

**A.M. No. SB-14-21-J – RE: ALLEGATIONS MADE UNDER OATH
AT THE SENATE BLUE RIBBON COMMITTEE HEARING HELD
ON SEPTEMBER 25, 2013 AGAINST ASSOCIATE JUSTICE
GREGORY S. ONG, *SANDIGANBAYAN***

Promulgated:

SEPTEMBER 23, 2014

x-----x

SEPARATE CONCURRING OPINION

JARDELEZA, J.:

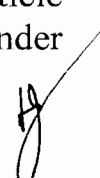
Respondent Ong stands administratively charged for violations of the New Code of Judicial Conduct, specifically that:

- (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.¹

After much consideration, the majority found Respondent guilty of gross misconduct, dishonesty and impropriety, for which he is meted the penalty of “dismissal 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.”

I concur with the majority. I submit this Separate Opinion, however, to emphasize that the commission of acts of *Indirect Bribery* under Article 211 of the Revised Penal Code (RPC) and *Acceptance of Gift* under

¹ A.M. No. SB-14-21-J, Report and Recommendation, p. 16.



Presidential Decree No. 46 (PD 46)² are also punishable administratively. If proven on the facts by substantial evidence, they give rise to the sanctions of dismissal from the service and forfeiture of benefits as provided under Rule 140 of the Revised Rules of Court.³

Laws governing practice of gift-giving

A public officer should not accept any gift offered to him because such gift is offered in anticipation of future favor from him. Such gift received will in the future corrupt him or make him omit the performance of his official duty.⁴ As part of the government's efforts to wipe out all conceivable forms of graft and corruption in the public service, there are several laws in place that regulate the practice of gift-giving to public officials. For purposes of this case, PD 46 and Article 211 of the Revised Penal Code find relevance.

Thus, Presidential Decree No. 46 makes it "punishable for any public official or employee, whether of the national or local governments, to receive, directly or indirectly, and for private persons to give, or offer to give, *any gift, present or other valuable thing on any occasion*, including Christmas, when such gift, present or other valuable thing is given *by reason of his official position, regardless of whether or not* the same is for past favor or favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions."

Violation of PD 46 shall be penalized by imprisonment of not less than one (1) year nor more than five (5) years and perpetual disqualification from office. The official or employee concerned shall likewise be subject to administrative disciplinary action and, "if found guilty, shall be meted out the penalty of suspension or removal, depending on the seriousness of the offense."

While PD 46 is not part of the enumeration in Section 8, Rule 140 of the Revised Rules of Court the commission of which gives rise to the sanction of dismissal from the service and forfeiture of benefits, PD 46 should be deemed included among these "serious charges." An examination of said Section would show that the enumeration is qualified by the word "include"--- which implies that the enumeration is not exclusive but would also cover acts analogous to those enumerated.⁵ The acts of gift-giving and

² Making It Punishable For Public Officials And Employees To Receive, And For Private Persons To Give, Gifts On Any Occasion, Including Christmas.

³ RULES OF COURT, Rule 140, Sections 8 and 11.

⁴ Reyes, The Revised Penal Code Book II, 2001 Fifteenth Edition, p. 359.

⁵ "The enumerated acts constituting serious, less serious, and light charges or administrative offenses, respectively, are not exclusive. Other acts analogous thereto and conviction in a criminal prosecution may also be grounds for discipline, as the word "include" in enumerating the charges implies and as rulings of the Supreme Court on disciplinary cases show." Agpalo. Legal and Judicial Ethics, 2009, p. 688.

gift-receiving prohibited in PD 46 are analogous⁶ to those same practices similarly prohibited under Article 211 of the RPC (*Indirect Bribery*) and Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The common element under PD 46 and Article 211 of the RPC is that both laws consider a public official's act of receiving a gift, given by reason of his official position, as corrupt.

PD 46 was issued by former President Ferdinand E. Marcos in 1972. To date, it has not been repealed nor its constitutionality duly questioned; it thus continues to be good law. In fact, PD 46 is included in the Revised Edition of the Compilation of Laws on Graft and Corruption issued by the Office of the Ombudsman in 2004. In his Commentary on Legal and Judicial Ethics, Agpalo identifies violation of PD 46 as among the other crimes committed by public officers and included in the liability of judges.⁷

Similarly, Article 211 of the RPC (*Indirect Bribery*) provides for a penalty to be imposed upon any public official who shall accept *gifts* offered to him *by reason of his office*. This Article was amended in 1985 to increase the penalty for the offense from *arresto mayor* to *prision correccional*.

