

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

A.M. No. SB-14-21-J [Formerly A.M. No. 13-10-06-SB]. September 23, 2014

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PER CURIAM:

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

- Justice Oliver Wendell Holmes

This administrative complaint was filed by the Court En Banc after investigation into certain allegations that surfaced during the Senate Blue Ribbon Committee Hearing indicated prima facie violations of the Code of Judicial Conduct by an Associate Justice of the Sandiganbayan. The investigation was conducted motu proprio pursuant to the Court's power of administrative supervision over members of the Judiciary.[1]

Factual Antecedents

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

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

Marina Sula (Sula) executed a Sworn Statement[2] before the National Bureau of Investigation (NBI) on August 29, 2013, part of which reads:

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

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

Rene Maglanque, Atty. Dequina, Justice Gregory Ong, x x x.

34. Before the warrant of arrest was issued against Ms. Napoles, she told us that that case could take four to five years to clear. She said, “Antayin niyo munang ma-clear pangalan ko para makakilos ako at matulungan ko kayo”. Sinabi niya na meron na siyang kausap sa Ombudsman at sa Sandiganbayan.

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

x x x x

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

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

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

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

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

x x x x

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

x x x x[6]

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

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

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

MS. SULA. Hindi ko po alam.

THE CHAIRMAN. Your attention is called sa page –

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

THE CHAIRMAN. Nandito sa page 20.

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

THE CHAIRMAN. Gregory Ong.

MS. SULA. Opo.

THE CHAIRMAN. Sa Sandiganbayan?

MS. SULA. Opo.

x x x [7] (Emphasis supplied.)

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

Respondent surmised that the photograph was taken during the birthday of Senator Estrada in February, either in the year 2012 or 2013, but definitely not in 2010 or earlier. He explained that he could vaguely remember the circumstances but it would have been rude for him to prevent any guest from posing with him and Senator Estrada during the party. On the nature of his association with Mrs. Napoles, respondent asserted:

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

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

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

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

SEN. ANGARA. Sa inyo, hindi niyo alam kung inayos iyong kaso na iyon? Kasi napakaraming koneksiyon, ‘di ba?

xxxx Sige, huwag kang matakot, Benhur.

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

SEN. ANGARA. Okay.

xxxx

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

xxxx

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

THE CHAIRMAN. Gregory Ong.

MS. SULA. Opo.

THE CHAIRMAN. Sa Sandiganbayan?

MS. SULA. Opo.

xxxx[8]

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

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

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

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

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

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

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

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

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

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

Report and Recommendation of the Investigating Justice

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

FACTUAL ANTECEDENTS

1. THE KEVLAR CASE

Two criminal cases were filed with the Sandiganbayan sometime in 2001 – Criminal Case No. 26768 for Falsification of Public Documents and Criminal Case No. 26769 for Violation of Section 3(e) of the Anti-Graft Law. Charged were several members of Philippine Marine Corps and civilian employees including Ms. Janet L. Napoles (Napoles), her mother Magdalena Francisco (now deceased), her brother Reynaldo Francisco and wife Anna Marie Dulguime, and her (Napoles') three employees.

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

The prosecution alleged inter alia that the accused, acting in conspiracy, released the payment although there was yet no delivery of the Kevlar helmets; that the suppliers are mere dummies of Napoles; and that the

helmets were made in Taiwan, not in the U.S.A.

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

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

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

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

x x x x

THE INVESTIGATION

x x x x

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

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

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

Q

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

x x x x

A

Yes po.

Q

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

Witness Luy

A

Si Justice Gregory Ong po.

Q

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

A

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

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

Q

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

A

Ano po, the year 2010 po ma'am.

Q

And you met him (Justice Ong) in 2012?

A

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

Q

That was after the decision was promulgated?

A

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

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

“Baka alam ng ibang whistle blowers kung nagkaka-ayusan sa kaso na iyon (Kevlar case). Sige huwag kang matakot Benhur.”

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

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

Q

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

A

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

x x x

Q

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

A

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

x x x

Q

Nagbigay ng pera kay Justice Gregory Ong?

A

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

Q

To you?

A

Yes, madam.

Q

Do you remember when she made that kind of statement?

A

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

x x x

Justice Gutierrez

Continue counsel.

Witness Luy

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

Q

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

A

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

Q

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

A

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

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

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

Q

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

Witness Luy

A

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

Q

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

A

Opo.

Q

So he could get 13% interest?

A

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

Q

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

A

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

Q

That belongs to Justice Ong?

A

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

Q

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

A

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

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

On cross-examination, Benhur claimed that in his affidavits executed in the NBI, he did not mention respondent's name. However, in his reply-affidavit filed with the Sandiganbayan, he alleged that Napoles issued P282,000.00

(the amount stated in each of the 11 checks) but he did not mention the name of the payee upon instruction of his lawyer, Atty. Baligod. Nonetheless, he knew that the checks were issued to respondent.

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

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

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

The Chairman (Senator Teofisto Guingona III)

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

x x x

Ms. Sula

Si Mr. Ong po. Justice Ong po.

The Chairman

Gregory Ong?

Ms. Sula

Opo.

The Chairman

Sa Sandiganbayan?

Ms. Sula

Opo.

The Chairman

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

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

Q

Not the illegal detention case?

Witness Sula

A

Hindi po, pag nakasuhan na po kami sa Sandiganbayan.

Q

Okay, again?

A

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

Q

Yung PDAF?

A

Opo, yung PDAF sa Sandiganbayan.

Q

Pagdating ng kaso sa Sandiganbayan?

A

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

Q

Is that in your affidavit?

A

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

Q

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

A

Opo, doon sa Sandiganbayan.

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

Q

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

A

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

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

x x x x

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

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

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

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

x x x x

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

1. He asserted that he could not be the contact or “connect” of Napoles at the Sandiganbayan for he never met or came to know her during the pendency of the Kevlar case;
2. Challenging Benhur’s testimony that he fixed or “inayos” the Kevlar case, respondent claimed that it was decided based on the merits by the Sandiganbayan Fourth Division as a collegial body. The two other members of the court, Justice Jose R. Hernandez (ponente) and Justice Maria Cristina J. Cornejo, are independent-minded jurists who could not be pressured or influenced by anybody, not even by their peers;
3. On Benhur’s allegation that respondent received an amount of money from Napoles prior to the promulgation of the decision in the Kevlar case, respondent deplored the fact that Benhur was attempting to tarnish his reputation without any proof. And that it is unthinkable for him to have received money from Napoles considering that her mother, brother, and sister-in-law were convicted;
4. Respondent admitted he went to Napoles’ office twice, sometime in March 2012, after the decision in the Kevlar case was promulgated in 2010 and narrated what prompted him to do so, thus:

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

Respondent became interested because he has been a devotee of the Holy Black Nazarene since he was a little boy. Napoles told him that Msgr. Ramirez has with him the robe of the Holy Black Nazarene which has a healing power if one wears it. Then respondent asked if he can have access to the robe so he can be cured of his ailment (prostate cancer) which he keeps only to himself and to the immediate members of his family. Napoles made arrangement with Msgr. Ramirez until respondent was able to drape the robe over his body for about one or two minutes in Quiapo Church. He also received a fragrant ball of cotton which he keeps until now to heal any ailing part of his body. That was a great deal for him. So out of courtesy, he visited Napoles in

her office and thanked her. That was his first visit.

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

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

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

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

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

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

EVALUATION

x x x x

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

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

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

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

honest and trustworthy witnesses.

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

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

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

x x x x

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

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

Justice Ong

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

x x x x

Justice Gutierrez

That is your prerogative.

Justice Ong

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

x x x x

Atty. Geronilla

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

Justice Gutierrez (to Atty. Geronilla)

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

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

x x x x

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

Judicial Conduct for the Philippine Judiciary.

X X X X

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

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

Respondent's transgression pertains to his personal life and no direct relation to his judicial function. It is not misconduct but plain dishonesty. His act is unquestionably disgraceful and renders him morally unfit as a member of the Judiciary and unworthy of the privileges the law confers on him. Furthermore, respondent's conduct supports Benhur's assertion that he received money from Napoles.

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

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

X X X X

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

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

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

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

X X X X

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

X X X X

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

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

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

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

x x x x

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

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

x x x x

RECOMMENDATION

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

x x x x

The Court's Ruling

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

Based on the testimonies of Luy, Sula and Rufo, the Investigating Justice formulated the charges against the

respondent, as follows:

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

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

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

We cannot overemphasize that in administrative proceedings, only substantial evidence, i.e., that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion, is required. The standard of substantial evidence is satisfied when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence might not be overwhelming or even preponderant.[13]

The testimonies of Luy and Sula established that Napoles had been in contact with respondent ("nag-uusap sila") during the pendency of the Kevlar case. As Napoles' trusted staff, they (especially Luy who is a cousin) were privy to her daily business and personal activities. Napoles constantly updated them of developments regarding the case. She revealed to them that she has a "connect" or "contact" in the Sandiganbayan who will help "fix" the case involving her, her mother, brother and some employees. Having closely observed and heard Napoles being confident that she will be acquitted even prior to the promulgation of the decision in the Kevlar case, they were convinced she was indeed in contact with respondent, whose identity was earlier divulged by Napoles to Luy. Luy categorically testified that Napoles told him she gave money to respondent but did not disclose the amount. There was no reason for them to doubt Napoles' statement as they even keep a ledger detailing her expenses for the "Sandiganbayan," which reached P100 million. Napoles' information about her association with respondent was confirmed when she was eventually acquitted in 2010 and when they saw respondent visit her office and given the eleven checks issued by Napoles in 2012.

