Problem Areas In Legal Ethics

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I will discuss *Problem Areas in Legal Ethics* and will deal with real problems in the practice of law. Now let us begin with some general propositions which we often hear in a regular legal ethics class.

The first is the pronouncement that it law is not a trade or business but a profession. And since law is a profession, the motivation for practicing law should not be to earn or to gain from it, but to serve one's fellowmen in view of justice. That is the primary motivation in the practice of law. This is the reason why advertisement of legal services is not allowed. Lawyers are not supposed to advertise their services or talents, unlike industries with respect to their products. The lawyer is limited to simple information about himself and a brief and simple statement of the area in law where he is practicing or claims to have some expertise, nothing more. This, however, is a traditional concept.

In the United States of America, there seems to be a relaxation of this rule. It is not surprising to find advertisements for legal services in the periodicals, especially in insurance practice. Lawyers advertise their talents in the practice of law. In the Philippines, the rule is a bit conservative. We do not allow and we discourage this kind of advertisement. Eventually perhaps, there will also be a relaxation of this rule in our country. Very recently, around October 2003, there was a case about a lawyer who was meted an administrative sanction because of an advertisement he put up in one of the newspapers saying he is a specialist in annulment of marriages. He even stated that his batting average in annulment of marriage cases is 80%. It is precisely because of that presumptuousness that he was suspended from the practice of law for three months. Recently, however, I have read an advertisement of a lawyer who claims to be an expert in immigration cases. There seems to be no question on this. So, maybe, we may eventually find a relaxation of this rule.

The second doctrinal pronouncement is that law is, perhaps, the noblest profession. I do not know if that pronouncement is still valid today. Today, from my observation, the practice of law years ago was different from the present situation. First, it is different in terms of the relationship between lawyers and judges. At that time, the judge was practically a "demi-god" to lawyers. It would be unthinkable for lawyers to remain seated when a judge was passing by. All lawyers will stand, even in the corridors, when a judge is passing by. In the courtroom, no lawyer will speak out of turn. No lawyer would address the court sitting down. Law students are trained to show this kind of respect. This is the tradition of the Judiciary.

At that time, the filing of administrative charges against judges by lawyers was a seldom occurrence. Now, however, it has practically become a routine for losing lawyers. Yet the rule is constant to the effect that if there are remedies in the ordinary course of law, administrative charges against judges should not be resorted to. There are so many remedies. You can challenge the resolution or the decision of the court by means of a motion for reconsideration, new trial, by means of appeal or certiorari. You can even ask for the annulment of judgment or declaration of mistrial and so long as these remedies are available, you are not supposed to file administrative charges against a judge. Unfortunately, at present, when some lawyers lose a case, the first thing they insinuate to their clients is that the judge was probably paid off or accepted a bribe. Then they file those charges against the judge. That is, in my opinion, most unfair and most unkind. They try to justify or they try to save face out of their incompetence by attributing their loss to the wrongdoing of another. So I would say that the relationship or the attitude of lawyers now toward the judges is very different.

The third doctrinal pronouncement is that the legal profession gives a person, the greatest opportunity to serve his fellowmen. Our founding fathers in this Republic are mostly lawyers. The great statesmen and jurists of this country are also lawyers. But there is a downside as well. Lawyers have also played a hand during the difficult and trying times of our nation. Therefore the law profession gives you the greatest opportunity to serve your countryman and also the greatest opportunity to take advantage over them.

This is especially true in the provinces. I practiced law in the province for 30 years. When a man from the humble *barrio* goes to you and engages your legal services, he practically gives you everything. You can let him sign anything and he will willingly do so. If you ask him to sign a deed of sale for all his properties, he will sign it unquestioningly because of his ignorance. In other words, when a client goes to you, he would practically entrust all his properties to you, all his honor and dignity. It is upon you to make good the trust or to break the trust. That is what I am trying to say: the greatest opportunity to serve and also, the greatest opportunity to take advantage of your fellowmen.

