

ON "ETHICS AMONG JUDGES"

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THE first issue of the Lawyers Journal this year¹ carried an editorial entitled "Ethics Among Judges." The writer of said editorial advanced two propositions:

First: "Judicial Ethics", a subject widely known in American law schools, for "reasons and causes not yet explained is not taught in our law schools and colleges."

Second: It was unethical for a district judge, upon returning to his court, to reverse totally an order of the vacation judge who temporarily presided over the court, for such action showed lack of consideration and respect for the vacation judge.

Far from seeking a quarrel with the writer of the editorial but impelled, rather, by a desire to "consider my own acquired knowledge but as a torch flung into an abyss, making the darkness visible"² this paper was resolved into being by this writer.

Judicial Ethics is a subject taught in almost all of the law schools in the country. All the latest textbooks dealing with the ethics of the legal profession are entitled "Legal and Judicial Ethics" and in addition to devoting chapters to Judicial Ethics include among their appendices the "Canons of Judicial Ethics."³ In truth, law professors assigned to teach Legal Ethics devote needed emphasis on Judicial Ethics in order to complete the preparation of candidates for the Bar as examinations in "Legal Ethics and Practical Exercises" have time and again included questions and problems dealing with Judicial Ethics.⁴

Since 1946, all law graduates have been taught, as a part of their study of positive law, the Canons of Judicial Ethics. The Canons of Judicial

Ethics adopted by the American Bar Association in 1924 were, with changes intended to cope with local conditions, proposed by the Philippine Bar Association and approved by the Judges of the Court of First Instance of Manila and of the defunct People's Court. Thereupon the Secretary of Justice by Administrative Order No. 162 of August 1, 1946, adopted the Canons of Judicial Ethics "for guidance and observance by all judges under the administrative supervision of the Department of Justice."⁵ And, reference to the said Canons of Judicial Ethics has already been made by members of the Supreme Court in a case where the Solicitor General sought in a petition for a writ of prohibition to have a judge of the defunct People's Court declared disqualified to sit in a division of said court.⁶ It is, therefore, hardly accurate to complain that our law schools and colleges, for reasons and causes yet unexplained, do not teach the subject of Judicial Ethics. The complaint is an unwarranted criticism of our law schools and colleges in general and of our law teachers in particular.

The editorial subject of comment clamored that "there should be more ethics among judges themselves." But the basis for such complaint by the writer of the editorial was too narrow and singular. From a single instance — the reversal by the district judge of an order on a question of law rendered by the vacation judge — the general accusation that our trial judges are wanting in ethics has been voiced. A reading of the article entitled "Two Judges Disagree on a Procedural Question"⁷ which follows the editorial under consideration leaves no doubt that the district judge alluded to in the editorial, despite the use of the masculine gender, was Judge Cecilia Muñoz Palma and the vacation judge, Hon. Felix R. Domingo.

The case of Flora Blas de Buenaventura v. Rosalina Santos, et al.,⁸ which brought to the fore the *disagreement* referred to in the aforementioned article was brought to the Court of Appeals as an original petition for mandamus seeking to declare null and void an order issued by Judge Cecilia Muñoz Palma dismissing an appeal taken by the petitioner and to receive an order of Judge Felix R. Domingo approving the appeal bond and the record on appeal and giving due course to the appeal of petitioner. Briefly, the facts that brought about the mandamus proceedings were as follows: Special Proceedings No. 2524 of the Court of First Instance of Rizal was commenced by Rosalina Santos seeking the probate of the will of the late Maxima Santos Vda. de Blas. Flora Blas de

5 MALCOLM, *supra*, at 199.

6 People v. Judge Lopez, G.R. No. L-1243, April 14, 1947.

7 The article appears on page 2 of the Journal. The article which appears to have been written by Atty. Benjamin M. Tongol is presented in the form of a comment on the case of Flora Blas de Buenaventura v. Rosalina Santos, et al., CA-GR No. 25075-R.

8 The decision is reported in full in the same issue of the Journal (pp. 30-32). Atty. Vicente J. Francisco, Editor and Publisher of the Lawyers Journal, appeared as counsel for petitioner Flora Blas de Buenaventura.

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2 HOFFMAN'S FIFTY RESOLUTIONS IN REGARDS TO PROFESSIONAL DEPARTMENT, RES. NO. 34.