Respondent maintains that the testimonies of Luy and Sula were hearsay as they have no personal knowledge of the matters they were testifying, which were merely told to them by Napoles. Specifically, he points to portions of Sula's testimony indicating that Napoles had not just one but "contact persons" in Ombudsman and

Sandiganbayan; hence, it could have been other individuals, not him, who could help Napoles “fix” the Kevlar case, especially since Napoles never really disclosed to Sula who was her (Napoles) contact at the Sandiganbayan and at one of their conversations Napoles even supposedly said that respondent’s “talent fee” was too high.

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

An accusation of bribery is easy to concoct and difficult to disprove. The complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a grave misconduct, the quantum of proof required should be more than substantial.[16] Concededly, the evidence in this case is insufficient to sustain the bribery and corruption charges against the respondent. Both Luy and Sula have not witnessed respondent actually receiving money from Napoles in exchange for her acquittal in the Kevlar case. Napoles had confided to Luy her alleged bribe to respondent.

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

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

It is a settled rule that the findings of investigating magistrates are generally given great weight by the Court by reason of their unmatched opportunity to see the deportment of the witnesses as they testified.[17] The rule which concedes due respect, and even finality, to the assessment of credibility of witnesses by trial judges in civil and criminal cases applies a fortiori to administrative cases.[18] In particular, we concur with Justice Sandoval-Gutierrez’s assessment on the credibility of Luy and Sula, and disagree with respondent’s claim that these witnesses are simply telling lies about his association with Napoles.

Contrary to respondent’s submission, Sula in her testimony said that whenever Napoles talked about her contacts

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

Atty. Benipayo

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

Witness Sula

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

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

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

x x x x

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

A Opo. Sinabi po niya sa amin everytime po pag nagkukwento siya, sinasabi niya na si Justice Ong ang tutulong sa kanya para ma-clear po yung Kevlar case niya.

x x x x[19] (Emphasis supplied.)

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

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

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

A judge must not only be impartial but must also appear to be impartial and that fraternizing with litigants tarnishes this appearance.[20] Public confidence in the Judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and the appearance thereof. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.[21]

In *Cañeda v. Alaan*,^[22] we held that:

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

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

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

x x x x

Indeed, respondent must always bear in mind that:

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

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

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

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

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

‘30. Social relations

It is not necessary to the proper performance of judicial duty that judges should live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interests in or appearance at meetings of members at the bar. A judge should, however, in pending or prospective litigation before him be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course.’”

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

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

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

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

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

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

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

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

Justice Gutierrez

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

Justice Ong

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

Justice Gutierrez

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

Justice Ong

I don't know, your honor.

Justice Gutierrez

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

Justice Ong

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

Justice Gutierrez

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

Justice Ong

I will heed to that advice, your honor.

Justice Gutierrez

Q

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

Justice Ong

Your honor, talking about....

Justice Gutierrez

Q

Do you admit you committed a lapse along that line?

Justice Ong

A

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

In her report, Justice Sandoval-Gutierrez noted that respondent's purported reason for visiting Napoles in her office remains uncorroborated, as Napoles and the Quiapo parish priest were not presented as witnesses despite her suggestion to respondent and his counsel. On the other hand, Luy's testimony on what transpired in one of respondent's meeting with Napoles at her office appears to be the more plausible and truthful version. Expectedly, respondent denied having issued a BDO check for P25.5 million as claimed by Luy, and asserted he (respondent) did not deposit any money to AFPSLAI. Unfortunately, Luy is unable to present documentary evidence saying that, as previously testified by him before the Senate, most of the documents in their office were shredded upon orders of Napoles when the "Pork Barrel Scam" controversy came out.

Justice Sandoval-Gutierrez stated that the eleven checks of P282,000.00 supposed advance interest for respondent's check deposit to AFPSLAI were given to respondent as consideration for the favorable ruling in the Kevlar case. Such finding is consistent with Luy's testimony that Napoles spent a staggering P100 million just to "fix" the said case. Under the circumstances, it is difficult to believe that respondent went to Napoles office the second time just to have coffee. Respondent's act of again visiting Napoles at her office, after he had supposedly merely thanked her during the first visit, tends to support Luy's claim that respondent had a financial deal with Napoles regarding advance interest for AFPSLAI deposit. The question inevitably arises as to why would Napoles extend such an accommodation to respondent if not as consideration for her acquittal in the Kevlar case? Respondent's controversial photograph alone had raised adverse public opinion, with the media speculating on pay-offs taking place in the courts.

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

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

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

Under Section 11(A), Rule 140 of the Rules of Court, a respondent found guilty of a serious charge may be penalized as follows:

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

imposed:

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

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

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

This Decision is IMMEDIATELY EXECUTORY.

SO ORDERED.

Sereno, C.J., Carpio, Del Castillo, Villarama, Jr., and Perlas-Bernabe, JJ., concur.

Velasco, Jr., J., I dissent. I join the opinion of J. Perez and J. Reyes.

Leonardo-De Castro, and Peralta, JJ., no Part.

Brion, J., see: separate and concurring opinion.

Bersamin, J., with concurring & dissenting opinion.

Perez, J., please see concurring and dissenting opinion.

Mendoza, J., joining J. Perez and J. Reyes in their dissents.

Reyes, J., see concurring and dissenting opinion.

Leonen, J., see separate concurring opinion.

Jardeleza, J., see concurring opinion.

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

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

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

[2] Rollo, pp. 210-229.

[3] Id. at 226-228.

[4] Sourced from Internet - Disciplinary proceedings for members of the judiciary are sui generis investigative proceedings requiring substantial evidence to reach a conclusion and Decision in Criminal Case Nos. 26768-69

promulgated on October 28, 2010 and Resolution issued on September 20, 2011, records, Volume 8, pp. 11-52, 247-254.

[5] Rollo, pp. 258-282.

[6] Id. at 278-281.

[7] Id. at 198.

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

[9] Id. at 1-2.

[10] Id. at 6-25.

[11] Report and Recommendation, p. 16.

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

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

[14] Art. 210, Revised Penal Code.

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

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

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

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

[19] TSN, February 12, 2014, pp. 71-73.

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

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

[22] 425 Phil. 20, 26-27 (2002).

[23] 370 Phil. 850, 866-867 (1999).

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

[25] 420 Phil. 584, 590 (2001).

[26] TSN, March 21, 2014, pp. 52-54.

[27] Comment of Justice Ong, p. 20.

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

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

SEPARATE CONCURRING OPINION

BRION, J.:

I write this Opinion to support Associate Justice Martin S. Villarama, Jr.'s conclusion that the respondent Justice Gregory Ong (Justice Ong), Chairman of the Fourth Division of the Sandiganbayan, should be dismissed from the service for gross misconduct, dishonesty and impropriety.

I likewise submit this Opinion to express my disagreement with the opinions of Associate Justices Lucas P. Bersamin, Jose P. Perez and Bienvenido L. Reyes that Justice Ong should only be penalized for simple misconduct and meted the lighter penalty of three to six months suspension.

I take this opportunity, too, to draw the Court's attention to the administrative offense of gross misconduct where the underlying act involved is bribery. If the Court is serious about its anti-corruption intentions, it is high time that it makes itself clear on the needed quantum of evidence to support a finding of administrative liability, in contrast with the quantum of evidence needed to find a public officer guilty of bribery in a criminal proceeding.

An administrative offense, as has been established, should be proven by substantial evidence as it involves an administrative proceeding; a criminal case, on the other hand, necessarily requires proof beyond reasonable doubt. Furthermore, we should clarify in the strongest terms that no need exists to apply in an administrative proceeding an amorphous quantum of evidence higher than substantial evidence – in the manner a Member of this Court advocates.

I likewise posit that the present case should serve as a wake-up call for us to re-examine the use of hearsay evidence in disciplinary proceedings, when the serious charge of bribery (or gross misconduct based on bribery) is involved. We have disallowed the use of hearsay evidence in the past. Should we continue with this rule?

Bribery, like rape, is a transgression that is almost never committed in public view. It thrives and prospers in the dark, in secrecy. But this illegality is not totally unknown to the Members of this Court; we all know that bribery is happening in our midst. The media hints at it; law practitioners talk about it and do not even do so in whispers; clients accept it as a fact of litigation and readily accept their counsels' claim for extra expenses "para kay justice, para kay judge o para kay fiscal" – a grave injustice to many in the judiciary and the prosecution service who have strictly trodden the high road of morality in the public service.

