THESE NOTES ARE MEANT TO BE SHARED!
SHARING THEM IS A GOOD THING!
SHARING THEM IS A GOOD KARMA WAITING TO HAPPEN! ☺

THE JUSTICE MARVIC M.V.F. LEONEN♦ CASE DOCTRINES IN LEGAL AND JUDICIAL ETHICS

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ATTY. BERNARDO T. CONSTANTINO v. PEOPLE OF THE PHILIPPINES
G.R. No. 225696 April 8, 2019

For a notary public to be found guilty of falsifying a notarial will, the prosecution must prove that he or she has falsified or simulated the

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signatures of the testator or the instrumental witnesses to make it appear that they participated in the execution of the document when they did not.

Before one can be held criminally liable for falsification of public documents, it is essential that the document allegedly falsified is a public document.

Public documents are defined as "those instruments authorized by a notary public or by a competent public official with all the solemnities required by law.

By this definition, any notarized document is considered a public document. Rule 132, Section 19 of the Rules of Court, however, provides:

SECTION 19. Classes of documents. — For the purpose of their presentation in evidence, documents are either public or private.
Public documents are:

a. The written official acts, or records of the official acts of the sovereign authority, official bodies and tribunals, and public officers, whether of the Philippines, or of a foreign country;
b. Documents acknowledged before a notary public ***except last wills and testaments***; **and**
c. Public records, kept in the Philippines, of private documents required by law to be entered therein.

All other writings are private. (Emphasis supplied)

Notarization confers a public character upon private documents so that, for the purposes of admissibility in court, no further evidence is required to prove the document's authenticity. The notary public swears to the truth of the document's contents and its due execution.

The principal function of a notary public is to authenticate documents. When a notary public certifies the due execution and delivery of a document under his hand and seal he thereby gives such a document the force of evidence.

Thus, notaries public are cautioned to take due care in notarizing documents to ensure the public's confidence in notarized documents.

A notarial document is by law entitled to full faith and credit upon its face, and for this reason notaries public must observe the utmost care to comply with the elementary formalities in the performance of their duties. Otherwise the confidence of the public in the integrity of this form of conveyancing would be undermined.

Under the Rules on Evidence, notarized documents are clothed with the presumption of regularity; that is, that the notary public had the authority to certify the documents as duly executed. **A last will and testament, however, is specifically excluded from the application of Rule 132, Section 19 of the Rules of Court. This implies that when the document being presented as evidence is a last will and testament, further evidence is necessary to prove its due execution, whether notarized or not.**

When a notary public falsifies a public document, his or her act effectively undermines the public's trust and reliance on notarized documents as evidence. Thus, he or she is held criminally liable for the offense when the falsity committed leads others to believe the document was authentic when it is not.

The due execution of a notarized will is proven through the validity of its attestation clause. The prosecution must prove that either the testator could not have authored the instrument, or the instrumental witnesses had no capacity to attest to the due execution of the will. This requires that the notary public must have falsified or simulated the signatures appearing on the attestation clause.

CELIANA B. BUNTAG et. al., vs. ATTY. WILFREDO S. TOLEDO,
A.C. 12125 February 11, 2019

The burden of proof lies on the party making the allegation. In a disbarment complaint, the allegations of the complainant must be proven with substantial evidence.

The standard of substantial evidence required in administrative proceedings is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

While rules of evidence prevailing in courts of law and equity shall not be controlling, the obvious purpose being to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order, this assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without basis in evidence having rational probative force.

The Respondent cannot be made administratively liable on the basis of mere general accusations such as this without proof. This Court will not penalize lawyers unless it is unmistakably shown that they are unfit to continue being a member of the Bar. A mere charge or allegation of wrongdoing does not suffice. Accusation is not synonymous with guilt.

The power to disbar or suspend ought always to be exercised 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.

Only those acts which cause loss of moral character should merit disbarment or suspension, while those acts which neither affect nor erode the moral character of the lawyer should only justify a lesser sanction unless they are of such nature and to such extent as to clearly show the lawyer's unfitness to continue in the practice of law. The dubious character of the act charged as well as the motivation which induced the lawyer to commit it must be clearly demonstrated before suspension or disbarment is meted out. The

mitigating or aggravating circumstances that attended the commission of the offense should also be considered.

A retainer or written agreement between a lawyer and the client lists the scope of the services to be offered by the lawyer and governs the relationship between the parties. Without a written agreement, it would be difficult to ascertain what the parties committed to; hence, a party may be emboldened to make baseless demands from the other party, presenting his or her own interpretation of the verbal agreement into which they entered.

If the parties had executed a written agreement, issues on lawyer's fees and other expenses incurred during a trial would not have arisen, as each party would know his or her obligations under the retainer agreement. To prevent a similar predicament from happening in the future, respondent is directed to henceforth execute written agreements with all of his clients, even those whose cases he is handling *pro bono*.

RE: COMPLAINT-AFFIDAVIT OF ELVIRA N. ENALBES, REBECCA H. ANGELES AND ESTELITA B. OCAMPO AGAINST FORMER CHIEF JUSTICE TERESITA J. LEONARDO-DE CASTRO [RET.], RELATIVE TO G.R. NOS. 203063 AND 204743.
A.M. No. 18-11-09-SC January 22, 2019

Courts are not unmindful of the right to speedy disposition of cases enshrined in the Constitution. Magistrates are obliged to render justice in the swiftest way possible to ensure that rights of litigants are protected. Nevertheless, they should not hesitate to step back, reflect, and reevaluate their position even if doing so means deferring the final disposition of the case. Indeed, justice does not equate with hastily giving one's due if it is found to be prejudicial. At the end of the day, the duty of the courts is to dispense justice in accordance with law.

Gross ignorance of the law is the failure of a magistrate to apply "basic rules and settled jurisprudence." It connotes a blatant disregard of clear and

unambiguous provisions of law "because of bad faith, fraud, dishonesty, or corruption." It is a serious charge that is punishable by the following:

RULE 140

Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan

. . . .

SECTION 11. Sanctions. - A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;
2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months[;] or
3. A fine of more than P20,000.00 but not exceeding P40,000.00.[17]

To hold a magistrate administratively liable for gross ignorance of the law, it is **not enough** that his or her action was erroneous; it must also be proven that it was driven by bad faith, dishonesty, or ill motive.

Being the court of last resort, this Court should be given an ample amount of time to deliberate on cases pending before it.

Ineluctably, leeway must be given to magistrates for them to thoroughly review and reflect on the cases assigned to them. This Court notes that all matters brought before it involves rights which are legally demandable and enforceable. It would be at the height of injustice if cases were hastily decided on at the risk of erroneously dispensing justice.

While the 24-month period provided under the 1987 Constitution is persuasive, it does not summarily bind this Court to the disposition of cases

brought before it. It is a mere directive to ensure this Court's prompt resolution of cases, and should not be interpreted as an inflexible rule.

Magistrates must be given discretion to defer the disposition of certain cases to make way for other equally important matters in this Court's agenda.

In *Coscolluela v. Sandiganbayan, et al.,* this Court noted that "the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient.

EVERDINA C. ANGELES VS. ATTY. WILFREDO B. LINA-AC
A.C. No. 12063 January 8, 2019

The practice of law is a privilege, and lawyers who fail to meet the strict standards of legal proficiency, morality, and integrity will have their names stricken out of the Roll of Attomeys.

Complainant engaged respondent's services to secure a declaration nullifying her marriage with her husband. However, despite complainant's considerable efforts at coming up with the cash for respondent's professional fees, respondent did not reciprocate with similar diligence toward her case. Further, instead of filing an actual petition for the nullity of complainant's marriage, he attempted to hoodwink complainant by furnishing her a copy of a Complaint with a fraudulent received stamp from the Regional Trial Court.

Worse, even after their attorney-client relationship was severed, respondent filed a second Complaint in a blatant attempt to cover up his earlier negligence and thwart complainant's efforts to recover the money she paid him. Respondent's repeated duplicity toward complainant reflects his lack of integrity, and is a clear violation of the oath he took before becoming a lawyer.

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Very clearly, respondent violated his oath as he was not forthright and honest in his dealings with the complainant. He engaged in deceitful conduct by presenting a bogus complaint allegedly bearing the stamp of the court. Consequently, he must bear the consequence of his own wrongdoing.

Nonetheless, this Court takes judicial notice that respondent will be about 78 years old by the time this Resolution is promulgated. In light of his advanced age, this Court deems it proper to temper justice with mercy and mete out a penalty of two (2) years of suspension instead of the ultimate penalty of disbarment. Ours is a court of law, but it is our humane compassion that strengthens us as an institution and cloaks us "with a mantle of respect and legitimacy."

RE: MEMORANDUM DATED JULY 10, 2017 FROM ASSOCIATE JUSTICE TERESITA J. LEONARDO-DE CASTRO

A.M. 17-07-05-SC July 3, 2018

[A.M. No. 18-02-13-SC]

RE: LETTER OF RESIGNATION OF ATTY. BRENDA JAY ANGELES MENDOZA, PHILJA CHIEF OF OFFICE FOR THE PHILIPPINE MEDIATION CENTER

"**Judicial personnel**" refer to the incumbent Justices and judges of the courts; and "**Non-judicial personnel**" refer to officials and employees who are performing adjudication support functions (otherwise called judicial support personnel), as well as administrative and financial management functions; including clerks of courts, sheriffs, legal personnel, process servers, accountants, administrative officers, and all other personnel in the Judiciary who are not Justices or judges.

This matter invokes the administrative powers of the Supreme Court *En Banc*. It does not call for the exercise of this Court's adjudicative powers. Thus, the purpose of this Resolution is to resolve pending questions as to the interpretation of this Court's power as contained in the Constitution, relevant laws, and this Court's administrative orders. Resolutions of this nature may also suggest not only clarifications but also changes in policy when necessary.

Being a collegial body, the Court *En Banc* should welcome queries and suggestions on administrative matters raised by its members either by themselves or through reflecting committees that have been assigned to them. By design, the Constitution crafted a body composed of fifteen (15) Justices in order that in all matters dealt with by the highest judicial body, most, if not all, possible perspectives can be taken into account. Thus, the judiciary is collectively led by the Supreme Court. None of its members, including its presiding officer, should be immune or impervious from accountability towards this body.

The 1987 Constitution vests the power of appointment within the judiciary in the Supreme Court.

This Court's nature as a collegial body requires that the appointing power be exercised by the Court *En Banc*, consistent with Article VIII, Section 1 of the Constitution.

Since this Court is a collegial court, each Justice has equal power and authority, and all Justices must act on the basis of consensus or majority rule. Even if this Court has a Chief Justice and does much of its work in divisions, it still remains that this Court must exercise its powers as one (1) body:

Any ambiguity or vagueness in the delegation of powers must be resolved in favor of non-delegation. To do otherwise is to permit an abdication of the "duty to be performed by the delegate through the instrumentality of his own judgment and not through the intervening mind of another." This is

demonstrated by the requirement for a valid delegation of legislative power that both the completeness and sufficient standard tests must be passed.