Significantly, under both PD 46 and Article 211 of the RPC, a public officer becomes liable upon mere acceptance of a gift. It is not necessary that the official should do any particular act or promise to do an act, as it is enough that he accepts gifts offered to him by reason of his office.⁸ Neither is it required that the giver hopes or expects to receive a favor or better treatment in the future.⁹ That PD 46 and Article 211 is a variant of the other appears to be confirmed by Luis B. Reyes who, in his commentary on the Revised Penal Code, included PD 46 in his discussion of Article 211.¹⁰

Republic Act No. 6713 (RA 6713), or the Code of Conduct and Ethical Standards for Public Officials and Employees, defines a gift as “a thing or a right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it...”¹¹ RA 6713 further defines the act of “receiving any gift” to include “the act of accepting directly or indirectly, a gift from a person other than a member of his family or relative... even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is neither nominal nor insignificant, or the gift is given in anticipation of,

⁶ PD 46 provides:

WHEREAS, under existing laws and civil service rules, it is prohibited to receive, directly or indirectly, any gift, present, or any other form of benefit in the course of official duties;

WHEREAS, it is believed necessary to put more teeth to existing laws and regulations to wipe out all conceivable forms of graft and corruption in the public service, the members of which should not only be honest but above suspicion and reproach;

WHEREAS, the stoppage of the practice of gift-giving to government men is a concrete step in the administration's program of reforms for the development of new moral values in the social structure of the country, one of the main objectives of the New Society...

⁷ Agpalo, Legal and Judicial Ethics, 2009, p. 681.

⁸ Reyes, The Revised Penal Code Book II, 2001, Fifteenth Edition, p. 360. Also cited in *Pozar vs. CA*, G.R. No. L-62439 October 23, 1984.

⁹ See also Agpalo. Legal and Judicial Ethics, 2009, p. 682.

¹⁰ *Supra* at note 8.

¹¹ Section 3(c).

or in exchange for, a favor.”¹²

Notably, the proscription against the solicitation and/or acceptance of gifts has been adopted by a number of government agencies as part of their official policy. The Governance Commission for Government-Owned and Controlled Corporations (GCG), under Section 29 of the Code of Corporate Governance for the GOCC Sector, required all covered Governing Boards to formally adopt a “No Gift Policy” and ensure its full advertisement to the community and its strict implementation by particular set of rules.¹³ Thus, government-owned and controlled corporations (GOCCs) such as the Land Bank of the Philippines,¹⁴ the Philippine Postal Corporation,¹⁵ the Development Bank of the Philippines¹⁶ and the Philippine Deposit Insurance Corporation¹⁷ have issued written policies to this effect. Line agencies in the Executive Department, including the Department of Agrarian Reform,¹⁸ Department of Budget and Management (DMB)¹⁹ and the Department of Finance,²⁰ have likewise issued written policies governing the receipt of gifts. In the case of the DBM, it makes specific reference to PD 46 as a statutory basis for its “No Gift Policy.”

In this case, the evidence on record substantially establish that Respondent accepted gifts, extended to him by reason of his office, from Mrs. Napoles.

Evidence on record

During the course of the investigation, it was alleged that Respondent met with Mrs. Napoles twice in her office in 2012. Respondent did not deny these meetings but explained that these were mere gestures of appreciation on his part for Mrs. Napoles’ invaluable assistance in securing him access to the robe of the Black Nazarene:

xxx

A: xxx And one thing that caught my attention was that she told me that Monsignor Ramirez is not only a Parish Priest of Quiapo Church but that he has with him the robe of the *Mahal na Poon* which is miraculous and has a healing power if you wear it.

Atty. Geronilla

Q: What was your reaction when Mrs.

¹² Section 3(d).

¹³ GCG Memorandum Circular No. 2012-07.

¹⁴ Executive Order No. 041, s. 2014 (June 10, 2014).

¹⁵ Board Resolution No. 2014-69 (2014)

¹⁶ Circular No. 25 (2013)

¹⁷ From <http://www.pdic.gov.ph/index.php?cgo=1>, last accessed September 22, 2014.

