



Republic of the Philippines
Supreme Court

Manila

EN BANC

**RE: ALLEGATIONS MADE
UNDER OATH AT THE SENATE
BLUE RIBBON COMMITTEE
HEARING HELD ON
SEPTEMBER 26, 2013 AGAINST
ASSOCIATE JUSTICE
GREGORY S. ONG,
SANDIGANBAYAN**

A.M. No. SB-14-21-J
[Formerly A.M. No. 13-10-06-SB]

Present:

SERENO, C.J.,
CARPIO,
VELASCO, JR.,
LEONARDO-DE CASTRO,*
BRION,
PERALTA,*
BERSAMIN,
DEL CASTILLO,
VILLARAMA, JR.,
PEREZ,
MENDOZA,
REYES,
PERLAS-BERNABE,
LEONEN, and
JARDELEZA, JJ.

Promulgated:

SEPTEMBER 23, 2014

X-----

DECISION

PER CURIAM:

The character of every act depends upon the circumstances in which it is done.

- Justice Oliver Wendell Holmes

This administrative complaint was filed by the Court *En Banc* after investigation into certain allegations that surfaced during the Senate Blue Ribbon Committee Hearing indicated *prima facie* violations of the Code of Judicial Conduct by an Associate Justice of the Sandiganbayan. The investigation was conducted *motu proprio* pursuant to the Court's power of

* No Part.

administrative supervision over members of the Judiciary.¹

Factual Antecedents

In the middle of 2013, the local media ran an exposé involving billions of government funds channeled through bogus foundations. Dubbed as the “pork barrel scam,” as the money was sourced from the Priority Development Assistance Fund allotted to members of the House of Representatives and Senate, the controversy spawned massive protest actions all over the country. In the course of the investigation conducted by the Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee), the names of certain government officials and other individuals were mentioned by “whistle-blowers” who are former employees of the alleged mastermind, Janet Lim-Napoles (Mrs. Napoles), wife of an ex-military officer. These personalities identified by the whistle-blowers allegedly transacted with or attended Mrs. Napoles’ parties and events, among whom is incumbent Sandiganbayan Associate Justice Gregory S. Ong, herein respondent.

Benhur Luy (Luy), a cousin of Mrs. Napoles who had worked for several years with the Napoleses, filed illegal detention charges against Mrs. Napoles who accused him of double-dealing. When Luy went public with his story about Mrs. Napoles’ anomalous transactions and before the warrant of arrest was issued by the court, she reportedly tried to reach out to the other whistle-blowers for them not to testify against her but instead point to Luy as the one receiving and distributing the money.

Marina Sula (Sula) executed a Sworn Statement² before the National Bureau of Investigation (NBI) on August 29, 2013, part of which reads:

32. In the sixteen (16) years that I worked with Ms. Napoles, I witnessed several personalities visit our offices and join us as our special guests during our parties and other special occasions.

33. These personalities who would either visit our office or join our events and affairs are: Senator Franklin Drilon, Senator Jinggoy Estrada and family, Senator Bong Revilla, Lani Mercado-Revilla, Bryan Revilla, Secretary Rene Villa, Congressman Pichay and Wife, Congressman Plaza, Congressman Ducut, DAR Director Theresita Panlilio, Catherine Mae Canlas Santos, Pauline Labayen, Jen Corpuz (Staff of Senator Sotto), Mayor Rene Maglanque, Atty. Dequina, **Justice Gregory Ong**, x x x.

34. Before the warrant of arrest was issued against Ms. Napoles, she told us that that case could take four to five years to clear. She said, “*Antayin niyo munang ma-clear pangalan ko para makakilos ako at matulungan ko*

¹ Sections 6 and 11, Art. VIII of the 1987 Constitution state:

SEC. 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

SEC. 11. ... The Supreme Court *En Banc* shall have the power to discipline judges of lower courts, or order their dismissal by a vote of a majority of the Members who actually took part in the deliberations on the issues in the case and voted thereon.

² *Rollo*, pp. 210-229.

kayo". **Sinabi niya na meron na siyang kausap sa Ombudsman at sa Sandiganbayan.**

35. On 28 August 2013 while me and my companions were at the NBI, Janet Lim Napoles called me. She was crying and ask[i]ng me not to turn my back on her, that we should stay together. She said "kahit maubos lahat ng pera ko, susuportahan ko kayo. **Hintay[i]n nyo kasi lalabas na ang TRO ko.**"

x x x x

38. Attorney Tan instructed us to implicate Benhur in case we were asked by the NBI. He said "wala naman ipinakita sa inyong masama si Madam (Janet Lim Napoles). Siguro wala naman kayong sama ng loob kay madam, kaya nga idiin ninyo si Benhur na siya ang nag-utos at saka sa kanya ninyo ibinibigay ang pera."³ (Emphasis supplied.)

The following day, the social news network Rappler published an article by Aries Rufo entitled "*Exclusive: Napoles Parties with Anti-Graft Court Justice*" showing a photograph of Senator Jinggoy Estrada (Senator Estrada), one of the main public figures involved in the pork barrel scam, together with Mrs. Napoles and respondent. The reporter had interviewed respondent who quickly denied knowing Mrs. Napoles and recalled that the photograph was probably taken in one of the parties frequently hosted by Senator Estrada who is his longtime friend. Respondent also supposedly admitted that given the ongoing pork barrel controversy, the picture gains a different context; nevertheless, he insisted that he has untainted service in the judiciary, and further denied he was the one advising Mrs. Napoles on legal strategies in connection with the Kevlar helmet cases where she was acquitted by a Division of the Sandiganbayan of which respondent is the Chairman and the then Acting Presiding Justice.⁴

On September 12, 2013, Sula executed a "*Karagdagang Sinumpaang Salaysay*"⁵ wherein she gave details regarding those persons named in her sworn statement, alleged to have visited their office or attended their events, thus:

63) T: Ayon sa paragraph Nos. 32 at 33 ng iyong sinumpaang salaysay na may petsang 29 Agosto 2013, nabanggit mo ang mga personalidad na nakikita mong bumibisita sa inyong opisina o di kaya naman sa tuwing may party o special occasions si JANET NAPOLES ay may mga special guests kayo na kinabibilangan ng mga malalaking pulitiko at ang iba naman ay may mga katungkulan sa gobyerno. Maari mo bang ilahad ang mga pangyayari sa mga bawat pagkakataon na nakita mo sila sa iyong pagkaka-alala?

S : Opo, iisa-isahin ko po ang mga pangyayari sa mga pagkakataon na nakita ko po ang mga taong nabanggit ko:

³ Id. at 226-228.

⁴ Sourced from Internet - <<http://www.rappler.com/newsbreak/37673-napoles-anti-graft-court-justice>> and Decision in Criminal Case Nos. 26768-69 promulgated on October 28, 2010 and Resolution issued on September 20, 2011, records, Volume 8, pp. 11-52, 247-254.

⁵ *Rollo*, pp. 258-282.

x x x x

- w) Justice GREGORY ONG - **Isang beses ko po siyang nakitang nagpunta sa office** sa 2501 Discovery Centre, Ortigas at nakita ko po silang **magkausap ni Madam JANET NAPOLES sa conference room.**

x x x x⁶

In her testimony before the Senate Blue Ribbon Committee on September 26, 2013, Sula was asked to confirm her statement regarding Justice Ong, thus:

THE CHAIRMAN. *Thank you, Senator Grace.
Isang tanong lang kay Ms. Sula.*

Sinabi niyo kanina may tinawagan si Ms. Napoles at sinabi niya, “Malapit na lumabas yung TRO galing sa korte.” May kilala pa ba si Janet Lim Napoles sa huwes sa korte sa Sandiganbayan?

MS. SULA. *Hindi ko po alam.*

THE CHAIRMAN. *Your attention is called sa page –*

MS. SULA. *Sandiganbayan po, sorry. Mayroon po siyang binanggit na ano po –*

THE CHAIRMAN. *Nandito sa page 20.*

MS. SULA. *Si Mr. Ong, po, Justice Ong po.*

THE CHAIRMAN. *Gregory Ong.*

MS. SULA. *Opo.*

THE CHAIRMAN. *Sa Sandiganbayan?*

MS. SULA. *Opo.*

x x x x⁷ (Emphasis supplied.)

In a letter dated September 26, 2013 addressed to Chief Justice Maria Lourdes P. A. Sereno, respondent meticulously explained the controversial photograph which raised questions on his integrity as a magistrate, particularly in connection with the decision rendered by the Sandiganbayan's Fourth Division in the Kevlar helmet cases, which convicted some of the accused but acquitted Mrs. Napoles.

Respondent surmised that the photograph was taken during the birthday of Senator Estrada in February, either in the year 2012 or 2013, but definitely not in 2010 or earlier. He explained that he could vaguely remember the circumstances but it would have been rude for him to prevent

⁶ Id. at 278-281.

