6. The court rendered judgement in the case without requiring payment for attorney's fees and the judgement had become final.

REMEDIES IN ESTATE PROCEEDINGS

- The procedure for collection of attorney's fees in an estate proceeding is for the lawyer to ask the administrator or executor to pay him his fee.
- If the administrator or executor refuses or fails to make payment, the lawyer as either of the two remedies. He may file an independent civil action against the administrator executor in his personal capacity, and should judgement be secured and the latter pays, the administrator or executor may include the amount so paid in his account filed with the probate court.
- If the administrator or executor dies before the fees of a lawyer could be paid, he may file a claim against the estate of the deceased administrator or executor or a petition for the allowance of his fees with the probate court.
- Lawyer may enforce his right to fees in the probate court at any time before the estate proceeding is definitely closed.
- The allowance of counsel fees in a estate proceedings rest largely in the sound discretion of the probate court which should not be interfered with except for manifest abuse, but it may be modified by the appellate court when the fee allowed is inadequate or excessive.

COURT JURISDICTION

- The court having jurisdiction to try he main action in which the lawyer rendered services has also jurisdiction to pass upon he question of fees even though the total sum thereof is less than the jurisdictional amount cognizable by the court, and continues to have that jurisdiction until the proceeds of the judgement shall have been delivered to the client.

NECESSITY OF HEARING

- A petition for recovery of attorney's fees, either as a separate civil suit or as an incident of the main action, has to be prosecuted and the allegations therein established as any other money claim.
- The person who are entitled to or must pay the attorney's fees have the right to be heard upon the question of their property or amount.
- The burden of proof is upon the lawyer to establish his allegations.

DEFENSES

- An acton for recovery of attorney's fees is subject to the usual defenses applicable to an ordinary civil suit such as want of jurisdiction, res judicata, prescription of action, nullity of the contract for

professional services, negligence in the discharge of the lawyer's duties, lack of attorney-client relationship, payment or unconscionableness of the amount claimed.

EXECUTION

- A final award of attorney's fees may be enforced by the execution.
- The award may be enforced against any property of the client, including the proceeds of the judgement secured for the client in the main action.

E. ATTORNEY'S FEES AS DAMAGES

TWO CONCEPTS OF ATTORNEY'S FEES COMPARED

- Two concepts:
  1. The award that the court may grant to a successful party by way of attorney's fee is an indemnity for damages sustained by him in prosecuting or defending, through counsel, his cause in court.
  2. Attorney's fees which a client pays his counsel refers to the compensation for the latter's services.
- The fee as an item of damages belongs to the party litigant and not his lawyer.
- The two concepts of attorney's fees are similar in other respects. They both require, as a prerequisite to their grant, the intervention of or the rendition of professional services by a lawyer.

FEES AS DAMAGES NOT RECOVERABLE – GENERAL RULE

- Attorney's fees in the concept of damages are not recoverable.
- An adverse decision does not ipso facto justify their award in favor of the winning party.
- Public policy requires hat no penalty be placed on the right to litigate.

FEES AS DAMAGES RECOVERABLE – EXCEPTION TO THE RULE

- Attorney's fees in the concept of damages are not recoverable admits of several exceptions.
- Two instances when attorney's fees as an item of damages may be recovered, namely, when there is a written agreement for payment of such fees in the event of suit and when there s a special law authorizing their award.
- Attorney's fees in the concept of damages may be awarded in any of the following circumstance: (check pages 437-442)
  1. When there is agreement.
  2. When exemplary damages are awarded.
  3. When defendant's action or omission compelled plaintiff to litigate.
  4. In criminal cases of malicious prosecution.
  5. When the action is clearly unfounded.
  6. When defendant acted in gross and evident bad faith.
     - Mere refusal to pay a valid claim is by itself insufficient to justify the award of attorney's fees; that act must, in addition, be characterized by gross and evident bad faith.
  7. In actions for support.
  8. In cases of recovery of wages.
  9. In actions or indemnity under workmen's compensation and employees liability laws.
     - The workmen's compensation act expressly authorized the award of attorney's fees in favor of employees, in workmen's compensation cases.
  10. In a separate civil action arising from a crime.
  11. When at least double cost are awarded.
      - Double cost are usually awarded in favor of the winning party where the action or appeal is frivolous.
      - A frivolous action or appeal is one which presents no justifiable question or is so readily recognizable as devoid of merit on its face that there is, if any, little prospect of succeeding.
  12. When the court deems it just and equitable.
  13. When a special law so authorizes.

RIGHT TO PRIVATE COUNSEL A PRECONDITION

- To entitle a party to recover attorney's fees as an item of damages, he must not only show that the case falls under any of the exceptions that may warrant the award thereof; he must have employed and, in the case of a public litigant, must show his right to employ a private counsel as well.

AWARD OF ATTORNEY'S FEES DISCRETIONARY

- It is well settled that the award of attorney's fees in favor of the prevailing party in a case is essentially discretionary with the trial court.

PLEADING AND PRACTICE

- The claim for attorney's fees in the concept of damages and the ground relied upon must be pleaded.
- The claim for attorney's fees must not only be alleged; the existence of the factual basis and the amount thereof must also be proved.

CHAPTER XIV: ATTORNEY'S LIEN

A. IN GENERAL

GENERALLY

- A lawyer who withdraws or is discharge shall, subject to a retaining lien, immediately turn over all papers and property to which the client is entitled, and shall cooperate with his successor in the orderly transfer of the matter.
- A lawyer shall have a lien over the funds of his clients 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 t the same extent on all judgements and executions he has secured for his client as provided for in the rules of court.
- Retaining lien - lien not only upon the funds, documents and papers of his client which have lawfully come into his possession until what is due him has been paid.
- Charging lien - lien upon all judgements for the payment of money and executions issued in pursuance of such judgements rendered in the case wherein his services has been retain by the client.