¹⁸ Memorandum Circular No. 07, s. 2010.

¹⁹ Circular Letter No. 2011-12 (2011).

²⁰ Rule II (Policy on Gift Giving and Acceptance of Gifts. Donations and Sponsorship), Department Order No. 21-2010 dated June 25, 2010, also known as the Department of Finance Code of Conduct.

Napoles told you about this?

Justice Ong

A: I have a medical issue, but I did not tell her that. I have a medical issue and how I wished that I will get relief because of my faith and devotion to the *Mahal na Poon* called the Black Nazarene. **So, obviously, I was very interested and I asked that if I can have access to the robe of the *Mahal na Poon*.**

xxx

Q: Now what happened after this when you confirmed with Mrs. Napoles that there was such a robe of the Black Nazarene and you wanted to be draped or clothed or whatever? What happened next? What did you tell to Ms. Napoles?

A: **I want to have access to that robe so that I can wear it and then put it on my body, sir.**

Q: **What happened next? What was the reaction of Mrs. Napoles when you told him about your wish?**

A: **Mrs. Napoles readily acceded and she told me that she will arrange an audience with Monsignor Ramirez for me.**

Q: And what happened next?

A: About the call of Mrs. Napoles on the cell, she told me if I know Santuario de San Antonio Church...

Q: How did she know your cell number Justice Ong?

A: Did I not tell you that we exchanged cell numbers when I got interested when she mentioned about Monsignor Ramirez...

Atty. Geronilla

I think your mind came ahead. You have not stated that. I am sorry.

Justice Ong

... the Parish Priest of Quiapo, that is why I got interested and we exchanged cell

numbers.

Q: You were saying that Janet Napoles called you up?

A: Yes, sir.

Q: In your cellphone?

A: Yes, sir. She told me Monsignor Ramirez agreed, but do you know the Santuario de San Antonio Church in Makati?

Q: What was your answer?

A: I said I know the Santuario in Makati but definitely *sabi ko* I know the Adoracion Chapel at the back of the church. I don't go to Santuario. I went there only twice or thrice.

Q: So, what happened next after you told her that you know the Adoracion Chapel at the back of the Santuario de San Antonio Church?

A: She told me that I just park my car there and somebody will pick me up. That was a Sunday. When she arranged for a meeting, that was a Sunday, sir.

Q: After that, did you actually go to the Adoracion Chapel?

A: Yes, sir. I went there and I was picked up by the driver and he brought me to... inside a subdivision. I really don't know if it is Forbes or Dasmarias.

Q: What happened next?

A: I went inside the house, and it is a modest house, and at that time, a mass was about to take place.

Q: Who were in the house where the mass was about to take place, Justice?

A: Monsignor Ramirez and a number of Chinese priests and many Chinese guests inside the house.

Q: What happened next? What did you do there?

A: I attended the mass and then after the mass, *nahihiya po ako e*. I wanted to go home

already but Janet Napoles said “No, I will introduce you.” *Kasi ho* there were many Chinese and I did not want to be identified with them. So, I wanted to go home already because ever since if I may be allowed, your Honor, if I have a problem, the Chinese Federation, they cannot approach me. When I was in the RTC, there was someone who... I wanted to leave the premises but Janet Napoles said I have to introduce you to Monsignor Ramirez. So, I was introduced to Monsignor Ramirez and I was also introduced to the husband of Napoles. The husband was a good singer. He was playing the guitar during the mass.

Q: What is the name of the husband?

A: Jaime Napoles, sir.

Q: Do you know where that house is?

A: I do not know, sir, but that is the place where Monsignor Ramirez and the other priests were staying.

Q: Okay, according to Mrs. Janet Napoles, she wanted to introduce you to Monsignor Ramirez. Did she actually introduce you to him?

A: Yes, sir. I was introduced to Monsignor Ramirez and that was already about lunch time and after the mass, Monsignor Ramirez told me to stay for lunch.

Q: And who were with you in the lunch?

A: The husband and wife together with a number of Chinese guests seated in a long table.

Q: Do you remember where you were seated?