Now, I have discussed some aspects about the present practice of law. I have some further observations to make. I have been a lawyer for almost half

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a century and so I believe that I am qualified to give my observations because of my age. There seems to be a growing attitude of some lawyers to establish networks with political agencies of government, with the quasi-judicial agencies, with the bench, with the prosecuting arm. They feel that this is a very vital component in successful practice of law. Why is that a growing attitude? When a big businessman has attached property and he needs a lawyer to assist him in his legal problem, the first thing that he will ask of his colleagues or associates will not be: "Who is the expert in taxation among the lawyers or the officers?" Instead, it will be: "Who has influence in *Malacañang*? Who has clout with the BIR or the Customs?" Now, when big time, big businessmen have that kind of preference in the employment of legal services, then you can be sure that lawyers will try to fit their practice with the demands of these big businessmen. In order to land these "big" clients, they try to cultivate close relationships with people in high positions. The ultimate effect is that competence is relegated to the number two position. The number one criteria are the connections of the lawyer. So, rather than read the law textbooks, the lawyer instead plays golf with those people and takes them to dinner in expensive restaurants regularly. This is a most unfortunate development in legal advocacy.

Another practice I have come to observe is the inclination of a good number of lawyers to master technical rules for the purpose of securing procedural advantage over their opponents. In the province, I often heard praise for lawyers who bring cases "back from the dead". In other words, they are experts in technical rules, not for the purpose of advancing the cause of justice, but for the purpose of thwarting the proper administration of justice. That is why there are so many final decisions which cannot be executed, leaving the prevailing party holding an empty bag.

Our rules give so many rarities and reasons for postponing the implementation or the execution of a final judgment. For example, the prevailing party files a Motion to Execute Judgment. Opposition is filed on the ground there are intervening circumstances which would make the enforcement of the judgment unfair and unjust. Even if it is denied, the aggrieved party would file a Petition for Certiorari to the appellate court. Assuming it is also denied, the remedy of Certiorari to the Supreme Court would be availed of. Assuming again the Supreme Court denies it, the case will then go back to the trial court. The trial court will issue an Alias Writ of Execution. However, there is an Opposition once again, this time perhaps on the ground that there has been a novation of the judgment, an implied novation. Litigation will ensue again all the way to the Supreme Court and back down to the trial court. Another Alias Writ of Execution is issued but once again, there is an Opposition. There are a handful of reasons that one can raise to thwart the execution of a final judgment.

With enough patience, one could make a compilation of the various exceptions to all of the general rules in litigation. There are so many exceptions established by the decisions of the Supreme Court. For example, the Court of Appeals, under the law, is the final arbiter of questions of facts. In other words, you do not go to the Supreme Court when there are factual issues to be determined. The determination of factual issues ideally stops in the Court of Appeals. But if you examine jurisprudence, there are a lot of exceptions. The last time I checked, there are already 14 exceptions to this rule. There could be more. Now because of this, our procedure is now so convoluted, encouraging the prolongation of the litigation process.

In other areas, there is a growing temptation for some law firms to resort to "extralegal" means to win a case in court. It has been said that some firms even have a budget for this – this resort to "extralegal" means. This is what I would call the subterranean practice of law.

Actually there are only two reasons for a lawyer to accept the engagement of his legal services. The first is to prosecute a valid claim. By valid claims, we do not refer to claims which are conjured just for the purpose of harassment or tried for the purpose of getting even with somebody else. The second is to litigate a legal wrong. When a client goes to you and tells you that he is the victim of an illegal act, a quasi-delict or a fraudulent act and you file a complaint, you are pursuing an action to vindicate a legal wrong. But when you lend your legal services and file a case for other purposes, then you are committing a very unethical act. For example, some insurance companies have this practice of sending lawyers to intimidate prospective claimants into settling for much less than the amount of the claim. They approach these prospective claimants and offer a quick settlement of sometimes only 50% of the amount due, threatening to delay the case for 10-20 years if the offer is not accepted. Therefore, sometimes, cases and claims are resisted, not because they have cause to resist, but in order to take advantage of the weakness of the claimant. The same is true in criminal cases, when lawyers deliberately lose the case or intentionally delay the prosecution of criminal cases, thereby exhausting resources of the complainant. The probable outcome would be acquittal or dismissal and the complainant would no longer bring to court his witnesses because he has no more money to cover the expenses of bringing them to court and therefore no witness could be presented. The case would be dismissed. This is most unfair.

