

**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

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CONCURRING AND DISSENTING OPINION

REYES, J.:

I concur with the *ponencia's* declaration that the evidence presented against Sandiganbayan Associate Justice Gregory S. Ong (Justice Ong) are insufficient to sustain the charge of bribery against him. That there is no direct evidence that would sufficiently establish that Justice Ong actually received money from Janet Lim-Napoles (Napoles) in exchange for her acquittal in the Kevlar case. Likewise, I agree with the *ponencia's* finding that the association between Justice Ong and Napoles had been sufficiently proved; that Justice Ong's act of meeting with Napoles at the latter's office on two occasions, notwithstanding that the decision in the Kevlar case had long been promulgated, violates the rule of propriety under Canon 4 of the New Code of Judicial Conduct.

I am unable to agree, however, with the *ponencia's* conclusion that Justice Ong's association with Napoles "constitutes gross misconduct notwithstanding the absence of direct evidence of corruption or bribery." Although Justice Ong's dealing with Napoles gives the appearance of impropriety, there is a paucity of evidence, however, to conclude that he has a "corrupt inclination" which would merit a finding of gross misconduct on his part and be meted the penalty of dismissal from the service. Further, I do not agree with the *ponencia* that Justice Ong is guilty of dishonesty when he failed to disclose in his letter to the Chief Justice that he visited Napoles in her office after the promulgation of the decision in the Kevlar case.

***The charge of bribery and/or
corruption against Justice Ong was
not sufficiently proved.***

The charge of gross misconduct against Justice Ong stems from the allegation of bribery against him by "pork barrel scam" whistleblowers Benhur Luy (Luy) and Marina Sula (Sula). Essentially, Luy and Sula

alleged that Napoles solicited the help of Justice Ong in connection with the Kevlar case, which was then pending before the Sandiganbayan. They claimed that Napoles was acquitted of the charge against her in the said case through the intercession of Justice Ong; that Justice Ong obtained monetary consideration in exchange for Napoles' acquittal.

The accusation of bribery is a very serious charge that would entail not only the dismissal of a judge, in this case an Associate Justice of the Sandiganbayan, but also criminal prosecution.¹ An accusation of bribery is easy to concoct and difficult to disprove. Thus, the complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent connotes a misconduct so grave that, if proven, would entail dismissal from the bench, the quantum of proof required should be more than substantial.² In such cases, there must be a direct and convincing evidence to prove the charge of corruption; mere accusations will not suffice.³

The claims of Luy and Sula that Justice Ong is the "contact" of Napoles in the Sandiganbayan and that he caused the acquittal of the latter in the Kevlar case in exchange for monetary consideration are hearsay.

During the investigation conducted by retired Supreme Court Justice Angelina Sandoval-Gutierrez (Justice Sandoval-Gutierrez) on February 12, 2014, Luy categorically stated in his direct examination that Justice Ong is the "contact" of Napoles in the Sandiganbayan. However, when asked how he knew that Justice Ong is the "contact" of Napoles, Luy replied that Napoles told him so. Thus:

Atty. Garen

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

Witness Luy

A Si Justice Gregory Ong po.


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

A Ang sinabi po... Si Ms. Napoles po, pinsan ko po kasi si Ms. Napoles. We are second cousins. **So, kinwento talaga sa akin ni madam kung ano ang mga development sa mga cases, kung ano ang mga nangyayari. Tapos po, sinabi niya sa akin mismo na nakakausap niya si Justice Gregory Ong at ang nagpakilala**

¹ See *Sy v. Judge Fineza*, 459 Phil. 780 (2003).

² See *Castaños v. Judge Escañó, Jr.*, 321 Phil. 527 (1995); *Cea v. Judge Paguio*, 445 Phil. 535 (2003); *Vda. de Nepomuceno v. Judge Bartolome*, 448 Phil. 663 (2003).

³ See *Atty. Valdez, Jr. v. Judge Gabales*, 507 Phil. 227 (2005).



raw sa kanya po ay si Senator [J]inggoy Estrada.⁴ (Emphasis mine)

Likewise, Luy's allegation that Justice Ong was the one who orchestrated the acquittal of Napoles in the Kevlar case in exchange for monetary considerations is based only on what Napoles told him, viz:

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

Witness Luy

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

Justice Gutierrez

Just answer the question directly. Paano inayos... Anong ibig mong sabihin na inayos. Paano inayos?