⁷ Id. at 198.

any guest from posing with him and Senator Estrada during the party. On the nature of his association with Mrs. Napoles, respondent asserted:

(4) I can categorically state, on the other hand, that **I have never attended any party or social event hosted by Mrs. Napoles or her family, either before she had a case with our court, or while she already had a pending case with our court, or at any time afterwards.** I have never, to use the term of Mr. Rufo in his article, “partied” with the Napoleses. (Emphasis supplied.)

As to the Kevlar helmet cases, respondent said it was impossible for him to have been advising Mrs. Napoles, as claimed by Mr. Rufo, as even the article itself noted that Mrs. Napoles’ own brother, Reynald L. Lim, (a.k.a. Reynaldo L. Francisco), a co-accused in the case, was convicted by the Sandiganbayan. He stressed that these cases were decided on the merits by the Sandiganbayan, acting as a collegial body and he was not even the *ponente* of the decision.

Respondent thus submitted himself to the discretion of the Chief Justice such that even without being required to submit an explanation, he voluntarily did so “to defend [his] reputation as a judge and protect the Sandiganbayan as an institution from unfair and malicious innuendos.”

On October 7, 2013, Chief Justice Sereno wrote the Members of this Court, citing the testimonies of Luy and Sula before the Senate Blue Ribbon Committee “[t]hat the malversation case involving Mrs. Janet Lim-Napoles, Major Jaime G. Napoles, Jenny Lim Napoles, Reynaldo L. Francisco and other perpetrators was ‘fixed’ (*inayos*) through the intervention of Justice Gregory S. Ong of the Sandiganbayan”, to wit:

SEN. ANGARA. *Sa inyo, hindi niyo alam kung inayos iyong kaso na iyon? Kasi napakaraming koneksiyon, ‘di ba?*
xxxx *Sige, huwag kang matakot, Benhur.*

MR. LUY. *Alam ko, inayos ni Ms. Napoles iyon dahil may connect nga siya sa Sandiganbayan*

SEN. ANGARA. *Okay.*
xxxx

THE CHAIRMAN. xxx *Sinabi niyo kanina na may tinawagan si Ms. Napoles at sinabi niya “Malapit na lumabas yung TRO galing sa korte.” May kilala pa ba si Janet Lim Napoles sa huwes sa korte sa Sandiganbayan?*
xxxx

MS. SULA. *Si Mr. Ong po, Justice Ong po.*

THE CHAIRMAN. *Gregory Ong.*
MS. SULA. *Opo.*

THE CHAIRMAN. *Sa Sandiganbayan?*

MS. SULA. *Opo.*

xxxx⁸

Chief Justice Sereno then requested the Court *En Banc* to conduct an investigation *motu proprio* under this Court's power of administrative supervision over members of the judiciary and members of the legal profession (referring to notaries public who were alleged to have purposely left their specimen signatures, dry seals and notarial books with Mrs. Napoles to facilitate the incorporation of non-governmental organizations [NGOs] involved in the scam).⁹

Under our Resolution dated October 17, 2013, the Court *En Banc* required respondent to submit his comment and directed the NBI to furnish the Court with certified copies of the affidavit of Luy.

On November 21, 2013, the Court received respondent's Comment.¹⁰ Respondent categorically denied any irregularity in the Kevlar helmet cases and explained the visit he had made to Mrs. Napoles as testified by Sula.

On Sula's statement, respondent points out that Sula never really had personal knowledge whether respondent is indeed the alleged "contact" of Mrs. Napoles at the Sandiganbayan; what she supposedly "knows" was what Mrs. Napoles merely told her. Hence, Sula's testimony on the matter is based purely on hearsay. Assuming that Mrs. Napoles actually made the statement, respondent believes it was given in the context of massive media coverage of the pork barrel scam exploding at the time. With the consciousness of a looming criminal prosecution before the Office of the Ombudsman and later before the Sandiganbayan, it was only natural for Mrs. Napoles to assure Sula and others involved in their business operation that she would not leave or abandon them and that she would do all that she can to help them just so they would not turn their backs on her and become whistle-blowers. Thus, even if Mrs. Napoles made misrepresentations to Sula regarding respondent as her "connection", she only had to do so in order to convince Sula and her co-employees that the cases to be filed against them would be "fixed."

As to Sula's statement that she personally witnessed respondent at one time visiting Mrs. Napoles at her office and having a meeting with her at the conference room, respondent said that at the birthday party of Senator Estrada where the controversial photograph was taken, Mrs. Napoles engaged him in a casual conversation during which the miraculous healing power of the robe or clothing of the Black Nazarene of Quiapo was mentioned. When Mrs. Napoles told respondent that she is a close friend of the Quiapo Church's parish priest, he requested her help to gain access to the Black Nazarene icon. Eventually, respondent, who is himself a Black Nazarene devotee and was undergoing treatment for his prostate cancer, was

⁸ As cited in the letter dated October 7, 2013, id. at 1.

⁹ Id. at 1-2.

¹⁰ Id. at 6-25.

given special permission and was able to drape the Black Nazarene's robe or clothing for a brief moment over his body and also receive a fragrant ball of cotton taken or exposed to the holy image, which article he keeps to this day and uses to wipe any ailing part of his body in order to receive healing. Because of such favor, respondent out of courtesy went to see Mrs. Napoles and personally thank her. Respondent stressed that *that* was the single occasion Sula was talking about in her supplemental affidavit when she said she saw respondent talking with Mrs. Napoles at the conference room of their office in Discovery Suites.

Respondent maintains that there was nothing improper or irregular for him to have personally seen Mrs. Napoles at the time in order to thank her, considering that she no longer had any pending case with his court, and to his knowledge, with any other division of the Sandiganbayan at the time and even until the date of the preparation of his Comment. He thus prays that this Court duly note his Comment and accept the same as sufficient compliance with the Court's Resolution dated October 17, 2013.

This Court upon evaluation of the factual circumstances found possible transgressions of the New Code of Judicial Conduct committed by respondent. Accordingly, a Resolution was issued on January 21, 2014 stating that:

WHEREFORE, the Court hereby resolves to have the instant administrative matter **RE-DOCKETED** as **A.M. No. SB-14-21-J** (*Re: Allegations Made Under Oath at the Senate Blue Ribbon Committee Hearing held on September 26, 2013 against Associate Justice Gregory S. Ong, Sandiganbayan*), and **ASSIGNS** the same to retired Supreme Court Justice Angelina Sandoval-Gutierrez for investigation, report and recommendation within a period of sixty (60) days from notice hereof.

The Court further resolves to **NOTE** the letter dated January 7, 2014 of Atty. Joffre Gil C. Zapata, Executive Clerk of Court III, Sandiganbayan, Fourth Division, in compliance with the resolution of the Court En Banc dated December 3, 2013, transmitting the original records of Criminal Case Nos. 26768 and 26769. Atty. Zapata is **INFORMED** that there is no more need to transmit to this Court the post-sentence investigation reports and other reports on the supervisory history of the accused-probationers in Criminal Case Nos. 26768 and 26769.

Report and Recommendation of the Investigating Justice

Justice Angelina Sandoval-Gutierrez, a retired Member of this Court, submitted her report with the following findings and conclusions:

FACTUAL ANTECEDENTS

1. THE KEVLAR CASE

Two criminal cases were filed with the Sandiganbayan sometime in 2001 – Criminal Case No. 26768 for Falsification of Public Documents and Criminal Case No. 26769 for Violation of Section 3(e) of the Anti-Graft Law. Charged were several members of Philippine Marine Corps

and civilian employees including Ms. Janet L. Napoles (Napoles), her mother Magdalena Francisco (now deceased), her brother Reynaldo Francisco and wife Anna Marie Dulguime, and her (Napoles') three employees.

These cases are referred to as the Kevlar case because the issue involved is the same – the questionable purchase of 500 Kevlar helmets by the Philippine Marine Corps in the amount of P3,865,310.00 from five suppliers or companies owned by Napoles.

The prosecution alleged *inter alia* that the accused, acting in conspiracy, released the payment although there was yet no delivery of the Kevlar helmets; that the suppliers are mere dummies of Napoles; and that the helmets were made in Taiwan, not in the U.S.A.

Napoles' husband, Major Jaime Napoles, was dropped from the two Informations in an Order issued by the Ombudsman on March 18, 2002.

Napoles' mother, brother, and sister-in-law were among those convicted for the lesser crime of Falsification of Public Documents and sentenced to suffer the penalty of 4 years and 2 months of *prision correccional* to 8 years and 1 day of *prision mayor* and each to pay P5,000.00. They all underwent probation.

Napoles and six members of the Philippine Marine Corps were acquitted in both cases.

The court ruled that Napoles "was not one of the dealer-payees in the transaction in question. Even if she owns the bank account where the 14 checks were later deposited, this does not in itself translate to her conspiracy in the crimes charged x x x."

x x x x

THE INVESTIGATION

x x x x

I. During the investigation, Benhur testified that he and Napoles are second cousins. After passing the Medical Technology Licensure Examination in 2002, he was employed in the JLN (Janet Lim Napoles) Corporation as Napoles' personal assistant. As such, he was in charge of disbursements of her personal funds and those of her office. He was also in charge of government transactions of the corporation and kept records of its daily business activities.

