



LEGAL ETHICS

BAR QUESTIONS & ANSWERS

(2007-2017)

with Table of Frequently
Asked Topics in the Bar

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I. LEGAL ETHICS

A. Practice of Law

1. Concept

1. (1) Define the following terms: (4%) (2015 Bar Question)

a) counsel *de officio*

SUGGESTED ANSWER:

counsel *de officio* – a lawyer appointed by the court to represent a party who cannot afford to secure lawyer to represent him in a case.

b) counsel *de parte*

SUGGESTED ANSWER:

counsel *de parte* - a lawyer chosen by a party to represent him in a case.

c) amicus curiae

SUGGESTED ANSWER:

Amicus curiae literally, a friend of the court; a lawyer appointed by the court, not to represent a party to the case, but to advise the court on intricate questions of law in a case that the lawyer may have some expertise in.

d) attorney of record

SUGGESTED ANSWER:

A *counsel of record* is a lawyer whose name and address appears in the record of a case as representing a party; same as a counsel *de parte*.

2. Cite some of the characteristics of the legal profession which distinguish it from business. (4%) (2015 Bar Question)

SUGGESTED ANSWER:

The primary characteristics which distinguish the legal profession from a business are:

1. a duty of public service of which emolument is a by-product, and in which one may attain the highest eminence without making much money;
2. a relation as officer of the court to the administration of justice involving thorough sincerity, integrity and reliability;
3. a relation to client in the highest degree fiduciary;
4. a relation to colleagues characterized by candor, fairness and unwillingness to resort to current business methods of advertising and encroachment on their practice, or dealing directly with their clients (*In Re Sycip*, 92 SCRA 1).

3. What are the duties of an attorney? (2007 Bar Question)**SUGGESTED ANSWER:**

The duties of attorneys as found in the Attorney's Oath are:

1. To maintain allegiance to the Republic of the Philippines;
2. To Support its Constitution;
3. To obey the laws as well as the legal orders of the duly constituted authorities therein;
4. To do no falsehood, nor consent to the doing of any in court;
5. To avoid wittingly or unwittingly promoting or suing any groundless, false or unlawful suit, nor give aid or consent to the same;
6. To delay no man for money or malice,
7. To conduct himself as a lawyer according to the best of his knowledge and discretion with all good fidelity well to the courts as to his clients.

ALTERNATIVE SUGGESTED ANSWER:

The duties of attorneys as found in Section 20, Rule 138 of the Rules of Courts are:

1. To maintain the allegiance to the Republic of the Philippines;
2. To maintain the respect due to the courts of justice and judicial officers;
3. To counsel or maintain such actions or proceedings only as appear to him to be just, and such defenses only as he believes to be honestly debatable under the law;
4. To employ, for the purposes of maintaining the causes confided to him, such means only as are consistent with truth and honor, and never seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law;
5. To maintain inviolate the confidence, and at every peril to himself, to preserve the secret of his client, and to accept no compensation in connection with his client's business except from him with his knowledge and approval;
6. To abstain from all offensive personality, and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged;
7. Not to encourage either the commencement or the continuance of an action or proceeding, or delay any man's cause from any corrupt motive or interest;
8. Never to reject, for any consideration personal to himself, the cause of the defenseless or oppressed;
9. In the defense of a person accused of crime, by all fair and honorable means, regardless of his personal opinion as to the guilt of the accused, to present every defense that the law permits, to the end that no person may be deprived of life or liberty, but by due process of law.

ALTERNATIVE SUGGESTED ANSWER:

In the Code of Professional Responsibility, the duties of a lawyer are grouped into four, the principal ones in each group being:

1. Duties to society in general – to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes;
2. Duties to the legal profession – to uphold the dignity and integrity of the legal profession;
3. Duties to the court – to be candid with and promote respect for the courts and judicial officers, and to assist the courts in rendering speedy and efficient justice, and
4. Duties to the client – to observe candor, fairness and loyalty to the client, hold the client's money and property in trust, serve the client with competence and diligence, and to preserve the confidence of the client.

2. Qualifications for admission to the Bar (Bar Matter No. 1153)

4. Miguel Jactar, a fourth year law student, drove his vehicle recklessly and hit the rear bumper of Simplicio Medroso's vehicle. Instead of stopping, Jactar accelerated and sped away. Medroso pursued Jactar and caught up with him at an intersection.

In their confrontation, Jactar dared Medroso to sue, bragged about his connections with the courts, and even uttered veiled threats against Medroso. During the police investigation that followed, Medroso learned that Jactar was reviewing for the Bar examinations.

Under these facts, list and justify the potential objections that can be made against Jactar's admission to the practice of law. (8%) (2013 Bar Question)

SUGGESTED ANSWER:

The potential objection that can be made against Jactar's admission to the practice of law is the absence of good moral character (Rules of Court, Rule 138, Sec. 2).

Jactar's bragging about his connection with the courts and uttering veiled threats against Medroso are indications of his lack of good moral character. His acts are contrary to justice, honesty, modesty or good morals (*In re Basa*, 41 Phil. 276). He has acted in a manner that has violated the private and social duties which a man owes to his fellowmen, or to society in general, contrary to the accepted and customary rule of right and duty between man and man (*Tak Ng v. Republic*, G.R. No. L-13017, 106 Phil. 730, December 23, 1959).

ALTERNATIVE SUGGESTED ANSWER:

If light threats would be filed against him, then another potential objection would be pendency of charges against him, involving moral turpitude (Rules of Court, Rule 138, Sec. 2).

The question states, "Under these facts, list and justify the potential objections that can be made against Jactar's admission to the practice of law."

The question requires that an assumption be made that Jactar has passed the Bar Examination and is about to take his oath as an attorney. It is suggested that the better question should have been: "Under these facts list and justify the potential objections that can be made against Jactar's being admitted to take the Bar Examination."

5. Victor has been legally separated from his wife, Belen for fifteen (15) years. He has found true love and happiness with Amor and they lived together as husband and wife. Amor convinced Victor to study law and gave him financial support. Recently, Victor passed the 2011 Bar Examinations. Upon knowing this, Belen filed a complaint against Victor for immorality. Should Victor be allowed to take oath as an attorney? (2012 Bar Question)
- a. Yes, his relationship with Amor is imbued with genuine love and cannot be considered immoral and indecent.
 - b. Yes, legal separation does not allow the spouses to remarry.
 - c. No, because legal separation does not dissolve the marriage and, therefore, Victor's relationship with Amor is still considered illicit.
 - d. Yes, it is totally unfair for Belen to complain since they have lived separate lives.

SUGGESTED ANSWER: C [*Macarrubo v. Macarrubo*, A.C. No. 6148, January 22, 2013]

6. Lee became a lawyer in 1988 under a claim that he is a Filipino like his parents. Efren sought Lee's disbarment on the ground that he really is a Chinese. To prove he is a Filipino, Lee cited an Albay regional trial court's final judgment in an action to recover real property which mentioned his citizenship as Filipino. This final judgment resulted in the correction of his birth records in a separate special proceeding to show he is a Filipino, not Chinese as there stated. Is Lee's claim to Filipino citizenship valid? (2011 Bar Question)
- No, since the mention of his citizenship in the land case was just incidental.
 - No, since those rulings were not appealed to the Supreme Court.
 - Yes, because the rulings in his favor have become final and executory.
 - Yes, since his parents are Filipinos based on what he said in his bar exam petition.

SUGGESTED ANSWER:

A [In re: *Florencio Mallare*, A.M. No. 533, April 29, 1968]

7. After passing the Philippine Bar in 1986, Atty. Richards practiced law until 1996 when he migrated to Australia where he subsequently became an Australian citizen in 2000. As he kept abreast of legal developments, petitioner learned about the Citizenship Retention and Re-Acquisition Act of 2003 (Republic Act No. 9225), pursuant to which he reacquired his Philippine citizenship in 2006. He took his oath of allegiance as a Filipino citizen at the Philippine embassy in Canberra, Australia. Jaded by the laid back life in the outback, he returned to the Philippines in December 2008. After the holidays, he established his own law office and resumed his practice of law.

Months later, a concerned woman who had secured copies of Atty. Richards' naturalization papers with consular authentication, filed with the Supreme Court an anonymous complaint against him for illegal practice of law. (2010 Bar Question)

Is respondent entitled to resume the practice of law? Explain. (5%)

SUGGESTED ANSWER:

Yes, as long as he observes the procedure laid down in *Petition for Leave to Resume Practice of Law of Benjamin M. Dacanay* (B.M. No. 1678, December 17, 2007, 540 SCRA 424), to wit:

- Updating and payment in full of the annual membership dues in the IBP;
- Payment of the professional tax;
- Completion of at least 36 credit hours of mandatory continuing legal education; and
- Pre-taking of the lawyer's oath.

8. What is the object of the bar examinations? Explain. (2%) (2009 Bar Question)

SUGGESTED ANSWER:

Public policy demands that any person seeking admission to the bar in the Philippines be required to furnish satisfactory proof of his knowledge of the law and ethical standards and of his possession of such degree of learning and proficiency in law as may be deemed necessary for the due performance of the duties of lawyer.

3. Continuing requirements for membership in the bar

9. Casper Solis graduated with a Bachelor of Laws degree from Achieve University in 2000 and took and passed the bar examinations given that same year. Casper passed the bar examinations and took the Attorney's Oath together with other successful bar examinees on March 19, 2001 at the Philippine International Convention Center (PICC). He was scheduled to sign the Roll of Attorneys on May 24, 2001 but he misplaced the Notice to Sign the Roll of Attorneys sent by the Office of the Bar Confidant after he went home to the province for a vacation. Since taking his oath in 2001, Casper had been employed by several law firms and private corporations, mainly doing corporate and taxation work. When attending a seminar as part of his Mandatory Continuing Legal Education in 2003, Casper was unable to provide his roll number. Seven years later in 2010, Casper filed a Petition praying that he be allowed to sign the Roll of Attorneys. Casper alleged good faith, initially believing that he had already signed the Roll before entering PICC for his oath-taking on March 19, 2001. (2015 Bar Question)

a) Can Casper already be considered a member of the Bar and be allowed to use the title of "attorney"? Explain. (1%)

SUGGESTED ANSWER:

Casper cannot already be considered a member of the Bar and be allowed to use the title of attorney. In the case of *In Re: Petition to Sign on the Roll of Attorneys, Michael A. Medado, Petitioner*, B.M. No. 2540, September 24, 2013, and *Aguirre v. Rana*, 451 SCRA 428, involving the same facts, the Supreme Court held it is the act of signing the Roll of Attorneys that makes a successful Bar examinee a full-fledged member of the Philippine Bar. [Sec. 17-19, Rule 138, Rules of Court requires the taking of Oath as well as signing in the Roll of Attorneys to be a full-fledged member of the Bar]

b) Did Casper commit any professional or ethical transgression for which he could be held administratively liable? (2%)

SUGGESTED ANSWER:

He can be held liable for unauthorized practice of law. Canon 9 of the Code of Professional Responsibility provides that a lawyer shall not directly or indirectly assist in the unauthorized practice of law.” In the *Medado* case, the Supreme Court held that “while a reading of Canon 9 appears to merely prohibit lawyers from assisting in the unauthorized practice of law, the unauthorized practice of law by the lawyer himself is subsumed under this provision, because at the heart of Canon 9 is the lawyer's duty to prevent the unauthorized practice of law”.

c) Will you grant Casper's Petition to belatedly sign the Roll of Attorneys? Why? (2%)

SUGGESTED ANSWER:

I will grant Casper's petition to belatedly sign the Roll of Attorneys. He demonstrated good faith and moral character in voluntarily filing his petition. He did not wait for a third party to file a complaint against him for his transgression. However, he should be allowed to sign the Roll only one year afterwards, which is tantamount to a suspension, as was done in the *Medado* case.

10. Atty. Avaro has consistently failed to pay his annual IBP dues for several years. Demand letters have been sent to him and he has acknowledged receipt of these letters. However, all the IBP's efforts proved futile. As a result, the IBP sent Atty. Avaro a notice that his name would be stricken

off the Roll of Attorneys.

Was the IBP's action correct? (1%) (2013 Bar Question)

- a. No, because default in the payment of annual dues only warrants suspension of Integrated Bar members.
- b. Yes, because non-payment of annual dues is an indicator of the lawyer's moral fitness; refusal to pay is refusal to honor his obligation to the IBP.
- c. No, because failure to pay affects a member's capability to practice, but not his membership in the Bar.
- d. Yes, because payment of membership dues and other lawful assessments are conditions sine qua non to the privilege of practicing law and to the retention of his name in the Roll of Attorneys.
- e. None of the above choices is correct.

SUGGESTED ANSWER:

E. [The striking out of names in the Roll of Attorneys can only be ordered by the Supreme Court as per its power to promulgate rules regarding admission to the bar under Sec. 5(5), Article VIII of the 1987 Constitution]

11. Atty. Gelly passed the Bar in 1975. After taking his oath, he did not enlist in any IBP chapter because he went to the USA to pursue a master's degree. Eventually, he passed the state bar and specialized in Immigration law. In 2005, he returned to the Philippines and was, but the IBP is charging him from 1975 up to the present and threatening him with expulsion if he does not comply. Is the IBP correct? (2012 Bar Question)

- a. Atty. Gelly cannot be compelled to pay the IBP dues because he was not engaged in the practice of law from 1975-2005.
- b. Atty. Gelly is exempt from 1975-2005 because he was out of the country.
- c. Atty. Gelly should pay the dues from 1975 to the present since membership in the IBP is compulsory.
- d. Atty. Gelly should not pay because the rule on bar integration is unconstitutional for compelling a lawyer to join an association.

SUGGESTED ANSWER:

C [In re: Edillon, A.M. No. 1928, August 3, 1978; In re: Letter of Atty. Cecilio Arevalo, B.M. No. 1370, May 9, 2005]

12. Atty. Edad is an 85-year-old lawyer. He does not practice law anymore. However, his IBP Chapter continues to send him notices to pay his IBP dues of more than ten (10) years with warning that failure to comply will result in the removal of his name. Piqued by this, Atty. Edad filed with the IBP Secretary a sworn letter notifying that he is voluntarily terminating his membership with the IBP. Should he be allowed? (2012 Bar Question)

- a. No, because membership in IBP is compulsory for all lawyers.
- b. Yes, an erstwhile IBP member may terminate his membership for good reasons.
- c. No, that is only a ploy to evade payment of IBP dues.
- d. Yes, it will violate his right not to join an association.

SUGGESTED ANSWER:

B [In the case of *Santos v. Llamas, A.C. No. 4749, January 20, 2000* the Supreme Court did not exempt senior citizens from IBP dues, then in the case of *In re: Letter of Atty. Cecilio Arevalo, B.M. No. 1370, May 9, 2005* the Supreme Court noted that petitioner therein should have terminated her membership before leaving the country to be exempted from paying dues]

13. Can a lawyer still practice his profession despite having arrears in his Integrated Bar of the Philippines (IBP) dues? (2014 Bar Question)

SUGGESTED ANSWER:

Sec. 10, Rule 139-A of the Rules of Court provides that “default in the payment of annual dues for six months shall warrant suspension of members in the Integrated Bar, and default in such payment for one year shall be a ground for the removal of the name of delinquent member from the Roll of Attorneys.”

Hence, a lawyer who is in arrears in the payment of his IBP dues may still practice his profession until he is suspended and/or disbarred.

4. Appearance of Non-Lawyers

a. Law student practice rule (Rule 138-A)

14. Debbie, topnotcher of their class, is now on her 4th year law studies and has enrolled in the legal aid clinic of the law school. She was assigned to handle a domestic violence and support case filed by their client against her husband. During the hearing, the clinic's supervising attorney introduced Debbie to the Branch Clerk of Court and then left to oversee another intern. In the midst of the proceedings, opposing counsel objected to the appearance of Debbie because she is not yet a lawyer. Decide. (2012 Bar Question)

- a. Debbie can proceed because the law student practice rule allows a student who has finished 3rd year of the regular course to appear without compensation before a trial court.
- b. Debbie can proceed since she is appearing only during the trial and did not sign the pleadings.
- c. Debbie cannot proceed without the presence of their clinic's supervising attorney.
- d. Debbie has proven her capability to handle the case and opposing counsel is objecting only now because he might lose to a law student.

SUGGESTED ANSWER: C [Rule 138-A, Sec. 2 requires that the appearance of the student be under the “direct supervision and control” of a member of the Integrated Bar]

15. What is the student practice rule? (2%) (2009 Bar Question)

SUGGESTED ANSWER:

The Student Practice Rule (Rule 138-A) is the Rule authorizing a law student who has successfully completed his 3rd year of the regular four-year prescribed law curriculum and is enrolled in a recognized law school's clinical legal education program approved by the Supreme Court, to appear without compensation in any trial court, tribunal or board or officer, to represent indigent clients accepted by the

legal clinic of the law school, under the direct supervision and control of a member of the IBP accredited by the law school.

b. Non-lawyers in courts and/or administrative tribunals

16. Atty. Magtanggol of the PAO was assigned to defend X who is accused of Slight Physical Injury before the MTC of a far-flung town. During the trial, P02 Tulco appeared in court on behalf of the complainant. Atty. Magtanggol objected to his appearance since the policeman is not a member of the Bar. (2012 Bar Question)
- The objection is valid. It should be the public prosecutor who should prosecute the criminal action.
 - Atty. Magtanggol is just afraid that his client may be convicted through the efforts of a non-lawyer.
 - In the courts of a municipality, a party may conduct his litigation in person or with the aid of an agent or friend.
 - If a public prosecutor is not available, at least a private prosecutor who must be a lawyer should be designated.

SUGGESTED ANSWER:

A [The question is vague and options B, C and D are unresponsive to the question so the best answer is A].

17. Bong Tupak, a second-year law student, was charged in the RTC for Forcible Abduction with Rape. Having knowledge of criminal law and procedure, he dismissed the counsel de officio assigned and appeared for himself. He asserted that there was lack of force. Eventually, the RTC found him guilty of Consented Abduction and imposed the penalty. Bong Tupak now assails the decision, saying that there was a violation of due process because he was allowed to appear by himself and he did not know that Consented Abduction is a crime. Decide. (2012 Bar Question)
- An accused before the RTC may opt to defend himself in person and he cannot fault others for his decision.
 - The RTC should have appointed a counsel de officio to assist the accused even if not sought or requested by the accused.
 - There was violation of due process. There is disparity between the expertise of a public prosecutor and the inexperience of a 2nd year law student.
 - A 2nd year law student has sufficient knowledge of criminal law and procedure, hence, he is competent to defend himself.

SUGGESTED ANSWER:

B [*Ledesma v. Climaco*, G.R. No. L-23815. June 28, 1974 is a landmark case that provides for the right to counsel]

18. May a party appear as his own counsel in a criminal or in a civil case? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

A party may appear as his own counsel in civil case (Sec. 34, Rule 138). However, in criminal cases involving grave and less grave offenses, he must always appear through counsel.

A party may appear without his own counsel before the Municipal Trial Court, whether or not for a civil or criminal case. In the RTC or the Appellate Courts, a party in a civil suit may conduct his litigation either personally or by attorney unless the party is a juridical person. However, with respect to criminal proceedings in the said tribunals, the right to counsel of an accused is absolute or immutable. It has never been considered subject to waiver (*Flores v. Ruiz*, 90 SCRA 428 [1979]).

c. Proceedings where lawyers are prohibited from appearing as counsels

19. Elaine filed a complaint against Fely before their barangay concerning a contract that they entered into. During conciliation, Fely came with Sarah, who claimed the right to represent her minor sister. The barangay captain let Sarah assist her sister. Eventually, the barangay issued a certificate to file action after the parties failed to settle their differences. When Sarah formally appeared as lawyer for her sister, Elaine filed an administrative complaint against her for taking part in the barangay conciliation and preventing the parties from taking meaningful advantage of the same. Is Sarah liable? (2011 Bar Question)

- a. No, because she has to represent her sister who was a minor.
- b. No, because the Court can always dismiss the case without prejudice to a genuine conciliation.
- c. Yes, because what Sarah did was deceitful and amounts to fraud.
- d. Yes, because as a lawyer, she is absolutely forbidden to appear in barangay conciliations.

SUGGESTED ANSWER: D [Sec. 415, R.A. 7160 provides that “in all katarungang pambarangay proceedings, the parties must appear in person without the assistance of counsel or representative, except for minors and incompetents who may be assisted by their next-of-kin who are not lawyers]

5. Prohibited practice of non-lawyers and appearance without authority

20. Ronnie, a paralegal in a law firm, helped Beth in a property dispute in which she was involved by giving her legal advice and preparing a complaint that she eventually filed in court under her own signature. When the lawyer for the defendant learned of it, he told Ronnie to desist from practicing law. But he disputed this, claiming that he had not practiced law since he did not receive compensation from Beth for his help. Is Ronnie correct? (2011 Bar Question)

- a. Yes, because he could as a paralegal provide competent legal help to litigants.
- b. Yes, for so long as he did not sign the complaint or appeared as Beth's lawyer.
- c. No, unless Beth was ill-advised in filing her complaint in court.
- d. No, because receipt of compensation is not the sole determinant of legal practice.

SUGGESTED ANSWER:

D [*Hilado v. David*, G.R. No. L-961, September 21, 1949 provides that formality is not an essential element in a lawyer-client relationship, so long as a lawyer's advice and assistance is sought and received in matters pertaining to his profession]

21. Atty. Alfredo Prado appeared in a case as legal officer of the Land Registration Authority (LRA). His opponent, Atty. Armando, knew an Atty. Alfredo Prado from his province who had been dead for years. When Atty. Armando checked with the Supreme Court, only one Alfredo Prado was in the roll of attorneys. What action can Atty. Armando take against Vicente who had taken a dead lawyer's identity? (2011 Bar Question)

- a. File direct contempt action against Vicente for deceiving the court.
- b. Criminally prosecute Vicente for estafa for making money upon false pretense.
- c. Criminally prosecute Vicente for theft of Alfredo's identity and law practice.
- d. Institute a disbarment case against Vicente for misrepresenting himself as lawyer.

SUGGESTED ANSWER:

B [Sec. 2(a), Art. 315, RPC penalizes Swindling (estafa) by using fictitious name or falsely pretending to possess power, influence, qualifications, etc.]

22. Eric, a labor federation president, represented Luisa, a dismissed WXT employee, before the NLRC. Atty. John represented Luisa's two co-complainants. In due course, the NLRC reinstated the three complainants with backwages and awarded 25% of the backwages as attorney's fees, 15% for Atty. John and 10% for Eric, a non-lawyer. When WXT appealed to the Court of Appeals, Atty. John questioned Eric's continued appearance before that court on Luisa's behalf, he not being a lawyer. Is Eric's appearance before the Court of Appeals valid? (2011 Bar Question)

- a. Yes, for Eric has a personal stake, the fees awarded to him, in defending the NLRC's decision in the case.
- b. No, since John can very well represent Luisa, she being in the same situation as his own clients.
- c. No, because the representation of another in courts can be entrusted only to lawyers.
- d. Yes, since that appeal is a mere continuation of the labor dispute that began at the NLRC.

SUGGESTED ANSWER:

C [Sec. 2(a), Art. 315, RPC penalizes Swindling (estafa) by using fictitious name or falsely pretending to possess power, influence, qualifications, etc.]

6. Public officials and the practice of law; prohibitions and disqualifications

23. Atty. Dennis is the head of the Provincial DILG Office in Sultan Kudarat. In view of the lack of lawyers and notaries public in the province and because of numerous requests that the DILG provide a notary public, Atty. Dennis was constrained to apply for a commission for the RTC, which was granted. He was able to notarize thousand of documents and affidavits until Atty. Antonio, the only notary public in the province, charged Atty. Dennis with misconduct and violation of the CPR. Is the charge correct? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The performance of the duties of a notary public constitutes practice of law. A lawyer in the government service may either be prohibited from practicing law during his tenure or allowed to practice but subject to some restrictions. There is no law prohibiting a Provincial DILG Officer from practicing his profession. But as a Civil Service officer, he can do so only with the consent of his Department Head (*Catu v. Relloso*, A.C. No. 5738. Feb. 19, 2008).

24. Atty. Aga was appointed as Treasurer by the IBP President with the approval of the Board of Governors for a term coterminous with that of the President. A year thereafter, Atty. Aga ran as Barangay Chairman of their place, and took a leave of absence for two (2) weeks to campaign.

May Atty. Aga re-assume as Treasurer after his leave of absence? (2012 Bar Question)

- a. Yes, since he lost in the election.
- b. No, because he was deemed resigned upon filing of his certificate of candidacy.
- c. Yes, because his position as Treasurer is coterminous with the President of the IBP.
- d. No, because he should first seek the approval of the IBP Board of Governors before running as Brgy. Chairman.

SUGGESTED ANSWER:

B [*Quinto v. COMELEC*, G.R. No. 189698, February 22, 2010 reiterates the ruling in *Fariñas, et. al. v. Executive Secretary* that appointive officials are deemed resigned when they file their certificates of candidacy]

25. Atty. Fred is a law practitioner and headed a law firm bearing his name and those of his partners. When Atty. Fred was elected as Congressman, his client's needs were handled by the other partners. Later, A, a newly proclaimed congressman-friend, faced an election protest before the HRET, and sought the help of Congressman Fred who immediately directed his law firm to appear for A. 8, the protestant, sought the disqualification of Congressman Fred's law firm from appearing before the HRET because Congressman Fred is prohibited from practicing his profession. Decide. (2012 Bar Question)

- a. Yes, Congressman Fred's law firm is disqualified because Congressman Fred may exercise undue influence on his peers who are members of HRET.
- b. No, the law firm is not disqualified because it is another partner, and not Congressman Fred who is appearing.
- c. No, the prohibition is on Congressman Fred from personally appearing, and not to his partners.
- d. Yes, the spirit of the prohibition is clearly to avoid influence and cannot be indirectly circumvented.

SUGGESTED ANSWER:

C [*Sec. 14, Art. VI, 1987 Const* provides that no Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies]

26. Vice-Mayor Ron is a well-loved law practitioner because he assists his constituents, especially the indigents. Ed, one of his friends who is employed as Cashier in the Register of Deeds, sought his assistance because he was charged with Malversation in court. Can Vice-Mayor Ron appear as counsel of Ed? (2012 Bar Question)
- a. Yes, members of the Sanggunian are allowed to practice their profession.
 - b. No, because Ed is charged with an offense in relation to his office.
 - c. Yes, since the position of Ed does not pertain to the local government.
 - d. No, because all criminal cases are against the government.

SUGGESTED ANSWER:

B [*Sec. 90(b)(1), RA 7160* provides that sanggunian members who are also members of the Bar shall not appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party]

27. Atty. Noe was elected Vice-Governor and continued with his law practice. Later, the governor

went on sick leave for one (1) year and Atty. Noe was designated as Acting Governor. Since hearings have already been set, can Atty. Noe continue appearing as counsel in the cases handled by him? (2012 Bar Question)

- a. Yes, because his election is only as Vice-Governor, and his delegation as Governor is only temporary.
- b. Yes, but only for the hearings that have already been set.
- c. Yes, provided Atty. Noe seeks the permission of DILG.
- d. No, all governors- even under acting capacity- are prohibited from exercising their profession.

SUGGESTED ANSWER:

D [Sec. 90(a), RA 7160 provides that All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives]

28. Atty. Dude is the COMELEC Officer in a very distant municipality. He is the only lawyer in that area. When election period is over, he has much spare time. Many people go to him for counseling, legal advice, preparation of documents of Sale, Mortgage and the like. He does not charge a fee in money, but he receives gifts which are offered. Is there impropriety? (2012 Bar Question)

- a. Yes, giving legal advice and preparing legal documents, even if free, constitutes private practice of law, which is prohibited of government employees.
- b. No, it is only giving of advices, and not court appearance.
- c. Yes, because Atty. Dude accepts gifts.
- d. No, since Atty. Dude does not accept money.

SUGGESTED ANSWER:

A [*Cayetano v. Monsod*, G.R. No. 100113, September 3, 1991 on what constitutes “practice of law” in relation to Rule 6.02, Canon 6, Code of Professional Responsibility which prohibits a lawyer in government service from using his public position to promote or advance his private interests]

29. Judge Cristina has many law-related activities. She teaches law and delivers lectures on law. Some in the government consult her on their legal problems. She also serves as director of a stock corporation devoted to penal reform, where she participates in both fund raising and fund management. Which of the following statements applies to her case? (2011 Bar Question)

- a. She should not engage in fund raising activities.
- b. Her activities are acceptable except the part where she is involved in fund management.
- c. She can teach law and deliver lectures on law but not do the other things.
- d. All of her activities are legal.

SUGGESTED ANSWER:

C [Sec. 10, Canon 4 of the New Code of Judicial Conduct provides that judges may write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters]

30. Atty. Eliseo represented Allan in a collection suit against the Philippine Charity Sweepstakes Office (PCSO). After his election as sangguniang bayan member, the court rendered a decision in PCSO's favor. Still, Atty. Eliseo appeared for Allan in the latter's appeal, prompting the PCSO to

question his right to do so. In response, Atty. Eliseo claimed that the local government code authorizes him to practice law as long it does not conflict with his duties. Is Atty. Eliseo right? (2011 Bar Question)

- a. No, because he cannot appear against a government instrumentality in a civil case.
- b. Yes, because his official duties do not conflict with his private practice.
- c. No, because he works on his private case at the sacrifice of public service.
- d. Yes, because he does not appear in the case as a municipal official.

SUGGESTED ANSWER: A [*Sec. 90(b)(1), RA 7160* prohibits Sanggunian members from appearing as counsel in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party]

7. The Lawyer's Oath

31. State the duties of a lawyer imposed by the Lawyer's Oath. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The following are the duties of a lawyer imposed by the lawyer's oath:

1. To maintain allegiance to the Republic of the Philippines,
2. To support its Constitution,
3. To obey the laws as well as the legal orders of the duly constituted authorities,
4. To do no falsehood nor consent to the doing of the same in any court,
5. Not to wittingly or willingly promote or sue any groundless, false or unlawful suit, nor to give nor to consent to the doing of the same;
6. To delay no man for money or malice,
7. To conduct himself as a lawyer according to the best of his knowledge and discretion, with all good fidelity to the courts as to his clients,
8. To impose upon himself that voluntary obligation without any mental reservation or purpose of evasion.

32. The Lawyer's Oath is a source of obligation and its violation is a ground for suspension, disbarment, or other disciplinary action. State in substance the Lawyer's Oath. (3%) (2015 Bar Question).

SUGGESTED ANSWER:

"I, _____, having been permitted to continue in the practice of law in the Philippines, do solemnly swear that I recognize the supreme authority of the Republic of the Philippines; I will support its Constitution and obey the law as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God."

33. The following are duties of a lawyer but only one of these is expressly stated in the Lawyer's Oath. Choose the express duty that the Oath contains. (1%) (2013 Bar Question)

- a. To maintain a respectful attitude towards the courts.

- b. To uphold the honor and dignity of the legal profession.
- c. To act with courtesy, candor and fairness toward other lawyers.
- d. To do no falsehood, nor consent to the doing of any in court.
- e. To respect the courts and uphold the dignity of the profession.

SUGGESTED ANSWER: D [Lawyer's Oath]

B. Duties and responsibilities of a lawyer under the Code of Professional Responsibility

1. The Code of Professional Responsibility is the code of conduct for: (1%) (2014 Bar Question)

- a. Members of the Bench
- b. Members of the Bar
- c. Members of the Bench and the Bar

SUGGESTED ANSWER: B or C

1. To society (Canons 1 to 6)

a. Canon 1

2. George, an American citizen doing business in the Philippines, bought a lot in Manila and secured the services of Atty. Henry for the execution of the required documents. Atty. Henry prepared a Deed of Sale of Land using the name of George's friend, Pete, as the buyer. In order to protect George's interests and ensuring his free and undisturbed use of the property for an indefinite period of time, Atty. Henry also prepared a Counter Deed of Sale and Occupancy Agreement signed by Pete in favor of George. A competitor of George filed a complaint for disbarment against Atty. Henry on the ground that he violated the Constitution and the CPR. Rule on the complaint and explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

I will rule in favor of the complainant, In the case of *Donton v. Tansingo*, (A.C. No. 6057, June 27, 2006, 493 SCRA 1 [2006]), which involves the same facts as in this case, the Supreme Court held that in preparing an Occupancy Agreement, the lawyer in the said case advised and aided a foreigner in circumventing the constitutional prohibition against foreign ownership of land. Thus, the Supreme Court held that the lawyer used his knowledge of the law to achieve an unlawful end, which amounts to malpractice in his office, for which he may be suspended. That ruling is equally applicable in this case. [Canon 1 of the Code of Professional Responsibility provides that a lawyer shall obey the laws of the land]

3. Sonia, who is engaged in the lending business, extended to Atty. Roberto a loan of P50,000.00 with interest of P25,000.00 to be paid not later than May 20 2016. To secure the loan, Atty. Roberto signed a promissory note and issued a postdated check. Before the due date, Atty. Roberto requested Sonia to defer the deposit of the check. When Atty. Roberto still failed to pay, Sonia deposited the check which was dishonored. Atty. Roberto ignored the notice of dishonor and refused to pay. (2016 Bar Question)

A) Did Atty. Roberto commit any violation of the CPR? Explain. (2.5%).

SUGGESTED ANSWER:

Atty. Roberto committed a violation of Canon 1, Rule 1.01, Canon 7 and Rule 7.03 in issuing a bouncing check. He should very well know that the issuance of a bouncing check is an unlawful act, a crime involving moral turpitude (*Co v. Bernardino, A.C. No. 3919, January 28, 1998*).

B) Can he be held civilly liable to Sonia in an administrative case for suspension or disbarment? Explain. (2.5%)

SUGGESTED ANSWER:

No, he cannot be held civilly liable. The sole issue in an administrative case is the determination of whether or not a lawyer is still fit to continue being a lawyer. The Supreme Court will not order the return of money which is not intimately related to a lawyer-client relationship (*Sps. Concepcion v. Atty. de la Rosa, A.C. No. 10681, Feb. 3, 2015*).

4. Atty. Gail was separated from her husband, Dino, for more than ten (10) years due to incompatibility. She fell in love with Mica who was also separated from her husband. She filed a petition for the declaration of nullity of her marriage with Dino, and also a petition for the declaration of nullity of the marriage of Mica with her husband. While the cases were pending, Atty. Gail and Mica lived in their respective residences but were often seen together in parties, events and in public places. Dino filed a disbarment complaint against Atty. Gail for immorality, alleging that Atty. Gail and Mica are lovers. Decide whether Atty. Gail should be sanctioned for immorality. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

I will rule in favor of Atty. Gail. In the first place, being seen together with Mica in parties, events and public places is not sufficient proof of immorality, which has been defined as “that conduct which is willful, flagrant or shameless, and which shows a moral indifference to the opinion of good and respectable members of the community” (*Ariga v. Maniwang, A.M. No. 1608, August 14, 1981; 106 SCRA 591*).

5. Atty. Javier sold a piece of land in favor of Gregorio for P2,000,000.00. Atty. Javier drafted the Deed of Sale with Right to Repurchase which he and Gregorio signed on August 12, 2002. Under said Deed, Atty. Javier represented that he had "the perfect right to dispose as owner in fee simple" the land and that the land is "free from all liens and encumbrances." The Deed also stated that Atty. Javier had two years within which to repurchase the property. Atty. Javier turned over the owner's copy of his certificate of title, TCT No. 12121, to Gregorio. Gregorio then immediately took possession of the land.

Atty. Javier failed to exercise his right to repurchase within two years. Gregorio sent Atty. Javier a letter dated April 8, 2005 demanding that the latter already repurchase the property. Despite receipt of Gregorio's letter, Atty. Javier still failed to repurchase the property. Gregorio remained in peaceful possession of the land until July 25, 2013, when he received notice from Trustworthy Bank informing him that the land was mortgaged to said bank, that the bank already foreclosed on the land, and that Gregorio should therefore vacate the land. Upon investigation, Gregorio discovered that Atty. Javier's TCT No. 12121 had already been cancelled when another bank foreclosed on a previous mortgage on the land, but after a series of transactions, Atty. Javier was able to reacquire the land and secure TCT No. 34343 for the same. With TCT No. 34343, Atty. Javier constituted another mortgage on the land in favor of Trustworthy Bank on February 22, 2002. Gregorio was subsequently dispossessed of the property. Gregorio filed an administrative complaint against Atty. Javier. In his defense, Atty. Javier argued that he could not be held administratively liable as

there was no attorney-client relationship between him and Gregorio. Moreover, the transaction was not actually one of sale with right to repurchase, but one of equitable mortgage, wherein he still had the legal right to mortgage the land to other persons. (2015 Bar Question)

A) If you are tasked to investigate and report on Gregorio's administrative complaint against Atty. Javier, what will be your recommendation and finding? (3%)

SUGGESTED ANSWER:

In the case of *Saladaga v. Atty. Arturo Astorga* [A.C. No. 4697, November 25, 3014] involving the same facts, the Supreme Court found that:

Respondent clearly committed an act of gross dishonesty and deceit against complainant. Canon 1 and Rule 1.01 of the Code of Professional Responsibility". Respondent dealt with complainant with bad faith, falsehood, and deceit when he made it appear that the property was covered by a TCT under his name when the truth is that the TCT had already been cancelled. Moreover, he did not even care to correct the wrong statement in the deed when he was subsequently issued a new copy of the TCT. The actions of the respondent further violated Article 19 of the Civil Code and show a disregard for Section 63 of the Land Registration Act. They also reflect bad faith, dishonesty, and deceit on respondent's part.

Following the said precedent, I will recommend that Atty. Javier be likewise sanctioned. This is also in consonance with Rule 1.01, Canon 1 of the Code of Professional Responsibility, which states that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

B) In the same administrative case, may Atty. Javier be ordered to return the P2,000,000.00 purchase price to Gregorio? Explain. (3%)

SUGGESTED ANSWER:

However, Atty. Javier may not be ordered to return the P2,000,000.00 to Gregorio in the administrative case. This is a civil liability which is best determined in a civil case. The sole issue in an administrative proceeding is whether or not the respondent deserves to remain a member of the Bar (*Concepcion and Blesilda S. Concepcion v. Atty. Elmer A. Dela Rosa*, A.C. No. 10681, February 3, 2015).

6. Atty. Doblar represents Eva in a contract suit against Olga. He is also defending Marla in a substantially identical contract suit filed by Emma. In behalf of Eva, Atty. Doblar claims that the statute of limitations runs from the time of the breach of the contract. In the action against Marla, Atty. Doblar now argues the reverse position – i.e., that the statute of limitation does not run until one year after discovery of the breach.

Both cases are assigned to Judge Elrey. Although not the sole issue in the two cases, the statute of limitations issue is critical in both.

Is there an ethical/professional responsibility problem in this situation? If a problem exists, what are its implications or potential consequences? (8%) (2013 Bar Question)

SUGGESTED ANSWER:

Yes. There is an ethical/professional responsibility problem that results from the actuation of Atty. Doblar in arguing the reverse positions.

The signature of Atty. Doblar on the pleadings for Eva and for Marla, constitute a certificate by him that he has read the pleadings; that to the best of his knowledge, information and belief there is good ground to support them; and that the pleadings were not interposed for delay (Rules of Court, Rule 7, Sec. 3, 2nd par.). Atty. Doblar could not claim he has complied with the foregoing requirement because he could not take a stand for Eva that is contrary to that taken for Marla.

He has likewise violated the ethical responsibility that his appearance in court should be deemed equivalent to an assertion on his honor that in his opinion his client's case is one proper for judicial determination (Canons of Professional Ethics, Canon 30, 2nd par., last sentence).

In counseling on the contradictory positions, Atty. Doblar has likewise counseled or abetted activities aimed at defiance of the law or at lessening confidence in the legal system (Code of Professional Responsibility, Canon 1, Rule 1.02) because conflicting opinions may result arising from an interpretation of the same law.

Atty. Doblar could not seek refuge under the umbrella that what he has done was in protection of his clients. This is so because a lawyer's duty is not to his client but to the administration of justice. To that end, his client's success is wholly subordinate.

7. Atty. Aimee was convicted by final judgment of Estafa Thru Falsification of a Commercial Document, a crime involving moral turpitude. What is the appropriate penalty? (2012 Bar Question)

- a. Disbarment
- b. Indefinite suspension
- c. Suspension for three (3) years
- d. Admonition

SUGGESTED ANSWER:

A [*In re: Gutierrez, Adm. Case No. L-363, July 31, 1962* affirmed the rule that under section 5 of Rule 127, a member of the bar may be removed or suspended from his office as attorney by SC by reason of his conviction of a crime involving moral turpitude]

8. Raul sought Ely's disbarment for notarizing a deed of sale knowing that four of the sellers were dead. Ely admitted that he notarized the deed of sale but only after his client assured him that the signatures of the others were authentic. Later, Raul moved to have the complaint against him dismissed on the ground that it was filed because of a misunderstanding which had already been clarified. This prompted the IBP to recommend the dismissal of the complaint. Can the dismissal be allowed? (2011 Bar Question)

- a. No, unless the complainant executes an affidavit of desistance.
- b. Yes, since no compelling reason remained to continue with it.
- c. Yes, but recall Ely's notarial commission since the charge against him seems meritorious.
- d. No, given Ely's admission that he notarized the document when some signatories were absent.