The rules on the appointment of personnel to the Judiciary, as clarified in this Resolution, are amended. The delegation to the Chief Justice and the Chairpersons of the Divisions in A.M. No. 99-12-08-SC (Revised) of the power of appointment and revocation or renewal of appointments of personnel in this Court, Court of Appeals, Sandiganbayan, Court of Tax Appeals, the Lower Courts including the Sharia'h courts, the Philippine Judicial Academy, and the Judicial and Bar Council shall not be deemed to include personnel with salary grades 29 and higher, and those with judicial rank.

PROSECUTOR IVY A. TEJANO VS. PRESIDING JUDGE ANTONIO D. MARIGOMEN AND UTILITY WORKER EMELIANO C. CAMAY, JR., BOTH OF REGIONAL TRIAL COURT (RTC), BRANCH 61, BOGO CITY, CEBU, RESPONDENTS.

A.M. No. RTJ-17-2492 September 26, 2017

Without a standing warrant of arrest, a judge not assigned to the province, city, or municipality where the case is pending has no authority to grant bail. To do so would be gross ignorance of the law.

The text of Rule 114, Section 17(a) of the Rules of Court shows that there is an order of preference with respect to where bail may be filed. In the absence or unavailability of the judge where the case is pending, the accused must first go to a judge *in the province, city, or municipality where the case is pending*. Furthermore, a judge of another province, city, or municipality may grant bail *only if* the accused has been *arrested* in a province, city, or municipality other than where the case is pending.

A judge not assigned to the province, city, or municipality where the case is

pending but approves an application for bail filed by an accused not arrested is guilty of gross ignorance of the law. The last sentence of Rule 114, Section 17(a) is clear that for purposes of determining whether or not the accused is in custody of the law, the mode required is arrest, not voluntary surrender,[before a judge of another province, city, or municipality may grant a bail application. In the same vein, it is gross ignorance of the law if a judge grants an application for bail in a criminal case outside of his or her jurisdiction without ascertaining the absence or unavailability of the judge of the court where the criminal case is pending.

This Court "cannot be bound by the unilateral decision of a complainant to desist from prosecuting a case involving the discipline of parties subject to its administrative supervision." The faith and confidence of the people in their government and its agencies and instrumentalities need to be maintained. The people should not be made to depend upon the whims and caprices of complainants who, in a real sense, are only witnesses. To rule otherwise would subvert the fair and prompt administration of justice, as well as undermine the discipline of court personnel.

This doctrine applies especially in this case where respondent is not just any other court personnel. Respondent is a judge, who is supposedly knowledgeable of the law but has been found grossly ignorant of it, not just once but twice.

LAURENCE D. PUNLA AND MARILYN SANTOSVS. ATTY. ELEONOR MARAVILLA-ONA
A.C. No. 11149 August 15, 2017

Clearly, respondent lawyer has been a serial violator of the Canons of Professional Responsibility as shown in the thirteen (13) pending cases filed against her. Add to that the present case and that places the total pending administrative cases against respondent at fourteen (14). That these 14 cases were filed on different dates and by various individuals is substantial

proof that respondent has the propensity to violate her lawyer's oath - and has not changed in her professional dealing with the public.

It cannot be stressed enough that once a lawyer takes up the cause of a client, that lawyer is duty-bound to serve the latter with competence and zeal, especially when he/she accepts it for a fee. The lawyer owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him/her.[Moreover, a lawyer's failure to return upon demand the monies he/she holds for his/her client gives rise to the presumption that he/she has appropriated the said monies for his/her own use, to the prejudice and in violation of the trust reposed in him/her by his/her client.

What is more, this Court cannot overlook the reality that several cases had been filed against respondent, as pointed out by the IBP. In fact, one such case eventually led to the disbarment of respondent.
While indeed respondent's condemnable acts ought to merit the penalty of disbarment, we cannot disbar her anew, for in this jurisdiction we do not impose double disbarment.

ARNEL MENDOZA VS. HON. MARCOS C. DIASEN, JR., ACTING PRESIDING JUDGE, METROPOLITAN TRIAL COURT, BR. 62, MAKATI CITY

A.M. No. MTJ-17-1900 August 9, 2017

Under Canon 5, Rule 5.02:
Rule 5.02. - A judge shall refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities or increase involvement with lawyers or persons likely to come before the court. A judge should so manage

investments and other financial interests as to minimize the number of cases giving grounds for disqualification.

The restriction enshrined under Rules 5.02 and 5.03 of the Code of Judicial Ethics on judges with regard to their own business interests is based on the possible interference which may be created by these business involvements in the exercise of their judicial duties which may tend to corrode the respect and dignity of the courts as the bastion of justice. Judges must not allow themselves to be distracted from the performance of their judicial tasks by other lawful enterprises. It has been a time-honored rule that judges and all court employees should endeavor to maintain at all times the confidence and high respect accorded to those who wield the gavel of justice.

Judge Diasen's act of attempting to sell rice to his employees and to employees of other branches was highly improper. As a judge, he exercised moral ascendancy and supervision over these employees. If the sale had pushed through, he would have profited from his position.

ROGER RAPSING VS. JUDGE CARIDAD M. WALSE-LUTERO, METROPOLITAN TRIAL COURT, BR. 34, QUEZON CITY [NOW PRESIDING JUDGE, REGIONAL TRIAL COURT, BR. 223, QUEZON CITY] AND CELESTINA D. ROTA, CLERK OF COURT III, METROPOLITAN TRIAL COURT, BR. 34, QUEZON CITY,

A.M. No. MTJ-17-1894 April 4, 2017

As the presiding judge, it was respondent's responsibility to know which cases or motions were submitted for decision or resolution. Judges are expected to closely follow the development of cases and in this respect, "to keep [their] own record of cases so that [they] may act on them promptly."

[T]he regular and continuing physical inventory of cases enable[s] the judge to keep abreast of the status of the pending cases and to be informed that everything in the court is in proper order." Responsibility rests primarily on

the judge and he or she "cannot take refuge behind the inefficiency or mismanagement of his personnel."
Had respondent Judge Walse-Lutero physically inventoried her cases on a semestral basis as prescribed, she could have discovered the unresolved pending incidents earlier, instead of two (2) years later. The resolution of two (2) fairly simple motions dragged on for more than two (2) years – thereby prolonging the resolution of the ejectment case – because of respondent's lapse.

Here, considering the reasons for the delay in the resolution of the motions, the absence of bad faith or malice on the part of respondent, and lack of any record of previous administrative sanctions against her, we consider it proper to admonish respondent Judge Walse-Lutero for her failure to act promptly on the complainant's motions.

Branch clerks of court must realize that their administrative functions are vital to the prompt and proper administration of justice. They are charged with the efficient recording. filing and management of court records, besides having administrative supervision over court personnel. They play a key role in the complement of the court and cannot be permitted to slacken on their jobs under one pretext or another. They must be assiduous in performing their official duties and in supervising and managing court dockets and records. On their shoulders, as much as those of judges, rest the responsibility of closely following development of cases, such that delay in the disposition of cases is kept to a minimum.

Rota's apathy towards her duties and responsibilities as Branch Clerk of Court is inimical to the prompt and proper administration of justice.
Simple neglect of duty is defined as the failure of an employee to give one's attention to a task expected of him or her. Gross neglect of duty is such neglect which, "from the gravity of the case or the frequency of instances, becomes so serious in its character as to endanger or threaten the public welfare."

Rota's neglect in this case is gross, bordering on utter carelessness or indifference, to the prejudice of the public she was duty-bound to serve. Her

inattentiveness and lack of any effort to even look for the case records, despite several follow-ups from the complainant, caused unnecessary and undue delay in the progress of the ejectment case. [A]s ranking officers of our judicial system who perform delicate administrative functions vital to the prompt and proper administration of justice, they should perform their duties with diligence and competence in order to uphold the good name and integrity of the judiciary, and to serve as role models for their subordinates.

Clerks of Court are at the forefront of judicial administration because of their indispensable role in case adjudication and court management. They are the models for the court employees "to act speedily and with dispatch on their assigned task[s] to avoid the clogging of cases in court and thereby assist in the administration of justice without undue delay." Moreover, as public officers, they should discharge their tasks with utmost responsibility, integrity, loyalty, and efficiency guided by the principle that "public office is a public trust."

The objective of imposing the correct disciplinary measure is not so much to punish the erring officer or employee but primarily to improve public service and preserve the public's faith and confidence in the government. Respondent's incompetence and repeated infractions exhibited her unfitness, and plain inability to discharge the duties of a Branch Clerk of Court, which justifies her dismissal from service.

LIANG FUJI VS. ATTY. GEMMA ARMI M. DELA CRUZ
A.C. No. 11043 March 8, 2017

Failure to exercise utmost prudence in reviewing the immigration records of an alien, which resulted in the alien's wrongful detention, opens the special prosecutor in the Bureau of Immigration to administrative liability.

Generally, this Court defers from taking cognizance of disbarment complaints against lawyers in government service arising from their administrative

duties, and refers the complaint first either to the proper administrative body that has disciplinary authority over the erring public official or employee or the Ombudsman.

A case of suspension or disbarment may proceed regardless of interest or lack of interest of the complainant. What matters is whether, on the basis of the facts borne out by the record, the charge of deceit and grossly immoral conduct has been duly proven. This rule is premised on the nature of disciplinary 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. Disciplinary proceedings involve no private interest and afford no redress for private grievance. They are undertaken and prosecuted solely for the public welfare. They are undertaken for the purpose of preserving courts of justice from the official ministration of persons unfit to practice in them. The attorney is called to answer to the court for his conduct as an officer of the court. The complainant or the person who called the attention of the court to the attorney's alleged misconduct is in no sense a party, and has generally no interest in the outcome except as all good citizens may have in the proper administration of justice.

Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of her duties as a government official. However, if said misconduct as a government official also constitutes a violation of her oath as a lawyer and the Code of Professional Responsibility, then she may be subject to disciplinary sanction by this Court.

Lawyers in government service should be more conscientious with their professional obligations consistent with the time-honored principle of public office being a public trust. The ethical standards under the Code of Professional Responsibility are rendered even more exacting as to government lawyers because they have the added duty to abide by the policy of the State to promote a high standard of ethics, competence, and professionalism in public service. In this case, respondent's negligence evinces a failure to cope with the strict demands and high standards of public

service and the legal profession.

