

FRITZIE R. ESPEJO-TY, COMPLAINANT, VS. LOURDES P. SAN DIEGO, RESPONDENT.*Adm. Case No. 169-J. June 29, 1972*

Ponente: ZALDIVAR, J.

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On May 20, 1970 complainant Fritzie R. Espejo-Ty filed with this Court a verified complaint for disbarment, charging respondent Lourdes P. San Diego, a member of the Philippine Bar and an Associate Justice of the Court of Appeals, with acts allegedly constituting serious misconduct, under two specifications, namely: misconduct as a bar examiner, and falsification of public document.

Under the first specification, the complainant alleges that in 1963 respondent, in violation of law and in utter disregard of the time-honored tradition in the judiciary known as "delicadeza," accepted an appointment as member of the Committee of Bar Examiners and performed duties as examiner in the subject of Commercial Law, knowing that her son-in-law, Santiago Ortega, Jr., a relative of hers within the first civil degree by affinity, was then a candidate for the bar who would take the bar examinations of 1963; that as such examiner she gave Santiago Ortega, Jr. the highest rating of 91 % in the subject of Commercial Law among 5,446 examinees to insure his passing the 1963 bar examinations, and as a consequence said Santiago Ortega, Jr., who was rated a grade of 45% in the subject of Civil Law, obtained a general average of 74.9% which enabled him to pass the bar examinations by the very slim margin of .4% above the reconsidered qualifying general average of 74.5%, "to the damage and prejudice of the integrity of judicial proceedings for the admission of attorneys-at-law and to the disadvantage of other bar examinees in said bar examinations." [1]

Under the second specification, the complainant alleges that on April 2, 1968 while acting as Presiding Judge of Branch IX of the Court of First Instance of Rizal, Quezon City, the respondent "did then and there willfully and unlawfully issue an order in Criminal Case No. Q-7067, for Slander, entitled 'People of the Philippines, Plaintiff, vs. Maria A. Agapito, Accused' dismissing the said case and thereby acquitting the accused Maria A. Agapito, to the damage and prejudice of the State and of the offended party therein, Atty. Leon O. Ty, on the basis of the statement that when said case was called for trial on that date, the Fiscal moved for the dismissal of the case on the ground that the complainant had manifested lack of interest in prosecuting it knowing that such statement was completely false because no such motion had been presented by the Fiscal and no such manifestation of lack of interest on the part of the complainant had been made as the court records will show." [2]

This Court on August 13, 1970, resolved "to require both complainant and respondent to submit within 15 days from notice hereof, a memorandum concerning the jurisdiction of the Supreme Court to act on said complaint considering that respondent is a Justice of the Court of Appeals and is removable only by impeachment according to law." [3]

In compliance with the above-mentioned resolution of this Court, on August 28, 1970, the respondent filed her "Memorandum of Authorities" to sustain her stand that the Supreme Court has no jurisdiction to disbar a lawyer

who is an Associate Justice of the Court of Appeals for the reasons: (1) that disbarment proceedings cannot prosper against an Associate Justice of the Court of Appeals who can be removed by impeachment only; (2) that impeachment as a method of removing an Associate Justice of the Court of Appeals is exclusively lodged in the legislature; (3) that the grounds for impeachment are exclusively those only enumerated in the Constitution, namely: culpable violation of the Constitution, treason, bribery and other high crimes; and (4) that a Justice of the Court of Appeals may not be impeached for acts allegedly committed during a prior term of office (when respondent was still a Judge of the Court of First Instance).

On the other hand, in her memorandum, the complainant maintains: (1) that the Supreme Court still has the authority to investigate the charges of acts relating to a bar examination anomaly that were committed by respondent despite her appointment to the Court of Appeals; (2) that the appointment of respondent to the Court of Appeals does not ipso facto clear her of the anomalous acts committed by her as bar examiner; and (3) that despite the findings of guilt by the Supreme Court of the charges against her, Congress still retains its power to impeach and to try the respondent.

Required by this Court to comment on complainant's memorandum, respondent filed her reply memorandum, dated November 10, 1970, to which reply memorandum the complainant filed a rejoinder, dated December 30, 1970.

On January 18, 1971, this Court, without in the meantime resolving the question of whether or not this Court has jurisdiction to act on the complaint, required respondent to file an answer to the complaint. In her answer respondent vehemently denies the charges of "acts constituting serious misconduct" imputed to her. Regarding the charge of misconduct as bar examiner, respondent alleges that complainant filed the very same charge before the sub-committee on justice of the Commission on Appointments, of the Congress of the Philippines, when said body was considering the confirmation of respondent's appointment to the Court of Appeals, but complainant failed to produce any evidence in support of the charge, so that respondent was exonerated. Respondent further alleges that she did not solicit the appointment as bar examiner in the 1963 bar examinations; that she did not conceal the fact that her son-in-law, Santiago Ortega, Jr., was an examinee in the 1963 bar examinations; that she did not violate any law by her acceptance of the appointment as bar examiner; that she did not commit an act of favoritism or partiality in having given her son-in-law the rating of 91% in Commercial Law because, by reason of tight security measures adopted in the bar examinations, an examiner could not even identify the unnamed, unmarked and unnumbered examination notebooks of the bar examinees; that she did not approach any of the bar examiners in behalf of her son-in-law; that at the meeting of the committee of bar examiners she voted against the passing of any candidate who got less than 50% in any subject; that the committee of bar examiners had, in fact, flunked Santiago Ortega, Jr. because he got a grade of less than 50% in one subject; that Santiago Ortega, Jr. filed a petition with the Supreme Court to be admitted to the bar because he got a general average of 74.9% although he got a grade of 45% in Civil Law but the Supreme Court denied his petition by resolution of May 20, 1964; that when Mr. Ortega's individual petition was denied by the Supreme Court he joined a group of other candidates who also had a general average higher than 74.5% but got less than 50% in one subject in a common petition to the Supreme Court to be admitted to the bar, and by resolution of September 22, 1964 the Supreme Court granted the petition; that when the Supreme Court issued the resolution of September 22, 1964, and when Santiago Ortega was admitted to the bar on October 26, 1964, the committee of bar examiners of which she was a member had already been dissolved and become functus officio; that, historically, Santiago Ortega's favorite subject in the college of law was Commercial Law, in which subject he got a bar review grade of 1.25 and a rank of 1.5 among 22 reviewers in the University of Nueva Caceres. Denying the charge of falsification of public document, respondent alleges that the same charge had also been filed with, was fully investigated by, and was dismissed by the sub-committee on justice of the Commission on Appointments of the Congress of the Philippines. Explaining