On the side of the defendant, it is a duty of the lawyer to examine the cause of the defendant and if he believes that the claim of the plaintiff is not valid, then he is doing a great service by taking up the cudgels for the defendant. I am not saying that if a client has a weak case, the lawyer should decline the employment. What I am trying to emphasize is that if after studying the case of a person coming to you for legal assistance, you arrive at the

conclusion that he is not pursuing a valid claim but is rather, filing the suit for some other purposes, then the lawyer who adheres to the rules of ethics should decline.

That is the same rule in cases of appeals. I always tell lawyers that when you receive an adverse decision, you must study the decision very well. First, is the recitation of facts made by the court in accordance with the evidence presented and with the probative weight of the evidence presented? Second, is there a law that sustains the conclusion of the court? Third, if there is such a law, did the court correctly apply the law? Now, upon studying the decision, supposing the lawyer comes to the conclusion that the decision cannot be overturned in the appellate court, it is the duty of the lawyer to advise the client not to appeal. If the client insists in appealing because he has another purpose for pursuing the appeal, then the lawyer should withdraw from the case.

The rule of thumb that I always tell lawyers is this: if you only have a 40% chance or less of overturning the decision, then forget it and do not appeal. But if, in your judgment, your chances are better than 40%, then you can appeal. But there are, of course, clients who assert that money is no object and admonishes upon the attorney to appeal, no matter what. That is an indicator that he has another purpose.

That brings me to the qualities of a good lawyer. A good lawyer is not measured by the number of clients that he has. A good lawyer is not measured by the number of cases he has won. That is not the measure of a good lawyer. Although this can be some kind of *indicia*, that is not the true or correct test. The test of a good lawyer is the esteem or the respect that his colleagues in the Bar and the members of the Bench accord him.

Amongst practicing lawyers themselves, they know who are the lawyers who practice their profession in accordance with the Code of Ethics. The lawyers also know who practice their profession in a different way. The same can be said with judges and members of the judiciary. They know the lawyers who have a penchant for postponing cases. I myself have been in the judiciary for 15 years and the truth is that we have a very good opportunity of observing the conduct of lawyers. If the lawyer is respectful, confident and professional, that lawyer is respected.

From my experience as a judge, as a trial judge, I used to say that 40% of the utterances of the lawyers are false. In our country, it appears that lawyers are not afraid of perjury. Look at the Philippines Reports and Supreme Court Reports Annotated. You will hardly see a case disciplining a lawyer for perjury. Lawyers take their oath for granted by making false manifestations in court, something which I have observed as an ordinary and routine practice. Lawyers are never afraid of the oath.

This is in stark contrast with the situation in the United States. There, even the President could be charged for perjury. They are serious with their oaths. Thus, they are very careful that all their utterances are backed up by facts.

An example of what I am talking about is the Motion for Postponement. 50% of the grounds of motions for postponement are false. But if the judge is tolerant, he just allows it. As you can see, there is not much compulsion for avoiding falsehoods being uttered in court. There was once one such lawyer practicing in my court. I noticed that when his client would be in a very tight fix in the witness stand, he would suddenly slam the table and pull out some medicine and pop up a tablet and ask for water. We would give him water and he would tell the court that he is feeling dizzy and ask for a postponement. Although his reason is doubtful, you would be held culpable if he actually does collapse during the proceedings. So the judge has no choice but to grant the postponement.

There was one lawyer who came to court during a summer session wearing a thick jacket, with medicinal gauze pads affixed all over, asking for postponement on the grounds of illness. So, I granted the postponement only to find out that when I passed by the house of his friend, he was there, playing mahjong. In other words, lawyers, at least a good number of them, are not afraid of telling falsehoods in court. Yet that is specifically provided for in the oath of lawyers, that, "I shall not do any falsehood in court nor allow the doing of the same in court."[1]

It must be stressed that the lawyer must be a man or woman of character. There is only one attribute of a lawyer that must inhere in him for as long as he is a member of the bar and that is he must continuously possess good moral character. The moment he does not possess good moral character anymore, then he forfeits his membership in the Philippine Bar. Remember that in administrative disciplinary cases, there is no such thing as prescription of administrative offenses. There is no statute of limitations for these types of offenses.

