

EN BANC

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

Promulgated: SEPTEMBER 23, 2014

X-----X

CONCURRING OPINION

LEONEN, J.:

I join the ponencia and the concurring opinions of Justices Arturo Brion and Francis Jardeleza in this important case that defines our collective commitment to strictly enforce our own canons of judicial ethics. I add the following views to those they have already mentioned.

A full understanding of this case requires that we consider the facts in context.

Janet “Jenny” Lim Napoles is one of the accused in the Sandiganbayan case, *People v. Lt. Gen. Edgardo Viray Espinosa*.¹ The accused were charged with malversation of public funds, through falsification of public documents, and violation of Section 3(e) of Republic Act No. 3019.

The case involved the purchase by the Philippine Marine Corps of 500 US-made Kevlar helmets worth ₱3,864,044.99 (hence, this case is referred to as the *Kevlar* case). Several vouchers and documents were falsified to certify their delivery by dealers who won the public biddings. It was alleged that the dealers were merely the dummies of Napoles and that the helmets were not delivered. It was also alleged that when the helmets were subsequently delivered, they turned out to be poorly made Kevlar helmets, made elsewhere and not from the United States as specified in the bid documents.

Benhur Luy, Napoles’ cousin and personal assistant, testified at the Senate Blue Ribbon Committee hearing held on September 26, 2013, that he was aware that Napoles “fixed” the *Kevlar* case in the Sandiganbayan. Another witness and former employee of Napoles, Marina Sula, stated that

¹ The case was docketed as Crim. Case No. 26768 for the malversation of public funds through falsification of public documents, and Crim. Case No. 26769 for the violation of Section 3(e), Rep. Act No. 3019. The case was raffled to the Fourth Division, with Associate Justice Gregory S. Ong as the chairperson, Associate Justice Jose R. Hernandez as ponente, and Associate Justice Cristina J. Cornejo.

Napoles knew Justice Gregory S. Ong, the chairperson of the Sandiganbayan Division that heard the *Kevlar* case.²

During this court's investigation following up on statements made during the Senate Blue Ribbon Committee hearing, Benhur Luy further testified that he kept a ledger where he listed all the expenses of Napoles in relation to the *Kevlar* case, which took ten (10) years to resolve. He found it strange that for a four-million-peso malversation case, Napoles was spending ₱100 million. According to Luy, Napoles explained that she had to pay several individuals in order to fix this case. Luy also stated that one of the beneficiaries to these pay-offs was Justice Ong, although he did not know how much Justice Ong received. Before the decision on the *Kevlar* case was released, Benhur Luy observed that Napoles was confident that she would be acquitted.³

On October 28, 2010, the Fourth Division of the Sandiganbayan promulgated the decision in the *Kevlar* case. The decision was penned by Associate Justice Jose R. Hernandez and concurred in by Associate Justices Gregory S. Ong and Cristina J. Cornejo. As predicted, Napoles was acquitted from the charges against her.

In assessing the guilt of Napoles and her co-accused, the Sandiganbayan relied on the elements of malversation and falsification of public documents.

The elements of malversation under Article 217 of the Revised Penal Code are as follows: (1) that the offender is a public officer; (2) that he had the custody or control of funds or property by reason of the duties of his office; (3) that those funds or property were public funds or property for which he was accountable; and (4) that he appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

The Sandiganbayan identified Commander Eduardo Resurreccion Loyola as the accountable officer in the *Kevlar* case.⁴ Commander Loyola had control over the funds of the Philippine Marine Corps.

The Sandiganbayan also found that the 500 helmets were not yet delivered to the Philippine Marine Corps even if the inspection report stated otherwise. Without the delivery of the 500 Kevlar helmets, the Sandiganbayan concluded that there was taking of government funds.⁵

² Report and recommendation dated May 15, 2014 (A.M. No. SB-14-21-J), p. 3.

³ Id. at 5-9.

⁴ Sandiganbayan decision dated October 28, 2010 (Crim. Case No. 26768-69), p. 22.

⁵ Id. at 26.

2

Despite these findings, the Sandiganbayan found that there was no sufficient evidence to show that Commander Loyola malversed funds because the prosecution did not present evidence that shows Commander Loyola's participation in the preparation of the procurement documents that supported the disbursement vouchers. What was only proven was that Commander Loyola signed those disbursement vouchers and the fourteen (14) checks that paid for the Kevlar helmets' acquisition.⁶

The Sandiganbayan acquitted everyone for the charge of malversation due to the lack of guilt of the accountable officer.⁷

However, the Sandiganbayan ruled that the property inspection and acceptance report that certified the delivery of the helmets was falsified. The Sandiganbayan found the members of the Inspection and Acceptance Committee and the private bidders who conspired with the committee guilty for falsification of a public document.

Napoles was not included among those implicated for the falsification charge. The Sandiganbayan acquitted Napoles on this basis. Thus, in that decision:

The same finding, however, cannot be attributed to accused Napoles. She was not one of the dealer-payees in the transaction in question; on this score alone, her participation as a private individual becomes remote. *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 crime charged in the information absent evidence of an overt act on her part.*⁸ (Emphasis supplied)

The Sandiganbayan also pointed out that the prosecution failed to prove that Napoles used the dealers as dummies since there was "no sufficient evidence that [Napoles] maintains a controlling interest in these entities."⁹

Napoles' co-defendants in the *Kevlar* case filed a motion for reconsideration on their conviction for the falsification charge. In the resolution dated September 20, 2011, the same Sandiganbayan Division lowered the penalty of those who were convicted.

⁶ Id. at 26-27.

⁷ Id. at 27, 30, and 41.

⁸ Id. at 32.

⁹ Id. at 29.

2

From the records of this case, it appears that Justice Ong met Napoles on February 17, 2012.¹⁰

Justice Ong claims that he did not know Napoles during the pendency of the *Kevlar* case. He also claims that he was formally introduced to Napoles during a party hosted by Senator Jinggoy Estrada sometime in 2012.¹¹

When Justice Ong met Napoles, she thanked him for her acquittal in the *Kevlar* case. Justice Ong told her that she should not thank him, but, rather, she should thank her evidence.¹²

In the course of this meeting, Justice Ong discovered that Napoles engaged in philanthropic work and worked with different churches.¹³ Napoles offered to arrange a meeting between Justice Ong and the parish priest of Quiapo Church, so Justice Ong could have an opportunity to wear the robe of the Black Nazarene.¹⁴

Justice Ong emphasized the importance of the opportunity given to him by Napoles.¹⁵ He was a devotee of the Black Nazarene and was suffering from a terminal illness (prostate cancer). He believed that wearing the robe could catalyze his healing. Justice Ong exchanged cellphone numbers with Napoles in order to coordinate his meeting with the parish priest of Quiapo Church.¹⁶

One Sunday, Napoles' driver collected Justice Ong from the adoration chapel of Santuario de San Antonio Parish in Makati. The driver brought him to a private residence. He attended a private mass followed by a lunch hosted by Napoles. In that lunch, he met Monsignor Ramirez of the Quiapo Church.¹⁷

Due to the intercession of Napoles, Justice Ong was able to wear the Black Nazarene's robe.¹⁸

Justice Ong testified further that he went to Napoles' office at the Discovery Suites Center, 25 ADB Avenue, Ortigas, Pasig City, to thank Napoles for giving him the opportunity to wear the Black Nazarene's robe.¹⁹

¹⁰ Memorandum, p. 58.

¹¹ TSN, March 21, 2014, p. 21.

¹² Id.

¹³ Id.

¹⁴ Id. at 23.

¹⁵ Comment, pp. 19–20.

¹⁶ TSN, March 21, 2014, p. 23.

¹⁷ Id. at 24–25.

¹⁸ Id. at 26.

ℓ

After Justice Ong's first visit, Napoles continued calling him and inviting him, and he felt that he would be a "walang kwentang tao" if he turned her down.²⁰ He went again for a second time to Napoles' office for "chit-chat and small talk."²¹

Based on Benhur Luy's testimony, during the first time that Justice Ong visited Napoles' office, Napoles helped Justice Ong invest in the Armed Forces and Police Savings & Loan Association, Inc. (AFPSLAI). Napoles earns 13% per annum in interest in her AFPSLAI placements.²²

In that visit, Justice Ong brought a check for ₱25.5 million to deposit to the AFPSLAI. Napoles told Luy that the check would be deposited in her Metrobank account. She further instructed Luy to prepare eleven (11) checks to advance the interest earnings of Justice Ong. Each check was for approximately ₱282,000.00, for a total of ₱3,102,000.00.²³

*After Luy had prepared the eleven (11) checks, he asked Napoles if the payee should be in the name of Justice Ong. Napoles told Luy that she would ask Justice Ong who was in the room next to where Luy had prepared the checks. When Napoles returned, she told Luy that the checks should be paid to cash. Luy followed Napoles' instructions. Luy handed the checks to Napoles who went to the next room presumably to hand the checks to Justice Ong.*²⁴

Sometime in July 2013, news broke out that Napoles masterminded a multibillion peso scam involving the Priority Development Assistance Fund or PDAF.²⁵ This prompted media attention to shift to Napoles, her operations, her lifestyle, and her relationships with powerful individuals.