In one recent administrative matter, we even asked a leading and high profile law practitioner to explain the claim she made in a leading radio station that bribery exists in the High Court.[1] She blithely escaped sanction by claiming that she only "heard" about the bribery she spoke about, but at the same time hinted that she could not speak about this charge because she has cases before this Court.

Thus, as a practical reality, this Court is now in a public denial mode about bribery and does so by maintaining the rule that disallows hearsay evidence in disciplinary proceedings, even if the hearsay testimony is already confirmed by the totality of the evidence on record.

Additionally, we should admit that judges, based on their knowledge, training and experience, should be adept at recognizing, proving (and consequently evading) the administrative offense of bribery. This reality should make us aware (if, for some reason, we have not yet reached this level of cognition) that we would effectively be condoning the presence of the offenders among us if from the very start we adopt the rule that we should not consider hearsay evidence at all. In this sense, all of us – the Members of this Court – may ourselves be worthy of blame for the proliferation of corruption in the judiciary.

The better approach, I believe, is to allow the investigating judges and justices sufficient discretion to admit

hearsay evidence, subject to guidelines in determining its probative value. (I dwell at length on this point in the discussions below.)

This approach, in my view, gives the Court flexibility in disciplining its ranks without sacrificing both the fairness that should be accorded the respondent judges, judicial officials and employees, and the character of reliability that evidence must carry to support a finding of administrative liability.

I. Antecedents

The present administrative case against Justice Ong sprang from various testimonies given by whistleblowers Benhur Luy (Luy) and Marina Sula (Sula) at the height of the pork barrel scam scandal.

Both Luy and Sula had been employees of Janet Lim-Napoles (Napoles), the main personality involved in the high profile scandal, more popularly known as the pork barrel scam. Both claimed to have helped facilitate Napoles' nefarious schemes. In the course of offering their testimonies against Napoles, they claimed that Justice Ong was Napoles' "contact man" at the Sandiganbayan – the country's anti-graft court.

In a sworn statement filed before the National Bureau of Investigation (NBI), Sula narrated that Napoles urged her not to testify against her, and promised that she would help Sula once she is able to clear her name. Sula also named Justice Ong to be among those who had visited Napoles' office.

The day following the execution of Sula's sworn statement, Aries Rufo of the news network Rappler, published the article entitled "Exclusive: Napoles parties with Anti-graft Court Justice." The article showed the photograph of Senator Jinggoy Estrada (Senator Estrada, one of the main public figures now criminally charged in the pork barrel scam scandal) together with Napoles and Justice Ong. The article also noted that Justice Ong had been a member of the Sandiganbayan's Fourth Division that handled the Kevlar Helmet case where Napoles stood accused for the ghost purchase of 500 Kevlar helmets in 1998; the Fourth Division that Justice Ong chairs acquitted Napoles of the criminal charge.

Thereafter, the Senate Blue Ribbon Committee held committee hearings to investigate the pork barrel scam. At these hearings, Sula reiterated her statements about Justice Ong.

It was at this time that Justice Ong, unbidden, wrote Chief Justice Maria Lourdes P. A. Sereno (Chief Justice Sereno) a letter explaining the photo published in Rappler. The Court responded to the letter, the Rappler article, and Sula's testimony before the Senate Blue Ribbon Committee, by initiating a motu proprio investigation of Justice Ong.

The Court designated former Justice Angelina Sandoval-Gutierrez, a retired Member of this Court, as the investigating justice tasked to investigate Justice Ong's involvement with Napoles.

After hearing the testimonies of Sula, Luy and Justice Ong and considering their submitted Memoranda, Justice Sandoval-Gutierrez recommended in her Report to the Court that Justice Ong be found liable for gross misconduct, dishonesty and impropriety. She recommended that Justice Ong be dismissed from service, with forfeiture of all retirement benefits and with prejudice to re-employment in any government agency or instrumentality.

Justice Villarama affirmed Justice Sandoval-Gutierrez's Report, holding that:

(1)

Justice Ong is guilty of gross misconduct and impropriety, for violating Canon 1 of the New Code of Judicial Conduct, which requires judges to avoid acts and the appearance of impropriety in all their activities. The

totality of the circumstances shows that Justice Ong associated with Napoles after the promulgation of the decision in the Kevlar Helmet case. To Justice Villarama, these circumstances strongly indicate Justice Ong's corrupt inclinations and heightened the public's perception of anomaly in the Judiciary's decision-making process.

Justice Villarama arrived at his conclusion by giving credit to the testimonies of Sula and Luy who both identified Justice Ong as Napoles' contact man at the Sandiganbayan. This finding is supported by the photographs showing him with Senator Estrada and Napoles at a party. Taken together, these pieces of evidence sufficiently proved that he had exposed himself to suspicion of partiality to Napoles.

Justice Villarama also noted that the financial accommodation that Napoles gave Justice Ong – which Luy testified to – could be the financial consideration for Justice Ong's assistance in Napoles' acquittal in the Kevlar Helmet case. The acquittal and Luy's testimony gave the public cause to doubt the honesty and fairness of Justice Ong's participation in the Kevlar Helmet case and the integrity of our justice system.

(2)

Justice Ong committed dishonesty and violated Canon 3 of the New Code of Judicial Conduct on Integrity. In his letter to Chief Justice Sereno, he denied attending parties hosted by Napoles, and omitted to inform her that he had visited Napoles' office twice. It was only when Luy and Sula testified before the Senate and named him as the "contact man" of Napoles in the Sandiganbayan, that Justice Ong admitted that he had visited Napoles at her office once.

Justices Bersamin, Perez and Reyes argue on this point that the core of Luy and Sala's testimonies cannot be used to conclude that Justice Ong committed the offenses charged, as the testimonies of these witnesses are hearsay. According to them, Luy and Sula do not have personal knowledge of the alleged financial transaction between Napoles and Justice Ong. Neither should Justice Ong be held accountable for dishonesty because Justice Villarama took out of context Justice Ong's statement that he visited Napoles only once. To the three magistrates, Justice Ong should thus be only found liable for simple misconduct for mingling with litigants before his court, which offense is punishable by suspension and a fine.

With due respect to my esteemed Colleagues, I believe that they failed to consider that Justice Ong's admitted "mingling" with Napoles came while the probation case of Napoles' co-accused in the Kevlar Helmet case was still pending at the Sandiganbayan's Fourth Division. These co-accused are all her close relatives – her mother Magdalena L. Francisco, her brother, Reynaldo L. Francisco and her sister-in-law Ana Marie Dulguime. My Colleagues apparently failed to consider that these co-accused/relatives, despite their conviction, never went to jail; when matters had sufficiently quieted down, Justice Ong granted them probation and even penned the ruling on reconsideration.

II. The nature of disciplinary proceedings of judges should allow us to admit hearsay evidence in appropriate cases

In evaluating the pieces of evidence relating to the charge of bribery against Justice Ong, Justice Reyes posits that a standard of evidence, higher than substantial evidence, should be used to arrive at the conclusion that Justice Ong had indeed been bribed by Napoles. Several Colleagues in the Court additionally argue that hearsay evidence against Justice Ong should not be admitted nor given probative value, and that, in any case, the remaining pieces of evidence are insufficient to prove the bribery charge.

Disciplinary proceedings against members of the bench have been characterized as administrative proceedings,[2] as the end result of these proceedings involves the determination of whether the respondent judge committed an

administrative offense that carries a disciplinary penalty. The penalties range from the lightest penalty of admonition with warning, to the ultimate penalty of dismissal from the service.[3]

I submit that the characterization of disciplinary proceedings against members and officials of the judiciary as a mere administrative proceeding whose aim is the imposition of penalties, is a very simplistic view of what disciplinary proceedings are. Properly and critically viewed, they are closer to the sui generis nature of disbarment proceedings against lawyers, where the main objective of inquiry is not the infliction of punishment, but the investigation of whether the respondent lawyer continues to possess the qualities required of members of the legal profession.[4]

Lawyers assume a unique role in our society because they are officers of the court who directly participate in the administration of justice; judges' and justices' roles are no less and in fact are higher than those of lawyers as they directly act as the main principals in the administration of justice. Judges and justices directly interpret the law and determine how the scales of justice shall swing through the adjudicatory duties solely reserved for them by the Constitution.

Under these roles, the all-important question to be answered is whether judges and justices are worthy of donning the judicial robes and of discharging the adjudicatory duties of a member of the bench. When they err morally and legally in discharging their duties, they become pejoratively known as "hoodlums in robes" and thereby bring disrepute, not only to themselves, but to the institution they represent.