3 MALCOLM, LEGAL AND JUDICIAL ETHICS (1949); MARTIN, LEGAL AND JUDICIAL ETHICS (1958); ALBUERO, ETHICS AND THE LAWYER (1959). Significantly Francisco's Legal Ethics does not touch Judicial Ethics.

4 Questions Nos. 2 and 7, 1938; Questions Nos. 2 and 4, 1949.

Buenaventura and Justo Garcia filed oppositions to the probate of the will. Flora Blas de Buenaventura, however, subsequently withdrew her opposition but the hearing on the probate of the will continued in view of Justo Garcia's opposition. Judge Gustavo Victoriano who heard the petition allowed the will and as no appeal was taken from his order, the same became final. Flora Blas de Buenaventura then filed a motion praying that the executrix, Rosalina Santos, be authorized and/or directed to deliver to her the fishpond given her as a specific legacy in the aforementioned will. This was opposed by the executrix on the ground that the will contained a provision declaring as forfeited whatever hereditary rights an instituted heir, who opposes the probate of the will, may have. Judge Victoriano denied the motion and sustaining the opposition declared the specific legacy in favor of Flora Blas de Buenaventura forfeited in favor of the residuary heirs who did not oppose the probate of the will. Counsel for Flora Blas de Buenaventura moved for a reconsideration of Judge Victoriano's order but the motion for reconsideration was also denied. Following the receipt of the order denying the motion for reconsideration, Flora Blas de Buenaventura, through counsel, filed a motion for additional time within which to file her record on appeal. The motion for extension of time to file the record on appeal made no mention of extending the period for the filing of her appeal bond. The motion was referred to Judge Felix R. Domingo, a vacation judge, who granted the same. Within the extended period but either two or four days after the expiration of the original period of appeal, Flora Blas de Buenaventura filed her appeal bond together with a motion for its approval. Three days before the expiration of the extended period, Flora Blas de Buenaventura filed her record on appeal. The approval of both the appeal bond and the record on appeal was opposed by the executrix who maintained that the extension granted for filing the record on appeal did not include the period for filing the appeal bond and thus, the appeal not having been duly perfected, the order subject of the intended appeal had become final and executory. The executrix also filed a motion to dismiss the appeal. On the date set for the hearing of the motion, the prospective appellant asked for and was given time within which to file an opposition thereto, but Judge Domingo, a week before the opposition was due, issued an order approving the record on appeal and the appeal bond, but before the records of the case could be elevated to the appellate court, the executrix, through counsel, filed a motion for the reconsideration of the aforementioned order of Judge Domingo. This motion for reconsideration was submitted for resolution to Judge Cecilia Muñoz Palma. After examining the doctrine laid down by the Supreme Court in *Leoncia Reyes v. The Court of Appeals and Enrique Bautista*,⁹ *De Remorin, et al., v. Jose Valles*¹⁰ and other cases, Judge Palma concluded

9 74 Phil. 37 (1942).
10 49 O.G., 1846 (1953).

that the grant of an additional period for the presentation of the record on appeal did not include the filing of the appeal bond as such extension, if any, must be express and cannot be presumed. Accordingly, Judge Palma ruled that inasmuch as the extension of the period to file the record on appeal of Flora Blas de Buenaventura did not carry with it the extension of the time for the filing of her appeal bond, the order of Judge Domingo approving the appeal bond and record on appeal should be, as it was thereby, set aside, and the appeal of said Flora Blas de Buenaventura dismissed.

The act of Judge Palma in reversing the order of Judge Domingo is what has been decried by the writer of the editorial under comment as wanting in ethical considerations.

"Ethics" has been defined as the science of moral duty.¹¹ The sum of the aggregate of the rules of right living.¹² The ethics of the legal profession is usually referred to as "legal ethics." The term has been used to denote that set of moral principles by which the conduct of the members of the legal profession is controlled.¹³ It embraces every phase of morals and manners pertaining to the two branches of the legal profession — The Bench and the Bar — their relation to the administration of justice.¹⁴ Judicial ethics may, therefore, be defined as that branch of legal ethics which treats of the duties of a judge in respect to his behaviour, in relation to the State and the citizens, the litigants, the principles of law, the practitioners of law before his court, and the witnesses and court officials who aid him in the administration of his functions.¹⁵ Admittedly, legal ethics is not an exact science for it has its roots in the social conditions of each succeeding generation and widely differing localities or communities, and the changing conceptions of what constitutes professional service or duty.¹⁶ Therefore, to determine whether the actuation of a judge is ethical or not, the test is not the parallelism between such actuation and those of a moralist, but whether such actuation runs faithful to the traditional limitations as well as aspirations of the judicial office.