There was one lawyer who, before taking the bar, committed seduction but was never charged. He took the bar. 12 years after he took the bar and with a successful practice of law, he was finally charged for grave misconduct for the seduction he committed before the bar. He was disbarred. Why? First of all, he committed falsification because when you apply for the bar, you make a certification that you possess good moral character. He was not of good moral character when he took the bar because he committed seduction. Also, a lawyer can be charged for one act or omission under two different laws, and there's no such thing as double jeopardy in administrative cases.

1. RULES OF COURT, Rule 138 § 3.

For example, if you are a lawyer in the government service, you can be charged under the Code of Professional Responsibility and for the same act, you can also be charged under the Code of Standards and Ethical Conduct for Government Employees. So for the same act or omission, you can be charged under two laws.

The character requirement of a lawyer can be restated simply. He must possess integrity and morality. Let us not talk about integrity but morality. Well, insofar as immorality as a ground for disciplinary action against a judge is concerned, lawyers are in a better position than judges because under the Code of Professional Responsibility, to be a ground for disbarment, the immorality should be gross. Under the Code of Judicial Ethics, all that is required to dismiss a judge on the ground of immorality is simple immorality.

Now, what is the difference between gross and simple immorality? When is immorality simple and when is immorality gross? I will give you an example. There was a case of a female lawyer. She "lived in" with a married lawyer and bore a child. She later quarreled with somebody and that somebody filed a case against her for immorality, an *ex parte* case. Her defense was ignorance — that she was unaware that her live-in partner was married. The Supreme Court believed her, ruling that although such was an act of indiscretion, it did not rise to the level of gross immorality. That is simple indiscretion. But if that happened to a judge, it would have been different. A simple indiscretion is enough to dismiss one from the service.

But do you know that service in the judiciary is a mitigating circumstance? I will give you this example. There was a practicing lawyer who had a mistress with whom he had a child. The wife filed a disbarment case against him and he was disbarred. Then there was a retired Justice of the Court of Appeals who married twice even though his first wife was still alive. He was charged with immorality and was suspended from the practice of law for two years. So the practicing lawyer filed a motion for reconsideration, citing this decision of the Court, arguing that to those who are given more, more is expected of them. His argument was that since the Justice held a greater station and received mere suspension, it was unfair to disbar him because he was a mere private attorney. The motion was denied because the Court took into consideration the lengthy service in the judiciary of the Court of Appeals Justice.

The other important attribute of a lawyer is that he must be competent. Competence is something that you really cannot acquire even if 40 experts lecture to you. You cannot acquire competence through a crash course. Rather it is the result of years and years of continuous study of the law.

Another important attribute is a commitment to the rule of law. The lawyer must be committed. When a lawyer, for example, advises his client to jump bail because he sees no chance of acquittal and reasons that the surety bond is adequate to pay his debt to society, he has no commitment to the law. He must not advise his client or those supporting his clients to rise up in arms when they are defeated in a particular case. This portrays a lack of commitment to the rule of law.

Other essential attributes are courage and loyalty. I have much respect for lawyers who are willing to take up unpopular causes. These are the lawyers with moral courage. These are the lawyers unafraid to lose a case because they believe that their position is correct and they intend to prove that it is correct. There are indeed lawyers in our midst who are of that caliber, risking even the opprobrium of the public to champion unpopular but principled causes. But of course, this goes without saying that a lawyer should still respect the decisions of the court even if they believe that the decision is wrong. That is our system of government. Any other system would be anarchy.

However, that does not prevent lawyers from exposing the errors of the courts, even the Supreme Court. That is the advantage of practicing lawyers. Professors of law have an even greater advantage because they can dissect the decisions of the Supreme Court in the classrooms and point to law students the errors of the Supreme Court, something which judges lower than the Supreme Court cannot do.