DOMINADOR BIADO et al. VS. HON. MARIETTA S. BRAWNER-CUALING, PRESIDING JUDGE, MUNICIPAL CIRCUIT TRIAL COURT [MCTC], TUBA-SABLAN, BENGUET, RESPONDENTS.
A.M. No. MTJ-17-1891 February 15, 2017

An administrative complaint is not the proper remedy for every action of a judge considered "aberrant or irregular" especially when a judicial remedy exists.

"[A]n administrative complaint is not the appropriate remedy for every act of a Judge deemed aberrant or irregular where a judicial remedy exists and is available[.]" It must be underscored that "the acts of a judge in his judicial capacity are not subject to disciplinary action." He cannot be civilly, criminally, or administratively liable for his official acts, "no matter how erroneous," provided he acts in good faith. "Disciplinary proceedings and criminal actions do not complement, supplement or substitute judicial remedies, whether ordinary or extraordinary."

Manifest partiality pertains to "a clear, notorious or plain inclination or predilection to favor one side rather than the other." Thus, a mere imputation of bias and partiality against a judge is insufficient because "bias and partiality can never be presumed."

Since "bad faith or malice cannot be inferred simply because the judgment is adverse to a party," it is incumbent upon the complainants to prove that respondent judge was manifestly partial against them. Their failure to prove this is fatal to their cause. Apart from their bare allegations, complainants offered no other independent proof to validate this allegation.

ANITA SANTOS MURRAY, V. ATTY. FELICITO J. CERVANTES
A.C. No, 5408 February 7, 2017

Moreover, following complainant's engagement of his services, respondent failed to communicate with complainant or update her on the progress of the services that he was supposed to render. Not only did he fail in taking his own initiative to communicate; he also failed to respond to complainant's queries and requests for updates.

Disciplinary proceedings against lawyers do not involve a trial of an action, but rather investigations by the court into the conduct of one of its officers." Thus, disciplinary proceedings are limited to a determination of "whether or not the attorney is still fit to be allowed to continue as a member of the Bar." This court has also ordered restitution as concomitant relief in administrative proceedings when respondent's civil liability was already established:

Although the Court renders this decision an administrative proceeding primarily to exact the ethical responsibility on a member of the Philippine Bar, the Court's silence about the respondent lawyer's legal obligation to restitute the complainant will be both unfair and inequitable. No victim of gross ethical misconduct concerning the client's funds or property should be required to still litigate in another proceeding what the administrative proceeding has already established as the respondent's liability. That has been the reason why the Court has required restitution of the amount involved as a concomitant relief.

ATTY. JOSELITA C. MALIBAGO-SANTOS, CLERK OF COURT VI, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, ANTIPOLO CITY, RIZAL, VS. JUANITO B. FRANCISCO, JR., SHERIFF IV, OFFICE OF THE CLERK OF COURT [OCC], REGIONAL TRIAL COURT, ANTIPOLO CITY, RIZAL.
A.M. No. P-16-3459 June 29, 2016

Sheriffs play an important role in the effective and efficient administration of our justice system. They must, at all times, maintain the high ethical standards expected of those serving in the judiciary. They cannot receive any voluntary monetary considerations from any party in relation to the performance of their duties as officers of the court.

Our Constitution states that "public office is a public trust." It provides that "[p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."

Sheriffs play a crucial role in our justice system as our front-line representatives tasked with executing final judgments by the courts. Consequently, a sheriff must always perform his or her duty with integrity for "once he [or she] loses the people's trust, he [or she] diminishes the people's faith in the judiciary."

With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometre of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of the said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

Codes of ethics for public employees such as sheriffs prohibit them from accepting any form of remuneration in relation to the performance of their official duties.

Canon I, Section 4 of the Code of Conduct for Court Personnel provides that court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity.

This Court will no longer tolerate court employees who receive gifts or tokens from party-litigants for favorable treatment or efficient service. Subsequent

incidents of this nature will be dealt with more severely in the future.

Those serving in the judiciary must carry the heavy burden and duty of preserving public faith in our courts and justice system by maintaining high ethical standards. They must stand as "examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence since they are officers of the court and agents of the law." We do not tolerate any misconduct that tarnishes the judiciary's integrity.

IN RE: RESOLUTION DATED AUGUST 14, 2013 OF THE COURT OF APPEALS IN C.A. - GR.CV NO. 94656, VS. ATTY. GIDEON D.V. MORTEL

A.C. No. 10117, July 25, 2017

We hold that an attorney owes it to himself and to his clients to adopt an efficient and orderly system of receiving and attending promptly to all judicial notices. He and his client must suffer the consequences of his failure to do so particularly where such negligence is not excusable as in the case at bar."...

An oath is not an empty promise, but a solemn duty. Owing good fidelity to the court, lawyers must afford due respect to "judicial officers and other duly constituted authorities.

Lawyers are particularly called upon to obey court orders and processes, and this deference is underscored by the fact that willful disregard thereof may subject the lawyer not only to punishment for contempt but to disciplinary sanctions as well. Any departure from the path which a lawyer must follow as demanded by the virtues of his profession shall not be tolerated by this Court as the disciplining authority.

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. Respondent's

actions shatter the dignity of his profession. He exhibited disdain for court orders and processes, as well as a lack of fidelity to the court.

TERESITA P. FAJARDO VS. ATTY. NICANOR C. ALVAREZ
A.C. No. 9018 April 20, 2016

This administrative case involves the determination of whether a lawyer working in the Legal Section of the National Center for Mental Health under the Department of Health is authorized to privately practice law, and consequently, whether the amount charged by respondent for attorney's fees is reasonable under the principle of *quantum meruit*.

The practice of law is not limited to the conduct of cases in court. A person is also considered to be in the practice of law when he:

> "x x x for valuable consideration engages in the business of advising person, firms, associations or corporations as to their rights under the law, or appears in a representative capacity as an advocate in proceedings pending or prospective, before any court, commissioner, referee, board, body, committee, or commission constituted by law or authorized to settle controversies and there, in such representative capacity performs any act or acts for the purpose of obtaining or defending the rights of their clients under the law. Otherwise stated, one who, in a representative capacity, engages in the business of advising clients as to their rights under the law, or while so engaged performs any act or acts either in court or outside of court for that purpose, is engaged in the practice of law."

THESE NOTES ARE MEANT TO BE SHARED!
SHARING THEM IS A GOOD THING!
SHARING THEM IS A GOOD KARMA WAITING TO HAPPEN! ☺

Practice of law means any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience. "To engage in the practice of law is to perform those acts which are characteristics of the profession. Generally, to practice law is to give notice or render any kind of service, which device or service requires the use in any degree of legal knowledge or skill."

. . . .

Work in government that requires the use of legal knowledge is considered practice of law. Under Section 7(b)(2) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, and Memorandum Circular No. 17, series of 1986, government officials or employees are prohibited from engaging in private practice of their profession unless authorized by their department heads. More importantly, if authorized, the practice of profession must not conflict nor tend to conflict with the official functions of the government official or employee:

Memorandum Circular No. 17:

The authority to grant permission to any official or employee shall be granted by the head of the ministry or agency in accordance with Section 12, Rule XVIII of the Revised Civil Service Rules, which provides:

> "Sec. 12. No officer or employee shall engage directly in any private business, vocation, or profession or be connected with any commercial, credit, agricultural, or industrial undertaking without a written permission from the head of Department; *Provided*, That this prohibition will be absolute in the case of those officers and employees whose duties and responsibilities require that their entire time be at the disposal of the Government: *Provided, further*, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office hours should be fixed by the chief of the agency to the end that it will not

> impair in any way the efficiency of the other officer or employee: *And provided, finally*, That no permission is necessary in the case of investments, made by an officer or employee, which do not involve any real or apparent conflict between his private interests and public duties, or in any way influence him in the discharge of his duties, and he shall not take part in the management of the enterprise or become an officer or member of the board of directors",subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission.

In this case, respondent was given written permission by the Head of the National Center for Mental Health, whose authority was designated under Department of Health Administrative Order No. 21, series of 1999. However, by assisting and representing complainant in a suit against the Ombudsman and against government in general, respondent put himself in a situation of conflict of interest.
Respondent's practice of profession was expressly and impliedly conditioned on the requirement that his practice will not be "in conflict with the interest of the Center and the Philippine government as a whole."

There is basic conflict of interest here. Respondent is a public officer, an employee of government. The Office of the Ombudsman is part of government. By appearing against the Office of the Ombudsman, respondent is going against the same employer he swore to serve. Thus, a conflict of interest exists when an incumbent government employee represents another government employee or public officer in a case pending before the Office of the Ombudsman. The incumbent officer ultimately goes against government's mandate under the Constitution to prosecute public officers or employees who have committed acts or omissions that appear to be illegal, unjust, improper, or inefficient.

The power to disbar or suspend ought always to be exercised 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. Only those acts which cause loss of moral character should merit disbarment or suspension, while those acts which neither affect nor erode the moral character of the lawyer should only justify a lesser sanction unless they are of such nature and to such extent as to clearly show the lawyer's unfltness to continue in the practice of law. The dubious character of the act charged as well as the motivation which induced the lawyer to commit it must be clearly demonstrated before suspension or disbarment is meted out. The mitigating or aggravating circumstances that attended the commission of the offense should also be considered.

Likewise, we find that respondent violated the Lawyer's Oath and the Code of Professional Responsibility when he communicated to or, at the very least, made it appear to complainant that he knew people from the Office of the Ombudsman who could help them get a favorable decision in complainant's case.

Respondent violated the oath he took when he proposed to gain a favorable outcome for complainant's case by resorting to his influence among staff in the Office where the case was pending.
This act of influence peddling is highly immoral and has no place in the legal profession.

Lawyers who offer no skill other than their acquaintances or relationships with regulators, investigators, judges, or Justices pervert the system, weaken the rule of law, and debase themselves even as they claim to be members of a noble profession. Practicing law should not degenerate to one's ability to have illicit access. Rather, it should be about making an honest appraisal of the client's situation as seen through the evidence fairly and fully gathered. It should be about making a discerning and diligent reading of the applicable law. It is foremost about attaining justice in a fair manner. Law exists to temper, with its own power, illicit power and unfair advantage. It should not be conceded as a tool only for those who cheat by

unduly influencing people or public officials.

It is time that we unequivocally underscore that to even imply to a client that a lawyer knows who will make a decision is an act worthy of the utmost condemnation. If we are to preserve the nobility of this profession, its members must live within its ethical parameters. There is never an excuse for influence peddling.

DIONNIE RICAFORT VS. ATTY. RENE O. MEDINA
A.C. No. 5179 May 31, 2016

RESOLUTION

It is true that this Court does not tolerate the unceremonious use of disciplinary proceedings to harass its officers with baseless allegations. This Court will exercise its disciplinary power against its officers only if allegations of misconduct are established. A lawyer is presumed to be innocent of the charges against him or her. He or she enjoys the presumption that his or her acts are consistent with his or her oath.