SUGGESTED ANSWER:

D [*Ventura v. Samson, A.C. No. 9608, November 27, 2012* on the effect of an Affidavit of Desistance/Motion to Dismiss in a disbarment case, in relation to *Sec. 2(b), Rule IV, 2004 Rules on Notarial Practice* which provides that a person shall not perform a notarial act if the person involved as signatory to the instrument or document is not in the notary's presence personally at the time of the notarization and is not personally

known to the notary public or otherwise identified by the notary public through competent evidence of identity]

9. Noel and Emily who were involved in a road accident sued Ferdie, the driver of the other car, for damages. Atty. Jose represented only Noel but he called Emily to testify for his client. During direct examination, Emily claimed that her injuries were serious when Atty. Jose knew that they were not. Still, Atty. Jose did not contest such claim. Ferdie later sued Emily for giving false testimony since her own doctor's report contradicted it. He also sued Atty. Jose for foisting a false testimony in court. Is Atty. Jose liable? (2011 Bar Question)
- No, because he did not knowingly arrange for Emily to lie in court.
 - Yes, because he did not advise his client to settle the case amicably.
 - No, because Emily did not permit him to reveal the falsity to the court.
 - Yes, because he knowingly let Emily's false testimony pass for truth.

SUGGESTED ANSWER:

B [Rule 1.04, Canon 1, Code of Professional Responsibility provides that a lawyer shall encourage his clients to avoid, end or settle a controversy if it will admit of a fair settlement]

10. Atty. XX rented a house of his cousin JJ on a month-to-month basis. He left for a 6-month study in Japan without paying his rentals and electric bills while he was away despite JJ's repeated demands.

Upon his return to the Philippines, Atty. XX still failed to settle his rental arrearages and electric bills, drawing JJ to file an administrative complaint against Atty. XX.

Atty. XX contended that his non-payment of rentals and bills to his cousin is a personal matter which has no bearing on his profession as a lawyer and, therefore, he did not violate the Code of Professional Responsibility. (2010 Bar Question)

A) Is Atty. XX's contention in order? Explain. (3%)

SUGGESTED ANSWER:

No. In a case involving the same facts, the Supreme Court held that having incurred just debts, a lawyer has the moral duty and legal responsibility to settle them when they become due. "Verily, lawyers must at all times faithfully perform their duties to society, to the bar, to the court and to their clients. As part of their duties, they must promptly pay their financial obligations" (*Wilson Cham v. Atty. Eva Pata-Moya*, 556 SCRA 1 [2008])

B) Cite two (2) specific Rules in the Code of Professional Responsibility, violation of which subjects a lawyer to disciplinary action by the Supreme Court although the acts complained of are purely personal or private activities that do not involve the practice of law. (2%)

SUGGESTED ANSWER:

Rule 1.01 "A lawyer shall not engage in unlawful, dishonest, immoral and deceitful conduct"

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

11. A retired member of the Judiciary is now engaged in private practice. In attending hearings, he uses his car bearing his protocol plate which was issued to him while still in the service.

Pass on the ethical aspect of the judge's use of the protocol plate. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

The judge's use of his protocol plate after his retirement is unethical. He is no longer entitled to use such protocol plate after his retirement. As a practicing lawyer, he should not engage in unlawful, dishonest, immoral or deceitful conduct. His continued use of a protocol plate after his retirement is at least dishonest conduct."

12. Cliff and Greta were law school sweethearts. Cliff became a lawyer, but Greta dropped out. One day, Cliff asked Greta to sign a marriage contract. The following day, Cliff showed Greta the document already signed by an alleged solemnizing officer and two witnesses. Cliff then told Greta that they were already married and Greta consented to go on a honeymoon. Thereafter, the couple cohabited and begot a child. Two years later, Cliff left Greta and married a Venezuelan beauty. Incensed, Greta filed a disbarment complaint against Cliff. Will the case prosper? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

The disbarment case will prosper. In the case of *Cabrera v. Agustin* (106 Phil. 256 [1959]), a lawyer who deceived a woman to believe that they were already married after they had signed an application for a marriage license, and afterwards took advantage of her belief to satisfy his lust, until she bore him a child, was considered by the Supreme Court to be lacking in integrity and good moral character to remain a member of the bar.

13. Atty. Hyde, a bachelor, practices law in the Philippines. On long weekends, he dates beautiful actresses in Hong Kong. Kristine, a neighbor in the Philippines, filed with the Supreme Court an administrative complaint against the lawyer because of sex videos uploaded through the internet showing Atty. Hyde's sordid dalliance with the actresses in Hong Kong.

In his answer, Atty. Hyde (1) questions the legal personality and interest of Kristine to institute the complaint and (2) insists that he is a bachelor and the sex videos relate to his private life which is outside public scrutiny and have nothing to do with his law practice.

Rule on the validity of Atty. Hyde's defenses. (5%) (2009 Bar Question)

SUGGESTED ANSWER:

(a) The legal personality and interest of Kristine to initiate the complaint for disbarment is immaterial. A disbarment proceeding is *sui generis*, neither a civil nor a criminal proceeding. Its sole purpose is to determine whether or not a lawyer is still deserving to be a member of the bar. In a real sense, Kristine is not a plaintiff; hence, interest on her part is not required.

(b) Atty. Hyde's second is untenable. His duty not to engage in unlawful, dishonest, immoral and deceitful conduct under Rule 1.01 of the CPR, as well as his duty not to engage in scandalous conduct to the discredit of the legal profession under Rule 7.03, is applicable to his private as well as to his professional life. [Rule 1.01 provides that a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct, while Rule 7.03 provides that a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession]

14. Atty. Simeon persuaded Armando, Benigno and Ciriaco to invest in a business venture that later went bankrupt. Armando, Benigno and Ciriaco charged Atty. Simeon with estafa. Simultaneously, they filed an administrative complaint against the lawyer with the Supreme Court. (2009 Bar Question)

A) If Simeon is convicted of estafa, will he be disbarred? Explain. (3%)

SUGGESTED ANSWER:

Yes. One of the grounds for disbarment under Sec. 27, Rule 138, is conviction of a crime involving moral turpitude. Estafa is a crime involving moral turpitude.

B) If Simeon is acquitted of the estafa charge, will the disbarment complaint be dismissed? Explain. (3%)

SUGGESTED ANSWER:

Not necessarily. If the acquittal is based on the ground that no crime was committed, or that Simeon is innocent, the administrative case may be dismissed. But if the acquittal is based merely on reasonable doubt, the disbarment proceeding may still continue. The purpose of a disbarment proceeding is to determine whether a lawyer still deserves to remain a member of the bar. For such determination, conduct which merely avoids the penalty of the law is not sufficient.

15. [May an] unwed female lawyer carrying on a clandestine affair with her unwed male hairdresser [be sanctioned]. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

She may not be sanctioned. In *Soberano v. Villanueva* (6 SCRA 891 [1962]), the Supreme Court held the intimacy between a man and a woman who are of age and are not disqualified from marrying each other is “neither so corrupt as to constitute a criminal act nor so unprincipled as to warrant disbarment or disciplinary action against the man as a member of the bar.”

b. Canon 2

16. (A) A sign was posted at the building where the law office of Atty. Redentor Walang-Talo is located. The sign reads:

Atty. Redentor A. Walang-Talo
Chairman, IBP Legal Aid Committee
Makati City IBP Chapter
Free conciliation, mediation and court representation
Suite 210, Galaxy Building, J.P. Rizal Street, Makati City

Does the posting constitute solicitation? (2.5%) (2016 Bar Question)

SUGGESTED ANSWER:

There is nothing wrong with this advertisement. The statement that he is the chairman of the IBP Legal Aid Committee is factual and true. Canon 27 of the Canons of Professional Ethics states that “memberships and offices in bar associations and committees thereof” may be included in a lawyer’s advertisement. The statement that he gives free consultation, mediation and court representation services is for the purpose of promoting the IBP Legal Aid Committee.

B) Suppose the sign reads:

Atty. Redentor A. Walang-Talo
Attorney and Counsel-at-Law
General practitioner
(Accepts *pro bono* cases pursuant to the IBP Legal Aid Program)

Does the posting constitute solicitation? (2.5%)

SUGGESTED ANSWER:

On the other hand, this advertisement is for the benefit of the lawyer alone, and constitutes solicitation.

ALTERNATIVE ANSWER:

This does not constitute solicitation. The lawyer does not claim to be a specialist, but only a “general practitioner”. The statement that he accepts *pro bono* cases is not for the purpose of promoting his “business”, as “*pro bono*” means “for free”.

17. Wanda finally became pregnant in the 10th year of her marriage to Horacio. As her pregnancy progressed, she started having difficulty breathing and was easily fatigued. The doctors diagnosed that she has a heart congestion problem due to a valve defect, and that her chances of carrying a baby to full term are slim. Wanda is scared and contemplates the possibility of abortion. She thus sought legal advice from Diana, a lawyer-friend and fellow church member, who has been informally advising her on legal matters.

What is Diana’s best ethical response? (1%) (2013 Bar Question)

- a. Beg off from giving any advice because it is a situation that is not purely legal.
- b. Advise Wanda on the purely legal side of her problem and assure her that abortion is allowed by law if the pregnancy endangers the life of the mother.
- c. Advise that it is a religious problem before it is a medical or legal one, and Wanda should consult and follow the advice of her religious confessor.
- d. Advise Wanda that abortion, above everything else, is a moral problem and she should only have an abortion if it is an act she can live with.
- e. Refrain from giving any kind of advice as abortion is a serious matter that cannot be resolved through informal consultations with friends and fellow church members.

SUGGESTED ANSWER:

A [Code of Professional Responsibility, Canon 2, Rule 2.01, which provides that a lawyer shall not reject, except for valid reasons, the cause of the defenseless or the oppressed, and Rule 2.02 which adds that in such cases, even if the lawyer does not accept a case, he shall not refuse to render legal advice to the person concerned if only to the extent necessary to safeguard the latter's rights]

18. Atty. Nelson recently passed the Bar and wanted to specialize in marine labor law. He gave out calling cards with his name, address and telephone number in front, and the following words at the back: "We provide legal assistance to overseas seamen who are repatriated due to accident, illness, injury, or death. We also offer FINANCIAL ASSISTANCE." Does this constitute ethical misconduct? (2012 Bar Question)

- a. No, clients have freedom in the selection of their counsel.

- b. No, use of a professional card is a lawful way of announcing his services as a professional.
- c. Yes, because the offer of financial assistance is an undignified way of luring clients.
- d. Yes, because the offer of assistance is stated at the back.

SUGGESTED ANSWER:

C [*Linsangan v. Tolentino*, A.C. No. 6672, September 4, 2009 provides that lawyers should not steal another lawyer's client nor induce the latter to retain him by a promise of better service, good result or reduced fees for his services]

19. Atty. Melissa witnessed the car accident that resulted in injury to Manny, a friend of hers. While visiting him at the hospital, she advised him about what action he needed to take regarding the accident. Is Atty. Melissa subject to disciplinary action if she eventually handles the case for him? (2011 Bar Question)

- a. No, because Melissa did not directly volunteer her services.
- b. No, because Manny happened to be a friend.
- c. Yes, she engaged in typical ambulance chasing.
- d. Yes, because she should have offered her services for free.

SUGGESTED ANSWER:

B [Rule 1.03, Canon 1 of the Code of Professional Responsibility, which provides that a lawyer shall not, for any corrupt motive or interest, encourage any suit or proceeding or delay any man's cause prohibits the practice of ambulance chasing]

c. Canon 3

20. Atty. Simplicio published the following advertisement in a local newspaper: "Annulment of Marriage, Competent Attorney, Reasonable Fees, Call 221-2345."

A Justice of the Supreme Court saw the advertisement and thereafter called the attention of his colleagues. The Supreme Court directed the Bar Confidant investigate the matter. When directed to explain why no disciplinary action should be taken against him for the improper advertisement, Atty. Simplicio contended that: (a) the advertisement was not improper because his name was not mentioned; and (b) he could not be subjected to disciplinary action because there was no complaint filed against him.

Rule on Atty. Simplicio's contentions. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Both of Atty. Simplicio's contentions are untenable.

First, the telephone number he stated is his, hence, it is as if his name was mentioned. The advertisement violates Rule 3.01 of the Code of Professional Responsibility which prohibits "false and misleading" advertisement. The use of the word "competent" would create expectations which Attorney X may not be able to perform. Furthermore, sharing the same facts in the case of *Khan Jr. v. Simbillo* [A. C. No. 5299, 2003], the advertisement tends to undermine the sanctity of marriage as a recognized inviolable institution in the Philippines.

Second, a complaint is not necessary to initiate disciplinary action against a lawyer. Being *sui generis* in nature, a disciplinary action against a lawyer may be initiated by the Supreme Court *motu proprio* [Sec. 1, Rule 139-B, Rules of Court provides that Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person].

21. Determine if the following advertisements by an attorney are ethical or unethical. Explain your answer. (2017 Bar Question)

A) A calling card, 2 inches x 2 inches in size, bearing the attorney's name in bold print, office, residence and email addresses, telephone and facsimile numbers. (2%)

SUGGESTED ANSWER:

It is ethical. A lawyer is allowed the customary use of simple professional cards. (Canon 27 of the Code of Professional Ethics provides that the customary use of simple professional cards is not improper; *Ulep v. Legal Clinic Inc.*, Bar Matter No. 553, 1993)

B) A business card, 3 inches x 4 inches in size, indicating the aforementioned data with his 1 inch x 1 inch photograph. (2%)

SUGGESTED ANSWER:

It is unethical. The size of the card and the inclusion of the lawyer's photo in it takes it away from the ambit of "simple professional cards" that are allowed. The business card likewise is a form of self-laudation, is undignified and smacks of crass commercialism.

C) A pictorial press release in a broadsheet newspaper made by the attorney showing him being congratulated by the president of a client corporation for winning a multi-million damage suit against the company in the Supreme Court. (2%)

SUGGESTED ANSWER:

It is unethical. Rule 3.01 of the Code of Professional Responsibility provides that a lawyer shall not use or permit the use of any false, fraudulent, misleading, deceptive, undignified, self-laudatory or unfair statement or claim regarding his qualifications or legal services.

D) The same press release made in a tabloid by the attorney's client. (2%)

SUGGESTED ANSWER:

It is ethical. This is already the act of a client, not of the lawyer, unless it was permitted by the lawyer.

E) A small announcement that the attorney is giving free legal advice on November 30, 2017 published in Balita, a tabloid in Filipino. (2%)

SUGGESTED ANSWER:

It is unethical. The announcement in a newspaper that he will give free advice is a form of self-laudation and advertisement that has no place in the legal profession [In re: *Luis Tagorda*, 1929 provided the essential doctrine that the law is a profession and not a business, thus in that case respondent was suspended for distributing cards that says he is only charging Php 3 for his services].

22. A) What is the best form of advertising possible for a lawyer? (2%) (2015 Bar Question)**SUGGESTED ANSWER:**

The best form of advertising is a well-merited reputation for professional capacity and fidelity to trust, which must be earned as an outcome of character and conduct (*Ulep v. Legal Clinic, Inc.* 223 SCRA 378 [2012]).

B) What are the allowable or permissible forms of advertising by a lawyer? (3%)**SUGGESTED ANSWER:**

1. Publication in reputable law lists of brief biographical and honest informative data,
2. Use of an ordinary professional business card,
3. Announcements of specialization and availability of service in a legal journal for lawyers,
4. Seeking of appointment to a public office requiring lawyers,
5. Advertising to seek full-time position as counsel for a corporation,
6. Offering free legal service to indigents through radio broadcasts or printed matter,
7. Announcement of opening of a law firm, changes of personnel, firm name or office address,
8. Listings in a telephone directory.

23. C and D are the law partners using the firm name C and D – Attorneys-at-Law. In an administrative case filed against C, the Supreme Court (SC) find out that C is not entitled to admission to the practice of law in the Philippines and ordered his name stricken- off from the rolls of Attorneys. As a result, C and D changed their firm name to Law Office of D, while D is the practitioner. Are C and D liable for contempt of court? Explain your answer. (5%) (2014 Bar Question)

SUGGESTED ANSWER:

In adopting the firm name of “*Law Office of D-Attorney at Law, C – Counsellor*”, C and D violated the following provisions of the Code of Professional Responsibility:

Rule 3.02 - “In the choice of a firm name, no false, misleading or assumed name shall be used.” In including the name D in the firm name, even though he is referred to as a “Counsellor”, the impression is given that he can practice law.

Canon No. 9 - “A lawyer shall not, directly or indirectly, assist in the unauthorized practice of law”.

Attorney D may be suspended for such conduct. C, being a non-lawyer, may be held liable for indirect contempt of court.

24. Atty. Anunciante is engaged in the practice of law and has a regular, live, weekly TV program where he gives advice to and answers questions from the audience and program viewers concerning U.S. immigration problems. Occasionally, advertisements inviting viewers to watch his TV program are shown outside his regular program schedule. Because of the popularity of his TV program, the number of his law practice clients increased tremendously.

The TV program of Atty. Anunciante is _____. (1%) (2013 Bar Question)

- a. permissible because it is public service in nature;
- b. objectionable because the work involves indirect advertising or solicitation of business;

- c. improper because it gives him an unfair advantage over other lawyers;
- d. ethically allowable because it does not violate the traditional standards of the legal profession;
- e. None of the above.

SUGGESTED ANSWER:

E [*Ulep v. Legal Clinic*, B.M. No. 533, June 17, 1993].

25. [May the judge concerned be sanctioned for] dictating his decision in open court immediately after trial. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

There is no rule prohibiting such conduct, specially in simple cases such as when an accused pleads guilty to an Information for a minor offense. But in complex and serious cases, such conduct may be considered improper, and the judge accused of arriving at hasty decisions. In the case of *People v. Eleuterio* (173 SCRA 243 [1989]), The Supreme Court criticized the same conduct of the judge in the following words:

The Court agrees, however, that Judge Enrique Agana was exceptionally careless, if not deliberately high-handed, when he immediately after the trial dictated his decision in open court. One may well suspect that he had prejudged the case and had a prepared decision to foist upon the accused even the submission of the case. And what is worse is that the decision *was wrong*.

d. Canon 4

26. As a new lawyer, Attorney Novato started with a practice limited to small claims cases, legal counseling, and notarization of documents. He put up a solo practice law office and was assisted by his wife who served as his secretary/helper. He used a makeshift hut in a vacant lot near the local courts and a local transport regulatory agency. With this strategic location, he enjoyed heavy patronage assisting walk-in clients in the preparation and filing of pleadings and in the preparation and notarization of contracts and documents. He had the foresight of investing in a good heavy-duty copier machine that reproduces quality documents, and charges a reasonable fee for this service. He draws electric power from an extension wire connected to an adjoining small restaurant. He put up a shingle that reads: "Atty. Novato, Specialist in Small Claims, Fastest in Notarization; the Best and Cheapest in Copier Services."

Is Attorney Novato's manner of carrying out his professional practice – i.e., mixing business with the practice of law, announcing his activities via a shingle and locating his office as above-described – *in keeping with appropriate ethical and professional practice?* (8%) (2013 Bar Question)

SUGGESTED ANSWER:

No.

The use of a makeshift hut standing alone would create the impression that the lawyer does not have a permanent address which is required to be stated in all pleadings he signs as well as required to be shown in documents notarizes.

His shingle shows that he has considered the law profession as a business. He should have a separate shingle for his copier services business.

When he included in his shingle the phrases “Specialist in Small Claims” and “Fastest in Notarization,” he has transgressed the rule that a lawyer in making known his legal services shall use only dignified information or statement of facts (Code of Professional Responsibility, Canon 3). So also the norm that a lawyer shall not use or permit the use of any misleading, undignified, self-laudatory or unfair statement or claim regarding his qualifications of legal services (*Ibid.*, Canon 3, Rule 3.01).

The use of the phrases “Specialist in Small Claims” and “Fastest in Notarization” is misleading advertisement because they are likely to create an unjustified expectation about the results the lawyer can achieve or implies that the lawyer can achieve results by improper means (ABA Model Rule 7.1.b).

[NOTES AND COMMENTS: *The examinees have sixteen (16) minutes to answer each essay question. Thus, they have more than ample time to write exhaustive answers to the questions. The citations are merely guides. Examinees should get full credit even if they do not include the citations*].

e. Canon 5

f. Canon 6

27. City Prosecutor Philip prosecuted the criminal case for the murder of the city mayor against the accused Reynaldo, the losing mayoralty candidate. There was no private prosecutor and Phillip personally handled the prosecution of the case from arraignment up to the presentation of the evidence for the accused. Before the trial, Alfonso approached Phillip and confessed that he is the killer of the city mayor and not Reynaldo. When the case was called for trial, Phillip manifested before the court that Alfonso approached him and admitted that he killed the mayor and asked the court for whatever proper action it may take. The counsel for the accused took advantage of the presence of Alfonso, who was placed on the witness stand and elicited testimonial evidence. The court eventually acquitted Reynaldo. The heirs of the city mayor filed a disbarment case against Phillip on the ground that it is his duty to see to it that the criminal is convicted and punished. They believed Reynaldo is the real killer and Alfonso was only a fall guy and that Reynaldo could not have been acquitted were it not for the disclosure of Phillip. Phillip argues that the City Prosecutor is not for the offended party or the heirs of the victim but it is his main duty that “Justice be done”. Did Phillip commit any violation of the CPR? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

Phillip did not commit any violation of the Code of Professional Responsibility. Rule 6.01 categorically states that “the primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the concealment of witnesses capable of establishing the innocence of the accused is highly reprehensible and is cause for disciplinary action”. A public prosecutor “is a representative not of an ordinary party in a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all” (*Suarez v. Platon*, 69 Phil. 556, G.R. No. 46371, 7 February 1990).

2. To the legal profession

a. Canons 7 to 9

1. Canon 7

28. Atty. Anna Kirmet was one of Worry Bank's valued clients. The bank gave her a credit card with a credit limit of P250,000.00. Because of her extravagance, Atty. Kirmet exceeded her credit limit and refused to pay the monthly charges as they fell due.

Hence, aside from a collection case, Worry Bank filed a disbarment case against Atty. Kirmet. In her comment on the disbarment complaint, Atty. Kirmet insisted that she did not violate the Code of Professional Responsibility because her obligation to the bank was personal in nature and had no relation to her being a lawyer.

Is Atty. Kirmet correct? Explain your answer briefly. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

No, Atty. Kirmet is not correct. Under Rule 7.03 of the Code of Professional Responsibility, "a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession." Rule 1.01 likewise provides that "a lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct," without qualifying that it be in his professional life only. Atty. Kirmet has the moral duty and legal responsibility to settle her financial obligations when they become due. It is not necessary for a lawyer-client relationship to exist for a lawyer to become a subject of a disbarment case. [*Gacias v. Bulautan*, A.C. No. 7280, 2006].

29. Atty. Utang borrowed from Y Php 300,000.00 secured by a postdated check. When presented, the check was dishonored. Y filed a BP 22 case in court, and a disbarment complaint with the IBP. In the latter case, Atty. Utang moved for dismissal as the act has nothing to do with his being a lawyer and that it is premature because the case is pending, and he is entitled to presumption of innocence. Should the disbarment complaint be dismissed? (2012 Bar Question)
- No, because lawyers may be disciplined for all acts, whether professional or private.
 - Yes, there is no conviction yet.
 - Yes, BP 22 does not involve moral turpitude.
 - No, unless he pays the amount of the check to the satisfaction of Y.

SUGGESTED ANSWER:

A [*Tapucar v. Tapucar*, Adm. Case No. 4148, July 30, 1998 reiterated the rule that the Court may disbar or suspend a lawyer for misconduct, whether in his professional or private capacity, which shows him to be wanting in moral character, in honesty, probity, and good demeanor]

30. Which of the following statements best describes the distinct traditional dignity that the legal profession enjoys over other professions? (2011 Bar Question)
- People are quite dependent on lawyers for their skills in getting them out of trouble with the law.
 - Its members strive to maintain honesty even in their private dealings.
 - Its members earn by charging specified emoluments or fees.

- d. The profession is anchored on a fiduciary relation with the client.

SUGGESTED ANSWER:

B [Rule 7.03, Canon 7 of the Code of Professional Responsibility provides that a lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he whether in public or private life, behave in a scandalous manner to the discredit of the legal profession]

31. On November 28 Atty. Patrick wrote in a newspaper column that the Supreme Court already decided in favor of the validity of the Executive Order that created the Truth Commission upon a vote of 13-2. But, as it turned out, the Court actually rendered an adverse decision only on December 7, and upon a vote of 10-5. Asked to explain his misleading article, Patrick said that his constitutionally protected right to free expression covered what he wrote. Can the Court cite Patrick for contempt? (2011 Bar Question)

- a. Yes, because his article obstructs and degrades the administration of justice.
- b. No, because the right to free expression occupies a high rank in the hierarchy of cherished rights.
- c. No, because courts must simply ignore public opinion and the media when rendering decisions.
- d. Yes, because he wrote a lie in his column.

SUGGESTED ANSWER:

A [In *re. Sotto*, January 21, 1949 provides that while it is true that constitutional guaranty of freedom of speech and press be protected to its fullest extent, it is not to be confused with license or abuse of liberty of the press and of the citizen with liberty in its true sense. Thus, an attorney as an officer of the court is under special obligation to be respectful in his, conduct and communication to the courts.]

32. [May the lawyer concerned be sanctioned for] not paying the annual IBP dues. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

It is the duty of every lawyer to support the activities of the Integrated Bar of the Philippines. This is in accordance with Canon 7 of the Code of Professional Responsibility which provides that “a lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar. Default in payment of IBP dues for six months shall warrant suspension of membership to the Integrated Bar, and default to make such payment for one year shall be a ground for the removal of the delinquent member from the Roll of Attorneys (*In Re Atty. Marcial Edillon*, 84 SCRA 554 [1978]).

2. Canon 8

33. (33) Atty. Y, in his Motion for Reconsideration of the Decision rendered by the National Labor Relations Commission (NLRC), alleged that there was connivance of the NLRC Commissioners with Atty. X for monetary considerations in arriving at the questioned Decision. He insulted the Commissioners for their ineptness in appreciating the facts as borne by the evidence presented.

Atty. X files an administrative complaint against Atty. Y for using abusive language.

Atty. Y posits that as lawyer for the down-trodden laborers, he is entitled to express his righteous anger against the Commissioners for having cheated them; that his allegations in the Motion for Reconsideration are absolutely privileged; and that proscription against the use of abusive

language does not cover pleadings filed with the NLRC, as it is not a court, nor are any of its Commissioners Justices or Judges.

Is Atty. Y administratively liable under the Code of Professional Responsibility? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Atty. Y “has clearly violated Canons 8 and 11 of the Code of Professional Responsibility and is administratively liable. A lawyer shall not in his professional dealings, use language which is abusive, offensive or otherwise improper” (*Rule 8.01, CPR*). A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the courts (*Rule 11.03, CPR*).

In the case of *Johnny Ng v. Atty. Benjamin C. Alar* (507 SCRA 465 [2006]), which involves the same facts, the Supreme Court held that the argument that the NLRC is not a court, is unavailing. The lawyer remains a member of the Bar, an “oath-bound servant of the law, whose first duty is not to his client but to the administration of justice and whose conduct ought to be and must be scrupulously observant of law and ethics.”

The Supreme Court also held that the argument that labor practitioners are entitled to some latitude of righteous anger is unavailing. It does not deter the Court from exercising its supervisory authority over lawyers who misbehave or fail to live up to that standard expected of them as members of the Bar.

3. Canon 9

- 34. You had just taken your oath as a new lawyer. The secretary of a big university offered to get you as the university’s notary public. She explained that the faculty and students would be sent to you to have their documentations and affidavits notarized; and that the arrangement would be very lucrative for you. However, the secretary wants you to share with her half of your earnings throughout the year.**

Will you agree to the arrangement proposed by the secretary of the university? Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

No, I will not agree to the arrangement. The arrangement will be violative of *Rule 9.02 of the Code of Professional Responsibility*, which provides that “a lawyer shall not divide or stipulate to divide a fee for legal services with persons not licensed to practice law.” The secretary of the university is not licensed to practice law. Hence, I cannot validly share my earnings as a notary public with him.

- 35. Engr. Gilbert referred his friends, spouses Richard and Cindy Maylupa, to Atty. Jane for the institution of an action for partition of the estate of Richard's deceased father. In a letter, Atty. Jane promised to give Engr. Gilbert a commission equivalent to 15% of the attorney's fees she would receive from the spouses Maylupa. Atty. Jane, however, failed to pay Engr. Gilbert the promised commission despite already terminating the action for partition and receiving attorney's fees amounting to about P600,000.00. Engr. Gilbert repeatedly demanded payment of his commission but Atty. Jane ignored him. May Atty. Jane professionally or ethically promise a commission to Engr. Gilbert? Explain. (3%) (2015 Bar Question)**

SUGGESTED ANSWER:

Atty. Jane may not professionally or ethically promise a commission to Engr. Gilbert. Rule 9.02 of the CPR provides that “a lawyer shall not divide or stipulate to divide a fee for legal services with persons not authorized to practice law”.

36. A person who has been refused admission to the bar by order of the Supreme Court but nonetheless attempts to practice law is guilty of: (2014 Bar Question)

- a. direct contempt
- b. indirect contempt
- c. criminal contempt

SUGGESTED ANSWER:

B [In the case of *In re: Michael Medado*, B.M. No. 2540, September 24, 2013, the respondent’s unauthorized practice of law constituted an indirect contempt of court; hence, he was punished under Canon 9]

37. Atty. Monica Santos-Cruz registered the firm name "Santos- Cruz Law Office" with the Department of Trade and Industry as a single proprietorship. In her stationery, she printed the names of her husband and a friend who are both non-lawyers as her senior partners in light of their investments in the firm. She allowed her husband to give out calling cards bearing his name as senior partner of the firm and to appear in courts to move for postponements.

Did Atty. Santos-Cruz violate the Code of Professional Responsibility? Why? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes, she did. In the case of *Cambaliza v. Cristobal-Tenorio* (434 SCRA 288 [2004]), which involves the same facts, the Supreme Court held that 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 which provide as follows:

“Canon 9. A lawyer shall not directly or indirectly assist in the unauthorized practice of law.”

“Rule 9.01. A lawyer shall not delegate to any unauthorized person the performance of any task which by law may only be performed by a member of the bar in good standing.”

38. Atty. Manuel is counsel for the defendant in a civil case pending before the RTC. After receiving the plaintiff’s Pre-Trial Brief containing the list of witnesses, Atty. Manuel interviewed some of the witnesses for the plaintiff without the consent of plaintiff’s counsel. (2009 Bar Question)

A) Did Atty. Manuel violate any ethical standard for lawyers? Explain. (3%)

SUGGESTED ANSWER:

No, because Canon 39 of the Canons of Professional Ethics provides that “a lawyer may interview any witness or prospective witness from the opposing side in any civil or criminal action without the consent of opposing counsel or party.” This is because a witness is supposed to be a neutral person whose role is to tell the truth when called upon to testify.

B) Will your answer be the same if it was the plaintiff who was interviewed by Atty. Manuel without the consent of plaintiff's counsel? Explain. (2%)

SUGGESTED ANSWER:

My answer will not be the same. Canon 9 of the Canons of Professional Ethics provides that “a lawyer should not in any way communicate upon a subject of controversy with a party represented by counsel, much less should he undertake to negotiate or compromise the matter with him, but should deal only with his counsel.” If he communicates with the adverse party directly, he will be encroaching into the employment of the adverse party’s lawyer.

- 39. [May a] suspended lawyer working as an independent legal assistant to gather information and secure documents for other lawyers during the period of his suspension [be sanctioned]. (3%) (2008 Bar Question)**

SUGGESTED ANSWER:

The lawyer may not be sanctioned. Practice of law has been defined as any activity, inside or outside the courtroom which requires knowledge of the law and procedure (*Cayetano v. Monsod*, 201 SCRA 210 [1991]). The act of gathering information and securing documents for other lawyers, and not for a client, does not constitute practice of law. Any clerk can be tasked by a lawyer to perform such services.

However, if these acts will involve the exercise of professional judgment of a lawyer, the essence of which has been said to be his educated ability to relate the general body of and philosophy of law to a specified legal problem, such acts would constitute practice of law, and the suspended lawyer can be sanctioned for performing them.

- 40. [May a] suspended lawyer allowing his non-lawyer staff to actively operate his law office and conduct business on behalf of clients during the period of suspension [be sanctioned]. (3%) (2008 Bar Question)**

SUGGESTED ANSWER:

The lawyer maybe sanctioned. A lawyer shall not delegate to any unqualified person the performance of any task which by law may only be performed by a member of the bar in good standing. (Rule 9.01, CPR) Cite the rule.

b. Integrated Bar of the Philippines (Rule 139-A)

1. Membership and dues

3. To the courts (Canons 10 to 13)

a. Canon 10

- 41. Atty. Billy, a young associate in a medium-sized law firm, was in a rush to meet the deadline for filing his appellant's brief. He used the internet for legal research by typing keywords on his favorite search engine, which led him to many websites containing text of Philippine jurisprudence. None of these sites was owned or maintained by the Supreme Court. He found a case he believed to be directly applicable to his client's cause, so he copied the text of the decision from the blog of another law firm, and pasted the text to the document he was working on. The formatting of the text he had copied was lost when he pasted it to the document, and he could not**

distinguish anymore which portions were the actual findings or rulings of the Supreme Court, and which were quoted portions from the other sources that were used in the body of the decision. Since his deadline was fast approaching, he decided to just make it appear as if every word he quoted was part of the ruling of the Court, thinking that it would not be discovered.

Atty. Billy's opponent, Atty. Ally, a very conscientious former editor of her school's law journal, noticed many discrepancies in Atty. Billy's supposed quotations from the Supreme Court decision when she read the text of the case from her copy of the Philippine Reports. Atty. Billy failed to reproduce the punctuation marks and font sizes used by the Court. Worse, he quoted the arguments of one party as presented in the case, which arguments happened to be favorable to his position, and not the ruling or reasoning of the Court, but this distinction was not apparent in his brief. Appalled, she filed a complaint against him. (2015 Bar Question)

A) Did Atty. Billy fail in his duty as a lawyer? What rules did he violate, if any? (2%)

SUGGESTED ANSWER:

Atty. Billy has violated Canon 10, Rules 10.01 and 10.02 of the CPR which provide as follows:

CANON 10. A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

Rule 10.01. A lawyer shall not do any falsehood, nor consent to the doing of any in court; nor shall he mislead or allow the Court to be misled by any artifice.

Rule 10.02. A lawyer shall not knowingly misquote or misrepresent the contents of a paper, the language or the argument of opposing counsel, or the text of a decision or authority, or knowingly cite a law a provision already rendered inoperative by repeal or amendment, or assert as a fact that which has not been proved.

B) How should lawyers quote a Supreme Court decision? (2%)

SUGGESTED ANSWER:

In citing a quote from a decision of the Supreme Court, lawyers must use verbatim reproductions of the Supreme Court decisions, down to the last word and punctuation mark (*Insular Life Assurance Co., Ltd Employees Association v. Insular Life Assurance Co., Ltd.*, 37 SCRA 244).

42. The duty of a lawyer to his client is more paramount than his duty to the Court. (2009 Bar Question)

SUGGESTED ANSWER:

The statement is false because a lawyer's paramount duty is to the court. This is because he is an officer of the court.

b. Canon 11

43. Atty. Harold wrote in the Philippine Star his view that the decision of the Supreme Court in a big land case is incorrect and should be re-examined. The decision is not yet final. Atty. Alfonso, the counsel for the winning party in that case, filed a complaint for disbarment against Atty. Harold for violation of the *sub judice* rule and Canon 11 of the CPR that a lawyer shall observe and maintain the respect due to the courts. Explain the *sub judice* rule and rule on the disbarment case. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The *sub judice* rule restricts comments and disclosures pertaining to pending judicial proceedings, not only by participants in the pending case, members of the bar and bench, litigants and witnesses, but also to the public in general, which necessarily includes the media, in order to avoid prejudging the issue, influencing the court, or obstructing the administration of justice. A violation of this rule may render one liable for indirect contempt under Sec. 3(d), Rule 71 of the Rules of Court. The specific rationale for the *sub judice* rule is that courts, in the decision of issues of fact and law should be immune from every extraneous influence; that facts should be decided upon evidence produced in court; and that the determination of such facts should be uninfluenced by bias, prejudice or sympathies. (*Marantan v. Diokno*, 716 SCRA 164, G.R. No. 205956, February 12, 2014). After a case is decided; however, the decision is open to criticism, subject only to the condition that all such criticism shall be bona fide, and shall not spill over the walls of decency and propriety.

In this case, the published comment of Atty. Harold was made after the decision of the Supreme Court was rendered, but the same was not yet final. The case was still pending. Hence, the publication of such comment was inappropriate, and Atty. Harold may be penalized for indirect contempt of court.

ALTERNATIVE ANSWER:

Although the comment of Atty. Harold was made while the case was technically still pending, it was made after a decision was rendered, and the comment made is within the grounds of decency and propriety. Hence, the lawyer does not deserve punishment for the same.

- 44. Atty. Luna Tek maintains an account in the social media network called Twitter and has 1,000 followers there, including fellow lawyers and some clients. Her Twitter account is public so even her non-followers could see and read her posts, which are called tweets. She oftentimes takes to Twitter to vent about her daily sources of stress like traffic or to comment about current events. She also tweets her disagreement and disgust with the decisions of the Supreme Court by insulting and blatantly cursing the individual Justices and the Court as an institution. (2015 Bar Question)**

A) Does Atty. Luna Tek act in a manner consistent with the Code of Professional Responsibility? Explain the reasons for your answer. (3%)

SUGGESTED ANSWER:

Atty. Luna Tek did not act in a manner consistent with the CPR. Canon 11 of the Code provides that “a lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct with others”. As an officer of the court, a lawyer should set the example in maintaining a respectful attitude towards the court. Moreover, he should abstain from offensive language in criticizing the courts. Atty. Luna Tek violated this rule in insulting and blatantly cursing the individual Justices and the Supreme Court in her tweets. Lawyers are expected to carry their ethical responsibilities with them in cyberspace (*Lorenzana V. Judge Ma. Cecilia L. Austria*, A.M. No. RTJ-092200, April 2, 2014).

B) Describe the relationship between a lawyer and the courts. (3%)

SUGGESTED ANSWER:

A lawyer is an officer of the court. As such, he is as much a part of the machinery of justice as a judge is. The judge depends on the lawyer for the proper performance of his judicial duties. Thus, Canon 10 enjoins a lawyer to be candid with the courts; Canon 11 requires him to show respect to judicial officers; and Canon

12 urges him to exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.”

45. RTC Judge Bell was so infuriated by the conduct of Atty. X who conveniently absents himself when his clients do not pay his appearance fee in advance. Atty. X also uses disrespectful and obscene language in his pleadings. At one point, when his case was called for hearing, Atty. X did not appear for his client although he was just outside the door of the court room. Judge Bell directed the client to summon Atty. X, but the latter refused. Judge Bell then issued an Order directing Atty. X to explain why no disciplinary action shall be imposed on him for this misconduct but he refused the directive. Decide. (2012 Bar Question)
- RTC Judge Bell can suspend Atty. X from the practice of law before his sala.
 - The case of Atty. X can be dismissed due to non-appearance of counsel even though the party was present.
 - The hearing of the case should be rescheduled in the interest of justice.
 - The court can admonish the client for the unprofessional conduct of his lawyer and ask him to change his lawyer.

SUGGESTED ANSWER:

BONUS [Options A – not part of the scale of the penalties; Options B, C and D are unresponsive to the question]. The lawyer should have been reprimanded and fined, as per the ruling in the case of *Dallong Galiciano v. Castro, Adm. Case No. 6396, Oct. 25, 2005*.

46. Which of the following demonstrates the lawyer's duty to give the court the respect it deserves? (2011 Bar Question)
- Counsel consistently appearing in court on time.
 - Counsel obeying court's orders and processes.
 - Woman counsel appearing in court dressed in business attire.
 - Counsel addressing the court as "Your Honor" at all times.

SUGGESTED ANSWER:

B [Canon 11 of the Code of Professional Responsibility provides the rules: shall appear in court properly attired (Rule 11.01); shall punctually appear at court hearings (Rule 11.02); shall abstain from scandalous, offensive or menacing language or behavior before the Courts (Rule 11.03); shall not attribute to a Judge motives not supported by the record or have no materiality to the case (Rule 11.04); and shall submit grievances against a Judge to the proper authorities only (Rule 11.05).]

47. Atty. Candido commented in a newspaper that the decision of the Court of Appeals was influenced by a powerful relative of the prevailing party. The appellate court found him guilty of indirect contempt. Does this involve moral turpitude? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Moral turpitude has been defined as everything which is done contrary to justice, modesty, or good morals, an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to morals” (*Soriano v. Dixon*, 480 SCRA 1 [2006]). Based on this definition, it would appear that the published comment of Atty. Candido does not constitute “moral turpitude” although contemptuous.

c. Canon 12

48. The court ordered Atty. Z to testify as a witness for his client in the very case he is handling, but he refused on the ground that it would violate the rule on privilege communication. Atty. Z is guilty of: (1%) (2014 Bar Question)

- a. Direct contempt
- b. Indirect contempt
- c. Violation of his duty to the court

SUGGESTED ANSWER:

A or B [*Regala v. Sandiganbayan*, G.R. NO. 105938. September 20, 1996 provides the general rule that a lawyer may not invoke his privilege and refuse to divulge the name or identify of his client, subject to certain exceptions like when the disclosure would establish the client's connection with the very issue in the case.]