That disbarment of lawyers should be the take-off point in characterizing and calibrating the role of judges and justices cannot be avoided when it is considered that:

(1)

The exercise of the legal professions and the higher calling of acting as a magistrate are both considered a privilege;

(2)

Both professions are under the regulation and supervision of the Supreme Court;

(3)

Both professions have crucial roles in the administration of justice – the lawyer as an officer of the court, while the judge is the embodiment of the court that directly acts in dispensing justice;

(4)

Both proceedings involve investigating officers appointed by the Supreme Court to inquire on the accusations against the respondent lawyer or judge, to be initiated motu proprio or upon the filing of a complaint;

(5)

The ultimate penalty in both disciplinary proceedings involves divesting the respondent lawyer or judge of the privilege to practice law or adjudicate as a member of the judiciary, respectively.

Our focus in disciplinary proceedings for members of the judiciary must necessarily and unavoidably be the determination of whether the respondent judge is still fit for the judicial office, with the preservation of the public interest in an independent, incorruptible judiciary as the ultimate objective.

In this consideration, the Court calls upon the member of the bench charged with misfeasance or malfeasance, to account for accusations against him or her, with the end in view of keeping the proper and honest administration

of justice untainted and immaculate in the public's view, by excluding from the judiciary those who, by their misconduct, have proven themselves unworthy to be entrusted with the duties and responsibilities of a judge.

Based on these objectives, the tighter and stricter procedural rules applicable to criminal proceedings, particularly the requirement for a quantum of evidence higher than substantial evidence, cannot and should not be used in disciplinary proceedings involving judges. By their higher evidentiary requirement, proof of wrongdoing becomes more difficult to achieve, ultimately defeating the objectives of disciplinary proceedings.

As the Court very well knows, our ruling in disciplinary proceedings will not result in the criminal conviction and the incarceration of the respondent judge or justice; our judgment is confined to the finding and declaration of the respondent Justice's unworthiness to be a member of the judiciary.[5] If imprisonment and criminal penalties will result at all from the judge's or justice's illegal acts, they will not arise from the disciplinary proceedings; they will arise from separate criminal proceedings that require a whole new and separate process of charges, trial and conviction upon proof beyond reasonable doubt.

Viewed from the perspectives of proportionality, higher evidentiary standards are properly required as stakes become higher in the spectrum of individual rights and liberties; proof beyond reasonable doubt is required in criminal proceedings as the life, liberty and property of the accused are at stake.

Conversely, as the stakes become lower (as when only the privilege to practice law or to act as judge or justice is involved) it is but proper that evidentiary standards should likewise be lower. To lose this proportion is to lay down a policy vastly in favor of the individual, but at the expense of the societal value of a judiciary whose integrity, fairness and independence must be at their highest.

In my view, these distinctions ought to be ever present in the Court's mind in order not to defeat the purpose for which disciplinary proceedings are instituted; forgetting them and setting impossibly high and impractical standards amount to giving up the first line of defense in preserving and maintaining the judiciary's independence and integrity.

In the context of the present case, I cannot but emphasize that the gauge for determining whether bribery (or gross misconduct based on bribery) had occurred should be confined to substantial evidence and not to any higher level of evidence. The bribery accusation should be adjudged in the same manner that other accusations of gross misconduct, dishonesty and impropriety should be weighed – through substantial evidence or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[6]

B. The rules on hearsay should be relaxed in disciplinary proceedings against members of the judiciary

I likewise cannot accept the strict application of the hearsay rules in the present case as some of my Colleagues advocate. Given the nature of disciplinary proceedings and the indisputable circumstances present in bribery transactions, the demand for evidence executed by one who has strict personal knowledge of the illegal transaction is to ask for a near impossibility in many cases. It is for this reason perhaps that disciplinary findings of bribery or gross misconduct based on bribery come few and far between.

Indeed, as some of my Colleagues in the Court have pointed out, a bribery charge is easy to concoct. However, it should likewise not be lost to us that a bribery charge, by its very nature, is also very difficult to prove even in an administrative proceeding, more so under the view of some of our Colleagues that a higher burden of proof should be required for a finding that bribery or acts indicating bribery indeed happened.

Bribery at the consummated stage, by its nature, requires a bribe-giver and a bribe-taker where both participants are parties to the crime. The public official who accepts money or other valuable consideration commits bribery,

among other things,[7] while the person who offers and gives the bribe is guilty of corruption of a public official.[8]

Necessarily, the persons who have personal knowledge of the transaction would, more often than not, be limited to the offenders themselves who both risk prosecution for their misdeeds. Demanding as a matter of law that witnesses speak from their strict personal knowledge of the actual details of a bribery, would, under these circumstances, practically amount to the requirement that one of the participants turn on the other. Obviously, this requirement would make it extremely difficult to successfully prosecute the crime of bribery. Under these terms, bribery becomes a high percentage crime for the chances of success it offers.

Consider, too, that bribery cases become even more difficult to prove and establish when one of its participants has extensive knowledge of how bribery is committed and proven in court. Bribery is a crime that lawyers study from their first year in law school; its elements as well as the degree of proof required to convict are all drilled into lawyers' minds from the first course in Criminal Law and later in Remedial Law. This knowledge is honed as the lawyer takes the bar examination and as he or she goes into practice.

The specialized knowledge rises to the level of expertise when the lawyer enters the judiciary where criminal cases – bribery among them – are the daily fare of the cases he or she handles. This is particularly true for the Sandiganbayan, our anti-graft court, whose expertise and specialty are crimes committed by public officers in the course of their duties, bribery among them.

I say all these with no intent to cast any pejorative aspersions on the members of the Sandiganbayan. I say these merely as a matter of fact - we have before us a respondent who had been schooled and trained on the elements of bribery, and necessarily, for those inclined to commit this crime, on the ways and means to avoid even the mere suspicion of bribery. (Note, for example, Luy's testimony that Justice Ong did not want checks paid out in his name; he wanted these paid "to cash." Note, too, the claim that he had merely been engaged in an investment transaction, albeit at very high interest rates. Without more and standing alone and by themselves, these ready excuses may possibly pass muster, but not when the other circumstances, discussed below, are considered.)

Given the nature of disciplinary proceedings for judges, as well as the nature of bribery transactions, I urge my Colleagues in the Court to reconsider and re-examine the need for applying the rules on hearsay evidence in disciplinary proceedings where a bribery allegation is involved.

In special situations such as this case, where the illegal transaction is cloaked in secrecy and the dramatis personae include an expert on the intricacies of bribery (particularly on how a charge is prosecuted and evaded), do we not owe the institution we serve and the Filipino people who rely on us for a fair and speedy system of justice, the duty to exhaust all fair and reasonable means necessary to determine if indeed there are corrupt officials within our ranks?

I submit that we cannot choose to ignore the special circumstances before us – particularly the confluence of facts before us that can be likened to a smoking gun staring us in the face – simply because an unsound evidentiary technicality tells us to do so. The proper approach, in my view, in order to be sensitive to all the interests involved in an administration of justice situation, is as I expressed in my Concurring Opinion in AM No. 13 – 11 – 09 – SC (Re: Interview with Lorna Kapunan on Corruption in the Judiciary):

I believe and propose to the Court that it desist from declaring the matter in caption closed and terminated simply because the statements Atty. Lorna Kapunan turned out to be hearsay. Instead, the Court should proactively react to the smoke that Atty. Kapunan has raised; a fire must exist somewhere behind her statements. Even smoking embers, if left unattended to, may turn into a raging conflagration. [9]

1) The purpose of hearsay evidence and its decline in administrative proceedings in other jurisdictions.

Hearsay evidence, or evidence presented by a witness who has no personal knowledge of the fact being attested to – as a rule – is inadmissible as evidence[10] and, even if admitted, offers no probative value.[11]

The exclusion of hearsay evidence has been traditionally justified by the perceived unreliability of out-of-court statements. Traditionally, hearsay evidence poses four risks of unreliability: a narration risk (i.e., the risk that the declarant did not mean what he or she seemed to say); a sincerity risk (the risk that the declarant intentionally fabricated); a memory risk (the risk that the declarant misrecalled what happened); and a perception risk (the risk that the declarant misperceived things to begin with).[12]

While the recognition of these risks admittedly has empirical basis, I believe it equally undeniable that we encounter the same risks whenever we receive testimony from a person who has personal knowledge of the fact or the event sought to be proved.

Indeed, both narrations – one made by a person outside of court (i.e., by a declarant) and another made by a person testifying before the court (i.e., by a witness) may be unreliable. The latter, however, is admitted as evidence before the court because the trial process subjects it to three safeguards that in the end, makes the information the witness recounted more credible: first, the oath the witness takes to tell the truth, second, the jury's ability to watch the witness's demeanor, and third, the opportunity for cross-examination.[13]

Consider, however, that we admit other sources of evidence that may be unreliable and misleading even when subjected to the three safeguards of the trial process, such as the testimony of cooperating co-defendants. In this situation, we admit the testimony but evaluate its credibility and probative value vis a vis other pieces of evidence and the totality of the circumstances that the evidence points us to.