the circumstances which brought about the issuance of the order of dismissal of Criminal Case No. Q-7607 of the Court of First Instance of Rizal, the respondent avers: that the case was one of slander which was originally filed by Leon O. Ty before the City Court of Quezon City against Maria A. Agapito; that the city court found the accused guilty of the offense charged and imposed upon her a fine of P50.00; that the case was appealed to the Court of First Instance of Rizal and the case was heard by herein respondent who was then the Presiding Judge of Branch IX of the Court of First Instance of Rizal at Quezon City; that during the trial herein complainant testified, and in the series of questions propounded to her by her husband, Atty. Leon O. Ty, who conducted the direct examination as private prosecutor, it was gathered in her answers that she emphasized the fact that the accused never apologized to the offended party despite several opportunities for her to do so and even after she had been advised to do so; that respondent asked Atty. Leon O. Ty whether he and his wife would consider forgiving the accused if she would apologize to them, and because Atty. Ty answered that he was a Christian and could forgive an enemy she suspended the trial and invited the parties to her chamber for a dialogue; that inside her chamber, after some exchange of views the accused apologized and the Tys accepted the apology, and the parties shook hands; that Atty. Alfonso Cruz, counsel for the accused, asked for the dismissal of the case and the Fiscal manifested that he could not do otherwise but agree to the dismissal; that when herein respondent remarked that she would then dismiss the case no one objected and the parties left the chamber satisfied; that after the parties had left, herein respondent, in accordance with the standard procedure on dismissal based on mutual consent of the parties instructed the clerk assigned to the criminal case section to prepare the usual order of dismissal; that the phrase "upon motion of the fiscal" which was used in the order of dismissal was a routinary and standard form prepared by the clerk of court and was not in furtherance of a prevarication, because the case had been amicably settled on April 2, 1968 in the presence of herein respondent as the trial judge then; that the most convincing proof that the Tys had dropped the case is that they never took any step to follow up the case after that confrontation on April 2, 1968 in herein respondent's chambers, and it was only on January 1, 1970, almost two years later, when herein complainants, after respondent's appointment to the Court of Appeals had been announced, went to the office of the clerk of court and raised trouble for not having been served with notice of the order of dismissal; that there is nothing in the record of the case that would show that the complainant had asked for the resetting of the case for hearing as any one who did not know about the dismissal of the case would have done. As an affirmative defense the respondent reiterates her contention, as stated in the memorandum of authorities that she had previously filed, that the Supreme Court has no jurisdiction to disbar an Associate Justice of the Court of Appeals who can be removed from office only by impeachment.

In her reply to respondent's answer, complainant alleges that her failure to prove before the Commission on Appointments the charge that respondent gave her son-in-law the highest grade in Commercial Law was due to a resolution of the Supreme Court stating that "only the Commission on Appointments could ask for the release of the grades of Ortega"; that the security measures adopted in conducting the bar examinations could be defeated where, as obtained in this case, the examiner and examinee were within the first degree of affinity; that respondent's claim that Mr. Ortega's favorite subject was Commercial Law was not a guarantee that he would score a high grade in that subject in the bar examinations; that even if the committee on bar examiners of which respondent was a member had already become *functus officio*, when Mr. Ortega was ultimately admitted to the bar, it should not be overlooked that the matter of respondent's having unethically aided his son-in-law with the highest grade in Commercial Law and thereby enabling him to be included among those who were reconsidered, was already a *fait accompli*; that because bar examinations constitute a part of judicial proceedings (*People vs. Romualdez, et al.*, 57 Phil. 148, 187) and a bar examiner therefore acts as a judicial officer, respondent should have then disqualified herself, at least for *delicadeza*, from accepting the position of bar examiner under the provision of Section 1 of Rule 137 of the Rules of Court; that respondent's actuations as a trial judge in the slander case against Miss Maria A. Agapito showed that she had unusual and personal interest in dismissing the case so as

to favor the accused; that it was not true that the accused apologized, and that Atty. Leon O. Ty accepted the apology, or that the Fiscal moved for the dismissal of the case, or that the case was dismissed by mutual consent, for said incidents are not recorded in the transcript of the stenographic notes; that if it was true that respondent instructed, on April 2, 1968, the clerk of court to prepare the order dismissal, then it is unexplainable why it was only after two years that the City Fiscal was furnished with copy of such order; that contrary to respondent's claim, complainant followed up the case several times, but she was told that the records were in the possession of respondent, which fact showed respondent's intention to fix the case; that respondent's alleged exoneration by the sub-committee on justice of the Commission on Appointments, which is a mere adjunct of the legislative department, cannot bind this Court which has exclusive jurisdiction over disbarment proceedings; that despite respondent's appointment to the Court of Appeals, this Court has jurisdiction to disbar her, and that if the Supreme Court finds her unworthy of being continuously carried on the rolls of attorneys by reason of her misconduct, then it would be up to Congress, later on, to exercise its power of impeachment.

The first question that has to be resolved in this case is whether or not the Supreme Court has jurisdiction to entertain and decide a complaint for disbarment against a Justice of the Court of Appeals. If the answer to this question is in the affirmative, then the next question to be resolved is whether or not respondent had, as charged, committed acts constituting gross misconduct in office as attorney that would warrant her removal from said office.