In the course of Benhur's employment at the JLN Corporation, Napoles mentioned to him the Kevlar case, then pending in the Sandiganbayan, saying she has a "connect" in that court who would help her.

When asked about his testimony before the Senate Blue Ribbon Committee concerning the Kevlar case, Benhur declared that Napoles' "connect" with the Sandiganbayan is respondent, thus:

Q The question was, Mr. Witness, this is coming from Senator Angara, and I quote, "Kailan ho lumabas yung decision ng Court sa Kevlar?" And just to

refresh your memory, Mr. Witness, then Ms. Sula answered, "I think 2010. Yun po yung lumabas po." And then going forward, Senator Angara referred to both of you this question: "Sa inyo, hindi ninyo alam kung inayos yung kaso na iyon kasi napakaraming koneksyon, di ba? Baka alam ng ibang whistleblowers kung nagka-ayusan sa kaso na iyon. Sige, huwag kang matakot, Benhur." Do you remember that question being asked from you?

x x x x

A Yes po.

Q And now Mr. Witness, about this statement of yours at the Blue Ribbon Committee that Ms. Napoles has a certain connect sa Sandiganbayan, who was this connect you were talking about, if you remember?

Witness Luy

A Si Justice Gregory Ong po.

Q How do you know that Justice Gregory Ong was the connect of Ms. Napoles at the Sandiganbayan?

A Ang sinabi po... Si Ms. Napoles, pinsan ko po kasi we are second cousins. So kinuwento talaga sa akin ni Madam kung ano ang mga developments sa mga cases, kung ano ang mga nangyayari. Tapos po, sinabi niya sa akin mismo na nakakausap niya si Justice Gregory Ong at ang nagpakilala raw sa kanya po ay si Senator Jinggoy Estrada.

Benhur further testified that even before the decision in the Kevlar case was promulgated, Napoles and respondent were already communicating with each other (*nag-uusap na po sila*). Therefore, she was sure the decision would be in her favor:

Q Do you remember the date when the decision (in Kevlar case) was promulgated?

A Ano po, the year 2010 po ma'am.

Q And you met him (Justice Ong) in 2012?

A 2012 po, pero prior to that decision, madam, naririnig ko na po kay madam (Ms. Napoles) kasi kinukwento na po ni madam sa akin na nag-uusap na po sila ni Justice Gregory Ong.

Q That was after the decision was promulgated?

A Bago po nailabas yung decision, ikinwento po ni Ms. Napoles sa akin na nag-uusap na po sila ni Justice Gregory Ong. Kaya kampante po si Ms. Napoles. Noong lumabas po yung decision, alam niya na po. Yung ang sabi sa akin ni Ms. Napoles.

Going back to the hearing before the Blue Ribbon Committee, Benhur told Senator Angara that Napoles fixed the Kevlar case because she has a "connect" in the Sandiganbayan:

"Baka alam ng ibang whistle blowers kung nagkaka-ayusan

sa kaso na iyon (Kevlar case). Sige huwag kang matakot Benhur.”

Benhur Luy: *“Alam ko inayos ni Ms. Napoles iyon dahil may connect nga siya sa Sandiganbayan.”*

On how Napoles “inayos” or fixed the Kevlar case, Benhur said that he kept a ledger of the Sandiganbayan case wherein he listed all her expenses in the sum of P100 million pesos. He was surprised why she would spend such amount considering that what was involved in the Kevlar case was only P3.8 million. She explained that she gave various amounts to different people during the pendency of the case which lasted up to ten years. And before the decision in the Kevlar case was released, she also gave money to respondent but she did not mention the amount. Thus, she knew she would be acquitted.

Q You answered Senator Angara this way which we already quoted a while ago, “Alam ko inayos ni Ms. Napoles iyon dahil may connect nga siya sa Sandiganbayan.” You stated that the connect is Justice Ong. Can you explain before us what you mean, “Alam ko inayos ni Ms. Napoles iyon.” What do you mean by that “inayos”?

A Kasi po ma’am meron kaming ledger ng Sandiganbayan case sa lahat ng nagastos ni Ms. Janet Napoles, nilista ko po yon lahat. Kasi naririnig ko po kay Janet Napoles, parang pinsan ko po si Janet Napoles, “Paano nagkaroon ng kaso ang ate ko? So nadiscover ko na lang po na yun pala yung Kevlar. So, mahigit one hundred million na nagastos po ni Ms. Napoles kasi di lang naman po si sir Justice Gregory Ong...

x x x

Q Did you come to know to whom she gave all the money?

A Wala po siyang...basta ang sabi niya inayos na niya si...binaggit niya po si...kasi si madam hindi kasi nagki-keep kasi ako pinsan niya po kasi ako, nabanggit niya po si Justice Gregory Ong. Sinabi niya nagbigay daw po siya ng pera kay Justice Ong pero she never mentioned kung magkano yung amount.

x x x

Q Nagbigay ng pera kay Justice Gregory Ong?

A Opo, yung ang sabi niya (referring to Ms. Napoles).

Q To you?

A Yes, madam.

Q Do you remember when she made that kind of statement?

A Bago po ano madam, bago po lumabas yung decision kaya kampante na po si Ms. Napoles bago lumabas yung decision na acquitted siya. Alam na niya. Sa Kevlar case.

x x x

Justice Gutierrez

Continue counsel.

Witness Luy

Kasi naikwento po madam ni Ms. Napoles na almost P100 million na ang nagastos niya. Tapos ang sabi ko nga po sa kanya: “Madam, P100 million na sa halagang P3.8 lang na PO (purchase order) sa Kevlar helmet, tapos P100 million na ang nagastos mo?”

Q Did she tell you or explain to you to whom this P100 million was paid? How was it spent?

A Basta ang natatandaan ko...di ko na po matandaan ang mga dates kasi parang staggered. May P5 million sa ibang tao ang kausap niya. Tapos ito naman tutulong ng ganito. Iba-iba kasi madam, eh.

Q But there was no showing the money was given to Justice Ong?

A Wala po pero nabanggit lang po niya (Ms. Napoles) sa akin na nagbigay po siya kay Justice Ong, but she never mentioned the amount.

Continuing with his testimony, Benhur declared that in 2012, respondent went twice to Napoles’ office at the Discovery Suites Center, 25 ADB Avenue, Ortigas, Pasig City. On the first visit, Napoles introduced Justice Ong to Benhur and her other employees.

Benhur narrated what transpired during that visit. According to him, Napoles has so much money being placed at the Armed Forces of the Philippines and Police Savings and Loan Association, Inc. (AFPSLAI) which offered 13% interest annually. Napoles called Benhur telling him that respondent would like to avail of such interest for his BDO check of P25.5 million. To arrange this, Napoles informed Benhur that she would just deposit respondent’s P25.5 million in her personal account with Metrobank. Then she would issue to respondent in advance eleven (11) checks, each amounting to P282,000.00 as monthly interest, or a total of P3,102,000.00 equivalent to 13% interest. Upon Justice Ong’s suggestion, the checks should be paid to cash. So, Benhur prepared the corresponding eleven (11) checks, thus:

Q With respect to the Kevlar case, what participation did you have, if there was any?

Witness Luy

A Noon 2012 po kasi si Justice Gregory Ong po nasa unit 2501, yung office (of Ms. Napoles), so kami ni Janet Napoles, nandito sa 2502 kasi yun po talaga ang office namin. Si Ms. Napoles po sinabi niya sa akin, Ben, kasi si Ms. Napoles, may pera siyang madami na pine-place niya po sa AFPSLAI at yung AFPSLAI po ay nagbibigay po sa kanya o nago-offer ng 13% interest annually po. So, ang nangyari po doon, sabi ni Janet Napoles, si Justice Ong ho raw, gustong magkaroon din ng interest parang ganoon. So tutulungan niya. So ang ginawa po namin x x x.

Q Meaning to say, Justice Ong would like to deposit money?

A Opo.

Q So he could get 13% interest?

A Opo, kasi tapos madam ang nangyari po pumunta na po si Ms. Napoles sa kanyang opisina. Tinawag po niya ako kasi pinasulat na niya sa akin ang checke. So, ang ginawa po ni Ms. Napoles, yung checke ni..BDO check po kasi yun. Ang sabi sa akin ni Ms. Napoles, checke daw po yun ni Justice Gregory Ong. Sa, BDO. So, di ko naman din po nakita Madam yung nakalagay sa...

Q So it is the check of Justice Ong, not the check of Ms. Napoles?

A Opo, ang amount po ng check madam ay P25.5 million ang amount noong BDO check na inissue...

Q That belongs to Justice Ong?