Legal history tells us that the exclusion of hearsay evidence first emerged as a rule after the introduction of the trial by jury system. Notable scholars observed that judges began excluding hearsay evidence because untrained and inexperienced jurors tended to overvalue such evidence, and failed to fully appreciate the potential sources of weakness in testimonial evidence untested by cross-examination.[14]

Aware of this hearsay rule rationale and its history, administrative agencies in the United States do not exclude hearsay evidence in their quasi-judicial proceedings.[15] They have recognized that no reason exists to exclude hearsay evidence when hearing officers are equipped with training and experience to gauge the reliability, value and relevance of the evidence presented before them. (Interestingly in many cases, the admission of hearsay evidence is made even if the administrative proceedings do not necessarily require cross-examination of witnesses.) As in the U.S., and for the same reasons, England likewise eventually allowed the admission of hearsay evidence in civil actions,[16] after it slowly departed from civil juries beginning in 1854.[17]

In the Philippines, we never had the jury system so that the actual and practical reason for the exclusion of hearsay testimony was, for the most part, lost to us. Our heads, however, need not forever be buried in the sands of inherited rules as our system of justice has come of age and has gathered enough experience for a re-examination of the rules that work or do not work for us.

To be sure, I do not recommend an outright abandonment of our rule on hearsay, but I submit that it is high time that we re-examine its strict application in administrative proceedings, particularly in disciplinary proceedings of judges and justices where bribery charges are involved.

Three reasons compel me to make this proposal:

First, disciplinary proceedings of judges, as earlier discussed, involve an administrative proceeding before an

investigating judge or justice who determines, after an investigation, whether the accusations made against the respondent judge are true, and thereafter recommends the appropriate remedy or penalty.

In this light, due respect should be given the investigating judge or justice's evaluations of the credibility of the witnesses, and the reliability of the pieces of information that they attest to. Unlike lay jurors, the investigating judge or justice has had years of experience in hearing and evaluating the testimony of witnesses and their demeanor in delivering their testimonies. The risk of overvaluing the import of hearsay evidence is thus minimized by the training and expertise of our investigating judges and justices.

Second, the strict application of the hearsay rule, in effect, has shielded erring judges and justices from facing the consequences of their corrupt acts. As I earlier noted, the nature of a bribery case necessarily involves secrecy between the corruptor and the corruptee; thus, bribery rarely, if at all, surfaces when the transaction goes as planned.

Would we have to wait for betrayal, or for ill-relations between the two parties, so that we can find a witness with personal knowledge of the bribery transaction?

Should this Court simply suffer in silence while practitioners glibly claim that the judiciary is corrupt and at the same time hide behind the hearsay rule when they are held to account for their statements?

Third, the unnecessarily strict application of hearsay in administrative proceedings of judges has crippled this Court's capability to discipline its ranks. An examination of bribery cases involving judges show our extreme wariness in declaring that a judge had in fact been bribed, often using the hearsay rule to conclude that insufficiency of evidence prevents us from finding the judge liable for bribery. We would, however, still penalize these judges and dismiss them from office because of acts constituting gross misconduct.

I cannot help but think that we so acted because, at the back of our minds, we might have believed that the respondent judge had indeed been guilty of bribery, but our over-attachment to the hearsay rule compelled us to shy away from this reason to support our conclusion. Hence, we try to find other ways to penalize the erring judge or justice.[18]

While this indirect approach may ultimately arrive at the desired goal of penalizing erring judges and removing the corrupt from our roster, we should realize that this approach surrenders the strong signal that a finding of guilt for bribery makes.

It must not be lost on us that we send out a message to the public, to the members of the judiciary, and to the members of the bar, every time we decide a case involving the discipline of judges: we broadcast, by our actions, that we do not tolerate the acts for which we found the erring judge guilty. This message is lost when we penalize judges and justices for gross misconduct other than bribery, when bribery was the real root cause for the disciplinary action.

I believe that the time has come for this Court to start calling a spade a spade, and make the conclusion that bribery had taken place if and when the circumstances sufficiently prove its occurrence. In making this conclusion, we should not be unduly hindered by technical rules of evidence, including hearsay, as we have the resources and experience to interpret and evaluate the evidence before us and the information it conveys.

We must not likewise get lost as we wander in our search for the proper degree of supporting evidence in administrative proceedings. This quantum of evidence should be substantial evidence because this standard provides the necessary balance and flexibility in determining the truth behind the accusations against a respondent judge, without sacrificing the necessary fairness that due process accords him and without sacrificing what is due

to the institution we serve and the Filipino people.

2) The probative value of hearsay evidence in substantial evidence

The admission of hearsay evidence does not necessarily translate into belief in the information it provides, hook, line and sinker. To satisfy the substantial evidence requirement for administrative cases, hearsay evidence should necessarily be supplemented, and corroborated by other evidence that are not hearsay.

We are not completely without experience in admitting and giving due probative value to hearsay testimony. Note, in this regard, our experience in administrative proceedings on the writ of amparo, as well as the evaluation of hearsay evidence we do in child abuse cases.

In both, we give due regard to information otherwise inadmissible because of the hearsay rule, without giving up the fairness and rule of reason required by the due process clause. Note too, that in both instances, a compelling need exists to relax the exclusionary rule of hearsay evidence[19] – a necessity that is also present in disciplinary proceedings against judges.

In giving due credence to hearsay evidence, we said in the case of *Razon, et. al. v. Tagitis*: [20]

The fair and proper rule, to our mind, is to consider all the pieces of evidence adduced in their totality, and to consider any evidence otherwise inadmissible under our usual rules to be admissible if it is consistent with the admissible evidence adduced. In other words, we reduce our rules to the most basic test of reason – i.e., to the relevance of the evidence to the issue at hand and its consistency with all other pieces of adduced evidence. Thus, even hearsay evidence can be admitted if it satisfies this basic minimum test.[21] (Emphasis supplied)

If this approach were to be applied to the disciplinary proceedings of judges, I submit that all the evidence relating to or tending to support the underlying act of bribery – regardless of their hearsay nature - can and should be examined. If all the acts alleged are substantially proven to have been committed, and they collectively point to the commission of bribery although not to the level of proof beyond reasonable doubt, then the Court should be well within its rights to find the respondent liable for acts amounting to gross misconduct based on bribery.

In assessing hearsay evidence, I submit that we consider the following factors:

(1)

The credibility of the witness, and possible motives or relationship with the interested parties that could taint the reliability of his testimony;

(2)

The availability of the declarant to testify in person before the investigating judge or justice as well as his or her general character;

(3)

The timing of the statement and the relationship between the declarant and the witness;

(4)

Whether the information conveyed by the hearsay evidence had been substantially corroborated in its material points; and

(5)

The circumstances surrounding the statement, particularly those pointing to the declarant's misrepresentation

about the respondent's involvement.

III. The totality of evidence shows that Justice Ong committed bribery

Based on the above factors, I am convinced and hereby ask the Court to join me in the conclusion that the hearsay evidence provided by Luy – specifically, that Justice Ong was Napoles's contactman in the Sandiganbayan, and that the latter paid him a bribe – should be admitted and given its proper weight when considered alongside other pieces of evidence.

First, the investigating justice found Luy and Sula to be credible and reliable witnesses whose testimonies even withstood the intense public scrutiny of Senate committee hearings. No evidence has ever been shown that they fabricated their statements about Justice Ong, nor that they harbored ulterior or illegal motives in adducing evidence against Justice Ong.

Second, Napoles, the declarant of the damning statements about Ong, could not reasonably be made available to testify against Justice Ong, as she would be testifying against her own interest. As I earlier explained, testifying against Justice Ong would amount to the admission by Napoles that she had committed the crime of corruption of a public officer, without any possibility of evading prison sentence by becoming a state witness.

Third, Napoles's statements regarding Justice Ong's assistance in the Kevlar Helmet case, her payment to Justice Ong, as well as her instructions to give checks to Justice Ong, were all made in the course of Luy's performance as her employee; they were made in confidence and in the course of instructing Luy on how to better undertake the tasks she had asked him to perform.

In particular, Napoles's statement that he paid Justice Ong a certain amount was made in reference to a ledger she kept of her expenses on the Kevlar Helmet case, information that she told Luy in the course of the latter's employment.

Fourth, the information derived from the hearsay evidence – that Justice Ong aided Napoles in the Kevlar Helmet case and that Napoles paid him for this assistance – constitutes a reasonable explanation for Justice Ong's visits to Napoles's office during which he was given a financial accommodation by Napoles; Justice Ong's picture with Napoles during a social function; and the highly questionable grant of probation of Napoles' relatives by Justice Ong – pieces of evidence that are not based on hearsay.

Further, these pieces of information are corroborated by the testimony of another Napoles employee, Sula, who received information from Napoles in the course of their employer-employee relationship. In her testimony, Sula categorically attested that Napoles identified Justice Ong as her "contactman" in the Sandiganbayan several times; Napoles did this before Sula and before other Napoles employees.