"The ethical test of a judge is not whether his judgments run parallel to the judgments of a moralist, but whether the judge administers his office true to its traditional limitations as well as its aspirations."¹⁷

The judicial office exists for one solemn end . . . to promote justice and thus aid in securing the contentment and happiness of the people.¹⁸ This end alone places on a judge tremendous responsibility. Being an arbiter of the law, people seek him to apply the law in their causes. They expect

11 Webster's New International Dictionary.
12 MALCOLM, *op. cit. supra* note 3, at 8.
13 WARVELLE, LEGAL ETHICS 1.
14 COSTIGAN, LEGAL ETHICS 1.
15 Canons of Judicial Ethics, Canon No. 1.
16 JESSUP, THE PROFESSIONAL IDEALS OF A LAWYER 6.
17 Wyzanski, A Trial Judge's Freedom and Responsibility, 65 HARV. L. REV. 1281 (1952).
18 Canons of Judicial Ethics, Canon No. 2.

him to do it intelligently and impartially.¹⁹ Since he is to administer the law and apply it to the facts, he should be studious of the principles of law and diligent in endeavoring to ascertain the facts.²⁰ To merit the confidence of the citizenry, the judge must be learned. He owes it to the dignity of the court over which he presides, to the legal profession to which he belongs and to the public who depend on him, to know the law which he is called upon to interpret and to apply. The people who come to his court have a right to expect that he shall keep abreast of the changes of the law, the latest decisions or precedents.²¹ But mastery of the law and legal principles is not enough, the judge, having determined what is right under the law, must also be fearless in his pursuit to render justice.

He should be above public clamor and the consideration of personal popularity.²² He should not be afraid to displease any man or interest or power, but should administer the law without fear of displeasing a long-time friend, a former benefactor, or even a brother. In the words of the great Rufus Choate, a truly great judge is one who, having arrived at a conviction as to the merits of a case, "will not respect persons in judgment. He shall know nothing about the parties; everything about the case. He shall do everything for justice; nothing for himself; nothing for his friend; nothing for his patron; nothing for his sovereign. If on one side is the executive power, and the legislature, and the people — the sources of his honor, the giver of his daily bread — and on the other hand, an individual nameless and odious, his eye is to see neither great nor small, attending only to the 'trepidations of the balance'. If a law is passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it, in which the whole community is on one side and an individual nameless and odious on the other, and he believes it to be against the Constitution, he must so declare it, or there is no judge."²³

Obedience to the law is a recognized limitation on the actuations of a judge. A judge should be mindful that his duty is the application of general law to particular instances, that ours is a government of laws and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may become a precedent unsettling accepted principles and may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of law itself, remembering that

19 MARTIN, *op. cit. supra* note 3, at 179.

20 MALCOLM, *op. cit. supra* note 3, at 200.

21 Canons of Judicial Ethics, Canon No. 31.

22 *Id.*, Canon No. 13.

23 JESSUP, *op. cit. supra* note 16, at 56.

he is not a depositary or arbitrary power, but a judge under the sanction of law.²⁴

In reversing totally the order of vacation Judge Domingo, no breach of judicial ethics was committed by district Judge Cecilia Muñoz Palma. Her actuation was in keeping with the highest traditions and aspirations of the judiciary. Permit us to take a second look at the comparison made of the two orders which according to the editorial under comment revealed a breach of judicial ethics on the part of the district judge.

Judge Palma's order identified the general law, recognized the weight of precedent and expressed its binding mandate over the court presided by her.