Witness Luy

A Ano po ma'am nagbigay po siya ng pera pero hindi siya nagbanggit ng amount. Basta nagpalabas po siya ng pera.

Justice Gutierrez

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

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

Q Nagbigay ng pera kay Justice Gregory Ong?

A **Opo, yun ang sabi niya.**

Q That was her statement?

A Yes, madam.

⁴ TSN, February 12, 2014, p.15.



Q To you?
A Yes, madam.

x x x x

Witness Luy

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

Justice Gutierrez

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

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

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

A **Wala po pero nabanggit lang po niya sa akin na nagbigay po siya kay Justice Ong, but she never mentioned the amount.**⁵
(Emphasis mine)

Even Luy’s testimony on the circumstances surrounding Napoles’ issuance of eleven (11) checks, each amounting to ₱282,000.00, to Justice Ong, supposedly interest payments for the ₱25.5 million which the latter wanted to deposit with the Armed Forces of the Philippines and Police Savings and Loans Association, Inc. (AFPSLAI), are merely based on what Napoles told him. Luy never saw that the said checks, which he insinuated were part of the consideration for Napoles’ acquittal in the Kevlar case, were indeed given to Justice Ong.

Q Now, when..... I am interested in this check which as you said P25million or so?

A Opo, P25.5 million po.

Q Whose check was that?

A BDO Check from Gregory Ong po.

Q How do you know that it was from Gregory Ong?

A **Sinabi po ni Ms. Napoles sa akin.**

Q Ah, it was she who told you?

A Yes po.

Q That this is the check of Gregory Ong?

A Yes po. As I testified earlier na hindi ko nakita ang checke kung nakapangalan kay Ms. Janet Napoles, ang sinabi ni Ms. Napoles sa akin, ang checke ay BDO na P25.5. Kaya nag-compute kami ng 26.

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Id. at 26-29.

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x x x x

Q You never asked or confronted or talked to Justice Ong regarding that matter? You only relied on the “say-so” of Janet Napoles?

A **Sinabi niya, kasi siya ang boss ko, ang instructions niya noon,** and at that time po, Justice Gregory Ong was in the other... nasa kabilang office siya and before na nag-issue kami, na sa 2501 siya.

Q Yes, yes, but I am interested of your personal knowledge in the issuance of check, if the check came from Justice Ong or not, and you said that it was only told to you by Janet Napoles?

A **Yes po.**

Justice Gutierrez

By the way Mr. Luy, were you the one who delivered the check to Mr. Justice Gregory Ong?

Witness Luy

A **Hindi na po.**

Q Who delivered the check to him?

A Si Ms. Napoles na po.

Q How did you come to know that it was Ms. Napoles? Did you see?
A Opo, kasi dalawa po kami na nag-prepare. Bago kasi.... Tinanong ko kasi madam siya kung sino ang payee. Ilalagay ko po ba dito madam Gregory Ong? Sabi niya, Hindi. Teka lang. Umalis siya. Pumunta sa kabila, sa 2501. Tapos, tumuloy siya at sabi “Pay to cash na lang.” So, inilagay namin madam na cash. Tapos, pinirmahan niya yung checke na prenapare ko. So, bitbit na niya yung check. Dinala na niya.

Q Ah, she brought the check to the other room but you did not see the person to whom it was delivered, right?

A Kasi madam, alam ko po na ...

Atty. Geronilla

No. You just answer the question.

Justice Gutierrez

Just answer the question.

Witness Luy

A **Ah, you mean si Ms. Napoles na binigay niya mismo yung checke kay Gregory Ong? Hindi po.**

Justice Gutierrez

Q **You did not see?**

A **Hindi po. Hindi ko po nakita.**⁶ (Emphases mine)

Similarly, Sula's claim that Justice Ong is the "contact" of Napoles in the Sandiganbayan is merely based on what Napoles told her. Thus:

Atty. Benipayo

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

Witness Sula

A Ang alam ko po kasi marami po siyang kinaka-usap na mga lawyers na binabayaran niya para tulungan siya kay Gregory Ong sa Kevlar case. **Tapos, sa kalaunan po, nasabi na niya sa amin na meron na po siyang nakilala sa Sandiganbayan na nagngangalang Justice Gregory Ong. Tapos, sabi niya, siya po ang tutulong sa amin para ma-clear kami. x x x.**⁷ (Emphasis mine)