A: Yes, sir. Monsignor Ramirez is a very big guy, almost 400 lbs, I suppose. He is a very big guy so he was seated in the *kabisera* and I was seated to his right, and Mrs. Napoles was facing me. **I supposed Monsignor Ramirez already knew at that time that I wanted access to the robe. When I kissed his hand, he told me “*Hijo, bakit gusto mong masuot ang robe ng Mahal na Poon?*” Since he is a priest, I confided “*kasi ho may prostate cancer po ako e.*” and**

he said you just talk to Mrs. Napoles and arrange it and I will have you wear it. You just make arrangement with Ms. Napoles and you will know when and how you can wear that robe.

Q: So did this actually happen, Justice Ong?

A: Yes, sir.

Q: Will you tell this Court the circumstances of this happening?

A: After a week or more than that, a week or two, Mrs. Napoles told me to go to Quiapo Church early in the afternoon. I am very sure it was not a Friday *kasi ho walang masyadong tao*. When I went inside, it is a small office, a man was already waiting for me and he was holding I think the robe. So, I addressed him *Manong* and he said “*Sige, isuot mo na. Yan ang sabi ni Monsignor.*” So I wore the robe. I put on the robe.

Justice Gutierrez

Q: For how long was the robe on your body? How many minutes?

Justice Ong

A: One or two minutes only, your honor. I was so happy. I cannot explain my happiness. I was spiritually refreshed because of my devotion, my faith in the *Mahal na Poon*.

Atty. Geronilla

Q: After you have already worn on your body the robe of the Black Nazarene, what happened?

Justice Ong

A: I said, thank you *Manong*. I said, *Manong, maraming salamat po*. When I was about to leave, *manong* said: *Sandali lang, may ipinabibigay sa iyo*.

Q: What was that?

A: He gave me fragrant cotton balls and he told me that “*kung saan may*

karamdaman ka or kung saan may sakit, pwede mong ipahid.” Tutulungan ka ni Mahal na Poon.” As a matter of fact, I have it here, your Honor. I want to show it to you, your Honor, but I cannot leave this. This is the one taken from the body of the Mahal na Poon.

Justice Gutierrez

Witness showing to the Investigating Justice fragrant cotton balls.

Justice Ong

Date ho, your honor, it was bilog na bilog. Since it has been with me for a long time, napisa na.

Justice Gutierrez

Which witness claims it has some miraculous healing power. Continue.

Atty. Geronilla

Q: After this man gave you that piece of cotton or cotton balls, what happened next? What did you do, if any?

A: After that, I decided to see Ms. Napoles, sir. I called her up. I decided to see her because this is a big thing for me. I should not only thank her over the phone but I want to thank her personally.

Xxx

Q: Now when did you see Ms. Napoles?

A: It was already... I think it was... probably sometime in March, sir.

Justice Gutierrez

Q: What was the year?

A: 2013, your honor. No, 2012, your honor.

Q: Now, you were explaining earlier that your letter to the Chief Justice concentrated only on the photograph and article of Mr. Rufo and that at that time, there was no allegation regarding the fact that you visited or was seen in the office of Janet Napoles.

Now, will you please tell us where this allegation was first made regarding your visit to Ms. Napoles?

A: When I was directed by the Honorable Supreme Court to file my comment, sir.

Justice Gutierrez

Let us be consistent. The last question was he saw Janet Napoles in March 2012. **So, where did you meet Janet Napoles?**

A: **In her office, your honor, the first time because I was told to go to the Discovery Suites. That was the first time I went there.**

Justice Gutierrez

Q: **Discovery Suites at 2502?**

A: **I don't know. It's on the 25th floor.**

Q: **What happened when you met her on the 25th floor? Was she there?**

A: **Yes, your honor. I was alone with her. And afterwards, I left. I went there only to thank her because it is a big deal for me.**

Q: **That is all the conversation you had with her, just to thank her?**

A: **Yes, your honor.**

Q: **So, afterwards, you left?**

A: **Yes, your honor.**

Justice Gutierrez

Continue, counsel.

Atty. Geronilla

Q: Early statement of yours when I was asking why you did not state the circumstances regarding...

Justice Gutierrez

Next question before that.

Q: Did you go there?

Justice Ong

Yes, your honor.

Q: The second time as claimed by the whistleblowers?

A: Yes, I went there twice your honor.