A Opo. Tapos madam, so ang ginawa po namin ni Ms. Napoles, dahil po 13% interest ang ino-offer ng AFPSLAI, sabi ni Madam ganito na lang, Ben, ipasok na lang muna natin yung check niya sa personal account ko. Ako na lang muna for the meantime, mag-iissue ng check sa kanya para maavail ni Justice Ong yung interest. So, ang ginawa namin madam, P25.5 million times 13% interest, tapos divided by 12, lumalabas P282,000.00 or P283,000.00 or P281,000.00 po madam kasi nag-round off kami sa P282,000.00. So, ang ginawa ni Madam, бага monthly. So eleven (11) checks ang prinepare namin. Kung hindi po ako nagkakamali po, JLN Corporation check ang...Ako pa nga po ang nagsulat at saka bago po namin isinulat yung payee, inalam pa po namin. x x x So, pumunta na naman si madam sa 2501 kasi nandoon si Justice Gregory Ong. Noong bumalik siya, pay to cash na lang daw. So, makikita po sa records namin ni Ms. Napoles na pumasok ang P25.5 million na amount sa kanyang account at the same time nag-issue siya ng checke na P282,000.00 na eleven checks. Nag-start kami madam 2012, siguro sometime July or August or mga ganoong buwan po. Basta 11 checks, hindi nalalayo doon. So, siguro tapos na.

Q But what actually turned out was that the money of Justice Ong was deposited at the bank but the interest was paid in advance by Ms. Napoles, and actually the bank will pay Ms. Napoles the advanced interest she paid to Justice Ong, is that clear? Is that the arrangement? Do you understand me?

A Kasi ang nangyari po ma'am ganito e: yung P25.5 million ipinasok sa personal account ni Ms. Napoles dito sa Metrobank. Metrobank kasi po yun e.

On the second visit of respondent to Napoles' office, they just engaged in conversation. She ordered Chinese food for him which, according to Benhur, is his (respondent's) favorite.

On cross-examination, Benhur claimed that in his affidavits executed in the NBI, he did not mention respondent's name. However, in his reply-affidavit filed with the Sandiganbayan, he alleged that Napoles issued P282,000.00 (the amount stated in each of the 11 checks) but he did not mention the name of the payee upon instruction of his lawyer, Atty. Baligod. Nonetheless, he knew that the checks were issued to respondent.

II. Sula, also a whistle blower, testified that she was an employee of JLN Corporation. Her duties included the formation of corporations by making use of the forms, applying for business licenses, transfer of properties, purchase of cars, and others.

Sula corroborated Benhur's testimony that respondent visited the office of Napoles twice sometime in 2012.

Sula was asked to explain her testimony before the Blue Ribbon Committee during the hearing on September 26, 2013, quoted as follows:

The Chairman (Senator Teofisto Guingona III)

Sinabi ninyo na may tinawagan si Mrs. Napoles at sinabi niya, Malapit nang lumabas yung TRO galing sa korte. May kilala pa ba si Janet Lim Napoles sa huwes sa korte sa Sandiganbayan?

x x x

Ms. Sula

Si Mr. Ong po. Justice Ong po.

The Chairman

Gregory Ong?

Ms. Sula

Opo.

The Chairman

Sa Sandiganbayan?

Ms. Sula

Opo.

The Chairman

Okay. With that, I will just have a closing statement before we leave the hearing.

Sula explained that the TRO mentioned by Napoles refers to the TRO to be issued by the Sandiganbayan in the event the case involving the P10 billion PDAF scam against her is filed with that court; and that Napoles told Sula and the other employees not to worry because she has contact with the Sandiganbayan – respondent Justice Ong, thus:

Q Not the illegal detention case?

Witness Sula

A Hindi po, pag nakasuhan na po kami sa Sandiganbayan.

Q Okay, again?

A Sa pagkakaintindi po namin, ang sabi po ni Madam na it takes 4 to 5 years, so hihintayin niya na ma-acquit, sabi niyang ganoon, ang pangalan niya para maluwag na tulungan kami. Ito po ang pagkakaintindi namin na sa Sandiganbayan.

Q Yung PDAF?

A Opo, yung PDAF sa Sandiganbayan.

Q Pagdating ng kaso sa Sandiganbayan?

A Opo, kasi po ina-ano po niya, siya po tinitira na ni Benhur – si Madam tungkol sa P10 billion scam. So, pinag-uusapan namin sa bahay niya sa South Garden Unit na, Madam, paano po yan, pag lahat ng kaso na iyan dadaan sa lawmakers, dadaan yon sa Ombudsman at saka sa Sandiganbayan? Sabi niya, “Huwag kayong mag-alala. Meron naman akong mga contact doon.” Sabi niyang ganoon sa Ombudsman at sa Sandiganbayan.

Q Is that in your affidavit?

A Wala po. Pero sinabi ko po doon sa part na yon (her testimony before the Senate Blue Ribbon Committee) na meron na siyang kilala sa Ombudsman, pero hindi niya nabanggit ang pangalan. Pero sa Sandiganbayan, ang alam namin kilala niya si Justice Ong.

Q Yun ang sagot niya kay Chairman Guingona. Di ba I read it a while ago?

A Opo, doon sa Sandiganbayan.

Sula also testified that every time Napoles talked to her and the other employees, she would say that Justice Ong will help her in the Kevlar case. Sula’s testimony is as follows:

Q x x x you told me that somebody will help in the Kevlar case?

A Opo. Sinabi po niya sa amin every time po pag nagkukwento siya, sinasabi niya na si Justice Ong an[g] tumulong sa kanya para ma-clear po yung Kevlar case niya.

Sula likewise testified that Napoles told her and the other employees that she will fix (*aayusin*) the “PDAF case” in the Sandiganbayan. Then they replied in jest that her acquaintance in that court is respondent. Napoles retorted, “*Ay huag na iyon kasi masyadong mataas ang talent fee.*”

x x x x

III. Aries Rufo, a Reporter of Rappler, testified that he cannot reveal who gave him the photograph [of respondent beside Napoles and Senator Jinggoy Estrada] because he is shielded by law and he has to protect his source.

When asked about his comment upon seeing the picture, Rufo said:

Initially, when I saw the picture, since I knew that Justice Ong was one of the members of the division that handled the Kevlar case, it aroused my curiosity why he was in that picture. Second, because in journalism, we also get to practice ethical standards, I immediately sensed though that a Justice or a lawyer, that he should not be seen or be going to a party or be in an event where respondent (Ms. Napoles) was in a case under his Division. He should

not be in a situation that would compromise the integrity of his office.

Rufo further testified that on August 27, 2013, he faxed a letter to respondent to “get his side about the photo.” The next day, he went to respondent’s office and showed it to him. Respondent was shocked. He explained that it must have been taken during one of the parties hosted by his friend Senator Jinggoy Estrada; that he did not know that the woman in the picture is Napoles because she did not appear during the hearing of the Kevlar case; and that such picture must have been taken in one of those instances when a guest would like to pose with celebrities or public figures.

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Respondent, in his defense, vehemently denied the imputations hurled against him.

1. He asserted that he could not be the contact or “connect” of Napoles at the Sandiganbayan for he never met or came to know her during the pendency of the Kevlar case;

2. Challenging Benhur’s testimony that he fixed or “*inayos*” the Kevlar case, respondent claimed that it was decided based on the merits by the Sandiganbayan Fourth Division as a collegial body. The two other members of the court, Justice Jose R. Hernandez (*ponente*) and Justice Maria Cristina J. Cornejo, are independent-minded jurists who could not be pressured or influenced by anybody, not even by their peers;

3. On Benhur’s allegation that respondent received an amount of money from Napoles prior to the promulgation of the decision in the Kevlar case, respondent deplored the fact that Benhur was attempting to tarnish his reputation without any proof. And that it is unthinkable for him to have received money from Napoles considering that her mother, brother, and sister-in-law were convicted;

4. Respondent admitted he went to Napoles’ office twice, sometime in March 2012, after the decision in the Kevlar case was promulgated in 2010 and narrated what prompted him to do so, thus:

At the birthday party of Senator Jinggoy Estrada on February 17, 2012, Napoles approached him and introduced herself. She engaged him in a casual conversation and thanked him for her acquittal in the Kevlar case. Respondent replied she should thank her “evidence” instead, adding that had the court found enough evidence against her, she would have been convicted. She talked about her charity works like supporting Chinese priests, building churches and chapels in China, and sponsoring Chinese Catholic priests. He was not interested though in what she was saying until she mentioned the name of Msgr. Ramirez, former Parish Priest of Quiapo Church.

Respondent became interested because he has been a devotee of the Holy Black Nazarene since he was a little boy. Napoles told him that Msgr. Ramirez has with him the robe of the Holy Black Nazarene which has a healing

power if one wears it. Then respondent asked if he can have access to the robe so he can be cured of his ailment (prostate cancer) which he keeps only to himself and to the immediate members of his family. Napoles made arrangement with Msgr. Ramirez until respondent was able to drape the robe over his body for about one or two minutes in Quiapo Church. He also received a fragrant ball of cotton which he keeps until now to heal any ailing part of his body. That was a great deal for him. So out of courtesy, he visited Napoles in her office and thanked her. That was his first visit.

Thereafter, Napoles kept on calling respondent, inviting him to her office, but he kept on declining. Then finally after two weeks, he acceded for she might think he is “*walang kwentang tao*.” They just engaged in a small talk for about 30 minutes and had coffee.