49. Atty. Serafin Roto is the Corporate Secretary of a construction corporation that has secured a multi-million infrastructure project from the government. In the course of his duties as corporate secretary, he learned from the company president that the corporation had resorted to bribery to secure the project and had falsified records to cut implementing costs after the award of the project.

The government filed a civil action to annul the infrastructure contract and has subpoenaed Atty. Roto to testify against the company president and the corporation regarding the bribery. Atty. Roto moved to quash the subpoena, asserting that lawyer-client privilege prevents him from testifying against the president and the corporation.

Resolve the motion to quash. (8%) (2013 Bar Question)

SUGGESTED ANSWER:

The motion should be denied because Atty. Roto did not learn of the bribery and falsification in connection with a lawyer-client relation. Being a corporate secretary does not create a lawyer-client relation because membership in the Bar is not a requirement to perform the functions of a corporate secretary. Consequently, Atty. Roto does not owe any obligation of confidentiality to the corporation.

Atty. Roto may be compelled to testify. As an officer of the court, a "lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice" (Code of Professional Responsibility, Canon 12). Furthermore, a "lawyer owes candor, fairness and good faith to the court" (*Ibid.*, Canon 10).

ALTERNATIVE ANSWER:

Motion granted.

It is true that being a corporate secretary does not necessarily constitute a lawyer-client relation. However, Atty. Roto may be considered in the practice of law if part of his duties as a corporate secretary is to give legal advice to or prepares legal documents for the corporation. Thus, a lawyer-client relationship may have been constituted between Atty. Roto and the corporation. Consequently, it is his duty as an attorney "to maintain inviolate the confidence, and at every peril to himself, to preserve the secrets of his client" (Rules of Court, Rule 138, Sec. 20, par. e, paraphrasing and arrangement supplied).

Atty. Roto learned from the company president of the bribery and falsification, while Atty. Roto was in the course of his performance of his duties as corporate secretary. Thus, he could not be examined on that matter without the consent of his client (*Ibid.*, Rule 130, Sec. 24 (b)).

50. A Regional Trial Court issues a temporary restraining order (TRO) halting the demolition order issued by the City Mayor who has long loathed the cluster of shanties put up by informal settlers along the road leading to the city's commercial district. The TRO, however, carried conditions that must be in place before the threatened demolition can be fully halted.

The city legal officer advised the City Engineer's Office and the local PNP chief that the TRO's conditions are not in place so that the demolition could proceed. The city filed a manifestation reflecting the city legal officer's position, while the informal settlers' counsel sought its own clarification and reconsideration from the court, which responded by decreeing that the conditions have been fulfilled. Despite this ruling, the city legal officer insisted that the conditions have not been fulfilled and thus gave the PNP clearance to aid the City Engineer's Office in proceeding with the demolition.

From the perspective of professional ethics, how would you characterize the city legal officer's actions? (1%) (2013 Bar Question)

- a. It is unethical since he counseled civil servants to disregard a court order.
- b. It is ethical, since he acted in accordance with his honest conviction after considering that the court's conditions have not been met.
- c. It constitutes indirect contempt, but the lawyer cannot be disciplined because he acted out of his firm and honest conviction.
- d. It is neither contemptuous nor unethical since he was performing his duties as city legal officer.
- e. It is unethical since the City Legal Officer was simply blindly following the Mayor's wishes.

SUGGESTED ANSWER:

A [Canon 12 of the Code of Professional Responsibility states that "a lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice."].

51. You are a lawyer working at the Office of the Special Prosecutor and you are part of the team handling the case against former Senator Avido who is charged with plunder. Based on your assessment of the evidence that the complainant Linda submitted, you know that the case against former Senator Avido is weak, although you instinctively feel that he is guilty. You inform your friend Atty. Curioso (who works with the office of Senator Elmismo, a known political rival of Senator Avido) regarding your instinctive feeling about Senator Avido. Atty. Curioso springs a surprise by giving you a recording of the wiretapped conversation between Senator Avido and Napo, a private party co-accused, about the transaction complained of and how they would split the proceeds.

What will you do under these circumstances? (1%) (2013 Bar Question)

- a. Disregard the wiretapped conversation as it is inadmissible and will not serve any useful purpose in the trial of the case.
- b. Present the wiretapped conversation in court; although inadmissible, its introduction and the disclosure of its existence is a right that the public is entitled to.
- c. Leak the wiretapped conversation to the media, to let the public know what really

- happened.
- d. Submit the wiretapped conversation to the Senate which is in the best position to determine what to do with it.
 - e. Let Napo privately know, through 3rd parties, that you are aware of the existence of the taped conversation, with the hint that he can still hope for a lighter penalty if he would cooperate.

SUGGESTED ANSWER:

A [Canon 12 of the Code of Professional Responsibility states that “a lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.”].

52. Sheryl, Eric's counsel, once asked for postponement and the court granted it since the opposing counsel, Bernadine, did not object. Eric then asked Sheryl not to allow any further postponements because his case has been pending for 8 years. When trial resumed, Bernadine moved to reset the trial because of her infant's ailment. What must Sheryl do? (2011 Bar Question)

- a. Remind the Court that it has the duty to promptly decide the case.
- b. Interpose no objection since she too once sought postponement without Bernadine's objection.
- c. Vehemently oppose Bernadine's motion for being contrary to Eric's wishes.
- d. Submit the motion to the Court's sound discretion.

SUGGESTED ANSWER:

D [Rule 12.03, Canon 12 of the Code of Professional Responsibility provides that a “lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.”]

53. Counsel for Philzea Mining appealed a decision of the Bureau of Mines, which was adverse to his client, to the Environment Secretary. At about the same time, he filed a special civil action of certiorari with the Court of Appeals for the annulment of the same decision. Did counsel commit any ethical impropriety in his actions? (2011 Bar Question)

- a. Yes, since the action he filed with the Court of Appeals was barred by the pendency of a similar action before the Environment Secretary.
- b. Yes, since he was evidently shopping for a sympathetic forum, a condemnable practice.
- c. No, since his appeal to the Environment Secretary was administrative, not judicial.
- d. No, since he has to exhaust all available remedies to serve his client's interest.

SUGGESTED ANSWER:

B [Rule 12.02, Canon 12 of the Code of Professional Responsibility states that a “lawyer shall not file multiple actions arising from the same cause.”] Cite Rule 12.02

54. May an attorney talk to his witnesses before and during the trial? Explain. (2014 Bar Question)

SUGGESTED ANSWER:

He may talk to his witness before the trial, but he shall refrain from talking to his witness during a break or recess in the trial, while the witness is still under examination (Rule 12.05, Code of Professional Responsibility).

d. Canon 13

55. Atty. Hermano requested his fraternity brother, Judge Patron, to introduce him to Judge Apestado, before whom he has a case that had been pending for some time.

Judge Patron, a close friend of Judge Apestado, acceded to the request, telling the latter that Atty. Hermano is his fraternity "brod" and that Atty. Hermano simply wanted to ask for advice on how to expedite the resolution of his case. They met, as arranged, in the fine dining restaurant of a five-star hotel. Atty. Hermano hosted the dinner.

Did Atty. Hermano, Judge Patron and Judge Apestado commit any ethical/administrative violation for which they can be held liable? (8%) (2013 Bar Question)

SUGGESTED ANSWER:

Yes, the three (3) of them committed ethical/administrative violation for which they can be held liable.

For hosting the dinner, Atty. Hermano acted in contravention of ethical standards. A lawyer should refrain from any impropriety which tends to influence or give the appearance of influencing the court (Code of Professional Responsibility, Canon 13). A lawyer shall not extend extraordinary attention or hospitality to, nor seek opportunity for cultivating familiarity with judges (*Ibid.*, Canon 13, Rule 13.01). Marked attention and unusual hospitality on the part of a lawyer to a judge, uncalled for by the personal relations on the parties, subject both the judge and the lawyer to misconstruction of motive and should be avoided (Canons of Professional Ethics, Canon 3, 2nd par., 1st sentence), even if the purpose of the meeting was merely to "ask advice on how to expedite the resolution of his case."

Both Judge Patron and Judge Apestado may be held liable for having the dinner meeting with Atty. Hermano. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer (New Code of Conduct for the Philippine Judiciary, Canon 2, Sec. 1). Judges shall avoid impropriety and the appearance of impropriety in all of their activities (*Ibid.*, Canon 4, Sec. 1). The dinner meeting could be construed as appearance of impropriety.

Judge Patron for having allowed himself to be used as a "bridge" by Atty. Hermano, his fraternity "brod" to meet with Judge Apestado exhibited judicial misconduct in the following manner: Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court (*Ibid.*, Canon 1, Sec. 3). Furthermore, Judge Patron allowed the use of prestige of judicial office to advance the private interests of others, conveyed or permitted his fraternity "brod" to convey the impression that he is in a special position to influence the judge (*Ibid.*, Canon 1, Sec. 4, 2nd sentence).

The specific violations of Judge Apestado were committed when he allowed himself to be convinced by Judge Patron to have the dinner with Atty. Hermano to discuss how the case may be expedited. In performing judicial duties, judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently (*Ibid.*, Canon 1, Sec. 2). Finally, in having a dinner meeting with Atty. Hermano who has a pending case with him, Judge Apestado has exhibited an appearance of impropriety in his activities (*Ibid.*, Canon 4, Sec. 1).

56. After hearing in a sensational criminal case, counsel for the accused told television viewers how the judge unfairly ruled to stop his witness from testifying fully about certain aspects of the case that would help the accused. Counsel said that the public should know the injustice to which his client was being subjected. Can counsel be disciplined for his utterances? (2011 Bar Question)

- a. Yes, because rather than defend the judicial system as was his duty, he attacked it.
- b. No, since counsel did not use obscene language.
- c. No, so long as counsel did not knowingly make false statements or act in reckless disregard of truth.
- d. Yes, even if the judge may have actually made unfair rulings in the course of trial.

SUGGESTED ANSWER:

C [In the case of *In re: Interview with Atty. Lorna Kapunan*, A.M. No. 13-11-09-SC, the Supreme Court did not sanction Atty. Kapunan pending investigation because of her defense that she was actually careful in her answers in the interview.]

- 57. Rico, an amiable, sociable lawyer, owns a share in Marina Golf Club, easily one of the more posh golf courses. He relishes hosting parties for government officials and members of the bench.**

One day, he had a chance meeting with a judge in the Intramuros golf course. The two readily got along well and had since been regularly playing golf together at the Marina Golf Club.

If Atty. Rico does not discuss cases with members of the bench during parties and golf games, is he violating the Code of Professional Responsibility? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes. A lawyer shall not extend extraordinary attention or hospitality to, nor seek opportunity for cultivating familiarity with judges (*Rule 13.01, Code of Professional Responsibility*). Moreover, he should refrain from any impropriety which gives the appearance of influencing the court (*Canon 13, CPR*). In regularly playing golf with judges, Atty. Rico will certainly raise the suspicion that they actually do not. However, if Rico is known to be a non-practicing lawyer, there is not much of an ethical problem.

- 58. On a Saturday, Atty. Paterno filed a petition for a writ of amparo with the Court of Appeals (CA). Impelled by the urgency for the issuance of the writ, Atty. Paterno persuaded his friend, CA Justice Johnny de la Cruz, to issue the writ of amparo and the notice of hearing without the signature of the two other Justices-members of the CA division. Are Atty. Paterno and Justice de la Cruz guilty of unethical conduct? Explain. (4%) (2009 Bar Question)**

SUGGESTED ANSWER:

Yes. Atty. Paterno violated Canon 13 of the Code of Professional Responsibility which provides that a lawyer shall rely on “the merit of his cause and refrain from any impropriety which tends to influence or gives the appearance of influencing the court.” Atty. Paterno has relied on his friendship with Justice de la Cruz to obtain a writ of amparo without a hearing. He thus makes it appear that he can influence the court.

Justice de la Cruz, violated Section 3, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary, which provides that “judges shall, in their personal relations with individual members of the legal profession who practice regularly in their courts, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.”

- 59. Dumbledore, a noted professor of commercial law, wrote an article on the subject of letters of credit which was published in the *IBP Journal*. (2008 Bar Question)**

A) Assume he devoted a significant portion of the article to a commentary on how the Supreme Court should decide a pending case involving the application of the law on letters of credit. May

he be sanctioned by the Supreme Court? Explain. (4%)

SUGGESTED ANSWER:

Professor Dumbledore may be sanctioned by the Supreme Court. Rule 13.02 of the CPR provides that “a lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party. The court in a pending litigation must be shielded from embarrassment or influence in its duty of deciding the case.

B) Assume Dumbledore did not include any commentary on the case. Assume further after the Supreme Court decision on the case had attained finality, he wrote another *IBP Journal* article, dissecting the decision and explaining why the Supreme Court erred in all its conclusions. May he be sanctioned by the Supreme Court? Explain. (3%)

SUGGESTED ANSWER:

He may not be sanctioned by the Supreme Court. Once a litigation is concluded, the judge who decided it is subject to the same criticism as any other public official, because his decision becomes public property and is thrown open to public consumption. The lawyer enjoys a wide latitude in commenting or criticizing the judge’s decision, provided that such comment or criticism shall be *bona fide* and not spill over the bounds of decency and propriety.

4. To the clients

a. Canons 14 to 22

1. Canon 14

60. A is the accused of robbery in a complaint filed by B. A sought free legal assistance from the Public Attorneys Office (PAO) and Atty. C was assigned to handle his case. After reviewing the facts as stated in the complaint as narrated by A, Atty. C is convinced that A is guilty. (4%) (2014 Bar Question)

A) May Atty. C refuse to handle the defense of A and asked to be relieved ? Explain fully.

SUGGESTED ANSWER:

Rule 14.01 of the Code of Professional Responsibility provides that a lawyer shall not decline to represent a person solely on account of his own opinion regarding the guilt of the said person. It is not the duty of a lawyer to determine whether the accused is guilty or not, but the judge’s. Besides, in a criminal case, the accused is presumed innocent, and he is entitled to an acquittal unless his guilt is proven beyond reasonable doubt. The role of the lawyer is to see to it that his constitutional right to due process is observed

B) In the problem (A), if the lawyer is counsel de parte for the accused and he learns later after accepting the case and while trial is ongoing that his client was indeed the perpetrator of the crime, may the lawyer withdraw his appearance from the case? Why or why not?

SUGGESTED ANSWER:

He may withdraw his appearance but in accordance with procedure in Section 26, Rule 138 of the Rules of Court. Moreover, Rule 19.02 of the Code of Professional Responsibility provides that “a lawyer who has received information that his client has, in the course of the representation, perpetuated a fraud upon a

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

61. The Rendition of free legal service is a lawyer's: (1%) (2014 Bar Question)

- a. Moral duty
- b. Social obligation
- c. Legal mandate

SUGGESTED ANSWER:

B or A [Sec. 2, RA 9999 states the declaration of policy of the Free Legal Assistance Act of 2010: to value the dignity of every human person and guarantee the rights of every individual, particularly those who cannot afford the services of legal counsel; and to promote a just and dynamic social order that will ensure the prosperity and independence of the nation and free the people from poverty through policies and programs that provide adequate social services and improve the quality of life for all.]

62. A person named and appointed by the court to defend an absentee defendant in the suit in which the appointment is made is an: (2014 Bar Question)

- a. attorney-in-fact
- b. attorney ad hoc
- c. attorney de officio

SUGGESTED ANSWER:

B [Black's Law Dictionary defines an attorney ad hoc as one appointed for a special purpose, generally to represent the client or infant in the particular action in which the appointment is made.

63. Vito is a notorious gangster in the province who has been accused of raping and mercilessly killing a 16-year old girl. Sentiments run very strongly against him and the local Bar Association met and decided that no lawyer in the locality would represent him. Vito could not afford the services of an out-of-town counsel.

Choose the most appropriate legal and ethical characterization of the decision of the local Bar Association. (1%) (2013 Bar Question)

- a. It is within its right to make, since lawyers may freely decide who to represent and who not to represent.
- b. It is unethical; it constitutes a collective denial of Vito's right to the assistance of counsel.
- c. It constitutes an anticipated act of contempt towards the court that may order any of the members of the association to represent the accused.
- d. It must be concurred in by each member of the Bar Association to have any binding force.
- e. It is unethical because the Bar Association already prejudged Vito.

SUGGESTED ANSWER:

B [*Code of Professional Responsibility, Canon 14, Rule 14.01* which states that a “lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person.”].

64. Candido engaged the services of Atty. Lebron in a criminal case. In the course of their consultations, Candido admitted to Atty. Lebron that he committed the crime and in fact actively planned its commission. He stressed, however, that under no circumstance would he admit or confess to the murder charge he is facing and, in fact, would enter a plea of "not guilty" on arraignment.

If Candido insists on his planned plea, Atty. Lebron should _____. (1%) (2013 Bar Question)

- a. discontinue his representation; to continue would be unethical since he would then be aiding the accused in foisting a deliberate falsehood on the court
- b. allow Candido to choose his course of action; Atty. Lebron's duty is to protect all his legal and statutory rights
- c. convince Candido to plead guilty and withdraw from the case if Candido refuses to heed his advice
- d. file a manifestation, if Candido pleads "not guilty," declaring to the court what he knows of the truth.
- e. play matters by ear and wait for developments as Candido may still plead guilty.

SUGGESTED ANSWER:

B [Code of Professional Responsibility, Canon 14, Rule 14.01, which states that a lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person].

65. You are a lawyer working in the Public Assistance Office. Yolly, a key witness in the case (reckless imprudence resulting in homicide) you are handling, is indigent and illiterate. While Yolly is willing to testify in court, you worry that the judge might not be able to appreciate the impact of her testimony, as she has a difficult time answering English questions. You also worry that this might affect her credibility. Further, Yolly has indicated that she might not have the money to pay the fare to attend the trial. You are presenting her as a witness for the defense at the hearing next week.

66. Which of the following is NOT a permissible act for you to do? (1%) (2013 Bar Question)

- a. Provide Yolly with money for fare to ensure her attendance in court.
- b. Interview Yolly before trial, so that she will be more at ease when she testifies before the court.
- c. Prepare a judicial affidavit of Yolly's testimony, which she will then verify before the court.
- d. Provide her with sample questions that you might ask in the hearing tomorrow.
- e. All the above are permissible.

SUGGESTED ANSWER:

E [Nothing wrong with all of these acts. (A) is justified by Rule 16.04 of the Code of Professional Responsibility, which provides that "Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client." (B), (C), and (D) are also not violative of Rule 12.05 of the Code of Professional Responsibility, which provides that "a lawyer shall refrain from talking to his witness during a break or recess in the trial, while the witness is still under examination" since all of the acts are before the trial.]

67. If a lawyer volunteers his free legal service to a poor client, (1%)

1. a lawyer-client relationship is established between them
2. he is bound to serve his poor client with the same degree of competence, fidelity, and diligence as his paying client
3. he is not justified to neglect the cause of his client for the client's inability to defray the costs of court litigation

SUGGESTED ANSWER:

B [Rule 14.01, Code of Professional Responsibility provides that "lawyer shall not decline to represent a person solely on account of the latter's race, sex, creed or status of life, or because of his own opinion regarding the guilt of said person."]

2. Canon 15

68. (A) Brando & Luzon Law Office had a retainer agreement with Gregory, a businessman with shady connections. Gregory was recently charged in the RTC in Manila with money laundering in relation to an illegal drugs syndicate using Cable Co., his holding company, as its money laundering conduit. The members of the Brando & Luzon Law Office assigned to handle Gregory's account, including yourself were implicated in the money laundering case for their role in the incorporation of Cable Co., and in the active management of its business affairs.

In a bid to fortify the case against Gregory and the others, the public prosecutor approaches you (as the least guilty person who will qualify for a discharge as a state witness) and offers to make you a state witness. Should you accept the offer? Explain your answer. (5%) (2017 Bar Question)

SUGGESTED ANSWER:

No, the information I acquired involving the criminal case against Gregory is covered by the privileged communication rule. Having been one of the lawyers who handled Gregory's account, I acquired information involving the criminal case against him, which is covered by the privileged communication rule. A lawyer cannot without the consent of his client be examined as to any communication made by a client in the course of, or with view to, professional employment [Sec. 24 (b), Rule 130, Rules of Court, which provides that "An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity."].

B) Under the facts of the preceding question, assume that you had resigned from the Brando & Luzon Law Office prior to the filing of the money laundering case against Gregory and the others, and that you were not implicated in the case. However, you had assisted in handling the Cobra Co., account during your time with the law firm. Cobra Co. was largely owned by Cable Co.

The public prosecutor handling the case against Gregory and the other asks you, as a former member of the Brando & Luzon Law Office, to help strengthen the case for the Government, and hints that you may be implicated in the case if you do not cooperate. What is your legal and ethical course of action? Explain your answer. (5%)

SUGGESTED ANSWER:

I will decline to testify against the defendants and to provide evidence in the case as the attorney-client privilege lasts even beyond the termination of the relationship. The fact that I am no longer a member of Brando & Luzon Law Office, raises the probability that the questions that may be asked of me will refer

to crimes already committed at the time they were communicated to me. As such, they are covered by the mantle of privileged communication, and I will refuse to become a state witness.

69. (A) Pedro Tigas, a known toughie, asked Atty. Chloe to meet with him in the Jollibee Restaurant in Harrison Plaza because he wanted to seek her legal advice on an important matter. Atty. Chloe had once before been consulted by Pedro Tigas, who had then paid her well. When they met in Jollibee Restaurant, he confided his planned assassination of Pepeng Taga, his rival for control of the neighborhood in San Adres Bukid, Manila. He wanted her to represent him should he be apprehended for the assassination. Atty. Chloe did not agree, and he left the restaurant in a hurry before Pedro Tigas could utter anything more.

A few days afterwards, Pepeng Taga was killed near his house in San Andres Bukid, Manila. The police follow-up team arrested Pedro Tigas on the basis of testimony by at least two residents that they heard him saying two days before the killing that Pepeng Taga would not live beyond 48 hours. Should Atty. Chloe reveal to the police investigator what Pedro Tigas had stated to her at the Jollibee Restaurant without violating the confidence of the latter as a client? Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Yes, Atty. Chloe has an obligation to disclose what Pedro Tigas had stated to her without violating the lawyer-client confidentiality rule. The general rule is that protection of the attorney-client privilege has reference to communications which are legitimately and properly within the scope of a lawful employment, and does not extend to those made in contemplation of a crime or perpetuation of a fraud. There is privileged communication only as to crimes already committed before its communication to the lawyer. It is the civic duty of Atty. Chloe to disclose to the police authorities the intent of Pedro Tigas to assassinate Pepeng Taga. The lawyer-client relationship does not prevent her from disclosing information because it refers to an illegal act. [*Canon 17, Code of Professional Responsibility* which provides that “a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him,” qualified by the ruling in *People v. Sandiganbayan*, G.R. NO. 115439-41. July 16, 1997, which provided the doctrine that intent to commit future crimes is not included within the attorney-client privilege.]

B) Assuming that the meeting between Pedro Tigas and Atty. Chloe in Jollibee Restaurant occurred after the killing of Pepeng Taga, and in that meeting Pedro Tigas expressly admitted to Atty. Chloe in strict confidence as his lawyer that he had shot Pepeng Taga. Is Atty. Chloe ethically bound to reveal the admission of Pedro Tigas to the police investigator what Pedro Tigas had stated to her at the Jollibee Restaurant? Explain your answer. (4%)

SUGGESTED ANSWER:

No, Atty. Chloe is not ethically bound to reveal the admission of Pedro Tigas to the police investigator. The lawyer-client privilege extends to revelations of crimes already committed. The law in fact encourages a client to make a full disclosure of the circumstances relating to the crime for which he is or may be charged. *Rule 15.02 of the Code of Professional Responsibility* provides that a lawyer shall be bound by the rule on privilege communication in respect of all matters disclosed to him by a prospective client.

70. Eva consulted Atty. Doble Kara, a well-known solo practitioner, to represent her as a probable heir to the huge estate of her late lamented grandaunt who died without issue. After Atty. Doble Kara perused the documents relevant to the estate presented by Eva, he told Eva that he could not be of help to her.

A few days later, Eva learned that Atty. Doble Kara had just initiated intestate proceedings involving the same estate in the RTC, and the petitioner seeking appointment as administratrix

was Mely, Eva's hostile cousin and co-heir to the estate.

Eva moved to immediately disqualify Atty. Doble Kara from representing Mely on the ground of conflict of interest, but Atty. Doble Kara explained to the estate court that there was no conflict of interest because he had no lawyer-client relationship with Eva. He further indicated that Eva had not also paid him any retainer fee. Given his explanations to the estate court, may Atty. Doble Kara ethically represent Mely? (4%) (2017 Bar Question)

SUGGESTED ANSWER:

No, Atty. Doble Kara may not ethically represent Mely because there would be a conflict of interest. A lawyer-client relationship between Atty. Doble Kara and Eva was created when the latter consulted the former on the matter of the estate of her late grand-aunt, gave him documents to study, and the lawyer gave her advice after such study. It does not matter that the lawyer refused to represent her or that he was not paid a retainer fee. As held by the Supreme Court, if a person consults a lawyer in respect to his business of any kind, with a view to obtaining his professional advice or assistances, and the voluntarily permits or acquiesces to such consultation, a lawyer-client relationship is established [*Canon 15, Code of Professional Responsibility* which provides that "a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients; *Hilado v. David, G.R. No. L-961, 1949* on the doctrine that formality is not an essential element in establishing a lawyer-client relationship so long as a lawyer's advice and assistance is sought and received in matters pertaining to his profession].

71. **St. Ivan's Hospital, Inc. (St. Ivan's) and Allied Construction Co. (Allied) separately retained the legal services of Tomas and Benedicto Law Offices. St. Ivan's engaged the services of Allied for the construction of a new building but failed to pay the contract price after the completion of the works. A complaint for sum of money was filed by Atty. Budoy, a former associate of Tomas and Benedicto law Offices, on behalf of Allied against St Ivan's. St. Ivan's lost the case and was held liable to Allied.**

Thereafter, St Ivan's filed a disbarment complaint against Atty. Budoy. It claimed that while Atty. Budoy has established his own law office, an arrangement was made whereby Tomas and Benedicto Law Offices assign cases for him to handle, and that it can be assumed that Tomas and Benedicto Law Offices collaborate with Atty. Budoy in the cases referred to him, creating a conflict of interest. Rule on the complaint with reasons. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

I will rule in favor of St. Ivan's and against Atty. Budoy. "There is conflict of interest if the acceptance of a new retainer will require the lawyer to perform an act which will injuriously affect his new 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 during their relation" (*Hornilla v. Salamat, 453 Phil. 108, A.C. No. 5804, July 1, 2003*). Herein, St. Ivan's was a client of Atty. Budoy because of the principle that when a party hires a law firm, he hires all the lawyers therein. Atty. Budoy was in a position to know the information transmitted by St. Ivan's to the firm. A lawyer is prohibited from representing new clients whose interests oppose those of a former client in any manner, whether or not they are parties in the same action or on totally unrelated cases. (*Anglo v. Atty. Valencia, A.C. No. 10567, February 25, 2015*).

72. **Maria and Atty. Evangeline met each other and became good friends at zumba class. One day, Maria approached Atty. Evangeline for legal advice. It turned out that Maria, a nurse, previously worked in the Middle East. So she could more easily leave for work abroad, she declared in all her documents that she was still single. However, Maria was already married with two children. Maria again had plans to apply for work abroad but this time, wished to have all her papers in order. Atty. Evangeline, claiming that she was already overloaded with other cases, referred Maria's case**

to another lawyer. Maria found it appalling that after Atty. Evangeline had learned of her secrets, the latter refused to handle her case.

Maria's friendship with Atty. Evangeline permanently turned sour after Maria filed an administrative case against the latter for failing to return borrowed jewelry. Atty. Evangeline, on the other hand, threatened to charge Maria with a criminal case for falsification of public documents, based on the disclosures Maria had earlier made to Atty. Evangeline. (2015 Bar Question)

A) Was the consultation of Maria with Atty. Evangeline considered privileged? (1%)

SUGGESTED ANSWER:

The consultation of Maria with Atty. Evangeline is considered privileged. In the case of *Hadjula v. Madianda, A.C. No. 6711, July 3, 2007*, which involves basically the same facts, the Supreme Court held as follows:

The moment complainant approached the then receptive respondent to seek legal advice, a veritable lawyer-client relationship evolved between the two. Such relationship imposes upon the lawyer certain restrictions circumscribed by the ethics of the profession. Among the burdens of the relationship is that which enjoins the lawyer, respondent in this instance, to keep inviolate confidential information acquired or revealed during legal consultations. Of little moment, is the fact that no formal professional engagement follows the consultation. Nor will it make any difference, that no contract whatsoever was executed by the parties to memorialize the relationship.”

B) What are the factors to establish the existence of attorney-client privilege? (3%)

SUGGESTED ANSWER:

In the same case, the Supreme Court cited Wigmore on the factors essential to establish the attorney-client privilege as follows:

- (1) Where legal advice of any kind is sought
- (2) from a professional legal adviser in his capacity as such,
- (3) the communication relating to that purpose,
- (4) made in confidence
- (5) by the client
- (6) are at his instance permanently protected
- (7) from disclosure by himself or by the legal advisor,
- (8) except the protection be waived.

- 73. Jon served as Chief Executive Officer (CEO) of PBB Cars, Inc. (PBB), a family-owned corporation engaged in the buying and selling of second-hand cars. Atty. Teresa renders legal services to PBB on a retainer basis.**

In 2010, Jon engaged Atty. Teresa's services for a personal case. Atty. Teresa represented Jon in a BP Big. 22 case filed against him by the spouses Yuki. Jon paid a separate legal fee for Atty. Teresa's services. Jon subsequently resigned as CEO of PBB in 2011. In 2012, Atty. Teresa filed on behalf of PBB a complaint for replevin and damages against Jon to recover the car PBB had assigned to him as a service vehicle. Atty. Teresa, however, had not yet withdrawn as Jon's counsel of record in the BP Big. 22 case, which was still then pending.

Jon filed an administrative case for disbarment against Atty. Teresa for representing conflicting

interests and violating the Code of Professional Responsibility. Atty. Teresa countered that since the BP Blg. 22 case and the replevin case are unrelated and involved different issues, parties, and subject matters, there was no conflict of interest and she acted within the bounds of legal ethics.

Is Atty. Teresa's contention tenable? Explain. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

The Supreme Court has adopted the following tests for determining conflict of interest.

- (1) Whether a lawyer is duty bound to fight for an issue or claim in behalf of one client, and at the same time, to oppose that claim for another client;
- (2) Whether the acceptance of a new relation would prevent the full discharge of his duty of undivided loyalty to his client.
- (3) Whether the acceptance of a new relation would invite suspicion of unfaithfulness or double-dealing in the performance of his duty of fidelity and loyalty.
- (4) Whether in the acceptance of the new relation, he would be called upon to injure his former client on a matter that he has handled for him, or require him to reveal information that his former client has given to him.

Although the case for replevin filed by Atty. Teresa against Jon is different from the BP 22 case she was handling for him, the pendency of the two cases at the same time is likely to invite suspicion of unfaithfulness or double-dealing in the performance of her duty and fidelity to Jon.

Teresa's contention is, therefore, not tenable.

- 74. R is retained the counsel of ABC Bank Ermita Branch. One day, his Balikbayan compadre B, consulted him about his unclaimed deposits with the said branch of ABC Bank, which the Bank had refused to give to him claiming that the account had become dormant. R agreed to file a case against the bank with the Regional Trial Court (RTC) of Manila, B lost the case, but upon the advice of R, he no longer appealed the the decision. B later discovered that R was retained counsel of ABC Bank- Ermita Branch. Does B have any remedy? Discuss the legal and ethical implications of the problem. (4%) (2014 Bar Question)**

SUGGESTED ANSWER:

Atty. R clearly violated the rule against representing conflicting interests (Rule 15.03, Code of Professional Responsibility). B may file an action to set aside the judgment on the theory that that if a lawyer is disqualified from appearing as counsel for a party on account of conflict of interests, he is presumed to have improperly and prejudicially advised and represented the party in the conduct of the litigation from beginning to end. He may also file an action for damages against Atty. R, aside from an administrative complaint due to his misconduct. He was prejudiced by the adverse decision against him, which he no longer appealed upon the advice of Atty. R.

- 75. Graft Investigator Atty. Retirada served the Office of the Deputy Ombudsman for eight years before retiring from the service. While still a Graft Investigator, she investigated a government contract for office supplies where Mr. Sakim was the supplier. The transaction was supposedly overpriced. Atty. Retirada recommended that no charges be filed against the officials involved and the recommendation benefited Mr. Sakim as the supplier involved in the transaction.**

After her retirement from the service, Atty. Retirada's services as counsel were engaged by Mr. Sakim as counsel to represent the Sakim family in a claim against the State arising from a family property that had been expropriated. Atty. Retirada now consults you about the ethical

permissibility of accepting the engagement.

What advice would you give Atty. Retirada? (1%) (2013 Bar Question)

- a. Having been in government service, she cannot now represent a party with a claim against the State.
- b. Having once handled a case involving her prospective client, a conflict of interest would exist if she were to accept the engagement.
- c. Representing the Sakim family would involve the unethical use of information she obtained while in government service.
- d. There is no ethical objection to her acceptance of the engagement because the case is neither criminal nor administrative in character.
- e. Acceptance of the engagement should be on condition that Atty. Retirada would withdraw if a conflict of interest situation arises.

SUGGESTED ANSWER:

D [R.A. 910, Sec. 1 provides that “It is a condition of the pension provided for herein that no retiring Justice during the time that he is receiving said pension shall appear as counsel before any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein and officer or employee of the Government is accused of an offense committed in relation to his office, or collect any fee for his appearance in any administrative proceedings to maintain an interest adverse to the Government, insular, provincial or municipal, or to any of its legally constituted officers.].

76. The mediator assigned to a civil case happens to be your law school classmate and he makes a doctrinal statement about the rights of the parties. You knew that the statement, although favorable to your client’s case, is incorrect.

The ethical move to make under the circumstances is to _____. (1%) (2013 Bar Question)

- a. correct the mediator and state the right doctrine;
- b. just keep quiet because the other counsel might learn about your relationship with the mediator;
- c. reveal your relationship with the mediator and ask the opposing counsel if he has any objections;
- d. request the Mediation Supervisor to immediately change the mediator;
- e. simply withdraw from the case because of the unfair advantage that you enjoy.

SUGGESTED ANSWER:

A or C [Code of Professional Responsibility, Canon 15, Rule 15.04 provides that “a lawyer may, with the written consent of all concerned, act as mediator, conciliator or arbitrator in settling disputes.”]

77. Based on the same facts as Question XIV [Wanda finally became pregnant in the 10th year of her marriage to Horacio. As her pregnancy progressed, she started having difficulty breathing and was easily fatigued. The doctors diagnosed that she has a heart congestion problem due to a valve defect, and that her chances of carrying a baby to full term are slim. Wanda is scared and contemplates the possibility of abortion. She thus sought legal advice from Diana, a lawyer-friend and fellow church member, who has been informally advising her on legal matters.], assume that Diana, aside from being a family friend of the couple, has been formally and informally acting as their lawyer in all their personal and family affairs. She has represented them in court in a case

involving a car accident and in the purchase of their family home, for which they formally paid the attorney's fees that Diana billed.

In this instance, Wanda asked about her legal rights but did not formally ask for a written opinion from Diana. Horacio never had any input on the query as he was then away on an out-of-town trip for his office.

Diana advised Wanda that she is fully protected in law and her best course of action is to have an abortion while her pregnancy is not yet far advanced.

Did Diana violate the prohibition against representing conflicting interests when she provided legal advice to Wanda without Horacio's knowledge? (1%) (2013 Bar Question)

- a. Yes. The decision of whether to have an abortion should be decided by both spouses; thus, Diana should not have provided legal advice in the absence of Horacio whose concerns and positions are unknown to her.
- b. No. Diana did not give any formal advice that would constitute legal practice calling for the strict observance of the conflict of interest rules.
- c. No. The decision on whether or not to have an abortion lies solely with Wanda; it is her body and health that is in issue.
- d. No. Horacio and Wanda are married, any advice given to Wanda is deemed to have been given to Horacio as well.
- e. No. Giving advice to Wanda is not necessarily acting against Horacio's interest; Diana was giving advice based on the couple's best interest.

SUGGESTED ANSWER:

A [Code of Professional Responsibility, Canon 15 which provides that "a lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with this clients."] or C (Code of Professional Responsibility, Canon 18, which state that "a lawyer shall serve his client with competence and diligence."); (Reproductive Health Law].

78. **ABLE Law Office** has a retainer agreement with **Santino**, a businessman with shady connections, who has recently been charged with laundering money for an illegal drugs syndicate using **Cable Co.**, Santino's holding company. The lawyers of **ABLE Law Office** assigned to handle Santino's account have been impleaded as co-defendants for incorporating and actively handling the affairs of **Cable Co.**

In its bid to strengthen its case against the defendants, the prosecution approached you (as the least guilty defendant who would qualify for a discharge as a state witness) and offers to make you a state witness.

Can you accept, within the bounds of professional ethics, the prosecution's offer? (1%) (2013 Bar Question)

- a. No, as Santino's lawyer you are duty-bound to protect his interests, ably represent him in court, and not turn against him.
- b. Yes, as an officer of the court, you have the duty to disclose to the court information crucial to the case.
- c. No, the information you acquired involving the criminal case against Santino is covered by the privileged communications rule.
- d. Yes, a lawyer may testify against his client provided he first severs the lawyer-client relationship.

- e. Yes, the law of self-preservation is akin to the law of self-defense and stands higher than any obligation you may have with your client.

SUGGESTED ANSWER:

C [(Code of Professional Responsibility, Canon 15, Rule 15.02, which states that “a lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client.”); (Privileged Communication Rule) or B (Code of Professional Responsibility, Canon 10, Rule 10.01, which states that “a lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.”)].

79. Under the same essential facts as the preceding Question XVI, assume that you have resigned from ABLE Law Office and that you were never impleaded as a co-defendant, but during your stay with the firm, you assisted in handling the Cobra Co. account, which is largely owned by Cable Co.

The prosecutor handling the case against Santino and the law firm asks you, as a former law firm member, if you can help strengthen the prosecution’s case and hints that you, too, may be impleaded as a co-defendant if you do not cooperate.

What is your best legal and ethical course of action? (1%) (2013 Bar Question)

- a. Offer to testify on what you know and provide evidence against the defendants in exchange for a guarantee of immunity from prosecution in the case.
- b. Offer to provide evidence against Santino, but clarify that you cannot testify against Santino because of the privileged communications rule
- c. Decline to testify against the defendants and to provide evidence in the case as the attorney-client privilege lasts even beyond the termination of the relationship.
- d. Decline to testify against the defendants as whatever information you acquired from Santino and Cable Co. in the course of the lawyer-client relationship is privileged.
- e. Alert the law firm to the prosecution’s offer so that they can prepare for the evidence within your knowledge that the prosecution may use.

SUGGESTED ANSWER:

C [Code of Professional Responsibility, Canon 15, Rule 15.02, which states that “a lawyer shall be bound by the rule on privilege communication in respect of matters disclosed to him by a prospective client.”].

80. Mr. Joseph, owner of an investment house, consulted a friend, Atty. Miro, about a potential criminal action against him because he cannot pay investors due to temporary liquidity problems. Atty. Miro asked Mr. Joseph to transfer to him all assets of the firm and he will take charge of settling the claims and getting quitclaims. A month later, Mr. Joseph was surprised to receive a demand letter from Atty. Miro, as counsel for all the claimants, for the pay back of their investments. After a while, Mr. Joseph received releases and quitclaims from the investors, with desistance from filing criminal action against him. Atty. Miro later told Mr. Joseph that he sent the demand letter so he can claim attorney's fee. Was there a conflict of interest? (2012 Bar Question)

- a. No, there was no formal engagement of Atty. Miro as counsel for Mr. Joseph.
- b. Yes, by giving legal advice to Mr. Joseph, the latter became a client of Atty. Miro.
- c. No, there is no attorney-client relationship between Mr. Joseph and Atty. Miro as no attorney's fee was charged nor paid to the latter.
- d. Yes, because Atty. Miro was representing Mr. Joseph when he disposed the assets to

pay off the claims.

SUGGESTED ANSWER:

B [*Hilado v. David*, No. L-961. September 21, 1949 on the doctrine that formality is not an essential element in establishing a lawyer-client relationship so long as a lawyer's advice and assistance is sought and received in matters pertaining to his profession.]