Q: When was the second time after you thanked her? You went there for that second time?

A: Yes, your honor.

Q: When was that? Do you remember?

A: After a week or two, I went there again, your honor.

Q: So, what was your purpose in going back to her place for the second time?

A: Your honor, after I thanked her for the first time, she kept on calling me up. She wanted to invite me. I turned her down. Ang daming imbitasyon. I turned her down, and then finally, I acceded because I felt that she was not happy for me na parang walang kwentang tao, I will always turn her down. So, I just went to see her again.

Q: So, what was the purpose of your going there for the second time?

A: Only for chitchat and small talk only, your honor.²¹

xxx

(Emphasis and underscoring supplied.)

A professed Black Nazarene devotee, Respondent, by his own admission, “asked” Mrs. Napoles to arrange for him “access” to the robe of the Black Nazarene.²² Respondent also received, as a result of this same access provided by Mrs. Napoles, fragrant cotton balls which he wipes on any ailing part of his body.²³ In my view, these special favors constitute gifts which, under both PD 46 and Article 211 of the RPC, Respondent is

²¹ TSN (A.M. No. SB-14-21-J), March 21, 2014, pp. 22-30.

²² *Id.* at 22.

²³ *Id.* at 26.

prohibited from receiving.

First. A gift need not be restricted to a physical thing or object. In fact, as provided under RA 6713, it can come in the form of a favor, an act or liberality extended in favor of another. Thus, in *Capuno vs. Jaramillo*,²⁴ a judge was found guilty of gross misconduct and dismissed from the service for having accepted the free use, for one year, of a car and availment of free battery recharging services from a litigant who has a pending case before him. In *Agpalasin vs. Agcaoili*,²⁵ a judge was dismissed for allowing a litigant in his *sala* to pay for the freight of his personal acquisitions.

Second. The gift given to Respondent can hardly be considered of nominal or insignificant value. Respondent referred to the robe of the “*Mahal na Poon*” as “miraculous and has a healing power if you wear it.”²⁶ By Respondent’s own estimation of his devotion, this gift is of immeasurable value to him as it is a gift of healing, more so in light of his medical condition. As Respondent testified, after he wore the robe, he was “so happy” and “spiritually refreshed because of his devotion.”²⁷

This Court may take judicial notice of the fact that ardent devotees of the Black Nazarene risk injury to life and limb for even just a simple touch of the icon's robe when it is paraded during the Black Nazarene's feast day in January. Needless to say, this gift of the ability to wear (and not merely to touch) the Black Nazarene’s robe partakes of special treatment not made available to the rest of the faithful. It was, however, made especially available to Respondent. The same can be said of the gift of the fragrant cotton balls.

In addition, Respondent admitted that, after having worn the Black Nazarene's robe and received the fragrant cotton balls, he went to Mrs. Napoles' office on his own volition to thank her personally. Even after that, he was unable to decline Mrs. Napoles' invitations for him to visit her at her office. These only prove that Respondent deemed the gifts of such inestimable value that he needed to see Mrs. Napoles twice to personally thank her. Otherwise, as the Honorable Investigating Justice Angelina Sandoval-Gutierrez said, Respondent could very well just have thanked Mrs. Napoles over the phone, as would be the polite way to do when one receives tokens of nominal value.²⁸

Finally, the gift was extended to Respondent by reason of his office. Respondent is not a relative or family friend of Mrs. Napoles. Neither are they colleagues or employees of the same office. In fact, according to Respondent, they met only during the party of Senator Estrada. The only conceivable and rational reason Mrs. Napoles would give Respondent the

²⁴ A.M. No. RTJ-93-944, July 20, 1994, 234 SCRA 212.

²⁵ A.M. No. RTJ-95-1308, April 12, 2000, 330 SCRA 250.


²⁶ TSN, March 21, 2014, p. 22.

²⁷ *Id.* at 26.

²⁸ A.M. No. SB-14-21-J, Report and Recommendation, p. 28.

favours she gave him is because he is a member of the *Sandiganbayan*.

In view of the foregoing, and for the reasons stated in the Majority Opinion, I vote with the Majority in finding Respondent GUILTY of GROSS MISCONDUCT, DISHONESTY AND IMPROPRIETY.



FRANCIS H. JARDELEZA
Associate Justice