RETAINING AND CHARGING

- Retaining lien is the right of an attorney to retain the funds, documents and papers of his client which have lawfully come into his possession until his lawful fees and disbursement have been paid and to apply such funds to the satisfaction thereof.
- Charging lien is the right which the attorney has upon all judgements for the payment of money and executions issued in pursuance thereof, incurred in favor of the client.

B. RETAINING LIEN

DEFINITION

- Retaining lien for the balance of the account due to the attorney from his client for services rendered in all matters which he may have handled for the client, regardless of their outcome.
- Charging lien is a special lien in a particular case and presupposes at a favorable judgement has been secured for the client in that case.

NATURE AND ESSENCE OF RETAINING LIEN

- A retaining lien is a passive right and cannot be actively enforced.

REQUISITES FOR VALIDITY

- In order that a retaining lien will be valid and accorded full protection, there must be present the following requisite:
  1. Attorney-client relationship,
  2. Lawful possession by the lawyer of the client's funds, documents and papers in his professional capacity,
  3. Unsatisfied claim for attorney's fees or disbursements.

PROPERTY TO WHICH LIEN ATTACHES

- The general, possessory or retaining lien of an attorney attaches to all property, papers, books, documents or securities o the client that lawfully come to the lawyer professionally or in the course of his professional employment, not necessarily in connection with a particular case but any case or matter handled for the client.

WHEN LIEN ATTACHES

- The returning lien attaches from the moment the attorney lawfully obtains and retains possession of the funds, documents and papers of the client.

BOND FOR RETURN OF DOCUMENTS

- Until the client files such bond or security, the court may not compel the surrender of the documents and papers without gravely abusing its discretion or authority for the court's duty is to protect and not to destroy the attorney's retaining lien.

EXTINGUISHMENT OF RETAINING LIEN

- The general or retaining lien is dependent upon possession and does not attach to anything not in the attorney's possession.

- It expires when possession lawfully ends, as when the lawyer voluntarily parts with the funds, documents and papers of his client or offers them in evidence in court.

SATISFACTION LIEN

- The attorney's general or retaining lien is only a mere passive right to enforce collection of his fees and disbursements.
- The lawyer may lawfully apply the clients's funds in satisfaction of his claim for attorney's fees and disbursements.

C. CHARGING LIEN

NATURE AND ESSENCE OF CHARGING LIEN

- A charging lien is an equitable right to have the fees and lawful disbursements due a lawyer for his services in a suit secured to him out of the judgement for the payment of money and executions issued in pursuance thereof n the particular suit.
- A client should not be allowed to appropriate the whole of a judgement in his favor without paying the services of his counsel in obtaining or helping obtain such judgement.
- A charing lien is a special lien. It is a charge upon the thing which is protected in equity.
- It is a device invented by law for the protection of attorney's against the knaveries of their clients by disabling them from receiving the fruits of recoveries without paying for the valuable services by which the recoveries were obtained.

REQUISITES FOR VALIDITY OF CHARGING LIEN

- A charging lien, to be valid as security for payment of attorney's fees and lawful disbursements, requires that the following requisites concur:
    1. There must be an attorney-client relationship;
    2. The attorney has rendered services;
    3. A money judgement favorable to the client has been secured in the action
    4. The attorney has a claim for attorney's fees or advances; and
    5. A statement of his claim has been duly recorded in the case with the notice thereof served upon the client and adverse party.
- A charging lien to be enforceable as security for the payment of attorney's fees requires as a condition sine qua non a judgement for money and execution in pursuance of such judgment secured I the main case by the attorney in favor of his client.

RECORDAL AND NOTICE OF LIEN

- The recordal, to be valid, should be effected while the court has jurisdiction over the case and before full satisfaction of the judgement.
- Compliance with the requirement of notice is necessary to make. The lien effective.

TO WHAT CHARGING LIEN ATTACHES

- The attorney's charging lien, once duly recorded, attaches to the judgement for the payment of money and the executions issued in pursuance of such judgement.
- The lien is restricted to amounts awarded t the client by final judgement and does not comprise sums of money which according to the same judgement, must be applied to satisfy a legitimate debt of the client.

EFFECTS OF CHARGING LIEN

- Charging lien that has been duly recorded partakes of the nature of a collateral security or a lien on a real or personal property.
- The lien gives the lawyer the right to collect, in payment of his professional fees and disbursements, a certain amount from out of the judgment or award rendered in favor of his client.
- The lien survives the death of the client ad need not therefore be enforces in the proceeding for the settlement of the client's estate.
- The client cannot defeat the attorney's right to the charging lien by dismissing the case, terminating the services of his counsel, waiving his cause or interest in favor of the adverse party or compromising his action.

EXTINGUISHMENT OF CHARGING LIEN

- A charging lien which has been recorded before the case is finally decided is extinguished when the client loses the action as the lien may only be enforced against a judgement awarded in favor of the client, the proceeds thereof or executions thereon.

ASSIGNMENT OF CHARGING LIEN

- Attorney's charging lien may be assigned or transferred without the preference thereof being extinguished except when the assignment carries with it a breach of attorney's duty to preserve his client's confidence inviolate.

SATISFACTION OF JUDGEMENT

- The satisfaction of a judgement in favor of the client does not by itself extinguish the attorney's charging lien.

ENFORCEMENT

- The court which hears the case retains jurisdiction over the subject matter thereof until the judgement rendered therein shall have been fully satisfied or, if there be a duly recorded charging lien thereon, until the lien is settled.