81. **Atty. Juan Cruz of the Cruz, Cruz and Cruz Law Office personally handled a damage case of Mr. Gonzalo which resulted in an award of Php 500,000.00. The writ of execution was served by Sheriff Onoy, but resulted in recovery of only Php 70,000.00. Mr. Gonzalo was unsatisfied and filed an administrative complaint. When informed, Sheriff Onoy berated and threatened Mr. Gonzalo; and for this, the Sheriff was charged with Grave Threat. Atty. Pedro Cruz of the same Cruz, Cruz and Cruz Law Office appeared as defense counsel pro bono. Mr. Gonzalo seeks his disqualification. Decide. (2012 Bar Question)**
- No conflict of interest. The Grave Threat case arose out of a different factual scenario.
 - There is conflict of interest because both Atty. Juan Cruz and Atty. Pedro Cruz belong to one law office.
 - No conflict of interest since the court case was wholly handled by Atty. Juan Cruz. The law office did not participate in any way.
 - No conflict of interest. No likelihood that information in the civil case can be used in the criminal case.

SUGGESTED ANSWER:

B. [In the case of *Anglo v. Valencia, A.C. No. 10567, February 25, 2015*, the Supreme Court concurred with the IBP's conclusions that respondent lawyers who belonged in the same law office represented conflicting interests and must therefore be held liable.]

82. **Justice Frank, a retired Court of Appeals justice, appeared before the Supreme Court on behalf of Landbank, a government bank, in a case involving the compensable value of the property taken from a landowner under the agrarian reform law. The landowner questioned Justice Frank's appearance in the case, pointing out that the same is unethical and smacks of opportunism since he obviously capitalizes on his judicial experience. Is Justice Frank's appearance in the case valid? (2011 Bar Question)**
- Yes, because the law allows such appearance as long as the government is not the adverse party.
 - No, because he cannot enjoy his retirement pay and at the same time work for a government institution.
 - Yes, since Landbank does not perform government function.
 - No, he should have waited for at least a year to avoid improprieties.

SUGGESTED ANSWER:

A [Sec. 1, R.A. 910 provides that "It is a condition of the pension provided for herein that no retiring Justice during the time that he is receiving said pension shall appear as counsel before any court in any civil case wherein the Government or any subdivision or instrumentality thereof is the adverse party, or in any criminal case wherein and officer or employee of the Government is accused of an offense committed in relation to his office, or collect any fee for his appearance in any administrative proceedings to maintain an interest adverse to the Government, insular, provincial or municipal, or to any of its legally constituted officers.]

83. A lawyer cannot refuse to divulge the name or identity of his client. (2009 Bar Question)**SUGGESTED ANSWER:**

The answer is false. As a general rule, a client's name is not confidential, but there are exceptions enumerated in *Regala v. Sandiganbayan* (262 SCRA 122 [1996]), to wit: (a) where a strong possibility exists that a revealing a client's name would implicate that client in the very activity for which he sought the lawyer's advice, (b) where disclosure would open the client to civil liability, and (c) where the government's lawyers have no case against an attorney's client unless by revealing the client's name, the said name would furnish the only link that would form the chain of testimony necessary to convict an individual of a crime.

84. What are the three (3) tests to determine conflict of interest for practicing lawyers? Explain each briefly. (3%) (2009 Bar Question)**SUGGESTED ANSWER:**

- (1) When in representation of one client, a lawyer is required to fight for an issue or claim, but is also duty bound to oppose it for another client;
- (2) When the acceptance of the new retainer will require an attorney to perform an act that may injuriously affect the first client or when called upon in a new relation to use against the first client any knowledge acquired through their professional connection;
- (3) When the acceptance of a new relation would prevent the full discharge of an attorney's duty to give undivided fidelity and loyalty to the client or would invite suspicion of unfaithfulness or double-dealing in the performance of that duty (*Northwestern University v. Arquillo*, 415 SCRA 513 [2005]).

85. It is ethical for a lawyer to advise his client to enter a plea of guilty in a criminal case if the lawyer is personally convinced that he cannot win the case for his client. (2009 Bar Question)**SUGGESTED ANSWER:**

TRUE. A lawyer should be candid with a client. But he should leave it up to the client to decide whether to plead guilty or not.

86. There is no presumption of innocence or improbability of wrongdoing in an attorney's favor when he deals with his client concurrently as lawyer and as businessman. (2009 Bar Question)**SUGGESTED ANSWER:**

The answer is true. This is the ruling of the Supreme Court in *Nakpil v. Valdes* (288 SCRA 758 [1998]) which provided that since business transactions between an attorney and his client are disfavored and discouraged by the policy of the law, there is no presumption of innocence or improbability of wrongdoing in an attorney's favor.

87. In 1998, Acaramba, a telecommunications company, signed a retainer agreement with Bianca & Sophia Law Office (B & S) for the latter's legal services for a fee of P2,000 a month. From 1998 to 2001, the only service actually performed by B & S for Acaramba was the review of a lease agreement and representation of Acaramba as a complainant in a bouncing checks case. Acaramba stopped paying retainer fees in 2002 and terminated its retainer agreement with B & S in 2005. In 2007, Temavous, another telecommunications company, requested B & S to act as its counsel in the following transactions: (a) the acquisition of Acaramba; and (b) the acquisition of Super-6, a company engaged in the power business.

In which transactions, if any, can Bianca & Sophia Law Office represent Temavous? Explain fully. (7%) (2008 Bar Question)

SUGGESTED ANSWER:

B & S cannot represent Temavous in the transaction for the acquisition of Acaramba, as this will constitute conflict of interest. One of the tests of conflict of interest is whether or not in the acceptance of a new relation, the lawyer would be called upon to use against a client confidential information acquired or presumed to have been acquired through their connection. Another test is whether the acceptance of new relation would invite suspicion of unfaithfulness or double dealing in the performance of the lawyer's duty to undivided fidelity or loyalty to the client (*Quiambao v. Bamba*, 468 SCRA 1 [2005]). The 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. In addition, the rule holds even if the inconsistency is remote or merely probable or the lawyer has acted in good faith with no intention to represent conflicting interests. (*Heirs of Lydio "Terry" Falanme v. Atty. Edgar J. Baguio*, A.C. 6876, March 7, 2008)

ALTERNATIVE ANSWER:

a) There seems to be no conflict of interest involved if B & S will act as counsel for Temavous in the acquisition of Acaramba. Acaramba is no longer its client, and the only service Acaramba asked B & S to render during their relationship was to review a lease agreement and handle a bouncing checks case. U.S. courts have denied disqualification where there is no evidence that the law firm has acquired confidential information during the prior representation that would be of value in the current representation.

b) S & B can represent Temavous in the acquisition of Super-6. The subject matter of such transaction is no longer related to the work that the law firm had previously performed for Acaramba. There is no conflict of interest involved, even though Acaramba and Temavous are competing companies.

3. Canon 16

88. Arthur hired Atty. Jojo to file a complaint for the collection of P500,000.00. He agreed to pay Atty. Jojo the amounts of P100,000.00 as acceptance fee and P100,000.00 as success fee. Arthur paid P50,000.00 as partial payment of the acceptance fee with the promise to pay the balance of P50,000.00 after presentation of Arthur's evidence. During the pre-trial, the defendant paid to Atty. Jojo the amount of P100,000.00 as partial payment of his debt. Considering that he has not yet been paid of the balance of his acceptance fee, Atty. Jojo applied P50,000.00 to the balance of the acceptance fee and the remaining P50,000.00 was deposited in his bank account for safekeeping. Despite the lapse of one (1) month, Arthur was not informed of the payment. Arthur sued Atty. Jojo for keeping the money and argues that the latter violated the rules under Canon 16 of the CPR that a lawyer shall hold in trust all monies of his client that may come into his possession. Atty. Jojo claims he has a lien on the monies paid to him by the defendant. Rule on the complaint and explain. (5%) (2016 Bar Question).

SUGGESTED ANSWER:

Atty. Jojo violated Canon 16 of the Code of Professional Responsibility which provides that "a lawyer shall hold in trust all moneys and properties of his client that may come into his possession", and Rule 16.01, which provides that "a lawyer shall account for all money or property collected or received for or from the client". Instead of holding the received P100,000.00 in trust for Arthur, Atty. Jojo applied P50,000.00 to the unpaid balance of his acceptance fee, and deposited the other P50,000.00 in his bank account. The Supreme Court has held that Rule 16.03 permitting liens is applicable only if there is an agreement between

the lawyer as to the payment of his fees and the client is notified of the receipt of payment for him. There was no notice of the payment made to the client, and no agreement between Atty. Jojo and Arthur as to when the balance of the former's acceptance fee should be made. In fact, Arthur promised to pay the same after presentation of his evidence. Moreover, when Atty. Jojo deposited the balance of P50,000.00 in his bank account, he violated Rule 16.02 which provides that "a lawyer shall keep the funds of each client separate and apart from his own and with those of others kept by him".

89. In open court, accused Marla manifested that she had already settled in full the civil aspect of the criminal case filed against her in the total amount of P58,000.00. Marla further alleged that she paid directly to private complainant Jasmine the amount of P25,000.00. The balance of P33,000.00 was delivered to Atty. Jeremiah, Jasmine's lawyer, evidenced by a receipt signed by Atty. Jeremiah himself.

However, Jasmine manifested that she did not receive the amount of P33,000.00 which Marla turned over to Atty. Jeremiah. Despite Jasmine's requests to turn over the money, Atty. Jeremiah failed to do so. It was only after Jasmine already filed an administrative complaint against Atty. Jeremiah that the latter finally paid the P33,000.00 to the former, but in three installment payments of P11,000.00 each. Atty. Jeremiah claimed that he decided to hold on to the P33,000.00 at first because Jasmine had not yet paid his attorney's fees.

Is Atty. Jeremiah administratively liable? Explain. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

Atty. Jeremiah is administratively liable for violating Rule 16.01 of the Code of Professional Responsibility which provides that "a lawyer shall account for all money and property collected or received by him for or from the client." His claim that he held on to the P33,000.00 because his client Jasmine had not yet paid his attorney's fees, is lame. The Supreme Court has held that Rule 16.03 permitting liens is applicable only if there is an agreement between the lawyer as to the payment of his fees and the client is notified of the receipt of payment for him. There is no evidence of such agreement in this case. In fact, Atty. Jeremiah claimed his exercise of a retaining lien only after an administrative case was already filed against him; moreover, it is belied by the fact that Atty. Jeremiah paid the P33,000.00 to his client Jasmine, albeit in installments.

90. In settling his client's claims, Atty. Cruz received from the adverse party P200,000 in cash for his client. Which of the following is an **IMPROPER** way for Atty. Cruz to handle the money? (2011 Bar Question)
- Ask his client to prepare a check for his fees for swapping with the cash.
 - Deposit the cash in his own bank account and later issue his personal check to his client, less his fees.
 - Turn over the cash to his client with a request that the latter pay him his fees.
 - Tell his client about the settlement and the cash and wait for the client's instructions.

SUGGESTED ANSWER:

B [Canon 16, Code of Professional Responsibility provides that "a lawyer shall hold in trust all moneys and properties of his client that may come into his possession."]

91. Atty. Ramon borrowed his client's (Menchu) land title. After eight months, Menchu demanded its return but he failed to comply and changed his residence. After Menchu tracked him down, she confronted him about the title. He then offered to just buy the property and gave her five checks for it but these bounced. Charged with malpractice, Atty. Ramon answered that his license to

practice law cannot be in issue. He merely incurred civil liability for a failed transaction. Will the malpractice action prosper? (2011 Bar Question)

- a. No, because his failure to pay his obligation only makes him civilly liable.
- b. No, since Menchu did not transact business with Atty. Ramon as a lawyer.
- c. Yes, because it is professionally reprehensible for a lawyer to be unavailable to a person in need.
- d. Yes, he having taken advantage of Menchu who was not fully protected and had no independent advice.

SUGGESTED ANSWER:

D [Canon 16, Code of Professional Responsibility provides that “a lawyer shall hold in trust all moneys and properties of his client that may come into his possession.”]

- 92. Marlyn, a widow, engaged the services of Atty. Romanito in order to avert the foreclosure of several parcels of land mortgaged by her late husband to several creditors. Atty. Romanito advised the widow to execute in his favor deeds of sale over the properties, so that he could sell them and generate funds to pay her creditors. The widow agreed. Atty. Romanito did not sell the properties, but paid the mortgage creditors with his own funds, and had the land titles registered in his name. Atty. Romanito succeeds in averting the foreclosure. Is he administratively liable? Reasons. (3%) (2009 Bar Question)**

SUGGESTED ANSWER:

Yes, Atty. Ramonito is administratively liable. The basic facts in this case are the same as the facts in *Hernandez v. Go* (450 SCRA 1 [2005]), where the Supreme Court found the lawyer to have violated Canon 16 and 17 of the Code of Professional Responsibility, and disbarred him. The Supreme Court held that a lawyer’s acts of acquiring for himself the lots entrusted to him by his client are, by any standard, acts constituting gross misconduct. The lawyer in that case was disbarred. [Canon 16, Code of Professional Responsibility provides that “a lawyer shall hold in trust all moneys and properties of his client that may come into his possession.” Likewise, Canon 17 provides that “a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.”]

- 93. [May the lawyer concerned be sanctioned for] keeping money he collected as rental from his client’s tenant and remitting it to the client when asked to do so. (3%) (2008 Bar Question)**

SUGGESTED ANSWER:

The lawyer may be sanctioned for not delivering the rentals that he collected from the client’s tenant immediately, and waiting for his client to ask for it yet. In the case of *Licuanan v. Melo* (170 SCRA 100 [1989]), a lawyer who collected the rentals of his client’s property for a period of one year without reporting and/or delivering such collections to his client until the latter demanded for it, was disbarred by the Supreme Court. Money collected for the client should be reported and accounted for promptly.

ALTERNATIVE ANSWER:

The lawyer may not be sanctioned as long as he holds his client’s funds in trust and accounts for them and delivers them upon demand. (Code of Professional Responsibility, Canon 16, Rule 16.01, which provides that “a lawyer shall account for all money or property collected or received for or from the client,” and Rule 16.03, which provides that “a lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He

shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.”)

94. **C engages the services of attorney D concerning various mortgage contracts entered into by her husband from whom she is separated, fearful that her real estate properties will be foreclosed and of impending suits for sums of money against her. Attorney D advised C to give him her land titles covering her lots so he could sell them to enable her to pay her creditors. He then persuaded her execute deeds of sale in his favor without any monetary or valuable consideration, to which C agreed on condition that he would sell the lots and from the proceeds pay her creditors. Later on, C came to know that attorney D did not sell her lots but instead paid her creditors with his own funds and had her land titles registered in his name.**

Did attorney D violate the Code of Professional Responsibility? Explain. (2007 Bar Question)

SUGGESTED ANSWER:

The decision of the Supreme Court in the case of *Hernandez v. Go*, (450 SCRA 1 [2005]), is squarely applicable to this problem. Under the same set of facts, the Supreme Court held the lawyer to have violated Canons 16 of the Code of Professional Responsibility, which provides as follows:

Canon 16. A lawyer shall hold in trust all moneys and properties of his client that may come into his possession

and Canon 17 of the same Code, which provides as follows:

Canon 17. A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

The Supreme Court further held that the lawyer concerned has engaged in deceitful, dishonest, unlawful and grossly immoral acts, which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession. Consequently, the Court disbarred him.

4. Canon 17

95. **Which of the following demonstrates a lawyer’s fidelity to known practices and customs of the bar regarding a case he is handling? (2011 Bar Question)**

- a. Treating his client’s disclosures as confidential but not the documents he submits for review.
- b. Meeting with his client’s opponent over lunch to discuss settlement without telling his client.
- c. Accepting a tough case although he is new in practice, trusting that his diligence would make up for lack of experience.
- d. Inviting the judge hearing the case to dinner with no purpose to discuss the case with him.

SUGGESTED ANSWER:

C [Canon 17, Code of Professional Responsibility provides that “a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.]

5. Canon 18

96. Prosecutor Regan was designated to represent the State during the trial of an action to declare the nullity of a marriage. He realized soon enough, however, that the counsels of the parties were very competent and sincere in doing their work for their respective client. Thus, Prosecutor Regan, mindful of his large caseload of preliminary investigations, and believing that his attendance at the trial was superfluous, decided not to attend the trial anymore so that he could devote more time to the work back in his office.

Explain whether or not the decision of Prosecutor Regan to miss the trial of the action to declare the nullity of the marriage was warranted. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

The decision of Prosecutor Regan to miss the trial is not warranted. A prosecutor is appointed to represent the state in every action for declaration of nullity of a marriage because the state has the constitutional duty to preserve a marriage a *counsel de officio*, the prosecutor should perform his duties actively and diligently. In case of heavy work schedule of the public prosecutor or in the event of lack of public prosecutors, the private prosecutor may be authorized in writing by the Chief of the Prosecution Office or the Regional State Prosecutor to prosecute the case subject to the approval of the court (*2nd sentence, 1st paragraph, Sec. 5, Rule 110, Rules of Court, as amended by A.M. No. 02-2-07* provides that “once so authorized to prosecute the criminal action, the private prosecutor shall continue to prosecute the case up to end of the trial even in the absence of a public prosecutor, unless the authority is revoked or otherwise withdrawn.”).

97. Armin, holding a transfer certificate of title to a lot in downtown Calamba in the name of Bobby, shows you the title and claims that Bobby sold him the lot. He then asks you to draft a deed of sale covering the transaction. In reply to your query on where Bobby is, Armin explains that Bobby is currently out of the country but he (Armin) has his general power of attorney which he also shows to you. The power of attorney empowers Armin to do everything that Bobby can do with the Calamba lot, but you note that it does not specifically authorize Armin to sell the property. Armin also assures you that he wants the deed of sale drafted so he can send it to Bobby for his signature even while overseas.

How will you act under the given circumstances? (1%) (2013 Bar Question)

- Agree to draft the deed of sale, subject to your usual 10% commission.
- Refuse to draft the deed of sale, as Armin has not presented a special power of attorney that would support the deed that he is asking you to prepare.
- Refuse to draft the deed of sale, as Bobby is not present to sign the deed of sale and verify that he is indeed selling his lot to Armin.
- Agree to draft the deed of sale, since it is only a draft that Bobby still has to consider and sign.
- Refuse to have anything to do with Armin's request because it is a potentially problematic situation given the price of lots in downtown Calamba.

SUGGESTED ANSWER:

B [Code of Professional Responsibility, Canon 18 provides that “a lawyer shall serve his client with competence and diligence.”].

98. Which of the following instances demonstrates counsel's LACK of diligence in serving his client's interest? (2011 Bar Question)

- a. Failing to file his client's appeal brief despite 2 extensions upon the excuse that the client did not coordinate with him.
- b. Failing to send to client a requested legal opinion until after the latter gave him the additional documents he requested.
- c. Failing to rehearse his client on his testimony before the trial.
- d. Updating his client about the status of his case by phone and electronic mail.

SUGGESTED ANSWER:

A [*Chang v. Hidalgo, A.C. No. 6934, Apr. 6, 2016* provides that "the offensive attitude of a client is not an excuse to just disappear and withdraw from a case without notice to the court and to the client, especially when attorney's fees have already been paid."]

99. [May the lawyer concerned be sanctioned for] Filing a complaint that fails to state a cause of action, thereby resulting in the defendant succeeding in his motion to dismiss. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

The lawyer may be sanctioned for lack of competence and diligence (Canon 18, CPR). Rule 18.02 provides that a lawyer shall not handle a case without adequate preparation. Filing a complaint that fails to state a cause of action resulting to the dismissal of his case shows incompetence and lack of adequate preparation.

100. Attorney M. accepted a civil case for the recovery of title and possession of land in behalf of N. Subsequently, after the Regional Trial Court had issued a decision adverse to N, the latter filed an administrative case against attorney M for disbarment. He alleged that attorney M caused the adverse ruling against him; that attorney M did not file an opposition to the Demurrer to Evidence filed in the case, neither did he appear at the formal hearing on the demurrer, leading the trial court to assume that plaintiff's counsel (attorney M) appeared convinced of the validity of the demurrer filed; that attorney M did not even file a motion for reconsideration, causing the order to become final and executory; and that even prior to the above events and in view of attorney M's apparent loss of interest in the case, he verbally requested attorney M to withdraw, but attorney M refused. Complainant N further alleged that attorney M abused his client's trust and confidence and violated his oath of office in failing to defend his client's cause to the very end.

Attorney M replied that N did not give him his full cooperation; that the voluminous records turned over to him were in disarray, and that appeared for N, he had only half of the information and background of the case; that he was assured by N's friends that they had approach the judge; that they requested him (M) to prepare a motion for reconsideration which he did and gave to them; however these friends did not return the copy of the motion.

Will the administrative case prosper? Give reasons for your answer. (2007 Bar Question)

SUGGESTED ANSWER:

The administrative case will prosper. In failing to file an opposition to the Demurrer to Evidence and to appear at the hearing thereof, and in failing to file a motion for reconsideration of the order granting the demurrer, thereby causing the same to become final and executory, Attorney M violated Canon 18 of the Code of Professional Responsibility, which provides that a lawyer shall serve his client with competence and diligence, and Rule 18.03 which provides that a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall make him liable.

In refusing to comply with N's request to withdraw from the case, Atty. M violated the rule that a client has the absolute right to terminate the lawyer-client relationship at any time with or without cause.

Atty. M's defense that the voluminous records turned over to him were in disarray, and when he appeared for B he had only half of the information and background of the case, is not meritorious. Rule 18.02 provides that he shall not handle any legal matter without adequate preparation. He should have been competent and diligent enough to organize the records given to him, and not go to trial with only half of the information and knowledge of the case (Rule 12.01, Code of Professional Responsibility).

His defense that friends of N assured him that they had approached the judge, and asked him to prepare a motion for reconsideration, which is allegedly did and gave to them, is incredible. Even if true, Atty. M violated Canon No. 13 of the code of Professional Responsibility which provides that "a lawyer shall rely upon the merits of his cause and refrain from any impropriety which tends to influence or gives the appearance of influencing the court."

For that matter, even his alleged giving of motion for reconsideration to the friends of N for filing, is another instance of negligence of the part of Atty. M. He should have taken care to file his motion himself (*Francisco v. Portugal*, 484 SCRA 57 [2006]).

6. Canon 19

- 101. Jaybee engaged the services of Atty. Pete to defend him in a criminal case for murder. During trial, when the defense was presenting its evidence, Jaybee admitted to Atty. Pete that he killed the victim in the case. Atty. Pete withdrew from the case. Jaybee sued Atty. Pete for disbarment alleging that the latter violated Canon 15 of the CPR that "a lawyer shall observe candor, fairness and loyalty in all his dealing and transactions with his client" and Canon 17 of the CPR that "a lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him. " Rule on the case and explain. (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

I will rule in favor of Atty. Pete. A lawyer's duty of entire devotion to his client's cause must be performed within the bounds of the law. Canon 19 of the Code of Professional Responsibility provides that "a lawyer shall represent his client with zeal within the bounds of the law".

Moreover, Rule 19.02 of the Code of Professional Responsibility provides that "a lawyer who has received information that his client has in the course of his representation, perpetuated fraud upon a person or tribunal, shall promptly call upon the client to rectify the same, and failing which he shall terminate the relationship with such client in accordance with the Rules of Court". But, of course, the Atty. Pele [should] not reveal what Jaybee revealed to him, because the same is covered by the duty of confidentiality under Canon 21 of the same code.

- 102. Pedro was accused of the crime of murder before the RTC and was found guilty of homicide. His counsel, Atty. Nestor, told him that he will file an appeal before the Court of Appeals (CA) because he believes that the claim of self-defense of Pedro will be given merit by the appellate court and that he will be acquitted. Pedro explains that he is amenable to the penalty imposed upon him. Despite the opposition of the accused, Atty. Nestor went on with the appeal. The CA decided that the conviction should be for murder in view of the qualifying circumstance. A petition with the High Court proved futile. Pedro hires you to file a disbarment suit against Atty. Nestor. What cannon or rule of the CPR will you use as ground for the suit. Explain. (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

I will base my action on Canon 19, particularly Rule 19.03 of the Code of Professional Responsibility which provides that “a lawyer shall not allow the client to dictate the procedure in handling the case.” The other side of the coin of this rule is that the substantive aspects of the case are within the sole authority of the client to decide. The lawyer’s authority is limited only to the procedural aspects of the case. Certainly, the matter of whether or not to appeal an adverse decision is a substantive matter which is exclusively for the client to decide. Having filed an appeal against the decision of his client, the lawyer should be held liable for its negative result.

103. Atty. Bravo represents Carlos Negar (an insurance agent for Dormir Insurance Co.) in a suit filed by insurance claimant Andy Limot who also sued Dormir Insurance. The insurance policy requires the insured/claimant to give a written notice to the insurance company or its agent within 60 days from the occurrence of the loss.

Limot testified during the trial that he had mailed the notice of the loss to the insurance agent, but admitted that he lost the registry receipt so that he did not have any documentary evidence of the fact of mailing and of the timeliness of the mailed notice. Dormir Insurance denied liability, contending that timely notice had not been given either to the company or its agent. Atty. Bravo’s client, agent Negar, testified and confirmed that he never received any notice.

A few days after Negar testified, he admitted to Atty. Bravo that he had lied when he denied receipt of Limot’s notice; he did receive the notice by mail but immediately shredded it to defeat Limot’s claim.

If you were Atty. Bravo, what would you do in light of your client’s (Carlos Negar’s) disclosure that he perjured himself when he testified? (8%) (2013 Bar Question)

SUGGESTED ANSWER:

If I were Atty. Bravo I shall promptly call upon Carlos Negar, my client, to rectify his perjured testimony by recanting the same before the court.

Should he refuse or fail to do so I shall then terminate my relationship with him (Code of Professional Responsibility, Canon 19, Rule 19.02 which provides that “a lawyer who has received information that his client has, in the course of the representation, perpetrated a fraud upon a person or tribunal, shall promptly call upon the client to rectify the same, and failing which he shall terminate the relationship with such client in accordance with the Rules of Court) stating that with his having committed perjury he pursued an illegal conduct in connection with the case (*Ibid.*, Canon 22, Rule 22.01 which provides that “a lawyer may withdraw his services when the client pursues an illegal or immoral course of conduct in connection with the matter he is handling.”).

Since my client Limot refuses to forego the advantage thus unjustly gained as a result of his perjury, I should promptly inform the injured person or his counsel, so that they may take the appropriate steps (Canons of Professional Ethics, Canon 41, which states that “When a lawyer discovers that some fraud or deception has been practiced, which was unjustly imposed upon the court or party, he should endeavor to rectify it; at first by advising his client, and should endeavor to rectify it; at first by advising his client, and if his client refuses to forego the advantage thus unjustly gained, he should promptly inform the injured person or his counsel, so that they may take appropriate steps.”).

Finally, as part of my duty to do no falsehood, nor consent to the doing of any in court (Code of Professional Responsibility, Canon 10, Rule 10.01, and the Attorney's Oath), I shall file a manifestation with the court attaching thereto the notice of termination as Limot's counsel.

- 104. Christine was appointed counsel *de officio* for Zuma, who was accused of raping his own daughter. Zuma pleaded not guilty but thereafter privately admitted to Christine that he did commit the crime charged.**

A) In light of Zuma's admission, what should Christine do? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

Christine should continue to act as counsel *de officio* for Zuma. Christine was appointed counsel *de officio* and should not decline to do so even if she believes her client to be guilty [*Sec. 6, Rule 116, Rules of Court*, which states that "before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed counsel of his choice, the court must assign a counsel *de officio* to defend him."] Her client is entitled to the presumption of innocence and is not obliged to plead guilty. There is no fraud involved in his pleading not guilty.

ALTERNATIVE ANSWER:

Rule 19.02 of the Code of Professional Responsibility (CPR) provides that "a lawyer who has received information that his client has, in the course of representation, perpetuated a fraud upon a person or tribunal, shall promptly call upon the client to rectify the same, and failing which he shall terminate the relationship with such client in accordance with the Rules of Court." In the light of this provision, Christine should call upon Zuma to immediately rectify the fraud he really committed the crime charged.

B) Can Christine withdraw as counsel of Zuma should he insist in going to trial? Explain. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

No. Christine cannot withdraw as counsel of Zuma should he insist in going to trial. It is Christine's duty and moral obligation when she accepted the assignment as Zuma's counsel *de officio*. It is not up to her to judge him to be guilty; that is the responsibility of the court. She should not ask the court to excuse her from her responsibility as counsel *de officio*.

ALTERNATIVE ANSWER:

Pursuant to Rule 19.02 Christine should terminate her relationship with Zuma in accordance to Section 26, Rule 138 of the Rules of Court, which provides that a lawyer may retire at any time from an action by the written consent of the client, or, without such consent, by permission of the court upon notice to the client and hearing. Christine should therefore first try to secure the written consent of Zuma to her withdrawal as his counsel, and if he refuses, she can file a motion asking the court to allow her to withdraw as such counsel, for serious and sufficient cause (Rule 14.02, CPR states that "a lawyer shall not decline, except for serious and sufficient cause, an appointment as counsel *de officio* or as *amicus curiae*, or a request from the Integrated Bar of the Philippines or any of its chapters for rendition of free legal aid.").

- 105. In case of postponement of the trial, whose decision should prevail – the client or his attorney? Explain the governing rule. (4%) (2014 Bar Question)**

SUGGESTED ANSWER:

On the matter of the postponement of the trial, the lawyer's decision should prevail. Rule 19.03 of the Code of Professional Responsibility provides that "a lawyer shall not allow his client to dictate the procedure in handling the case". Sec. 23, Rule 138 of the Rules of Court provides that lawyers have the full authority to bind their clients in all matters of ordinary judicial procedure.

7. Canon 20**106. A) Define champerty. (3%) (2017 Bar Question)****SUGGESTED ANSWER:**

Champerty is a contract between a lawyer and his client whereby the lawyer agrees to be paid his fees only if he is successful in handling the case of his client, with the proviso that the lawyer shall shoulder all the expenses and costs of the case.

B) Atty. Andy and Atty. Valeriano were classmates in law school. As such, they developed a close friendly relationship. They agreed that they would refer clients to each other, and whoever referred clients would receive a commission or portion of the attorney's fees. Atty. Andy referred a client to Atty. Valeriano, who charged the client P100,000.00 as initial attorney's fees. Thereafter, Atty. Valeriano sent 15% of P100,000.00, or P15,000.00, to Atty. Andy as the latter's referral fee.

Explain if the agreement on the referral fee is ethical. (3%)

SUGGESTED ANSWER:

The agreement on the referral fee is unethical. Under *Rule 20.02 of Canon 20 of the Code of Professional Responsibility* provides that "a lawyer shall, in cases of referral, with the consent of the client be entitled to a division of fees in proportion to the work performed and responsibility assumed." There is no such service rendered in the matter of a referral fee, where a lawyer shall receive compensation merely for recommending another lawyer to his client. It smacks of commercialism.

107. Farida engaged the services of Atty. Garudo to represent her in a complaint for damages. The two agreed that all expenses incurred in connection with the case would first be shouldered by Atty. Garudo and he would be paid for his legal services and reimbursed for all expenses which he had advanced out of whatever Farida may receive upon the termination of the case. What kind of contract is this? (2%) (2010 Bar Question)

SUGGESTED ANSWER:

This appears to be a champertous contract, which is invalid. Atty. Garudo agreed to shoulder all expenses in connection with the case, and Farida will reimburse him only out of whatever Farida may receive upon termination of the case. In other words, Atty. Garudo will be reimbursed only if he will be successful in winning the case for Farida. If he is not successful, he will not be reimbursed. He is, thus, investing in the outcome of the case.

108. Chester asked Laarni to handle his claim to a sizeable parcel of land in Quezon City against a well-known property developer on a contingent fee basis. Laarni asked for 15% of the land that may be recovered or 15% of whatever monetary settlement that may be received from the property developer as her only fee contingent upon securing a favorable final judgment or compromise settlement. Chester signed the contingent fee agreement. (2008 Bar Question)

A) Assume the property developer settled the case after the case was decided by the Regional Trial Court in favor of Chester for P1 Billion. Chester refused to pay Laarni P150 Million on the ground that it is excessive. Is the refusal justified? Explain. (4%)

SUGGESTED ANSWER:

The refusal of Chester to pay is unjustified. A contingent fee is impliedly sanctioned by Rule 20.01 (f) of the CPR. A much higher compensation is allowed as contingent fees in consideration of the risk that the lawyer will get nothing if the suit fails. In several cases, the Supreme Court has indicated that a contingent fee of 30% of the money or property that may be recovered is reasonable. Moreover, although the developer settled the case, it was after the case was decided by the Regional Trial Court in favor of Chester, which shows that Atty. Laarni has already rendered service to the client.

[Rule 20.01 - A lawyer shall be guided by the following factors in determining his fees:

- (a) the time spent and the extent of the service rendered or required;*
- (b) the novelty and difficulty of the questions involved;*
- (c) The importance of the subject matter;*
- (d) The skill demanded;*
- (e) The probability of losing other employment as a result of acceptance of the proffered case;*
- (f) The customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;*
- (g) The amount involved in the controversy and the benefits resulting to the client from the service;(*
- h) The contingency or certainty of compensation;*
- (i) The character of the employment, whether occasional or established; and*
- (j) The professional standing of the lawyer.]*

ALTERNATIVE ANSWER:

Chester's refusal to pay Atty. Laarni P150 million as attorney's fees on the ground that it is excessive, is justified. In the case of *Sesbreño v. Court of Appeals* (245 SCRA 30 [1995]), the Supreme Court held that "contingent fee contracts are under the supervision and close scrutiny of the court in order that the clients may be protected from unjust charges" and that "its validity depends on a large measure on the reasonableness of the stipulated fees under the circumstances of each case." Also, "stipulated attorney's fees are unconscionable whenever the amount is by far so disproportionate compared to the value of the services rendered as to amount to fraud perpetuated against the client." Considering the circumstances that the case was decided by settlement of the property developer, the attorney's fee of P150 million would be unconscionable.

B) Assume there was no settlement and the case eventually reached the Supreme Court which promulgated a decision in favor of Chester. This time Chester refused to convey to Laarni 15% of the litigated land as stipulated on the ground that the agreement violates Article 1491 of the Civil Code which prohibits lawyers from acquiring by purchase properties and rights which are the object of litigation in which they take part by reason of their profession. Is the refusal justified? Explain. (4%)

SUGGESTED ANSWER:

Chester's refusal is not justified. A contingent fee agreement is not covered by Art. 1491 of the Civil Code, because the transfer or assignment of the property in litigation takes effect only upon finality of a favorable judgment (*Directors of Lands v. Ababa*, 88 SCRA 513 [1979]; *Macariola v. Asuncion*, 114 SCRA 77 [1982]).

109. [May the lawyer concerned be sanctioned for] refusing to return certain documents to the client pending payment of his attorney's fees. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

He may not be sanctioned. He is entitled to a retaining lien by virtue of which he may retain the funds, documents and papers of his client which have lawfully come into his possession, until his lawful fees and disbursements have been paid (Sec. 37, Rule 138, Rules of Court provides that “An attorney shall have a lien upon the funds, documents and papers of his client which have lawfully come into his possession and may retain the same until his lawful fees and disbursements have been paid, and may apply such funds to the satisfaction thereof”).

- 110. B hired Atty. Z to file a replevin case against C for an agreed acceptance fee of P30,000.00 which was evidenced by a written contract. After the complaint was filed by Atty. Z, B terminated his services and hired a new lawyer for the same amount of attorney’s fees. How much attorney’s fees is Atty. Z entitled to? (4%) (2014 Bar Question)**

SUGGESTED ANSWER:

Atty. Z is entitled to the entire amount of the attorney’s fees agreed upon less because his services were terminated by the client without just cause (Sec. 26, Rule 138, Rules of Court).

- 111. May a lawyer collect fees for services rendered to his client despite the absence of an agreement of an agreement to pay attorney’s fees? (2014 Bar Question)**

SUGGESTED ANSWER: A lawyer may collect fees for services rendered to his client in the absence of an agreement, on the basis of *quantum meruit*, which means as much amount as his services are worth. “The basic rule is that when one has rendered services to another and these services were accepted by the latter, in the absence of proof that the services were rendered gratuitously, it is but just that the recipient should make compensation therefor, pursuant to well-known and accepted principle of law that no one should be permitted to enrich himself at the expense of another”. (*Dominguez v. Court of Appeals*, [135 SCRA 109]).

- 112. In the absence of a contract for the payment of attorney’s fees, what factor/s may be considered in fixing the amount of attorney’s fees?**

SUGGESTED ANSWERS: The factors that may be considered are:

- (a) The time spent and the extent of the services rendered or required;
- (b) The novelty and difficulty of the questions involved;
- (c) The importance of the subject matter;
- (d) The skill demanded;
- (e) The probability of losing other employment as a result of acceptance of the proffered case;
- (f) The customary charges for similar services and the schedule of fees of The IBP chapter to which he belongs;
- (g) The amount involved in the controversy and the benefits resulting to the client from the service;
- (h) The contingency or certainty of compensation;
- (i) The character of the employment, whether occasional or established, and
- (j) The professional standing of the lawyer. (Rule 20.1, Code of Professional Responsibility”.

8. Canon 21

- 113. Sancho Mahilig went to the office of Atty. Charm to engage her legal representation in the criminal case for adultery that the husband of his socialite friend had brought against him in the City Prosecutor’s Office in Manila. Atty. Charm thoroughly interviewed Sancho in her office with only Linda, the secret/stenographer of Atty. Charm, the only other person present. On that occasion,**

Sancho candidly informed Atty. Charm about his illicit affair with the socialite wife, and gave many details. Linda faithfully recorded the interview.

During the trial of the criminal case for adultery, the trial prosecutor requested the court to issue a *subpoena duces tecum* to compel the production of the record of the interview and a *subpoena ad testificandum* to compel Linda to testify on the admission of the affair by Sancho. Atty. Charm objected to the request on the basis of lawyer-client confidentiality.

If you were the trial judge, how will you resolve the objection of Atty. Charm? Justify your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

I would sustain Atty. Charm's objection. Section 24 of Rule 130 of the Rules of Court provides that "An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him, or his advice given thereon in the course of, or with a view to, professional employment, nor can an attorney's secretary, stenographer, or clerk be examined, without the consent of the client and his employer, concerning any fact the knowledge of which has been acquired in such capacity". Since Linda is a secretary/stenographer of Atty. Charm, she cannot be compelled by the prosecution to testify in the criminal case for adultery of Sancho Mahilig.

114. Atty. Miriam rents her office space in a building owned by Winston. Eventually, Atty. Miriam became Winston's regular legal counsel. Because of their good relationship, Atty. Miriam did not hesitate to borrow money from Winston. Atty. Miriam issued postdated checks covering the interest of her loans. Unfortunately, Atty. Miriam failed to pay her obligations to Winston. Her postdated checks with Winston also bounced. Hence, he filed a criminal case for violation of the Bouncing Checks Law against her.

In her counter-affidavit, Atty. Miriam averred that Winston was "a businessman who is engaged in the real estate business, trading and buy and sell of deficiency taxed imported cars, shark loans and other shady deals and has many cases pending in court."

Hurt by the allegations, Winston filed a disbarment complaint against Atty. Miriam arguing that her allegations in the counter-affidavit constituted a breach of their confidential lawyer-client relationship.

Discuss whether or not the disclosures in Atty. Miriam's counter-affidavit constitute a breach of fidelity towards her client. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

The disclosures in Atty. Miriam's affidavit does not constitute a breach of fidelity towards her client Winston. *Canon 21, Rule 21.01 of the Code of Professional Responsibility* provides that a lawyer shall not reveal the confidences or secrets of his clients except when "necessary to defend himself, his employee or associates or by judicial action." By filing a complaint against his attorney, a client waives the attorney-client privilege in favor of his lawyer who may disclose or use so much of his client's confidences as may be necessary to protect himself. In *Genato v. Silapan*, (A.C. No. 4078, 2003), the Court held that the privilege against disclosure of confidential communications or information is limited only to communications which are legitimately and properly within the scope of a lawful employment of a lawyer; it does not extend to those made in contemplation of a crime or perpetuation of a fraud. However, the disclosures in Atty. Miriam's counter-affidavit do not seem to be necessary to protect herself in the criminal case filed against her.

ALTERNATIVE ANSWER:

The disclosures made by Atty. Miriam's constitutes a breach of fidelity towards her client, Winston. While it is true that an exception to the confidentiality rule, or an instance where the lawyer could divulge the secrets of his client learned during the professional engagement is when such confidential information is used to defend the lawyer [*Rule 21.01, Canon 21, Code of Professional Responsibility*]. The disclosures made by Atty. Miriam does fall within the aforesaid exceptions because the statements made in the counter-affidavit are irrelevant to her defense in the criminal case filed against her for violation of the Bouncing Checks Law.

115. Atty. Lorna, a legal officer of a government agency, and Chona, a nurse in the medical department, were best friends. At one time, Chona consulted Atty. Lorna about a legal matter, revealing that she is living with a married man and that she has a child out of wedlock fathered by another man. Later, the relation between Atty. Lorna and Chona soured. When Chona applied for promotion, Atty. Lorna filed immorality charges against Chona utilizing solely the disclosure by the latter of her private life. Chona objected and invoked confidentiality of information from attorney-client relationship. Decide. (2012 Bar Question)

- a. There is no attorney-client relationship because, being in the government, Atty. Lorna is disallowed from practicing her profession.
- b. No lawyer-client relationship privilege because the information was given as a friend, and not as a lawyer.
- c. Personal secrets revealed to Atty. Lorna for the purpose of seeking legal advice is covered by attorney-client privilege.
- d. There is no attorney-client relationship because no attorney's fee was paid to Atty. Lorna.