1. The respondent maintains that no proceedings for the removal from office as attorney may be taken by the Supreme Court, upon its own motion or upon the complaint of a party, against an associate justice of the Court of Appeals, because for the Supreme Court to remove an associate justice of the Court of Appeals from office as attorney is to declare him disqualified to hold the office of justice of the Court of Appeals, and the action of the Supreme Court may give cause for his removal from his office as justice of the Court of Appeals, when, under the law and the Constitution, a justice of the Court of Appeals can be removed from office only on impeachment. The respondent invokes the following provisions of the law and the Constitution in support of her stand:

"The Presiding Justice and the Associate Justices of the Court of Appeals shall not be removed from office except on impeachment upon the grounds and in the manner provided for in Article IX of the Constitution." [4]

"The President, the Vice-President, the Justices of the Supreme Court, and the Auditor General, shall be removed from office on impeachment for and conviction of, culpable violation of the Constitution, treason, bribery, or other high crimes." [5]

"The House of Representatives, by a vote of two-thirds of all its members, shall have the sole power of impeachment." [6]

"The Senate shall have the sole power to try all impeachments. When sitting for that purpose, the Senators shall be on oath or affirmation. When the President of the Philippines is on trial, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of three-fourths of all the Members of the Senate." [7]

"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution trial, and punishment according to law." [8]

The basic qualification that a person must possess in order that he may be appointed Justice of the Court of Appeals is that of being one who has been admitted to the practice of law in the Philippines and whose name appears in the roll of attorneys of the Supreme Court. Section 28 of the Judiciary Act of 1948, (R.A. 296), as amended, provides that the justices of the Court of Appeals shall have the same qualifications as those provided in

the Constitution for members of the Supreme Court. And Section 6, Article VIII, of the Constitution provides that "no person may be appointed member of the Supreme Court unless he has been five years a citizen of the Philippines, is at least forty years of age, and has for ten years or more been a judge of a court of record or engaged in the practice of law in the Philippines." [9]

In the case of "In re Pelaez" (44 Phil. 567, 571-572), this Court has adopted the doctrine laid down by the Supreme Court of Kansas (U.S.A.) in the case of "Peyton's Appeal" (12 Kan., 398, 404) that the power of the Court to exclude unfit and unworthy members of the (legal) profession is inherent; that "it is a necessary incident to the proper administration of justice; that it may be exercised without any special statutory authority, and in all proper cases, unless positively prohibited by statute; and that it may be exercised in any manner that will give the party to be disbarred a fair trial and a full opportunity to be heard."

In the case of "In re Cunanan, et al." (94 Phil. 534, 550-552), this Court had occasion to define in unequivocal terms its authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys-at-law. In that case this Court had to decide on the constitutionality of Republic Act No. 972, entitled "An Act to fix the passing marks for bar examinations from nineteen hundred and forty six up to and including nineteen hundred and fifty five." In declaring unconstitutional that part of R.A. 972 which provides that bar candidates who obtained in the bar examinations of 1946 to 1952 a general average of 70% without falling below 50% in any subject be admitted in mass to the practice of law, this Court, among others, said:

"In decreeing that bar candidates who obtained in the bar examinations of 1946 to 1952, a general average of 70 per cent without falling below 50 per cent in any subject, be admitted in mass to the practice of law, the disputed law is not a legislation; it is a judgment – a judgment revoking those promulgated by this Court during the aforesaid year affecting the bar candidates concerned; and although this Court certainly can revoke these judgments even now, for justifiable reasons, it is no less certain that only this Court, and not the legislative nor executive department, that may do so. Any attempt on the part of any of these departments would be a clear usurpation of its functions, as it is the case with the law in question.

"That the Constitution has conferred on Congress the power to repeal, alter or supplement the rules promulgated by this Tribunal, concerning the admission to the practice of law, is no valid argument. Section 13, article VIII of the Constitution provides:

'Section 13. The Supreme Court shall have the power to promulgate rules concerning pleading, practice, and procedure in all courts, and the admission to the practice of law. Said rules shall be uniform for all courts of the same grade and shall not diminish, increase or modify substantive rights. The existing laws on pleading, practice, and procedure are hereby repealed as statutes, and are declared Rules of Courts, subject to the power of the Supreme Court to alter and modify the same. The Congress shall have the power to repeal, alter, or supplement the rules concerning pleading, practice, and procedure, and the admission to the practice of law in the Philippines Constitution of the Philippines, Art. VIII, sec. 13.

"It will be noted that the Constitution has not conferred on Congress and this Tribunal equal responsibilities concerning the admission to the practice of law. The primary power and responsibility which the Constitution recognizes continue to reside in this Court. Had Congress found that this Court has not promulgated any rule on the matter, it would have nothing over which to exercise the power granted to it. Congress may repeal, alter and supplement the rules promulgated by this court, but the authority and responsibility over the admission, suspension, disbarment and reinstatement of attorneys-at-law and their supervision remain vested in the Supreme Court. The power to repeal, alter and supplement the rules does not signify nor permit that Congress substitute or take place of this Tribunal in the exercise of its primary power on the matter. The Constitution does not say nor mean that Congress may admit, suspend, disbar or reinstate directly attorneys-at-law, or a determinate group of individuals to the practice of law. Its power is limited to repeal, modify or supplement the existing rules on the

matter, if according to its judgment the need for a better service of the legal profession requires it. But this power does not relieve this Court of its responsibility to admit, suspend, disbar and reinstate attorneys at law and supervise the practice of the legal profession.