CHAPTER XV: LIABILITIES OF ATTORNEY

A. LIABILITY FOR DAMAGES

DEGREE OF CARE REQUIRED

- An attorney upon being retained is understood as promising to employ a reasonable degree of care, skill and diligence as men of the legal profession commonly possess and exercise in matter's of professional employment.
- All tat is required of a lawyer, in the performance of his duties to his client, is to exert that degree of vigilance and attention expected of a good father of a family or such degree of care and ordinary diligence as any member of the bar similarly situated is expected to exercise.

CIVIL LIABILITY TO CLIENT

- A client is bound by the acts, even mistakes, of his counsel in realm of procedural technique.
- A lawyer is not liable for mere error in judgement.
- Liability on the part of a lawyer arises only when his error or misconduct in the discharge of his duties is gross or patent.

LIABILITY FOR BREACH OF FIDUCIARY OBLIGATIONS

- A lawyer holds his client's funds or property in trust for the client.
- The lawyer is under obligation to make an accounting of such funds that come into his possession. His failure to return the client's money or property after demand gives rise to the presumption that he has misappropriated the same to his personal benefit and makes him civilly liable n favor of the client, apart from his criminal or administrative responsibility arising therefrom.

CIVIL LIABILITY TO THIRD PARTY; NO COUNTERCLAIM AGAINST HIM

- The obligation of an attorney to exercise reasonable care and skill in the performance of the designated service is to the client and not to a third party; hence, where neither fraud, falsehood nor collusion exist, he is not liable for want of reasonable care and skill at the suit of any one between whom and himself the relation of attorney and client does not exist.

LIBELOUS WORDS IN PLEADINGS; PRIVILEGE COMMUNICATION

- The generally accepted rule is that lawyers are exempted from liability for libel or slander for words otherwise defamatory published in the course of judicial proceedings, provided that the statements are connected with, or relevant, pertinent or material to, the cause in hand or the subject of inquiry.

LIABILITY FOR COST OF SUIT

- Where a lawyer insisted on the client's patently unmeritorious case or interposed an appeal merely to delay litigation or thwart the prompt satisfaction of the prevailing party's just and valid claim, the court may adjudge the lawyer liable to pay treble costs of suit.

B. CRIMINAL LIABILITY

PREJUDICING CLIENT OR REVEALING HIS SECRETS

- A lawyer who, for any malicious breach of professional duty or inexcusable negligence or ignorance, shall prejudice his client or reveal any of the secrets of the latter learned b him in his professional capacity, may be held criminally liable therefor.
- Two acts are penalized: (a) causing prejudice to client through malicious breach of professional duty or through inexcusable negligence or ignorance; (b) revealing the client's secret learned in the lawyer's professional capacity through malicious breach of professional duty or through inexcusable negligence or ignorance.
- Malicious implies deliberate intent or or sinister design on the part of the lawyer.

REPRESENTING ADVERSE INTEREST

- A lawyer who has undertaken the defense of a client or has received confidential information from said client in a case may be held criminally liable for undertaking the defense of the opposing

party in the same cause without the consent of his first client.

INTRODUCING FALSE EVIDENCE

- Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with intent to cause such damage, shall use any false document may be held criminally liable.

MISAPPROPRIATING CLIENT'S FUNDS

- A lawyer who misappropriates his client's funds may be held liable for estafa.

C. CONTEMPT OF COURT

NATURE AND PURPOSE

- The power to punish for contempt or to control, the furtherance of justice, the conduct of ministerial officers of the court, including lawyers and all other persons in any manner connected with a case before it, is inherent in all court.
- The power is essential to the observance of order in judicial proceedings and to the enforcement of judgements, orders and writs of courts and consequently to the due administration of justice.
- The power to punish for contempt should be exercised on the preservative and not on the vindictive principle and on the corrective rather than the retaliatory idea of punishment.
- Contempt proceedings are criminal in nature even if the acts complained of are incidents of ivil actions.

KINDS OF CONTEMPT

- Direct contempt which is punished summarily, consist of misbehavior in the presence of or so near a court or judge as to interrupt or obstruct the proceedings before the court or the administration of justice. No formal charge is necessary and the proceeding is summary in nature. A punishment for direct contempt by a superior court is not appealable, but may be reviewed only on a petition for certiorari on the ground of grave abuse of discretion or lack of jurisdiction on the part of the judge.
- Indirect or constructive contempt is one committed away from the court involving disobedience of or resistance to a lawful writ, process, order, judgement or command of the court, or tending to belittle, degrade, obstruct interrupt or embarrass the court. The law requires that there be a charge in writing duly filed in court and an opportunity to the person charge to be heard by himself or by a counsel.

ACTS CONSTITUTING CONTEMPT

- A lawyer may be punished for contempt of court for:
  1. Misbehavior as an officer of the court,
  2. Disobedience of or unlawful interference with the judicial proceedings,
  3. Obstruction in the administration of justice,
  4. Misleading the courts or making false allegations, criticisms, insult or veiled threat against the court,
  5. Aiding in the unauthorized practice of law, and
  6. Unlawful retention of client's funds.

MISBEHAVIOR

- A lawyer who misbehaves in the performance of his official duties or in his official transaction may be punished as for contempt.

DISOBEDIENCE

- The lawyers disobedience of or resistance to an order of the court may constitute contempt of court.
- A lawyer may not be punished for contempt In failing to do something not specified in the order.

PUBLICATION CONCERNING PENDING LITIGATION

- A publication which tends to impede, obstruct, embarrass r influence the court's in administering justice in a pending suit or proceeding, constitutes criminal contempt which is summarily punished.
- There is no contempt here there is no action pending s there is no decision which might in any way be influence by the newspaper publication.