In administrative cases against lawyers, the required burden of proof is preponderance of evidence, or evidence that is superior, more convincing, or of "greater weight than the other."[54]

In this case, complainant discharged this burden.

The purpose of administrative proceedings is to ensure that the public is protected from lawyers who are no longer fit for the profession. In this instance, this Court will not tolerate the arrogance of and harassment committed by its officers.

By itself, the act of humiliating another in public by slapping him or her on the face hints of a character that disregards the human dignity of another. Respondent's question to complainant, "*Wa ka makaila sa ako*?" ("Do you not know me?") confirms such character and his potential to abuse the

profession as a tool for bullying, harassment, and discrimination.

This arrogance is intolerable. It discredits the legal profession by perpetuating a stereotype that is unreflective of the nobility of the profession. As officers of the court and of the law, lawyers are granted the privilege to serve the public, not to bully them to submission.

Good character is a continuing qualification for lawyers. This Court has the power to impose disciplinary sanctions to lawyers who commit acts of misconduct in either a public or private capacity if the acts show them unworthy to remain officers of the court.

Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney.

BIENVENIDO T. CANLAPAN, VS. ATTY. WILLIAM B. BALAYO,
A.C. No. 10605 February 17, 2016

As servants of the law, lawyers must be model citizens and set the example of obedience to law. The practice of law is a privilege bestowed on lawyers who meet high standards of legal proficiency and morality. Respondent's display of improper attitude and arrogance toward an elderly constitute conduct unbecoming of a member of the legal profession and cannot be tolerated by this court.

Careless remarks such as this tend to create and promote distrust in the administration of justice, undermine the people's confidence in the legal

profession, and erode public respect for it. "Things done cannot be undone and words uttered cannot be taken back."

The Court may suspend or disbar a lawyer for "any misconduct showing any fault or deficiency in his moral character, honesty, probity or good demeanor," whether in his professional or private life because "good character is an essential qualification for the admission to the practice of law and for the continuance of such privilege.

RE: DECISION DATED AUGUST 19, 2008, 3RD DIVISION, COURT OF APPEALS IN CA-G.R. SP NO. 79904 [HON. DIONISIO DONATO T. GARCIANO, ET AL. V. HON. PATERNO G. TIAMSON, ETC., ET AL.], PETITIONER, VS. ATTY. JOSE DE G. FERRER
A.C. No. 8037 February 17, 2016

The grave evil sought to be avoided by the rule against forum shopping is the rendition by two competent tribunals of two separate and contradictory decisions. Unscrupulous party litigants, taking advantage of a variety of competent tribunals, may repeatedly try their luck in several different fora until a favorable result is reached. To avoid the resultant confusion, this Court strictly adheres to the rules against forum shopping, and any violation of these rules results in the dismissal of a case.
Respondent must be reminded that the withdrawal of any case, when it has been duly filed and docketed with a court, rests upon the discretion of the court, and not at the behest of litigants. Once a case is filed before a court and the court accepts the case, the case is considered pending and is subject to that court's jurisdiction.

As a lawyer, respondent is expected to anticipate the possibility of being held liable for forum shopping. He is expected to be aware of actions constituting forum shopping. Respondent's defense of substantial compliance and good faith cannot exonerate him. The elements of forum shopping are expected to be fundamentally understood by members of the bar, and a defense of

good faith cannot counter an abject violation of the rule.

A lawyer owes fidelity to the cause of his client, but not at the expense of truth and the administration of justice. The filing of multiple petitions constitutes abuse of the court's processes and improper conduct that tends to impede, obstruct and degrade the *administration of justice and will be punished as contempt of court.*

ATTY. PABLO B. FRANCISCO, VS. ATTY. ROMEO M. FLORES,
A.C. No. 10753 January 26, 2016

Failure of counsel to act upon a client's case resulting in the prescription of available remedies is negligence in violation of Canon 18 of the Code of Professional Responsibility. The general rule is that notice to counsel is notice to client. This rule remains until counsel notifies the court that he or she is withdrawing his or her appearance, or client informs the court of change of counsel. Untruthful statements made in pleadings filed before courts, to make it appear that the pleadings are filed on time, are contrary to a lawyer's duty of committing no falsehood.

Fundamental is the rule that in his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a bonafide member of the Law Profession.
The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from

consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility.

It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client. In the absence of a notice of withdrawal or substitution of counsel, the Court will rightly assume that the counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period.

HELEN CHANG VS. ATTY. JOSE R. HIDALGO,
A.C. No. 6934 April 6, 2016

A lawyer cannot simply withdraw from a case without notice to the client and complying with the requirements in Rule 138, Section 26 of the Rules of Court. Otherwise, the lawyer will be held liable for violating Canons 17 and 18 of the Code of Professional Responsibility.

In an administrative case against a lawyer, the complainant has the burden of proof to show by preponderance of evidence that the respondent lawyer was remiss of his or her duties and has violated the provisions of the Code of Professional Responsibility.

Due to respondent's withdrawal as complainant's counsel for the cases, he did not anymore attend any of the hearings, Since the withdrawal was without the conformity of complainant, new counsel was not engaged. This necessarily resulted in the summary dismissal of the collection cases as

alleged by complainant.

Complainant could have obtained the services of another lawyer to represent her and handle her cases with the utmost zeal and diligence expected from officers of the court. However, respondent simply opted to withdraw from the cases without complying with the requirements under the Rules of Court and in complete disregard of his obligations towards his client.

The relationship between a lawyer and a client is "imbued with utmost trust and confidence." Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients to the best of their ability without need to be reminded by either the client or the court.

A lawyer is bound to protect his client's interests to the best of his ability and with utmost diligence. He should serve his client in a conscientious, diligent, and efficient manner; and provide the quality of service at least equal to that which he, himself, would expect from a competent lawyer in a similar situation. By consenting to be his client's counsel, a lawyer impliedly represents that he will exercise ordinary diligence or that reasonable degree of care and skill demanded by his profession, and his client may reasonably expect him to perform his obligations diligently. The failure to meet these standards warrants the imposition of disciplinary action.

Further, restitution of acceptance fees to complainant is proper. Respondent failed to present any evidence to show his alleged efforts for the cases. He failed to attend any of the hearings before the Commission on Bar Discipline. There is no reason for respondent to retain the professional fees paid by complainant for her collection cases when there was no showing that respondent performed any act in furtherance of these cases.

INTESTATE ESTATE OF JOSE UY, HEREIN REPRESENTED BY ITS ADMINISTRATOR WILSON UY, COMPLAINANT, VS. ATTY. PACIFICO M. MAGHARI III

THESE NOTES ARE MEANT TO BE SHARED!
SHARING THEM IS A GOOD THING!
SHARING THEM IS A GOOD KARMA WAITING TO HAPPEN! ☺

A.C. No. 10525 September 1, 2015

Respondent did not merely commit errors in good faith. The truth is far from it. First, respondent violated clear legal requirements, and indicated patently false information. Second, the way he did so demonstrates that he did so knowingly. Third, he did so repeatedly. Before our eyes is a pattern of deceit. Fourth, the information he used was shown to have been appropriated from another lawyer. Not only was he deceitful; he was also larcenous. Fifth, his act not only of usurping another lawyer's details but also of his repeatedly changing information from one pleading to another demonstrates the intent to mock and ridicule courts and legal processes. Respondent toyed with the standards of legal practice.

The requirement of a counsel's signature in pleadings, the significance of this requirement, and the consequences of non-compliance are spelled out in Rule 7, Section 3 of the Rules of Court:

> Section 3. Signature and address. — Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

A counsel's signature on a pleading is neither an empty formality nor even a mere means for identification. Through his or her signature, a party's counsel makes a positive declaration. In certifying through his or her signature that he or she has read the pleading, that there is ground to support it, and that it is not interposed for delay, a lawyer asserts his or her competence, credibility, and ethics. Signing a pleading is such a solemn component of legal practice that this court has taken occasion to decry the delegation of this task to non-lawyers as a violation of the Code of Professional Responsibility.

The preparation and signing of a pleading constitute legal work involving practice of law which is reserved exclusively for the members of the legal profession. Counsel may delegate the signing of a pleading to another lawyer but cannot do so in favor of one who is not.

A counsel's signature is such an integral part of a pleading that failure to comply with this requirement reduces a pleading to a mere scrap of paper totally bereft of legal effect. Thus, faithful compliance with this requirement is not only a matter of satisfying a duty to a court but is as much a matter of fidelity to one's client. A deficiency in this respect can be fatal to a client's cause.

Apart from the signature itself, additional information is required to be indicated as part of a counsel's signature:

(1) Per Rule 7, Section 3 of the Rules of Court, a counsel's address must be stated;
(2) In Bar Matter No. 1132, this court required all lawyers to indicate their Roll of Attorneys number;
(3) In Bar Matter No. 287, this court required the inclusion of the "number and date of their official receipt indicating payment of their annual membership dues to the Integrated Bar of the Philippines for the

current year"; in lieu of this, a lawyer may indicate his or her lifetime membership number;

(4) In accordance with Section 139 of the Local Government Code, a lawyer must indicate his professional tax receipt number;

(5) Bar Matter No. 1922 required the inclusion of a counsel's Mandatory Continuing Legal Education Certificate of Compliance or Certificate of Exemption; and

(6) This court's Resolution in A.M. No. 07-6-5-SC required the inclusion of a counsel's contact details.

As with the signature itself, these requirements are not vain formalities.

The inclusion of a counsel's Roll of Attorneys number, professional tax receipt number, and Integrated Bar of the Philippines (IBP) receipt (or lifetime membership) number is intended to preserve and protect the integrity of legal practice. They seek to ensure that only those who have satisfied the requisites for legal practice are able to engage in it. With the Roll of Attorneys number, parties can readily verify if a person purporting to be a lawyer has, in fact, been admitted to the Philippine bar.

With the professional tax receipt number, they can verify if the same person is qualified to engage in a profession in the place where he or she principally discharges his or her functions. With the IBP receipt number, they can ascertain if the same person remains in good standing as a lawyer.

These pieces of information "protect the public from bogus lawyers." Paying professional taxes (and the receipt that proves this payment) is likewise compliance with a revenue mechanism that has been statutorily devolved to local government units.

The inclusion of information regarding compliance with (or exemption from) Mandatory Continuing Legal Education (MCLE) seeks to ensure that legal practice is reserved only for those who have complied with the recognized mechanism for "keep[ing] abreast with law and jurisprudence, maintaining] the ethics of the profession[,] and enhancing] the standards of the practice

of law."

Lastly, the inclusion of a counsel's address and contact details is designed to facilitate the dispensation of justice. These pieces of information aid in the service of court processes, enhance compliance with the requisites of due process, and facilitate better representation of a client's cause.