"Being coordinate and independent branches, the power to promulgate and enforce rules for the admission to the practice of law and the concurrent power to repeal, alter and supplement them may and should be exercised with the respect that each owes to the other, giving careful consideration to the responsibility which the nature of each department requires. These powers have existed together for centuries without diminution on each part; the harmonious delimitation being found in that the legislature may and should examine if the existing rules on the admission to the Bar respond to the demands which public interest requires of a Bar endowed with high virtues, culture, training and responsibility. The legislature may, by means of repeal, amendment or supplemental rules, fill up any deficiency that it may find, and the judicial power, which has the inherent responsibility for a good and efficient administration of justice and the supervision of the practice of the legal profession, should consider these reforms as the minimum standards for the elevation of the profession, and see to it that with these reforms the lofty objective that is desired in the exercise of its traditional duty of admitting, suspending, disbarring and reinstating attorneys-at-law is realized. They are powers which, exercised within their constitutional limits, are not repugnant, but rather complementary to each other in attaining the establishment of a Bar that would respond to the increasing and exacting necessities of the administration of justice." [10]

It is thus the settled rule in this jurisdiction that the Supreme Court has the power to exclude from the roll of attorneys the unfit and unworthy members of the bar. The power of the Supreme Court to deal with its own officers, including attorneys-at-law, is inherent, continuing and plenary, and exists independently of statutes. As has been declared by this Court in "In re Cunanan," supra, this power is recognized in expressed terms by the Constitution (Sec. 13, Article VIII) which grants to the Court the power to promulgate rules concerning admission to the practice of law. The right to remove or suspend a lawyer is but a logical consequence of the right to admit.

But when a member of the Bar holds a position in the judiciary – as in the case of the respondent in the present case, who is a Justice of the Court of Appeals – may this Court exercise disciplinary power over such member of the Bar who is holding a judicial position, considering that there are existing statutory provisions regarding the causes and the procedure for removal from office of the members of the judiciary?

Because of the paucity of Philippine jurisprudence that have a bearing on the question before Us, We have made a study of American cases that We find to be relevant to the question. We have noted that the courts in the United States have rendered conflicting decisions on the question of whether or not the court may discipline an attorney who is holding a judicial position, where the manner of removal from office, as provided by law, is impeachment (or some other move, such as recall). We find, however, that the preponderance of authority supports the view that an attorney who holds a judicial office may be disbarred, suspended, or otherwise disciplined, for misconduct which clearly reveals moral delinquency, as where the acts complained of constitutes fraud, crime, or dishonesty. [11]

In disbarment proceedings against a judge courts in the United States concern themselves only with the question of whether or not the act complained of discloses such lack of moral character as to render the attorney unfit to remain as a member of the bar and disregard the effect which the disbarment will have in the judicial office. Thus, in the early leading case of "In re Stolen," [12] acting on a petition to disbar a judge who had borrowed money without security from bootleggers who had appeared before him in certain criminal proceedings, the Supreme Court of Wisconsin ordered the respondent judge to show cause why he should not be disbarred. The respondent judge moved that the complaint filed against him be dismissed upon the ground that the alleged acts complained of were committed in his capacity as judge of the superior court, that the Supreme Court of Wisconsin was

without jurisdiction to try and determine the disbarment proceeding for the reason that such proceeding might result in his removal from office and that the provision for the removal from office of judges of the court of record as provided in the Constitution of the State of Wisconsin was exclusive. The motion having been denied, the respondent judge filed his answer. The Supreme Court of Wisconsin rendered a judgment barring the respondent judge from the practice of law in the state and striking his name from the roll of attorneys of the court. Among others, the Supreme Court of Wisconsin held:

"* * * One of the requisite qualifications for one who holds the office of an attorney-at-law is that he or she shall be of good moral character, in so far as it relates to the discharge of the duties and responsibilities of an attorney at law. This is a continuing qualification. It is a qualification necessary to entitle one to admission to the bar, and the loss of such qualification requires his suspension. The respondent is a member of the bar of this court. The charges preferred against him challenge his moral integrity. Just as it was the duty of this court to refuse him admission in the first instance upon a showing that he lacked the necessary moral qualification, so, it is its duty now to remove him upon like proof. *Re O 73 Wis 619, 42 NW 221; Re Richter, 187 Wis 490, 41 ALR 485, 204 NW 492*. The fact that he may be judge of the superior court, or that he may hold any other office, does not affect the duty or power of the court. He cannot take unto himself any office or position, or shroud himself in any garb, which will place him beyond the power of this court to keep its roster of attorneys clean. With the effect that will have upon his official station this court is not concerned. Its present concern is only that the act complained of discloses a lack of moral character constituting a continuing qualification to entitle him to remain a member of the bar of this court. If his suspension or removal as a member of the bar results in his disqualification for some other office, that effect is but incidental, and is due to the provisions of the law which make his office as an attorney-at-law a requisite qualification for such other office.

"As already stated, whether the Legislature may limit our power in this respect need not here be determined, because, as we construe the act creating the superior court for Dane county, it has made no attempt to do so. But it is apparent from the act that the Legislature considered that the judge of that court should be a member of the bar. It did that knowing that the certificate of such membership attested not only to his legal ability but to his moral character. This was also a continuing qualification. *State ex rel Fugina vs. Peirce, 191 Wis 1, 209 NW 693*. Just as this court requires continuing moral character to entitle one to retain membership in the bar of this court, so did the Legislature require membership of the bar as a continuing qualification on the part of the judge of that court. From these considerations it is plain that the fact that respondent was, at the time the motion was made to dismiss, a judge of the superior court of Dane county does not interfere at all with the power of this court to discipline him as a member of the bar of this court, but rather that the exercise of such power on the part of this court is in harmony with the legislative purpose in requiring the judge of that court to be a member of the bar of Dane county. This conclusion is support-ed by *Re Burton, (Utah) 246 Pac 188; State vs. Pec, 88 Conn 447, LRA 1915 A, 663, 91 Atl 274 Ann Cas 1917B, 227; Hobbs's Case, 75 NH 285, 73 Atl 303; State ex rel Dill vs. Martin, 45 Wash 76, 87 Pac 1054; Re Simpson 79 Okla 305, 192 Pac 1097; State vs. Hays, 64 W Va 45, 61 SC 355; Re Norris 60 Kan 649, 57 Pac 528; Re Breen 30 Nev 164, 17 LRA (NS) 572, 93 Pac 997*."