5. Concerning Benhur’s testimony that Napoles paid respondent an advanced interest consisting of eleven (11) checks in the amount of P282,000.00 each and that he issued to her his BDO check of P25.5 million which she deposited in her account, he claimed that “he never issued that check as he did not intend to invest in AFPSLAI. In fact, he does not have any money deposited there. Inasmuch as he did not issue any BDO check, it follows that Napoles could not have given him those eleven (11) checks representing advanced interest. He further explained that he found from the internet that in AFPSLAI, an investor can only make an initial deposit of P30,000.00 every quarter or P120,000.00 per year. The limit or ceiling is P3 million with an interest of 15% or 16% per annum.

6. The whistle blower’s testimony are conflicting and therefore lack credibility. While Sula testified that Napoles told her that **she did not want to approach respondent** (should a case involving the pork barrel scam be filed with the Sandiganbayan) **because his talent fee is too high**, however, both whistle blowers claimed that he is Napoles’ contact in the Sandiganbayan.

With respect to the Rappler Report, according to respondent, Rufo was insinuating four things:

1. That there was irregularity in the manner the Kevlar case was decided;
2. That respondent was close to Napoles even during the pendency of the Kevlar case;
3. That respondent was attending parties of the Napoleses; and
4. That respondent was advising Napoles about legal strategies relative to the Kevlar case.

Respondent “dismissed all the above insinuations as false and without factual basis.” As to the last insinuation that he advised Napoles about legal strategies to be pursued in the Kevlar case, respondent stressed that the case was decided by a collegial body and that he never interceded on her behalf.

EVALUATION

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It bears stressing that before the Senate Blue Ribbon Committee, Benhur initially testified that Napoles fixed or “*inayos*” the Kevlar case because she has a contact at the Sandiganbayan, referring to respondent. Sula corroborated Benhur’s testimony.

Testifying before the Senate Blue Ribbon Committee is certainly an ordeal. The witnesses and everything they say are open to the public. They are subjected to difficult questions propounded by the Senators, supposedly intelligent and knowledgeable of the subject and issues under inquiry. And they can easily detect whether a person under investigation is telling the truth or not. Considering this challenging and difficult setting, it is indubitably improbable that the two whistle blowers would testify falsely against respondent.

Moreover, during the investigation of this case, Benhur and Sula testified in a candid, straightforward, and categorical manner. Their testimonies were instantaneous, clear, unequivocal, and carried with it the ring of truth.

In fact, their answers to the undersigned’s probing questions were consistent with their testimonies before the Senate Blue Ribbon Committee. During cross-examination, they did not waver or falter. The undersigned found the two whistle blowers as credible witnesses and their story untainted with bias and contradiction, reflective of honest and trustworthy witnesses.

The undersigned therefore finds unmeritorious respondent’s claim that Benhur and Sula were lying.

...respondent insisted he could not have intervened in the disposition of the Kevlar case considering that Napoles’ mother, brother and sister-in-law were convicted.

Respondent must have forgotten that Napoles’ natural instinct was self-preservation. Hence, she would avail of every possible means to be exonerated. Besides, respondent’s belief that the two members of his Division are independent-minded Jurists remains to be a mere allegation.

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With the undersigned’s finding that there is credence in the testimonies of Benhur and Sula, there is no need to stretch one’s imagination to arrive at the inevitable conclusion that in “fixing” Kevlar case, money could be the consideration... Benhur testified he kept a ledger (already shredded) of expenses amounting to P100 million incurred by Napoles for the Sandiganbayan during the pendency of the Kevlar case which extended up to ten years; and that Napoles told him she gave respondent an undetermined sum of money.

Respondent maintains that the testimonies of Benhur and Sula are pure hearsay, inadmissible in evidence:

Justice Ong

Your honor, since these are all accusations against

me by Luy and Sula, and according to Luy and Sula, these were only told to them by Napoles, always their statements were...they do not have personal knowledge, it was only told to them by Napoles, is it possible that we subpoena Napoles so that the truth will come out? If...

x x x x

Justice Gutierrez

That is your prerogative.

Justice Ong

I am willing to take the risk although I know I am not an acquaintance of Napoles. Just to clear my name whether I should be hung or I should not be hung.

x x x x

Atty. Geronilla

I don't think it would be necessary, your honor.

Justice Gutierrez (to Atty. Geronilla)

Discuss this matter with your client, file a motion, then we will see.

However, respondent and his counsel did not take any action on the undersigned's suggestion. They did not present Napoles to rebut the testimonies of Benhur and Sula. Significantly, respondent failed to consider that his testimony is likewise hearsay. He should have presented Msgr. Ramirez and Napoles as witnesses to support his claim regarding their role which enabled him to wear the robe of the Holy Black Nazarene.

x x x x

Respondent's acts of allowing himself to be Napoles' contact in the Sandiganbayan, resulting in the fixing of the Kevlar case, and of accepting money from her, constitute gross misconduct, a violation of the New Code of Judicial Conduct for the Philippine Judiciary.

x x x x

That Benhur personally prepared the eleven (11) checks which Napoles handed to respondent led the undersigned to conclude without hesitation that this charge is true. It is highly inconceivable that Benhur could devise or concoct his story. He gave a detailed and lucid narration of the events, concluding that actually Napoles gave respondent P3,102,000.00 as advanced interest.

According to respondent, the purpose of his first visit was to thank Napoles for making it possible for him to wear the Holy Black Nazarene's robe. Even assuming it is true, nonetheless it is equally true that during that visit, respondent could have transacted business with Napoles. Why should Napoles pay respondent an advanced interest of P3,102,000.0 with her own money if it were not a consideration for a favor?

Respondent's transgression pertains to his personal life and no direct relation to his judicial function. It is not misconduct but plain

dishonesty. His act is unquestionably disgraceful and renders him morally unfit as a member of the Judiciary and unworthy of the privileges the law confers on him. Furthermore, respondent's conduct supports Benhur's assertion that he received money from Napoles.

Dishonesty likewise violates Canon 2 (1 and 2) on Integrity of the same Code providing in part that judges must ensure that their conduct is above reproach and must reaffirm the people's faith in the integrity of the Judiciary.

Indeed, respondent should not stay in his position even for a moment.

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...From respondent's end, there was nothing wrong when he visited Napoles twice in her office considering that the visits took place long after the promulgation of the decision in the Kevlar case.

Contrary to respondent's submission, such acts also constitute gross misconduct in violation of Canon 4 on Propriety of the same Code. Section 1 provides that judges shall avoid impropriety and the appearance of impropriety in all of their activities.

...respondent's reason for his first visit was to thank Napoles for her help in making it possible for him to wear the robe of the Holy Black Nazarene. Instead of visiting her, respondent could have extended his gratitude by simply calling her by phone. Worse, he visited her again because she may think he is an unworthy person. This is an extremely frail reason. He was seen by the whistle blowers and their co-workers who, without doubt, readily confirmed that he was Napoles' contact at the Sandiganbayan and that he "fixed" the decision in the Kevlar case.

Respondent cannot be excused for his unconcern for the position he holds. Being aptly perceived as the visible personification of law and justice, his personal behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach. A judicial office circumscribes a personal conduct and imposes a number of inhibitions, whose faithful observance is the price one has to pay for holding an exalted position.

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On the photograph showing respondent
with Senator Jinggoy Estrada and Napoles.

X X X X

This incident manifests respondent's disregard of the dictum that propriety and the appearance of propriety are essential to the performance of all the activities of a judge. This exacting standard of decorum is demanded from judges to promote public confidence in the integrity of the Judiciary.

In joining Senator Estrada and Napoles in a picture taking, respondent gave a ground for reproach by reason of impropriety. It bears reiterating Canon 4 (1) on Propriety of the same Code which provides that judges shall avoid impropriety and the appearance of impropriety in all of

their activities.

Respondent maintained that he did not know Napoles at that time because she was not present before the Sandiganbayan during the hearing of the Kevlar case for she must have waived her appearance. Respondent's explanation lacks merit. That court could not have acquired jurisdiction over her if she did not appear personally for arraignment.

Of utmost significance is the fact that this is not the first time that respondent has been charged administratively. In "*Assistant Special Prosecutor III Rohermina J. Jamsani-Rodriguez v. Justices Gregory S. Ong, Jose R. Hernandez and Rodolfo A. Ponferrada, Sandiganbayan*," the Supreme Court found respondent Justice Ong guilty of violation of PD 1606 and The Revised Internal Rules of the Sandiganbayan for non-observance of collegiality in hearing criminal cases in the Hall of Justice, Davao City. Instead of sitting as a collegial body, the members of the Sandiganbayan Fourth Division adopted a different procedure. The Division was divided into two. As then Chairperson of the Division, respondent was ordered to pay a fine of P15,000.00 with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

X X X X

...the undersigned cannot hold back her skepticism regarding the acquittal of Napoles. The Sandiganbayan Fourth Division, of which respondent was the Chairman, held that Napoles did not conspire with the suppliers in the questionable purchase of the Kevlar helmets as she was not one of the "dealer-payees" in the transaction in question and that there was no proof of an overt act on her part. How could the Fourth Division arrive at such conclusion? The Decision itself indicates clearly that (1) Napoles was following up the processing of the documents; (2) that she was in charge of the delivery of the helmets; and (3) the checks amounting to P3,864,310.00 as payment for the helmets were deposited and cleared in only one bank account, Security Bank Account No. 512-000-2200, in the name of Napoles.