Basic is the rule that a witness may only testify to those facts, which he knows of his personal knowledge.⁸ Hearsay evidence is inadmissible, generally, since it is not subject to the tests that can ordinarily be applied for the ascertainment of the truth of the testimony, since the declarant is not present and available for cross-examination.⁹ By itself, and as repeatedly conveyed by jurisprudential policy, hearsay evidence is devoid of intrinsic merit, irrespective of any objection from the adverse party.¹⁰

The veracity of the foregoing allegations against Justice Ong cannot be ascertained since the declarant thereof, *i.e.* Napoles, was not presented during the investigation conducted by Justice Sandoval-Gutierrez. Notwithstanding that the testimonies of Luy and Sula were admitted in evidence, the same are, insofar as the claims that Justice Ong is the "contact" of Napoles in the Sandiganbayan and that he caused the acquittal of the latter in the Kevlar case in exchange for monetary consideration, devoid of any probative value.

⁶ Id. at 50-52.

⁷ Id. at 71.

⁸ RULES OF COURT, Rule 130, Section 36.

⁹ See R.J. Francisco, EVIDENCE, 1996 ed., p. 246.

¹⁰ Peralta, Jr., PERSPECTIVES OF EVIDENCE, 2005 ed., p. 275.

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While it is true that technical rules of procedure and evidence are not applied strictly in administrative proceedings,¹¹ still, hearsay evidence, without more, would not suffice to establish an allegation therein.¹² In this case, other than the hearsay testimonies of Luy and Sula, no other evidence was presented to establish that it was indeed Justice Ong who is the “contact” of Napoles in the Sandiganbayan who helped her secure an acquittal in the Kevlar case. Thus, the testimonies of Luy and Sula with regard to the foregoing should not be given any weight in the determination of Justice Ong’s administrative liability.

Justice Ong’s act of visiting Napoles’ office twice after the promulgation of the decision in the Kevlar case gives the appearance of impropriety.

Although the circumstances surrounding the charge of bribery against Justice Ong were not established, it does not mean, however, that he cannot be held administratively liable. Luy testified that he personally saw Justice Ong visit Napoles’ office in Discovery Suites Center on two occasions sometime in 2012, after the promulgation of the decision in the Kevlar case. Luy’s testimony was corroborated by Sula.

Justice Ong admitted that he indeed visited Napoles in her office twice sometime in 2012. However, he clarified that, on his first visit, he just wanted to thank Napoles personally since the latter made it possible for him to wear the robe of the Black Nazarene, of which he is a devotee. He explained that he wanted to wear the robe of the Black Nazarene, which is known for its healing powers, since he is suffering from prostate cancer. On his second visit to Napoles, he claimed that they just talked for about 30 minutes and had coffee.

Section 1, Canon 4 of the New Code of Judicial Conduct mandates judges to avoid not only impropriety but also the appearance of impropriety as well in all of their activities. 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.¹³ In this regard, judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.¹⁴ Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. Fraternizing with litigants tarnishes this appearance.¹⁵

¹¹ *Office of the Court Administrator v. Indar*, A.M. No. RTJ-10-2232, April 10, 2012, 669 SCRA 24.

¹² *See Gonzales v. NLRC*, 372 Phil. 39 (1999); *Skippers United Pacific, Inc. v. NLRC*, 527 Phil. 248 (2006).

¹³ NEW CODE OF JUDICIAL CONDUCT, Canon 4, Section 2.

¹⁴ *Id.*, Canon 2, Section 1.

¹⁵ *Dela Cruz v. Judge Bersamira*, 391 Phil. 232, 242 (2000).

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Regardless of the reason therefor, it cannot be gainsaid that Justice Ong's act of visiting Napoles in her office on two occasions gave rise to an appearance of impropriety on his part. He should have been more circumspect in dealing with Napoles considering that the latter is a former litigant in a case decided by a division of the Sandiganbayan, of which he is the chairman. Undoubtedly, from the view of a reasonable observer, such conduct is highly imprudent and unbefitting of a magistrate of the Sandiganbayan.

The appearance of impropriety on the part of Justice Ong is not negated by the fact that his visit to the office of Napoles occurred long after the decision in the Kevlar case had been promulgated. The termination of the Kevlar case will not dissipate public scrutiny on his conduct as an Associate Justice of the Sandiganbayan, especially considering that he received a favor from Napoles who was acquitted of the charge against her in the said case.