SUGGESTED ANSWER:

C [In *Hadjula v. Madianda, A.C. No. 6711, July 3, 2007*, the Supreme Court held that "if a person, in respect to business affairs or troubles of any kind, consults a lawyer with a view to obtaining professional advice or assistance, and the attorney voluntarily permits or acquiesces with the consultation, then the professional employments is established."].

116. After representing Lenie in an important lawsuit from 1992 to 1995, Atty. Jennifer lost touch of her client. Ten years later in 2005, Evelyn asked Atty. Jennifer to represent her in an action against Lenie. Such action involved certain facts, some confidential, to which Atty. Jennifer was privy because she handled Lenie's old case. Can Atty. Jennifer act as counsel for Evelyn? (2011 Bar Question)

- a. No, but she can assist another lawyer who will handle the case.
- b. Yes, but she must notify Lenie before accepting the case.
- c. No, because her duty to keep the confidences of previous clients remains.
- d. Yes, but she cannot reveal any confidential information she previously got.

SUGGESTED ANSWER:

C [Rule 21.02 provides of the Code of Professional Responsibility provides that "a lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto".]

117. When Atty. Romualdo interviewed his client, Vicente, who is accused of murder, the latter

confessed that he killed the victim in cold blood. Vicente also said that when he takes the witness stand, he will deny having done so. Is Atty. Romualdo obliged, under his oath as lawyer, to inform the judge that [a] his client is guilty and [b] his client will commit perjury on the witness stand? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

(a) Atty. Romualdo cannot reveal to the judge that Vicente is guilty. He is bound to keep what Vicente told him in confidence, because that is an admission of a crime already committed.

(b) Atty. Romualdo can reveal to the judge that Vicente will commit perjury on the witness stand. This is already a revelation of a crime still to be committed, and that lies outside the mantle of privileged communication.

118. Christine was appointed counsel *de officio* for Zuma, who was accused of raping his own daughter. Zuma pleaded not guilty but thereafter privately admitted to Christine that he did commit the crime charged.

Can Christine disclose the admission of Zuma to the court? Why or why not? (2%) (2008 Bar Question)

SUGGESTED ANSWER:

Christine cannot disclose the admission of Zuma to the Court. If she does so, she will violate her obligation to preserve confidences or secrets of her client (Canon 21, Rule 21.02 of the Code of Professional Responsibility provides that “a lawyer shall not, to the disadvantage of his client, use information acquired in the course of employment, nor shall he use the same to his own advantage or that of a third person, unless the client with full knowledge of the circumstances consents thereto.” The privileged communication between lawyer and client may be used as a shield to defend crimes already committed.

119. In need of legal services, Niko secured an appointment to meet with Atty. Henry of Henry & Meyer Law Offices. During the meeting, Niko divulged highly private information to Atty. Henry, believing that the lawyer would keep the confidentiality of the information. Subsequently, Niko was shocked when he learned that Atty. Henry had shared the confidential information with his law partner, Atty. Meyer, and their common friend, private practitioner Atty. Canonigo. When confronted, Atty. Henry replied that Niko never signed any confidentiality agreement, and that he shared the information with the two lawyers to secure affirmance of his legal opinion on Niko’s problem. Did Atty. Henry violate any rule of ethics? Explain fully. (7%) (2008 Bar Question)

SUGGESTED ANSWER:

Atty. Henry violated Canon No. 21 of the CPR by sharing information obtained from his client Niko with Atty. Canonigo. Canon No. 21 provides that “a lawyer shall preserve the confidences or secrets of his client even after the attorney-client relationship is terminated.” The fact that Atty. Canonigo is a friend from whom he intended to secure legal opinion on Niko’s problem, does not justify such disclosure.

On the other hand, Atty. Henry did not violate Canon 21 in sharing information with his partner Atty. Meyer. Rule 21.04 of the CPR specifically provides that “a lawyer may disclose the affairs of a client of the firm to partners or associates thereof unless prohibited by the client”. The employment of a member of a firm is generally considered as employment of the firm itself (*Hilado v. David*, 84 Phil. 569 [1949]).

9. Canon 22

120. **Atty. Jessa was the counsel for Mr. Nolan, a cantankerous millionaire, in the latter's personal case. Soon after the case was submitted for decision, Mr. Nolan withdrew the files from Atty. Jessa and informed her that he was engaging another lawyer. On that same day, a copy of the decision in the case received by Atty. Jessa but she did not do anything anymore with the decision. She did not also file a withdrawal of her appearance. Mr. Nolan's new counsel did not file any notice of his appearance. By the time Mr. Nolan found out about the adverse decision, his period to appeal had lapsed.**

Was the service of the decision on Atty. Jessa still effective? Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Yes, without compliance with the procedure of proper withdrawal as counsel, the lawyer remains to be the counsel of record of his client and is duty bound to serve him or her until proper withdrawal is made or is so dismissed by the client. Atty. Jessa failed to comply with the following formal requisites: she should filed a motion for withdrawal in court, serve a copy of her motion upon her client and the adverse party at least three (3) days before the date set for hearing and her motion should be filed well in advance of the trial date of the case to enable the client to secure the services of another lawyer [*Sec. 26, Rule 138, Rules of Court* provides that "An attorney may retire at any time from any action or special proceeding, by the written consent of his client filed in court. He may also retire at any time from an action or special proceeding, without the consent of his client, should the court, on notice to the client and attorney, and on hearing, determine that he ought to be allowed to retire."].

121. **The plaintiff died during the pendency of the case in the RTC. If you were the counsel of the plaintiff, what is the last duty you need to discharge in behalf of the late client before your professional engagement for the case may be deemed terminated? Explain briefly your answer. (4%) (2017 Bar Question)**

SUGGESTED ANSWER:

Where the claim is not extinguished due to the death of my client, my last duty to him shall be to inform the court in which his case is pending, within thirty (30) days after such death, and to give the name and address of his legal representative or representatives [*1st paragraph, Sec. 16, Rule 3, Rules of Court*].

122. **Give three instances when a lawyer is allowed to withdraw his/her services. (3%) (2015 Bar Question)**

SUGGESTED ANSWER:

(Any three of the following:)

1. When the client pursues an illegal or immoral course of conduct in connection with the matter he is handling;
2. When the client insists that the lawyer pursue conduct violative of these canons and rules;
3. When his inability to work with co-counsel will not promote the best interest of the client;
4. When the mental or physical condition of the lawyer renders it difficult for him to carry out the employment effectively;
5. When the client deliberately fails to pay the fees for the services or fails to comply with the retainer agreement;
6. When the lawyer is elected or appointed to a public office.

7. Other similar cases.

123. **Atty. M is a partner in a law firm OMP & Associates. C, a former classmate of Atty. M engaged the legal services of Atty. M to handle his appeal to the Court of Appeals (CA) from the adverse decision of the Regional Trial Court (RTC) in his annulment case. After the Notice to file brief was issued by the CA, Atty. M met an accident which incapacitated him from further engaging in law practice. May Atty. P, his partner in the law firm, file the required appeal brief for C? Explain your answer. (5%) (2014 Bar Question)**

SUGGESTED ANSWER:

It depends on whether or not C knew Atty. M to be a partner of the OMP & Associates law firm when he hired him. Generally, the retainer of a member of a law firm is equivalent to the retainer of the firm itself. Thus, if the said member dealt with dies or is incapacitated to render service, the law firm is bound to provide a substitute. Hence, Atty. P may file the required brief for C.

On the other hand, if Atty. M was retained alone, without knowledge that he belonged to a law firm, P may not file the required brief for C without the consent of the latter. There is no statement in the problem that C knew M to be a member of the law firm OMP & Associates at the time that C engaged his services.

124. **Atty. Atras was the counsel for Mr. Abante. Soon after the case was submitted for decision, Mr. Abante got the files and informed Atty. Atras that he was hiring another lawyer. On that same day, a copy of the decision was received by Atty. Atras but he did not do anything anymore. He also' failed to file his withdrawal, and no appearance was made by the new counsel. When Mr. Abante found out about the adverse decision, the period to appeal had lapsed. Was service to Atty. Atras effective? (2012 Bar Question)**

- a. Yes, Atty. Atras is still considered the counsel of record until his withdrawal of appearance has been actually filed and granted.
- b. Service should be done on Mr. Abante because he had already severed lawyer-client relationship with Atty. Atras.
- c. Service should be done on the new counsel as soon as he enters his appearance.
- d. Service upon Atty. Atras is not effective because his services have already been terminated by the client.

SUGGESTED ANSWER:

A [*In Orcino v. Gaspar*, A.C. No. 3773, September 24, 1997, the Court held that “the lawyer has no right to presume that his petition for withdrawal will be granted by the court. Until his withdrawal shall have been approved, the lawyer remains counsel of record who is expected by his client as well as by the court to do what the interests of his client require. He must still appear on the date of hearing for the attorney-client relation does not terminate formally until there is a withdrawal of record.”]

125. **A recovery of ownership complaint was filed by the Dedo and Dedo Law Firm, through Atty. Jose Dedo as counsel. During all the phases of trial, it was Atty. Jose Dedo who appeared. Unfortunately, Atty. Jose Dedo died before completion of trial. Notices and orders sent to the Dedo and Dedo Law Firm were returned to the court with the manifestation that Atty. Dedo already died and requesting the court to directly send the matters to the client. Is this proper? (2012 Bar Question)**

- a. No, the law firm- through another lawyer - should continue to appear for the client.
- b. Yes, because the death of the handling lawyer terminates the attorney-client relationship.

- c. Yes, because attorney's fees was not paid to the law firm.
- d. No, it will be unjust for the client to pay another lawyer.

SUGGESTED ANSWER: A [Agpalo: Employment in a law firm is equivalent to the retainer of a member even if only one of them is consulted. Once a law firm is engaged, even if only one lawyer is sought, the whole firm is engaged for the reason that information given to one of them is available to the whole company.]

126. A difficult client directed his counsel to bring up to the Supreme Court the trial court's dismissal of their action. Counsel believes that the trial court acted correctly and that an appeal would be futile. Which of the following options should counsel take? (2011 Bar Question)

- a. Withdraw from the case to temper the client's propensity to litigate.
- b. Engage a collaborating counsel who can assist in the case.
- c. Submit a new retainer proposal to the client for a higher fee.
- d. Elevate the case to the Supreme Court as directed by client.

SUGGESTED ANSWER:

A [Rule 22.01, Code of Professional Responsibility provides that "a lawyer may withdraw his services in any of the following: (b) When the client insists that the lawyer pursue conduct violative of these canons and rules]

127. Which of the following is required of counsel when withdrawing his services to a client in a case? (2011 Bar Question)

- 1. Counsel's desire to withdraw, expressed in his motion.
- 2. Payment of withdrawal fee.
- 3. Opposing counsel's conformity to the withdrawal.
- 4. Client's written consent filed in court.

SUGGESTED ANSWER:

D [In *Obando v. Figueras*, G.R. No. 134854, Jan. 18, 2000, the Court held that Counsel may be validly substituted only if the following requisites are complied with: (1) new counsel files a written application for Substitution; (2) the client's written consent is obtained; and (3) the written consent of the lawyer to be substituted is secured, if it can still be; if the written consent can no longer be obtained, then the application for substitution must carry proof that notice of the motion has been served on the attorney to be substituted in the manner required by the Rules."]

128. (A) May a client hire additional counsel as collaborating counsel over and above the objection of the original counsel? (2014 Bar Question)

SUGGESTED ANSWER:

Yes, the client is entitled to have as many lawyers as he can afford. Professional courtesy, however, demands that a lawyer retained as a collaborating counsel should at least communicate with the original counsel before entering his appearance. On the part of the original counsel, he should not look at the employment of a collaborating counsel as a loss of confidence in him.

(B) If the client insists, may the original counsel withdraw from the case, and how?

SUGGESTED ANSWER:

If the client insists on retaining a collaborating counsel over and above the objection of the original counsel, the latter may withdraw his services when his inability to work with co-counsel will not redound to the best interest of the client (Rule 22.01, Code of Professional Responsibility).

129.A) If an attorney has been granted by his client full authority to enter into an amicable settlement with the other party, may the client later on refuse to honor the amicable settlement forged by his attorney? Explain. (2014 Bar Question)

SUGGESTED ANSWER:

A compromise agreement effected by a client or by his attorney with special authority from him has upon the parties the effect of *res judicata*. The client cannot refuse to honor the amicable settlement forged by lawyer unless if the lawyer has gone beyond the limits of the authority granted him by his client.

B) In such instance as in (A) above, can the lawyer withdraw from the case and collect in full his contracted attorney's fees? Why or why not?

SUGGESTED ANSWER:

The lawyer can withdraw from the case on the ground that the client is pursuing an or immoral illegal course of action by not honoring a compromise agreement validly entered into. He may recover his contracted attorney's fees in full because, after all, he has performed all the services required of him. It is his client's fault for refusing to honor the amicable settlement forged.

b. Attorney's fees**1. Acceptance fees**

130.B hired Atty. Z to file a replevin case against C for an agreed acceptance fee of P30,000.00 which was evidenced by a written contract. After the complaint was filed by Atty. Z, B terminated his services and hired a new lawyer for the same amount of attorney's fees. How much attorney's fees is Atty. Z entitled to? (2014 Bar Question)

SUGGESTED ANSWER:

Atty. Z is entitled to the entire amount of the attorney's fees agreed upon less because his services were terminated by the client without just cause (Sec. 26, Rule 138, Rules of Court provides that "A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract.")

2. Contingency fee arrangements

131. For services to be rendered by Atty. Hamilton as counsel for Gener in a civil case involving the recovery of the ownership and possession of a parcel of land with an area of 5,000 square meters, the two of them agreed on a success fee for Atty. Hamilton of P50,000.00 plus 500 square meters of the land. The trial court ultimately rendered judgment in favor of Gener, and the judgment became final and executory. After receiving P50,000.00, Atty. Hamilton demanded the transfer to him of the promised 500 square meters of the land.

Instead of complying, Gener brought an administrative complaint charging Atty. Hamilton with violation of the Code of Professional Responsibility and Art. 1491(5) of the Civil Code for demanding the delivery of a portion of the land subject of the litigation.

Is Atty. Hamilton liable under the Code of Professional Responsibility and the Civil Code? Explain your answer. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Atty. Hamilton is not liable under the *Code of Professional Responsibility* and under the *Civil Code*. The agreement to be paid under a contingency fee is allowed provided that the client will shoulder all the costs of litigation. Furthermore, the elements under the prohibition in Article 1491 of the Civil Code are: 1) presence of a lawyer-client relationship, 2) the client's property is subject to litigation, 3) the lawyer is handling the case for the client, 4) the case is still pending, and 5) the lawyer acquires the said property or portion thereof, directly or indirectly. In this case, Atty. Hamilton will acquire a portion of the property of Gener only after the judgment of the case involving the said property has already become final and executory. Hence, the acquisition of a portion thereof by Atty. Hamilton, is not covered by Article 1491 of the Civil Code.

ALTERNATIVE ANSWER:

Atty. Hamilton is liable under the *Code of Professional Responsibility* but is not guilty of violating the *Civil Code*. The agreement between Atty. Hamilton and his client, Gener, is a contingent fee contract because it is based on the success of the litigation. A contingent fee agreement does not violate Article 1491 of the Civil Code, because the transfer or assignment of the property in litigation takes effect only after the finality of a favorable judgment [*Director of Lands v. Ababa et al.*, (G.R. No. L-26096, 1979)]. The property ceases to be property in litigation. However, it may be considered unethical as a champertous contract since a portion of the attorney's fees is a part of the property recovered.

132. Andrew engaged the services of Atty. Juju under a contingent fee agreement to help him file a complaint for damages against his employer, Wilkon Shipping, Inc. Atty. Juju handled Andrew's case for two (2) years before the Labor Arbiter and the National Labor Relations Commission (NLRC), filing the necessary pleadings and attending several hearings. The complaint, however, was dismissed. To improve his chances, Andrew replaced Atty. Juju with Atty. Jen, who eventually succeeded in getting a favorable decision from the Court of Appeals, which became final. When Andrew's claims were satisfied by Wilkon, Atty. Juju filed a collection suit against him claiming that he (Atty. Juju) is entitled to attorney's fees for the services he rendered for two (2) years. Will the collection suit prosper? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The collection case will not prosper. The agreement for attorney's fees between Andrew and Atty. Juju was a contingent fee agreement. A contingent fee agreement is one in which the lawyer will be paid a fee only when he is successful in handling the case of the client. In this case, Atty. Juju was not successful in handling the case of Andrew. It was Atty. Jen who won the case for the client.

ALTERNATIVE ANSWER:

Atty. Juju is entitled to attorney's fees based on *quantum meruit*. The case was decided in favor of Andrew by the Court of Appeals. In appealed cases, the appellate court relies on what is presented during the hearings, and no other evidence is presented at that stage.

133. Apollo hired Atty. Dennis to file an action for damages. Since Apollo has no money, he entered into a contingent fee agreement where Atty. Dennis will shoulder all expenses of litigation and will not charge for legal services. In case of a favorable decision, Apollo agreed to transfer to his lawyer a lot in Cebu. Eventually, Apollo won the case. Atty. Dennis asked Apollo to execute the deed of sale, but the latter refused upon advice of a friend that the agreement is illegal. Due to threats of legal action by his lawyer, Apollo filed a complaint before the Supreme Court alleging that the agreement is a champertous contract. Rule on the legality of the agreement on contingent fee and the propriety of getting the property of Apollo. Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The contract for attorney's fees between Atty. Dennis and Apollo is indeed a champertous agreement. What makes it champertous is the provision, as in this case, that the lawyer will shoulder all the expenses of litigation. That makes the lawyer a businessman who invested in the case in the hope that he will profit from such investment.

With regard to the acquisition by Atty. Dennis of Apollo's property in Cebu, the same will not be in violation of Article 1491 of the New Civil Code, if the contract was simply a contingent fee contract, because the property in Cebu was not involved in the case that Atty. Dennis handled, and the lot will not be transferred to Atty. Dennis until the case was terminated.

134. The spouses Manuel were the registered owners of a parcel of land measuring about 200,000 square meters. On May 4, 2008, the spouses Manuel sold the land for P3,500,000.00 to the spouses Rivera who were issued a certificate of title for said land in their names. Because the spouses Rivera failed to pay the balance of the purchase price for the land, the spouses Manuel, through Atty. Enriquez, instituted an action on March 18, 2010 before the Regional Trial Court (RTC) for sum of money and/or annulment of sale, docketed as Civil Case No. 1111. The complaint in Civil Case No. 1111 specifically alleged that Atty. Enriquez would be paid P200,000.00 as attorney's fees on a contingency basis. The RTC subsequently promulgated its decision upholding the sale of the land to the spouses Rivera. Atty. Enriquez timely filed an appeal on behalf of the spouses Manuel before the Court of Appeals. The appellate court found for the spouses Manuel, declared the sale of the land to the spouses Rivera null and void, and ordered the cancellation of the spouses Rivera's certificate of title for the land. The Supreme Court dismissed the spouses Rivera's appeal for lack of merit. With the finality of judgment in Civil Case No. 1111 on October 20, 2014, Atty. Enriquez filed a motion for the issuance of a writ of execution.

Meanwhile, the spouses Rivera filed on November 10, 2014 before the RTC a case for quieting of title against the spouses Manuel, docketed as Civil Case No. 2222. The spouses Manuel, again through Atty. Enriquez, filed a motion to dismiss Civil Case No. 2222 on the ground of *res judicata* given the final judgment in Civil Case No. 1111.

Pending the resolution of the motion to dismiss in Civil Case No. 2222, the RTC granted on February 9, 2015 the motion for issuance of a writ of execution in Civil Case No. 1111 and placed the spouses Manuel in possession of the land. Atty. Enriquez, based on a purported oral agreement with the spouses Manuel, laid claim to ½ of the land, measuring 100,000.00 square meters with market value of

P1,750,000.00, as his attorney's fees. Atty. Enriquez caused the subdivision of the land in two equal portions and entered into the half he appropriated for himself. Based on the professional and ethical standards for lawyers, may Atty. Enriquez claim $\frac{1}{2}$ of the land as his contingency fee? Why? (4%) (2015 Bar Question)

SUGGESTED ANSWER:

Atty. Enriquez may not claim $\frac{1}{2}$ of the land as his contingency fee. In *Corpus v. Court of Appeals*, 98 SCRA 424 [1980] the Court held that “an attorney is not entitled to a percentage of the amount recovered by his client in the absence of an express contract to that effect”. There is no such contract in this case and as a matter of fact, the claim of a purported oral agreement for a contingency fee of $\frac{1}{2}$ of the land is contradicted by the allegation in the Complaint in Civil Case No. 1111 for a contingency fee of P200,000.00 only. Moreover, the amount claimed as contingent fee appears to be excessive and unreasonable.

Furthermore, Atty. Enriquez caused the division of the land and appropriated one half thereof, pending resolution of the motion to dismiss in Civil Case No. 2222. This constitutes a violation of Article 1491 of the New Civil Code, because the case in which the property is involved has not yet been terminated. The payment of the contingent fee is not made during the pendency of the litigation involving the client's property but only after the judgment has been rendered in the case handled by the lawyer. (*The Conjugal Partnership of the Spouse Cadavedo v. Victorino T. Lacaya*, G.R. No. 173188, January 15, 2014).

135.A inherited a parcel of land situated in Batasan Hills which is occupied by informal settlers. He wants to eject the occupants, but he has no financial means to pursue the ejectment case. He contracted the services of Atty. B, who agreed to defray all the expenses of the suit on the condition that he will be paid one-half ($\frac{1}{2}$) of the property to be recovered as his compensation. What is this kind of attorney's fees?

Can Atty. B enforce this contract against A? What are the respective remedies relative to the collection of attorney's fees, if any, of A and Atty. B against each other? (2014 Bar Question)

SUGGESTED ANSWER:

This is a *champertous* fee agreement because Atty. B agreed to defray all the expenses of the action and will be paid only if he is successful in recovering A's property. Atty. B cannot enforce it because it is contrary to public policy and the ethics of the legal profession. The remedy of A is to file an action to have the agreement declared null and void, or simply to refuse to pay attorney's fees to Atty. B on the basis of the said agreement. On the other hand, Atty. B will still be entitled to collect attorney's fees on a *quantum meruit* basis. He may bring an action to collect such fees.

136. Atty. Francisco's retainer agreement with RXU said that his attorney's fees in its case against CRP "shall be 15% of the amounts collected." Atty. Francisco asked the trial court to issue a temporary restraining order against CRP but this was denied, prompting him to file a petition for certiorari with the Court of Appeals to question the order of denial. At this point, RXU terminated Atty. Francisco's services. When the parties later settled their dispute amicably, CRP paid RXU P100 million. Because of this, Atty. Francisco came around and claimed a 15% share in the amount. What should be his attorney's fees? (2011 Bar Question)

- a. Nothing because the compromise came after RXU terminated him.
- b. 15% of what CRP paid RXU or P15 million.
- c. A reasonable amount that the court shall fix upon proof of quantum meruit.
- d. Nothing since he was unable to complete the work stated in the retainer contract.

SUGGESTED ANSWER:

C [In *Aquino v. Casabar*, G.R. No. 191470. January 26, 2015, the Court held that “the recovery of attorney’s fees on the basis of quantum meruit is a device that prevents an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. An attorney must show that he is entitled to reasonable compensation for the effort in pursuing the client’s cause, taking into account certain factors in fixing the amount of legal fees.”]

137. For services to be rendered by Atty. Delmonico as counsel for Wag Yu in a case involving 5,000 square meters (sq.m.) of land, the two agreed on a success fee of ₱50,000 plus 500 sq.m. of the land.

The trial court rendered judgment in favor of Wag Yu which became final and executory.

After receiving ₱50,000, Atty. Delmonico demanded the transfer to him of the promised 500 sq.m. Instead of complying, Wag Yu filed an administrative complaint charging Atty. Delmonico with violation of the Code of Professional Responsibility and Article 1491(5) of the Civil Code for demanding the delivery of a portion of the land subject of litigation.

Is Atty. Delmonico liable under the Code of Professional Responsibility and the Civil Code? Explain. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

Atty. Delmonico is not guilty of violating the Code of Professional Responsibility and the Civil Code.

He and his client agreed on a success fee of P50,000 plus 500 sq. of the land involved in the case that he was handling. This is a contingent fee contract which is allowed under Canon 20, Rule 20.01 of the Code of Professional Responsibility and Canon 13 of the Code of Professional Ethics.

In *Director of Lands v. Ababa*, 88 SCRA 513 [1979], the Court stated that “for the prohibition [in Article 1491] to operate, the sale of the property must take place during the pendency of the litigation involving the property. A contract for a contingent fee is not covered by [this prohibition] because the transfer or assignment of the property in litigation takes effect only after the finality of a favorable judgment”.

3. Attorney’s liens

138. What is a retaining lien? (2012 Bar Question)

- a. The lawyer who handled the case during the trial stage should continue to be retained up to the appeal.
- b. The right of the lawyer to be retained as counsel for a party until the entire case is finished.
- c. The right of a lawyer who is discharged or withdrawn to keep the records and property of the client in his possession until his lawful services have been paid.
- d. The prerogative of a client's retainer to recover out-of-pocket expenses.

SUGGESTED ANSWER:

C [In *Elena Peralta Vda. De Caina, et al. v. Hon. Gustavo Victoriano, et al.*, G.R. No. L-12905. February 26, 1959, the Court defined a retaining lien as the “right of the attorney to retain the funds, documents, and

papers of his client which have lawfully come into his possession until his lawful fees and disbursements have been paid and to apply such funds to the satisfaction thereof. The retaining lien is dependent upon possession and does not attach to anything not in attorney's hands".]

139. Which of the following characteristics pertains to a charging lien? (2011 Bar Question)

- a. It cannot attach to judgments for delivery of real estates.
- b. It involves documents placed in the lawyer's possession by reason of the retainer.
- c. It does not need any notice to the client to make it effective.
- d. It may be exercised before judgment or execution.

SUGGESTED ANSWER:

A [*Metropolitan Bank and Trust Company v. CA*, G.R. Nos. 86100-03. January 23, 1990]

140. A *charging lien*, as distinguished from a *retaining lien*, is an active lien which can be enforced by execution. (2009 Bar Question)

SUGGESTED ANSWER:

TRUE. It is active because it requires the lawyer to charge the judgment and its execution for the payment of his fees.

141. The satisfaction of a judgment debt does not, by itself, bar or extinguish the attorney's liens, except when there has been a waiver by the lawyer, as shown by his conduct or his passive omission. (2009 Bar Question)

SUGGESTED ANSWER:

True, the satisfaction of a judgment debt does not, by itself, bar or extinguish the attorney's liens, except when there has been a waiver by the lawyer, as shown by his conduct or his passive omission. In the case of *Sesbreño v. Court of Appeals* (551 SCRA 524 [2008]), the Supreme Court held that the satisfaction of the judgement extinguishes the lien, if there has been a waiver as shown either by the lawyer's conduct or by his passive omission. No rule will allow a lawyer to collect from his client and then collect anew from the judgment debtor except, perhaps, on a claim for a higher amount.

142. The vendor filed a case against the vendee for the annulment of the sale of a piece of land. (2008 Bar Question)

A) Assume the vendee obtained a summary judgment against the vendor. Would the counsel for the defendant vendee be entitled to enforce a charging lien? Explain. (4%)

SUGGESTED ANSWER:

A charging lien, to be enforceable as security for payment of attorney's fees, requires as a condition *sine qua non* a judgment for money and execution in pursuance of such judgment secured in the main action by the attorney in favor of his client (*Metropolitan Bank v. Court of Appeals*, 181 SCRA 367 [1990]). A summary judgment against the vendor in this case only means that his complaint was dismissed. This is not a judgment for payment of money, hence, a charging lien cannot attach. However, if the judgment should include a money judgment in favor of the vendee on his counterclaim, a charging lien can properly be enforced.

B) Assume, through the excellent work of the vendee's counsel at the pre-trial conference and his

wise use of modes of discovery, the vendor was compelled to move for the dismissal of the complaint. In its order the court simply granted the motion. Would your answer be the same as in question (a)? Explain. (3%)

SUGGESTED ANSWER:

My answer will not be the same, because a dismissal simply on motion of plaintiff to dismiss will certainly not include a judgment for a sum of money; hence, no charging lien can attach.

4. Fees and controversies with clients

143. Atty. Alex entered into an agreement for his legal services with Johnny where it is provided that the latter will pay him P100,000.00 as acceptance fee and P100,000.00 upon submission of the case for decision. The court granted Johnny moral damages, exemplary damages and attorney's fees of P100,000.00. After execution of the judgment, Atty. Alex kept the P100,000.00 as his attorney's fees. Johnny sued Atty. Alex for violation of the CPR claiming that the attorney's fees award by the court belong to him. Decide the case with reasons. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

I will rule in favor of Johnny. The P100,000.00 awarded to him as moral damages, exemplary damages and attorney's fees, are items of damages which are due to him as plaintiff in the case. Attorney's fees awarded to a party pursuant to Article 2208 of the New Civil Code, constitute extraordinary attorney's fees which belong to the client, not to the lawyer. It is not the ordinary attorney's fees which is the compensation due from a client to his lawyer.

144. M engaged the services of Atty. D to prosecute his annulment of marriage case in the Regional Trial Court (RTC). After a long-drawn trial, Atty. D was able to secure a favorable judgment from the court. Unfortunately, M failed to pay in full the stipulated attorney's fees of Atty. D. How can Atty. D collect his fees from M? Discuss fully. (2014 Bar Question)

SUGGESTED ANSWER:

He can collect his fees either by filing a motion in the annulment of marriage case that he handled, and to order M to pay the same, or he can file a separate action for the recovery of his attorney's fees. Of the two, the first is preferable, because the judge in the annulment case will be in a better position to evaluate the amount and value of his services. In the meantime, he may avail of the retaining lien, which is to retain the moneys and properties of M in his possession until he is paid for his services, or a charging lien, which is to charge the any money judgment in the case for the payment of his fees.

145. After Atty. Benny got a P2 million final judgment in his client's favor, he promptly asked the court, without informing his client, to allow him a charging lien over the money in the amount of P500,000, his agreed fees, The Court issued a writ of execution for the whole judgment in Atty. Benny's name with an order for him to turn over the excess to his client. Is Atty. Benny's action correct? (2011 Bar Question)

- a. No, since his fees are excessive.
- b. Yes, since he was merely asserting his right to collect his fees.
- c. Yes, since he would anyway give the excess to his client after getting his fees.
- d. No, since he did not disclose to his client the matter of getting a charging lien and a writ of execution in his name.

SUGGESTED ANSWER:

D (Rule 16.03, Canon 16 of the Code of Professional Responsibility provides that “A lawyer shall deliver the funds and property of his client when due or upon demand. However, he shall have a lien over the funds and may apply so much thereof as may be necessary to satisfy his lawful fees and disbursements, giving notice promptly thereafter to his client. He shall also have a lien to the same extent on all judgments and executions he has secured for his client as provided for in the Rules of Court.”)

146. Atty. Arthur agreed to represent Patrick in a personal injury case after the latter signed a retainer agreement for a 33% fee contingent on their winning the case. In the course of trial, Patrick dismissed Atty. Arthur after he presented their evidence in chief and engaged Atty. Winston another lawyer. They lost the case. What fee would Atty. Arthur be entitled to? (2011 Bar Question)

- a. Thirty three percent of the fee actually paid to Winston.
- b. The reasonable value of his services.
- c. A flat hourly rate for the time he invested in the case.
- d. Absolutely nothing.

SUGGESTED ANSWER:

D [*Metropolitan Bank and Trust Company v. CA*, G.R. Nos. 86100-03. January 23, 1990]

147. Atty. Wilmar represented Beatriz in a partition case among heirs, and won. When Wilmar demanded payment of attorney’s fees, Beatriz refused to pay. Wilmar sued Beatriz for the unpaid attorney’s fees and obtained a favorable judgment. Thereafter, Beatriz filed an administrative complaint against Wilmar claiming that he lied when he stated in his claim for attorney’s fees that the subject of the partition case involved the entire estate of the deceased when, in fact, it covered only 50% thereof. Wilmar set up the defenses that (1) Beatriz filed the complaint only to delay the execution of the judgment ordering her to pay attorney’s fees and (2) Beatriz engaged in forum-shopping. Are the defenses of Atty. Wilmar tenable? Explain. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

The defenses of Atty. Wilmar are tenable.

(1) The claim of Beatriz that he lied when he stated in his claim for attorney’s fees that the subject of the partition case involved the entire estate, should have been raised in the suit for collection filed by Atty. Wilmar. It is clear that Beatriz is trying to delay the execution of a final judgment.

(2) Yes. Beatriz engaged in forum shopping. There is forum-shopping when as a result of a decision in one forum, a party seeks a favorable opinion in another forum through means other than appeal or certiorari, raising identical causes of action, subject matter and issues. There is identity of subject matter, causes of action and issues between the civil case brought by Atty. Wilmar and the administrative case brought by Beatriz.

148. Atty. C was hired by D to file an action against E for recovery of possession of real property. In their contract of service, they stipulated that D cannot compromise the case without the consent of Atty. C. After trial and unknown to Atty. C, D entered into a compromise with E. Atty. C withdrew from the case and collected from D: (1%) (2014 Bar Question)

- a. his attorney’s fees under their contract
- b. his attorney’s fees based on quantum meruit

- c. nothing by way of attorney's fees

SUGGESTED ANSWER:

A [Sec. 26, Rule 138 of the Code of Professional Responsibility provides that "A client may at any time dismiss his attorney or substitute another in his place, but if the contract between client and attorney has been reduced to writing and the dismissal of the attorney was without justifiable cause, he shall be entitled to recover from the client the full compensation stipulated in the contract".]

5. Quantum meruit

- 149.A) Explain the doctrine of *quantum meruit* in determining the amount of attorney's fees. (2%) (2015 Bar Question)**

SUGGESTED ANSWER:

Quantum meruit means as much as the services of a lawyer are worth. Recovery of attorney's fees on the basis of *quantum meruit* is authorized when (1) there is no express contract for the payment of attorney's fees; (2) although there is a contract for attorney's fees, the fees stipulated are found unconscionable by the court; (3) the contract for attorney's fees is void due to formal defects of execution; (4) the lawyer was not able to finish the case for justifiable cause; (5) the lawyer and the client disregard the contract for attorney's fees; and (6) the client dismissed his counsel or the latter withdrew therefrom, for valid reasons.

- B) Identify the factors to be considered in determining attorney's fees on a *quantum meruit* basis. (2%)**

SUGGESTED ANSWER:

The factors are those set in Rule 20.01 of the CPR, as follows:

- a) the time spent and the extent of the services rendered or required;
- b) the novelty and difficulty of the questions involved;
- c) the importance of the subject matter;
- d) the skill demanded;
- e) the probability of losing other employment as a result of acceptance of the proffered case;
- f) the customary charges for similar services and the schedule of fees of the IBP chapter to which he belongs;
- g) the amount involved in the controversy and the benefits resulting to the client from the service;
- h) the contingency or certainty of compensation;
- i) the character of the employment, whether occasional or established, and
- j) the professional standing of the lawyer."

- 150. Mr. Joey owns a 5-hectare parcel of land which is being expropriated as market site. The government is offering only Php 15 per sqm while Mr. Joey deserves Php 20 per sqm. Atty. AI agreed to represent Mr. Joey in the expropriation case on contingent basis in that his attorney's fees shall be the excess of Php 20 per sqm. Due to expert handling, the expropriation court awarded Mr. Joey the fair market value of Php 35 per sqm. Mr. Joey complained to the court that the attorney's fee being charged is excessive as it amounts to about 63% of the award. Decide. (2012 Bar Question)**

- a. A retainer's agreement, as a contract, has the force of law between the parties and must be complied with in good faith.
- b. It was the excellent handling of the case that resulted in a bigger award; hence, it is fair that Atty. AI should be rewarded with the excess.

- c. Mr. Joey got the desired valuation for his land. So, he must honor his contract with Atty. AI.
- d. Attorney's fees are always subject to court supervision and may be reduced by the court based on quantum meruit.

SUGGESTED ANSWER:

D [In *Aquino v. Casabar*, G.R. No. 191470, January 26, 2015, the Court held that “the recovery of attorney’s fees on the basis of quantum meruit is a device that prevents an unscrupulous client from running away with the fruits of the legal services of counsel without paying for it and also avoids unjust enrichment on the part of the attorney himself. An attorney must show that he is entitled to reasonable compensation for the effort in pursuing the client’s cause, taking into account certain factors in fixing the amount of legal fees.”]

151. When is recovery of attorney's fees based on *quantum meruit* allowed? (2007 Bar Question)**SUGGESTED ANSWER:**

Recovery of attorney’s fees on the basis of *quantum meruit* is authorized when (1) there is no express contract for payment of attorney’s fees agreed upon between the lawyer and the client; (2) when although there is a formal contract for attorney’s fees, the fees stipulated are found unconscionable or unreasonable by the court; and (3) when the contract for attorney’s fees is void due to purely formal defects of execution; (4) when the counsel, for justifiable cause, was not able to finish the case to its conclusion; (5) when lawyer and client disregard the contract for attorney’s fees (*Rilloraza v. Eastern Telecommunications Phils.*, 308 SCRA 566 [1999]).

C. Suspension, disbarment and discipline of lawyers**1. Nature and characteristics of disciplinary actions against lawyers**

152.A) Alleging that Atty. Frank had seduced her when she was only 16 years old, and that she had given birth to a baby girl as a result, Malen filed a complaint for his disbarment seven years after the birth of the child charging that he was grossly immoral person unworthy and unfit to continue in the Legal Profession. In his comment, Atty. Frank argued that the complaint for disbarment should be dismissed because of prescription.

Explain whether or not Atty. Frank’s argument is justified. (4%) (2017 Bar Question)

SUGGESTED ANSWER:

Atty. Frank’s defense of prescription is not justified. Disbarment is imprescriptible. In addition, administrative proceedings against a lawyer are sui generis, neither civil nor criminal. The ordinary statutes of limitation have no application to disbarment proceedings [*Calo Jr. v. Degamo, A.C. No. 516, 1967*]. The purpose of such proceedings is not to punish the individual lawyer but to safeguard the administration of justice by protecting the court and the public from the misconduct of lawyers and to remove from the profession of law persons whose disregard of their oath of office proves them unfit to continue charging the trust reposed in them as members of the bar.

B) Beth administratively charged her former lawyer, Atty. Rawet, with gross misconduct and gross ignorance of the law for the latter’s inadequate legal representation of her in her suit against her neighbor. Midway during the investigation, Beth decided to migrate to Australia. Learning about her plans, Atty. Rawet approached her and pleaded for her understanding. He was able to

persuade her to execute an affidavit of desistance in respect of her administrative complaint. He submitted the affidavit of desistance to the Supreme Court, and moved to dismiss the charge against him.

Will the affidavit of desistance warrant the dismissal of the administrative charge? Explain your answer. (4%)

SUGGESTED ANSWER:

No, the affidavit of desistance would not warrant the dismissal of the administrative charge. A disbarment proceeding is sui generis, neither a civil or criminal action. As such, a desistance by the complainant is unimportant. The case may proceed regardless of interest or lack of interest of the complainant [*Rayos-Ombac v. Rayos, A.C. No. 2884, 1998*]. The general rule is that no investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute the same unless the Supreme Court *motu proprio* or upon recommendation of the IBP Board of Governors determines that there is no compelling reason to continue with the proceedings.

153. Atty. D was required by Judge H of the Regional Trial Court (RTC) of Manila to show cause why he should not be punished of contempt of court for shouting invectives at the opposing counsel and harassing his witness. Assuming that there was sufficient cause or ground, may Judge H suspend Atty. D from the practice of law? If Judge H finds that the actuations of Atty. D are grossly unethical and unbecoming of a member of the bar, may judge H disbar Atty. D instead? Explain your answer. (5%) (2014 Bar Question)

SUGGESTED ANSWER:

Under Section 28, Rule 138 of the Rules of Court, a Regional Trial Court may suspend a lawyer from the practice of law for any of the causes provided in Section 27, until further action of the Supreme Court. But it may not disbar him, for only the Supreme Court can disbar a lawyer pursuant to its constitutional power to admit persons to the practice of law.

154. For grave misconduct, a lawyer was suspended from the practice of law indefinitely. Is he still obliged to pay his IBP dues during his suspension? (2012 Bar Question)

- a. Yes, as he continues to be a lawyer and a member of the IBP.
- b. No, because indefinite suspension is practically disbarment.
- c. No need to pay IBP dues because he cannot practice anyway.
- d. Pay only after the lifting of the suspension, if it comes.

SUGGESTED ANSWER:

A [Rules of Court, Rule 139-A, Sec. 9 provides that “Every member of the Integrated Bar shall pay such annual dues as the Board of Governors shall determine with the approval of the Supreme Court.”]

155. After several years as a private practitioner, Ben got appointed as Regional Trial Court judge. Five years after his appointment, he received summons directing him to answer a disbarment complaint that pertained to a document he notarized more than 10 years ago from appointment date. He sought the dismissal of the complaint arguing that the cause of action has prescribed. Must the complaint be dismissed? (2011 Bar Question)

- a. No, because such complaints do not prescribe.
- b. Yes, because the complaint creates a chilling effect on judicial independence.