Fifth, Napoles had no reason to lie or misrepresent that Justice Ong assisted her in the Kevlar Helmet case at the time she made the disclosure to Luy. At that time, Napoles and Luy's personal and working relationships were close, as they did not only stand as employer and employee to one another; they were members of the same family as they were second cousins. Napoles also disclosed the information to Luy in the course of the latter's performance of his duties as her employee. There could possibly be no benefit to Napoles in fabricating the fact of Justice Ong's assistance in the Kevlar Helmet case where she had been acquitted.

Admitting Luy's hearsay statement regarding Justice Ong's assistance to Napoles in the Kevlar Helmet case and giving it its proper weight would – when considered with the rest of the evidence untainted with issues of admissibility – lead to the reasonable conclusion that Justice Ong had committed gross misconduct through acts amounting to bribery.

As I earlier emphasized, Justice Ong's assistance to Napoles, as well as his receipt of money from her, reasonably explain Justice Ong's action in the grant of probation to Napoles's relatives, the ledger of "Sandiganbayan expenses" that Luy encountered in the course of his employment, as well as Justice Ong's subsequent visits to Napoles's office where he was given an advantageous financial accommodation. It additionally explains why Napoles's employees believed that Justice Ong indeed was her contact man at the Sandiganbayan.

Taken together, these pieces of evidence provide a cohesive narrative revealing that Napoles gave Justice Ong money in exchange for his assistance in the Kevlar Helmet case, a case that the Fourth Division of the Sandiganbayan (whose Chairman is Justice Ong) decided.

The act which the public officer committed in exchange for the gift he received need not necessarily be a crime – it may consist of committing an unjust act, or refraining from doing something that is his official duty to do, so long as it is connected with the performance of his official duties. Assisting a litigant towards a successful avoidance of a criminal sentence or imprisonment involves such an unjust act.

Worthy of note too, that specifying the act which the respondent judge committed to doing in exchange for the gift he accepted is immaterial for purposes of determining whether he committed gross misconduct arising from acts amounting to bribery.

Bribery, as defined in the Revised Penal Code, has two forms: first, direct bribery, which may be committed by accepting a gift in exchange for the public official's (1) performance of a crime, (2) performance of an unjust act and / or (3) refraining from performing his duty.[22] These acts must be performed in the course of the public official's duties in government.

The second form involves indirect bribery – which involves accepting gifts given by virtue of the public official's position in government, often with the view of exchanging future favors.[23] Acts which are neither illegal nor unjust, but which are performed in the course of the public official's duties and in exchange of the gift or favor given to the public official, falls under indirect bribery.[24]

In these lights, the critical facts necessary to prove bribery, for purposes of determining gross misconduct, are (1) the respondent judge's act of the receiving a gift or favor, (2) his knowledge that this gift was given by virtue of his office, and (3) the connection between the bribe-giver's interest with the bribe-receiver's office.

In other words, what is crucial in gross misconduct where bribery is the underlying act is the acceptance of a gift or favor, knowing that the gift or favor is given because of one's position in the judiciary – i.e., that it was given to persuade the respondent judge or justice to perform an act for the giver. This act may be criminal, unjust, or may even be in line with the respondent judge or justice's duties.

Notably, the New Code of Judicial Conduct asks members of the judiciary not only to establish judicial independence and integrity, but to maintain the appearance of these judicial attributes. Judges and justices are given sufficient leeway and discretion in the application of the law and evaluation of the pieces of evidence before him or her, and it is crucial that their exercise of discretion is never compromised. Particularly, their actions cannot be tainted with ulterior motives that our criminal laws cover, such as payment from one of the litigants, regardless of whether such litigant's cause was in line with the law or not.

In these lights, the acceptance of a gift or valuable favor from a litigant in one's court, especially when such litigant had just been acquitted and still had relatives with pending cases in the division one presides over or is a member, already constitutes the underlying act of bribery for purposes of a gross misconduct charge. It involves indirect bribery at the very least because the gift or favor was accepted knowing full well that it was given because of one's position in the judiciary, not because of any particular private relationship that would justify

modest gifts. In such case, the gift would necessary be in exchange for or would be looking up to a favorable act in favor of the giver.

Applying these principles in these lights, I cannot accept Justice Ong's attempt to hide behind the Sandiganbayan division's collegial decision-making process to exonerate himself of the charges against him. That he is just one of five (5) justices in his division is no excuse when it is considered that he speaks for or against the merits of cases pending with his Division. That Justice Ong himself might not have actually drafted the decision in the Kevlar Helmet case does not automatically free him from liability for the acts imputed to and proven against him, as the critical point is his participation in the case.

Justice Ong acted, in his official capacity as presiding justice and member of the Sandiganbayan Fourth Division, on the decision and motion for reconsideration of the Kevlar Helmet cases. He was identified, by several people who had no cause to implicate him, as Napoles's contactman in the Sandiganbayan. He even went to Napoles's office twice before signing probation orders for Napoles's relatives. During one of those visits, Luy prepared checks to be given to him as an accommodation given to him by Napoles. At that time, Napoles had just been acquitted before Justice Ong's Division, while the cases of Napoles' relatives still stood to be acted upon by the Division on the probation aspects. These acts, to my mind, more than reasonably establish his gross misconduct based on the underlying acts of bribery (indirect bribery, at the very least).

IV. Assuming *arguendo* that the hearsay evidence against Justice Ong could not be admitted as evidence, the totality of admissible evidence shows that Justice Ong committed gross misconduct by assisting, claiming to have assisted, or fostering the belief that he assisted Napoles in the Kevlar case.

A. Assessment of Luy and Sula's testimonies

Even with the use of our traditional approach of excluding hearsay evidence in administrative proceedings, I submit that the presented evidence that are not hearsay sufficiently prove that Justice Ong committed acts amounting to gross misconduct. His acts after the promulgation of the Kevlar Helmet decision show that he had assisted, claimed to have assisted, or at the very least fostered, the belief that he assisted Napoles in the Kevlar Helmet case.

A closer examination of Luy and Sula's testimonies show that they are not entirely without any probative value. A statement made by a witness may, at the same time, be both hearsay and non-hearsay, depending on what it intends to prove.

If the testimony is used to prove the veracity of a statement that the witness had no personal knowledge of, then the statement is undoubtedly hearsay with respect to the subject of the statement. But if the testimony is used to prove matters other than the veracity of the statement itself^[25] and of which the witness has actual knowledge, then the statement is admissible and may be given probative value. This is the independently relevant type of evidence.

In these lights, evidence that may be hearsay in proving the fact directly in issue (bribery), may be used to prove the surrounding facts, related to the fact directly in issue, that a witness has personal knowledge of, such as the utterance of another person in front of witnesses, albeit the veracity of the uttered statement itself cannot be considered to be directly established.^[26]

Further, it may also be used to show the other person's state of mind, physical and mental condition, knowledge, belief, intention, and other emotions.^[27] The latter, notably, coincides with Rule 130, Section 48 of the Rules of Court, that allows a witness to present his opinion on the emotion, behavior, condition, or appearance of a person.

Admittedly, the purpose for which a piece of evidence is offered must be manifested to the court at the time the evidence is offered and presented.[28] This aspect, however, is where the leniency of administrative cases on the technical rules of evidence comes in. Thus, although no distinction had been made as to the purpose of the testimonies, probative value may be given to and separated from their hearsay aspects, particularly to the extent that a statement is independently relevant to the issue at hand.

Applied to the present case, we can - without refusing to apply the hearsay rule – give credence to Luy’s statement insofar as it proves that (1) Napoles plainly stated that she had been talking to Justice Ong while the Kevlar Helmet case was pending in the Sandiganbayan and that she gave the latter money to assist her, (2) that her demeanor at the time she uttered this statement was calm and confident, and (3) that during the conversation when Napoles uttered these statements, she appeared confident that she would be acquitted in the Kevlar Helmet case.

In other words, while we do not use Luy and Sula’s statements to establish that Napoles had been telling the truth regarding Justice Ong’s involvement in acquitting her in the Kevlar Helmet case, we still can accept that she uttered these statements to Luy, a person closely related to her and whose work involved confidential matters entrusted only to a trusted associate or employee.

To reiterate, Luy was not merely an employee of Napoles; he is also her second cousin, and has assisted her in her operations (now being questioned for its linkages in the illegal use of the Priority Development Assistance Fund) for a considerable length of time. We can also accept Luy’s impressions of Napoles’ state of mind and emotions at the time she uttered these statements – i.e., a person confident that she would be acquitted. Significantly, she was in fact acquitted. From the time of this acquittal, the proven acts of meetings, socials and financial accommodation followed.