On August 13, 2013, Aries Rufo's article, entitled *Exclusive: Napoles parties with anti-graft court justice*, was published in the news website, Rappler.²⁶ The article featured a photograph of Justice Ong with Senator Jinggoy Estrada and Janet Lim Napoles during a social function. The article published statements made by Justice Ong when the reporter confronted him

¹⁹ Id. at 28.

²⁰ Id. at 30.

²¹ Id.

²² TSN, February 12, 2014, p. 23.

²³ Id. at 24–25.

²⁴ Id. at 51–52.

²⁵ N.C. Carvajal, *NBI probes P10-B scam*, Philippine Daily Inquirer, July 12, 2013 <<http://newsinfo.inquirer.net/443297/nbi-probes-p10-b-scam>> (visited September 22, 2014).

²⁶ A. Rufo, *Exclusive: Napoles parties with anti-graft justice*, Rappler, August 30, 2013 <<http://www.rappler.com/newsbreak/37673-napoles-anti-graft-court-justice>> (visited September 22, 2014).

with the photo and knowledge of Napoles' acquittal in the *Kevlar* case. Excerpts from the article state:

I do not know her. She did not appear in court. I think she had a waiver of appearance in court," he replied when reminded that Napoles and her brother, Reynald Lim aka Reynaldo Francisco, were both respondents in the Kelvar [sic] helmet case.

....

Asked where the photo was taken, Ong vaguely remembers the occasion but said it could have been one of the parties frequently hosted by Estrada. "Jinggoy is a friend. I am closer to him than with the father," Ong said, referring to former President Joseph Estrada. The former president appointed Ong to the Sandiganbayan in 1998.

....

In an interview Wednesday, August 28, Ong sought to downplay the first impression that he was close to or even a friend of Napoles. He explained, "I was beside Jinggoy. Jinggoy was the one in the middle. If she was beside me, that would have been a different story."


He said he "would not be stupid enough" to be posing with Napoles had he known that she was the respondent in the case previously handled by his division. The ruling, where a number of Marine officials were found guilty, was penned by Justice Jose Hernandez. Ong and Justice Maria Cristina Cornejo concurred.

Told about the propriety of members of the judiciary being seen in social events that could compromise their integrity, Ong said: "I should have learned my lesson."

In response to the Rappler article, Justice Ong wrote a letter dated September 26, 2013, explaining to this court that he did not know Napoles during the pendency of the *Kevlar* case.

On September 26, 2013, the Senate Blue Ribbon Committee held an investigation in aid of legislation in relation to the Priority Development Assistance Fund (PDAF) scandal. In that hearing, Luy and Sula were presented. Both witnesses mentioned Justice Ong's connection with Napoles.

The statements made during the Senate Blue Ribbon Committee hearing prompted this court to investigate the matter surrounding Justice Ong's relationship with Napoles. We referred the case to former Associate Justice Angelina Sandoval-Gutierrez to conduct an investigation.



In the report dated May 15, 2014, Justice Sandoval-Gutierrez found Justice Ong guilty of gross misconduct, dishonesty, and impropriety. She recommended the penalty of dismissal with forfeiture of all retirement benefits, excluding accrued leave credits, and with prejudice to re-employment to any government agency, including government-owned or controlled corporations.²⁷

The issues in this case are:

- (a) Whether Justice Ong committed improprieties amounting to grave misconduct in the course of his interactions with Janet Lim Napoles;
- (b) Whether Justice Ong committed dishonesty; and
- (c) Whether dismissal is the appropriate penalty for Justice Ong's actions.


I Improprieties

Canon 4 of the Code of Judicial Conduct provides for the rules relating to the proprieties required of judges and justices.

The canon states that “[p]ropriety and the appearance of propriety are essential to the performance of all the activities of a judge.” The rules in the canon regulate the manner how judges should conduct themselves and how they should relate to lawyers and litigants. It extensively provides guidelines on judges’ receipt of gifts.

Justice Ong improperly received gifts from Napoles. Napoles facilitated his access to religious garments and allowed him to either illicitly invest in the AFPSLAI or to receive interest on his alleged investments prior to such interest being earned.

Public officers are prohibited to receive gifts unless it is a) unsolicited; b) of a token value; and c) customary to an occasion. In addition to these requirements, judges and justices should ensure that they do not receive any gift which may reasonably be “perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.”²⁸



²⁷ Report and recommendation dated May 15, 2014 (A.M. No. SB-14-21-J), pp. 33–34.

²⁸ CODE OF JUDICIAL CONDUCT, canon 4, sec. 15.

There was no occasion for Justice Ong to receive a gift from Napoles. His having been one of the justices that acquitted her from very serious charges in the Sandiganbayan raises a reasonable belief that such accommodation was the result of Napoles' influence during his performance of his judicial duties. Justice Ong himself testified that the accommodations started when he met with Napoles. According to him, Napoles thanked him while at the same time offered him assistance regarding access to religious garments.

Furthermore, Luy testified that a) he knew that at least ₱100 million was being spent by Napoles to ensure her acquittal, and (b) he personally prepared checks that were to be handed over to Justice Ong.

Finally, the amount of the checks prepared by Luy for Justice Ong was definitely not a token amount.

Laws and rules regulating gift-giving to public officers and judges


I disagree with the dissenting opinions that there has to be proof that Justice Ong committed an act in consideration of these gifts. The mere receipt is in itself illegal and, thus, grave misconduct was apparent on his part.

Several laws regulate a public officer's receipt of gifts:

The Revised Penal Code in Articles 210, 211, 211-A, and 212 provide:

Art. 210. *Direct Bribery*. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of his official duties, in consideration of any offer, promise, gift or present received by such officer, personally or through the mediation of another, shall suffer the penalty of *prision mayor* in its medium and maximum periods and a fine of not less than three times the value of the gift, in addition to the penalty corresponding to the crime agreed upon, if the same shall have been committed.

If the gift was accepted by the officer in consideration of the execution of an act which does not constitute a crime, and the officer executed said act, he shall suffer the same penalty provided in the preceding paragraph; and if said act shall not have been accomplished, the officer shall suffer the penalties of *prision correccional* in its medium period and a fine of not less than twice the value of such gift.



If the object for which the gift was received or promised was to make the public officer refrain from doing something which it was his official duty to do, he shall suffer the penalties of *prision correccional* in its maximum period to *prision mayor* in its minimum period and a fine of not less than three times the value of such gift.

In addition to the penalties provided in the preceding paragraphs, the culprit shall suffer the penalty of special temporary disqualification.

The provisions contained in the preceding paragraphs shall be made applicable to assessors, arbitrators, appraisal and claim commissioners, experts or any other persons performing public duties.

Art. 211. Indirect bribery. — The penalties of prision correccional in its medium and maximum periods, suspension and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office.

*Art. 211-A. Qualified Bribery. - If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by *reclusion perpetua* and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted.*

If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death.

Art. 212. Corruption of Public Officials. — The same penalties imposed upon the officer corrupted, except those of disqualification and suspension, shall be imposed upon any person who shall have made the offers or promises or given the gifts or presents as described in the preceding articles. (Emphasis supplied)

Direct bribery requires proof that the public officer agrees to commit or refrain to do an act “in consideration of any offer, promise, gift or present” which he receives directly or indirectly. Indirect bribery is committed when the public officer accepts a gift “offered to him by reason of his office.”

Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) added to the acts proscribed in relation to gift-giving. Thus:

Section 3. Corrupt practices of public officers.— In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

....

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act.

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the tendency thereof or within one year after its termination.

The Anti-Graft and Corrupt Practices Act added the prohibition against “directly or indirectly requesting” gifts, presents, shares, percentages, and other benefits in connection with the work of a public officer. The scope of work that will be done by the public officer for the illicit consideration includes “contracts or transactions,” granting of “permits and licenses,” or any other governmental act where “the public officer in his official capacity has to intervene under the law.” Republic Act No. 3019 added soliciting for others, including members of the family of the public officer.

Republic Act No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees further refined the proscriptions through the following provisions:

Section 3. *Definition of Terms.* – ...

(c) "Gift" refers to a thing or a right disposed of gratuitously, or any act or liberality, in favor of another who accept it, and shall include a simulated sale or an ostensibly onerous disposition thereof. It shall not include an unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee.

(d) "Receiving any gift" includes the act of accepting, directly or indirectly, a gift from a person other than a member of his family or relative as defined in this Act, 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, or in exchange for, a favor.

✓

Section. 7. *Prohibited Acts and Transactions.* - In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

.....

(d) Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office. (Emphasis supplied)

Republic Act No. 6713 expanded the concept of a “gift” to include “a thing or a right disposed of gratuitously, or any act or liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof.” Access to use of religious garments is an act of liberality. The receipt of interest before it is earned is a “gift” not only because it is a “thing or a right disposed of gratuitously” but also because it is likewise an act of liberality.

Republic Act No. 6713 expressly excluded an “unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee.”