PUBLICATION TENDING TO DEGRADE THE COURT; DISRESPECTFUL LANGUAGE IN PLEADINGS

- Contempt exist with or without a pending case as what is sought to be protected is the court itself and its dignity.
- A lawyer who uses in his pleadings words tat tend to degrade the court or bring it into disrepute commits contempt of court.

- Derogatory language of a lawyer in a pleading filed in a case against a judge before whom the case is pending is direct contempt.
- Use of disrespectful or contemptuous language against a particular judge in pleadings presented in another court or proceeding is indirect, not direct contempt as it is not tantamount to a misbehavior in the presence of or so near a court or judge as to interrupt the administration of justice.

MISLEADING THE COURT OR OBSTRUCTING JUSTICE

- Making false allegations in a pleading, offering false evidence or presenting perjured witness, misleading the court and obstructing justice constitutes contempt of court.

UNAUTHORIZED PRACTICE OF LAW

- The practice of law by one who has been disbarred or suspended therefrom constitutes contempt of court.

BELLIGERENT ATTITUDE

- Contempt of court presupposes a contumacious attitude, a floating or arrogant belligerence, a defiance of the court.

UNLAWFUL RETENTION OF CLIENTS FUNDS

- A lawyer who unjustly retains in his hands money of his client after it has been demanded may be punished for contempt as an officer of the court who have misbehaved in his official transactions.

PENALTY FOR DIRECT CONTEMPT; REMEDY

- In a direct contempt, no formal charge is necessary and the proceeding is summary in nature.
- The person adjudged in direct contempt by any court may not appeal but may avail himself of the remedies of certiorari or prohibition.

CHARGE AND HEARING IN INDIRECT CONTEMPT

- A person guilty of any of the following acts may be punished for indirect contempt:

  1. Misbehavior of an officer of a court I the performance of his official duties or in his official transactions.

  2. Disobedience of or resistance to a lawful wit, process, order, or judgement of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgement or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing the acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto.

  3. Any abuse of or any unlawful interference with the process or proceedings of a court not constituting direct contempt under Section 1 of this rule.

  4. Any improper conduct ending, directly or indirectly, to impede, obstruct or degrade the administration of justice.

  5. Assuming to be an attorney or an officer of court, and acting as such without authority.

  6. Failure to obey a subpoena duly observed.

  7. The rescue, or attempted rescue, of a person or property I the custody of an officer by virtue of an order or process of a court held by him.

- There are 2 ways by which indirect contempt proceedings may be commenced or initiated:

  1. May only be commenced or initiated by the court or the judge. (Par. 1, sec. 4)

  2. May be commenced by a party litigant or any aggrieved person filing a verified petition for the purpose. (Par.2, sec.4)

PENALTY

- The proper penalty depends upon the kind of contempt committed.
- The exercise of the power of contempt has a two-fold aspect:

  1. The proper punishment of the guilty party for his disrespect to the court or its order; and

  2. To compel his performance of some act or duty required of him by the court which he refuses to perform.

- Contempts are classified as civil or criminal.
- Contempt of, or with insult to public authority may aggravate the offense.
- To be appreciated as an aggravating circumstance, it is essential:

  1. That the crime is committed in the presence of a public authority, not a mere agent of the authorities; and

2. That the public authority is engaged in the exercise of his functions and is not the person against whom the crime is committed.

- The judgement or final order of a court in a case of indirect contempt may be appealed to the proper court as in criminal cases.

Chapter XVI: SUSPENSION AND DISBARMENT

A. IN GENERAL

Generally

- The practice of law is a privilege burdened with conditions

Authority to discipline.

- The Supreme Court as guardian of the legal profession has ultimate disciplinary power over attorneys. The court of appeals and the regional trial court may likewise exercise disciplinary power over lawyers who appear before them as counsel for litigants. Can only impose suspension or a lesser disciplinary sanction after giving the lawyer concerned the opportunity to be heard on a reasonable notice. It may recommend his disbarment. In case the penalty imposed is suspension, the lawyer shall not practice law until further action of the Supreme Court which may affirm, revoke or modify it, or cancel his name from the roll of attorneys.

Purpose of disciplinary proceedings.

- A disciplinary action is premised on the assumption that members of the bar should be competent, honorable and reliable, persons in whom courts and clients may repose confidence. The suspension or disbarment of a lawyer is intended to protect the court and the public from the misbehavior of its officers, safeguard the administration of justice from incompetence and dishonesty of lawyers, and preserve the purity of the legal profession by removing from its ranks those who have shown to be unfit and unworthy to remain in it.

Administrative cases against lawyers a class of their own

- In a criminal case, proof beyond reasonable doubt is necessary; in an administrative case for disbarment or suspension, clearly preponderant evidence is all that is required. Hence, a criminal prosecution will not constitute a prejudicial question even if the same facts and circumstances are attendant in the administrative proceedings. Laws dealing with double jeopardy or prescription or with procedure-like verification of pleadings and prejudicial questions have no application to disbursement proceedings.

Duty to discipline or protect lawyers.

- The power of the court to discipline lawyers should not, however, be exercised in an arbitrary and despotic manner. Neither should it be exercised at the pleasure of the court or from passion, prejudice or personal hostility, regulate its disciplinary power by a sound and just judicial discretion. Disciplinary proceedings confidential in nature until their final determination, pursuant to which the unauthorized publication of pending administrative charges or the proceedings based thereon, constitutes contempt of court, to safeguard the reputation of the lawyer during the pendency of the disciplinary action against him.