With respect to Luy’s testimony on the financial accommodation that Napoles gave Justice Ong, we can derive from his statements the following non-hearsay aspects:

(1)

Justice Ong visited Napoles’ office twice;

(2)

During one of those visits, Napoles received a check worth Php 25.5 million;

(3)

That in exchange for the Php25.5 million check, Luy was asked to prepare 11 checks to be issued by Napoles with Justice Ong as the payee;

(4)

That these checks contain an aggregate amount of Php25.5 million plus 13% interest; and

(5)

That before Luy placed Justice Ong’s name in the checks, Napoles went to the room where Justice Ong had been staying, and thereafter instructed Luy to make the checks payable to cash.

Luy’s statements regarding these events are not hearsay, as he was involved in preparing these checks. His testimony regarding Justice Ong’s presence in Napoles’ office at the time he was preparing these checks also cannot also be considered as hearsay. That these checks, however, had been issued to facilitate Justice Ong’s

participation in the AFPSLAI (that then gave 13% interest to its depositors) cannot be taken as evidence because Luy had not been personally privy to the transaction facilitated by the checks he prepared.

With respect to Sula's testimony, we can give it credit to the extent that she heard Napoles say that Justice Ong would help her in the Kevlar Helmet case, not just in front of Sula, but in front as well of other Napoles employees.

Further, we can also accept Sula's testimony that Justice Ong had visited Napoles' office twice in 2012. We cannot, however, give credit to Sula's statements regarding Justice Ong's possible involvement in helping Napoles with the cases filed against her in the pork barrel scam, as these are speculative and unproven at this point and are not covered by our present case.

B. The facts established by Luy and Sula's testimonies, when considered with the totality of the pieces of evidence, sufficiently establish that Justice Ong assisted or claimed to have assisted Napoles in the Kevlar Helmet case, or at the very least allowed Napoles to believe in such assistance.

After excluding the aspects of Luy and Sula's testimonies that are hearsay, I believe that the following facts can be considered sufficiently established:

(1)

That Luy and Sula both heard Napoles claim that Justice Ong was assisting her in the Kevlar Helmet case;

(2)

That Sula witnessed Napoles make the same claim before the latter's other employees;

(3)

That Napoles's demeanor in making this claim was of someone who knew that she would be acquitted prior to the release of decision in the Kevlar Helmet case;

(4)

That indeed Napoles was acquitted in the Kevlar Helmet case;

(5)

That Justice Ong visited Napoles's office twice in 2012;

(6)

That during one of those visits, Luy assisted Napoles in preparing 11 checks for Justice Ong, in exchange for the Php25.5 million check that Napoles allegedly received during Justice Ong's visit.

These factual conclusions from Luy's and Sula's testimonies, when taken together with other pieces of evidence and circumstances surrounding the case, sufficiently establish, by substantial evidence, that Justice Ong assisted, claimed to have assisted, or fostered the belief that he assisted Napoles in the Kevlar Helmet case. They also establish that Justice Ong afterwards received a favor from Napoles, as he exchanged his Php25.5 million check with 11 checks totaling to Php25.5 million with 13% interest.

Whether Justice Ong's check for Php25.5 million was funded, or had been encashed by Napoles, unfortunately, are unanswered questions from the evidence of the present case. If that check had not been funded, then Napoles effectively gave Justice Ong Php25.5 million, plus 13% of this sum, under the guise of the transaction they entered. On the other hand, if that check had indeed been funded, then a very interesting document to see would

be Justice Ong's Statement of Assets and Liabilities, his SALN.

What, if I may ask, was worth this much to Napoles at that time?

The totality of the pieces of evidence presented before the Court yield the following factual conclusions:

The two witnesses, both of whom were found credible by the investigating justice, testified that Napoles had been confident of her acquittal in the Kevlar Helmet case through Justice Ong's assistance. This confidence, according to Luy, was exhibited by Napoles even prior to the Sandiganbayan's decision on the Kevlar Helmet case.

Napoles had indeed been acquitted by the Fourth Division that Justice Ong then chaired (and still chairs). Meanwhile, her relatives, who had been her co-accused, were found guilty of falsification of public documents but never spent a minute in jail due to Justice Ong's direct action on this aspect of the Kevlar Helmet case.

We are aware though that the probation order came in the early part of 2013; i.e., after Justice Ong's established interactions with Napoles in 2012. Napoles and Justice Ong were photographed together at a social event in 2012. During the same year, Justice Ong visited Napoles's office twice.

Further, during one of those visits, Napoles allegedly received a check worth Php25.5 million, and initially intended to issue 11 checks reflecting Php25.5 million plus 13% interest with Justice Ong's name as payee. These checks, however, were ultimately made payable to cash.

A discordant note in all these is Justice Ong's claim that he visited Napoles to ask for her assistance in accessing the robe of the Black Nazarene in Quiapo. This claim, however, does not need to negate the credit of Luy's testimony that he prepared the checks as both can be accomplished in one visit. (Or, there might have been other visits.) Others also attested to Justice Ong's visits to Napoles in 2012 and, significantly, other than his lame reference to the deity and unabashed play for sympathy through religion, Justice Ong never presented any evidence to disprove these points.

I find it too much of a coincidence that the Sandiganbayan justice that Napoles had been boasting about as the one who would help her in the Kevlar Helmet case, is the same justice that she socially mingled with (as shown by their photograph in a party), and the same justice that had twice personally visited her in her office in 2012. Justice Ong, too, is apparently one justice who could issue a check for Php25.5 million.

The more logical explanation for all these events, to my mind, is that Justice Ong and Napoles have been more than passing acquaintances long before 2012. Justice Ong had been visiting Napoles at her office, and had been present in at least one party where he was photographed with Napoles and no less than a senator of the realm. These suggest relationships at both the official and social levels and should be read with the direct testimony of what Napoles told her employees about her acquittal and the actual fact of acquittal.

Additionally, Ong had transacted with Napoles to the tune of Php25.5 million, a fact also directly testified to by Luy.

I submit that the confluence of these facts and events cannot but lead a reasonable mind to believe that respondent Justice Ong, at the very least, assisted or, to be exact, extended favors to Napoles and her relatives in the Kevlar Helmet case.

Assisting or claiming to have assisted a litigant in a case pending or decided by the court he sits in, or allowing the belief that he assisted in the said case violate several canons in the New Code of Judicial Conduct pertaining to integrity and impartiality. Canon 2, Section 1, requires judges 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."

Further, Canon 3, Section 2 instructs 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 must not only perform their duties with impartiality and integrity, but must ensure that these duties appear to have been executed with impartiality and integrity. Acts of assisting or making litigants believe that they have been assisted by the judge hearing his or her case not only reflects on his partiality and questionable integrity, it also reflects badly for the reputation of the judiciary, as it gives the impression that justice can be bought. That the Sandiganbayan, the country’s anti-graft court, is involved in a corrupt practice should not be without significance to the Court.

Worse, as the accused in the present case is a member of the judiciary, it sends out the additional message that the one who dispenses justice can also be the same justice who sells it. Considering the grave repercussions of Justice Ong’s violations, I find it logically incomprehensible to characterize his acts as less than a serious charge, and I find it morally reprehensible to impose a penalty less than dismissal with prejudice. The Court should likewise forward its record of this case to the Ombudsman for whatever action she may deem proper under the circumstances.

In sum, given the nature of the disciplinary proceedings for judges and the circumstances proven in the present case, I strongly believe that Justice Ong is no longer worthy of being identified as one of our colleagues in the judiciary. We should, at the soonest possible time, act on this already-delayed case with dispatch, dismiss him as recommended by Justice Villarama, and thereby give the strongest signal to the country of our intent to purify our ranks.

As one final point, I also invite the Court’s attention to the underlying case that ultimately gave rise to the accusation against Justice Ong. It was a case involving Kevlar Helmets.

To the uninitiated, these are the helmets that the members of our military use as they fight battles for us who continue to live in the relative safety and comfort of our homes. Any irregularity in these purchases means that less than the ideal exchange had been secured by the purchasing government in the transaction. It is painful to realize that this irregularity – proven by no less than the conviction of several officers of the military as well as Napoles’ relatives – had been at the possible expense of the members of the military who risk their lives for the rest of our society. If only for this, the Court should be aware, sensitive, and critical, in viewing the present case. Even if only to this extent, let us signal to the military how we feel for and appreciate them.

[1] RE: Interview with Lorna Kapunan on Corruption in the Judiciary, A.M. No. 13-11-09-SC, August 12, 2014.

[2] An administrative offense means every act or conduct or omission which amounts to, or constitutes, any of the grounds for disciplinary action. *Salalima v. Guingona*, G.R. Nos. 117589-92, May 22, 1996, 257 SCRA 55.

[3] See Section 11, Rule 140 of the Rules of Court.