Finally, Presidential Decree No. 46, which is still in effect, provides:

WHEREAS, under existing laws and the 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; and

WHEREAS, the stoppage of the practice of gift-giving to government men is a concrete step in the administration 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;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, . . . do hereby make 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 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.* Included within the prohibition is the throwing of parties or entertainments in honor of the official or employee or of his immediate relatives.

For violation of this Decree the penalty of imprisonment for not less than one (1) year nor more than five (5) years and perpetual disqualification from public office shall be imposed. 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. (Emphasis supplied)

The law proscribes the receipt of gifts before or after the official act or omission. It punishes the receipt of gifts “regardless of whether or not the same is for past 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.” This law also expressly proscribes “the throwing of parties or entertainments” by others “in honor of the official or employee or of his immediate relatives.” Even repairing the automobile of a public officer for free is recognized as another form of gift.²⁹

In addition to these statutory proscriptions, Canon 4 of the Code of Judicial Conduct clarifies the rules with respect to judges and justices receiving gifts. Thus:

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

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.

....

SEC. 13. Judges and members of their families shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.

SEC. 14. Judges shall not knowingly permit court staff or others subject to their influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done in connection with their duties or functions.

²⁹ See *Ompoc v. Torres*, 258 Phil. 616 (1989) [Per Curiam, En Banc].



SEC. 15. Subject to law and to any legal requirements of public disclosure, judges may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Judicial propriety requires more from judges and justices than with other public officers. Public confidence in rule of law requires that all basis for doubt with respect to the independence and integrity of the judicial profession should be avoided. Canon 3, Section 2 of the Code of Judicial Conduct requires judges to “ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.” Judges and justices should “ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.”³⁰ As this court previously required:

... a judge's official conduct and his behavior in the performance of judicial duties should be free from the appearance of impropriety and must be beyond reproach. One who occupies an exalted position in the administration of justice must pay a high price for the honor bestowed upon him, for his private as well as his official conduct must at all times be free from the appearance of impropriety. Because appearance is as important as reality in the performance of judicial functions, like Caesar's wife, a judge must not only be pure but also beyond suspicion. A judge has the duty to not only render a just and impartial decision, but also render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge's integrity.

It is obvious, therefore, that while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such a manner that the parties before them should have confidence in their impartiality.³¹

In summary: Judges and justices cannot accept gifts, favors, and accommodations.

The only exception under existing law is that a judge or justice may only receive a gift if:

- 1) it is of nominal value or “a token gift, award or benefit”;

³⁰ CODE OF JUDICIAL CONDUCT, canon 2, sec. 1.

³¹ *Sibayan-Joaquin v. Javellana*, 420 Phil. 584, 589–590 (2001) [Per J. Vitug, Third Division].

ℓ

2) the gift and its value are “appropriate for the occasion on which it is made”; **and**

3) the act of giving and accepting the gift, the gift itself, or the value of such gift “might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.”³²

If any of these requirements are not present, the judge or justice commits a serious breach of both law and the canons. Since it is a violation of law and it affects the public’s perception of the fundamental values of integrity and independence of the judiciary, it amounts to a grave misconduct punishable by dismissal from the service

We have penalized several judges who have asked favors from lawyers and litigants who appeared before them. This court dismissed a judge who solicited “retirement money” and food for his court staff’s Christmas party.³³ That judge solicited from a litigant with a pending case in his court. This court also reprimanded a judge who solicited and received court office equipment from a litigant.³⁴ We also warned and fined a judge for soliciting and receiving contributions for a religious celebration and *barangay* fiesta.³⁵ While this court gave merit to the judge’s defense that she was merely “following-up” on the solicitation letter signed by the parish priest, this court stated that the judge going to the prosecutor’s office to receive the donations from lawyers “does not bode well for the image of the judiciary.”³⁶ In that case, we stated:

Respondent’s act of proceeding to the Prosecutor’s Office under the guise of soliciting for a religious cause betrays not only her lack of maturity as a judge but also a lack of understanding of her vital role as an impartial dispenser of justice, held in high esteem and respect by the local community, which must be preserved at all times. It spawns the impression that she was using her office to unduly influence or pressure Atty. Yruma, a private lawyer appearing before her sala, and Prosecutor Diaz into donating money through her charismatic group for religious purposes.

.....

Respondent’s act discloses a deficiency in prudence and discretion that a member of the judiciary must exercise in the performance of his official functions and of his activities as a private individual.³⁷

³² CODE OF JUDICIAL CONDUCT, canon 4, sec. 15.

³³ *Spouses Nazareno v. Almario*, 335 Phil. 1122 (1997) [Per Curiam, En Banc].

³⁴ *Lecaroz v. Garcia*, 194 Phil. 509 (1981) [Per J. De Castro, Second Division].

³⁵ *Perfecto v. Desales-Esidera*, A.M. No. RTJ-11-2270, January 31, 2011, 641 SCRA 1 [Per J. Carpio-Morales, Third Division].

³⁶ *Id.* at 4.

³⁷ *Id.* at 8.

ℓ

**Justice Ong's receipt of a religious
favor from Napoles is improper**

It was improper for Justice Ong to receive a favor from Napoles. Napoles offered it to him on the same occasion she thanked him for her acquittal. Justice Ong himself narrated:

Ms. Napoles approached me and introduced herself. She started the conversation talking to me partly in Chinese because partly, I can speak Chinese language, and then, on that occasion, *she was thanking me for her acquittal*. Your honor if you may allow me. Alam niyo naman may kayabangan ako. Sabi ko, you should not thank me. You should thank their evidence. That is what I do in cases wherein the accused would thank me for their acquittal and I tell them, do not thank the court for your acquittal. You should thank your evidence. It is your evidence that sets you free. In fact, I told her that if only there are enough evidence that would warrant her conviction, she would be convicted.³⁸ (Emphasis supplied)

It was after this conversation when Napoles began talking about her work with churches and offered Justice Ong the opportunity to wear the robe of the Black Nazarene. This gives us the impression that Justice Ong accepted the favor in return for the acquittal.

The height of impropriety can be seen in the manner Napoles arranged for Justice Ong to meet Monsignor Ramirez, the parish priest of Quiapo Church. The meeting occurred on a Sunday.³⁹ Sunday is sacred for Catholics, a day when all priests are busy. Justice Ong had the luxury of being picked up by Napoles' driver. There was a private mass officiated by Monsignor Ramirez and attended by several Chinese individuals.⁴⁰ During the lunch after the mass, Napoles even made sure that Justice Ong was seated next to the monsignor.⁴¹ This meeting in itself is already a huge favor for Justice Ong.

Justice Ong felt that Napoles "was instrumental in successfully paving the way . . . to be able to do something that was very important to him."⁴² It did not bother him that Napoles, who provided this favor and accommodation to him, was a winning litigant in a previous case that his Sandiganbayan Division decided.

³⁸ TSN, March 21, 2014, p. 21.

³⁹ Id. at 24.

⁴⁰ Id. at 24-25.

⁴¹ Id. at 25.

⁴² Comment, p. 19.

l

Justice Ong's excuse for using Napoles to arrange for the wearing of the robe is that he did not know that it could be done until he met Napoles.

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?**

....

Because you have been suffering from that ailment, mass or whatever, and that you are a devotee of the Black Nazarene. [Y]ou 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.⁴³ (Emphasis supplied)

Justice Ong's reasoning is flimsy to say the least. It is insulting to his colleagues in this court who are aware of the possibilities of access to such religious garments.

Justice Ong knew about the robe when Napoles told him about it. He should not have accepted Napoles' offer to arrange the wearing of the robe. As Justice Sandoval-Gutierrez suggested, he should have gone to the parish priest directly instead of risking the appearance of impropriety. Even his god would have frowned at the use of religious symbols for an immoral end.

In *Felongco v. Dictado*,⁴⁴ a judge received free bus tickets from a litigant bus company. The judge explained that the vice president of the bus company was his cousin and that in the civil case he was trying, the bus company lost.⁴⁵ However, this court still found him guilty of grave misconduct. Due to this and his other indiscretions, he was dismissed from service.⁴⁶

A religious favor might not be as tangible as bus tickets, but if a judge was dismissed for accepting bus tickets from a losing litigant, a Sandiganbayan justice who accepted a favor from a winning litigant deserves a similar penalty.

⁴³ TSN, March 21, 2014, pp. 52–53.

⁴⁴ A.M. No. RTJ-86-50, June 28, 1993, 223 SCRA 696 [Per Curiam, En Banc].

⁴⁵ Id. at 704–705.

⁴⁶ Id. at 719.

ℓ

By accepting the favor, Justice Ong created an impression of partiality, contrary to Canon 4, Section 15 of the Code of Judicial Conduct. If he really wanted to wear the Black Nazarene robe after Napoles had told him that it was possible, he would have pursued it himself, and not accept the offer of Napoles to do it for him. It does not appear that there was no other way for him to touch what he considered as sacred garments except to work through a person he acquitted.

Justice Ong's continued fraternization with Napoles constitutes another impropriety

It was improper for Justice Ong to visit Janet Lim Napoles on two separate occasions just to thank her for the religious favor he received from her.