All courts are bound by the law of *stare decisis* and we are supposed to abide by the rulings of the Court irrespective of our personal views. But when a practicing lawyer files a Petition for Certiorari, he can put in his pleadings the errors of the court. However he must keep in mind to always use temperate and respectful language. There are those who would say that the judge is not only ignorant but also stupid. That is too much. For example, I came upon a Petition for Certiorari questioning the denial of a Motion to Inhibit the judge. The petition alleged that the judge could not be expected to be fair and impartial because he is even cheating on his wife. That should not be a concern of the lawyer. In other words, that is simply irrelevant.

One of the things that I always tell lawyers is that they can put across their arguments more effectively if they use temperate and decent language rather than insulting words. That is why I advise lawyers: do not prepare your pleadings when you are angry. For example, you received an order of the Court which you believe to be wrong. Do not prepare your Motion for Reconsideration or Petition for Certiorari right then and there because what will come out is a very very strongly-worded petition which could offend the court.

Finally, lawyers should avoid any appearance of impropriety. In the practice of law, sometimes distinguishing appearances from reality is not very easy.

For example, you are a lawyer for one client but you are seen fraternizing with the other party or the lawyer of the opposing party. Even if nothing happens, that would generate suspicion that you are compromising the case of the client. In other words, never be in a situation when people can suspect that you are compromising the case. It is even unwise to offer a ride home to your opposing counsel because that will generate suspicion.

So, those are the preliminaries that I would like to take up with you. Now, I will begin with the problem areas of the legal profession. I will start with the more important ones.

The first one is the representation of conflicting interests. Canon 15, Rules 1 and 3 state that a lawyer should not represent conflicting interests.[2] The reason for this is very obvious. Representing conflicting interests is against public policy because it impairs the dignity and propriety of legal advocacy. Aside from the fact that representing conflicting interests is against public policy, it is also in bad taste. It is against our culture and our values. Now what is conflict of interest? Well, simply stated, when the lawyer represents the interests of two conflicting parties. But that is not the only kind of conflict of interest. Conflict of interest can arise between your interest as a lawyer and the interest of your client. How can that happen? For example, you file a suit against foreign corporation — a corporation of which you are a stockholder. That is conflict of interest.

Another example is when you sue a debtor corporation for a sum of moneyin behalf of a client and that debtor corporation is also your debtor. There is a conflict of interest. Why? Because if you succeed, it might impair your own interest to collect your own debt from him. His assets have been exhausted already. That is conflict of interest.

A conflict of interest can also arise when you are representing two parties, not necessarily in the same case, but in cases which are interrelated to one another. What happens is that what you argue for one client in one case, you could be arguing against the very same position in the other case. There is conflict of interest. There is also a conflict of interest when you handle a case for a new client against your former client.

What is the essence of conflict of interest? The essence of conflict of interest is the fact that it prevents the lawyer from devoting his time to the full

2. CODE OF PROFESSIONAL RESPONSIBILITY, Canon 15, Rule 1 states:

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 of so, shall forthwith inform the prospective client.

Rule 3 states:

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

measure of lawyerly devotion to one client. For example, the Rules say a lawyer is not supposed to handle a case against the former client. Yet, there are law firms which try to go around this prohibition of conflicting interests by establishing separate law offices. For example, a law firm is on retainer for a large corporation. When another large corporation files a case against that corporate-client, they manage to represent the suing adverse corporation also because they can pass it in turn to the other law office. There may be no ostensible objection to that because that is, theoretically, a separate and distinct law office. But in reality, that is only a surrogate firm established for one purpose — to circumvent the rule on conflict of interest.

The most important idea here is that a lawyer is not supposed to handle a case against a former client. The other one is that you are not supposed to handle a case against a present client. For example, you are the counsel for A in one case versus B. Yet, in another case, you are the counsel for B. Even if the case of B is different from the case of A, you are in a conflict of interest situation. Why? Because you are now handling the case of the opponent of your client in one case. And when you do that, you cannot avoid the perception that you do not accord to the former client the full devotion of lawyer because the defendant there is also your client in another case and that should be avoided. Even if the case of the client is different from the case of the other client, that is still a conflict of interest situation.