In another early leading case of "*In re Burton*"[13] the respondent was a judge of a judicial district. It was urged, in defense of the respondent, that because the Constitution of the State provided that a district judge, among other officers, may be removed from office only by impeachment "for high crime or malfeasance in office" and "may be removed from office by the concurrent vote of both houses of the Legislature," that such provisions in case of transgression of judicial officers should be regarded as exclusive, and that, therefore, the court was not possessed of power to disbar judges of the district court, and though it may be held that the court had such power, wisdom and public policy in view of the remedy provided for by impeachment, forbade its exercise in such a case. In decreeing the disbarment of the respondent judge, the Supreme Court of Utah, among others, said:

"On the other hand, there is good authority to sustain the proposition that, if sufficient cause exists therefor, an

attorney-at-law may be disciplined or disbarred and his license to practice law canceled and revoked, though he holds or occupies a judicial or other official position, or is not for other reasons at the time engaged in the practice, and though for the committed offense or offenses or wrongs he might also be subject to impeachment or indictment. (State vs. Peck, 88 Conn. 447, 91 A. 274, L.R.A. 1915A, 663, Ann. Cas. 1917B, 227; In re Breen, 30 Nev. 164, 93 P. 997, 17 L.R.A. (N.S.) 571; State vs. Martin, 45 Wash. 76, 87 P. 1054; In re Voss, II N.D. 540, 90 N.W. 15; In re Norris, 60 Kan. 649, 57 P. 528; In re Jones, 70 Vt. 71, 39 A. 1087; People vs. Anglim, 30 Colo. 40, 78 P. 687; In re Hobbs, 75 N. H. 285, 73 A. 303; People vs. Phipps, 261 Ill. 576; 104 N.E. 144; People vs. Smith, 290 Ill. 241, 124 N.E. 807, 9 A.L.R. 183; and notes; In re Hopkins, 54 Wash. 569, 103 P. 805; In re Dellenbaugh, 9 O.C.D. 325.) Such we believe to be the weight of authority."

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"* * * It is generally held that misconduct of an attorney even though outside of his professional dealings as such, may be sufficient to justify his discipline or disbarment 2 R.C.L. 1099. And this court is committed to the doctrine that an attorney, as a member of this court, may be disciplined and disbarred though the acts and conduct are not directly connected with his practice if they show such a lack of honesty, integrity and fidelity as to indicate that he is an unfit and improper person to be entrusted with the powers and duties of an attorney. In re Platz, 42 Utah, 439, 132 P. 390. This court is further committed to the doctrine that its power to deal with its own officers, including attorneys, is inherent, continuing, and plenary, and exists independently of statute, and ought to be assumed and exercised as the exigencies and necessities of the case require (In re Evans, 42 Utah, 282, 130 P. 217, and In re Platz, supra), and that courts, having power to admit attorneys to the bar, also possess as a necessary and inherent incident of such power, the right to disbar them for unworthy behavior, unprofessional conduct, or moral turpitude, or moral unfitness independently of authority given by statute." In re Hilton, 48 Utah, 172, 158 P. 691, Ann. Cas. 1918A, 271.

"When we thus admit one as an attorney and counsellor-at-law and as a member of the bar of this court, and grant him a certificate or license and send him forth as qualified to practice law and as worthy of public trust and confidence, but find that by his acts and conduct he has shown himself unworthy and morally unfit longer to be intrusted with the duties and obligations as an attorney-at-law, and that he has forfeited his right and claim thereto, we, both under the statute (Comp. Law Utah 1917, 331) and under our inherent power, have authority, when the exigencies and necessities of the case require, to cancel and revoke his license and bar him from thereafter engaging in the practice of the law, though he, at the time, may hold a judicial or other official position. Of course, it goes without saying that in the exercise of such power the court in such case deals only with the status or relation of the attorney as such, and in no sense with respect to any other official position, whether judicial or otherwise, which may be held by him."

We consider sound the doctrines announced by the Supreme Court of Wisconsin and of Utah in the aforecited cases of "In Re Stolen" and "In Re Burton," regarding the power of the court to discipline the members of the bar even if they hold a judicial office, and said doctrines may be adopted in this jurisdiction. This Court adheres to the idea that admission to the practice of law in this jurisdiction is a continuing qualification, and it is the concern of this Court that the one holding such a qualification is worthy of it at all times. The fact that a member of the bar holds the office of a judge does not deprive this Court of its inherent power to discipline him in his capacity as member of the bar. A judge is no less a member of the bar as an attorney in the active practice of the profession. As has been aptly observed, the only difference between them is that one exercises his profession as member of the bar before the bench, the other, behind it.[14] A judge, for that matter, continues to retain the status of one who has been admitted by this Court "to the practice of law" over whom this Court retains supervisory authority even to the extent of striking his name from the roll of attorneys. The effect of the action of this Court of removing from the roll of attorneys a person who holds a position in the judicial branch of the government, as regards the qualification of said person to remain in his office, is a matter that should concern the authority that is called upon to decide whether the official concerned should continue in office or not. The concern of this Court is

only to see to it that one whose name appears in its roll of attorneys has not committed any act that would render him unfit or unworthy to remain included in said roll of attorneys.

And so, in the case now before this Court, the fact that the respondent is a Justice of the Court of Appeals is no reason for this Court not to exercise its disciplinary power over her as a member of the bar. The provision of the second paragraph of Section 24 of the Judiciary Act of 1948 (R.A. No. 296), as amended, that the justices of the Court of Appeals shall not be removed from office except on impeachment, is no reason for this Court to abdicate its duty, and give up its inherent power, to oversee and discipline all members of the bar, regardless of whether they are in the private practice of the profession, or they hold office in any of the three departments of our government, or they pursue any other calling. The power of this Court to disbar an unworthy member of the legal profession is distinct and apart from the power of any other authority to remove such member of the legal profession from his judicial position or from any other position that he holds in the government. Constitutional or statutory proceedings for removal from office are wholly distinct and separate from disciplinary proceedings involving members of a profession.