"In the case of Leoncia Reyes vs. The Court of Appeals and Enrique Bautista, the Supreme Court, speaking through the Hon. Justice Roman Ozaeta after finding that while the notice of appeal and the record on appeal were filed within the reglementary period, the appeal bond was filed one day late, held:

"Second. The filing of an appeal bond is an indispensable prerequisite to the perfection of an appeal. Thus, section 3 of Rule 41 provides that 'appeal may be taken by serving upon the adverse party and filing with the trial court within thirty days from notice of order or judgment, a notice of appeal, an appeal bond, and a record on appeal.' The appeal bond shall be in the amount of ₱60.00 unless the court shall fix a different amount, or unless a supersedeas bond is filed. (Sec. 5, *id.*) 'Where the notice of appeal, appeal bond, or record on appeal is filed but not within the period of time herein provided, the appeal shall be dismissed.'"

x x x

"When a party prays only for the extension of the period to file the record on appeal and the petition is granted, does that necessarily extend to the time for filing the appeal bond? We believe no. The decision of our Supreme Court in the case of De Remorin, et al. vs. Jose Valles, 49 O.G., p. 1846 is controlling on the matter. The facts in said case are similar to the one at bar, and there it was expressly held that the grant of an additional period of 20 days for the presentation of the record on appeal did not include the filing of the appeal bond as such extension, if any, must be express and cannot be presumed."

x x x

"Notwithstanding the existence of a dissenting opinion in the above-mentioned case, the Decision rendered therein binds this Court especially when its philosophy finds support in the basic principle that the statutory requirements for perfecting an appeal are compulsory and mandatory in nature and are so provided for their strict compliance by party-litigants."

From the above quoted portions of Judge Palma's order, it is quite patent that she was aware of the latest decisions of the Supreme Court on the legal question at issue, that she believed the court bound by precedent, and that she was paying due regard to the integrity of our system of law.

24 Canons of Judicial Ethics, Canon No. 18.

On the other hand, from the order of Judge Domingo, we note that the said vacation judge did not only refuse to follow precedent, but criticized the same as if it were the opinion of a single judge and not that of a sufficient majority of the Supreme Court. The following quotations are from Judge Domingo's order:

"With all due respect to the learned justice,²⁵ this Court finds itself unable to agree with him because in its opinion, his holding is not supported by reason or authority; it is in conflict with prior decisions of the Supreme Court; it is a single decision which has not been followed and applied to subsequent cases²⁶ and is plainly productive of injustice."

x x x

"... the reasons that compel this Court to disagree with the aforesaid decision of Mr. Justice Pablo."

x x x

"The Justice says that the extension for the period for filing a record on appeal cannot include the period for filing the appeal bond because the filing of an appeal bond does not require as much time as does the filing of a record on appeal.

"This Court cannot see what relevancy this observation can have on the proposition that when the period to perfect an appeal has been extended for the filing of the record on appeal, such extended period may also apply to the appeal bond, because the Rules of Court gives only one and the same period for filing both. Anyhow, such observation is not entirely correct."

x x x

"The second and last reason advanced by Mr. Justice Pablo is the following:

"La concesion de plazo adicional no se deduce, ni se presume; tiene que ser expresa. La orden apelada concedio plazo adicional para la presentacion del expediente de apelacion y nada mas; Suponer que tambien concedia plazo adicional para la presentacion de la fianza de apelacion es darle sentido que no lo tiene."

"This argument, in the mind of this Court, is untenable because it presupposes that there is one period for filing the record on appeal and another and different period for filing the appeal bond and that, therefore, the extension of one of the periods does not include the other, which is completely erroneous because the Rules of Court provides for only one period — 30 days — for filing the appeal bond as well as for filing the record on appeal and the notice of appeal. (See Sec. 3, Rule 41)."²⁷

From the above quotations, there can be no question that it was the actuation of the vacation judge, rather than that of the district judge, which was liable to invite "public clamor or consideration of personal popularity."²⁸ The order of the district judge was one of conformity,

²⁵ Mr. Justice Guillermo Pablo with whom Chief Justice Paras, Justices Feria, Bengzon, Jugo, Bautista Angelo and Labrador concurred.

²⁶ The statement is not accurate. The doctrine in the *Remorin v. Valle* case was followed and reiterated in the cases of *Mallare v. Panahon*, et al. 52 O.G. 219 (1955); *Sinbengco v. Arellano*, 52 O.G. 6167 (1956); *Tiongco v. Arca*, G.R. No. L-8612, November 29, 1957; *Juco v. Surtida*, CA-GR No. 19623-R, June 10, 1957.