The more problematic situation arises when there is a conflict of interest between a new client and a former client. I would like to emphasize the words "former client." There are two decisions of the Supreme Court on this issue. One says that this situation should, in all circumstances, be avoided. In other words, you cannot fight your former client. That is the ruling in the case of *Lorenzana Food Corp. v. Daria*.[3] There is also a case which espouses a different view. This is *Nombrado v. Hernandez*.[4] The case stated that for as long as there is full disclosure of the former relationships to the new client and there is no relation between the old cases of the former client and the new case of the new client, then you can handle that case. The doctrine is finds support in American jurisprudence wherein the rule is that in order for a conflict of interest situation to arise between a new and a former client, there must be a relation between the case of the old client to the case of the new client. So that if the cases are so different, you can, after disclosure, handle the case.

Which is the better rule? Well, the more dominant rule in our country is the absolute one: you should not handle the case against your former client.

3. 197 SCRA 428 (1991).

4. 26 SCRA 13 (1968).

What is the rationale of this rule? First, whether you like it or not, you were the recipient of confidences of your old client which you may use in your new case to fight against it. And second, it is simply against our culture. It is simply in bad taste to fight your former client.

Let us suppose your former client dismissed you and you are asked to handle another case against that former client who dismissed you. Are you prohibited from handling that case? I believe you should not handle the case.

Suppose that you are representing initially two persons accused of the same criminal charge. Before the start of the trial, one of the accused is discharged and made a state witness. Can you remain as counsel to the remaining accused even if you would be against a former client. Yes, you can.

To preserve the confidentiality of the information between client and lawyer, this rule on conflict of interest applies not only to the lawyer personally but to the firm to which he belongs. All lawyers in that firm cannot handle a case where one of them would fall under a conflict of interest situation.

For example, a lawyer represents the proclaimed mayor in an election case as counsel for the protestee. One of the grounds for the protest was the commission of force and intimidation during the elections and one of the reliefs prayed for is the annulment of the entire elections because of vote buying and the employment of force and intimidation. Another protestant files another case against the proclaimed vice-mayor on the same grounds. Can that lawyer who is defending the mayor-protestee also serve as a lawyer for the protestant against the vice-mayor who is proclaimed? He cannot, because that is a clear case of conflict of interest. Why? In the case of the mayor, he would be advocating for the validity of the elections and the absence of fraud and intimidation. Yet in the case against the vice-mayor, he would have to advocate the exact opposite. And therefore, he would be in a conflict of interest situation.

There is also another kind of conflict apart from conflict of interest — conflict of duties. Conflict of duties means that a lawyer cannot render service to undo what he has done professionally in the past. For example, a lawyer prepared and notarized a Deed of Sale for one client. He cannot later on file a case for the annulment of the very same Deed of Sale which he prepared and notarized. Why? There is conflict of duties.

In one case, for example, the lawyer succeeded in securing a patent over an invention. Subsequent to that, he filed a case on behalf of another client to nullify the patent which he himself secured. That is conflict of duties.

Other cases may not exactly involve a legal duty but a duty owed to the client nonetheless. In one case, a lawyer has, at the same time, an accounting firm. This lawyer was counsel for the estate in a settlement of probate case.

Now, his accounting firm was the one who prepared the inventory of the assets of the estate and yet, at the same time, prepared the money claim of creditors against the estate. Note that the lawyer has no participation in the preparation of the claims against the estate but the lawyer is still a part of the accounting firm. The court therefore said that it was still a conflict of interest situation.

The issue may also arise in the case of lawyer-spouses. There are lawyer-spouses who practice law individually. They do not practice as a firm. Can they handle opposite sides in one case? I think that should be avoided because of the very close relationship between the spouses. Naturally, they might talk about the case and that temptation should be avoided.

We go now to the parameters and authorities of lawyers and clients in the relationship. What are the areas where the lawyer exercises control and the areas in litigation where the client retains full control? The basic rule is, insofar as procedural matters in litigation are concerned, that is within the exclusive competence of the lawyer. But insofar as the substantive aspects of the suit is concerned, that is still under the absolute control of the client. Now, when you speak of the procedural aspect, what does that cover? Choosing the nature of the case to file is something which the client should not be involved in. It is the lawyer who decides the cause of action to raise, when and what court to file the case in. The allegations in the pleadings are within the responsibility of the lawyer and the client has nothing to do with that.