It is, therefore, Our considered view that the Supreme Court has jurisdiction to entertain and decide complaints for disbarment against a justice of the Court of Appeals. But while this Court may order the disbarment of a justice of the Court of Appeals, it is Congress, and Congress alone, in the exercise of its power of impeachment, that can remove from office a justice of the Court of Appeals.

We now pass on the merits of the complaint for disbarment against herein respondent.

2. After carefully going over the pleadings filed by the parties, as well as the document or annexes attached to the pleadings, and also over the records of this Court or the bar examinations in the year 1963, which this Court takes judicial notice of, We are satisfied that this administrative case can be decided without the necessity of any hearing for the taking of evidence.

The charge against respondent is that she had committed acts constituting serious misconduct, on two specifications: (1) misconduct as a bar examiner, and (2) falsification of public document.

The grounds for the removal or suspension, by the Supreme Court, of a member of the bar are provided in Section 27 of Rule 138 of the Rules of Court, which reads as follows:

"SEC. 27. Attorneys removed or suspended by Supreme Court on what grounds. – 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 admission to practice, or for a wilful disobedience of any lawful order of a superior court, or for corruptly or willfully 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."

We gather from the allegations of the administrative complaint that herein complainant means to charge the respondent with "gross misconduct in office as attorney," as provided in the afore-quoted Section 27 of Rule 138 of the Rules of Court.

The first specification the complaint charges the respondent with having violated the law and disregarded the time-honored tradition in the judiciary known as "delicadeza" for having accepted and discharged the duties of bar examiner in the 1963 bar examinations, knowing that her son-in-law, Santiago Ortega, Jr., was an examinee, and for having given said son-in-law, who obtained a grade of 45% in the subject of Civil Law, the grade of 91% in the subject of Commercial Law, thereby enabling him to obtain a general average of 74.9%, which general average was .4% above the qualifying general average, of 74.5%, as reconsidered by the Supreme Court.

To be a bar examiner, one has to be a member of the bar of the Philippines and appointed by the Supreme Court as member of the committee of bar examiners.[15]

There is no dispute that when respondent was appointed bar examiner in the 1963 bar examinations she was a member of the Philippine bar. The respondent admits that when she accepted her appointment as bar examiner, and discharged her duties as examiner in the subject of Commercial Law, she was aware that her son-in-law, Santiago Ortega, Jr., was one of the examinees in the 1963 bar examinations.

Did the respondent violate the law, or commit an act of gross misconduct in office as a lawyer, when she accepted the appointment as a bar examiner, knowing that her son-in-law was an examinee; and, as examiner in the subject of Commercial Law, in giving her son-in-law the grade of 91% in the said subject?

Unlike Rule 137 of the Rules of Court which, in its Section 1, provides for the disqualification of a judge or judicial officer to sit in any case in which he is related to either party within the sixth degree of consanguinity or affinity, Rule 138, in its Section 12 which provides for the appointment of the members of the committee of bar examiners, does not provide for any disqualification of a bar examiner. While the bar examinations is part of the judicial proceedings of the Supreme Court[16], a bar examiner is not a judicial officer so as to be covered by the provision of Section 1 of Rule 137.

Failure to observe "delicadeza," or such precise and refined perception and discrimination, in accepting an appointment as bar examiner, is not a legal ground for disbarment of a lawyer. The observance of "delicadeza" is a voluntary act or conduct on the part of a person, depending on his discretion. In accepting the appointment as bar examiner in the 1963 bar examinations, when her son-in-law was an examinee, it cannot be said that respondent had committed an act of misconduct, or had violated Section 1 of Rule 137 of the Rules of Court. According to respondent herein, she did not conceal from the Court the fact that her son-in-law was a bar examinee – in the sense, evidently, that she had not disclosed this fact to the Court – although it would have been preferable if she had done so. A feeling of extreme delicacy on the part of an officer is not a circumstance that would constitute legal disqualification for him to act in the performance of his duties. (People vs. Lopez, 78 Phil. 286). Regarding this matter this Court had said:

"* * * While the Canons of Judicial Ethics are desirable and salutary, they do not constitute legal grounds for disqualification. They are addressed to the personal tastes of the judges, with a view to formulating certain standards of judicial decorum. But they can not be intended to provide grounds for disqualification of judicial officers * * *." (Talisay-Silay Milling Co., Inc. vs. Teodoro, Sr., 91 Phil. 101).

Neither did the act of the respondent, as examiner in the subject of Commercial Law, in giving her son-in-law the grade of 91% in the subject, constitute a misconduct in office as a lawyer. It cannot be assumed that respondent had committed an act of favoritism in favor of her son-in-law. On the other hand, it is presumed that she had regularly performed her official duty as a bar examiner.[17] The records show that Santiago Ortega, Jr. was a bright student. We have examined the scholastic record of Santiago Ortega, Jr., as found in the records of the Bar Division of this Court, and We find that he had a high proficiency in the subject of Commercial Law. He got a bar review grade of 1.25 in this subject. It may be admitted, as contended by complainant, that the bar review grade of 1.25 of Santiago Ortega, Jr. is not a guarantee that he would obtain also a high grade in Commercial Law in the bar examinations. Of course, it can happen that a bar examinee with high grades in the review course could get a low grade, or even fail, in the bar examinations. The success of a candidate in the bar examinations depends on many varied factors, among which may be mentioned one's diligence in his studies in the basic courses and in the review, his physical and emotional conditions while answering questions during the examinations, the way he organizes and expresses his ideas in answering the examination questions, the type or nature of the examination questions, his penmanship, etc. But normally, a bar candidate who was diligent in his studies of the basic course

and in the review course, and, therefore, well-prepared, has more chances of obtaining a high grade than one who is not so well prepared.