B. Grounds for discipline.

Generally.

- A lawyer may be disciplined for gross misconduct or malpractice or unprofessional conduct, gross misconduct as “any inexcusable, shameful, flagrant, or unlawful of justice who is prejudicial to the rights of the parties or to the right determination of a cause”. Malpractice ordinarily refers to any malfeasance or dereliction of duty committed by a lawyer. Gross misconduct, malpractice or unprofessional conduct constitutes ground for disciplinary action. The acts of misconduct prior to admission include

those which indicate that at the time the lawyer too his oath he did not possess the required qualifications for membership in the bar. The grounds for suspension or disbarment based on acts committed after the lawyer's admission to the bar are those which cause loss of moral character on his part or involve violation of his duties to the court, to his client to the legal profession and to the public.

Enumerated grounds not exclusive

- The enumerations of the statutory grounds for suspension or disbarment of a lawyer is not exclusive. The reason is that the continuous possession of good moral character is a condition for the continuous possession of a good moral character is a condition for the privilege to practice law and if that condition is broken by any act of misconduct on the part of the lawyer, the withdrawal of the privilege is justified.

Misconduct before or incident to admission.

- A lawyer may be disbarred for misrepresentation of or false pretense relative to the requirements for admission to practice. A lawyer may be suspended or disbarred for conviction of a crime involving moral turpitude or for gross immorality committed before admission, such as living adulterously with a woman or contracting a second marriage while his first marriage remains valid and subsisting. Two important requisites must concur before he may be suspended or disbarred for misconduct committed before he may be suspended or disbarred for misconduct committed before his admission. The first is that the act impute to him must be so corrupt and false as to constitute a criminal act or so unprincipled. Foreign judgment I presumed to be valid and binding in the country from which it comes, until a contrary showing, on the basis of a presumption or regularity or proceedings and the giving of due notice in the foreign forum.
- The judgment, resolution or order of the foreign court or disciplinary agency shall be prima facie evidence of the ground for disbarment or suspension. The inherent power of the court over its officers cannot be restricted. Malpractice ordinarily refers to any malfeasance or dereliction of duty committed by a lawyer.
- Canon 16. A lawyer shall hold in trust all moneys and properties of his client that may come to his possessions
  Rule 16.01 .A lawyer shall account for all money or properly 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.
- The relation between attorney and client is highly fiduciary in nature. Being such, it requires utmost good faith, loyalty, fidelity and disinterestedness on the part of the attorney.
- Lawyers who misappropriate the funds entrusted to them are in gross violation of professional ethics and are guilty of betrayal of public confidence in the legal profession.

C. Breach of duties to court

Generally

- An attorney is an officer of the court whose obligations to the court are more significant and important than his obligations to his clients.

Obstructing Justice and abuse of legal process

- A lawyer is not merely a professional but also an officer of the court and, as such, he is called upon to share in the task and responsibility of dispensing justice and resolving disputes in society.

Misleading the court

- Candor, fairness and honesty, which should characterize the conduct of a lawyer toward the court, require that the lawyer should never mislead the court.

Forum shopping.

- A willful violation of the non-forum shopping rule constitutes direct contempt of court and makes the lawyer liable administratively, such as suspension from practice of law for one year.

Preferring false charges.

- To warrant disciplinary action against a lawyer for preferring or prosecuting false charges or complaints, it must be shown that the charges are false and the lawyer knows them to be so, in spite of which he nevertheless filed them.

Introducing false evidence.

- A lawyer may be suspended or disbarred for knowingly presenting or introducing false evidence in any proceeding as his act is a violation of his oath to do no falsehood nor consent to the doing of any in court.

Blackmail; Violation of Canon 19

- Blackmail or violation of Canon 19 is a ground for disciplinary action. Blackmail is the extortion of money from a person by threats of accusation or exposure or opposition in the public prints,… obtaining of value from a person as a condition of refraining from making an accusation against him, or disclosing some secret calculated to operate to his prejudice.
- A lawyer shall represent his client with zeal within the bounds of the law, reminding legal practitioners that a lawyer's duty is not to his client but to the administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics.

Willfully disobeying court orders and disrespect to court

- A lawyer should comply with what the court lawfully requires of him. For willfully disobeying a court order, he may not only be cited and punished for contempt but mayalso be discipline as an officer of the court, as long as the procedural requirements of both proceedings have been complied with.
- The term "willful" conveys the idea of flagrant misconduct such as would indicate a disposition on the part of a lawyer as refractory in its character as to affect his qualifications and standing for the further exercise of his office as attorney
- A lawyer who openly defied the temporary restraining order of the court of appeals is guilty of violation of his duty to observe and maintain the respect due to the court of justice and judicial officers. A court's resolution is not to be construed as a mere request, nor should it be complied with partially, inadequately, or selectively.
- The court defined gross misconduct as "any inexcusable, shameful, flagrant, or 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 of the parties or to the right of determination of a cause."
- Disbarment proceedings are matters of public interest and the only basis for the judgment is the proof or failure of proof of the charges. To permit lawyers to resort unscrupulous practices for the protection of the supposed right of their clients is to defeat on of the purposes of the state – the administration of justice.

Using vicious or disrespectful language

- The use by a lawyer of vicious, intemperate, abrasive, threatening, or disrespectful language against the judge constitutes direct contempt as well as a violation of the lawyer's oath and a transgression of the Code of professional responsibility.
- Defamatory words are to be taken in the ordinary meaning attached to them by impartial observers; lack of intention provides no excuse from liability.
- Respect for the judicial office should always be observed and enforced. Nor does the fact that the lawyer apologized to the judge and the latter

expressed satisfaction thereto erase the poisonous effects of the defamatory words used.