It seems contrary to human experience that a Sandiganbayan justice will visit a mere acquaintance (not a close friend) just to thank the acquaintance for a favor. The second visit of Justice Ong makes it more suspicious that his visits were not merely for "chit-chat and small talk."⁴⁷

Justice Ong admitted to continuously socializing with a former litigant and even going to the extent of visiting her in her office. If they are not friends, as he alleged, and he was merely doing it to not seem as "walang kwentang tao,"⁴⁸ then he essentially admitted to socializing with a former litigant.

To be beholden to the impressions of an acquaintance as a result of doing what is right rather than to be concerned about maintaining the public trust does not speak well of Justice Ong's character. The Code of Judicial Conduct is not subservient to his interpretation of social customs. *Mas nagiging "walang kwenta" ang isang mahistrado kapag nalalagay sa alanganin ang buong hudikatura dahil bumibisita siya sa isang akusado sa isang kasong kanyang hinusgahan.*

Besides, the courage required to be able to comply with the required integrity of judges and justices also means the courage to face a public which may misunderstand his compliance with the rules. Rather than succumb to this misunderstanding, Justice Ong should have behaved as a justice should and educated others who would not understand why the rules are what they are.

⁴⁷ TSN, March 21, 2014, p. 30.

⁴⁸ Id.

Just like when receiving gifts, the Code of Judicial Conduct frowns upon judges fraternizing with litigants. It is considered an impropriety. This court previously stated, “[a] judge is not only required to be impartial; he must appear to be impartial. Fraternizing with litigants tarnishes this appearance.”⁴⁹

The constant association with Napoles creates a perception of past bias and partiality. Judges in the past always use the excuse that those litigants or counsels that they fraternized with lost in their cases. Even then, this court proceeded to penalize these judges.⁵⁰

Fraternizing with litigants after the finality of their cases is no different, especially if the judge is fraternizing with the winning litigant. It appears from a reasonable observer that the winning litigant only won because of her camaraderie with the judge. It tends to exhibit the partiality of a judge, which violates Canon 3 of the Code of Judicial Conduct on impartiality. Section 2 of Canon 3 states that “[j]udges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.”

Both Luy and Sula witnessed the visits of Justice Ong to Napoles. This affirmed Napoles’ statement to them that her connection in the Sandiganbayan was Justice Ong. Whether or not Justice Ong brokered the fixing of the *Kevlar* case may not be relevant. The visits were not made by Napoles. ***Justice Ong himself went to the condominium unit of Napoles who was a former accused. This, in itself, is an impropriety.***

**Justice Ong’s receipt of the eleven
(11) checks from Napoles is another
impropriety**

Financial accommodations are considered as “gifts” on the basis of law and the Code of Judicial Conduct.

The opportunity to invest in a financial instrument with low risks but high returns is a favor. Advancing interest earnings not yet earned on the investment is another favor. Being able to invest in a fund without being qualified to do so is yet another favor received by Justice Ong.

⁴⁹ *Cortes v. Agcaoili*, 355 Phil. 848, 886 (1998) [Per J. Panganiban, En Banc].

⁵⁰ See *Padilla v. Zantua, Jr.*, A.M. No. MTJ-93-888, October 24, 1994, 237 SCRA 670 [Per J. Romero, Third Division] and *Sibayan-Joaquin v. Javellana*, 420 Phil. 584 (2001) [Per J. Vitug, Third Division].

8

Benhur Luy testified that he prepared the checks to advance the interest earnings of Justice Ong in his AFPSLAI deposit. The checks amounted to approximately ₱3 million.

There was substantial evidence to support the conclusion that Justice Ong received these checks from Napoles. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”⁵¹

Luy attested that he saw Justice Ong visit Napoles. Napoles informed Luy that they would help Justice Ong invest in AFPSLAI. Napoles entertained Justice Ong in a different unit of the building (Unit 2501) from where Luy was holding office (Unit 2502). Napoles then went to Luy and instructed him to issue the checks for Justice Ong. Luy even remembered asking Napoles if he should put Justice Ong’s name as payee. Napoles had to confirm with Justice Ong before instructing Luy to have the checks paid to cash.

Even if Luy was not at Unit 2501 when Napoles handed the checks to Justice Ong, there could be no other conclusion to be derived from the facts. It appears that Napoles gave those eleven (11) checks to Justice Ong in advance of his interest earnings to his AFPSLAI deposit.

Justice Sandoval-Gutierrez characterized that Luy testified in a “candid, straightforward and categorical manner.”⁵² This narration was corroborated by Justice Ong’s admission that he visited Napoles on two occasions. These pieces of evidence, taken together, lead to no other conclusion but that Justice Ong received eleven (11) checks from Napoles, a former litigant in his court.

Justice Ong argued that it was impossible for him to invest ₱25.5 million with the AFPSLAI. He argued that the AFPSLAI rules only allow for a maximum deposit of ₱30,000.00 per quarter and a maximum deposit per member of ₱3 million.

This argument does not cast serious doubt on Luy’s testimony because it is possible that Napoles and AFPSLAI have a special and illicit arrangement. This provides an explanation why Napoles told Luy that she would deposit Justice Ong’s check in her personal account. In addition, Justice Ong’s argument omitted the fact that those limitations for the maximum deposit in AFPSLAI only refer to a capital contribution account.⁵³

⁵¹ *Ang Tibay v. CIR*, 69 Phil. 635, 642 (1940) [Per J. Laurel, En Banc].

⁵² Report and recommendation dated May 15, 2014 (A.M. No. SB-14-21-J), p. 22.

⁵³ See the official AFPSLAI website for the features of its capital contribution account <http://www.afpslai.com.ph/capitaldeposits_about.php> (visited September 22, 2014).

The AFPSLAI also offers a deposit product referred to as a savings deposit account. The latter account type earns at a lower interest rate per annum, but the product does not have deposit restrictions.

Currently, AFPSLAI membership is exclusive to current and retired and active uniformed personnel of the Philippine National Police, the Armed Forces of the Philippines, the Bureau of Jail Management and Penology, and the Bureau of Fire Protection.⁵⁴ ***By allowing Napoles to invest on his behalf, Justice Ong indirectly violated the rules of the AFPSLAI. This is another unacceptable impropriety that Justice Ong committed.***

It is difficult to understand why Justice Ong would choose Napoles to broker his investments. Assuming that he had ₱25.5 million, legitimate investment bankers and financial managers will easily find products that are as competitive as the AFPSLAI capital contribution account for that amount of money. Justice Ong could have invested that amount of money in the stock market, bonds market, real estate, hedge funds, and mutual funds under reasonable terms and conditions.

Justice Ong should have avoided the impropriety of having a former litigant — one whom he voted to acquit — manage his money. Risking public condemnation and loss of public trust simply because he desired an interest rate of 13% and getting the interest income in advance is inexcusable. Canon 4, Section 1 of the Code of Professional Responsibility states that “judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen. . . .” One of these personal restrictions is choosing financial intermediaries. Judges and justices should consciously avoid availing financial accommodations from their former litigants, even if it is not as apparent as receiving money. Receiving financial accommodations show impropriety and casts doubts on judges’ impartiality.

In *Guinto v. Flores*,⁵⁵ this court said:

Respondent judge’s conduct of “borrowing” money from litigants in his *sala* was highly improper and warrants extreme sanction from this Court. His insistence that the money he got from Manalastas was merely a “loan” taxes our credulity. In a recent case, we ruled that receiving money from litigants unavoidably creates the impression that litigants can facilitate the favorable resolution of cases pending before the courts.

A judge should impress upon the public that legal issues are resolved based solely on the facts and the laws applicable. Being at the forefront of the judicial system, respondent judge should have avoided

⁵⁴ See the official AFPSLAI website <http://www.afpslai.com.ph/info_faqs.php> (visited September 22, 2014).

⁵⁵ 530 Phil. 83 (2006) [Per J. Corona, Second Division].

2

impropriety and the appearance of impropriety in his behavior so as not to corrode the people's respect for the law and judicial institutions.⁵⁶

I disagree with the dissenting opinions that focus on the alleged lack of evidence connecting the issuance of the checks to the Kevlar case. This is not relevant to concluding that Justice Ong committed an unlawful act violative of the Code of Judicial Conduct.

In *Verginesa-Suarez v. Dilag*,⁵⁷ it was alleged by several anonymous complainants that Judge Renato Dilag was accepting bribes to render favorable decisions in declaration of nullity of marriage cases. A judicial audit was conducted, and it was discovered that a number of the declaration of nullity of marriage cases were decided with irregularities.⁵⁸ The Investigating Justice found that the evidence on record was not enough to prove graft and corruption. The allegations of pay-offs were merely hearsay. However, this court dismissed Judge Dilag from service for violations of the Code of Judicial Conduct, specifically for violating the canons on impartiality and impropriety. This court stated:

[W]hile not conclusively and clearly proving the charge of graft and corruption, the same casts a cloud of suspicion upon the integrity, impartiality and propriety of which respondent Judge is expected to possess and manifest. These requirements are concepts of the mind which can only be manifested through actuations of a magistrate. Thus, as explicitly worded in the New Code of Judicial Conduct, a judge must not merely possess these requirements but he *must be also be seen and perceived to be such*. The judiciary is the bastion of justice, fairness and equity. Certainly, it cannot afford to have erring magistrates who will only tarnish its image rather than maintain and preserve the same.⁵⁹

This reasoning is applicable to this case.