The complainant has not made any allegation in her complaint that the composition in Commercial Law of examinee Santiago Ortega, Jr. did not merit the grade of 91%. The records of the 1963 bar examinations show that another bar candidate, Pablito M. Castillo, also got a grade of 91% in the subject of Commercial Law. It is not for this Court now to review the correction of the composition of Santiago Ortega, Jr. in the subject of Commercial Law in the 1963 bar examinations. As We have adverted to, it is presumed that herein respondent, as bar examiner in Commercial Law, had performed her official duty regularly. The fact that bar candidate Santiago Ortega, Jr. got a grade of 45% in the subject of Civil Law does not warrant the assumption that he would also obtain low grades in the other subjects. The records of the bar examinations of 1963 show that Santiago Ortega, Jr. made good grades in the other subjects: 87% in Criminal Law; 81% in Political Law; 77% in International Law; 76% in Remedial Law; 75% in Land Registration, and 81% in Legal Ethics and Practical Exercises.

The records of the 1963 bar examinations show that the Supreme Court, acting on the report of the Committee of Bar Examiners on the results of the bar examinations, resolved to make the general average of 70% as the passing grade, provided that the candidate who obtained the general average of 70% did not have a grade of less than 50% in any subject. The general average of 70% was accordingly raised to 75%. The records also show that bar candidate Santiago Ortega, Jr. had obtained a general average of 74.9%, but because he obtained a grade of less than 50% in the subject of Civil Law, his name was not included in the list, that was released in February, 1964, of those that were considered as having passed the bar examinations of 1963.

The records of the bar examination of 1963 further show that on February 27, 1964 Santiago Ortega, Jr. filed a petition with the Supreme Court, praying that he be admitted to the bar upon the ground that he got a general average of 74.9% – which was way above the approved passing general average of 70% – although he got a grade of 45% in Civil Law, alleging that his record while taking the law course shows that he had always obtained high grades in Civil Law. In his petition, Santiago Ortega, Jr. explained to the Court the psychological condition and other circumstances, where he found himself when he was taking the examination in Civil Law, that accounted for his having obtained a grade of 45% in that subject. On May 20, 1964, this Court denied said petition of Santiago Ortega, Jr.

It appears in the records of the 1963 bar examinations of this Court, however, that Santiago Ortega, Jr., along with other candidates in the 1963 bar examinations who had obtained a general average of higher than 70% but who got a grade of less than 50% in one subject, filed a joint petition with this Court praying that they be admitted to the Philippine Bar. On September 22, 1964, this Court issued a resolution which reads as follows:

"Upon further consideration of the results of the Bar Examinations held in 1963, the Court RESOLVED that all those who obtained in said bar examinations a general average higher than 74.5%, but got less than 50% in one subject, be considered as having passed said examinations and admitted to the practice of law, after taking the requisite oath, in the absence of administrative charges against them."

Based on the facts hereinabove narrated, it cannot be said that respondent had taken advantage of her position as a bar examiner in order to make her son-in-law pass the bar examinations of 1963. There is no allegation in the complaint, much less any showing, that respondent was aware of the grades of candidate Santiago Ortega, Jr. in the other subjects of the bar examinations, so that she gave him the grade of 91% in the subject of Commercial Law in order to pull his grades up and enable him to pass the bar examinations. Let it be stated, in this connection, that the practice strictly observed in bar examinations is that an examiner in one subject is not made to know the grades of the candidates in the subjects other than the subject of which he is the examiner up to the time the results of the examinations are reported to the Court by the Committee of Bar Examiners. Moreover, it is

presumed that the respondent, as a bar examiner, was aware of the provisions of the Rules of Court that any bar candidate who obtains a grade lower than 50% in any of the subjects cannot pass the bar examination, so that it would be futile for respondent to give her son-in-law a high grade in Commercial Law if after all her son-in-law had a grade that was less than 50% in one of the subjects in the bar examinations. If Santiago Ortega, Jr. was eventually admitted to the bar, it was because of the resolution of this Court of September 22, 1964 that allowed to pass those candidates that obtained a grade of less than 50% in one subject but had a general average of 74.5% or above. Santiago Ortega, Jr. was one of those that were benefited by that resolution of this Court. Certainly, the respondent had nothing to do with that resolution of the Supreme Court of September 22, 1964 which allowed Santiago Ortega, Jr. to pass the bar examinations of 1963. Indeed, it cannot be said that respondent gave her son-in-law the grade of 91% in the subject of Commercial Law, in anticipation that the Supreme Court would in the future allow her son-in-law to pass the bar examinations even if he had obtained a grade of less than 50% in one subject.

Accordingly, We hold that respondent, as a member of the committee of bar examiners in the bar examinations of 1963, had not committed any act of gross misconduct as a lawyer which would warrant her being removed from the roll of attorneys of this Court.

The second specification of the complaint charges the respondent with having falsified a public document, in that on April 2, 1968, while acting as presiding judge of Branch IX of the Court of First Instance of Rizal, at Quezon City, she issued an order in Criminal Case No. Q-7067, entitled "People of the Philippines, plaintiff vs. Maria A. Agapito, Accused," dismissing the said case and thereby acquitting said accused on the basis of the statement that when said case was called for trial on that day the fiscal moved for the dismissal of the case on the ground that the offended party (Leon O. Ty, husband of complainant) had manifested lack of interest in prosecuting the case, said respondent knowing that that statement was false, because no such motion for dismissal had been presented by the fiscal and no manifesta-tion of lack of interest on the part of the offended party had been made. This charge assails the actuation of the respondent as a Judge of the Court of First Instance, and, ordinarily, a charge of this nature should be embodied in an administrative complaint against a judge of the Court of First Instance pursuant to the provision of Rule 140 of the Rules of Court. It happened, however, that when herein complainant decided to make this charge against respondent, the latter was no longer a Judge of the Court of First Instance because she was already appointed Justice of the Court of Appeals. The complainant filed with the Commission on Appointments of the Congress of the Philippines an opposition to the confirmation of the appointment of respondent as Justice of the Court of Appeals, and one of the grounds of that opposition is the very same charge of falsification which is specification No. 2 in the complaint for disbarment that complainant has filed against the respondent before this Court. This charge of falsification was investigated by the sub-committee on justice of the Commission on Appointments of the Congress of the Philippines. In the investigation by the sub-committee on justice of the Commission on Appointments herein complainant presented evidence in support of her charge of falsification of public document, and the respondent likewise presented evidence in her defense. After due hearing, the sub-committee on justice of the Commission on Appointment made a finding that the charge was not substantiated, and so said sub-committee exonerated the respondent and recommended to the Commission on Appointment the confirmation of her appointment as Justice of the Court of Appeals. This Court takes judicial notice of the official act of the Commission on Appointments of the Congress of Philippines in exonerating the respondent of this charge of falsification of public document,[18] and this Court hereby gives weight to, and concurs in, the finding of the legislative department of our Government in this connection.