Continuing to practice after suspensions

- A lawyer may be disbarred for continuing to practice after his suspension from the practice of law.

D. Breach of duties to client.

Generally

- A lawyer owes his client the duty of entire devotion to his genuine interest undivided allegiance, loyalty, fidelity and absolute integrity.

Negligence in the performance of duties.

- The failure to exercise due diligence or the abandonment of the client's cause makes the lawyer unworthy of the trust which the client has reposed him. Mere negligence or inattention which produces no pecuniary damage to the client may only justify reprimand or censure except when the breach of duty to client also constitutes a gross violation of obligation to the court, in which case a severer sanction, such as suspension from the practice of law, may be warranted.
- A member of the legal profession owes his client entire devotion to his genuine interest, warm zeal in the maintenance and defense of his rights.
- *Ignorance of law of lawyer as ground for discipline.*
- Reprimand, fine, or suspension may be imposed against erring lawyers for negligence in the performance of duties to their clients.

Employment of unlawful means

- 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 charges to obtain improper advantage in any case or proceedings.

Deceit or misrepresentations

- A lawyer may be suspended or disbarred for deceit or misrepresentation to the prejudice of or as a means to defraud his client.

Representing adverse interests and revealing client's secrets.

- In the absence of written consent on the part of the clients concerned, a lawyer may not represent conflicting interests without being disciplined for such misconduct.
- A lawyer who accepts employment as a lawyer from his client's adversary in a case involving related subject matter is guilty of representing conflicting interests and has been meted the penalty of suspension from practice for two years.
- A lawyer may also be suspended or disbarred for revealing the secrets of his client learned by him in the professional capacity.

Purchasing client's property in litigation

- The law prohibits a lawyer from purchasing his client's property in litigation.

Failing to account or misappropriating client's property

- The special relation which exists between an attorney and his client, one which is highly fiduciary in its nature and of a very delicate, exacting and confidential character, requires the lawyer promptly account for the money or property received by him on the client's behalf.
- A lawyer shall account for all money or property collected or received for or from the client and warrants sever sanction, such as disbarment.
- The lawyer's failure upon demand to return to his client the funds or property held by him on his behalf gives rise to the presumption that he has appropriated the same for his own use to the prejudice of an in violation of the trust reposed in him by his client.
- The conversion of the client's property, as a ground for disciplinary action, presupposes fraudulent intent on the part of the lawyer.

Collecting unreasonable fees

- A lawyer may be disciplined for collecting exorbitant fees for his professional services, applying the client's money to pay his unreasonable claim for work done without the

client's consent or refusing to return to his client what he collected as payment for his unprofessional services which he never rendered.

- What amounts to an unreasonably exorbitant fee depends upon the circumstances of each case.

Acting without authority

- A lawyer can bind his client without special power from the latter only in matters or procedure.

Willfully appearing without being retained

- A lawyer may not represent a litigant without authority from the latter or from the latter's representative or in the absence thereof, without leave of court.
- The lawyer's appearance for a party without the latter's authority must be willful, corrupt or contumacious in order that he may be held liable therefore.

D. Breach of duties to the bar

Unethical conduct, generally

- A lawyer may be disciplined for gross violation of the canons of the legal profession or for unprofessional conduct.

Defaming fellow lawyers

- It is unethical for a lawyer to use improper and objectionable language against another lawyer or to accuse him wantonly and maliciously of a serious misconduct In the absence of reasonable cause.

Communicating with adverse party

- 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 only deal with his counsel.

Encroaching upon business of another

- Efforts, direct or indirect, in any way to encroach upon the professional employment of another lawyer, may render the lawyer disciplinarily liable for unethical conduct.

Soliciting business

- Solicitation by a lawyer of cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice sufficient to warrant the lawyer's reprimand, suspension from the practice of law or removal from office. Malpractice ordinarily refers to any malfeasance or dereliction of duty committed by a lawyer

Advertising

- A lawyer may be disciplined for writing letters offering his services to prospective clients, sending circulars to the public concerning his fields of specialization. Announcing his skills as a lawyer in a newspaper or publication or in general, advertising his talents as a merchant advertises his wares.

Cooperating in illegal practice of law

- A layman or a disbarred or suspended lawyer many not practice law without being held liable for contempt of court.

Non-payment of IBP dues

- Membership in the integrated bar of the Philippines is a condition precedent for the practice of law and for maintaining his name in the roll of attorneys; faith fully pay the membership dues and other special assessments.

E. Other grounds for discipline.

Non-professional misconduct, generally

- A lawyer may not be suspended or disbarred, and the court may not ordinarily assume jurisdiction to discipline him, for misconduct in his non-professional or private capacity; so gross a character as to how him to be morally unfit for the office and unworthy of the privilege which his license and the law confer on him, the court may be justified in suspending or removing him from the office of attorney.

Gross immorality

- Immoral conduct is that conduct which is as willful, flagrant, or shameless as to show indifference to the opinion of good and responsible members of the community.
- Lawyers must maintain a high standard of legal proficiency, as well as morality including honesty, integrity and fair dealing.
- Lawyers must ensure the faith and confidence of the public that justice is administered with dignity and civility.
- A lawyer is expected at all times to uphold the integrity and dignity of the legal profession by faithfully performing his duties to society, the bar, to the courts and the clients.
- The court may disbar or suspend a lawyer for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, probity and good demeanor, thus proving unworthy to continue as an officer of the court.
- As officers of the court, lawyers must not only in face 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.
- The power to disbar or suspend ought always to be exercise on the preservative and not on the vindictive principle, with great caution and only for the most weighty reasons and only on clear cases of misconduct which seriously affect the standing and character of the lawyer as an officer of the court and member of the bar.