The conduct and behavior of everyone connected with an office charged with the dispensation of justice is circumscribed with the heavy burden of responsibility. His at all times must be characterized with propriety and must be above suspicion. His must be free of even a whiff of impropriety, not only with respect to the performance of his judicial duties, but also his behavior outside the courtroom and as a private individual.¹⁶

***Justice Ong's act of visiting Napoles
only amounts to simple misconduct.***

Notwithstanding the finding that there is no direct evidence to prove the charge of bribery against Justice Ong, the *ponencia* nevertheless found him guilty of gross misconduct, imposing upon him the penalty of dismissal from service. The *ponencia* stressed the "association" of Justice Ong with Napoles after the promulgation of the decision in the Kevlar case and pointed out that "[t]he totality of the circumstances of such association strongly indicates [Justice Ong's] corrupt inclinations."

I do not agree.

Misconduct means intentional wrongdoing or deliberate violation of a rule of law or standard of behavior in connection with one's performance of official functions and duties. For grave or gross misconduct to exist, there must be reliable evidence showing that the judicial acts complained of were corrupt or inspired by the intention to violate the law, or were in persistent disregard of well-known rules.¹⁷

¹⁶ *Derogatory News Items Charging J. Demetrio Demetria*, 407 Phil. 671 (2001).

¹⁷ *See Gacad v. Clapis, Jr.*, A.M. No. RTJ-10-2257, July 17, 2012, 676 SCRA 534; *Judge Francisco v. Justice Cosico*, 469 Phil. 549 (2004).

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Contrary to the *ponencia*'s finding, there is no reliable evidence in this case to conclude that Justice Ong's conduct was corrupt or inspired by the intention to violate the law. The hearsay testimonies of Luy and Sula, without more, are insufficient to prove the charge of bribery against Justice Ong. There were no other evidence presented as regards the alleged bribery of Justice Ong which, when taken together with the hearsay testimonies of Luy and Sula, would support a finding of gross misconduct on the part of Justice Ong.

The allegation that Justice Ong is the "contact" of Napoles in the Sandiganbayan who helped her secure an acquittal in the Kevlar case remains to be a mere allegation unsupported by any reliable evidence. It is derived from the testimonies of Luy and Sula who testified thereon based not on their personal knowledge but on what Napoles had told them. To stress, the said testimonies of Luy and Sula have no probative value and should not have been considered by the *ponencia* in the determination of the administrative liability of Justice Ong.

The "totality of circumstances" adverted to by the *ponencia*, apparently, only refers to the visit of Justice Ong to the office of Napoles on two occasions after the promulgation of the decision in the Kevlar case, which fact was admitted by Justice Ong. Indeed, from the various evidence presented against Justice Ong, only the fact of his visit to Napoles was sufficiently established. However, as already stated, the fact of Justice Ong's visit to Napoles only supports a finding of impropriety or giving the appearance of impropriety on the part of Justice Ong.

Impropriety or giving the appearance of impropriety, by fraternizing with a litigant, in this case a former litigant, only amounts to simple misconduct. On this point, the Court's ruling in *Atty. Molina v. Judge Paz*¹⁸ is instructive, viz:

In the present administrative case, respondent Judge Paz admitted to facilitating a meeting between Atty. Molina and Mayor Antiporda with the aim of forging a settlement between the warring political factions. Respondent Judge Paz saw himself as a mediator between the contending political factions in the Municipality of Buguey. However, Atty. Molina was at that time facing a multiple murder case in the sala of respondent Judge Paz and the victims of the multiple murder case were the political followers of Mayor Antiporda. In short, respondent Judge Paz held a private meeting with Atty. Molina, who was then accused of multiple murder before respondent Judge. Respondent Judge Paz knew that Atty. Molina was a private prosecutor in the criminal cases against the mayor's son pending with another court. The disputes between the political factions involved grave felonies, which respondent Judge Paz should have known could not be the subject of compromise.

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462 Phil. 620 (2003).



Canon 2 of the Code of Judicial Conduct provides that a judge should avoid impropriety and the appearance of impropriety in all his activities. A judge must not only be impartial, he must also appear to be impartial. Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. Fraternizing with litigants tarnishes this appearance.