A cursory review of the *Kevlar* case, however, reveals some questions that raise reasonable suspicions that some irregularities have happened.

Pinpointing the irregularities in the *Kevlar* case is not in exercise of our appellate jurisdiction. It is similar to the judicial audit conducted in the *Verginesa-Suarez*. It will not affect the rights of the parties to a final judgment but should assist this court assess whether there was abuse of discretion by a trial judge or a justice of the Sandiganbayan. Abuse of discretion can provide the context for charges of grave misconduct or improprieties.

⁵⁶ Id. at 88. The case cited by the decision, *Saraza v. Tam* (489 Phil. 52 (2005) [Per J. Ynares-Santiago, First Division]), involves a court stenographer who was suspended for loaning money from a litigant.

⁵⁷ 599 Phil. 640 (2009) [Per Curiam, En Banc].

⁵⁸ Id. at 645-648.

⁵⁹ Id. at 659-660.

The offense charged was a complex crime. The acts consist of falsification of a series of documents in order to make it appear that the government purchased five hundred (500) Kevlar helmets for the Marines. However, no helmets were initially delivered. As charged, falsification was committed as a necessary means to commit the crime of malversation.

The evidence presented during trial shows that all the requirements of a complex crime were proven beyond reasonable doubt. To recall:

Under Article 48 of the Revised Penal Code, a complex crime refers to (1) the commission of at least two grave or less grave felonies that must both (or all) be the result of a single act, or (2) one offense must be a necessary means for committing the other (or others). Negatively put, there is no complex crime when (1) two or more crimes are committed, but not by a single act; or (2) committing one crime is not a necessary means for committing the other (or others).⁶⁰

However, the Division of the Sandiganbayan⁶¹ participated in by Justice Ong treated malversation and falsification of public documents as two separate crimes that must be pleaded and proved, without taking into account the relation between the two crimes.

This is strange because the same Division of the Sandiganbayan found that the evidence presented supports the finding that malversation indeed happened. However, the Division reasoned that since the accountable officer, Commander Loyola, cannot be faulted for relying on the supporting documents in the disbursement voucher, the acts constituting the malversation could no longer be attributed to anyone. This is clearly *non-sequitur*.

This is also contrary to our doctrines. In *People v. Enfermo*,⁶² this court ruled:

[O]ur Supreme Court has ruled that to justify conviction for malversation of public funds, the prosecution has only to prove that the accused received public funds or property and that he could not account for them or did not have them in his possession and could not give a reasonable excuse for the disappearance of the same. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a

⁶⁰ *Monteverde v. People*, 435 Phil. 906 (2002) [Per J. Panganiban, Third Division], citing L. Reyes, *The Revised Penal Code, Book I* 645 (1998) and *People v. Honra, Jr.*, 395 Phil. 299, 321 (2000) [Per J. Gonzaga-Reyes, Third Division].

⁶¹ The decision of the Fourth Division of the Sandiganbayan was penned by Associate Justice Jose R. Hernandez, with Chairperson Associate Justice Gregory S. Ong and Associate Justice Maria Cristina J. Cornejo concurring.

⁶² 513 Phil. 1 (2005) [Per J. Azcuna, First Division].

Q

shortage in his accounts which he has not been able to explain satisfactorily. Such conversion of public funds must be affirmatively proved, whether by direct evidence or by the production of facts from which conversion necessarily follows.⁶³

Even assuming that Commander Loyola was unaware that the documents he relied on were falsified, the Sandiganbayan failed to take into account that malversation may also be committed through negligence:

Malversation may be committed either through a positive act of misappropriation of public funds or property or passively through negligence by allowing another to commit such misappropriation. To sustain a charge of malversation, there must either be criminal intent or criminal negligence and while the prevailing facts of a case may not show that deceit attended the commission of the offense, it will not preclude the reception of evidence to prove the existence of negligence because both are equally punishable in Article 217 of the Revised Penal Code.

More pointedly, the felony involves breach of public trust, and whether it is committed through deceit or negligence, the law makes it punishable and prescribes a uniform penalty therefor. Even when the information charges willful malversation, conviction for malversation through negligence may still be adjudged if the evidence ultimately proves that mode of commission of the offense.⁶⁴

Having, thus, disposed of the charge for malversation, the Sandiganbayan focused only on the lighter offense of falsification.

The Sandiganbayan found that there was falsification of public documents when the accused public officers certified that Napoles already delivered the Kevlar helmets when, in truth, she did not.⁶⁵ The certification issued by Commander Loyola was made allegedly to facilitate the encashment of the checks and which were deposited in Napoles' account.⁶⁶

Isolating the malversation charge from the falsification charge paved the way for Napoles' acquittal. She was a critical link in the charge for malversation because she was the point-person of the winning bidders and the Philippine Marine Corps.⁶⁷ The Sandiganbayan recognized the

⁶³ Id. at 9, citing *Estrella v. Sandiganbayan*, 389 Phil. 413, 428 (2000) [Per J. De Leon, Jr., Second Division]; *People v. Pepito*, 335 Phil. 37, 46 (1997) [Per J. Puno, Second Division]; *Felicilda v. Grospe*, G.R. No. 102494, July 3, 1992, 211 SCRA 285, 289 [Per J. Griño-Aquino, En Banc]; *Navallo v. Sandiganbayan*, G.R. No. 97214, July 18, 1994, 234 SCRA 175, 185 [Per J. Vitug, En Banc]; *Villanueva v. Sandiganbayan*, G.R. No. 95627, August 16, 1991, 200 SCRA 722, 734 [Per J. Regalado, En Banc]; *Bugayong v. People*, 279 Phil. 823, 830 (1991) [Per J. Gutierrez, Jr., En Banc].

⁶⁴ *People v. Uy*, 511 Phil. 682, 691 (2005) [Per J. Ynares-Santiago, First Division], citing *Cabello v. Sandiganbayan*, 274 Phil. 369, 374 (1991) [Per J. Regalado, En Banc]; *Deloso v. Hon. Desierto*, 372 Phil. 805, 813 (1999) [Per J. Pardo, First Division]; *Diaz v. Sandiganbayan*, 361 Phil. 789, 802–803 (1999) [Per J. Vitug, Third Division].

⁶⁵ Sandiganbayan decision dated October 28, 2010 (Crim. Case No. 26768-69), pp. 12–14, 23 and 28.

⁶⁶ Id. at 8–10 and 32.

⁶⁷ Id. at 19.

reports naming Napoles.⁶⁸ *Surprisingly, they chose to disregard these reports since they dismissed the malversation charge for everyone.*

The Fourth Division of the Sandiganbayan ruled that the evidence showed that fourteen (14) government checks were issued and deposited in Napoles' name. Surprisingly, the same Division of the Sandiganbayan was convinced that this was not enough to show that she participated in the falsification of the public documents. In spite of the checks, it still concluded that there was no evidence to support that the winning bidders were merely dummies of Napoles. In spite of these checks and the finding that these were deposited in her account, the same Division found that she could not be treated as a conspirator. Finally, completing its unorthodox conclusions, the Division of Justice Ong concluded that since Napoles did not sign any of the falsified documents, she was acquitted for the falsification charge.

The irregularities in the Sandiganbayan decision coupled with the cloud of suspicion cast by Justice Ong's acquaintance with Napoles erode the integrity and credibility of his court. Any observer with the required probity can justifiably and reasonably conclude that the irregularities in the *Kevlar* case were deliberate. It is not merely an error of judgment made in good faith if we consider that the justices that participated in the decision are not only competent but are experts on the rules of evidence, on deriving inference from the evidence, and on the law from which they are required to render fair judgments.

Even if Justice Jose Hernandez was the ponente of the *Kevlar* case, Justice Ong still participated in the case. The case was decided by a collegiate body, hence, we can presume that any irregularity should be attributed to the members of the collegiate body and not only to the ponente. It is contrary to public policy for this court to assume that justices of the Fourth Division of the Sandiganbayan concur with decisions that they have not read, understood, and studied.

In addition, it was Justice Ong who was seen in the company of Napoles. There are no reports on the relationship of Napoles to Justice Hernandez. Justice Ong's actions after his participation in the deliberations of the *Kevlar* case rouse the suspicion of this court and transgress the Code of Judicial Conduct.

It has been an accepted doctrine that judges should not be punished for errors in their judgment, if they were made in good faith.⁶⁹ *Errors per se*

⁶⁸ Id. at 23–24.

⁶⁹ See *Salcedo v. Caguioa*, 467 Phil. 20, 28 (2004) [Per J. Austria-Martinez, Second Division] and *Ever Emporium, Inc. v. Maceda*, 483 Phil. 323, 337 (2004) [Per J. Callejo, Sr., En Banc].

l

should not be subject to administrative penalties against the deciding judge. However, there will be administrative sanctions when judicial errors are “tainted with fraud, dishonesty, gross ignorance, bad faith or deliberate intent to do an injustice.”⁷⁰

When a Sandiganbayan Division renders a highly irregular decision and one of the Division’s justices continuously associates with the winning litigant, the judicial error becomes tainted with bad faith. It becomes conduct inconsistent with the ideals of the office of an Associate Justice of the Sandiganbayan. It deserves administrative sanction to the highest degree. Otherwise, it will jeopardize the integrity of the courts as a whole.