> In *Juane v. Garcia*, this court took occasion to expound on the significance of putting on record a counsel's address:
>
> The time has come, we believe, for this Court to remind the members of the Bar that it is their inescapable duty to make of record their correct address in all cases in which they are counsel for a suitor. For, instances there have been in the past when, because of failure to inform the court of the change of address, litigations were delayed. And this, not to speak of inconvenience caused the other parties and the court. Worse still, litigants have lost their cases in court because of such negligence on the part of their counsel. It is painful enough for a litigant to surfer a setback in a legal battle. It is doubly painful if defeat is occasioned by his attorney's failure to receive notice because the latter has changed the place of his law office without giving the proper notice therefor. It is only when some such situation comes about that the negligent lawyer comes to realize the grave responsibility that he has incurred both to his client and to the cause of justice. It is then that the lawyer is reminded that in his oath of office he solemnly declared that he "will conduct" himself "as a lawyer according to the best of his knowledge and discretion." Too late. Experience indeed is a good teacher. To a lawyer, though, it could prove very expensive.
>
> These requirements are not mere frivolities. They are not mere markings on a piece of paper. To willfully disregard them is, thus, to willfully disregard mechanisms put in place

> to facilitate integrity, competence, and credibility in legal practice; it is to betray apathy for the ideals of the legal profession and demonstrates how one is wanting of the standards for admission to and continuing inclusion in the bar. Worse, to not only willfully disregard them but to feign compliance only, in truth, to make a mockery of them reveals a dire, wretched, and utter lack of respect for the profession that one brandishes.

To begin with, details were copied from a pleading submitted by *another* lawyer. These details somehow found their way into respondent's own pleadings. Certainly, these details could not have written themselves, let alone transfer themselves from a pleading prepared by one lawyer to those prepared by another. Someone must have actually performed the act of copying and transferring; that is, someone must have *intended* to copy and transfer them. Moreover, the person responsible for this could have only been respondent or someone acting under his instructions; the pleadings on which they were transferred are, after all, respondent's pleadings.

Respondent is rightly considered the author of these acts. Any claim that the error was committed by a secretary is inconsequential.

The explanation given by the respondent lawyer to the effect that the failure is attributable to the negligence of his secretary is devoid of merit. A responsible lawyer is expected to supervise the work in his office with respect to all the pleadings to be filed in court and he should not delegate this responsibility, lock, stock and barrel, to his office secretary. If it were otherwise, irresponsible members of the legal profession can avoid appropriate disciplinary action by simply disavowing liability and attributing the problem to the fault or negligence of the office secretary. Such situation will not be countenanced by this Court.

Even assuming that the details provided by respondent in his Comment are correct, it still remains that he (1) used a false IBP official receipt number, professional tax receipt number, Roll of Attorneys number, and MCLE compliance number a total of seven (7) times; and (2) used another lawyer's details seven (7) times.

In failing to accurately state his professional details, respondent already committed punishable violations. An isolated inaccuracy, regardless of the concerned lawyer's lack of bad faith, already merits a penalty of relative severity.

This court has never shied away from disciplining lawyers who have willfully engaged in acts of deceit and falsehood.

Respondent is not only accountable for inaccuracies. This case is far from being a matter of clerical errors. He willfully used false information. In so doing, he misled courts, litigants—his own client included— professional colleagues, and all others who may have relied on the records and documents on which these false details appear.

Seven times, respondent took for himself professional details that belonged to another. In these seven instances, he used the same swiped details in his own pleadings. So too, in these seven instances he personally benefited. In these instances, respondent succeeded in making it appear that he filed valid pleadings and avoided the fatal consequences of a deficiently signed pleading. He was able to pursue reliefs in court and carry on litigation that could have been terminated as soon as his deficient pleadings were recognized.

All these instances of falsity, dishonesty, and professional larceny are similarly acts of deceit. In using false information taken from another, respondent misled courts, parties, and colleagues into believing that he was faithfully, truthfully, and decently discharging his functions.

Respondent did not merely violate a statute and the many issuances of this court as regards the information that members of the bar must indicate when they sign pleadings. He did so in a manner that betrays intent to make a mockery of courts, legal processes, and professional standards. By his actions, respondent ridiculed and toyed with the requirements imposed by

statute and by this court. He trampled upon professional standards established not only by this court, in its capacity as overseer of the legal profession, but by the Republic itself, through a duly enacted statute. In so doing, he violated his duty to society and to the courts.

In using false information in his pleadings, respondent unnecessarily put his own client at risk. Deficiencies in how pleadings are signed can be fatal to a party's cause as unsigned pleadings produce no legal effect. In so doing, respondent violated his duty to his clients.

DAVID YU KIMTENG ET., AL. ATTY. JOVITO GAMBOL, AND ATTY. DAN REYNALD R. MAGAT, PRACTICING LAW UNDER THE FIRM NAME, YOUNG REVILLA GAMBOL & MAGAT, AND JUDGE OFELIA L. CALO, PRESIDING JUDGE OF BRANCH 211 OF THE REGIONAL TRIAL COURT, MANDALUYONG CITY, **G.R. No. 210554**
August 5, 2015

A disbarred lawyer's name cannot be part of a firm's name. A lawyer who appears under a firm name that contains a disbarred lawyer's name commits indirect contempt of court.

Maintaining a disbarred lawyer's name in the firm name is different from using a deceased partner's name in the firm name. Canon 3, Rule 3.02 allows the use of a deceased partner's name as long as there is an indication that the partner is deceased. This ensures that the public is not misled. On the other hand, the retention of a disbarred lawyer's name in the firm name may mislead the public into believing that the lawyer is still authorized to practice law. On the other hand, this court has ruled that the use of the name of a person who is not authorized to practice law constitutes contempt of court.

A lawyer who allows a non-member of the Bar to misrepresent himself as a lawyer and to practice law is guilty of violating Canon 9 and Rule 9.01 of the Code of Professional Responsibility.

The term "practice of law" implies customarily or habitually holding oneself out to the public as a lawyer for compensation as a source of livelihood or in consideration of his services. Holding one's self out as a lawyer may be shown by acts indicative of that purpose like identifying oneself as attorney, appearing in court in representation of a client, or associating oneself as a partner of a law office for the general practice of law. Such acts constitute unauthorized practice of law.

The lawyer's duty to prevent, or at the very least not to assist in, the unauthorized practice of law is founded on public interest and policy. Public policy requires that the practice of law be limited to those individuals found duly qualified in education and character. The permissive right conferred on the lawyer is an individual and limited privilege subject to withdrawal if he fails to maintain proper standards of moral and professional conduct. The purpose is to protect the public, the court, the client, and the bar from the incompetence or dishonesty of those unlicensed to practice law and not subject to the disciplinary control of the Court. It devolves upon a lawyer to see that this purpose is attained. Thus, the canons and ethics of the profession enjoin him not to permit his professional services or his name to be used in aid of, or to make possible the unauthorized practice of law by, any agency, personal or corporate. And, the law makes it a misbehavior on his part, subject to disciplinary action, to aid a layman in the unauthorized practice of law.

JUN B. LUNA VS. ATTY. DWIGHT M. GALARRITA
A.C. No. 10662 July 7, 2015

The issue for resolution is whether respondent Atty. Galarrita should be held administratively liable for entering into a Compromise Agreement without his client complainant Luna's consent, then refusing to turn over the settlement proceeds received.

Those in the legal profession must always conduct themselves with honesty and integrity in all their dealings.
Lawyers should maintain, at all times, "a high standard of legal proficiency,

morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the CPR.

These mandates apply especially to dealings of lawyers with their clients considering the highly fiduciary nature of their relationship. Clients entrust their causes—life, liberty, and property—to their lawyers, certain that this confidence would not be abused.

The Rules of Court thus requires lawyers to secure special authority from their clients when entering into a compromise agreement that dispenses with litigation:

> SEC. 23. *Authority of attorneys to bind clients*. - Attorneys have authority to bind their clients in any case by any agreement in relation thereto made in writing and in taking appeals, and in all matters of ordinary judicial procedure. ***But they cannot, without special authority, compromise their client's litigation***, or receive anything in discharge of a client's claim but the full amount in cash. (Emphasis supplied)

This court has held that "any money collected for the client or other trust property coming into the lawyer's possession should promptly be reported by him [or her]."

Later jurisprudence clarified that this rule excluding civil liability determination from disciplinary proceedings "remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct [from] and not intrinsically linked to his professional engagement." This court has thus ordered in administrative proceedings the return of amounts representing legal fees.

Although the Court renders this decision in an administrative proceeding primarily to exact the ethical responsibility on a member of the Philippine Bar, the Court's silence about the respondent lawyer's legal obligation to restitute the complainant will be both unfair and inequitable. ***No victim of gross ethical misconduct concerning the client's funds or property should be required to still litigate in another proceeding what the administrative proceeding has already established as the respondent's liability.*** That has been the reason why the Court has required restitution of the amount involved as a concomitant relief.

ELADIO D. PERFECTO VS. JUDGE ALMA CONSUELO D. ESIDERA,
A.M. No. RTJ-15-2417 July 22, 2015

Morality refers to what is good or right conduct at a given circumstance. In *Estrada v. Escritor*, this court described morality as "how we ought to live and why."

Morality may be religious, in which case what is good depends on the moral prescriptions of a high moral authority or the beliefs of a particular religion. Religion, as this court defined in *Aglipay v. Ruiz*, is "a profession of faith to an active power that binds and elevates man to his Creator." A conduct is religiously moral if it is consistent with and is carried out in light of the divine set of beliefs and obligations imposed by the active power.

Morality may also be secular, in which case it is independent of any divine moral prescriptions. What is good or right at a given circumstance does not derive its basis from any religious doctrine but from the independent moral sense shared as humans.

The non-establishment clause bars the State from establishing, through laws and rules, moral standards according to a specific religion. Prohibitions against immorality should be based on a purpose that is independent of religious beliefs. When it forms part of our laws, rules, and policies, morality must be secular. Laws and rules of conduct must be based on a secular purpose.

In the same way, this court, in resolving cases that touch on issues of morality, is bound to remain neutral and to limit the bases of its judgment on secular moral standards. When laws or rules refer to morals or immorality, courts should be careful not to overlook the distinction between secular and religious morality if it is to keep its part in upholding constitutionally guaranteed rights.

There is the danger of "compelled religion" and, therefore, of negating the very idea of freedom of belief and non-establishment of religion when religious morality is incorporated in government regulations and policies.

Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, *i.e.*, to a "compelled religion" anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens. Expansive religious freedom therefore requires that government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality.

This court may not sit as judge of what is moral according to a particular religion. We do not have jurisdiction over and is not the proper authority to determine which conduct contradicts religious doctrine. We have jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest.