Can the lawyer, without consulting the client, make out issues of fact? Certainly. When you are the lawyer for the defendant, you can answer the complaint. You do not need to consult your client for that. As a matter of fact, when you file an answer, your client is now bound. In short, you can make admissions of fact even without the consent or knowledge of your client. When it comes to presenting witnesses, the manner in which the evidence is presented is the sole responsibility of the lawyer.

The rule is different when it comes to entering into compromise agreements, statements of facts importing practically a confession of judgment, withdrawal of appeal and waiver of appeal. These are absolutely within the competence of the client.

When a lawyer receives an adverse decision and he believes that appeal is a proper remedy, does he need to secure the consent of his client to appeal the case? Or can he, on his own initiative, appeal the case, without even informing the client? Theoretically, yes, he can. He can do that because appeal is still a continuation of the procedural aspect of the trial work. The purpose of the appeal is to relieve his client of the adverse effects of a decision, and therefore it still a procedural aspect of litigation. On the other hand, the

waiver of an appeal, or the dismissal of an appeal already perfected falls outside the procedural aspects of the case. It already falls within the substance of the litigation, and therefore, a lawyer cannot withdraw an appeal or waive an appeal.

Let us go to the issue of compromises. Can the client enter into an amicable settlement, or a compromise without the consent or even against the advice of counsel? The answer is yes because the attorney-client relationship is one of principal and agent. The lawyer is only the agent of the principal, who is the client. Therefore, the principal can do anything he wants to do, and, even without the lawyer, enter into a compromise agreement.

Here is a problem: the claim of the plaintiff is one million pesos and the contingent fee agreement between the plaintiff and the lawyer is that the latter will get 50% of whatever the former recovers. The client, against the advice of the lawyer, entered into an amicable settlement accepting the settlement of seven hundred fifty thousand pesos. How much can the lawyer collect by way of contingent fee? Can he demand 25% of the one million because he did not give his consent to that compromise agreement? Or is he entitled to just 25% of seven hundred fifty thousand pesos? The answer there is that it depends. If the client entered into that compromise agreement against the consent of his lawyer, and the client acted in bad faith, and he just wanted to escape paying his lawyer, then the lawyer is entitled to the full contingent fee computed from the claim of one million pesos to penalize the client for his bad faith. On the other hand, if he acted in good faith, the lawyer can only claim a maximum contingent fee of 25% of seven hundred fifty thousand pesos.

Sometimes the court will lower the attorney's fees on the basis of *quantum meruit*, meaning a fee corresponding to the stage of the case where the lawyer has served the client. In one case a lawyer was censured by the Supreme Court for refusing to sign a compromise agreement because his attorney's fees have not been stipulated in the agreement. The Supreme Court said that the lawyer should never reject a compromise agreement entered into by the court because his fees have not been included in the agreement.

Let us go to the scope of confidentiality. When a client tells you that he has killed somebody, is that information privileged? Yes. But if he tells you that he plans to kill somebody is that privileged? No it is not. In other words, the rule is that past crimes or past fraudulent acts, when communicated to the lawyer, are considered privileged. Future or intended crimes or contemplated fraud are not considered privileged. Therefore, you can divulge that kind of information and you can disclose that to the proper authorities. You would not be held liable for violating the attorney-client privilege.

In one case, the client jumped bail because he honestly believed that he had no chance. Thereafter, he called up his lawyer informing him about his whereabouts. Question: Is there any duty on the part of the lawyer to inform the court about the whereabouts his client so that this client can be arrested? Well, there is no jurisprudence on this in the Philippines, but American jurisprudence states that the loyalty or the duty of the lawyer to the Court is higher than his duty to his client. Therefore, the confidentiality of information can be breached in the interest of justice.