Justice Ong acting as the “connection” of Napoles is supported by independently relevant statements

It was improper for Justice Ong to appear to be the “connection” of Napoles to the Sandiganbayan.

Justices Perez, Bersamin, and Reyes are all of the belief that Luy and Sula were testifying on matters not of their personal knowledge. Hence, in their view, Luy’s and Sula’s testimonies are entirely based on hearsay.

Luy testified on a ledger for the Sandiganbayan during the pendency of the *Kevlar* case. Napoles also told him that she paid Justice Ong for the results of that case. However, Luy was not able to see if any of the items in the ledger were attributed to Justice Ong.⁷¹

Sula knew from Napoles that Justice Ong helped them in their Sandiganbayan case.⁷² However, when the PDAF scandal broke out, Napoles told Sula that they would not approach Justice Ong for help because his “talent fee” was too high.⁷³

Luy also testified that Napoles instructed him to prepare eleven (11) checks for Justice Ong, but he was not able to witness Napoles turning over those checks to Justice Ong.

I disagree with the view that the testimonies of Luy and Sula were hearsay. Even if Luy and Sula testified on matters that Napoles imparted to

⁷⁰ *Ever Emporium, Inc. v. Maceda*, 483 Phil. 323, 337 (2004) [Per J. Callejo, Sr., En Banc].

⁷¹ TSN, February 12, 2014, p. 27.

⁷² Id. at 85–86 and 91–95.

⁷³ Id. at 73.

them in confidence, these statements do not necessarily constitute hearsay; rather, they are independently relevant statements. The value of these statements depends on the fact that it was supposed to prove and should be taken in context.

Independently relevant statements are considered exceptions to the hearsay rule:

Under the doctrine of independently relevant statements, regardless of their truth or falsity, the fact that such statements have been made is relevant. The hearsay rule does not apply, and the statements are admissible as evidence. Evidence as to the making of such statement is not secondary but primary, for the statement itself may constitute a fact in issue or be *circumstantially relevant* as to the existence of such a fact.⁷⁴ (Emphasis supplied, citation omitted)

In addition, “[e]vidence as to the making of such statements is not secondary but primary, for in itself it (a) constitutes a fact in issue or (b) is circumstantially relevant to the existence of such fact.”⁷⁵

The testimonies of Luy and Sula pertaining to Napoles’ statements on her supposed connection with Justice Ong constitute independently relevant statements. They are *circumstantially relevant* to the administrative charges against him, regardless of the truth or falsity of Napoles’ utterances to them.

While Luy and Sula do not have personal knowledge of Napoles’ actual dealings with Justice Ong, their testimonies prove that Napoles bragged about her connection with Justice Ong. Evidence tending to prove that Napoles indeed mentioned Justice Ong as a “connect” should be admissible and credible evidence against Justice Ong in this administrative case.

The following testimonies should be considered by this court in establishing the fact that Justice Ong was improperly associated and connected with Napoles:

1) Luy’s testimony stating his personal knowledge of a) his preparation of the eleven (11) checks allegedly issued by Napoles to Justice Ong as advance for the latter’s deposit in AFPSLAI, b) the ledger listing Napoles’ alleged Sandiganbayan expenses, and c) Justice Ong’s visit to Napoles’ office;

⁷⁴ *People v. Velasquez*, 405 Phil. 74, 99–100 (2001) [Per J. Mendoza, En Banc].

⁷⁵ *Republic v. Heirs of Alejaga, Sr.*, 441 Phil. 656, 672 (2002) [Per Panganiban, Third Division].

2) Sula's testimony stating her personal knowledge of Justice Ong's visit to Napoles' office; and

3) Justice Ong's own admission that he personally met with Napoles twice.

This court can also take judicial notice of the fact that Napoles has been charged for numerous cases involving the PDAF together with, among other high-ranking officials, Senator Estrada. Justice Ong admits to a friendship with Senator Jinggoy Estrada. This relationship is supported by the picture showing Justice Ong, Senator Estrada, and Napoles posing together in what appears to be a social gathering. If Justice Ong is to be believed, he claims that it was Senator Jinggoy Estrada who introduced him — formally — to Napoles.

These pieces of evidence tend to prove that Napoles herself mentioned to her trusted staff that she had connections with Justice Ong, particularly for the fixing of the *Kevlar* case. These statements are admissible and meet the requirements of credibility for the purpose of assessing Justice Ong's fitness to continue as a member of the bench.

Justice Ong would rather call attention to minor inconsistencies in the statements of the witnesses to place them out of their context. He argues that his favorite food is Japanese,⁷⁶ and not Chinese, as Luy suggested in his testimony.⁷⁷ Just because Luy got his favorite food wrong does not cast doubt as to the rest of his testimony. Luy never stated that he knew Justice Ong well. He was merely narrating his recollection of his visits to Napoles.

Justice Ong also points out that Sula's testimony that Justice Ong is the "connect" of Napoles in the Sandiganbayan runs contrary to her statement that Napoles told her once that they would not fix the PDAF cases with Justice Ong because his "talent fee" is too high. These statements are not mutually exclusive. The statement of Napoles that Justice Ong's "talent fee" is high already suggests that she had previous dealings with him directly or indirectly. Any transaction involving a "talent fee" already demeans the profession of all judges and justices.

The minor inconsistencies that Justice Ong points out do not cast doubt as to the credibility of the statements made by Luy and Sula. Rather, they show that such statements were not rehearsed or contrived. For so long as the principal content remains consistent, minor inconsistencies in the details of the statement which do not cast doubt on the purpose for which they are presented supports the credibility of such evidence.

⁷⁶ TSN, March 21, 2014, p. 31.

⁷⁷ TSN, February 12, 2014, p. 30.

**Justice Ong's conduct prejudiced
the best interest of the courts**

Justice Ong's improprieties do not only constitute grave misconduct, they are also conduct prejudicial to the best interest of service.

Conduct prejudicial to the best interest of service is subject to disciplinary action under the Administrative Code.⁷⁸

Aries Rufo, a journalist who is a keen observer of the judiciary, mentioned in his testimony:

Judges and Justices . . . should insulate themselves from situations that could compromise their integrity. Without Napoles in the picture, **I would have been uncomfortable seeing Justice Ong with Jinggoy considering that Senator Jinggoy was tried before at the Sandiganbayan for plunder. He is still an active Justice and an ordinary person might conclude that, you know, he could favor him in cases if there are.**

An ordinary private citizen testified that he perceives Justice Ong as someone who is partial. Such perception is not unique or isolated. It is enough to prejudice the service that the judiciary is providing the public.

A reasonable public perception of partiality of one justice with good basis tarnishes the entire Sandiganbayan and the judiciary in general. It is for this reason that we promulgated Canon 3, Section 2 of the Code of Judicial Conduct, to wit:

SEC. 2. Judges shall ensure that his or her conduct, both in and out of court, ***maintains and enhances the confidence of the public***, the legal profession and litigants in the impartiality of the judge and of the judiciary. (Emphasis supplied)

In *Tan v. Pacuribot*:⁷⁹

We have repeatedly reminded members of the Judiciary to so *conduct themselves as to be beyond reproach and suspicion, and to be free from any appearance of impropriety in their personal behavior, not only in the discharge of their official duties but also in their everyday lives.*

⁷⁸ Exec. Order No. 292, book V, chap. 6, sec. 46(b)(27).

⁷⁹ 565 Phil. 1 (2007) [Per Curiam, En Banc]. While this case involved a judge who committed several acts of sexual harassment, the case is still instructive on the expectation of the public for members of the judiciary.

*For no position exacts a greater demand on the moral righteousness and uprightness of an individual than a seat in the Judiciary. Judges are mandated to maintain good moral character and are at all times expected to observe irreproachable behavior so as not to outrage public decency.*⁸⁰

II Dishonesty

Dishonesty is “the concealment of truth in a matter of fact relevant to one's office or connected with the performance of his duties. It is an absence of integrity, a disposition to betray, cheat, deceive or defraud, bad faith.”⁸¹ Dishonesty is also the “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.”⁸²

Dishonesty need not be an outright lie. It can consist of the concealment of the truth. The truth can be concealed not only by negating the truth. Under certain circumstances, facts can be concealed by one who does not say anything. The truth can be denied by uttering statements that make a contrary reality seem like the truth.

Truth can also be denied by slanting the facts, i.e., refocusing events on a detail that is irrelevant or stating only a partial truth. Dishonesty may be the conclusion from an examination of a series of actions. Sometimes, individuals can utter independently true statements, but when taken together, would create a context that is contrary to the truth.

Justice Ong committed dishonest acts in concealing his association with Napoles.

Justice Ong misrepresented his affiliation with Napoles when Aries Rufo confronted him with the photograph of him with Senator Estrada and Napoles. Before the Investigating Justice, Rufo testified:

Q Did you ask why Janet Napoles was there?