Conviction of crime involving moral turpitude

- "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 t society, contrary to the accepted rule of right and duty between man and man.
- No moral qualification for bar membership is more important than truthfulness.
- When lawyers are convicted of frustrated homicide, the attending circumstances – not the mere fact of their conviction – would demonstrate their fitness to remain in the legal profession.

Promoting to violate or violating penal laws

- A lawyer may be suspended or disbarred for promoting an organization designed to violate or evade the law against crime with knowledge of its object, accepting an offer to sell prohibited drugs, engineering a plan to defraud others or assisting a client in carrying out a dishonest scheme or advising him to do something in violation of law, good morals or public policy.

Misconduct in the discharge of duties as a public officer

- A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct and merits his suspension form the practice of law for one year.
- The rule that malfeasance or misconduct by a government official in the discharge of his official duties, which constitutes of a violation of his oath as a lawyer or of the code of professional responsibility, will subject him to disciplinary action, such as disbarment, does not apply to impeachable official during his incumbency would in effect be to remove him from office by other than impeachment and thus to circumvent and run afoul of the constitutional mandate

Commission of fraud or falsehood

- A lawyer may be suspended or disbarred for committing fraud, deceit or falsehood in his private dealings.
- A lawyer who notarized a deed which he knew the same was a falsified document and the person who singed was made to appear ad having appeared before him, so as to defraud another person, was guilty of falsification which justified his disbarment. A lawyer who notarized a document at a time when he had no commission or when his commission as notary public had expired is guilty of falsehood, meriting his

suspension from the practice of law for three years.

Misconduct as notary public

- A notary public exercises duties which call for carefulness and faithfulness.
- A lawyer may also be disciplined for notarizing a document in the absence of the affiant or for not disclosing on its face the fact that the person who singed it is an authorized agent.
- Respondent must accept the consequences of his professional indiscretion.

Chapter XVII: Procedure for discipline and reinstatement

A. Investigation of charges

Nature of proceedings

- A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant. It involves no private interest. The complainant or person who called the attention of the court to the attorney's misconduct is in no sense a party and has generally no interest in its outcome except as all good citizens may have in the proper administration of justice. It affords no redress for private grievance.
- A disciplinary action is in reality an investigation by the court into the misconduct of its officer or an examination in this character
- Desistance or withdrawal of the disbarment case does not exonerate respondent.
- A proceeding for suspension or disbarment is not in any sense a civil action where the complainant is a plaintiff and the respondent lawyer is a defendant.
- A complaint for disbarment or suspension is imprescriptible.

Proceedings are confidential

- A disciplinary proceeding against an attorney is a confidential in nature until its final determination.
- It is to enable the court to make its investigation free from any extraneous influence or interference. It is 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.

Who and how instituted

- proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the integrated bar of the Philippines or upon verified complaint of any person.
- All charges against Justices of the Court of Appeals and the *Sandiganbayan*, and judges of the Court of tax appeals and lower courts, even if lawyers are jointly charged with them, shall lower courts, even If lawyers are jointly charged with them, shall be filed with the supreme court.
- The right to institute a disbarment proceeding is not confined to clients nor is it necessary that is the person complaining suffered injury from the alleged wrong.
- Since the court is vested exclusively with the power to exclude unworthy person from the practice of law, it cannot abdicate such constitutional duty in the same manner that it cannot unilaterally renounce jurisdiction legally conferred upon it.

Action on, and investigation of, complaint

- In administrative complaints for disbarment or suspension against lawyers, the complainant must specify in the affidavit-complaint the alleged secrets or confidential information disclosed or will be disclosed in the professional employment.
- This means that there should be no ex parte investigation. The procedures outlined by the rules are meant to ensure that the innocents are spared from wrongful condemnation and that only the guilty are meted their just due.
- Complaints for disbarment, a formal investigation is a mandatory requirement which may not be dispensed with except for valid and compelling reasons.

Report of investigator and decision by board of governors

- The IBP board shall promulgate its decision within a period not exceeding thirty days from the next meeting of the board following the submission of the investigation report. If the decision is for exoneration of the respondent or the dismissal of the complaint, or the imposition of disciplinary sanction of less than suspension or disbarment, such as admonition or reprimand, the Board's decision becomes final unless upon petition of the complainant or other interested party filed with the supreme court within fifteen days from notice of the board's resolution, the Supreme Court orders otherwise
- The complainant may file a petition for review with the supreme court within fifteen days from receipt of the ruling of the IBP board exonerating the respondent or dismissing the complaint, or the imposing disciplinary sanction of less than suspension or disbarment, such as admonition or reprimand, otherwise the ruling becomes final.

Res ipsa loquitur

- Where the facts of record sufficiently provide the basis for the determination of a lawyer's administrative liability, he may be disciplined or disbarred by the Supreme Court without further inquiry or investigation into the matter under the principle of *res ipsa loquitur*

Defenses generelly

- A respondent lawyer may avail of only such defenses are consistent with truth and good faith.
- He must meet the issue and overcome the evidence against him. He must show proof that he still maintains that degree of morality and integrity which at all times is expected of him.
- A prescriptive period for the filing of administrative complaints
  against lawyers, should be struck down as void and of no legal effect for being ultra vires.
- His conviction is not necessary to hold the lawyer administratively liable because the two proceedings and their objectives are different and it is not sound public policy to await the final resolution of a criminal case before the court act on a complaint against a lawyer, as it may emasculate the disciplinary power of the court.
- Besides, it is not sound judicial policy to await the final resolution of a criminal case before a complaint against a lawyer may be acted upon; otherwise, this court will be rendered helpless from applying the rules on admission to and continuing membership in the legal profession during the whole period that the criminal case is pending final dispoistion when the objectives of the two proceedings are vastly disparate.