Considering this glaring irregularity, it is safe to conclude that indeed respondent has a hand in the acquittal of Napoles. All along, the whistle blowers were telling the truth.

X X X X

RECOMMENDATION

IN VIEW OF THE FOREGOING, It is respectfully recommended, for consideration of the Honorable Court, that respondent Justice Gregory S. Ong be found **GUILTY** of gross misconduct, dishonesty, and impropriety, all in violations of the New Code of Judicial Conduct for the Philippine Judiciary and be meted the penalty of **DISMISSAL** from the service **WITH FORFEITURE** of all retirement benefits, excluding accrued leave credits, and **WITH PREJUDICE** to reemployment to any government, including government-owned or controlled corporations.

X X X X

The Court's Ruling

This Court adopts the findings, conclusions and recommendations of the Investigating Justice which are well-supported by the evidence on record.

Based on the testimonies of Luy, Sula and Rufo, the Investigating Justice formulated the charges against the respondent, as follows:

1. Respondent *acted as contact* of Napoles in connection with the Kevlar case while it was pending in the Sandiganbayan Fourth Division wherein he is the Chairman;
2. Respondent, being Napoles' contact in the Sandiganbayan, *fixed the Kevlar case* resulting in her acquittal;
3. Respondent *received an undetermined amount of money* from Napoles prior to the promulgation of the decision in the Kevlar case thus, she was sure ("*kampante*") of her acquittal;
4. Respondent *visited Napoles in her office where she handed to him eleven (11) checks*, each amounting to P282,000.00 or a total of P3,102,000.00, as advanced interest for his P25.5 million BDO check she deposited in her personal account; and
5. Respondent attended Napoles' parties and was photographed with Senator Estrada and Napoles.¹¹

Respondent thus stands accused of gross misconduct, partiality and corruption or bribery *during* the pendency of the Kevlar case, and impropriety on account of his dealing and socializing with Napoles *after* her acquittal in the said case. Additionally, respondent failed to disclose in his September 26, 2013 letter to Chief Justice Sereno that he had actually visited Napoles at her office in 2012, as he vehemently denied having partied with or attended any social event hosted by her.

Misconduct is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; while "gross" has been defined as "out of all measure beyond allowance; flagrant; shameful; such conduct as is not to be excused."¹² We agree with Justice Sandoval-Gutierrez that respondent's association with Napoles during the pendency and after the promulgation of the decision in the Kevlar case resulting in her acquittal, constitutes gross misconduct notwithstanding the absence of direct evidence of corruption or bribery in the rendition of the said judgment.

We cannot overemphasize that in administrative proceedings, only substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The

¹¹ Report and Recommendation, p. 16.

¹² *Camus, Jr. v. Alegre*, 583 Phil. 738, 749 (2008).

standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.¹³

The testimonies of Luy and Sula established that Napoles had been in contact with respondent (“*nag-uusap sila*”) during the pendency of the Kevlar case. As Napoles’ trusted staff, they (especially Luy who is a cousin) were privy to her daily business and personal activities. Napoles constantly updated them of developments regarding the case. She revealed to them that she has a “connect” or “contact” in the Sandiganbayan who will help “fix” the case involving her, her mother, brother and some employees. Having closely observed and heard Napoles being confident that she will be acquitted even prior to the promulgation of the decision in the Kevlar case, they were convinced she was indeed in contact with respondent, whose identity was earlier divulged by Napoles to Luy. Luy categorically testified that Napoles told him she gave money to respondent but did not disclose the amount. There was no reason for them to doubt Napoles’ statement as they even keep a ledger detailing her expenses for the “Sandiganbayan,” which reached ₱100 million. Napoles’ information about her association with respondent was confirmed when she was eventually acquitted in 2010 and when they saw respondent visit her office and given the eleven checks issued by Napoles in 2012.

Respondent maintains that the testimonies of Luy and Sula were hearsay as they have no personal knowledge of the matters they were testifying, which were merely told to them by Napoles. Specifically, he points to portions of Sula’s testimony indicating that Napoles had not just one but “contact persons” in Ombudsman and Sandiganbayan; hence, it could have been other individuals, not him, who could help Napoles “fix” the Kevlar case, especially since Napoles never really disclosed to Sula who was her (Napoles) contact at the Sandiganbayan and at one of their conversations Napoles even supposedly said that respondent’s “talent fee” was too high.

Bribery is committed when a public officer agrees to perform an act in connection with the performance of official duties in consideration of any offer, promise, gift or present received.¹⁴ A judge who extorts money from a party-litigant who has a case before the court commits a serious misconduct and this Court has condemned such act in the strongest possible terms. Particularly because it has been committed by one charged with the responsibility of administering the law and rendering justice, it quickly and surely corrodes respect for law and the courts.¹⁵

An accusation of bribery is easy to concoct and difficult to disprove. The complainant must present a panoply of evidence in support of such an

¹³ *Jallorina v. Taneo-Regner*, A.M. No. P-11-2948, April 23 2012, 670 SCRA 301, 307, citing *Banaag v. Espeleta*, A.M. No. P-11-3011, November 29, 2011, 2011, 661 SCRA 513, 521.

¹⁴ Art. 210, Revised Penal Code.

¹⁵ *Atty. Velez v. Judge Flores*, 445 Phil. 54, 64 (2003), citing *Haw Tay v. Singayao*, 238 Phil. 103, 107-108 (1987), *Quiz v. Castaño*, 194 Phil. 187 (1981) and *Nazareno v. Almario*, 335 Phil. 1122 (1997).

accusation. Inasmuch as what is imputed against the respondent judge connotes a grave misconduct, the quantum of proof required should be more than substantial.¹⁶ Concededly, the evidence in this case is insufficient to sustain the bribery and corruption charges against the respondent. Both Luy and Sula have not witnessed respondent actually receiving money from Napoles in exchange for her acquittal in the Kevlar case. Napoles had confided to Luy her alleged bribe to respondent.

Notwithstanding the absence of direct evidence of any corrupt act by the respondent, we find credible evidence of his association with Napoles after the promulgation of the decision in the Kevlar case. The totality of the circumstances of such association strongly indicates respondent's corrupt inclinations that only heightened the public's perception of anomaly in the decision-making process. By his act of going to respondent at her office on two occasions, respondent exposed himself to the suspicion that he was partial to Napoles. That respondent was not the *ponente* of the decision which was rendered by a collegial body did not forestall such suspicion of partiality, as evident from the public disgust generated by the publication of a photograph of respondent together with Napoles and Senator Jinggoy Estrada. Indeed, the context of the declarations under oath by Luy and Sula before the Senate Blue Ribbon Committee, taking place at the height of the "Pork Barrel" controversy, made all the difference as respondent himself acknowledged. Thus, even in the present administrative proceeding, their declarations are taken in the light of the public revelations of what they know of that government corruption controversy, and how it has tainted the image of the Judiciary.

The hearsay testimonies of Luy and Sula generated intense public interest because of their close relationship to Napoles and their crucial participation in her transactions with government officials, dubbed by media as the "Pork Barrel Queen." But as aptly observed by Justice Sandoval-Gutierrez, the "challenging and difficult setting" of the Senate hearings where they first testified, made it highly improbable that these whistle blowers would testify against the respondent. During the investigation of this case, Justice Sandoval-Gutierrez described their manner of testifying as "candid, straightforward and categorical." She likewise found their testimonies as "instantaneous, clear, unequivocal, and carried with it the ring of truth," and more important, these are consistent with their previous testimonies before the Senate; they never wavered or faltered even during cross-examination.

It is a settled rule that the findings of investigating magistrates are generally given great weight by the Court by reason of their unmatched opportunity to see the deportment of the witnesses as they testified.¹⁷ The

¹⁶ *Ong v. Rosete*, 484 Phil. 102, 113 (2004); *Manalastas v. Flores*, 466 Phil. 925, 938 (2004); *Co v. Judge Calimag, Jr.*, 389 Phil. 389, 395 (2000), citing *Castaños v. Escano, Jr.*, 321 Phil. 527 (1995).

¹⁷ *Gacad v. Clapis, Jr.*, A.M. No. RTJ-10-2257, July 17, 2012, 676 SCRA 534, 543, citing *Ocampo v. Arcaya-Chua*, A.M. No. RTJ-07-2093, April 23, 2010, 619 SCRA 59, 125, further citing *Vidallon-Magtolis v. Salud*, 506 Phil. 423, 442 (2005).

rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases applies *a fortiori* to administrative cases.¹⁸ In particular, we concur with Justice Sandoval-Gutierrez's assessment on the credibility of Luy and Sula, and disagree with respondent's claim that these witnesses are simply telling lies about his association with Napoles.