Thus, for purposes of determining administrative liability of lawyers and judges, "immoral conduct" should relate to their conduct as officers of the court. To be guilty of "immorality" under the Code of Professional Responsibility, a lawyer's conduct must be so depraved as to reduce the

public's confidence in the Rule of Law. Religious morality is not binding whenever this court decides the administrative liability of lawyers and persons under this court's supervision. At best, religious morality weighs only persuasively on us.

Therefore, we cannot properly conclude that respondent judge's acts of contracting a second marriage during the subsistence of her alleged first marriage and having an alleged "illicit" affair are "immoral" based on her Catholic faith. This court is not a judge of religious morality.

We also do not find that respondent judge's acts constitute immorality for purposes of administrative liability. Under the circumstances, respondent judge's second marriage and her alleged affair with her second husband were *not of such depravity* as to reduce confidence in the Rule of Law. Respondent judge and her first husband never really lived together as husband and wife. She claimed that her first husband did not want to have a church wedding. She and her husband did not have a child. She claimed that this marriage was not recognized by her church. Eventually, their marriage was declared void, and she was wed civilly to her second husband, with whom respondent judge allegedly had an affair.

Moreover, respondent judge's acts were not intrinsically harmful. When respondent judge married her second husband, no harm was inflicted upon any one, not even the complainant. There was no evidence on the records that the first husband, who was the most interested person in the issue, even objected to the second marriage.

While we do not find respondent judge administratively liable for immorality, we can determine if she is administratively liable for possible misconduct. The Code of Professional Responsibility directs lawyers to obey the laws and promote respect for the law.

Respondent judge's act of participating in the marriage ceremony as governed only by the rules of her religion is not inconsistent with our law against bigamy. What the law prohibits is not second marriage during a subsisting marriage per se. What the law prohibits is a second marriage that

would have been valid had it not been for the subsisting marriage. Under our law, respondent judge's marriage in 1990 was invalid because of the solemnizing officer's lack of authority.

Marriages entered into in accordance with the law may or may not include marriages recognized in certain religions. Religious marriages are recognized in and may be governed by our laws only if they conform to legal requirements. Religious marriages that lack some or all the requirements under the law are invalid. They are not considered to have been entered into. They do not enjoy the benefits, consequences, and incidents of marriage provided under the law.

The lack of authority of the officer that solemnized respondent judge's marriage in 1990 renders such marriage invalid. It is not recognized in our law. Hence, no second marriage can be imputed against respondent judge while her first marriage subsisted.

However, respondent judge may have disobeyed the law, particularly Article 350 of the Revised Penal Code, which prohibits knowingly contracting marriages against the provisions of laws. Article 350 of the Revised Penal Code provides:

> ART. 350. *Marriage contracted against provisions of laws*. - The penalty of prision correccional in its medium and maximum periods shall be imposed upon any person who, without being included in the provisions of the next preceding article, shall contract marriage *knowing that the requirements of the law have not been complied with* or that the marriage is in disregard of a legal impediment. (Emphasis supplied)

Unless respondent judge's act of participating in a marriage ceremony according to her religious beliefs violates other peoples' rights or poses grave and imminent danger to the society, we cannot rule that respondent judge is administratively liable for her participation in her religious marriage ceremony.[49]

Benevolent neutrality recognizes that government must pursue its secular goals and interests but at the same time strives to uphold religious liberty to the greatest extent possible within flexible constitutional limits. Thus, although the morality contemplated by laws is secular, *benevolent neutrality* could allow for *accommodation* of morality based on religion, provided it does not offend compelling state interests.

However, benevolent neutrality and claims of religious freedom cannot shield respondent judge from liability for misconduct under our laws. Respondent judge knowingly entered into a civil marriage with her first husband. She knew its effects under our laws. She had sexual relations with her second husband while her first marriage was subsisting.

Respondent judge cannot claim that engaging in sexual relations with another person during the subsistence of a marriage is an exercise of her religious expression. Legal implications and obligations attach to any person who chooses to enter civil marriages. This is regardless of how civil marriages are treated in that person's religion.

Moreover, respondent judge, as a lawyer and even more so as a judge, is expected to abide by the law. Her conduct affects the credibility of the courts in dispensing justice. Thus, in finding respondent judge administratively liable for a violation of her marriage obligations under our laws, this court protects the credibility of the judiciary in administering justice.

Lawyers are not and should not be expected to be saints. What they do as citizens of their faiths are beyond this court's power to judge. Lawyers, however, are officers of court. They are expected to care about and sustain the law. This court's jurisdiction over their actions is limited to their acts that may affect public confidence in the Rule of Law. Our state has secular interests to protect. This court cannot be expected to condone misconduct

done knowingly on account of religious freedom or expression.

CRESCENCIANO M. PITOGO, VS. ATTY. JOSELITO TROY SUELLO, A.C. No. 10695 March 18, 2015

Respondent is administratively liable for his negligence in keeping and maintaining his notarial register.

Recording every notarial act in the notarial register is required under Rule VI the Notarial Rules, thus:

> Sec. 2. *Entries in the Notarial Register.* – (a) For every notarial act, the notary shall record in the notarial register at the time of the notarization the following:
> (1) The entry number and page number;
> (2) The date and time of day of the notarial act;
> (3) The type of notarial act;
> (4) The title or description of the instrument, document or proceeding;
> (5) The name and address of each principal;
> (6) The competent evidence of identity as defined by these Rules if the signatory is not personally known to the notary;
> (7) The name and address of each credible witness swearing to or affirming the person's identity;
> (8) The fee charged for the notarial act;
> (9) The address where the notarization was performed if not in the notary's regular place of work or business; and
> (10) Any other circumstance the notary public may deem of significance or relevance.
>
> . . . .

> (e) The notary public shall give to each instrument or document executed, sworn to, or acknowledged before him a number corresponding to the one in his register, and shall also state on the instrument or document the page/s of his register on which the same is recorded. No blank line shall be left between entries.
>
> Failure to properly record entries in the notarial register is also a ground for revocation of notarial commission:
>
> SECTION 1. *Revocation and Administrative Sanctions*. – . . .
>
> (b) In addition, the Executive Judge may revoke the commission of, or impose appropriate administrative sanctions upon, any notary public who:
>
> . . . .
>
> (2) fails to make the proper entry or entries in his notarial register concerning his notarial acts[.]

Notarial acts give private documents a badge of authenticity that the public relies on when they encounter written documents and engage in written transactions. Hence, all notaries public are duty-bound to protect the integrity of notarial acts by ensuring that they perform their duties with utmost care.

A notarial register is *prima facie* evidence of the facts there stated. It has the presumption of regularity and to contradict the veracity of the entry, evidence must be clear, convincing, and more than merely preponderant.

Notarization is not an empty, meaningless, routinary act. It is invested with such substantial public interest that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document, making that document admissible in evidence without further proof of its authenticity. For this reason, notaries

must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined.

Hence, when respondent negligently failed to enter the details of the three (3) documents on his notarial register, he cast doubt on the authenticity of complainant's documents. He also cast doubt on the credibility of the notarial register and the notarial process. He violated not only the Notarial Rules but also the Code of Professional Responsibility, which requires lawyers to promote respect for law and legal processes.

Respondent's secretary cannot be blamed for the erroneous entries in the notarial register. The notarial commission is a license held personally by the notary public. It cannot be further delegated. It is the notary public alone who is personally responsible for the correctness of the entries in his or her notarial register. Respondent's apparent remorse may assuage the injury done privately, but it does not change the nature of the violation.

TERESITA B. ENRIQUEZ VS. ATTY. TRINA DE VERA
A.C. No. 8330 March 16, 2015

The gravamen of the offense punished by B.P. Blg. 22 is the act of making and issuing . . . worthless check[s]; that is, a check that is dishonored upon its presentation for payment. The law is not intended or designed to coerce a debtor to pay his debt. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. . . . A check issued as an evidence of debt — though not intended to be presented for payment — has the same effect as an ordinary check and would fall within the ambit of B.P. Blg. 22.

As a lawyer, respondent is deemed to know the law, especially B.P. Blg. 22. By issuing checks in violation of the provisions of the law, respondent is guilty of serious misconduct.

In issuing the worthless checks, Atty. De Vera did not only violate the law, but she also broke her oath as a lawyer and transgressed the Canons in the Code of Professional Responsibility.

The main issue is whether Atty. De Vera committed serious misconduct and should be held administratively liable for the issuance and dishonor of worthless checks in violation of the Lawyer's Oath and the Code of Professional Responsibility.

This court has ruled that the lawyer's act of issuing worthless checks, punishable under Batas Pambansa Blg. 22, constitutes serious misconduct.

In *De Jesus v. Collado,* this court found respondent lawyer guilty of serious misconduct for issuing post-dated checks that were dishonored upon presentment for payment:

> In the case at bar, no conviction for violation of B.P. Blg. 22 has as yet been obtained against respondent Collado.. *We do not, however, believe that conviction of the criminal charges raised against her is essential, so far as either the administrative or civil service case or the disbarment charge against her is concerned.* Since she had admitted issuing the checks when she did not have enough money in her bank account to cover the total amount thereof, it cannot be gainsaid that the acts with which she was charged would constitute a crime penalized by B.P. Blg. 22. *We consider that issuance of checks in violation of the provisions of B.P. Blg. 22 constitutes serious misconduct on the part of a member of the Bar*.

Misconduct involves "wrongful intention and not a mere error of judgment"; it is serious or gross when it is flagrant.

Batas Pambansa Blg. 22 has been enacted in order to safeguard the interest of the banking system and the legitimate public checking account users. The

gravamen of the offense defined and punished by Batas Pambansa Blg. 22 . . . is the act of making and issuing a worthless check, or any check that is dishonored upon its presentment for payment and putting it in circulation; the law is designed to prohibit and altogether eliminate the deleterious and pernicious practice of issuing checks with insufficient funds, or with no credit, because the practice is deemed a public nuisance, a crime against public order to be abated.

. . .

Being a lawyer, respondent] was well aware of the objectives and coverage of Batas Pambansa Blg. 22. If he did not, he was nonetheless presumed to know them, for. the law was penal in character and application. His issuance of the unfunded check involved herein knowingly violated Batas Pambansa Blg. 22, and exhibited his indifference towards the pernicious effect of his illegal act to public interest and public order. He thereby swept aside his Lawyer's Oath that enjoined him to support the Constitution and obey the laws.

Membership in the bar requires a high degree of fidelity to the laws whether in a private or professional capacity. "Any transgression of this duty on his part would not only diminish his reputation as a lawyer but would also erode the public's faith in the Legal Profession as a whole."

A lawyer "may be removed or otherwise disciplined 'not only for malpractice and dishonesty in his profession, but also for gross misconduct not connected with his professional duties, which showed him to be unfit for the office and unworthy of the privileges which his license and the law confer to him.'"