- c. No, but the complaint should be verified to ensure transparency.
- d. Yes, because actions on contracts prescribe in 10 years.

SUGGESTED ANSWER:

A [*Freeman v. Reyes*, A.C. No. 6246, November 15, 2011 on disciplinary proceedings being *sui generis*]

156. Is the defense of Atty. R in a disbarment complaint for immorality filed by his paramour P that P is in *pari delicto* material or a ground for exoneration? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

It is immaterial that the complainant is not blameless or is in *pari delicto* as this is not a proceeding to grant relief to the complainant, but one to purge the law profession of unworthy members to protect the public and the courts. (*Po Cham v. Pizarro*, 467 SCRA 1 [2005]). The administrative case is *sui generis* appertaining to the lawyer's conduct, not the woman's.

157. Arabella filed a complaint for disbarment against her estranged husband Atty. P on the ground of immorality and use of illegal drugs.

After Arabella presented evidence and rested her case before the Investigating Commissioner of the IBP Committee on Bar Discipline, she filed an Affidavit of Desistance and motion to dismiss the complaint, she and her husband having reconciled for the sake of their children.

You are the Investigating Commissioner of the IBP. Bearing in mind that the family is a social institution which the State is duty-bound to preserve, what will be your action on Arabella's motion to dismiss the complaint? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

I would still deny the motion to dismiss. The general rule is that "no investigation shall be interrupted or terminated by reason of the desistance, settlement, compromise, restitution, withdrawal of the charges or failure of the complainant to prosecute the same unless the Supreme Court *motu proprio* or upon recommendation of the IBP Board of Governors determines that there is no compelling reason to continue with the proceedings. An administrative investigation of a lawyer is *sui generis*, neither a civil nor criminal proceeding. An affidavit of desistance has no place in it.

2. Grounds

158.a) What are the grounds for disbarment or suspension from office of an attorney? (4%) (2015 Bar Question)

SUGGESTED ANSWER:

Under Sec. 27, Rule 138, the grounds for suspension or disbarment of a lawyer are "any deceit, malpractice or other gross misconduct in such office, grossly immoral conduct, or by reason of conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before admission to practice, or for a willful disobedience appearing as an attorney for a party or to a cause without authority so to do". The practice of soliciting cases for the purposes of gain, either personally or through paid agents or brokers constitutes malpractice.

b) If Atty. Babala is also admitted as an attorney in a foreign jurisdiction, what is the effect of his

disbarment or suspension by a competent court or other disciplinary authority in said foreign jurisdiction to his membership in the Philippine Bar? (2%)

SUGGESTED ANSWER:

He may also be disbarred or suspended in the Philippines if the ground for his suspension or disbarment in a foreign jurisdiction is also a ground for suspension or disbarment here. He is, however, still entitled to notice and hearing, and the decision of the foreign tribunal will only be *prima facie* evidence of his guilt.

159. Which of these is not a ground for disbarment? (2012 Bar Question)

- a. Conviction of a crime involving moral turpitude.
- b. Belligerent disobedience to a lawful order of a trial court.
- c. Malpractice or other gross misconduct in office.
- d. Grossly immoral conduct.

SUGGESTED ANSWER:

B [Sec. 27, Rule 138 of the Rules of Court provides that A member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilfull disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice.]

160. Because of his political beliefs, Atty. Guerra joined a rebel group. Later, he was apprehended and charged with Rebellion in court. A disbarment case was also filed against him. While the case was pending, the government approved a general amnesty program and Atty. Guerra applied for and was granted amnesty. Should the disbarment case be also dismissed automatically? (2012 Bar Question)

- a. Yes, because amnesty obliterates the criminal act.
- b. No, disciplinary action on lawyers are sui generis and general penal principles do not strictly apply.
- c. No, a lawyer has the duty to maintain allegiance to the Republic of the Philippines and to support the Constitution and obey the laws of the Philippines.
- d. Yes, if the Secretary of Justice approves the dismissal.

SUGGESTED ANSWER:

A [*In re Lontok*, 43 Phil. 293, April 7, 1922, the Court quoting *Ex Parte Garland* held that “when the pardon is full, it releases the punishment and blots out the existence of guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offense”]

161. Soon after Atty. Cesar passed the Philippine Bar in 1975, he also took the New York State Bar and passed the same. He practiced law for 25 years in the USA, but he was disbarred therein for insurance fraud. He returned to the Philippines and started to practice law. X, who knew about his New York disbarment, filed a disbarment complaint with the IBP. Decide. (2012 Bar Question)

- a. The factual basis for the New York disbarment which is deceit also constitutes a ground for disbarment in the Philippines.
- b. The acts complained of happened in a foreign country and cannot be penalized here.

- c. Norms of ethical behavior of lawyers are the same worldwide.
- d. A lawyer's fitness to become a lawyer must be maintained wherever he may be.

SUGGESTED ANSWER:

A [*In re: Maquera*, B.M. 793, July 30, 2004, the Court held that “The disbarment or suspension of a member of the Philippine Bar by a competent court or other disciplinary agency in a foreign jurisdiction where he has also been admitted as an attorney is a ground for his disbarment or suspension if the basis of such action includes any of the acts [enumerated in Sec. 27 Rule 138 of the Rules of Court].

The judgment, resolution or order of the foreign court or disciplinary agency shall be prima facie evidence of the ground for disbarment or suspension.”]

162. When is professional incompetence a ground for disbarment under the Rule of Court? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Professional incompetence of a lawyer may be a special ground for disbarment if his incompetence is so total, gross and serious that he cannot be entrusted with the duty to protect the rights of clients. “A lawyer shall not undertake a legal service where he knows or should know that he is not qualified to render” (*Rule 18.01, CPR*). He may be liable for malpractice or gross misconduct under Section 27, Rule 138 which provides that “a member of the bar may be removed or suspended from his office as attorney by the Supreme Court for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he is required to take before the admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or willful appearing as an attorney for a party to a case without authority so to do. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice”.

163. Atty. Forma is a member of the Philippine Bar. He went to New York City, took the New York State Bar, and passed the same. He then practiced in New York City. One of his American clients filed a case for disbarment against him for pocketing the money which was entrusted to him as payment for the filing fee and other incidental expenses of his damage suit. Atty. Forma was later disbarred for dishonesty. Disheartened, Atty. Forma came back to the Philippines and practiced as a lawyer.

Will his disbarment in New York be used against him for purposes of disbarment proceedings here in the Philippines? (4%) (2014 Bar Question)

SUGGESTED ANSWER:

Atty. Forma may be disbarred in the Philippines if the ground for his disbarment in New York is also a ground for disbarment in this country. But he is still entitled to due process of law, and the foreign court's judgment against him only constitutes *prima facie* evidence of unethical conduct as a lawyer. He is entitled to be given an opportunity to defend himself in an investigation to be conducted in accordance with Rule 139 of the Revised Rules of Court (*In Re: Suspension from the Practice of Law in the Territory of Guam of Atty. Leon Maquera*, B.M. 793, July 30, 2004, 325 SCRA)

3. Proceedings (Rule 139-B, Rules of Court, as amended)

164. Administrative complaints against Judges and Justices below the Supreme Court are handled by:

(2012 Bar Question)

- a. Clerk of Court of the Supreme Court
- b. Ombudsman
- c. Presiding Justice of the Court of Appeals
- d. Office of the Court Administrator

SUGGESTED ANSWER:

D [In RE: Guidelines on the functions of the office of the Court Administrator, the Court Resolved to approve the guidelines on the functions of the Office of the Court Administrator, to wit: I.A. The Supreme Court exercises administrative supervision over all lower courts. In the discharge of its administrative functions, the Court is assisted by the Court Administrator and the Deputy Court Administrators [P.D. No. 828, as amended by P.D. No. 842]. The Court thus acts through the Court Administrators in the exercise of its administrative functions]

165.To whom may the Supreme Court refer complaints against lawyers for investigation? (2011 Bar Question)

- a. Integrated Bar of the Philippines.
- b. Office of the Bar Confidant.
- c. Judicial and Bar Council.
- d. Office of the Court Administrator.

SUGGESTED ANSWER:

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

166.After passing the Philippine Bar in 1986, Atty. Richards practiced law until 1996 when he migrated to Australia where he subsequently became an Australian citizen in 2000. As he kept abreast of legal developments, petitioner learned about the Citizenship Retention and Re-Acquisition Act of 2003 (Republic Act No. 9225), pursuant to which he reacquired his Philippine citizenship in 2006. He took his oath of allegiance as a Filipino citizen at the Philippine embassy in Canberra, Australia. Jaded by the laid back life in the outback, he returned to the Philippines in December 2008. After the holidays, he established his own law office and resumed his practice of law.

Months later, a concerned woman who had secured copies of Atty. Richards’ naturalization papers with consular authentication, filed with the Supreme Court an anonymous complaint against him for illegal practice of law.

May the Supreme Court act upon the complaint filed by an anonymous person?

Why or why not? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Yes, the Supreme Court may act upon the complaint filed by an anonymous complainant, because the basis of the complaint consists of documents with consular authentications which can be verified being public records. [Sec. 1 A.M. No. 01-8-10-SC] There is no need to identify the complainant when the evidence is documented and verifiable. Besides, the Supreme Court or the IBP may initiate disbarment proceedings *motu proprio* [Sec. 1, Rule 139-B, Rules of Court]

[AM. No. 01-8-10-SC, SECTION 1. How instituted. – Proceedings for the discipline of judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan may be instituted motu proprio by the Supreme Court or upon a verified complaint, supported by affidavits of person who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations, or upon an anonymous complaint, supported by public records of indubitable integrity. The complaint shall be in writing and shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for Judges by law, the Rules of Court, or the Code of Judicial Conduct]

4. Recoverable amounts; intrinsically linked to professional engagement

D. Readmission to the Bar

1. Lawyers who have been suspended

2. Lawyers who have been disbarred

E. Mandatory Continuing Legal Education (Bar Matter No. 850, as amended)

167. What is the purpose of MCLE? (2012 Bar Question)

- a. To conform with the requirements of international law.
- b. To provide a venue to improve fraternal relations among lawyers.
- c. To keep abreast with law and jurisprudence and to maintain the ethical standards of the profession.
- d. To supplement legal knowledge due to substandard law schools.

SUGGESTED ANSWER:

C [Sec. 1, B.M. 850 provides that “continuing legal education is required of members of the Integrated Bar of the Philippines (IBP) to ensure that throughout their career, they keep abreast with law and jurisprudence, maintain the ethics of the profession and enhance the standards of the practice of law.”]

1. Requirements

2. Compliance

168.a) Describe briefly the Mandatory Continuing Legal Education (MCLE) for a member of the Integrated Bar of the Philippines and the purpose of the same. (2%) (2015 Bar Question)

SUGGESTED ANSWER:

Mandatory Continuing Legal Education (MCLE) is a rule promulgated by the Supreme Court requiring all lawyers, with a few exceptions, to earn 36 units of legal education every three (3) years. Its purpose is to ensure that members of the bar keep abreast with law and jurisprudence, maintain the ethics of the profession, and enhance the standards of the practice of law.

b) Name three parties exempted from the MCLE. (3%)

SUGGESTED ANSWER:

[Select three from the following]:

- a. President and Vice-President, Secretaries and Undersecretaries of Executive Departments.
- b. Senators and Members of the House of Representatives,
- c. Chief Justice and Associate Justices of the Supreme Court, incumbent and retired members of the judiciary, incumbent members of the Judicial and Bar Council, incumbent court lawyers covered by the Philippine Judicial Academy,
- d. Chief State Counsel, Chief State Prosecutor, and Assistant Secretaries of the Department of Justice,
- e. Solicitor General and Assistant Solicitor General,
- f. Government Corporate Counsel, Deputy and Assistant Government Corporate Counsel,
- g. Chairmen and Members of Constitutional Commissions.
- h. The Ombudsman, over-all Deputy Ombudsman, Deputy Ombudsman and Special Prosecutor of the Office of the Ombudsman.
- i. Heads of government agencies exercising quasi-judicial functions.
- j. Incumbent deans, bar reviewers and professors of law who have teaching experience for at least ten years in accredited law schools.
- k. The Chancellor, Vice-Chancellor and members of the Corps of Professors and Professorial Lecturers of the Philippine Judicial Academy.

169. In order to comply with the MCLE requirements, Atty. Ausente enrolled in a seminar given by an MCLE provider. Whenever he has court or other professional commitments, he would send his messenger or a member of his legal staff to register his attendance at the MCLE sessions so he could be credited with the required qualifying attendance. He would also ask them to secure the printed handouts and the lecturers' CDs, all of which he studied in his free time. (2013 Bar Question)

Atty. Ausente should be _____. (1%)

- a. required to make up for his absence by attending lecture sessions in other MCLE providers;
- b. sanctioned because he circumvented or evaded full compliance with the MCLE requirements;
- c. excused because he attended to profession-related tasks, and fully studied the courses through the materials and CDs he secured;
- d. penalized by forfeiting all his earned MCLE units;
- e. excused because attendance by proxy is a widespread and tolerated MCLE practice.

SUGGESTED ANSWER:

B [Mandatory Continuing Legal Education, Rule 12, Section 1(e) provides that "any other act or omission analogous to any of the foregoing or intended to circumvent or evade compliance with the MCLE requirements."].

170. What is the duration of MCLE Compliance Period? (2012 Bar Question)

- a. Twelve (12) months;
- b. Twenty-four (24) months;
- c. Thirty-six (36) months;
- d. Eighteen (18) months.

SUGGESTED ANSWER:

C [Section 1, Rule 3, B.M. 850 provides that “the initial compliance period shall begin not later than three (3) months from the constitution of the MCLE Committee. Except for the initial compliance period for members admitted or readmitted after the establishment of the program, all compliance periods shall be for thirty-six (36) months and shall begin the day after the end of the previous compliance period.”]

171. When does compliance period begin? (2012 Bar Question)

- a. When the lawyer actually begins law practice;
- b. Upon admission/readmission to the Bar;
- c. 01 October 2009;
- d. 01 October 2006.

SUGGESTED ANSWER:

BONUS (A closer perusal of Rule 3 of the MCLE Rules would show that there is no accurate answer).

RULE 3
COMPLIANCE PERIOD

Section 1. Initial compliance period

The initial compliance period shall begin not later than three (3) months from the constitution of the MCLE Committee. Except for the initial compliance period for members admitted or readmitted after the establishment of the program, all compliance periods shall be for thirty-six (36) months and shall begin the day after the end of the previous compliance period.

Section 2. Compliance Group 1.

Members in the National Capital Region (NCR) or Metro Manila shall be permanently assigned to Compliance Group 1.

Section 3. Compliance Group 2.

Members in Luzon outside NCR shall be permanently assigned to Compliance Group 2.

Section 4. Compliance Group 3.

Members in Visayas and Mindanao shall be permanently assigned to Compliance Group 3.

Section 5. Compliance period for members admitted or readmitted after establishment of the program.

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

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

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

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

172. Does the MCLE requirement apply at once to a newly-admitted lawyer? (2012 Bar Question)

- a. Yes, if admitted to the Bar and there are four (4) more months remaining of the compliance period.
- b. No, wait for the next compliance period.

- c. Yes, if he will start law practice immediately.
- d. Yes, if more than one (1) year remains of the compliance period.

SUGGESTED ANSWER:

A [Section 5, Rule 3, B.M. 850 provides that “The initial compliance period after admission or readmission shall begin on the first day of the month of admission or readmission and shall end on the same day as that of all other members in the same Compliance Group.

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

173. When does the initial MCLE compliance period of a newly admitted member of the bar begin?

- a. On the first day of the month of his admission.
- b. On the tenth day of the month of his admission.
- c. On the third year after his admission as member.
- d. On the first year of the next succeeding compliance period.

SUGGESTED ANSWER:

A [Section 5, Rule 3, B.M. 850 provides that “the initial compliance period after admission or readmission shall begin on the first day of the month of admission or readmission and shall end on the same day as that of all other members in the same Compliance Group”]

3. Exemptions

174. Atty. Galing is a Bar topnotcher. He has been teaching major subjects in a law school for eight (8) years and has mastered the subjects he is handling. Is he exempt from the MCLE requirement? (2012 Bar Question)

- a. No, eight (8) years experience is not enough.
- b. Yes, since he has mastered what he is handling.
- c. Yes, professors of law are exempted.
- d. No, since he is not yet a Bar reviewer.

SUGGESTED ANSWER:

A [Sec. 1, Rule 7 of B.M. 850 provides that “the following members of the Bar are exempt from the MCLE requirement: (j) Incumbent deans, bar reviews and professors of law who have teaching experience for at least 10 years in accredited law schools”]

175. Atty. Rey has been a professor in the Legal Management Department of Y University for thirty (30) years. He teaches Constitution, Obligation and Contracts, Insurance, Introduction to Law. Is he exempted from the MCLE requirement? (2012 Bar Question)

- a. Yes, because his teaching experience is already more than ten (10) years.
- b. No, because he is not teaching in the College of Law.
- c. Yes, because of his field of knowledge and experience.
- d. No, because Y University is not accredited.

SUGGESTED ANSWER:

B [Sec. 1, Rule 7 of B.M. 850 provides that “the following members of the Bar are exempt from the MCLE requirement: (j) Incumbent deans, bar reviews and professors of law who have teaching experience for at least 10 years in accredited law schools”]

176. The term of Dean Rex of X College of Law expired in the first year of the third compliance period. Does his exemption extend to the full extent of said compliance period? (2012 Bar Question)

- a. No, he must comply with all the unit requirements.
- b. Yes, to the full extent.
- c. No, but comply proportionately.
- d. Yes, but he must apply for exemption.

SUGGESTED ANSWER:

A [Sec. 1, Rule 7 of B.M. 850 provides that “the following members of the Bar are exempt from the MCLE requirement: (j) Incumbent deans, bar reviews and professors of law who have teaching experience for at least 10 years in accredited law schools”]

177. Atty. Mike started teaching Agrarian Reform and Taxation in June 2001 at the Arts and Sciences Department of the Far Eastern University. In 2005, he moved to San Sebastian Institute of Law where he taught Political Law. Is Atty. Mike exempt from complying with the MCLE for the 4th compliance period in April 2013? (2011 Bar Question)

- a. No, since he has yet to complete the required teaching experience to be exempt.
- b. No, because he is not yet a bar reviewer.
- c. Yes, since by April 2013, he will have been teaching law for more than 10 years.
- d. Yes, since he updated himself in law by engaging in teaching.

SUGGESTED ANSWER:

A [Sec. 1, Rule 7 of B.M. 850 provides that “the following members of the Bar are exempt from the MCLE requirement: (j) Incumbent deans, bar reviews and professors of law who have teaching experience for at least 10 years in accredited law schools”]

178. Provincial Governors and Municipal Mayors who are lawyers are MCLE exempt because (2011 Bar Question)

- a. they handle cases of their constituents for free.
- b. the Local Government Code prohibits them from practicing their profession.
- c. they are rendering public service.
- d. As experts in local governance, it may be assumed that they are updated on legal developments.

SUGGESTED ANSWER:

B [Sec. 90(a) of the Local Government Code provides that “(a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives”. Rule 7 of B.M. 850 also provides that “the following members of the Bar are exempt from the MCLE requirement: (l) Governors and Mayors”]

4. Sanctions

179.A) Can a lawyer who lacks the number of units required by the Mandatory Continuing Legal Education (MCLE) Board continue to practice his profession? (2014 Bar Question)

SUGGESTED ANSWER:

He can, but they will be unable to comply with Bar Matter No. 1922 which requires that every pleading filed in court or a quasi-judicial body shall contain an annotation of the number and date of their MCLE compliance, otherwise, their pleadings will be expunged and their cases dismissed. They will also be listed as delinquent members of the Integrated Bar of the Philippines, and the IBP Board of Governors can recommend their suspension or disbarment to the Supreme Court. Until then, they can continue to practice law but cannot file pleadings in court or quasi-judicial bodies.

180. May a lawyer be held liable for damages by his client for the lawyer's failure to file the necessary pleadings to prosecute the client's case and as a result of which the client suffered damages?

SUGGESTED ANSWER:

Yes, he may be held liable. Rule 18.03 of the Code of Professional Responsibility provides that "a lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable". But attorney-client relationship, want of reasonable care and diligence, and injury sustained by the client as the proximate result thereof, are the prerequisites to the maintenance of an action for damages against a lawyer.

F. Notarial Practice (A.M. No. 02-8-13-SC, as amended)

1. Qualifications of a notary public

181. Cecilio is one of the 12 heirs of his father Vicente, who owned an agricultural land located in Bohol. Cecilio filed a complaint charging Judge Love Koto with abuse of discretion and authority for preparing and notarizing a document entitled "Extra-Judicial Partition with Simultaneous Deed of Sale" executed by Cecilio's mother Divina and brother Jose. Jose signed the Deed on his own behalf and purportedly also on behalf of his brothers and sisters, including Cecilio. Cecilio though alleged that in his Special Power of Attorney, he merely granted Jose the authority to mortgage said agricultural land but not to partition, much less to sell the same. Judge Koto contended that in a municipality where a notary public is unavailable, a municipal judge is allowed to notarize documents or deeds as *ex officio* notary public. He claimed that he acted in good faith and only wanted to help. Did Judge Koto violate any rules? Discuss. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

Municipal Trial Court judges are notaries public *ex officio*; however, they may notarize only such documents as are related to their functions. The exception to this is that, in remote municipalities where there is no notary public available, an MTC judge may notarize a private document provided that he shall state in his certification the absence of a notary public in the municipality, and that the notarial fees should be paid to the Municipal Treasurer [In Re: Request for clarification on the power of municipal trial court judges and municipal circuit trial court judges to act as Notaries Public Ex Officio, A.M. No. No. 89-11-1303, December 19, 1989].

Assuming, nevertheless, assuming that the exception applies in this case, Judge Koto should not have notarized the “Extra-Judicial Partition with Simultaneous Deed of Sale” submitted to him for notarization. This is because not all of the parties concerned signed and appeared before him. Herein, Judge Koto should have asked for the production of the Special Power of Attorney and determined whether or not Cecilio indeed authorized Jose to sign the deed of partition and sale on his behalf.

182. Atty. Tony is a 25-year-old Filipino lawyer. He has been a resident in Paranaque City for about ten (10) years and holds office in his residence. He filed a petition for appointment as Notary Public in Paranaque and has clearance from the I BP and the Bar Confidant. However, it appears that while still a college student, he was convicted by a Laguna Court for Reckless Imprudence Resulting in Damage to Property. During the summary hearing of his petition, the offended party therein strongly objected on that ground. Can Atty. Tony be appointed? (2012 Bar Question)

- a. No, because he has a previous criminal record.
- b. No, because of the opposition.
- c. Yes, the offense of Reckless Imprudence does not involve moral turpitude.
- d. Yes, since the Reckless Imprudence case did not happen in the jurisdiction where Atty. Tony is applying.

SUGGESTED ANSWER:

C [Sec. 1, Rule III, 2004 Rules on Notarial Practice provides that “to be eligible for commissioning as notary public, the petitioner: (1) must be a citizen of the Philippines; (2) must be over twenty-one (21) years of age; (3) must be a resident in the Philippines for at least one (1) year and maintains a regular place of work or business in the city or province where the commission is to be issued; (4) must be a member of the Philippine Bar in good standing with clearances from the Office of the Bar Confidant of the Supreme Court and the Integrated Bar of the Philippines; and (5) must not have been convicted in the first instance of any crime involving moral turpitude.”]

183. The petition for appointment as a notary public should be filed with: (2012 Bar Question)

- a. The Office of the Court Administrator;
- b. The Clerk of Court;
- c. The MeTC Executive Judge;
- d. The RTC Executive Judge.

SUGGESTED ANSWER:

D [Sec. 1, Rule III, 2004 Rules on Notarial Practice provides that “A notarial commission may be issued by an Executive Judge to any qualified person who submits a petition in accordance with these Rules.”]

2. Term of office of a notary public

184. When will Atty. Antonio's notarial commission expire if he applied for and was given such commission on 12 November 2010? (2011 Bar Question)

- a. 31 December 2012
- b. 31 December 2011
- c. 11 November 2011
- d. 11 November 2012

SUGGESTED ANSWER:

B [Sec. 11, Rule III, 2004 Rules on Notarial Practice provides that “a person commissioned as notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made, unless earlier revoked or the notary public has resigned under these Rules and the Rules of Court.”]

3. Powers and limitations

185. Ms. Seller and Mr. Buyer presented to a commissioned notary public a deed of sale for notarization. The notary public explained to them the transaction the deed embodies and asked them if they were freely entering the transaction. After the document was signed by all the parties, the notary public collected the notarial fee but did not issue any BIR-registered receipt.

The notarization of the deed is _____. (1%) (2013 Bar Question)

- a. neither unlawful nor improper because he explained the basis for the computation of the notarial fee;
- b. unlawful because he did not issue a BIR-registered receipt and did not post in his office the complete schedule of chargeable notarial fees;
- c. proper because he is not required to issue receipts for notarial fees;
- d. improper because he did not ask Ms. Seller and Mr. Buyer if they needed a receipt;
- e. proper because any irregularity in the payment of the notarial fees does not affect the validity of the notarization made.

SUGGESTED ANSWER:

E [In *Ocampo v. Land Bank of the Philippines*, G.R. No. 164968, July 3, 2009, the Court held that “a notarized instrument is admissible in evidence without further proof of its due execution and is conclusive as to the truthfulness of its contents, and has in its favor the presumption of regularity.”].

186. A party to a contract does not know how to write. Neither can he affix his thumbmark because both hands were amputated. How will that person execute the contract? (2012 Bar Question)

- a. Ask the party to affix a mark using the toe of his foot in the presence of the notary public and two (2) disinterested and unaffected witnesses to the instrument.
- b. Ask the party to hold the pen with his teeth and affix a + mark to be followed by the signature of one friend.
- c. The party may ask the notary public to sign in his behalf.
- d. None of the above.

SUGGESTED ANSWER:

C

[Section 1(c), Rule IV, 2004 Rules on Notarial Practice provides that “(c) A notary public is authorized to sign on behalf of a person who is physically unable to sign or make a mark on an instrument or document if:

- (1) the notary public is directed by the person unable to sign or make a mark to sign on his behalf;
- (2) the signature of the notary public is affixed in the presence of two disinterested and unaffected witnesses to the instrument or document;

- (3) both witnesses sign their own names;
- (4) the notary public writes below his signature: "Signature affixed by notary in presence of (names and addresses of person and two [2] witnesses)"; and
- (5) the notary public notarizes his signature by acknowledgment or jurat.]

187. The acknowledgment appearing in a deed of sale reads: "Before me personally appeared this 30 August 2010 Milagros A. Ramirez, who proved her identity to me through witnesses: 1. Rosauro S. Balana, Passport UU123456; 1-5-2010/ Baguio City; and 2. Elvira N. Buena, Passport VV200345; 1-17-2009/ Manila.

"Both witnesses, of legal ages, under oath declare that: Milagros A. Ramirez is personally known to them; she is the same seller in the foregoing deed of sale; she does not have any current identification document nor can she obtain one within a reasonable time; and they are not privy to or are interested in the deed he signed." What is the status of such a notarial acknowledgment? (2011 Bar Question)

- a. Questionable since the notary public is not shown to personally know the principal party.
- b. Ineffective since it included parties not privy to the deed.
- c. Invalid since the evidence of identity is non-compliant with the notarial rules.
- d. Valid since it is a manner of establishing the identity of the person executing the document.

SUGGESTED ANSWER:

D [Sec. 12, Rule II provides that "The phrase "competent evidence of identity" refers to the identification of an individual based on: (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification."]

188. Which of the following will subject Atty. Lyndon, a Manila notary public, to sanctions under the notarial rules? (2011 Bar Question)

- a. Notarizing a verification and certification against forum shopping in Manila Hotel at the request of his Senator-client.
- b. Refusing to notarize an extra-judicial settlement deed after noting that Ambo, a friend, was delisted as heir when he was in fact one.
- c. Performing signature witnessing involving his brother-in-law and recording it in his register.
- d. Notarizing a deed of sale for someone he knew without requiring any proof of identity.

SUGGESTED ANSWER:

C [Sec. 3, Rule IV, 2004 Rules on Notarial Practice provides that "A notary public is disqualified from performing a notarial act if he: (c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.]

189. In what documented act will a notary public's failure to affix the expiration date of his commission warrant administrative sanction? (2011 Bar Question)

- a. In the jurat of a secretary's certificate.
- b. In the will acknowledged before him.

- c. In the signature witnessing he performed.
- d. In the document copy he certified.

SUGGESTED ANSWER:

B [In *Lee v. Tambago*, A.C. No. 5281. Feb. 12, 2008, the Court held that “[the] formalities [of a will and those of notarization] are mandatory and cannot be disregarded, considering the degree of importance and evidentiary weight attached to notarized documents. A notary public, especially a lawyer, is bound to strictly observe these elementary requirements.]

190. Enumerate the instances when a Notary Public may authenticate documents without requiring the physical presence of the signatories. (2%) (2010 Bar Question)

SUGGESTED ANSWER:

1. If the signatory is old or sick or otherwise unable to appear, his presence may be dispensed with if one credible witness not privy to the instrument and who is known to the notary public, certifies under oath or affirmation the identity of the signatory.
2. If two credible witnesses neither of whom is privy to the instrument, not known to the notary public but can present their own competent evidence of identity, certify under oath or affirmation to the identity of the signatory.
3. In cases of copy certification and issuance of certified true copies.

191. A notary public is disqualified from performing a notarial act when the party to the document is a relative by affinity within the 4th civil degree. (2009 Bar Question)

SUGGESTED ANSWER:

TRUE. Sec. 3 (c), Rule IV of the 2004 Rules on Notarial Practice provides that a notary public is disqualified from performing a notarial act if he is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

192. When can Judges of the Municipal Trial Courts (MTC) and Municipal Circuit Trial Courts (MCTC) perform the function of notaries public *ex officio*, even if the notarization of the documents are not in connection with the exercise of their official function and duties? (5%) (2007 Bar Question)

SUGGESTED ANSWER:

MTC and MCTC judges assigned to municipalities of circuits with no lawyers or notaries public may, in their capacity as notary public *ex-officio* perform any act within the competency of a regular notary public, provide that: (1) all notarial fees charged be for the account of the government and turned over to the municipal treasurer (*Lapeña v. Marcos, Adm. Matter No. 1969-MJ*) and (2) certification be made in the notarized documents attesting to the lack of any lawyer or notary public in such municipality or circuit (*Abadilla v. Tabiliran, Jr., Adm. Matter MTC-92-716*).

4. Notarial Register

193. A notary public is required to record chronologically the notarial acts that he performs in the: (2012 Bar Question)

- a. Notarial Book;

- b. Roll of Documents Notarized;
- c. Notarial Register;
- d. Notarial Loose Leafs Sheets.

SUGGESTED ANSWER:

C [Sec. 2, Rule VI, 2004 Rules on Notarial Register states that “For every notarial act, the notary shall record in the notarial register at the time of 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.]

194. The reports of a Notary Public are submitted to the: (2012 Bar Question)

- a. Executive Judge;
- b. Court Administrator;
- c. Notarial Archives;
- d. Clerk of Court.

SUGGESTED ANSWER:

D [Sec. 2, Rule VI, 2004 Rules on Notarial Register provides that “a certified copy of each month's entries and a duplicate original copy of any instrument acknowledged before the notary public shall, within the first ten (10) days of the month following, be forwarded to the Clerk of Court and shall be under the responsibility of such officer. If there is no entry to certify for the month, the notary shall forward a statement to this effect in lieu of certified copies herein required”]

5. Jurisdiction of notary public and place of notarization

195. Jojo, a resident of Cavite, agreed to purchase the lot owned by Tristan, a resident of Bulacan. Atty. Agaton, Jojo's lawyer who is also a notary public, prepared the Deed of Sale and Jojo signed the document in Cavite. Atty. Agaton then went to Bulacan to get the signature of Tristan. Thereafter, Atty. Agaton went back to his office in Cavite where he notarized the Deed of Sale.

Is the notarization legal and valid? Explain. (5%) (2016 Bar Question)

SUGGESTED ANSWER:

The notarization is not legal and valid. Rule IV, Section 2 (b) of the 2004 Rules on Notarial Practice provides that a person shall not perform a notarial act if the person involved as signatory to the instrument or document is not personally in the notary's presence at the time of notarization. Tristan was not in Atty.

Agustin's presence when the latter notarized the deed of sale in his office in Cavite; moreover, Tristan signed in Bulacan which is outside the Atty. Agustin's territorial jurisdiction.

- 196. Atty. Sabungero obtained a notarial commission. One Sunday, while he was at the cockpit, a person approached him with an affidavit that needed to be notarized. Atty. Sabungero immediately pulled out from his pocket his small notarial seal, and notarized the document. Was the affidavit validly notarized? Explain. (3%) (2009 Bar Question)**

SUGGESTED ANSWER:

Section 2, Rule IV of the 2004 Rules on Notarial Practice provides that a Notary Public shall not perform a notarial act outside his regular place of work, except in few exceptional occasions or situations, at the request of the parties. Notarizing in a cockpit is not one of such exceptions. The prohibition is aimed to eliminate the practice of ambulatory notarization. However, assuming that the cockpit is within his notarial jurisdiction, the notarization may be valid but the notary public should be disciplined.

6. Competent evidence of identity

- 197. Under the 2004 Rules of Notarial Practice, what may used to satisfy the requirement of "competent evidence of identity"? (1%) (2013 Bar Question)**

- a. **Passport, Senior Citizen card, HMO card.**
- b. **Police clearance, credit card, Professional Regulatory Commission ID.**
- c. **Voter's ID, NBI clearance, Driver's license.**
- d. **Ombudsman's clearance, private office ID, PhilHealth card.**
- e. **All of the above.**

SUGGESTED ANSWER:

C [The 2008 amendment to AM No. 02-8-13-SC amends Sec. 12, Rule II to read as follows: "The phrase "competent evidence of identity" refers to the identification of an individual based on: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, such as but not limited to, passport, driver's license, Professional Regulations Commission ID, National Bureau of Investigation clearance, police clearance, postal ID, voter's ID, Barangay certification, Government Service and Insurance System (GSIS) e-card, Social Security System (SSS) card, Philhealth card, senior citizen card, Overseas Workers Welfare Administration (OWWA) ID, OFW ID, seaman's book, alien certificate of registration/immigrant certificate of registration, government office ID, certification from the National Council for the Welfare of Disable Persons (NCWDP), Department of Social Welfare and Development (DSWD) certification".]

- 198. Which of these does not constitute competent evidence of identity? (2012 Bar Question)**

- a. **Passport;**
- b. **SSS card;**
- c. **Community Tax Certificate;**
- d. **Senior Citizen Card.**

SUGGESTED ANSWER:

C [2008 amendment to AM No. 02-8-13-SC]

- 199. What is the effect when the parties to a document acknowledged before a notary public did not**

present competent evidence of identity? (2012 Bar Question)

- a. Voidable;
- b. Valid;
- c. Invalid Notarization;
- d. Unenforceable.

SUGGESTED ANSWER:

C [In *Bartolome v. Basilio*, A.C. No. 10783, October 14, 2015, the Court held that “since the notarial register is a record of the notary public's official acts, he is charged with recording therein the necessary information regarding the document or instrument notarized. If the document or instrument does not appear in the notarial records, doubt as to its nature arises so that the alleged notarized document cannot be considered a public document”]

200. Myra asked Atty. Elma to notarize her deed of sale. When Elma asked for Myra's competent evidence of identity, she explained that she does not have any current identification document nor could she get one soon. Instead, she presented her friend, Alex, who showed Atty. Elma his driver's license and confirmed her Myra's identity. Is Alex's identification of Myra valid? (2011 Bar Question)

- a. Yes, provided Alex states in the deed of sale that he knew Myra personally.
- b. No, Myra needs to produce a valid identification document of herself.
- c. No, since Alex is not himself a party to the document.
- d. Yes, since Alex had a valid identification document.

SUGGESTED ANSWER:

B [2008 amendment to AM No. 02-8-13-SC]

201. What evidence of identity does the 2004 Rules on Notarial Practice require before a notary public can officially affix his notarial seal on and sign a document presented by an individual whom the notary public does not personally know? (5%) (2007 Bar Question)

SUGGESTED ANSWER:

The required evidence of identity required before a notary public can officially affix his notarial seal on and sign a document presented by an individual whom the notary public does not personally know are as follows:

“(a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual, or

(b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public documentary identification.”

7. Sanctions**8. Relation to Code of Professional Responsibility**

II. JUDICIAL ETHICS

A. Sources

1. New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)

1. One of the foundation principles of the Bangalore Draft of the Code of Judicial Conduct is the importance in a modern democratic society of (2011 Bar Question)
 - a. a judicial system that caters to the needs of the poor and the weak.
 - b. public confidence in its judicial system and in the moral authority and integrity of its judiciary.
 - c. the existence of independent and impartial tribunals that have the support of its government.
 - d. judges who are learned in law and jurisprudence.

SUGGESTED ANSWER:

B [Bangalore Draft of the Code of Judicial Conduct]

2. The *Bangalore Draft*, approved at a Roundtable Meeting of Chief Justices held at The Hague, is now the New Code of Judicial Conduct in the Philippines. (2009 Bar Question)

SUGGESTED ANSWER:

True, the Bangalore Draft is now the New Code of Judicial Conduct in the Philippines. The whereas clause of the New Code of Judicial Conduct in the Philippines provides that the Bangalore Draft of the Code of Judicial Conduct is intended to be a Universal Declaration of Judicial Standards applicable in all judiciaries. As such, it was adopted by the Supreme Court as its Code of Judicial Conduct, in solidarity with other jurisdictions in the world.

2. Code of Judicial Conduct

3. Identify and briefly explain three of the canons under the New Code of Judicial Conduct for the Philippine Judiciary. (6%) (2015 Bar Question)

SUGGESTED ANSWER: (Any three of the following:)

Canon No. 1 – Independence. Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify the judicial function independently on the basis of their assessment of the facts and in accordance a conscientious understanding of the law, free from any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

Canon No. 2 – Integrity. Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not be merely done but must also be seen to be done.

Canon No. 3. Impartiality. Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made. Judges shall perform their judicial functions without favor, bias or prejudice.

Canon No. 4. Propriety. Propriety and the appearance of propriety are essential to the performance of all the activities of a judge. Judges shall avoid impropriety and the appearance of impropriety in all their activities.

Canon No. 5. Equality. Ensuring equality of treatment to all before the courts is essential to the performance of the judicial office. Judges shall be aware of, and understand, diversity in society and differences arising from various sources, including, but not limited to, race, color, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes.

Canon No. 6. Competence and Diligence. Competence and diligence are prerequisites for the due performance of judicial office. Judges shall take reasonable steps to maintain and enhance their knowledge, skills and personal qualities necessary for the proper performance of judicial duties.

4. **A companion or employee of the judge who lives in the judge's household is included in the definition of the "judge's family." (2009 Bar Question)**

SUGGESTED ANSWER:

TRUE. A judge's family as defined in the New Code of Judicial Conduct for the Philippine Judiciary "includes a judge's spouse, son daughter, son-in-lase, daughter-in-law, and any other relative by consanguinity or affinity within the sixth civil degree, or person who is a companion or employee of the judge and who lives in the judge's household" [Definitions, Code of Judicial Conduct].

5. **What qualities should an ideal judge possess under the New Code of Judicial Conduct for the Philippine Judiciary? (5%) (2007 Bar Question)**

SUGGESTED ANSWER:

The qualities required of judges by the New Code of Judicial Conduct for the Philippine Judiciary are Independence (Canon 1), Integrity (Canon 2), Impartiality (Canon 3), Propriety (Canon 4), Equality (Canon 5), and Competence and Diligence (Canon 6)

a. Canon 1

6. **Judge A is a close friend of Governor G. On several occasions Judge A would borrow the vehicles from the Office of the Governor to travel to his judicial station. Judge's A actuation: (1%) (2014 Bar Question)**
- a. **Violates the canon on propriety**
 - b. **Creates an appearance of an improper connection with the executive branch**
 - c. **Is downright unethical**

SUGGESTED ANSWER:

A or B [Sec. 5, Canon 1, New Code of Judicial Conduct provides that "Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer."]

7. Judges of the first and second level courts are allowed to receive assistance from the local government units where they are stationed. The assistance could be in the form of equipment or allowance.

Justices at the Court of Appeals in the regional stations in the Visayas and Mindanao are not necessarily residents there, hence, they incur additional expenses for their accommodations.

Pass on the propriety of the Justices' receipt of assistance/allowance from the local governments. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

In the cases of *Dadole v. Commission on Audit* 393 SCRA 262 [2002]), and *Leynes v. Commission on Audit* (418 SCRA 180 [2003]), the Supreme Court has upheld the grant of allowance by local government unit (LGU) to "judges, prosecutors, public elementary and high school teachers, and other national government officials" stationed in or assigned to the locality pursuant to Sections 447(a)(1)(xi), 458(a)(1)(xi) and 468(a)(1)(xi) of Republic Act No. 7160, otherwise known as the Local Government Code. The Supreme Court held that "to rule against the power of the LGUs to grant allowances to judges ... will subvert the principle of local autonomy zealously guaranteed by the Constitution." Hence, it is not improper for judges and justices to receive allowances from local government units, since it is allowed by law for LGUs to give the same.

[Local Government Code.