A Yes, I asked him and *he said he doesn't recognize her because it appears that she did not appear in the Kevlar case.* He said that...

Q You mean, he did not recognize who this lady is?

⁸⁰ Id. at 53.

⁸¹ *Del Rosario v. Pascua*, A.M. No. P-11-2999, February 27, 2012, 667 SCRA 1, 6 [Per J. Brion, Second Division].

⁸² *National Power Corporation v. Olandescu*, G.R. No. 171434, April 23, 2010, 619 SCRA 264, 273–274 [Per J. Peralta, En Banc].

A Yes, Justice.

....

Q When you reminded him, did he finally recognize her as Janet Napoles?

A There was no categorical statement that he knew that it was Janet Napoles. I got the sense that he knew her because of the stories and the photos that. . . .

....

I asked him what brought about the photograph. He said *it must have been in one of those instances where a guest would like to have his or her photo taken with celebrities or with other public figures* and he also stated it must have been when I asked him whether they are close or not, he qualified the situation... the photo, by saying that it would have been different if he was close to Napoles in that photo that would indicate that they were closed [sic] but the fact that they were separated by Senator Jinggoy Estrada, it must have been the case where a person like Janet Lim Napoles would want her photo taken with public figures.⁸³

As a result of this conversation, Aries Rufo quoted Justice Ong in his article: **"I do not know her.** She did not appear in court. I think she had a waiver of appearance in court."⁸⁴

The ponencia also points out that Justice Ong's dishonest act was contained in his letter to the Chief Justice dated September 26, 2013. In that letter, he did not disclose that he visited Napoles' office sometime in 2012.

In addition to the letter, Justice Ong's denial that he did not attend any party hosted by Napoles was reiterated in his comment:

Justice Ong categorically states that he has never attended any party or social event or affair hosted by Mrs. Napoles or her family, either before she had a case with his court, or while she already had a pending case with his court, or at any time afterwards. This fact has now been confirmed by Sula who never claimed that Justice Ong was a presence or a fixture in any of the parties or social events or affairs that were hosted by Mrs. Napoles.⁸⁵

⁸³ TSN, March 7, 2014, pp. 9–10.

⁸⁴ A. Rufo, *Exclusive: Napoles parties with anti-graft court justice*, Rappler, August 30, 2013 <<http://www.rappler.com/newsbreak/37673-napoles-anti-graft-court-justice>> (visited September 22, 2014) Emphasis in this quote supplied.

⁸⁵ Comment, p. 18.

Justice Ong's representations constitute dishonesty that renders him administratively liable

Justices Perez and Reyes are of the belief that Justice Ong's acts do not constitute dishonesty. They opine that Justice Ong's statements were taken out of context. According to them, in his letter dated September 26, 2013, Justice Ong was only defending himself from the impression created by the Rappler article that makes it seem that he was part of Napoles' social circle. At that time, he was not obligated to disclose anything about the favor regarding the Black Nazarene's robes or that he visited Napoles' office.

Justice Reyes also points out that during the investigation, Justice Ong readily admitted to having associated with Napoles, which negates the finding that he intended to be dishonest in the letter to the Chief Justice.

I disagree.

I believe that Justice Ong's actions show a disposition to deceive. His words lacked the integrity and honesty we require from a Sandiganbayan justice. This is obvious if we take all his statements in the proper context.

Before the investigation on these issues went full-scale, Justice Ong deliberately wanted to create an impression that he was not associated with Napoles. This could be concluded from Aries Rufo's narration of the interview that preceded the Rappler article. Napoles already had a notorious reputation at that time, and an ordinary citizen would impulsively dissociate himself in order to avoid being implicated by Napoles' notoriety.

However, Justice Ong is not an ordinary citizen. He is required by the Rules of Court and the Code of Judicial Conduct to be honest in all his dealings.⁸⁶ If he has stayed true to this Code, he would not have had anything to conceal from the public. He would be able to face reporters and confidently say that he had nothing to do with Napoles.

A specifically dishonest statement Justice Ong made during the Rappler interview was when "[h]e said he 'would not be stupid enough' to be posing with Napoles had he known that she was the respondent in the case previously handled by his division."

⁸⁶ "By the very nature of the bench, judges, more than the average man, are required to observe an exacting standard of morality and decency. The character of a judge is perceived by the people not only through his official acts but also through his private morals as reflected in his external behavior." *De la Cruz v. Bersamira*, 402 Phil. 671, 679 (2001) [Per J. Ynares-Santiago, First Division].

However, during his testimony last March 21, 2014, he revealed that during the first time he was introduced to Napoles, Napoles thanked him for the *Kevlar* case acquittal. It is reasonable to presume that the introduction occurred, as narrated by Justice Ong, prior to the picture-taking. Thus, the statement made by Justice Ong to Rufo was an outright lie.

Another specifically dishonest statement of Justice Ong was made in his comment. He stated that he never attended a social event or affair hosted by the Napoleses. It was to negate the statement made in the Rappler article that "Napoles parties with anti-graft court justice." At that time, Justice Ong just needed to address the fact that he was seen at the party of Senator Estrada, which was also attended by Napoles. Hence, there is no inconsistency with the truth (he and Napoles were guests at Senator Estrada's party) and his statement in the comment (he was not a guest at Napoles' party).

However, during the course of the investigation, Justice Ong admitted to attending an affair where he was invited by Napoles. He attended a Eucharistic mass at a private residence. It is difficult to deny that it was Napoles who hosted that affair. This conclusion is based on Justice Ong's own narration. Napoles' driver picked him up. She seated him next to the Monsignor of Quiapo Church. His admissions are inconsistent with his previous statements.

Even if we assume that Justice Ong was not dishonest solely on the basis of his letter to the Chief Justice, he did commit dishonesty elsewhere. He committed dishonesty when he interacted with the reporter. He continued his dishonesty when he was asked to comment on the statements made during the Senate Blue Ribbon Committee investigation.

I disagree with some of my colleagues that his dishonesty was cured because he readily admitted his association with Napoles during the investigation. It is easy to admit matters when already confronted with so many pieces of evidence that cannot be denied. It does not wipe out his past acts of dishonesty.

Justice Ong had the disposition to deceive the public by limiting his association with Napoles as much as possible. His story accommodated more details as more facts emerged about his association with Napoles.

When Aries Rufo only had a photo to confront Justice Ong, Justice Ong limited his association with Napoles to the fact that they were both attendees of Senator Estrada's party.

His narrative evolved after the picture had been published. He stated in the letter to the Chief Justice that he did not know Napoles during the pendency of the *Kevlar* case.

On Marina Sula's testimony that she saw Justice Ong once in their office, he explained in his comment dated November 21, 2013 the reason why Sula saw him there. He narrated the religious favor Napoles gave him and the need for him to personally thank Napoles in her office.

During the hearing on February 12, 2014, Benhur Luy stated that he saw Justice Ong twice in Napoles' office. On March 21, 2014, when it was Justice Ong's turn to testify, his story evolved once more to accommodate the second instance that Luy referred to by stating that he visited Napoles' office twice to thank her for the religious favor.

Justice Ong's dishonest acts might not be as apparent as irregularly punching on the bundy clock,⁸⁷ or misrepresenting facts in the personal data sheet for civil service qualifications.⁸⁸ However, his acts are still dishonest and show his disposition to betray, cheat, deceive, and defraud.

This court must be wary of non-traditional concealments of truth. It shows that a person not only made a dishonest act but that the person has a propensity to conceal the truth. This runs against the very principles of truth and justice that the judiciary tries to uphold. It is reprehensible if it is a judge or justice — expected by the public trust to be honest — who perpetrates this act. As we have time and again declared: “[D]ishonesty is a malevolent act that has no place in the Judiciary.”⁸⁹

Justice Ong should be dismissed for his dishonesty

Rule 140, Section 8 of the Rules of Court classifies dishonesty as a serious charge. Rule 140, Section 11(A) provides for a range of penalties:

1. Dismissal from 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;

⁸⁷ *Re: Report on the Irregularity in the Use of Bundy Clock by Alberto Salamat*, 592 Phil. 404 (2008) [Per Chico-Nazario, Third Division].

⁸⁸ *Administrative Case for Dishonesty and Falsification of Official Document against Noel V. Luna, SC Chief Judicial Staff Officer, Systems Planning And Project Evaluation (SPPE) Division, MISO*, 463 Phil. 878 (2003) [Per Curiam, En Banc].

⁸⁹ *De Vera v. Rimas*, 577 Phil. 136, 143 (2008) [Per J. Azcuna, First Division].

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 ₱20,000.00 but not exceeding ₱40,000.00.

Justice Bersamin opines that Justice Ong's dishonesty "did not meet the required seriousness or gravity that would merit the extreme penalty of dismissal." Justice Bersamin applied the standard that for there to be dishonesty that is subject to the penalty of dismissal, the act of dishonesty should relate to Justice Ong's official duties or qualifications as a justice of the Sandiganbayan.