ROBERTO BERNARDINO, VS. ATTY. VICTOR REY SANTOS

THESE NOTES ARE MEANT TO BE SHARED!
SHARING THEM IS A GOOD THING!
SHARING THEM IS A GOOD KARMA WAITING TO HAPPEN! ☺

[A.C. NO. 10584 [FORMERLY CBD 10-2827]]

ATTY. JOSE MANGASER CARINGAL, VS.
ATTY. VICTOR REY SANTOS
A.C. No. 10583 February 18, 2015

R E S O L U T I O N

The rule on conflict of interest is based on the fiduciary obligation in a lawyer-client relationship. Lawyers must treat all information received from their clients with utmost confidentiality in order to encourage clients to fully inform their counsels of the facts of their case.

There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. *The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client."*

This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.

The Supreme Court, as guardian of the legal profession, has plenary disciplinary authority over attorneys. The authority to discipline lawyers stems from the Court's constitutional mandate to regulate admission to the practice of law, which includes as well authority to regulate the practice itself of law. Quite apart from this constitutional mandate, the disciplinary

authority of the Supreme Court over members of the Bar is an inherent power incidental to the proper administration of justice and essential to an orderly discharge of judicial functions. . . .

Parenthetically, it is this court that has the constitutionally mandated duty to discipline lawyers.[Under the current rules, the duty to assist fact finding can be delegated to the Integrated Bar of the Philippines. The findings of the Integrated Bar, however, can only be recommendatory, consistent with the constitutional powers of this court. Its recommended penalties are also, by its nature, recommendatory.

Time and again, this Court emphasizes that the practice of law is imbued with public interest and that "a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State—the administration of justice—as an officer of the court." Accordingly, Lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing."

Only this court can impose sanctions on members of the Bar. This disciplinary authority is granted by the Constitution and cannot be relinquished by this court. The Resolutions of the Integrated Bar of the Philippines are, at best, recommendatory, and its findings and recommendations should not be equated with Decisions and Resolutions rendered by this court.

REYNALDO G. RAMIREZ VS. ATTY. MERCEDES BUHAYANG-MARGALLO
A.C. No. 10537 February 3, 2015

When an action or proceeding is initiated in our courts, lawyers become the eyes and ears of their clients. Lawyers are expected to prosecute or defend the interests of their clients without need for reminders. The privilege of the office of attorney grants them the ability to warrant to their client that they

will manage the case as if it were their own. The relationship between an attorney and client is a sacred agency. It cannot be disregarded on the flimsy excuse that the lawyer accepted the case only because he or she was asked by an acquaintance. The professional relationship remains the same regardless of the reasons for the acceptance by counsel and regardless of whether the case is highly paying or pro bono.

The relationship between a lawyer and a client is "imbued with utmost trust and confidence." Lawyers are expected to exercise the necessary diligence and competence in managing cases entrusted to them. They commit not only to review cases or give legal advice, but also to represent their clients to the best of their ability without need to be reminded by either the client or the court. The expectation to maintain a high degree of legal proficiency and attention remains the same whether the represented party is a high-paying client or an indigent litigant.

The relationship between an attorney and his client is one imbued with utmost trust and confidence. In this light, *clients are led to expect that lawyers would be ever-mindful of their cause and accordingly exercise the required degree of diligence in handling their affairs. Verily, a lawyer is expected to maintain at all times a high standard of legal proficiency, and to devote his full attention, skill, and competence to the case, regardless of its importance and whether he accepts it for a fee or for free.*

Case law further illumines that a lawyer's duty of competence and diligence includes not merely reviewing the cases entrusted to the counsel's care or giving sound legal advice, but *also consists of properly representing the client before any court or tribunal, attending scheduled hearings or conferences, preparing and filing the required pleadings, prosecuting the handled cases with reasonable dispatch, and urging their termination without waiting for the client or the court to prod him or her to do so.*

Conversely, a lawyer's negligence in fulfilling his duties subjects him to disciplinary action. While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the *lawyer's mere failure to perform the obligations due his client is per se a violation*.

A problem arises whenever agents, entrusted to manage the interests of another, use their authority or power for their benefit or fail to discharge their duties. In many agencies, there is information assymetry between the principal and the entrusted agent. That is, there are facts and events that the agent must attend to that may not be known by the principal.

This information assymetry is even more pronounced in an attorney-client relationship. Lawyers are expected not only to be familiar with the minute facts of their cases but also to see their relevance in relation to their causes of action or their defenses. The salience of these facts is not usually patent to the client. It can only be seen through familiarity with the relevant legal provisions that are invoked with their jurisprudential interpretations. More so with the intricacies of the legal procedure. It is the lawyer that receives the notices and must decide the mode of appeal to protect the interest of his or her client.

Thus, the relationship between a lawyer and her client is regarded as highly fiduciary. Between the lawyer and the client, it is the lawyer that has the better knowledge of facts, events, and remedies. While it is true that the client chooses which lawyer to engage, he or she usually does so on the basis of reputation. It is only upon actual engagement that the client discovers the level of diligence, competence, and accountability of the counsel that he or she chooses. In some cases, such as this one, the discovery comes too late. Between the lawyer and the client, therefore, it is the lawyer that should bear the full costs of indifference or negligence.

JIMMY ANUDON AND JUANITA ANUDON, VS. ATTY. ARTURO B. CEFRA

THESE NOTES ARE MEANT TO BE SHARED!
SHARING THEM IS A GOOD THING!
SHARING THEM IS A GOOD KARMA WAITING TO HAPPEN! ☺

A.C. No. 5482 February 10, 2015

Whoever acts as Notary Public must ensure that the parties executing the document be present. Otherwise, their participation with respect to the document cannot be acknowledged. Notarization of a document in the absence of the parties is a breach of duty.

Notarization of a private document converts such document into a public one, and renders it admissible in court without further proof of its authenticity. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. Notarization is not an empty routine; to the contrary, it engages public interest in a substantial degree and the protection of that interest requires preventing those who are not qualified or authorized to act as notaries public from imposing upon the public and the courts and administrative offices generally.

The earliest law on notarization is Act No. 2103. This law refers specifically to the acknowledgment and authentication of instruments and documents. Section 1(a) of this law states that an acknowledgment "shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done."

The 2004 Rules on Notarial Practice reiterates that acknowledgments require the affiant to appear in person before the notary public. Rule II, Section 1 states:

> SECTION 1. Acknowledgment.—"Acknowledgment" refers to an act in which an individual on a single occasion:
>
> (a) **appears in person before the notary public** and presents and integrally complete instrument or document;
>
> (b) is attested to be personally known to the notary public

> or identified by the notary public through competent evidence of identity as defined by these Rules; and
>
> (c) **represents to the notary public that the signature on the instrument or document was voluntarily affixed by him** for the purposes stated in the instrument or document, declares that he has executed the instrument or document as his free and voluntary act and deed, and, if he acts in a particular representative capacity, that he has the authority to sign in that capacity. (Emphasis supplied)
>
> Rule IV, Section 2(b) states further:
>
> SEC. 2. *Prohibitions.*— . . .
>
> (b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document—
>
> (1) is not in the notary's presence personally at the time of the notarization; and
>
> (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

The rules require the notary public to assess whether the person executing the document voluntarily affixes his or her signature. Without physical presence, the notary public will not be able to properly execute his or her duty under the law.

Notarization is the act that ensures the public that the provisions in the document express the true agreement between the parties. Transgressing the rules on notarial practice sacrifices the integrity of notarized documents. It is the notary public who assures that the parties appearing in the document are the same parties who executed it. This cannot be

achieved if the parties are not physically present before the notary public acknowledging the document.

SPOUSES NICASIO DONELITA SAN PEDRO *vs.* ***ATTY. ISAGANI A. MENDOZA***
A.C. No. 5440 December 10, 2014

The main issue in this case is whether respondent is guilty of violating Canon 16 of the Code of Professional Responsibility for failing to hold in trust the money of his clients.

It has been said that "the practice of law is a privilege bestowed on lawyers who meet the high standards of legal proficiency and morality. Any conduct that shows a violation of the norms and values of the legal profession exposes the lawyer to administrative liability."

The fiduciary nature of the relationship between counsel and client imposes on a lawyer the duty to account for the money or property collected or received for or from the client[,] [thus] . . . [w]hen a lawyer collects or receives money from his client for a particular purpose (such as for filing fees, registration fees, transportation and office expenses), he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money (if the intended purpose of the money does not materialize) constitutes a blatant disregard of Rule 16.01 of the Code of Professional Responsibility.

Failure 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.

Respondent admitted that there were delays in the transfer of title of property to complainants' name. He continuously assured complainants that he would still fulfill his duty. However, after three (3) years and several demands from complainants, respondent failed to accomplish the task given

to him and even refused to return the money. Complainants' alleged failure to provide the necessary documents to effect the transfer does not justify his violation of his duty under the Code of Professional Responsibility.

Respondent's assertion of a valid lawyer's lien is also untenable. A valid retaining lien has the following elements:

An attorney's retaining lien is fully recognized if the presence of the following elements concur: (1) lawyer-client relationship; (2) lawful possession of the client's funds, documents and papers; and (3) unsatisfied claim for attorney's fees. Further, the attorney's retaining lien is a general lien for the balance of the account between the attorney and his client, and applies to the documents and funds of the client which may come into the attorney's possession in the course of his employment.

Respondent did not satisfy all the elements of a valid retaining lien. He did not present evidence as to an unsatisfied claim for attorney's fees. The enumeration of cases he worked on for complainants remains unsubstantiated. When there is no unsatisfied claim for attorney's fees, lawyers cannot validly retain their client's funds or properties.

Furthermore, assuming that respondent had proven all the requisites for a valid retaining lien, he cannot appropriate for himself his client's funds without the proper accounting and notice to the client. The rule is that when there is "a disagreement, or when the client disputes the amount claimed by the lawyer . . . the lawyer should not arbitrarily apply the funds in his possession to the payment of his fees .... "

VICTOR C. LINGAN VS. ATTYS. ROMEO CALUBAQUIB AND JIMMY P. BALIGA
A.C. No. 5377 June 30, 2014

This court has the exclusive jurisdiction to regulate the practice of law. When this court orders a lawyer suspended from the practice of law, the lawyer must desist from performing all functions requiring the application

of legal knowledge within the period of suspension. This includes desisting from holding a position in government requiring the authority to practice law.

Work in government that requires the use of legal knowledge is considered practice of law. In *Cayetano v. Monsod*, this court cited the deliberations of the 1986 Constitutional Commission and agreed that work rendered by lawyers in the Commission on Audit requiring "[the use of] legal knowledge or legal talent" is practice of law.

The exercise of the powers and functions of a Commission on Human Rights Regional Director constitutes practice of law. Thus, the Regional Director must be an attorney — a member of the bar in good standing and authorized to practice law. When the Regional Director loses this authority, such as when he or she is disbarred or suspended from the practice of law, the Regional Director loses a necessary qualification to the position he or she is holding. The disbarred or suspended lawyer must desist from holding the position of Regional Director.