447(a)(1)(xi) When the finances of the municipal government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed in or assigned to the municipality,

458(a)(1)(xi) When the finances of the municipal government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed in or assigned to the municipality

468(a)(1)(xi) When the finances of the provincial government allow, provide for additional allowances and other benefits to judges, prosecutors, public elementary and high school teachers, and other national government officials stationed or assigned to the province.

ALTERNATIVE ANSWER:

Section 5, Canon I of the New Code of Judicial Conduct for the Philippine Judiciary provides that "(J)udges shall be free from inappropriate connections with, and influence by, the executive and legislative branches of the government, and must also appear to be free therefrom to a reasonable extent." It is a common perception that the receipt of allowances or assistance from a local government unit may affect the judge's ability to rule independently in cases involving the said unit.

8. A and B are accused of Estafa by C, the wife of Regional Trial Court Judge D. Judge D testified as a witness for the prosecution in the Estafa case. Did Judge D commit an act of impropriety? Give reasons for your answer. (5%) (2007 Bar Question)

SUGGESTED ANSWER:

If the testimony of Judge D is essential for the prosecution of the estafa case brought by his wife, it is not improper for him to testify. But if it is not essential, as it does not appear to be so, his act of testifying will be improper.

Section 3, Canon 1, of the New Code of Judicial Conduct for the Philippine Judiciary provides, that “judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court of administrative agency. “ Section 8, Canon 4, of the same Code provides that “judges shall not use nor lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties”. In testifying for his wife unnecessarily, Judge D will convey the impression that he is trying to influence the presiding judge.

b. Canon 2

9. After being diagnosed with *stress dermatitis*, Judge Rosalind, without seeking permission from the Supreme Court, refused to wear her robe during court proceedings. When her attention was called, she explained that whenever she wears her robe she is reminded of her heavy caseload, thus making her tense. This, in turn, triggers the outbreak of skin rashes. Is Judge Rosalind justified in not wearing her judicial robe? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Judge Rosalind is not justified. In *Chan v. Majaducon* (413 SCRA 354 [2003]), the Supreme Court emphasized that the wearing of robes by judges as required by Adm. Circular No. 25, dated June 9, 1989, serves the dual purpose of heightening public consciousness on the solemnity of judicial proceedings and in impressing upon the judge the exacting obligations of his office. The robe is part of judges’ appearance and is as important as a gavel. The Supreme Court added that “while circumstances, such as the medical condition claimed by respondent judge, may exempt one from complying with AC No. 25, he must first secure the Court’s permission for such exemption. He cannot simply excuse himself, like respondent judge, from complying with the requirement.

10. During the hearing of an election protest filed by his brother, Judge E sat in the area reserved for the public, not beside his brother's lawyer. Judge E's brother won the election protest. Y, the defeated candidate for mayor, filed an administrative case against Judge E for employing influence and pressure on the judge who heard and decided the election protest.

Judge E explained that the main reasons why he was there in the courtroom were because he wanted to observe how election protest are conducted as he has never conducted one and because he wanted to give moral support to his brother.

Did Judge E commit an act of impropriety as a member of the judiciary? Explain? (2007 Bar Question)

SUGGESTED ANSWER:

Judge E committed an act of impropriety in appearing in another court at the hearing of his brother’s election protest. In the case of *Vidal v. Dojillo, Jr.*, (463 SCRA 264 [2005]), which involved the same facts, the Supreme Court held as follows:

“Although concern for family members is deeply ingrained in the Filipino culture, respondent, being a judge, should bear in mind that he is also called upon to serve the higher interest of preserving the integrity of the entire judiciary. Canon 2 of the Code of Judicial Conduct requires a judge to avoid not only impropriety but also the mere appearance of impropriety in all activities. Even if respondent did not intend to use his position as a judge to influence the outcome of his brother’s election protest, it cannot be denied that his presence in the courtroom during the hearing of his brother’s case would immediately give cause

for the community to suspect that his being a colleague in the judiciary would influence the judge trying the case to favor his brother.

11. **Justice B of the Court of Appeals (CA) was a former Regional Trial Court (RTC) Judge. A case which he heard as a trial judge was raffled off to him. The appellant sought his disqualification from the case but he refused on the ground that he was not the judge who decided the case as he was already promoted to the appellate court before he could decide the case.**

Was the refusal of Justice B to recuse from the case proper? Explain your answer. (5%) (2014 Bar Question)

SUGGESTED ANSWER:

The refusal of Justice B to recuse from the case is improper. In the case of *Sandoval v. CA*, [260 SCRA 283], involving the same facts, the Supreme Court held that the Court of Appeals Justice concerned was not legally bound to inhibit himself from the case. However, he “should have been more prudent and circumspect and declined to take on the case, owing to his earlier involvement in the case”, because “a judge should not handle a case in which he might be perceived, rightly or wrongly, to be susceptible to bias and partiality”. This axiom is “intended to preserve and promote public confidence in the integrity and respect for the judiciary”.

c. Canon 3

12. **State at least five (5) instances where judges should disqualify themselves from participating in any proceedings where their impartiality might reasonably be questioned. (5%) (2016 Bar Question)**

SUGGESTED ANSWER:

Any five (5) of the following instances provided in Section 5, Canon 3 of the New Code of Conduct for the Philippine Judiciary:

- a. The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- b. The judge previously served as a lawyer or was a material witness in the matter in controversy;
- c. The judge or a member of his or her family has an economic interest in the outcome of the matter in controversy;
- d. The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;
- e. The judge's ruling in a lower court is the subject of review;
- f. The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or
- g. The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings”.

Section 1, Rule 137, of the Revised Rules of Court, provides for similar grounds.

13. **Atty. Tristan filed a motion to disqualify Judge Robert from hearing a civil case on the ground that the latter was the classmate and fraternity brother of Atty. Mark, Atty. Tristan's opposing counsel. Judge Robert denied the motion on the ground that under Rule 3.12 of the Code of Judicial Conduct, he is not required to inhibit in all cases where his classmates and fraternity brothers are**

participating lawyers in cases before him. Is Judge Robert correct in denying the motion? (5%) (2016 Bar Question)

SUGGESTED ANSWER:

Judge Robert is correct in denying the motion for inhibition on the ground that he was the classmate of Atty. Tristan's adverse counsel. That one of the counsels in a case was a classmate of the judge is not a mandatory ground for his disqualification (*Vda. de Bonifacio v. BLT Bus Co., Inc.*, G.R. No. L-26810, 34 August 31, 1970, 34 SCRA 618 [1970]; *Santos v. Lacurom, A.M.* No. RTJ-04-1823, August 28, 2006). However, he may inhibit on the discretionary ground that his refusal to inhibit may reasonably cause the parties to lose trust and confidence on the court. Sec. 5, Canon 3 of the New Code of Judicial Conduct provides that "judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially."

14. In a land registration case before Judge Lucio, the petitioner is represented by the second cousin of Judge Lucio's wife. (2015 Bar Question)

A) Differentiate between compulsory and voluntary disqualification and determine if Judge Lucio should disqualify himself under either circumstance. (3%)

SUGGESTED ANSWER:

In compulsory disqualification, the judge is compelled to inhibit himself from presiding over a case when any of the ground provided by the law or the rules exist. Under Section 1, Rule 137 of the Revised Rules of Court, no judge or judicial officer shall sit in any case (1) in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or (2) in which he is related to either party within the sixth degree of consanguinity or affinity or to counsel within the fourth degree computed according to the rules of the civil law, or (3) in which he has been executor, administrator, trustee or counsel, or (4) in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest and entered upon the record.

Section 5, Canon 3 of the New Code of Judicial Conduct for the Philippine Judiciary adds the following grounds:

(a) the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

(b) the judge has previously served as a lawyer or was a material witness in the matter under controversy. In voluntary disqualification, a judge may inhibit himself in the exercise of his discretion. Paragraph 2, Rule 137 of the Revised Rules of Court provides that "a judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above". The New Code of Professional Conduct for the Philippine Judiciary adds that "judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially." There is no mandatory ground for Judge Lucio to disqualify himself. The second cousin of his wife, a sixth degree relative, is appearing not as a party but as a counsel.

In voluntary disqualification, a judge may inhibit himself in the exercise of his discretion. Paragraph 2, Rule 137 of the Revised Rules of Court provides that "a judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just and valid reasons other than those mentioned above". Sec. 5, Canon 3 of the New Code of Judicial Conduct adds that "judges shall disqualify themselves from

participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially.”

There is no mandatory ground for Judge Lucio to disqualify himself. The second cousin of his wife, a sixth degree relative, is appearing not as a party but as a counsel.

B) If none of the parties move for his disqualification, may Judge Lucio proceed with the case? (2%)

SUGGESTED ANSWER:

If none of the parties moves for his disqualification, Judge Lucio may proceed with the case. All the more so if, without the participation of the judge, the parties and their lawyers execute a written agreement that Judge Lucio may proceed with the same, and such agreement is signed by them and made a part of the records of the case.

- 15. Judge Clint Bravo is hearing a case between Mr. Timothy and Khristopher Company, a company where his wife used to work as one of its Junior Executives for several years. Doubting the impartiality of the Judge, Mr. Timothy filed a motion to inhibit Judge Clint Bravo. Judge Clint Bravo refused on the ground that his wife has long resigned from the company. Decide (2014 Bar Question)**

SUGGESTED ANSWER:

The fact that Judge Bravo’s wife used to work for Kristofer Company is not a mandatory ground for his inhibition. However, Section 2, Canon 3 of the New Code of Judicial Conduct for the Philippine Judiciary provides that judges should disqualify themselves from participating in any proceeding in which “it may appear to a reasonable observer that they are unable to decide the matter impartially”. The Supreme Court has advised that a judge “should exercise his decision in a way that the people’s faith in the courts of justice is not impaired” (*Pimentel v. Salanga*, [21 SCRA 160]). While It may not be reasonable to believe that Judge Bravo cannot be impartial because his wife used to work as a Junior Executive for Kristofer Company, the better part of prudence would dictate that he inhibit himself from the case involving the said company.

- 16. After the pre-trial of a civil case for replevin, Judge D advised B’s counsel to settle the case because according to Judge D, his initial assessment of the case shows that B’s evidence is weak. (2014 Bar Question)**

A) Did Judge D commit an act of impropriety? Explain.

SUGGESTED ANSWER:

Yes, Judge D acted improperly. Sec. 4, Canon 3 of the New Code of Judicial Conduct for the Philippine Judiciary provides that “judges shall not knowingly, while a proceeding is before or could come before them, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.”

B) What remedy or remedies may be taken by B’s lawyer against Judge D? Discuss fully.

SUGGESTED ANSWER:

B’s lawyer could move for the disqualification or inhibition of the judge, and if he refuses to inhibit, his refusal can be raised to a higher court by certiorari.

17. Bong, son of Judge Rey, is a fourth-year law student. He helped his friend prepare an affidavit-complaint for Violation of Batas Pambansa Big. 22. After drafting, they showed it to Judge Rey who made some corrections. Later, the BP 22 case was raffled to Judge Rey who tried and convicted the accused. Was there impropriety? (2012 Bar Question)
- a. Yes, since Judge Rey was not a fair and impartial judge.
 - b. No, the evidence for the prosecution was strong and sufficient to prove guilt beyond reasonable doubt.
 - c. No, because any other judge would also have convicted the accused.
 - d. No, those matters were not known to the accused.

SUGGESTED ANSWER:

A [Sec. 5, Canon 3 of the New Code of Judicial Conduct provides that “judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially.”]

18. On appeal, RTC Judge Rudy affirmed the MTC’s conviction of Lorna for violation of the bouncing checks law and awarded Agnes, the complainant, Php1.6 million in damages. Two years later, upon Lorna’s motion and after ascertaining that her counsel never received the court’s decision, Judge Rudy recalled the entry of judgment in the case, reversed himself, and absolved Lorna of guilt. Claiming an unjust judgment, Agnes filed an administrative complaint against Judge Rudy, saying that it is plain from the circumstances that he connived with Lorna, her counsel, and the handling prosecutor. But she offered no further evidence. Rudy denied the charges and asserted that any error in his judgment is correctible only by an appeal, not by an administrative suit. Should Judge Rudy be disciplined? (2011 Bar Question)
- a. No, because Agnes’ complaint is merely based on suspicions and speculations.
 - b. No, because Agnes has yet to establish that Rudy’s decision is plainly erroneous.
 - c. Yes, because he gravely abused his discretion in recalling the entry of judgment.
 - d. Yes, because reconsidering the judgment of conviction that the MTC and he earlier issued shows anomaly in Judge Rudy’s action.

SUGGESTED ANSWER:

A [Sec. 1, Rule 139-B provides that “proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.”]

19. In a case for homicide filed before the Regional Trial Court (RTC), Presiding Judge Quintero issued an order for the arrest of the accused, granted a motion for the reduction of bail, and set the date for the arraignment of the accused. Subsequently, Judge Quintero inhibited himself from the case, alleging that even before the case was raffled to his court, he already had personal knowledge of the circumstances surrounding the case. Is Judge Quintero’s inhibition justified? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

Judge Quintero's inhibition is justified. One of the grounds for inhibition under Section 5, Canon 3 of the New Code of Judicial Conduct for the Philippine Judiciary is "where the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings."

d. Canon 4**20. A judge who insults counsel and shouts invectives at a litigant is guilty of: (2014 Bar Question)**

- a. serious misconduct
- b. committing acts unbecoming of a judge
- c. manifest bias and partiality

SUGGESTED ANSWER:

B [In *Jorda v. Bitas*, AM No. RTJ-14-2376. March 5, 2014, the Court held that "the use of intemperate language is included in the proscription provided by Section 1, Canon 4 of the New Code of Judicial Conduct, thus: "Judges shall avoid impropriety and the appearance of impropriety in all the activities of a judge." It bears stressing that as a dispenser of justice, respondent should exercise judicial temperament at all times, avoiding vulgar and insulting language. He must maintain composure and equanimity.]

21. Constantino was accused of estafa by Hazel, the wife of Judge Andres, for misappropriating the ring she entrusted to him. Since Judge Andres was present when Hazel handed the ring to Constantino, he was compelled by his wife to testify as a witness for the prosecution in the criminal case. Did the judge commit any violation of the New Code of Judicial Conduct for the Philippine Judiciary? Explain. (5%) (2016 Bar Question)**SUGGESTED ANSWER:**

Section 4, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary provides that "Judges shall not participate in the determination of a case in which any member of their family represents a litigant or is associated in any manner with the case." Judge Constantino's appearance as a witness in the criminal case in which his wife was the offended party is violative of this rule. It may also be violative of Section 3, Canon 1, which provides that "judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency".

22. Judge Ana P. Sevillaño had an issue with the billings for the post-paid cellular phone services of her 16-year-old daughter for the last three consecutive months. Although Judge Sevillaño had been repeatedly calling the Customer Service Hotline of Universal Telecoms, the billings issue was never fully settled to Judge Sevillaño's satisfaction. Finally, Judge Sevillaño wrote the National Telecommunications Commission a letter of complaint against Universal Telecoms, using her official court stationery and signing the letter as "Judge Ana P. Sevillaño." Did Judge Sevillaño violate any professional or ethical standard for judges? Justify your answer. (3%) (2015 Bar Question)**SUGGESTED ANSWER:**

Judge Sevillaño violated Section 8, Canon 4, of the New Code of Judicial Conduct for the Philippine Judiciary, which provides that "judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them

in the performance of judicial duties”, as well as Rule 6.02 of the Code of Professional Responsibility which provides that “a lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties”.

In the case of *Ladigon v. Garong*, A.M. MTJ-08-1712, Aug. 20, 2008, the Supreme Court held that “While the title [of judge or justice] can be used for social and other identification purposes, it cannot be used with the intent to use the prestige of his judicial office to gainfully advance his personal, family or other pecuniary interests”.

23. Judge Junior attended the 50th birthday party of his fraternity brother, Atty. Vera. Also present at the party was Atty. Rico who was Atty. Vera's classmate way back in high school and who was handling Civil Case No. 5555 currently pending before Judge Junior's court. Well-aware that Atty. Rico had a case before his sala, Judge Junior still sat next to Atty. Rico at a table, and the two conversed with each other, and ate and drank together throughout the night. Since Atty. Vera was a well-known personality, his birthday party was featured in a magazine. The opposing party to Atty. Rico's client in Civil Case No. 5555, while flipping through the pages of the magazine, came upon the pictures of Judge Junior and Atty. Rico together at the party and used said pictures as bases for instituting an administrative case against Judge Junior. Judge Junior, in his answer, reasoned that he attended Atty. Vera's party in his private capacity, that he had no control over who Atty. Vera invited to the party, and that he and Atty. Rico never discussed Civil Case No. 5555 during the party. Did Judge Junior commit an administrative infraction? Explain. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

Section 3, Canon 4 of the New Code of Conduct for the Philippine Judiciary provides that “judges shall, in their personal relations with individual members of the legal profession who practice regularly in their court, avoid situations which might reasonably give rise to the suspicion of favoritism or partiality.” The act of Judge Junior in sitting next to Atty. Rico, a lawyer whom he knew had a case before his sala, and dining and conversing with him throughout the night, violates the foregoing rule. It tends to give rise to suspicion of partiality. It is improper conduct for which he may be reprimanded.

24. Judge A accepted a gift consisting of assorted canned goods and other grocery items from his compadre whose friend has a pending case with him. He accepted the gift just so as not to embarrass his compadre. When his compadre left his chambers, he asked his secretary to donate the gift he received to the victims of Typhoon Yolanda. Did the Judge cross the ethical line? Explain your answer. (2014 Bar Question)

SUGGESTED ANSWER:

In accepting a gift from his *compadre*, which he must have suspected was connected with the case of his *compadre's* friend, because he accepted just in order not to embarrass his *compadre*, Judge A violated Section 13, Canon 4 of the New Code of Conduct for the Philippine Judiciary which provides that “Judges and members of their families shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.”

25. In an action to prevent the condominium developer from building beyond ten (10) floors, Judge Cerdo rendered judgment in favor of the defendant developer. The judgment became final after the plaintiffs failed to appeal on time. Judge Cerdo and Atty. Cocodrilo, counsel for the developer, thereafter separately purchased a condominium unit each from the developer.

Did Judge Cerdo and Atty. Cocodrilo commit any act of impropriety or violate any law for which

they should be held liable or sanctioned? (8%) (2013 Bar Question)**SUGGESTED ANSWER:**

Judge Cerdo and Atty. Cocodrilo did not commit any act of impropriety nor did they violate any law.

The prohibition imposed by the Civil Code, Art. 1491 (5), prohibiting judges and attorneys with regard to purchase of any interest in the subject matter of the litigation refer only to instances where the property is still the subject of the litigation.

The prohibition does not apply to instances, such as in the problem, where the conveyance takes place after the judgment because the property can no longer be said to the “subject of litigation” (*Director of Lands v. Ababa*, G.R. No. L-26096, February 27, 1979, 88 SCRA 513).

ALTERNATIVE ANSWER:

Atty. Crocodilo did not commit any ethic violation nor did he violate any law when he purchased a condominium unit from the developer. The prohibition under the Canons of Professional Ethics and under the Civil Code, Art. 1491(5) finds application only while the property is still the subject of litigation. With the judgment having attained a state of finality, the property can no longer be said to be the “subject of litigation” (*Director of Lands v. Ababa*, G.R. No. L-26096, February 27, 1979, 88 SCRA 513).

While technically, Judge Cerdo has not violated the provisions of the Civil Code, Art. 1491 (3) when he purchased a condominium unit from the developer because the judgment has attained a state of finality, there may be some concerns on the ethical aspect of what he had done. Judges, like Judge Cerdo should be free of any whiff of impropriety in all of their activities (New Code of Conduct for the Philippine Judiciary, Canon 4, Sec. 1). His purchase of a condominium unit from the developer might be interpreted by some quarters as a consideration for his having decided the case in favor of the defendant developer.

- 26. The criminal case arising from the P10-Billion Peso pork barrel scandal was raffled to Sandiganbayan Justice Marciano Cobarde. Afraid that he would antagonize the parties, his political patrons and, ultimately, his judicial career, he decided to inhibit from participating in the case, giving "personal reasons" as his justification.**

If you were to question the inhibition of SB Justice Cobarde, on what legal basis, and where and how will you do this? (8%). (2013 Bar Question)

SUGGESTED ANSWER:

The grounds relied upon by Justice Cobarde for his inhibition conveys the impression that “the parties” and “his political patrons” are in a special position improperly to influence him in the performance of judicial duties (New Code of Conduct for the Philippine Judiciary, Canon 4, Sec. 8). Furthermore, the Sandiganbayan sits in Divisions, so the fears of Justice Cobarde are unfounded.

I would file a motion with the Division of the Sandiganbayan in which Justice Cobarde is sitting for the remittal of his voluntary inhibition. I would advance in motion the reasons why the “personal reasons” set forth by the Justice are insubstantial and does not merit his inhibition. I would likewise set the motion for hearing as appropriate.

[NOTES: *The decision of Justice Marciano Cobarde to inhibit himself on account of “personal reasons” is not conclusive, and his competency may be determined on an application for mandamus to compel him to act (Palang v. Zosa, G.R. No. L-38229, August 30, 1974, 58 SCRA 776).*

The voluntary inhibition of Justice Marciano Cobarde is not subject to mandamus because voluntary inhibition involves the exercise of discretion (*Gutang, et al., v. Court of Appeals, et al.*, G.R. No. 124760, July 8, 1998).]

27. A Court Administrator's auditing team found that Judge Ruby used business cards which stated, in addition to her official title as presiding judge of her court, that she is bar topnotcher, her law school's "class valedictorian," and "one of the most sought after private law practitioners" before she joined the judiciary, all of which are true. Asked to explain this seeming impropriety, Ruby pointed out that business cards can include the person's "title" which is broad enough to include in her case her standing in the bar and all the honors she earned. Did Ruby commit an impropriety? (2011 Bar Question)
- a. Yes, unless the cards were given to her as a gift.
 - b. No, because all she stated in her business cards are true.
 - c. Yes, because she showed a hunger for publicity and recognition that debases her judicial post.
 - d. No, because she is free to include in her business cards details that say who she is.

SUGGESTED ANSWER:

C [Sec. 8, Canon 4 of the Code of Judicial Conduct provides that Section 8] Judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties".]

28. What unhealthy attitude of mind should a judge avoid falling into? (2011 Bar Question)

- a. Hearing and adjudicating cases is an important job.
- b. Courts are made for litigants.
- c. Litigants are made for the courts.
- d. Courts should dispose of their cases on time.

SUGGESTED ANSWER:

C [A.O. 162 (Canons of Judicial Ethics), August 1, 1946 provides that "the courts exist to promote justice; and thus to aid in securing the contentment and happiness of the people. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of his court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.']

29. After the prosecution cross-examined Sheila, a witness for the accused, Judge Pedro asked her ten additional questions that were so intense they made her cry. One question forced Sheila to admit that her mother was living with another man, a fact that weighed on the case of the accused. This prompted the latter's counsel to move to expunge the judge's questions for building on the prosecution's case. Judge Pedro denied the motion, insisting that bolstering a party's case is incidental to the court's desire to be clarified. Did Pedro commit an impropriety? (2011 Bar Question)
- a. No, his ten questions could not be considered an undue intervention.
 - b. No, because the judge is free to inquire into any aspect of the case that would clarify the evidence for him.
 - c. Yes, because he effectively deprived the defense of its right to due process when he

- acted both as prosecutor and judge.
- d. Yes, because nothing connects his desire to be clarified with the questions he asked.

SUGGESTED ANSWER:

C [In *Juan dela Cruz v. Judge Carretas*, A.M. No. RTJ-07-2043, September 5, 2007, the Court held that “a judge may properly intervene in the presentation of evidence to expedite and prevent unnecessary waste of time and clarify obscure and incomplete details in the course of the testimony of the witness or thereafter. But the judge should limit himself to asking clarificatory questions and the power should be sparingly and judiciously used. The rule is that the court should stay out of it as much as possible, neither interfering nor intervening in the conduct of the trial. A judge must always maintain cold neutrality and impartiality for he is a magistrate, not an advocate.”]

30. Reacting to newspaper articles and verbal complaints on alleged rampant sale of Temporary Restraining Orders by Judge X, the Supreme Court ordered the conduct of a discreet investigation by the Office of the Court Administrator.

Judges in the place where Judge X is assigned confirmed the complaints. (2010 Bar Question)

- A) What administrative charge/s may be leveled against Judge X? Explain. (3%)

SUGGESTED ANSWER:

He could be charged with Gross Misconduct, arising from violation of the *Anti-Graft and Corrupt Practices Act (RA No. 3019)*. He could also be charged with violation of Canon 4, Section 13 of the *New Code of Judiciary* which provides that “judges and members of their families shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties”.

- B) What defense/s can Judge X raise in avoidance of any liability? (2%)

SUGGESTED ANSWER:

He could raise the defense of hearsay evidence, lack of substantive evidence, and denial of due process.

31. Rico, an amiable, sociable lawyer, owns a share in Marina Golf Club, easily one of the more posh golf courses. He relishes hosting parties for government officials and members of the bench.

One day, he had a chance meeting with a judge in the Intramuros golf course. The two readily got along well and had since been regularly playing golf together at the Marina Golf Club.

If Atty. Rico does not discuss cases with members of the bench during parties and golf games, is he violating the Code of Professional Responsibility? Explain. (3%)

How about the members of the bench who grace the parties of Rico, are they violating the Code of Judicial Conduct? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Members of the bench who grace the parties of Atty. Rico would be guilty of violating Sec. 3, Canon 4 of the *New Code of Judicial Conduct* for the Philippine Judiciary which provides that “judges shall, in their personal relations with individual members of the legal profession who practice regularly in their court, avoid situations which might reasonably give rise to the suspicion or appearance of favoritism or partiality”.

In *Padilla v. Zantua*, 237 SCRA 670 [1994], the Court held that “constant company with a lawyer tends to breed intimacy and camaraderie to the point that favors in the future may be asked from respondent judge which he may find hard to resist. A judge must avoid all impropriety and the appearance thereof. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen”. But if Atty. Rico is not a practicing lawyer, such suspicion may not be aroused.

- 32. Judge X was invited to be a guest speaker during the annual convention of a private organization which was covered by media. Since he was given the liberty to speak on any topic, he discussed the recent decision of the Supreme Court declaring that the President is not, under the Constitution, proscribed from appointing a Chief Justice within two months before the election.**

In his speech, the judge demurred to the Supreme Court decision and even stressed that the decision is a serious violation of the Constitution. (2010 Bar Question)

A) Did Judge X incur any administrative liability? Explain. (3%)

SUGGESTED ANSWER:

He did not incur administrative liability. Sec. 4, Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary provides that “[J]udges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.”

B) If instead of ventilating his opinion before the private organization, Judge X incorporated it, as an *obiter dictum*, in one of his decisions, did he incur any administrative liability? Explain. (3%)

SUGGESTED ANSWER:

In deciding cases, a judge is supposed to be faithful to the law, which includes decisions of the Supreme Court. If he feels that a doctrine enunciated by the Supreme Court is against his way of reasoning or his conscience, he may state his personal opinion on the matter but should decide the case in accordance with the law or doctrine and not with his personal views (*Garcia v. Burgos*, 291 ASCRA 546 [1998]). The fact that Judge X ventilated his personal opinion merely as an *obiter dictum* indicates that he did not decide the case in accordance with his personal opinion. But, still, it undermines the authority of the Supreme Court, and he may incur administrative liability for it.

- 33. On the proposal of Judge G, which was accepted, he and his family donated a lot to the city of Gyoza on the condition that a public transport terminal would be constructed thereon. The donation was accepted and the condition was complied with.**

The family-owned tracts of land in the vicinity of the donated lot suddenly appreciated in value and became commercially viable as in fact a restaurant and a hotel were soon after built.

Did the Judge commit any violation of the Code of Judicial Conduct? (2%) (2010 Bar Question)

SUGGESTED ANSWER:

He may, thereby, be held liable for violating Section 8, Canon 4 of the New Code of Conduct for the Philippine Judiciary which provides that “judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them

in the performance of judicial duties”. In the instant case, it seems clear that the judge and his family were principally motivated by the anticipated increase in the value of their property as a consequence of the donation of a lot for the construction of a transport facility.

- 34. Judge Ramon obtained a two (2) year car loan from a financing company. He never paid a single amortization. After the lapse of two (2) years, the financing company filed an administrative complaint against the judge for willful failure to pay a just debt. Is the judge administratively liable? (2012 Bar Question)**
- No, since the loan is not connected with his judicial function.**
 - Yes, because a judge should avoid impropriety or the appearance of impropriety even in his private dealings.**
 - No, the financing company should have availed of the remedy of foreclosure.**
 - No, because the administrative charge is only meant to force the judge to pay.**

SUGGESTED ANSWER:

B [Sec. 1, Canon 4, New Code of Judicial Conduct provides that “judges shall avoid impropriety and the appearance of impropriety in all of their activities.”]

- 35. [May the judge concerned be sanctioned for] deciding a case in accordance with a Supreme Court ruling but adding that he does not agree with the ruling. (3%) (2008 Bar Question)**

SUGGESTED ANSWER:

There is nothing wrong with such conduct. In fact, in *Santos*, 50 O.G. 3546, cited in *Vivo v. Cloribel* (18 SCRA 713 [1966]) and *Albert v. CFI of Manila, Br. VI* (23 SCRA 948 [1968]), the Supreme Court ruled that if a judge of a lower court feels that a decision of the Supreme Court is against his way of reasoning or against his conscience, he may state his opinion, but apply the law in accordance with the interpretation of the Supreme Court.

e. Canon 5

- 36. Judge L is assigned in Turtle Province. His brother ran for Governor in Rabbit Province. During the election period this year, Judge L took a leave of absence to help his brother conceptualize the campaign strategy. He even contributed a modest amount to the campaign kitty and hosted lunches and dinners.**

Did Judge L incur administrative and/or criminal liability? Explain. (3%) (2010 Bar Question)

SUGGESTED ANSWER:

Judge L incurred administrative liability. Rule 5.18 of the Code of Judicial Conduct (which is applicable in a suppletory character to the New Code of Conduct for the Philippine Judiciary) provides that “[A] Judge is entitled to entertain personal views on political questions, but to avoid suspicion of political partisanship, a judge shall not make political speeches, contribute to party funds, publicly endorse candidates for political activities.”

He may also be held criminally liable for violation of Section 26 (I) of the Omnibus Election Code, which penalizes any officer or employee in the civil service campaign or engages in any partisan political activity, except to vote or to preserve public order.

f. Canon 6

37. Atty. Belinda appeared as counsel for accused Popoy in a case being heard before Judge Tadhana. After Popoy was arraigned, Atty. Belinda moved for a resetting of the pre-trial conference. This visibly irked Judge Tadhana and so before Atty. Belinda could finish her statement, Judge Tadhana cut her off by saying that if she was not prepared to handle the case, then he could easily assign a counsel *de oficio* for Popoy. Judge Tadhana also uttered that Atty. Belinda was wasting the precious time of the court. Atty. Belinda tried to explain that she was capable of handling the case but before she could finish her explanation, Judge Tadhana again cut her off and accused her of always making excuses for her incompetence. Judge Tadhana even declared that he did not care if Atty. Belinda filed a thousand administrative cases against him.

According to Atty. Belinda, Judge Tadhana had also humiliated her like that in the past for the flimsiest of reasons. Even Atty. Belinda's clients were not spared from Judge Tadhana's wrath as he often scolded witnesses who failed to respond immediately to questions asked of them on the witness stand.

Atty. Belinda filed an administrative case against Judge Tadhana. Do the acts of Judge Tadhana as described above constitute a violation of the Code of Judicial Conduct? Explain. (3%) (2015 Bar Question)

SUGGESTED ANSWER:

Judge Tadhana has violated Section 6, Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary which provides that "Judges shall maintain order and decorum in all proceedings before the court, and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control"

A judge should be courteous both in his conduct and in his language especially to those appearing before him. He can hold counsels to a proper appreciation of their duties to the court, their clients and the public in general without being petty, arbitrary, overbearing, or tyrannical. He should refrain from conduct that demeans his office and remember that courtesy begets courtesy. *Ruiz v. Bringas*, 330 SCRA 62 [2002].

B. Disqualifications of judicial officers (Rule 137)

1. Compulsory

38. A judge or judicial officer is disqualified to hear a case before him wherein a party is related to him by consanguinity or affinity – (2012 Bar Question)
- a. up to the 6th degree;
 - b. up to the 5th degree;
 - c. up to the 4th degree;
 - d. up to the 3rd degree.

SUGGESTED ANSWER:

A. Sec. 5, Canon 3, New Code of Judicial Conduct provides:

Sec. 5 Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

1. The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
2. The judge previously served as a lawyer or was a material witness in the matter in controversy;
3. The judge, or a member of his or her family, has an economic interest in the outcome of the matter in controversy;
4. The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;
5. The judge's ruling in a lower court is the subject of review;
6. The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or
7. The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings;

39. A judge or judicial officer should inhibit himself from hearing a case before him where the counsel for either party is a relative by consanguinity or affinity – (2012 Bar Question)

- a. up to the 3rd degree;
- b. up to the 4th degree;
- c. up to the 5th degree;
- d. up to the 6th degree.

SUGGESTED ANSWER:

B [Sec. 5, Canon 5, New Code of Judicial Conduct]

40. In a verified complaint, Kathy said that Judge Florante decided a petition for correction of entry involving the birth record of her grandson, Joshua, who happened to be child of Judge Florante's daughter, Pilita. Judge Florante insisted that he committed no wrong since the proceeding was nonadversarial and since it merely sought to correct an erroneous entry in the child's birth certificate. Is Judge Florante liable? (2011 Bar Question)

- a. Yes, because Florante breached the rule on mandatory disqualification.
- b. No, because Judge Florante has no pecuniary interest in the proceeding.
- c. No, because it is true the proceeding was non-adversarial so it prejudiced no one.
- d. Yes, since the correction in the child's record affects the details of birth of the child.

SUGGESTED ANSWER:

A [Sec. 5, Canon 3, New Code of Judicial Conduct]

41. Rebecca's complaint was raffled to the sala of Judge A. Rebecca is a daughter of Judge A's wife by a previous marriage. This is known to the defendant who does not, however, file a motion to inhibit the Judge.

Is the Judge justified in not inhibiting himself from the case? (3%) (2010 Bar Question)

SUGGESTED ANSWER:

The judge is not justified in not inhibiting himself. It is mandatory for him to inhibit if he is related to any of the parties by consanguinity or affinity within the sixth civil degree (*Sec. 3 [f] Canon 3, New Code of Judicial Conduct for the Philippine Judiciary*). Judge A, being the stepfather of Rebecca, is related to her by affinity by just one degree. “Judges shall disqualify themselves from participating in any proceeding in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially” (*Id., Sec. 5, Canon 3*). The fact that Rebecca is a daughter of Judge A’s wife is liable to make a reasonable observer doubt his impartiality.

- 42. [May the judge concerned be sanctioned for] refusing to inhibit himself although one of the lawyers in the case is his second cousin. (3%) (2008 Bar Question)**

SUGGESTED ANSWER:

One of the mandatory grounds for inhibition of a judge is when he is related to any of the lawyers handling a case before him within the fourth civil degree of consanguinity or affinity. (Sec. 5 (f), New Code of Judicial Conduct, Section 1, Rule 137, rules of Court). A second cousin of a judge is his relative within the sixth degree, hence, he may not be sanctioned for not inhibiting on such ground.

2. Voluntary Inhibition

- 43. Judge Nancy personally witnessed a vehicular accident near his house. Later, the Reckless Imprudence case was raffled to his sala. Is there a valid ground for his inhibition? (2012 Bar Question)**

- a. No, he is not acquainted nor related with any of the parties or lawyer.
- b. No, his personal knowledge of what actually happened will even ensure that he will decide the case justly on the basis of the true facts.
- c. Yes, because a judge should decide a case on the basis of the evidence presented before him and not on extraneous matters.
- d. No, because there is no ground for disqualification and no motion for inhibition.

SUGGESTED ANSWER:

C [Sec. 5(c), Canon 3, New Code of Judicial Conduct provides that:

Judges shall disqualify themselves from participating in any proceedings in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

1. The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
2. The judge previously served as a lawyer or was a material witness in the matter in controversy;
3. The judge, or a member of his or her family, has an economic interest in the outcome of the matter in controversy;
4. The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as counsel during their association, or the judge or lawyer was a material witness therein;
5. The judge's ruling in a lower court is the subject of review;
6. The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or

7. The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings;
44. Serving as counsel de officio, Atty. Mamerto advised John of the consequences of his plea of not guilty to the charge. Before trial could be held, however, the presiding judge died. As it happened, Atty. Mamerto was appointed judge and John's case was assigned to him by raffle. John quickly moved for the judge's disqualification. Is Judge Mamerto under obligation to inhibit himself from the case? (2011 Bar Question)
- No, because his service to John was just momentary.
 - Yes, because his knowledge of John's case affects his judgment.
 - No, because he was merely a counsel de officio.
 - Yes, because he served as John's counsel.

SUGGESTED ANSWER:

A [Sec. 5, Canon 3, New Code of Judicial Conduct]

45. Atty. Abigail filed administrative cases before the Supreme Court against Judge Luis. Thereafter, Atty. Abigail filed a Motion for Inhibition praying that Judge Luis inhibit himself from trying, hearing or in any manner acting on all cases, civil and criminal, in which Atty. Abigail is involved and handling.

Should Judge Luis inhibit himself as prayed for by Atty. Abigail? Explain fully. (6%) (2008 Bar Question)

SUGGESTED ANSWER:

Judge Luis should not inhibit himself. The mere filing of an administrative case against a judge is not a ground for disqualification on the ground of bias and prejudice (*Aparicio v. Andal*, 175 SCRA 569 [1989]; *Medina v. De Guia*, 219 SCRA 153 [1993]; *Mantaring v. Roman, Jr.*, 254 SCRA 158 [1996]).

C. Administrative jurisdiction of the Supreme Court over Judges and Justices (all levels)

46. An anonymous letter addressed to the Supreme Court was sent by one *Malcolm X*, a concerned citizen, complaining against Judge Hambog, Presiding Judge of the RTC of Mahangin City, Branch 7. *Malcolm X* reported that Judge Hambog is acting arrogantly in court; using abusive and inappropriate language; and embarrassing and insulting parties, witnesses, and even lawyers appearing before him. Attached to the letter were pages from transcripts of records in several cases heard before Judge Hambog, with Judge Hambog's arrogant, abusive, inappropriate, embarrassing and/or insulting remarks or comments highlighted. (2015 Bar Question)

A) Will the Court take cognizance of the letter-complaint even coming from an anonymous source? Explain. (2%)

SUGGESTED ANSWER:

Yes. Section 1, Rule 140 of the Revised Rules of Court provides that proceedings for the discipline of judges of regular and special courts, and Justices of the Court of Appeals and the Sandiganbayan, may be instituted "upon an anonymous complaint, supported by public records of indubitable integrity".

B) Describe briefly the procedure followed when giving due course to a complaint against an RTC judge. (3%)

SUGGESTED ANSWER:

Rule 140 of the Rules of Court provides that if the complaint is sufficient in form and substance, a copy thereof shall be sent to the respondent, and he shall be required to comment within 10 days from date of service. Upon the filing of the respondent's comment, the Supreme Court shall refer the matter the Office of the Court Administrator for evaluation, report and recommendation, or assign the case to a Justice of the Court of Appeals, for investigation, report and recommendation. The investigating Justice shall set a date for the hearing and notify the parties thereof, and they may present evidence, oral or documentary, at such hearing. The investigating Justice shall terminate the investigation within 90 days from its commencement, and submit his report and recommendation to the Supreme Court within 30 days from the termination of the investigation. The Supreme Court shall take action on the report as the facts and the law may warrant.

- 47. An audit team from the Office of the Court Administrator found that Judge Contaminada committed serious infractions through the indiscriminate grant of petitions for annulment of marriage and legal separation. In one year, the judge granted 300 of such petitions when the average number of petitions of similar nature granted by an individual judge in his region was only 24 petitions per annum.**

The audit revealed many different defects in the granted petitions: many petitions had not been verified; the required copies of some petitions were not furnished to the Office of the Solicitor General and the Office of the Provincial Prosecutor; docket fees had not been fully paid; the parties were not actual residents within the territorial jurisdiction of the court; and, in some cases, there was no record of the cross-examinations conducted by the public prosecutor or any documentary evidence marked and formally offered. All these, viewed in their totality, supported the improvident and indiscriminate grant that the OCA found.

If you were the counsel for Andy Malasuerte and other litigants whose marriages had been improperly and finally annulled, discuss your options in administratively proceeding against Judge Contaminada, and state where and how you would exercise these options. (8%) (2013 Bar Question)

SUGGESTED ANSWER:

As counsel for Andy Malasuerte, I have the option of participating in the administrative proceedings by filing a verified complaint in writing against Judge Contaminada, with the Office of the Court Administrator, supported by affidavits of persons who have personal knowledge of the facts alleged therein or by documents which may substantiate said allegations. The complaint shall state clearly and concisely the acts and omissions constituting violations of standards of conduct prescribed for judge by law, the Rules of Court, the Code of Judicial Conduct (Rules of Court, Rule 140, Sec. 1) and the new Code of Conduct for the Philippine Judiciary.