Executive pardon

- An absolute pardon by the President is one that operates to wipe out the conviction as well as the offesne itself, and the grant thereof in favor of a lawyer is ab ar to a proceeding for disbarment against him based solely on the commission of such offense. An absolutepardon subsequently granted to a lawyer who had previously been disbarred for conviction of a crime does not automatically entitle him to reinstatement to the bar.

Desistance of complainant

- The desistance of complainant or his withdrawal of the charges against a lawyer does not deprive the court of the authority to proceed to determine the matter.
- Desistance or withdrawal of the disbarment case does not exonerate respondent; disciplinary proceedings involve no private interest and afford no redress for private grievance.

Privilege communications

- Lawyer may properly plead the doctrine of absolute privilege as a defense. The rule is that statements which relevant, perinent and material to the cause, made in the course of judicial proceedings, are absolutely privileged, which insulates the lawyer from liability therefor.

Presumption; burden of proof; evidence required

- The burden of proof rests upon the complainant to overcome the presumption; clear, convincing and satisfactory proof.

- In disciplinary proceedings agaisnt members of the bar, only clear preponderance of evidence is required to establish liability.
- The failure of the lawyer to answer the administrative complaint does not amount to an admission of the allegations therein made. The complainant still hast to prove the charge.

Modifying circumstances

- The extent of disciplinary sanction which the court may impose against an erring lawyer may depend upon the attendance of mitigating or aggravating circumstances.
- The circumstances that may be considered in mitigation of the offesnse committed by a lawyer include good faith, want of intention to commit a wrong, lack of material damage to the complaining witness, desistance of complainant, youth and inexperience in the bar, error in judgement, honest and efficient service in various government positions.
- Matters in aggravation of the offesne include abuse of authority or of the attorney client relationships, having sexual interourse with the lawyer's relative, making the institituion of marriage a mockery, in a charge of gross immorality.

Judgement

- The supreme court decides the disciplinary action on the basis of the evidence adduced during the investigation conducted for the purpose.

Dismissal of case

- In the absence of convincing or clearly preonderant evidence, the disbarment case against the respondent should be dismissed.

Disciplinary sanctions; basic considerations

- The question as to what disciplinary sanction should be imposed against a lawyer found guilty of misconduct requires consideration of a number of factors. The primary purpose of disciplinary proceedings- to protect the administration of justice by requireing that hose who exercise this important fucntion shall be competent, honorable and reliable, men in whom courts and clients may repose confidence – should be taken into account by the court in the exercise of its discplinary power.
- The court must consider that the primary purposes of disciplinary proceedings are to protect the public; to foster public confidence in the bar; to preserve the integrity of the profession; and to deter other lawyers from similar misconduct.
- The determination of whether an attorney should be disbarred or merely suspended fo ra period involved the exercise of sound judicial discretion, taking int oaccount the circumstances of each case.
- The suspension from the practive of law is correctional in nature.
- Fine is a sort of a warning that the lawyer should be more careful in the discharge of his duties. Censure or reprimand is usually meted out for an isolated act of misconduct of a lessser nature. It is also imposed for some minor infraction of the lawyer's duty to the court or the clint. Admonition is a gentle and friendly reproof, a mild rebuke, a warning.

Effects of susupension or disbarment

- A judgement of suspension or disbarment is self-executory. Cannot practice law without being held liable for contempt of court.
- The disbarment of a lawyer who hold a government office which requires membership in the bar as an indispensable qualification will justify his dismissal from such office.
- A judgement of suspension or disbarment is always subject to change or modicfication by the court, regardless of the perio that has lapsed.

Reinstatement

- The supreme court has the exclusive authority to reinstate a disbarred or indefinitely suspended lawyer to the office of attorney-at-law. Constitutional prerogative to issue rules and regulations concerning the admission to the practice of law.

- Judgement does not become final not withstanding the lapse of several years from its promulgation as it may be reopened or reconsidered by the supreme court upon proper petition and satisfactory evidence.

Matters taken into account

- In a petition for reinstatement, the petitioner must allege and prove that he is of such good moral character acquired through positive efforts, honorable dealings and moral reformation as to be a fit and proper person to practice law, and posesses such metnal qualitifacation as to enable him to disscharge his duties properly.
- The quantum of evidence necessaru for reinstatement is the same as that for admission to the bar, ecept that the court, when the circumstances so warrant, may require an applicant to present additional prrof of his qualifications.
- The court will take into consideration the applicant's character and standing prior to the disbarment, the nature and character of the misconduct for which he was disbarred, his conduct subsequent to disbarment, time htat has elasped between disbarmetnt and the application for reinstatemtn and the circumstance that he has been sifficiently punished and discplined.
- Applicant's appreciation of the significance of his dereliction and his assurance that he now possess the requisite probity and integrity necessary to guarantee that he is worthy to be restored to the practice of law; as well as the favorable endorsement of the IBP as well as the local government officials and citizens of his community and the pleas of his loved ones.
- An absolute pardon extended to a lawyer after his disbarement will not automatically entitle him to reinstatement. He should still show, by evidence aside from the absolute pardon, that he is now a person of good moral character and a fit and proper person to practice law.
- The court, in reinstating a lawyer, may impose certain conditions on his re-admission.

Effect of reinstatement

- The reinstatement of a disbarred or indefinitely suspended lwyer to the office of attorney-at-law is a recognition of his moral rehabilitation and mental fitness to practice law.