The Commission on Human Rights erred in issuing the resolution dated April 13, 2007. This resolution caused Atty. Baliga to reassume his position as Regional Director/Attorney VI despite lack of authority to practice law.

We remind the Commission on Human Rights that we have the exclusive jurisdiction to regulate the practice of law. The Commission cannot, by mere resolutions and other issuances, modify or defy this court's orders of suspension from the practice of law. Although the Commission on Human Rights has the power to appoint its officers and employees, it can only retain those with the necessary qualifications in the positions they are holding.

JULIETA B. NARAG VS. ATTY. DOMINADOR M. NARAG
A.C. No. 3405 March 18, 2014

The extreme penalty of disbarment was meted on the respondent on account of his having committed a grossly immoral conduct, i.e., abandoning his wife and children to live with his much younger paramour. Indeed, nothing could be more reprehensible than betraying one's own family in order to satisfy an irrational and insatiable desire to be with another woman. The respondent's act was plainly selfish and clearly evinces his inappropriateness to be part of the noble legal profession.

More than 15 years after being disbarred, the respondent now professes that he had already repented and expressed remorse over the perfidy that he had brought upon his wife and their children. That such repentance and remorse, the respondent asserts, together with the long years that he had endured his penalty, is now sufficient to enable him to be readmitted to the practice of law.

The respondent's pleas, however, are mere words that are hollow and bereft of any substance. The Court, in deciding whether the respondent should indeed be readmitted to the practice of law, must be convinced that he had indeed been reformed; that he had already rid himself of any grossly immoral act which would make him inept for the practice of law. However, it appears that the respondent, while still legally married to Julieta, is still living with his paramour – the woman for whose sake he abandoned his family. This only proves to show that the respondent has not yet learned from his prior misgivings.

That he was supposedly forgiven by his wife and their children would likewise not be sufficient ground to grant respondent's plea. It is noted that only his son, Dominador, Jr., signed the affidavit which was supposed to evidence the forgiveness bestowed upon the respondent. Thus, with regard to Julieta and the six other children of the respondent, the claim that they had likewise forgiven the respondent is hearsay. In any case, that the family of the respondent had forgiven him does not discount the fact that he is still committing a grossly immoral conduct; he is still living with a woman other than his wife.

Likewise, that the respondent executed a holographic will wherein he

bequeaths all his properties to his wife and their children is quite immaterial and would not be demonstrative that he had indeed changed his ways. Verily, nothing would stop the respondent from later on executing another last will and testament of a different tenor once he had been readmitted to the legal profession.

In fine, the Court is not convinced that the respondent had shown remorse over his transgressions and that he had already changed his ways as would merit his reinstatement to the legal profession. Time and again the Court has stressed that the practice of law is not a right but a privilege. It is enjoyed only by those who continue to display unassailable character.

REX M. TUPAL, COMPLAINANT, VS. JUDGE REMEGIO V. ROJO, BRANCH 5, MUNICIPAL TRIAL COURT IN CITIES (MTCC), BACOLOD CITY, NEGROS OCCIDENTAL, RESPONDENT.
A.M. MTJ-14-1842 February 24, 2014

Municipal trial court judges cannot notarize affidavits of cohabitation of parties whose marriage they will solemnize.

Municipal trial court and municipal circuit trial court judges may act as notaries public. However, they may do so only in their ex officio capacities. They may notarize documents, contracts, and other conveyances only in the exercise of their official functions and duties. Circular No. 1-90 dated February 26, 1990 provides:

Municipal trial court (MTC) and municipal circuit trial court (MCTC) judges are empowered to perform the function of notaries public *ex officio* under Section 76 of Republic Act No. 296, as amended (otherwise known as the Judiciary Act of 1948) and Section 242 of the Revised Administrative Code. But the Court hereby lays down the following qualifications on the scope of this power:

MTC and MCTC judges may act as notaries public *ex officio* in the notarization of documents connected only with the exercise of their official

functions and duties x x x. They may not, as notaries public *ex officio*, undertake the preparation and acknowledgment of private documents, contracts and other acts of conveyances which bear no direct relation to the performance of their functions as judges. The 1989 Code of Judicial Conduct not only enjoins judges to regulate their extra-judicial activities in order to minimize the risk of conflict with their judicial duties, but also prohibits them from engaging in the private practice of law (Canon 5 and Rule 5.07).

They may also act as notaries public ex officio only if lawyers or notaries public are lacking in their courts' territorial jurisdiction. They must certify as to the lack of lawyers or notaries public when notarizing documents ex officio:

However, the Court, taking judicial notice of the fact that there are still municipalities which have neither lawyers nor notaries public, rules that MTC and MCTC judges assigned to municipalities or circuits with no lawyers or notaries public may, in the capacity as notaries public *ex officio*, perform any act within the competency of a regular notary public, provided that: (1) all notarial fees charged be for the account of the Government and turned over to the municipal treasurer (*Lapena, Jr. vs. Marcos*, Adm. Matter No. 1969-MJ, June 29, 1982, 114 SCRA 572); and, (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit.

Judge Rojo notarized affidavits of cohabitation, which were documents not connected with the exercise of his official functions and duties as solemnizing officer. He also notarized affidavits of cohabitation without certifying that lawyers or notaries public were lacking in his court's territorial jurisdiction. Thus, Judge Rojo violated Circular No. 1-90.

Before performing the marriage ceremony, the judge must personally interview the contracting parties and examine the requirements they submitted. The parties must have complied with all the essential and formal requisites of marriage. Among these formal requisites is a marriage license.

As a solemnizing officer, the judge's only duty involving the affidavit of cohabitation is to examine whether the parties have indeed lived together for at least five years without legal impediment to marry. The Guidelines does not state that the judge can notarize the parties' affidavit of cohabitation.

Thus, affidavits of cohabitation are documents not connected with the judge's official function and duty to solemnize marriages. Notarizing affidavits of cohabitation is inconsistent with the duty to examine the parties' requirements for marriage. If the solemnizing officer notarized the affidavit of cohabitation, he cannot objectively examine and review the affidavit's statements before performing the marriage ceremony. Should there be any irregularity or false statements in the affidavit of cohabitation he notarized, he cannot be expected to admit that he solemnized the marriage despite the irregularity or false allegation.

Thus, judges cannot notarize the affidavits of cohabitation of the parties whose marriage they will solemnize. Affidavits of cohabitation are documents not connected with their official function and duty to solemnize marriages.

For violating Circular No. 1-90 and the 2004 Rules on Notarial Practice nine times, Judge Rojo is guilty of gross ignorance of the law.

RE: NOMINATION OF ATTY. LYNDA CHAGUILE, IBP IFUGAO PRESIDENT, AS REPLACEMENT FOR IBP GOVERNOR FOR NORTHERN LUZON, DENIS B. HABAWEL

[A.M. No. 13-05-08-SC]

RE: ALLEGED NULLITY OF THE ELECTION OF IBP SOUTHERN LUZON GOVERNOR VICENTE M. JOYAS AS IBP EXECUTIVE VICE PRESIDENT [FOR 2011-2013]

[A.M. No. 13-06-11-SC]

THESE NOTES ARE MEANT TO BE SHARED!
SHARING THEM IS A GOOD THING!
SHARING THEM IS A GOOD KARMA WAITING TO HAPPEN! ☺

RE: LETTER-REQUEST OF THE NATIONAL SECRETARY OF THE IBP RE PROPOSED OATH-TAKING BEFORE THE SUPREME COURT OF THE ELECTED IBP REGIONAL GOVERNORS AND THE EXECUTIVE VICE PRESIDENT FOR THE TERM 2013 TO 2015
A.M. No. 13-04-03-SC December 10, 2013

As a rule, this Court may only adjudicate actual, ongoing controversies. The Court is not empowered to decide moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the result as to the thing in issue in the case before it. In other words, when a case is moot, it becomes non-justiciable.

An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.

Indeed, it is not only erroneous but also absurd to insist that a vacancy must actually and literally exist at the *precise* moment that a successor to an office is identified. Where a vacancy is anticipated with reasonable certainty — as when a term is ending or the effectivity of a resignation or a retirement is forthcoming — it is but reasonable that those who are in a position to designate a replacement act promptly. New officials are elected before the end of an incumbent's term; replacements are recruited (and even trained) ahead of an anticipated resignation or retirement. This is necessary to ensure the smooth and effective functioning of an office. Between prompt and lackadaisical action, the former is preferable. It is immaterial that there is an identified successor-in-waiting so long as there are no simultaneous occupants of an office.
The IBP Board of Governors arrogated unto itself a power which is vested in the delegates of the concerned IBP region. This arrogation is a manifest

violation of the clear and unmistakable terms of the IBP's By-Laws. We cannot countenance this. No amount of previous practice or "tradition" can validate such a patently erroneous action. It is, therefore, clear that Atty. Chaguile's designation as IBP Governor for Northern Luzon is tainted with irregularity, and therefore, invalid.

The leadership of our Integrated Bar must find a better way of resolving its conflicts other than elevating these matters to this Court. It cannot fail to show maturity in resolving its own conflicts. It behooves the members of the legal profession to avoid being so litigious that they lose sight of the primordial public interests that must be upheld in every case and conflict that is raised to the level of this Court.

Otherwise, the Integrated Bar of the Philippines will continue to alienate its mass membership through political contestations that may be viewed as parochial intramurals from which only a few lawyers benefit. It will be generations of leaders who model needless litigation and wasted time and energy. This is not what an integrated bar of a noble profession should be.

OFFICE OF THE COURT ADMINISTRATOR
vs.
RETIRED JUDGE GUILLERMO R. ANDAYA
A.M. No. RTJ-09-2181 June 25, 2013
(Formerly A.M. No. 09-4-174-RTJ)

In order for the Court to acquire jurisdiction over an administrative case, **the complaint must be filed during the incumbency of the respondent.** Once jurisdiction is acquired, it is not lost by reason of respondent's cessation from office.

Respondent's cessation from office does not warrant the dismissal of the administrative complaint filed against him while he was still in the service nor does it render said administrative case moot and academic. The Court's jurisdiction at the time of the filing of the administrative complaint is not lost

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by the mere fact that the respondent had ceased in office during the pendency of the case.

NO HONEST EFFORTS ARE EVER WASTED IF DONE AND OFFERED FOR THE GREATER GLORY OF GOD!

JULY 4, 2021
BATANGAS CITY

YOUR PRE-WEEK COMPANION IS COMING SOON!
OUT THIS JULY 2021 VIA CENTRAL BOOKSTORE
www.central.com.ph

Nakutulong ka na! (Surely),
Matututo ka pa! (Hopefully)
Proceeds will be used to fund our year long outreach activities to our adopted charities! ☺

+
Ad Majorem DEI Gloriam