What about documents delivered by the client to the lawyer? Are they privileged matters? This is the rule: communications between the client and the lawyer are privileged. Pre-existing documents, like a deed of sale, a carriage contract, or a certificate of birth, when delivered by the client to the lawyer, are privileged if they are originally privileged in the hands of the client. If they are not privileged in the hands of the client, they cannot be privileged just because they were transferred to the hands of the lawyer. So all you have to do, therefore, is to determine whether those documents in the hands of the client are impressed with the privilege.

This rule on confidentiality covers two aspects: (1) confidential information given by the client to the lawyer, and (2) legal advice given by the lawyer to client. These are privileged and the privileged nature is perpetual. It even goes beyond the grave. Even if the client already dies, the confidences that were shared with the client remain confidential and therefore, should not adversely affect his heirs. There are, of course, exceptions to the rule on confidentiality. One is when the law provides that the lawyer or the client should disclose what transpired between the two of them. Another is when it is necessary in order to collect the fees of the lawyer, or to defend himself from accusation by the client. In these cases, the lawyer can disclose the confidences that his client shared.

Let us go to the issue of representation. Can a non-lawyer, as a party in a case, represent himself? The answer is, as a general rule, yes. That is true in all levels of court. If a party believes he can defend himself, that he can maintain his litigation and appear before the Supreme Court, that is his business. There are however, exceptions to this general rule. The first is if the party is a juridical person. Naturally he has to be represented by a lawyer.[5] Another is if the non-lawyer accused is charged with an offense which carries an afflictive penalty, he has to be represented either by a counsel *de parte* or counsel *de oficio*.[6] That is what happened to former President Estrada. At one point, in the trial of the plunder case, he dismissed all his counsels and refused to recognize the jurisdiction of the court. The court allowed the discharge

5. Rustia v. CFI of Batangas, 44 Phil. 62 (1922).

6. Flores v. Ruiz, 90 SCRA 427 (1979).

but appointed a replacement. In these cases of serious crimes, it is a matter of public interest. It does not matter how brilliant the person is. Public interest demands that a non-lawyer who insists to defend himself by his lonesome should be represented by counsel.

It is important to note that there are cases where legal representation is not allowed. In the conciliation proceedings before the *barangay*, lawyers are not allowed because they will only prolong the negotiations. The Bureau of Patents is a unique office. It is the only office where a notarized special power of attorney is required before a lawyer may be allowed to appear for somebody else. In the first level courts, a party can be represented by a non-lawyer. In fact, there is actually a practicum program in some schools, where fourth year law students are allowed to handle cases in the first level courts. This is a situation where non-lawyers may represent a party.

In my talk I was able to discuss three doctrinal pronouncements and certain problem areas in legal ethics, namely conflict of interest, conflict of duties, the scope of authority given to lawyers, the attorney-client privilege and representation. It is hoped that the foregoing discussion was able to shed some light on these problem areas as well as provide guidelines in approaching similar issues in the future.

Social, Ethical and Conflict Resolution Aspects of the Davide Impeachment Case

Atty. Carlos P. Medina*

The Impeachment Case against Chief Justice Hilario Davide basically concerned a technical issue — whether or not the Judicial Development Funds ("JDF") were misused. And when you want to answer technical issues, you need a technical body to do that. In this kind of situation, you would need the Commission on Audit. That is why some people are even opposed to the Senate having a trial to determine the truth behind the use of the JDF because they think that in a Senate trial, they will not be after the truth. The Senate is a political body and so whatever decision is made will be a political decision. That was a big reservation to having a Senate trial for many citizen groups and political organizations. Because for them, even the Impeachment itself was not meant to discover the truth but was basically a "power play" between and among vested interests.

There are basically two responses to this controversy. One was political, with so many people going out into the streets and demonstrating. The other was the work of lawyers, the legal part, which tried to deal with the technical questions and that is why we have the Davide Impeachment case.

Briefly, what happened in this case? On June 20, 2003, former President Joseph Estrada filed an impeachment case against eight Justices of the Supreme Court, including Chief Justice Davide. The grounds were violation of the Constitution, betrayal of the public trust and other high crimes. The Justice Committee of the House of Representatives dismissed the complaint for being insufficient in substance. It said that the complaint was sufficient in

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