Respondent Judge Paz's actuation constitutes simple misconduct, which for a first offense is punishable with suspension of one month and one day to six months. However, respondent Judge Paz had retired compulsorily on 21 September 1998. In lieu of suspension, respondent Judge Paz should be fined, not ₱1,000 as recommended by the Investigating Justice, but ₱20,000 considering that simple misconduct is a less serious charge.¹⁹ (Emphasis mine)

Thus, finding that his conduct violates the rule on propriety under Canon 4 of the New Code of Judicial Conduct, Justice Ong should be held liable for simple misconduct. The charge of simple misconduct is classified under Section 9, Rule 140 of the Rules of Court as a less serious charge. A finding of guilt for a less serious charge carries with it the penalty of either: (a) suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months; or (b) a fine of more than ₱20,000.00, but not exceeding ₱40,000.00.²⁰

This is already the second offense of Justice Ong; he had previously been fined and sternly warned that a repetition of the same or similar offense in the future will be dealt with more severely.²¹ Accordingly, the maximum penalty for less serious charge should be imposed upon Justice Ong, *i.e.* suspension from office without salary and other benefits for three (3) months.

The charge of dishonesty against Justice Ong is unsubstantiated.

I further disagree with the *ponencia's* conclusion that Justice Ong is guilty of dishonesty. The *ponencia* opined that, in Justice Ong's letter to the Chief Justice prior to the commencement of the administrative investigation, he vehemently denied having attended parties or social events hosted by Napoles; that he deliberately failed to disclose his "social calls" to Napoles. That it was only after Luy and Sula testified that he mentioned the fact of his visit to Napoles.

Dishonesty is defined as 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.²² Contrary to the *ponencia's* assessment, the

¹⁹ Id. at 630-631.

²⁰ RULES OF COURT, Rule 140, Section 11.

²¹ See *Jamsani-Rodriguez v. Justice Ong*, A.M. No. 08-19-SB-J, August 24, 2010, 628 SCRA 626.

²² *Cañada v. Judge Suerte*, 570 Phil. 25, 35 (2008).

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failure of Justice Ong to disclose in his letter to the Chief Justice the fact of his visit to Napoles cannot be considered dishonesty as would merit disciplinary action.

The *ponencia* failed to take into consideration the context of the letter sent by Justice Ong to the Chief Justice. During the administrative investigation conducted by Justice Sandoval-Gutierrez, Justice Ong explained that:

Q Why did you write a letter to the Chief Justice?

A I wrote that letter *motu proprio* although I was not required by the Supreme Court to write that letter in order to defend a reputation as a magistrate or as a judge, and also to protect the good name and integrity of the Sandiganbayan as an institution because I believe that I did not commit any wrongdoing, sir.

Q What in particular was Mr. Rufo trying to say in this article?

A Mr. Rufo, in his article, he was trying to insinuate that during the pendency of the Kevlar helmet case against this Janet Napoles, that there is irregularity in the manner by which the decision was arrived at, and also, at that time of the pendency of the case, I was [close] to Napoles and he was also insinuating that I was the... I am the legal adviser. I was the one advising her of the legal strategies as to how to go about the Kevlar helmet case, and also **that I was partying with the Napoleses.**

x x x x

Q Now in your letter to the Chief Justice, you did not speak about this circumstance of meeting with Ms. Janet Napoles. So, why did you not include in your letter your explanation regarding the role of Ms. Napoles in helping you gain access to the Black Nazarene?

A **Because at that time when I wrote the Chief Justice, I was only addressing the picture wherein myself, Senator Jinggoy and Napoles were depicted and the article of Mr. Rufo and nowhere in the article that says that I was seen... that I was there in the office of Ms. Napoles at that time, sir.**²³ (Emphases mine)

Verily, Justice Ong wrote the said letter to the Chief Justice to address the insinuations in the article of Aries Rufo published in the social news-network Rappler, particularly, that he attended parties and social events hosted by Napoles. This he did by categorically denying in the said letter that he attended parties or social events hosted by Napoles. He failed to disclose that he twice visited Napoles in her office since he was addressing the insinuation against him in the said article. It may have been a lapse of judgment on his part but it certainly is not dishonesty. In any case, when allegations came out that he visited the office of Napoles in Discovery Suites Center on two occasions, Justice Ong readily admitted to such fact. Such admission, indubitably, is incongruent with the idea of being dishonest.

²³ TSN, March 21, 2014, pp. 12-13; 27.

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ACCORDINGLY, I vote to hold Sandiganbayan Associate Justice Gregory S. Ong guilty of **SIMPLE MISCONDUCT**. Accordingly, he should suffer the penalty of **SUSPENSION FROM OFFICE** for a period of **THREE (3) MONTHS**, without salary or other benefits. Further, he is **STERNLY WARNED** that a repetition of the same or similar offense in the future shall be dealt with more severely.



BIENVENIDO L. REYES
Associate Justice