[Rule 140. Sec. 1. All Charges against judges of first instance shall be in writing and shall set out distinctly, clearly, and concisely the facts complained of as constituting the alleged serious misconduct or inefficiency of the respondent, and shall be sworn to and supported by affidavits of persons who have personal knowledge of the facts therein alleged, and shall be accompanied with copies of documents which may substantiate said facts.]

[NOTES AND COMMENTS: The question clearly refers to “administratively proceeding against Judge Contaminada.” It is suggested that some credit should be given if the examinee discusses the options available for Andy Malasuerte to obtain relief with regard to improperly and finally annulled marriage.]

48. Administrative proceedings against Judges of all courts and Justices of the Court of Appeals and the Sandiganbayan shall be (2011 Bar Question)

- a. private and confidential.
- b. public but subdued.
- c. private but transparent.
- d. public.

SUGGESTED ANSWER:

A [Sec. 6, Rule 140 of Rules of Court provides that “proceedings against judges of first instance shall be private and confidential”. Moreover, Sec. 18, Rule 139-B of the Rules of Court provides that [proceedings against attorneys shall be private and confidential. However, the final order of the Supreme Court shall be published like its decisions in other cases”].]

49. Administrative penalties imposed on judges are (2011 Bar Question)

- a. curative.
- b. punitive.
- c. corrective.
- d. both punitive and corrective.

SUGGESTED ANSWER:

D [In *Office of the Court Administrator v. Chavez*, A.M. No. RTJ-10-2219, the Court elucidated that “while we are duty-bound to sternly wield a corrective hand to discipline our errant employees and to weed out those who are undesirable, we also have the discretion to temper the harshness of its judgment with mercy”].]

50. Judge A has an illicit relationship with B, his Branch Clerk of Court. C, the wife of Judge A, discovered the illicit affair and consulted a lawyer to vindicate her violated marital rights. If you were that lawyer, what would you advice C, and if she agrees and asks you to proceed to take action, what is the legal procedure that you should follow?

Discuss fully. (4%) (2014 Bar Question)

SUGGESTED ANSWER:

I will advise her to file an administrative case against Judge A and the Clerk of Court. They are both liable under Rule 1.01 of the Code of Professional Responsibility for gross immorality. Moreover, Judge A violated Sec. 1 Canon 4 of the Code of Judicial Conduct. I would advise her to invoke the automatic conversion of the administrative case against Judge A and the clerk of court as members of the bar under A.M. No. 02-9-02-SC, with the Office of the Court Administrator. This is without prejudice to the filing of the appropriate criminal and civil cases.

[A.M. No. 02-9-02-SC - Some administrative cases against Justices of the Court of Appeals and the Sandiganbayan; judges of regular and special courts; and court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility, and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.]

In any of the foregoing instances, the administrative case shall also be considered a disciplinary action against the respondent Justice, judge or court official concerned as a member of the Bar. The respondent may forthwith be required to comment on the complaint and show cause why he should not also be suspended, disbarred or otherwise disciplinarily sanctioned as a member of the Bar. Judgment in both respects may be incorporated in one decision or resolution.]

III. PRACTICAL EXERCISES

A. Demand and authorization letters

1. Ian Alba owns a house and lot at No. 9 West Aguila, Green Cross Subdivision, Quezon City, which he leased to Jun Miranda for a term of two years starting May 1, 2006, at a monthly rental of P50,000. Jun defaulted in the payments of his rentals for six (6) months, from January 1, 2007 to June 30, 2007.

Prepare a demand letter as lawyer of Ian Alba addressed to Jun Miranda preparatory to filing an ejectment case. (3%) (2008 Bar Question)

SUGGESTED ANSWER:

July 10, 2007

Mr. Ian Alba
No. 9 West Aguila St.
Green Cross Subdivision
Quezon City

Dear Sir:

This is with reference to your lease of the house and lot of my client, Mr. Jun Miranda, located at your above-stated address.

You leased the said property for a period of two years starting May 1, 2006, at a monthly rental of P50,000.00. However, you have defaulted in the payment of the said rentals for six months already, from January 1, 2007 to June 30, 2007.

In view thereof, my client is hereby terminating your lease, and demand is hereby made upon you to vacate the leased premises and pay your rentals in arrears within five (5) days from your receipt hereof.

Your truly,

Atty. X

B. Simple contracts: lease and sale

2. Prepare a clause stipulating a right of first refusal to be embodied in a contract of lease, in case of sale of the property leased. (2007 Bar Question)

SUGGESTED ANSWER:

It is hereby agreed that if the Lessor should decide to sell the leased premises during the period of this lease, he shall first offer the same in writing to the Lessee who shall have the right to accept the offer within a period of thirty (30) days from receipt of the same. Should the Lessee fail or refuse to accept, the Lessor may offer to sell the property to any other person, provided that he cannot offer the same at a lower price without first extending the same right of first refusal to the Lessee.

C. Special power of attorney

3. Allison hired Atty. X as his counsel in his complaint for Collection of Sum of Money. Upon receipt on March 20, 2009 of the Notice of Pre-Trial which was scheduled on May 24, 2009, Allison noted that at that time he would still be in a two-week conference in St. Petersburg. He thus asked Atty. X to represent him during the pre-trial.

Prepare the necessary document that Atty. X should submit to the court to enable him to represent Allison during Pre-Trial. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS:

THAT, I, ALLISON, of legal age and a resident of _____ have named, appointed and constituted Atty. X, of legal age and resident of _____, to be my true and lawful attorney-in-fact, for me and in my name, place and stead, to do or perform any or all of the following acts and deeds, to wit:

To represent me at the pre-trial of the case entitled ALLISON vs. _____, Civil Case No. _____ of the Regional Trial Court of Manila, on _____ 2010 or any postponement thereof, with full authority to consider and decide on those matters covered by Section 2, Rule 18 of the 1997 Rules of Civil Procedure.

HEREBY GIVING AND GRANTING unto my said Attorney-in-Fact full power and authority whatsoever necessary, proper or convenient as I might or could lawfully do if personally present, and hereby CONFIRMING AND RATIFYING all that my Attorney-in-Fact shall lawfully do or cause to be done by virtue of these presents.

(Place and date)

(Sgd.) ALLISON

ACCEPTED:

Atty. X

(Acknowledgment)

4. Romeo Hacendero wants to authorize Juanito Ahente to sell, on cash basis, for a price not lower than P500,000.00, a parcel of land, situated in Muñoz, Nueva Ecija, and covered by Transfer Certificate of Title No. 123456, in the Register of Deeds of Nueva Ecija. Prepare a Special Power of Attorney granting such authority. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

REPUBLIC OF THE PHILIPPINES)) S.S.
CITY OF MANILA)

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN Y THESE PRESENTS:

THAT I, ROMEO HACENDERO, of legal age and a resident of _____, have named JAUNITO ABENTE, of legal age and a resident of _____, to be my true and lawful Attorney-in-Fact, for me and in my name, place and stead, to do or perform the following acts and deeds, to wit:

To sell for the price of not lower that P500,000.00, that parcel of land situated in Muñoz, Nueva Ecija, of which I am the absolute owner, my title thereto being evidenced by Transfer Certificate of Title No. 123456 of the Register of Deeds of Nueva Ecija, and to sign the corresponding deed of sale.

HEREBY GIVING AND GRANTING unto my said Attorney-in-Fact full power or authority as may be proper or necessary as fully to all extent as I could do if personally present, and hereby confirming all that my said Attorney-in-Fact shall lawfully do or cause to be done by virtue of these presents.

Manila, September ___, 2009.

ROMEO HACENDERO
Principal

ACKNOWLEDGMENT

In the City of Manila, this ____ day of September, 2009, personally appeared before me Mr. Romeo Hacendero, with Driver's License No. _____ issued at _____ on _____, known to me to be the same person who executed the foregoing instrument, and he acknowledged to me that he executed the same of his own free and voluntary act and deed.

I further certify that the foregoing instrument is a Special Power Attorney over a parcel of land situated in Muñoz, Nueva Ecija.

WITNESS MY HAND AND SEAL.

NOTARY PUBLIC
(Attorney's Roll No.)
(Commission No.)
(IBP Membership No.)
(PTR O.R. No.)
(Email Address)

Doc. No. _____
Page No. _____
Book No. _____
Series of 2009

D. Verification and certificate of non-forum shopping

5. Prepare the following: (2010 Bar Question)

A) Verification and Certification against Forum Shopping. (5%)

SUGGESTED ANSWER:

VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING

X, after being duly sworn, hereby deposes and states:

That he is the plaintiff in the above-entitled case; that he has caused the foregoing Complaint to be prepared; that he has read the same and that the allegations of fact therein contained are true of his personal knowledge or based on authentic documents;

That (a) he has not heretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency, and to the best of his knowledge, no such other action or claim is pending therein; and (b) if he should hereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to this Honorable Court.

B) Petition for Letters Rogatory. (5%)

SUGGESTED ANSWER:

(caption)

PETITION FOR LETTERS ROGATORY

PLAINTIFF, through counsel, respectfully alleges:

1. That the above action is pending in this court and, for the purpose of completing the evidence and presenting to the court all the facts whereby a just decision can be arrived at, it is necessary that the testimony of Mr. A. B., who is presently residing in 123 North Avenue, Vancouver, British Columbia, Canada, be taken;

2. That the said witness will be unable to go to the Philippines to testify in this case due to his ailment as certified to by his doctor's sworn certificate hereto attached as Annex "A" hereof;

3. That it is in the interest of justice that the testimony of the aforementioned witness be taken and made part of the evidence in this case.

WHEREFORE, it is respectfully prayed that this court order the issuance by the clerk of this court of letters rogatory to the proper judicial tribunal of Vancouver, British Columbia, Canada, requesting the examination of Mr. A.B. on the written interrogatories filed herewith,

Manila, September 6, 2010.

Atty. WY

Notice of Hearing

Atty. M
Counsel for the defendant
(address)

Sir:

Kindly take notice that the foregoing petition will be submitted to the Honorable Court on September 27, 2010, for its consideration and resolution.

Atty. WY

E. Notice of hearing and explanation in motions

6. Kyle Angelo was served with summons and a copy of the complaint of Ciara Jane for collection of the amount of P1,000,000.00 as evidenced by a promissory note signed by Kyle Angelo. She alleged that the debt was overdue; and that Kyle Angelo refused to pay despite repeated demands.

Kyle Angelo engaged the services of Atty. Carlos Sa bit, who decided to file a motion to dismiss on the ground of lack of cause of action and prescription. Atty. Carlos Sabit drafted the motion and sent the draft to Kyle Angelo for his perusal.

Kyle Angelo, being himself a law graduate, quickly noticed that the draft did not contain a notice of hearing.

Draft the notice of hearing that Atty. Carlos Sabit should include in the motion to dismiss. (3%)
(2017 Bar Question)

SUGGESTED ANSWER:

NOTICE OF HEARING

Atty. _____
Counsel for the plaintiff

GREETINGS:

Please take notice that the above motion shall be submitted for the consideration of the Honorable Court on Friday (month, date, and year) at 2:00 p.m., or as soon thereafter as counsel may be heard.

ATTY. CARLOS SABIT
Counsel for the defendant

Copy furnished through personal service:

Atty. _____

Counsel for the plaintiff

Address _____

F. Judicial Affidavits

7. Herbert Madasalin, a 25-year old Bar candidate, surrendered his driver's license to the security guard at the Arlegui Gate when he entered the Malacanang compound to pray at the National Shrine of St. Jude Thaddeus. After praying the novena to St. Jude, Herbert went to the Arlegui Gate to retrieve his driver's license. However, he was not able to get the license because the security guard was then elsewhere. He returned the next day only to be told that the security guard had misplaced the license. The security guard concerned could not anymore remember where he had placed the license.

Herbert immediately requests your assistance in the preparation of an affidavit of loss. His address is at 143 Zuzuregui Street, Don Antonio Heights, Quezon City. As his friend, prepare Herbert's affidavit of loss. (5%) (2017 Bar Question)

SUGGESTED ANSWER:

Republic of the Philippines)

City of Quezon) s.s.

AFFIDAVIT OF LOSS

I, Herbert Madasalin, of legal age, single, with residence at 143 Zuzuregui Street, Don Antonio Heights, Quezon City after having been duly sworn deposes and says that:

1. That I am the holder of a Non-Professional Driver's License No. _____ issued by the La Loma, Quezon City LTO Branch with expiration at _____.
2. That sometimes in (state date) when I entered the Malacañang Compound to pray at the National Shrine of St. Jude Thaddeus I surrendered my driver's license to the security guard at the Arlegui Gate. That after praying the novena, I went to the Arlegui Gate to retrieve my driver's license, but I was not able to get my license because the security guard was then elsewhere;
3. That when I returned the next day, I was told that the security guard had misplaced my license, and could not anymore remember where he had placed my license;
4. That despite earnest efforts to locate said driver's license proved futile;
5. That I am executing this affidavit to support my application for the issuance of a replacement driver's license.

FURTHER AFFIANT SAYETH NAUGHT

HERBERT MADASALIN

WITNESSES:

SUBSCRIBED AND SWORN TO before me this ____ day of November 2017 in the City of Quezon, affiant exhibiting before me his competent evidence of identity which is a Postal I.D. no. _____ issued at ____ on ____ expiring on _____.

NOTARY PUBLIC

Office address

Commission no.

Until December ____

For the City of ____

Roll No. _____

IBP OR No. date, and place of issuance

PTR OR No. date, and place of issuance

MCLE Compliance until _____

Doc. No. ____

Page No. ____

Book No. ____

Series of 2017

[Note: Under Section 163 of the Local Government Code of 1991: "when an individual subject to the community tax acknowledges any document before a notary public, takes the oath of office upon election or appointment to any position in the government service; receives any license, certificate, or permit from any public authority; pays any tax or fee; receives any money from any public fund; transacts other official business; or receives any salary or wage from any person or corporation, it shall be the duty of any person, officer, or corporation with whom such transaction is made or business done or from whom any salary or wage is received to require such individual to exhibit the community tax certificate. The presentation of community tax certificate shall not be required in connection with the registration of a voter"].

8. Prepare an affidavit of merits to be attached to a Petition for Relief. (2007 Bar Question)

SUGGESTED ANSWER:

REPUBLIC OF THE PHILIPPINES)
CITY OF MANILA) S.S.

AFFIDAVIT OF MERIT

I, Mr. B, of legal age, single, and a resident of Quezon City, after being duly sworn, depose and state that:

1. I am the defendant in the case entitled "A versus B, docketed as Case No. 1234 of the Regional Trial Court of Manila, Branch 56, for collection of a sum of money;

2. On July 7, 2007, while on our way to the court to attend the hearing of said case, a truck bumped the taxicab in which my counsel and I were riding, causing serious physical injuries to both of us, which necessitated our hospitalization for two months;

3. Upon failure to appear in court on that date, the Honorable Regional Trial Court proceeded with the trial and thereafter rendered judgment ordering me to pay the plaintiff the amount of P500,000.00

with interest from January 10, 2006, plus cost. The said decision was served on my counsel only on September 15, 2007.

4. If I am given a chance to present evidence, I can show that the amount being collected from me by the plaintiff has been fully paid as shown by the receipt, a copy of which is attached hereto as Annex 1 of this Affidavit;

FURTHER, AFFIANT SAYETH NAUGHT.

Manila, September 20, 2007.

B
Affiant

SUBSCRIBED AND SWORN to before me, this 21st day of September 2007, by the affiant Mr. B who exhibited to me his Passport No. 345678 issued at Manila, on January 12, 2007.

WITNESS MY HAND AND SEAL

CD
NOTARY PUBLIC
Until December 31, 2007
Commission No. _____
(address)
Attorney's Roll No. _____
IBP Membership No. _____
PTR O.R. No. _____,
Manila

Doc No. _____
Page No. _____
Book No. _____
Series of 2007

G. Notarial certificates: *jurat* and acknowledgement

H. Motions for extension of time, to dismiss, and to declare in default

9. [Alexander Sison, resident of 111 Libertad St., Sampaloc, Manila, engages your services as lawyer. He tells you that a certain Mr. Juan Jamero of 222 Juan Luna St., Tondo, Manila, owes him P1,000,000.00; that the debt is long overdue; and that, despite repeated demands, Jamero has failed to comply with his obligation. He also shows you a promissory note, executed on January 3, 2008, wherein Jamero promises to pay the amount of P1,000,000.00, with 12% interest per annum, within one (1) year from date of note. Sison agrees to pay you attorney's fees in the amount of P75,000.00, and a fee of P3,000.00 for every appearance in court]

Assume that summons had been served on Jamero, but no responsive pleading was filed within the reglementary period.

Prepare a motion to declare Jamero in default. (4%) (2009 Bar Question)

SUGGESTED ANSWER:

REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
BRANCH _____, MANILA

ALEXANDER SISON

Plaintiff,
- Versus -

CIVIL CASE NO.

JUAN JAMERO,
Defendant.

x-----x

MOTION TO DECLARE IN DEFAULT

PLAINTIFF, through undersigned counsel, through this Honorable court respectfully alleges:

1. That on September __, 2009, defendant was served with summons and a copy of the Complaint;
2. That the reglementary period for the defendant to file an Answer or motion to dismiss expired on _____, without the defendant filing any such answer or motion.
3. That defendant may now be declared in default.

Wherefore, it is respectfully prayed that the defendant be declared in default and the plaintiff be allowed to present his evidence *ex parte*.

Manila, _____, 2009.

ATTY. _____

Counsel for the Plaintiff

(address)

Attorney's Roll No. _____

Date _____

PTR No., _____, Place/Date of issue

IBP O.R. No. _____

Date/Place issued _____

MCLE Cert. No. _____

Email address: _____

NOTICE OF HEARING

Mr. Juan Jamero
222 Juan Luna St., Tondo
Manila

Sir:

Notice is hereby given that on _____, at 8:30 a.m., the foregoing motion will be submitted to the Honorable Court for its consideration and resolution.

ATTY. _____

IV. Bar Questions not falling under any category for the 2019 Bar Syllabus

1. Plaintiff Jun Ahorro filed a complaint for collection of sum of money before the Regional Trial Court of Manila. Because of the large amount of his claim, he had to pay a sizeable docket fee. He insisted on paying the docket fee and other fees in installments because staggered payment is allowed under Rule 141, as amended. The Office of the Clerk of Court (OCC) refused to accept the complaint unless he paid the full amount of the docket and other required fees.

Plaintiff Jun Ahorro's position _____. (1%) (2013 Bar Question)

- a. is allowed because of the large amount of the docket fee;
- b. is justified because it is discretionary on the part of the OCC to accept staggered payment;
- c. is incorrect because the amendment on staggered payment has been suspended;
- d. is not allowed because the full payment of docket fee is jurisdictional;
- e. cannot be allowed because of its prejudicial impact on the judiciary's financial operations.

SUGGESTED ANSWER:

D [Rules of Court, Rule 141, Sec. 1].

2. Your client is the plaintiff in a civil case for damages arising from a car accident where he sustained serious physical injuries and damages amounting to P1Million. The counsel for the defendant asks you to give him a proposed amount for purposes of settlement and you are aware that whatever amount you tell him would not readily be accepted and would probably be cut into half.

What is your best legal and ethical course of action? (1%) (2013 Bar Question)

- (A) Inflate your proposal to make allowances for a compromise.
- (B) Tell the defendant's counsel the correct amount of damages.
- (C) Offer him a reasonably low amount so that the case can immediately be settled.
- (D) Ask the defendant's counsel to first submit his negotiating figure.
- (E) Play hard-to-get and initially refuse all the defendant's initiatives to settle.

SUGGESTED ANSWER:

D [It is the defendant that must submit first the negotiating figure]

3. Atty. Quiso was the retained counsel for Alfa Security Agency and handled all the cases involving the company. Adam, the Assistant Manager of the agency, hired Atty. Quiso when he was sued in an ejectment case. Later, Adam was fired from the agency. Adam did not return a vehicle and so, Atty. Quiso - as counsel for the security agency - filed a replevin suit Adam moved for Atty. Quiso's disqualification considering that the ejectment case is still pending. Is there conflict of interest? (2012 Bar Question)

- a. No, the cases are totally unrelated and there is no occasion to unduly use confidential information acquired from one case in the other.
- b. No, Atty. Quiso is duty bound to handle all cases of his client, including the replevin case against Adam.
- c. Yes, proscription is against representation of opposing parties who are present clients or in an unrelated action.
- d. Yes, Atty. Quiso must withdraw as counsel for Adam, otherwise he will lose his retainer.

SUGGESTED ANSWER:

C. [Kypers v. Hontanosas, A.C. No. 5704, May 8, 2009]

4. During the IBP Chapter elections, the candidates for President were Atty. EJ, a labor arbiter of the NLRC, Fiscal RJ of the DOJ and Atty. Gani of the PAO. After canvass, Fiscal RJ garnered the highest number of votes, followed by Arbiter EJ and by Atty. Gani. The winning Vice-President moved for the annulment of the election for President because all the candidates for President are government officials and are disqualified. Decide. (2012 Bar Question)
 - a. The election for presidency is invalid, and the elected Vice-President shall assume the Presidency by succession.
 - b. The election is a failure, and new elections should be held.
 - c. Fiscal RJ and Arbiter EJ are disqualified. Atty. Gani should be declared winner.
 - d. All the candidates who are government officials are deemed resigned upon their acceptance of nomination; and so, Fiscal RJ is winner.

SUGGESTED ANSWER:

A [In re: 2009 IBP Elections]

5. Who elects the members of the Board of Governors of the IBP? (2012 Bar Question)
 - a.
 - b. The Presidents of all IBP Chapters;
 - c. The members at large of the IBP;
 - d. The House of Delegates;
 - e. The Past Presidents of all IBP chapters.

SUGGESTED ANSWER:

C [In re: 2009 IBP Elections]

6. Who elects the President and Vice-President of the IBP? (2012 Bar Question)
 - a. The President of all IBP Chapters;
 - b. The IBP members voting at large;
 - c. The Board of Governors;
 - d. The outgoing IBP officers.

SUGGESTED ANSWER:

C [In re: 2009 IBP Elections]

7. On 17 April 2006 NWD, a local water district entity, hired Atty. Chito as private counsel for a year with the consent of the Office of the Government Corporate Counsel (OGCC). Shortly after, a leadership struggle erupted in NWD between faction A and faction B. Siding with the first, Atty. Chito filed several actions against the members of faction B. Eventually, the court upheld Faction B which thus revoked Atty. Chito's retainer on 14 January 2007. With OGCC's approval, NWD hired Atty. Arthur in his place. When Atty. Arthur sought the dismissal of the actions that Atty. Chito had instituted, the latter objected on the ground that his term had not yet expired and Atty. Arthur had no vacancy to fill up. Is Atty. Chito right? (2011 Bar Question)

- a. No, because Atty. Chito's continued appearances in the cases [were] without authority since 14 January 2007.
- b. No, because Atty. Arthur would have violated the rule on forum shopping.
- c. Yes, because Atty. Chito's retainer and authority remained valid until 17 April 2006.
- d. No, because Atty. Chito has the duty to expose the irregularities committed by the members of Faction B.

SUGGESTED ANSWER: A

8. What is the method of national inquiry into the conduct of Supreme Court magistrates? (2011 Bar Question)
- a. Administrative investigation.
 - b. Disqualification.
 - c. Impeachment.
 - d. Disbarment.

SUGGESTED ANSWER:

C [Sec. 2, Art. XI, 1987 Const.]

9. Draft the accusatory portion of an Information for RAPE of a 13-year old child committed by her maternal uncle in broad daylight at the back of a church. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

The undersigned public prosecutor accuses A.B. of the crime of Qualified Rape pursuant to Republic Act No. 8353 otherwise known as the "Anti-Rape Law of 1997" committed as follows:

10. Draft a Petition for the Issuance of a Writ of *Habeas Data*. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

Republic of the Philippines
(Court)

IN THE MATTER OF THE
PETITION FOR THE HABEAS
DATA, JUAN DE LA CRUZ

Petitioner,

versus

SP. PROC. NO. _____

THE CHIEF OF STAFF OF THE ARMED
FORCES OF THE PHILIPPINES and THE
COMMANDING GENERAL OF THE
PHILIPPINE NATIONAL POLICE,

Respondents.

X.....X

PETITION

PETITIONER, through undersigned counsel, respectfully alleges;

1. That petitioner is of legal age and a resident of Balanga, Bataan, while respondents are likewise of legal age and may be served with summons at their offices at Cam Crame, respectively, EDSA, Quezon City.

2. That, on or about March 1, 2010, allegedly on the basis of intelligence reports, elements of the Armed Forces of the Philippine National Police, without any warrant of arrest, apprehended the petitioner and 42 others while they were peacefully attending a seminar on rural health at Morong, Bataan.

3. That, ever since that date, March 1, 2010, until the present, the petitioner is under detention by the military and the police on the basis of the alleged intelligence reports.

4. That the petitioner had repeatedly asked the respondents to show him the alleged intelligence reports so that he can defend himself, but until the present, the respondents have failed and/or refused to comply with the said request of the petitioner.

5. That, to the best of the knowledge of the petitioner, the said intelligence reports are in the abovementioned offices of the respondents.

WHEREFORE, is it respectfully prayed that, after due hearing, a writ of Habeas Data be issued ordering the respondents to disclose and/or furnish copies thereof to the petitioner, the alleged intelligence reports which are the basis of his continued unlawful detention.

Place and date.

Counsel for the Petitioner

(Verification and Certification of Non-Forum Shopping)

11. Draft a Petition for Bail. (5%) (2010 Bar Question)

SUGGESTED ANSWER:

(Caption)

PETITION FOR BAIL

Defendant Juan de la Cruz, through counsel, respectfully alleges:

1. That the defendant is in custody for the alleged commission of a capital offense.

2. That no bail has been recommended for his temporary release on the assumption that the evidence of guilt is strong.

3. That the burden of showing that evidence of guilt is strong is with the prosecution, and unless that fact is satisfactorily shown, the defendant may be bailed at the court's discretion;

WHEREFORE, upon due notice and hearing, it is respectfully prayed that the defendant be admitted to bail in such amount as this Honorable Court may fix.

(Place and Date)

MCL

Counsel for the Defendant

(notice of hearing)

12. Court of Appeals (CA) Justice Juris was administratively charged with gross ignorance of the law for having issued an order "temporarily enjoining" the implementation of a writ of execution, and for having issued another order for the parties to "maintain the status quo" in the same case. Both orders are obviously without any legal basis and violate CA rules. In his defense, Justice Juris claims that the challenged orders were collegial acts of the CA Division to which he belonged. Thus, he posits that the charge should not be filed against him alone, but should include the two other CA justices in the Division. Is the contention of Justice Juris tenable? Explain. (3%) (2009 Bar Question)

SUGGESTED ANSWER:

No, the contention of Justice Juris is not tenable. Section 5, Rule VI, of the Internal Rules of the Court of Appeals provides that:

“Sec. 5. *Action by a Justice* – All members of the Division shall act upon an application for a temporary restraining order and writ of preliminary injunction. However, if the matter is of extreme urgency, and a Justice is absent, the two other Justices shall act upon the application. The action of the two Justices or the *ponente* shall however be submitted on the next working day to the absent member or members of the Division for ratification, modification or recall.”

In this case, if Justice Juris acted alone in issuing the erroneous orders, he alone should be held liable. But if the orders were issued by the Division to which he belongs, all the members of the Division should be included in the charge. It appears that Justice Juris acted alone in issuing the said orders.

13. Alexander Sison, resident of 111 Libertad St., Sampaloc, Manila, engages your services as lawyer. He tells you that a certain Mr. Juan Jamero of 222 Juan Luna St., Tondo, Manila, owes him P1,000,000.00; that the debt is long overdue; and that, despite repeated demands, Jamero has failed to comply with his obligation. He also shows you a promissory note, executed on January 3, 2008, wherein Jamero promises to pay the amount of P1,000,000.00, with 12% interest per annum, within one (1) year from date of note. Sison agrees to pay you attorney's fees in the amount of P75,000.00, and a fee of P3,000.00 for every appearance in court.

As Sison's lawyer, prepare the complaint that you will file in court against Juan Jamero. (10%) (2009 Bar Question)

SUGGESTED ANSWER:

REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
MANILA

ALEXANDER SISON
Plaintiff,
- Versus -

CIVIL CASE NO.

JUAN JAMERO,
Defendant.

x-----x

COMPLAINT

PLAINTIFF, through undersigned counsel, to this Honorable Court respectfully alleges:

1. That plaintiff is of legal age and a resident of 111 Libertad St., Sampaloc, Manila, while defendant is of legal age and a resident of 222 Juan Luna St., Tondo, Manila, where he may be served with summons;
2. That on January 3, 2008, the defendant borrowed from the plaintiff the amount of P1,000,000.00, evidenced by a Promissory Note executed by the defendant on the same date, a copy of which is hereto attached as Annex "A" and made an integral part hereof, promising to pay the plaintiff the said amount of

P1,000,000.00 with interest thereon at the rate of 12% per annum within a period of one year from the date thereof;

3. That the period of one year expired on January 2, 2009, but the defendant has not paid the said loan or any portion thereof despite repeated demands;

4. The due to the defendant's failure to pay plaintiff's plainly just and valid claim, the plaintiff was compelled to institute this suit and to engage the services of counsel, to whom he has agreed to pay the amount of P75,000.00 at attorney's fees, plus P3,000.00 for every appearance in court.

5. That barangay mediation was previously sought but no agreement was arrived at and the plaintiff was given a certification to file his claim in court, a copy of which is hereto attached as Annex "B" hereof.

WHEREFORE, it is respectfully prayed that, after due hearing, judgment be rendered ordering the defendant to pay the plaintiff the amount of P1,000,000.00, with interest thereon at the rate of 12% per annum from January 2, 2009 unit fully paid, plus the amount of P75,000.00 plus P3,000.00 per court appearance, as attorney's fees.

Plaintiff prays for such other and further relief as may be just or equitable under the premises.

Manila, September 28, 2009.

ATTY. _____
Counsel for the Plaintiff
(address)
Attorney's Roll No. _____

Date _____
PTR No., _____, Place/Date of issue
IBP O.R. No. _____
Date/Place issued _____
MCLE Cert. No. _____
Email address: _____

CERTIFICATION AGAINST FORUM SHOPPING

I, ALEXANDER SISON, after being duly sworn, hereby depose and state:

1. That I am the plaintiff in the above-entitled case;
2. That I have not initiated any case involving the same issues before any other court or administrative body;
3. That I am not aware of the pendency of any case involving the same issues or proceedings in any other court or administrative body; and
4. That if I should hereafter learn about the pendency of another case involving the same issues in another court, tribunal or administrative body, I will notify this Honorable Court within five (5) days from thereon.

ALEXANDER SISON
Affiant

14. From the affidavits and the death certificate submitted during the preliminary investigation, the following facts are established: At 6:00 o'clock in the evening of September 13, 2009, at the corner of Dapitan and Dos Castillas Sts., Sampaloc, Manila, Edgar Bastonero, *alias* Bugoy, and Carlos Tirador, *alias* Pogi, accosted Johnny Escolar, a student, and demanded the latter's cellular phone and wrist watch. Because Johnny resisted, Bastonero pulled out a knife and stabbed Johnny several times in the chest, causing instantaneous death. Bastonero and Tirador then ran away. The affidavits were executed by William Tan and Henry Uy, classmates of Johnny, who witnessed the entire incident. The death certificate was issued by Dr. Jose Cabra who conducted the autopsy on Johnny.

As Assistant City Prosecutor in Manila, prepare the appropriate criminal information to be filed in court. (10%) (2009 Bar Question)

SUGGESTED ANSWER:

REPUBLIC OF THE PHILIPPINES
NATIONAL CAPITAL JUDICIAL REGION
REGIONAL TRIAL COURT
MANILA

PEOPLE OF THE PHILIPPINES
Plaintiff

- versus -

CRIM CASE NO. _____
For: Robbery with Homicide

EDGAR BASTONERO *alias* "BUGOY" and
CARLOS TIRADOR *alias* "POGI",
Accused.

INFORMATION

The undersigned Assistant City Prosecutor of Manila hereby accuses Edgar Bastonero *alias* "Bugoy" and Carlos Tirado *alias* "Pogi", of the crime of ROBBERY WITH HOMICIDE, committed as follows:

That on or about 6:00 p.m. of September 13, 2009 at the corner of Dapitan and Dos Castillas Streets, Sampaloc, Manila, Philippines, within the jurisdiction of this Honorable Court, the said accused, conspiring and confederating together and mutually aiding each other, with the use of superior force, and with intent to gain, did then and there, willfully, unlawfully and feloniously, and by means of violence, take and take away from one JOHNNY EXCOLAR, a student, one cellular phone and a wrist watch belonging to the said JOHNNY ESCOLAR, of the total value of One Hundred Thousand Pesos (P100,000.00), to the damage and prejudice of the said owner, and on the same occasion and for the purpose of enabling them to take away the articles above mentioned, the herein accused, in pursuance of their conspiracy, did then and there willfully, unlawfully and feloniously, with intent to kill, and taking advantage of their superior number and strength, treacherously attack, assault, and repeatedly stab the said JOHNNY ESCOLAR in the chest with a knife, thereby inflicting multiple chest wounds on the said person which directly caused his death.

Contrary to law.

Manila, Philippine, 2009

Assistant City Prosecutor

CERTIFICATION

I hereby certify that a preliminary investigation was conducted by me, in which the accused were given an opportunity to present their evidence, and on the basis of the affidavits presented, there is *prima facie* reason to believe that a crime has been committed and that the accused are probably guilty thereof.

Assistant City Prosecutor

Witnesses:

Names

Address

William Tan

Henry Uy

Dr. Jose Cabra

Bail Recommended: P100,000.00 for each accused

- 15. Draft a complete deed of donation of a piece of land in accordance with the form prescribed by the Civil Code. (8%) (2008 Bar Question)**

SUGGESTED ANSWER:

DEED OF DONATION

KNOW ALL MEN BY THESE PRESENTS:

That, for an in consideration of the love and affection which I bear for the donee, I, Mr. A.B., Filipino, of legal age, single and resident of No. 7, West Aguila St., Green Cross Subdivision, Quezon City, Manila, have donated, as I hereby donate, to the Donee, Miss C.D., of legal age, single and a resident of No. 11, West Aguila St., Green Cross Subdivision, Quezon City, that certain parcel of land and the improvements thereon located at No. 9, West Aguila St., Green Cross Subdivision, Quezon City, covered by Transfer Certificate of Title No. 12345 of the Registry of Deeds of Quezon City, and which is more particularly described as follows:

(technical description)

And I, the above-named donee, do hereby accept this donation with deep gratitude to the donor.

IN WITNESS WHEREOF, the parties hereto have signed these presents, at Quezon City, Philippines, this 25th day of September, 2008.

A.B.
Donor

C.D.
Donee

WITNESSES:

REPUBLIC OF THE PHILIPPINES)

) S.S.

CITY OF QUEZON)

ACKNOWLEDGMENT

In the City of Quezon, Philippines, this 25th day of September, 2008, before me, a Notary Public in and for the said city, personally appeared Mr. A.B., with Driver's License No. _____ issued at Quezon City, on _____, and Miss C.D., with Passport No. _____ issued at Manila, on _____, both of whom are personally known to me and to me known to be the same persons who executed the foregoing instrument, and they acknowledged to me that the same is their free and voluntary act and deed.

I further certify that the foregoing instrument is a deed of donation of a parcel of land with the improvements thereon located at No. 9, West Aguila, Green Cross Subdivision, Quezon City, and consists of _____ pages, including this page, and signed on each and every page by the said parties and their instrumental witnesses.

WITNESS MY HAND AND SEAL

NOTARY PUBLIC

Until December 31, 2010

(address and tel. no.)

(Attys. Roll No., date)

(IBP O.R. No., date/place issued)

(PTR O.R. No., date/place issued)

Doc No. _____

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16. Prepare an arbitration clause to be included in a contract. (2007 Bar Question)**SUGGESTED ANSWER:**

Any dispute that may arise between the parties hereto concerning the interpretation of this contract and/or on the rights, duties or liabilities of any party arising hereunder, shall be exclusively referred to arbitration by a committee of three (3) arbitrators. Each party shall nominate one arbitrator and the two so nominated shall choose the third arbitrator. If they cannot agree on the third arbitrator within sixty (60) days from the date that the last of them was nominated, the Executive Judge of the Regional Trial Court of Manila shall be asked to appoint such third arbitrator. Any decision of the Arbitration Committee shall be final, enforceable and binding on the parties.

FREQUENTLY ASKED TOPICS (2007 - 2017)

TOPIC					No. of Times Asked
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Canons 14 to 23	Canon 15	19
JUDICIAL ETHICS	Sources	New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)	Canon 4		19
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To society (Canons 1 to 6)	Canon 1		16
PRACTICAL EXERCISES	Others* not in syllabus				16
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Canons 14 to 30	Canon 22	10
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the legal profession	Canons 7 to 11	Canon 9	9
JUDICIAL ETHICS	Sources	New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)	Canon 3		9
LEGAL ETHICS	Practice of Law	Public officials and the practice of law; prohibitions and disqualifications			8
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Canons 14 to 22	Canon 14	8
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Canons 14 to 24	Canon 16	8
LEGAL ETHICS	Notarial Practice (A.M. No. 02-8-13-SC, as amended)	Powers and limitations			8

FREQUENTLY ASKED TOPICS (2007 - 2017)

LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the courts (Canons 10 to 13)	Canon 12		7
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Canons 14 to 28	Canon 20	7
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Canons 14 to 29	Canon 21	7
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Attorney's Fees	Attorney's liens	7
LEGAL ETHICS	Suspension, disbarment, and discipline of lawyers	Grounds			7
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the courts (Canons 10 to 13)	Canon 13		6
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Attorney's Fees	Contingency fee arrangements	6
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Attorney's Fees	Fees and controversies with clients	6
LEGAL ETHICS	Suspension, disbarment, and discipline of lawyers	Nature and characteristics of disciplinary actions against lawyers			6
LEGAL ETHICS	Mandatory Continuing Legal Education (B.M. No. 850, as amended)	Compliance			6
LEGAL ETHICS	Mandatory Continuing Legal Education (B.M. No. 850, as amended)	Exemptions			6
LEGAL ETHICS	Practice of Law	Continuing Requirements for Membership in the Bar			5

FREQUENTLY ASKED TOPICS (2007 - 2017)

LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility		Canon 2		5
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility		Canon 3		5
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the courts (Canons 10 to 13)	Canon 11		5
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Canons 14 to 26	Canon 18	5
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Canons 14 to 27	Canon 19	5
LEGAL ETHICS	Notarial Practice (A.M. No. 02-8-13-SC, as amended)	Competent evidence of identity			5
JUDICIAL ETHICS	Disqualifications of judicial officers (Rule 137)	Compulsory			5
JUDICIAL ETHICS	Administrative jurisdiction of the Supreme Court over Judges and Justices (all levels)				5
LEGAL ETHICS	Practice of Law	Qualifications for Admission to the Bar (B.M. 1153)			4
LEGAL ETHICS	Practice of Law	The Lawyer's Oath			4
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the legal profession	Canons 7 to 9	Canon 7	4
JUDICIAL ETHICS	Sources	New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)			4
LEGAL ETHICS	Practice of Law	Concept			3

FREQUENTLY ASKED TOPICS (2007 - 2017)

LEGAL ETHICS	Practice of Law	Appearance of Non-Lawyers	Non-lawyers in courts and/or administrative tribunals		3
LEGAL ETHICS	Practice of Law	Prohibited practice of non-lawyers and appearance without authority			3
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the clients	Attorney's Fees	Quantum meruit	3
LEGAL ETHICS	Notarial Practice (A.M. No. 02-8-13-SC, as amended)	Qualifications of a notary public			3
JUDICIAL ETHICS	Sources	New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)	Canon 1		3
JUDICIAL ETHICS	Disqualifications of judicial officers (Rule 137)	Voluntary			3
PRACTICAL EXERCISES	Motions for extension of time, to dismiss, and to declare in default				3
LEGAL ETHICS	Practice of Law	Appearance of Non-Lawyers	Law Student Practice Rule (Rule 138-A)		2
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the legal profession	Canons 7 to 10	Canon 8	2
LEGAL ETHICS	Duties and Responsibilities of a lawyer under the Code of Professional Responsibility	To the courts (Canons 10 to 13)	Canon 10		2
LEGAL ETHICS	Suspension, disbarment, and discipline of lawyers	Proceedings (Rule 139-B, Rules of Court, as amended)			2

FREQUENTLY ASKED TOPICS (2007 - 2017)

LEGAL ETHICS	Notarial Practice (A.M. No. 02-8-13-SC, as amended)	Notarial register			2
LEGAL ETHICS	Notarial Practice (A.M. No. 02-8-13-SC, as amended)	Jurisdiction of notary public and place of notarization			2
JUDICIAL ETHICS	Sources	New Code of Judicial Conduct for the Philippine Judiciary (Bangalore Draft)	Canon 2		2
PRACTICAL EXERCISES	Simple contracts: lease and sale				2
PRACTICAL EXERCISES	Special power of attorney				2
PRACTICAL EXERCISES	Verification and certificate of non-forum shopping				2
PRACTICAL EXERCISES	Judicial Affidavits				2