Let it be stated that the charge of misconduct as a bar examiner was also filed by herein complainant with the Commission on Appointments of the Congress of the Philippines in connection with her opposition to the confirmation of respondent's appointment as Justice of the Court of Appeals. The sub-committee on Justice of the

Commission on Appointments, however, held that the complainant was not able to prove this particular charge. The complainant claims that she could not prove this charge before the sub-committee on justice of the Commission on Appoint-ments because she could not make available before the said sub-committee on justice the records of the Supreme Court of the bar examinations of 1963. It is because of that claim of complainant that We have examined the records of the 1963 bar examinations, and Our finding is, as stated earlier, that respondent had not committed any act of gross misconduct in office as a lawyer in connection with her actuations as a member of the committee of bar examiners of the bar examinations of 1963.

The power of the Supreme Court to remove or suspend a member of the bar should not be exercised in an arbitrary and despotic manner. It is the duty of this Court to exercise that power with a sound judicial discretion, so that the rights and independence of the bar may be as scrupulously guarded and maintained by the Court to the same extent as it maintains the dignity of the Court itself.[19] The power must be exercised with caution because of its serious consequences involved. This Court has said:

"The profession of an attorney is acquired, after long and laborious study. It is a lifetime profession. By years of patience, zeal and ability, the attorney may have acquired a fixed means of support for himself and family, of great pecuniary value, the deprivation of which would result in irreparable injury." (In re MacDougall, 3 Phil. 70, 78).

The serious consequences of disbarment should follow only where there is a clear preponderance of evidence against the respondent. The presumption is that an attorney is innocent of the charge preferred against him, and that he has performed his duty as an officer of the Court in accordance with his oath upon admission to the bar.[20] In the case now before Us, We find no ground to declare that the respondent, Atty. Lourdes P. San Diego, now a Justice of the Court of Appeals, has committed acts constituting gross misconduct in office as a lawyer, or that she has violated her oath as a lawyer, as would warrant her removal from the roll of attorneys of this Court.

WHEREFORE , the complaint for disbarment filed by complainant Fritzie Espejo-Ty against respondent, the Honorable Justice Lourdes P. San Diego of the Court of Appeals, should be, as it is hereby dismissed. It is so ordered.

Concepcion, C.J., Reyes, J.B.L., Makalintal, Ruiz Castro, Fernando, and Teehankee, JJ., concur.

Makasiar and Antonio, JJ., concur in the result.

Barredo, J., see concurring opinion.

[1] As quoted from the complaint.

[2] As quoted from the complaint.

[3] As quoted from the resolution of this Court of August 13, 1970.

[4] Second paragraph, Section 24, Judiciary Act of 1948, as amended.

[5] Section 1, Article IX of the Constitution.

[6] Section 2, Article IX of the Constitution.

[7] Section 3, Article IX of the Constitution.

[8] Section 4, Article IX of the Constitution.

[9] No person may be appointed a judge of any court in the Philippines unless he has been admitted by the

Supreme Court to the practice of law (Secs. 42 and 71, R.A. 296).

[10] Italics supplied.

[11] 53 ALR 2d 306; *Re Spriggs* (1930) 36 Ariz 262, 284 P 521; *Bar Asso. vs. Sullivan* (1921) 185 Cal 621, 198 P 7; *People ex rel. Johnson vs. Goddard* (1888) 11 Colo 259, 18 P 338; *State vs. Peck* (1914) 88 Conn 447; 91 A 274, LRA 1915 A 663, Ann Cas 1917B 227; *People ex rel. Stead vs. Phipps* (1914) 261 III 576, 104 NE 144; *Re Harriss* (1936) 364 III 290, 4 NE, 2d 387; *Re Holland* (1941) 377 III 346, 36 NE2d 543; *Re McGarry* (1942) 380 III 359, 44 NE2d 7; *Re Condon* (1914) 166 Iowa 265, 147 NW 769; *Re Titus* (1949) 359 Mo 1070, 225 SW2d 715; *Re Hobbs* (1909) 75 NH 285, 73 A 303; *Re Rempfer* (1927) 51 SD 393, 216 NW 355, 55 ALR 1346; *Re Burton* (1926) 67 Utah 118, 246 P. 188; *State ex rel Dill vs. Martin* (1906) 45 Wash 76, 87 P 1054; *Re Stolen* (1927) 193 Wis 602, 214 NW 379, 55 ALR 1355; *State vs. McCarthy* (1949) 255 Wis 234, 38 NW2d 679.

[12] 193 Wis 662; 214 NW 379; 55 ALR 1355 (Supreme Court of Wisconsin, 1927).

[13] 67 Utah 188; 246 Pacific Reporter 188, 199-200 (Supreme Court of Utah, 1926).

[14] *Jenkins vs. Oregon State Bar*, 405 P. 2d 525.

[15] Section 12, Rule 138, Rules of Court.

[16] *People vs. Romualdez, et al.*, 57 Phil. 148, 187.

[17] Paragraph (m) Section 5, Rule 131, Rules of Court.

[18] Section 1, Rule 129, Rules of Court.

[19] 7 Am. Jur. 2d p. 53.

[20] *Re Tiongko*, 43 Phil. 191, 194.

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