Contrary to respondent's submission, Sula in her testimony said that whenever Napoles talked about her contacts in the Ombudsman *and* Sandiganbayan, they knew that insofar as the Sandiganbayan was concerned, it was understood that she was referring to respondent even as she may have initially contacted some persons to get to respondent, and also because they have seen him meeting with Napoles at her office. It appears that Napoles made statements regarding the Kevlar case not just to Luy but also to the other employees of JLN Corporation. The following are excerpts from Sula's testimony on direct examination, where she even hinted at their expected outcome of the Kevlar case:

Atty. Benipayo

Q So, Ms. Sula, what were the statements being made by Ms. Janet Lim Napoles regarding her involvement in the Kevlar case, or how she was trying to address the problem with the Kevlar case pending before the Sandiganbayan?

Witness Sula

A Ang alam ko po kasi marami po siyang kinaka-usap na mga lawyers na binabayaran niya para tulungan siya kay Gregory Ong sa Kevlar case. Tapos, **sa kalaunan po, nasabi na niya sa amin na meron na po siyang nakilala sa Sandiganbayan na nagngangalang Justice Gregory Ong. Tapos, sabi niya, siya po ang tutulong sa amin para ma-clear kami.** Pero hindi niya sinabi na meron din pong ma...sasagot sa kaso. Hindi po lahat, kasi po dalawa sa mga empleyado niya, bale apat, dalawang empleyado niya, isang kapatid niya at sister-in-law ang mag-aano sa kaso pati yung mother niya na namatay na ay sasagot din sa kaso. Siya lang at saka yung asawa niya ang bale makli-clear sa kaso.

Q So, she told you that two (2) employees, one (1) sister-in-law and one brother will answer for the case and Janet Lim Napoles and her husband will be acquitted, is that right?

A Yun po ang aking pagkaka-alam kasi po, nag-petition po kasi sila eh, yung mga officemates ko. Nagkaroon ng probation. Noong lumabas ang hatol, meron silang probation period.

x x x x

Q Which you told me that somebody will help in the Kevlar case?

A Opo. **Sinabi po niya sa amin everytime po pag nagkukwento siya, sinasabi niya na si Justice Ong ang tutulong sa kanya**

¹⁸ Id., citing *Ferreras v. Eclipse*, A.M. No. P-05-2085, January 20, 2010, 610 SCRA 359, 374.

para ma-clear po yung Kevlar case niya.

x x x x¹⁹ (Emphasis supplied.)

As it turned out, Napoles' husband was dropped from the two informations while her mother, brother and sister-in-law were convicted in the lesser charge of falsification of public documents. Apparently, after her acquittal, Napoles helped those convicted secure a probation. But as stated in our earlier resolution, the Court will no longer delve into the merits of the Kevlar case as the investigation will focus on respondent's administrative liability.

Respondent's act of voluntarily meeting with Napoles at her office on two occasions was grossly improper and violated Section 1, Canon 4 (Propriety) of the New Code of Judicial Conduct, which took effect on June 1, 2004.

SECTION 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

A judge must not only be impartial but must also appear to be impartial and that fraternizing with litigants tarnishes this appearance.²⁰ Public confidence in the Judiciary is eroded by irresponsible or improper conduct of judges. 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.²¹

In *Cañeda v. Alaan*,²² we held that:

Judges are required not only to be impartial but also to appear to be so, for appearance is an essential manifestation of reality. Canon 2 of the Code of Judicial Conduct enjoins judges to avoid not just impropriety in their conduct but even the mere appearance of impropriety.

They must conduct themselves in such a manner that they give no ground for reproach.

[Respondent's] acts have been less than circumspect. He should have kept himself free from any appearance of impropriety and endeavored to distance himself from any act liable to create an impression of indecorum.

x x x x

Indeed, respondent must always bear in mind that:

“A judicial office traces a line around his official as well as personal conduct, a price one has to pay for

¹⁹ TSN, February 12, 2014, pp. 71-73.

²⁰ *De Guzman, Jr. v. Sison*, 407 Phil. 351, 374 (2001).

²¹ *Padilla v. Zantua, Jr.*, A.M. No. MTJ-93-888, October 24, 1994, 237 SCRA 670, 675-676.

²² 425 Phil. 20, 26-27 (2002).

occupying an exalted position in the judiciary, beyond which he may not freely venture. Canon 2 of the Code of Judicial Conduct enjoins a judge to avoid not just impropriety in the performance of judicial duties but in all his activities whether in his public or private life. He must conduct himself in a manner that gives no ground for reproach.” (Emphasis supplied.)

On this score, our previous pronouncements have enjoined judges to avoid association or socializing with persons who have *pending* cases before their court. Respondent cites the case of *Abundo v. Manio, Jr.*²³ where this Court did not find fault with a judge who was charged with fraternizing with his lawyer-friend. In that case, we said:

Respondent admits that he and Atty. Pajarillo became close friends in 1989 when they were both RTC judges stationed in Naga City. Since they both resided in Camarines Norte, Atty. Pajarillo hitched rides with respondent to Daet, Camarines Norte in the latter’s car.

In his Comment, respondent claims that he leaves the door to his chambers open to lawyers or parties with official court business, whose requests and complaints regarding their cases he listens to in full view of his staff, who are witnesses to his transparency and honesty in conducting such dialogues. He also admits that Atty. Pajarillo has been to his house on several occasions, but only to make emergency long-distance calls to his children in Metro Manila. He, however, denies that he and Atty. Pajarillo were frequently seen eating and drinking together in public places.

We agree with Justice Buzon’s finding that the evidence against respondent on this point was insufficient, *viz.*:

“On the other hand, the admission of respondent that he attended two public functions where Atty. Pajarillo was also present; that Atty. Pajarillo had been in his house twice or thrice and used his telephone; and that he receives lawyers, including Atty. Pajarillo, and litigants inside his chambers, the door to which is always open so that [the] staff could see that no under the table transactions are taking place, is not proof that he is fraternizing with Atty. Pajarillo. *A judge need not ignore a former colleague and friend whenever they meet each other or when the latter makes requests which are not in any manner connected with cases pending in his court.* Thus, Canon 30 of the Canons of Judicial Ethics provides:

‘30. *Social relations*

It is not necessary to the proper performance of judicial duty that judges should live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interests in or appearance at meetings of members at the bar. *A judge should, however, in pending or prospective litigation before him be*

²³ 370 Phil. 850, 866-867 (1999).

scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course.”

The factual setting in *Abundo v. Manio, Jr.* is not similar to the present case because Napoles was not a colleague or lawyer-friend but an accused in a former case before the Sandiganbayan’s Fourth Division chaired by respondent and which acquitted her from malversation charge. What respondent perhaps want to underscore is the caveat for judges, in pending or prospective litigation before them, to avoid such action as may raise suspicion on their partiality in resolving or deciding the case. Thus, he emphasized in his Memorandum that he “never knew Napoles on a personal level while she was still on trial as an accused in Kevlar helmet case.” Respondent even quoted Sula’s testimony expressing her opinion that she finds nothing wrong with respondent going to Napoles’ office because at that time, the Kevlar case had already been terminated.

We do not share the view that the rule on propriety was intended to cover only pending and prospective litigations.

Judges must, at all times, be beyond reproach and should avoid even the mere suggestion of partiality and impropriety.²⁴ Canon 4 of the New Code of Judicial Conduct states that “[p]ropriety and the appearance of propriety are essential to the performance of *all* the activities of a judge.” Section 2 further provides:

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

As we held in *Sibayan-Joaquin v. Javellana*²⁵

...Judges, indeed, should be extra prudent in associating with litigants and counsel appearing before them so as to avoid even a mere perception of possible bias or partiality. It is not expected, of course, that judges should live in retirement or seclusion from any social intercourse. Indeed, it may be desirable, for instance, that they continue, time and work commitments permitting, to relate to members of the bar in worthwhile endeavors and in such fields of interest, in general, as are in keeping with the noble aims and objectives of the legal profession. In pending or prospective litigations before them, however, judges should be scrupulously careful to avoid anything that may tend to awaken the suspicion that their personal, social or sundry relations could influence their objectivity, for not only must judges possess proficiency in law but that also they must act and behave in such manner that would assure, with great comfort, litigants and their counsel of the judges’ competence, integrity and independence.

²⁴ *Agunday v. Tresvalles*, 377 Phil. 141, 155 (1999).

²⁵ 420 Phil. 584, 590 (2001).

In this light, it does not matter that the case is no longer pending when improper acts were committed by the judge. Because magistrates are under constant public scrutiny, the termination of a case will not deter public criticisms for acts which may cast suspicion on its disposition or resolution. As what transpired in this case, respondent's association with Napoles has unfortunately dragged the Judiciary into the "Pork Barrel" controversy which initially involved only legislative and executive officials. Worse, Napoles' much-flaunted "contact" in the judiciary is no less than a Justice of the Sandiganbayan, our special court tasked with hearing graft cases. We cannot, by any stretch of indulgence and compassion, consider respondent's transgression as a simple misconduct.