²⁷ The argument is fallacious. It is highly doubtful whether the extension of time within which to file an appeal bond could ever be interpreted to carry with it extension of the time to file the record on appeal.

²⁸ Canons of Judicial Ethics, Canon No. 13.

of obedience, of submission to the opinion of the highest court. That of the vacation judge, by its own admission, one of dissent, departure from precedent, and the assertion of a better understanding of the reason and philosophy behind a legal provision than that of a sufficient majority of the membership of the Supreme Court. Certainly, after examining the orders of both district and vacation judges, it is that of the latter which would seem to run counter to the following Canon of Judicial Ethics, to wit:

"A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Therefore, except in case of conscientious difference of opinion on fundamental principle, dissents should be discouraged."²⁹

A judge of the Court of First Instance must at all times be aware of his position in the judicial hierarchy. Notwithstanding the existence of a dissenting opinion, the decision of the requisite majority of the Supreme Court is still the decision of the highest court of the land to which a lower court must pay obeisance. The judge's sense of modesty or sense of propriety should moderate his sense of importance or vanity. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgment, or spectacular or sensational in the conduct of his court.³⁰ Should the trial judge hold a view different from that of a higher court, he may respectfully state in his accompanying opinion such reservation as he may have, but he must still follow precedent.³¹

Judge Domingo justified his conclusion that the extension of the time for the filing of the record on appeal carried with it the extension of the period for filing the record on appeal by invoking the rule of liberality in the interpretation and construction of the Rules of Court. Such justification would have been sufficient if there had been no previous pronouncements of the Supreme Court as to the nature of the provisions of the Rules of Court prescribing the requisites for the perfection of an appeal and the true nature of the right to appeal. As aptly noted by Judge Palma —

"There can be no question that in this jurisdiction appeal is a purely statutory right for which reason in numerous cases it has been consistently held by our highest tribunal that the provisions of the Rules of Court governing appeals are compulsory in nature and failure to comply with any of the requirements therein provided will give rise to the dismissal of the appeal."³²

²⁹ *Id.*, Canon No. 17.

³⁰ *Id.*, Canon No. 19.

³¹ *Brown & Sharpe Mfg. Co. v. Kar Engineering Co.*, 59 F. Supp. 820; *Ashley v. Keith Oil Corp.*, 73 F. Supp. 37, 52-53.

³² This principle has been stated and reiterated in the cases of *Salva v. Hon. Judge Palacio*, et al. G.R. No. L-4247, Jan. 20, 1952; *Espartero v. Ladaw*, et al., G.R. No. L-5181, Feb. 24, 1953; *Tiongco v. Hon. F. Arca*, et al., G.R. No. L-8612, Nov. 29, 1957; and others.

The insinuation in the editorial under consideration is that it would have been better and keeping with the ethics of the judiciary if Judge Palma had merely maintained the order of Judge Domingo. Thus, the editorial said:

"The counsel for the party adversely affected by the order of the district judge succeeded in securing a favorable judgment from the Appellate Court to the discomfiture of the district judge himself. Such incident could have been avoided, if the district judge had shown more consideration and respect for the vacation judge who occupied his place during his absence. In other words, there should be more ethics among judges themselves."

But was Judge Palma really free to ignore precedent in order to accommodate the opinion of the vacation judge? Was conformity to the order of the vacation judge, considering the previous decisions of the Supreme Court which Judge Palma found binding on her court, the ethical thing to do?

"From the day he takes his seat the trial judge is aware that while he has more personal discretion than books reveal, he too is hemmed in by a developing tradition of impersonal usages, canons and legitimate expectations. While he has choice, he cannot exercise it even to his own satisfaction unless it is disciplined according to standards."³³

There is no question of deference where the order departed from comes from a judge of equal rank or a court not in the direct line of authority. And if the precedent is from a judge sitting in one's own court, appropriate amenities alone will not justify deference, but the profounder considerations of equality in the treatment of litigants control.³⁴

There was nothing unethical in Judge Palma's reversal of Judge Domingo's order. There could not be anything contrary to the ethics of the judiciary when one judge disagrees with the opinion of another of the same rank and grade on a pure question of law.

³³ Llewellyn, *Law and the Social Sciences*, 62 HARV. L. REV. 1286 (1949).

³⁴ Wyzanski, *op. cit. supra* note 17, at 1299.

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