I cannot agree with Justice Bersamin's assessment. Justice Ong's dishonesty was related to his qualifications as a justice of the Sandiganbayan. He might not have placed a false entry in his personal data sheet for the Judicial Bar Council to assess,⁹⁰ but he concealed truth that affects his fitness to be a member of the judiciary. The Code of Judicial Conduct requires propriety from its members. This qualification of a justice should be constant and should be met by a justice at all times. When Justice Ong committed dishonest acts to conceal his impropriety, his dishonesty related to his qualifications as a Sandiganbayan justice.

The dishonesty of Justice Ong did not only pertain to a single act. Taken together, this set of acts reveals a propensity of Justice Ong to be dishonest. For dishonesty alone, he should be meted the penalty of dismissal.

III Grave misconduct

Time and again, this court has clarified what can be considered as misconduct. Thus:

Misconduct has been defined as improper or wrongful conduct. It is the transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment.⁹¹ (Underscore supplied)

To be considered grave misconduct, "the elements of corruption, clear intent to violate the law or flagrant disregard of established rule"⁹² must be present.

⁹⁰ See *Fernandez v. Judge Vasquez*, A.M. No. RTJ-11-2261, July 26, 2011, 654 SCRA 349 [Per J. Perez, En Banc].

⁹¹ *Office of the Ombudsman v. Magno*, 592 Phil. 636, 658 (2008) [Per J. Chico-Nazario, Third Division].

⁹² *Id.*

Justices Perez, Bersamin, and Reyes concur that the improprieties of Justice Ong were tantamount to misconduct. However, due to the absence of the element of corruption, the misconduct cannot be considered grave, hence, they merely penalized him for simple misconduct.

However, grave misconduct is not only qualified by corruption, it could also be qualified by violation of law or “flagrant disregard of established rule.”

Justice Ong violated the law by improperly receiving gifts from Napoles. In addition, he flagrantly disregarded established rules.

In *Imperial, Jr. v. Government Service Insurance System*,⁹³ this court described the instances when there is flagrant disregard of an established rule:

Flagrant disregard of rules is a ground that jurisprudence has already touched upon. It has been demonstrated, among others, in the instances when there had been open defiance of a customary rule; in the repeated voluntary disregard of established rules in the procurement of supplies; in the practice of illegally collecting fees more than what is prescribed for delayed registration of marriages; when several violations or disregard of regulations governing the collection of government funds were committed; and when the employee arrogated unto herself responsibilities that were clearly beyond her given duties. **The common denominator in these cases was the employee’s propensity to ignore the rules as clearly manifested by his or her actions.**⁹⁴ (Emphasis in the original, citations omitted)

Justice Ong repeatedly ignored the Code of Judicial Conduct. His many years in the judiciary should have instilled in him the discipline to be cautious in his social life. Otherwise, he compromises his independence and impartiality.

Yet, Justice Ong repeatedly met and accepted favors from a former litigant. He offers no other explanation to characterize his relationship with Napoles. Certainly, his many acts of impropriety constitute grave misconduct.

Grave misconduct or gross misconduct constituting violations of the Code of Judicial Conduct under the Rules of Court, Rule 140, Section 8, is another serious charge. Again, the range of penalties for serious charges

⁹³ G.R. No. 191224, October 4, 2011, 658 SCRA 497 [Per J. Brion, En Banc].

⁹⁴ Id. at 507–508.

2

include dismissal, three- to six-month suspension, or a fine ranging from ₱20,000.00 to ₱40,000.00.

For Justice Ong's series of improprieties, he deserves the penalty of DISMISSAL.

We meted the penalty of dismissal to a Regional Trial Court judge, Judge Marino Rubia, for similar improprieties. In *Sison-Barias v. Rubia*,⁹⁵ Judge Rubia and one of his court staff met with a litigant in a restaurant in the Bonifacio Global City. At that time, the litigant had three pending cases in Judge Rubia's sala. During the meeting, Judge Rubia asked inappropriate questions relating to the personal circumstances of the litigant. The litigant was disturbed because Judge Rubia revealed that he was close to the opposing counsel, and he seemed to be using information about that litigant that he derived from the opposing counsel. The litigant felt that Judge Rubia was severely biased toward the opposing party. Judge Rubia convinced her to meet with opposing counsel to arrange her cases extra-judicially. For that meeting, Judge Rubia did not ask or receive favors from the litigant in exchange for a favorable decision, but the litigant paid the bill for the meals at the restaurant. After this incident, the litigant felt the bias against her in every order that Judge Rubia issued regarding her cases.

In *Rubia*, this court strictly enforced Canons 2, 3, and 4 of the Code of Judicial Conduct. To our mind, due to "[Judge Rubia's] actions, complainant and all who will be made aware of the events of this case will harbor distrust toward the judiciary and its processes."

Justice Ong should not be given a lighter penalty simply because he fraternized with a previous litigant, not a current litigant. The effect on his integrity, impartiality, and propriety is the same. He was a Sandiganbayan associate justice who was willing to compromise the integrity of the judiciary for favors. In that sense, Justice Ong's transgressions are even graver than Judge Rubia's.

IV Proper penalty

The charge of grave misconduct constituting Justice Ong's improprieties and his dishonesty is enough to justify the penalty of DISMISSAL.

⁹⁵ A.M. No. RTJ-14-2388, June 10, 2014 <<http://oca.judiciary.gov.ph/wp-content/uploads/2014/04/A.-M.-No.-RTJ-14-2388.pdf>> [Per Curiam, En Banc].

In addition, Justice Ong already had a prior administrative sanction that aggravates his current standing in this administrative case.

In *Jamsani-Rodriguez v. Ong*,⁹⁶ this court already penalized Justice Ong for his misconduct. While the nature of Justice Ong's offense was different, the finding of his administrative liability came with a warning that a repetition of the same or similar act shall be dealt with more severely. The fact that this court subsequently granted him judicial clemency⁹⁷ does not cure this warning. This warning persists.

The acts committed by Justice Ong in this case are more severe than in *Jamsani-Rodriguez v. Ong*. In *Jamsani-Rodriguez*, Justice Ong was found guilty of irregularly holding proceedings in court, violative of the collegial nature of the Sandiganbayan. In this case, his acts lacked integrity, were improper, and dishonest.

FINAL NOTE

The Code of Judicial Conduct requires "[j]udges [to] ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer."⁹⁸ A judge should ensure that his conduct, even out of court, maintains and enhances the confidence of the public in the impartiality of the judiciary.⁹⁹

The expectations of propriety are higher for Sandiganbayan justices like Justice Ong. It is the Sandiganbayan that has the primary exclusive jurisdiction to hear and decide the most difficult cases involving graft and corruption. It is the Sandiganbayan that sits in judgement of public officers who violate the provisions of the Revised Penal Code, Republic Act No. 3019, Republic Act No. 6713, and Presidential Decree No. 46 on the receiving of gifts. It is the justices of the Sandiganbayan that struggle day in and day out against political pressure and personal risk to live by the public's faith that they will themselves follow the law.

Many times during the deliberations of this case, colleagues have pointed to the need for compassion for the case of Justice Ong. We are told that he has served long years as a judge and as a justice. ***We were even told that he attempted to informally circulate a letter through other colleagues in this court that he was willing to take optional retirement should he be meted with any kind of suspension.***

⁹⁶ A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626 [Per J. Bersamin, En Banc].

⁹⁷ A.M. No. 08-19-SB-J, February 19, 2013 (unpublished resolution).

⁹⁸ CODE OF JUDICIAL CONDUCT, canon 2, sec. 1.

⁹⁹ CODE OF JUDICIAL CONDUCT, canon 3, sec. 2.

That he had the audacity to try to influence the members of this court by offering to resign through an informal letter circulated through some colleagues is in my view could have been another basis for his dismissal. It shows that he has at least made attempts to communicate ex parte with members of this court outside the formal processes allowed by our rules.

Ex parte communication sub rosa by one being investigated with any member of this court while we sit in deliberation of his case is wrong. Influence peddling is wrong.


We should, as the court with the constitutional duty to discipline judges and justices of the lower courts, properly call out an attempt to illicitly influence this court when it happens.

If there is any group deserving of compassion, it should be the judges and justices who toil with meager salaries and highly taxed benefits and who struggle daily to keep their integrity and independence intact. Our compassion should be reserved to judges and justices who do not succumb to temptation or pressure to cater to the rich and powerful accused at the expense of the Filipino people. Our compassion should be for them who we will disappoint should we mistake a failure of our ability to do justice for mercy.

Every decision will cause us discomfort. I do not take personal pleasure in voting for his dismissal. But it is what is called for by law and my conscience.

We fail ourselves, our institution, and the values and principles we swore to uphold when we lose the courage to do what is right and just.

ACCORDINGLY, I vote that Justice Ong be found GUILTY of GRAVE MISCONDUCT, IMPROPRIETY, ACTS PREJUDICIAL TO THE BEST INTEREST OF SERVICE, and DISHONESTY. I vote that he be DISMISSED from the service, with forfeiture of all retirement benefits, except accrued leave credits, if any, and with prejudice to re-employment in any branch, agency, or instrumentality of the government including government-owned or controlled corporations.


MARVIC M.V.F. LEONEN
Associate Justice