During his testimony, respondent acknowledged his violation of judicial ethics and its serious repercussions, as shown by his answers to the questions from the Investigation Justice, *viz*:

Justice Gutierrez

What I am thinking Justice, as a Justice holding a very high position, could it not be possible for you to just go to the Church of Quiapo and ask the priest there to help you or assist you, no longer through Ms. Napoles?

Justice Ong

You cannot do that, your honor. Ever since when I was a small boy, I never got near the image of the Mahal na Poon. Nobody can do that, your honor.

Justice Gutierrez

No, no. What I mean is that **you can just go to the priest in Quiapo and make the proper request. Why did you not do that?**

Justice Ong

I don't know, your honor.

Justice Gutierrez

Because you have been suffering from that ailment, mass or whatever, and that you are a devotee of the Black Nazarene. You could have gone to the Office of the priest there and had that request for you to wear that robe of the Black Nazarene?

Justice Ong

Hindi ko po alam na may ganyan, your honor. I was only told by Napoles during that conversation. Had I known that, *siguro po pwede ko pong gawin*. Had I known that there is such a robe, maybe I will do that.

Justice Gutierrez

Okay. It happened already. But just to thank Ms. Napoles, I think Justice you should have been very, very careful about your actuations. You should not have been seen in public, you know,

with a woman like her who was an accused before. You could have thanked her simply by calling her. You could have relayed to her your true feelings that you are so grateful because of her assistance. Were it not for her, you could not have worn that Holy Robe of the Black Nazarene. You could have simply called her instead of going to her office; instead of, you know, going to the Church of Santuario de San Antonio in Forbes Park. And you should have been more careful not to be seen by the public with her considering that she was a former accused in that case.

Justice Ong

I will heed to that advice, your honor.

Justice Gutierrez

Q And you admitted a while ago, during the interview conducted by Mr. Aries Rufo that “That is a lesson for me; **that I should not have associated, you know, with a former respondent or accused in a case before me.**” You admitted that? You said you learned your lesson. Was that the first time you learned that kind of lesson, Mr. Justice? Or even before you took your oath as a member of the Judiciary, you already knew that lesson, isn’t it or was that the first time? That is why you associated yourself with Senator Jinggoy Estrada who was accused before of plunder?

Justice Ong

Your honor, talking about....

Justice Gutierrez

Q **Do you admit you committed a lapse along that line?**

Justice Ong

A **Yes, your honor. You have to forgive me for that.**²⁶ (Emphasis supplied.)

In her report, Justice Sandoval-Gutierrez noted that respondent’s purported reason for visiting Napoles in her office remains uncorroborated, as Napoles and the Quiapo parish priest were not presented as witnesses despite her suggestion to respondent and his counsel. On the other hand, Luy’s testimony on what transpired in one of respondent’s meeting with Napoles at her office appears to be the more plausible and truthful version. Expectedly, respondent denied having issued a BDO check for ₱25.5 million as claimed by Luy, and asserted he (respondent) did not deposit any money to AFPSLAI. Unfortunately, Luy is unable to present documentary evidence saying that, as previously testified by him before the Senate, most of the documents in their office were shredded upon orders of Napoles when the “Pork Barrel Scam” controversy came out.

²⁶ TSN, March 21, 2014, pp. 52-54.

Justice Sandoval-Gutierrez stated that the eleven checks of ₱282,000.00 supposed advance interest for respondent's check deposit to AFPSLAI were given to respondent as consideration for the favorable ruling in the Kevlar case. Such finding is consistent with Luy's testimony that Napoles spent a staggering ₱100 million just to "fix" the said case. Under the circumstances, it is difficult to believe that respondent went to Napoles office the second time just to have coffee. Respondent's act of again visiting Napoles at her office, after he had supposedly merely thanked her during the first visit, tends to support Luy's claim that respondent had a financial deal with Napoles regarding advance interest for AFPSLAI deposit. The question inevitably arises as to why would Napoles extend such an accommodation to respondent if not as consideration for her acquittal in the Kevlar case? Respondent's controversial photograph alone had raised adverse public opinion, with the media speculating on pay-offs taking place in the courts.

Regrettably, the conduct of respondent gave cause for the public in general to doubt the honesty and fairness of his participation in the Kevlar case and the integrity of our courts of justice. Before this Court, even prior to the commencement of administrative investigation, respondent was less than candid. In his letter to the Chief Justice where he vehemently denied having attended parties or social events hosted by Napoles, he failed to mention that he had in fact visited Napoles at her office. Far from being a plain omission, we find that respondent deliberately did not disclose his social calls to Napoles. It was only when Luy and Sula testified before the Senate and named him as the "contact" of Napoles in the Sandiganbayan, that respondent mentioned of only one instance he visited Napoles (*"This is the single occasion that Sula was talking about in her supplemental affidavit x x x"*²⁷).

The Court finds that respondent, in not being truthful on crucial matters even before the administrative complaint was filed against him *motu proprio*, is guilty of Dishonesty, a violation of Canon 3 (Integrity) of the New Code of Judicial Conduct.

Dishonesty is a "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."²⁸ Dishonesty, being a grave offense, carries the extreme penalty of dismissal from the service with forfeiture of retirement benefits except accrued leave credits, and with perpetual disqualification from re-employment in government service. Indeed, dishonesty is a malevolent act that has no place in the Judiciary.²⁹

Under Section 11(A), Rule 140 of the Rules of Court, a respondent

²⁷ Comment of Justice Ong, p. 20.

²⁸ *De Vera v. Rimas*, 577 Phil. 136, 142-143 (2008), citing *Corpuz v. Ramiterre*, 512 Phil. 506, 518 (2005).

²⁹ *Id.* at 143, citing *A Very Concerned Employee and Citizen v. Mateo*, 565 Phil. 657, 665 (2007).

found guilty of a serious charge may be penalized as follows:

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

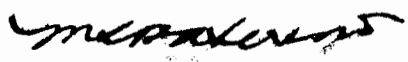
1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or -controlled corporations. *Provided, however,* that the forfeiture of benefits shall in no case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

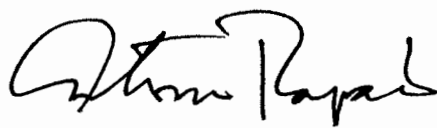
Considering that respondent is not a first time offender and the charges of gross misconduct and dishonesty are both grave offenses showing his unfitness to remain as a magistrate of the special graft court, we deem it proper to impose the supreme penalty of dismissal.

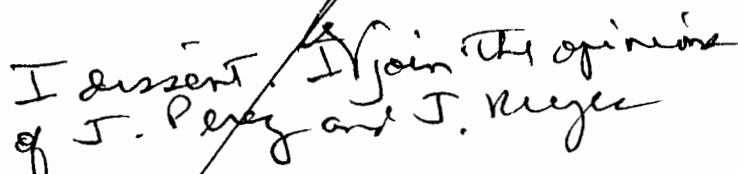
WHEREFORE, the Court finds respondent Sandiganbayan Associate Justice Gregory S. Ong **GUILTY** of **GROSS MISCONDUCT, DISHONESTY** and **IMPROPRIETY**, all in violations of the New Code of Judicial Conduct for the Philippine Judiciary, for which he is hereby **DISMISSED** from the service, with forfeiture of all retirement benefits, except accrued leave credits, if any, and with prejudice to reemployment in any branch, agency or instrumentality of the government including government-owned or -controlled corporations.

This Decision is **IMMEDIATELY EXECUTORY**.

SO ORDERED.


MARIA LOURDES P. A. SERENO
Chief Justice


ANTONIO T. CARPIO
Associate Justice


PRESBITERO J. VELASCO, JR.
Associate Justice

(No Part)

TERESITA J. LEONARDO-DE CASTRO

Associate Justice

*Separate
See: Concurring Opn.***ARTURO D. BRION**

Associate Justice

(No Part)

DIOSDADO M. PERALTA

Associate Justice

*With Concurring & Dissenting Opinion***LUCAS P. BERSAMIN**

Associate Justice

Mariano C. Del Castillo
MARIANO C. DEL CASTILLO
Associate Justice*Martin S. Villarama, Jr.*
MARTIN S. VILLARAMA, JR.
Associate Justice*See concurring and
Dissenting Opinion*
JOSE PORTUGAL PEREZ
Associate Justice*After joining J. Reyes & J. Reyes is
most dissonant*
JOSE CATRAL MENDOZA
Associate Justice*See concurring and
Dissenting Opinion*
BIENVENIDO L. REYES
Associate Justice*Ms. Perl*
ESTELA M. PERLAS-BERNABE
Associate Justice*See separate concurring
opinion**Marvic M. F. Leonen*
MARVIC M. F. LEONEN
Associate Justice*See concurring
opinion*
FRANCIS H. JARDELEZA
Associate Justice*See*