[4] See, for comparison, the following discussion on disciplinary proceedings for lawyers in *In the Matter of Proceedings for Disciplinary Action Against Atty. Vicente Raul Almacen*, G.R. No. L-27654, February 18, 1970, 31 SCRA 562, 600 – 601:

Accent should be laid on the fact that disciplinary proceedings like the present are *sui generis*. Neither purely civil nor purely criminal, this proceeding is not — and does not involve — a trial of an action or a suit, but is rather an investigation by the Court into the conduct of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. Accordingly, there is neither a plaintiff nor a prosecutor therein. It may be

initiated by the Court *motu proprio*. Public interest is its primary objective, and the real question for determination is whether or not the attorney is still a fit person to be allowed the privileges as such. Hence, in the exercise of its disciplinary powers, the Court merely calls upon a member of the Bar to account for his actuations as an officer of the Court with the end in view of preserving the purity of the legal profession and the proper and honest administration of justice by purging the profession of members who by their misconduct have proved themselves no longer worthy to be entrusted with the duties and responsibilities pertaining to the office of an attorney. In such posture, there can thus be no occasion to speak of a complainant or a prosecutor. (Citations omitted)

[5] See A.M. No. 01-8-10-SC amending Rule 140 of the Rules of Court on the Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan.

[6] Rule 133, Section 5 of the Rules of Court provides:

Section 5. Substantial evidence. — In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[7] Article 210 of the Revised Penal Code provides:

Art. 210. Direct bribery. — Any public officer who shall agree to perform an act constituting a crime, in connection with the performance of this 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 the value of the gift and] 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.

Art. 211. Indirect bribery. — The penalties of prision correccional in its medium and maximum periods, and public censure shall be imposed upon any public officer who shall accept gifts offered to him by reason of his office. (As amended by Batas Pambansa Blg. 872, June 10, 1985).

[8] Article 212 of the Revised Penal Code provides:

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.

[9] *Supra* note 1, at 1.

[10] The rule against admitting hearsay evidence is embodied in Section 36, Rule 130 of the Rules of Court:

Section 36. Testimony generally confined to personal knowledge; hearsay excluded. — A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules. (30a)

[11] *Mallari v. People*, 487 Phil. 299, 321 (2004).

[12] David Alan Sklansky, *Hearsay's Last Hurrah*, 2009 Sup. Ct. Rev. 1, 7 (2009).

[13] *Id.*

[14] See JAMES B. THAYER, A PRELIMINARY TREATISE ON EVIDENCE AT COMMON LAW 47 (1898) as cited in Gordon Van Kessel, *Hearsay Hazards in the American Criminal Trial: An Adversary-Oriented Approach*, 49 Hastings L.J. 477, 489 (1998), available at <http://librarysource.uchastings.edu/repository/Van%20Kessel/49HastingsLJ477.pdf>.

Traditionalists contend that, along with other common law exclusionary rules, hearsay restrictions arose with the development of the modern independent jury and that current exclusion of hearsay is justified primarily by the weaknesses of lay, as opposed to professional, factfinding with respect to evaluating second-hand evidence, which suffers from the four declarant-oriented weaknesses.

See also Lisa Dufraimont, *Evidence Law and the Jury: A Reassessment*, 53 McGill Law Journal 199, 223 (2008), where she notes that:

The idea that the hearsay rule was developed to prevent untrained and inexperienced lay juries from overvaluing unreliable second-hand information was popular among nineteenth century judges, and has regularly been advanced by scholars up to the present day.

In so doing, Dufraimont cites *Wright v. Doe d. Tatham* (1837), 7 Ad. & E. 313, 112 E.R. 488 at 512 (Exch. Ct.) Berkeley, *In re* (1837), 4 Camp. 401, 171 E.R. 128 at 135 to support her statement about the judges' apprehensions against the appreciation of evidence by lay jurors. Dufraimont, however, is of the view that "apprehensions of jury incompetence were not uppermost in the minds of the seventeenth- and eighteenth-century judges whose concerns about hearsay hardened into an exclusionary rule. Instead, the historical origins of the hearsay rule lie in concerns about lack of oath and cross-examination, process values that are crucial to the proper functioning of the adversary system. (ibid., citations omitted)

See also: Frederick W. J. Koch, *Wigmore and historical aspects of the hearsay rule*, unpublished dissertation (2004), available at <http://search.proquest.com/docview/305111445?fromunauthdoc=true>:

In 1904 Dean Wigmore advanced a new theory regarding the *raison d'être* for the hearsay rule which continues to exert a significant influence on English and Canadian hearsay reform. Based on his historical work, Wigmore said that the common law judges of the late seventeenth century developed a single rule excluding hearsay evidence. According to Wigmore, these judges began to exclude hearsay because of a perception that the juries used in common law trials tended to overvalue such evidence in the absence of cross-examination. This overvaluation occurred because these untrained and inexperienced jurors failed to fully appreciate the potential sources of weakness in testimonial evidence when it was untested by cross-examination.

See also: John Henry Wigmore, *The History of the Hearsay Rule*, 17 Harv L Rev 437, 438 – 439 (1904).

[15] In *Richardson v. Perales* 402 U.S. 389 (1971), the United States Supreme Court allowed the use of uncorroborated hearsay evidence (i.e., written medical reports and evaluations submitted by physicians) to satisfy the substantial evidence requirement in an administrative proceedings. In so doing, it gave sufficient leeway to the administrative agencies to determine what constitutes 'substantial evidence,' and to accord due weight on the reliability and probative value of hearsay evidence. See the *Use of Hearsay Evidence and the "Substantial Evidence" Standard*, 1972 Duke Law Journal 174-182 (1972). Available at: <http://scholarship.law.duke.edu/dlj/vol21/iss1/8>.

See also John L. Gedid, *Hearsay Evidence in Administrative Proceedings – Pro and Con Views on the "Legal Residuum" Rule: the "Legal Residuum" Rule should be retained in Pennsylvania because of its Function to Insure Fundamental Fairness and Due Process*, 75 PA Bar Assn. Quarterly 7 (2004).

[16] By statute, England made firsthand hearsay admissible in civil trials in 1968, abolished the rule entirely for civil cases in 1997, and in 2003 created a broad exception in criminal cases for firsthand hearsay from declarants unavailable to testify at trial. David Alan Sklansky, *Hearsay's Last Hurrah*, 2009 Sup. Ct. Rev. 1,10 (2009).

See also the discussion on the modernization of civil evidence in England, in NEIL ANDREWS, *THE THREE PATHS OF JUSTICE: COURT PROCEEDINGS, ARBITRATION, AND MEDIATION IN ENGLAND (IUS GENTIUM: COMPARATIVE PERSPECTIVES ON LAW AND JUSTICE, Vol. 10)* 105 – 106 (2011):

3.94 There has been much ‘modernising’ of civil evidence during the last few decades. The impetus for these reforms has been the civil jury’s virtual disappearance in modern English practice. And so various ‘exclusionary rules’, designed to protect the civil jury against ‘potentially unreliable’ material, have been removed or modified.

3.95 These developments are consistent with a perceived global trend towards ‘free evaluation’ of evidence. American Law Institute / UNIDROIT’s Principles of Transnational Civil Procedure has recognised this concept. These English evidential changes will now be listed. The English ‘hearsay rule’ used to provide a barrier to admitting relevant evidence. This rule concerned second-hand or remoter reports of oral statements (for example, if the defendant wished to adduce evidence, through one of his witnesses, who proposed to state that the ‘claimant told me that his wife had said, “let’s concoct a claim against these people”’), The hearsay rule also concerned documents composed out-of-court. But there has now been a fundamental change. Since 1995, statute has allowed a party to use out-of-court oral statements, and documents, as evidence: ‘In civil proceedings evidence shall not be excluded on the ground that it is hearsay’, that is, ‘a statement made otherwise than by a person giving oral evidence.’ Instead, the court must assess the ‘weight’ to be attached to the hearsay evidence. The judge is here guided by various considerations. x x x (Citations omitted)

[17] Section 1 of the Chancery Amendment Act of 1854 provides:

The Parties to any Cause may, by Consent in Writing, signed by them or their Attorneys, as the Case may be, leave the Decision of any Issue of Fact to the Court, provided that the Court, upon a Rule to show Cause, or a Judge on Summons, shall, in their or his Discretion, think fit to allow such Trial; or provided the Judges of the Superior Courts of Law at Westminster shall, in pursuance of the Power herein-after given to them, make any General Rule of Order dispensing with such Allowance, either in all Cases or in any particular Class or Classes of Cases to be defined in such Rule or Order; and such Issue of Fact may thereupon be tried and determined, and Damages assessed where necessary, in open Court, either in Term or Vacation, by any Judge who might otherwise have presided at the Trial thereof by jury, either with or without the Assistance of any other Judge or Judges of the same Court, or included in the same Commission at the Assizes; and the Verdict of such Judge or Judges shall be of the same Effect as the Verdict of a Jury, save that it shall not be questioned upon the Ground of being against the Weight of Evidence; and the Proceedings upon and after such Trial, as to the Power of the Court of Judge, the Evidence, and otherwise, shall be the same as in the Case of Trial by Jury.

See also Sally Lloyd-Bostock and Cheryl Thomas’s discussion on the English jury in civil cases, viz:

The frequency of civil jury trials steadily declined in England and Wales from the middle of the nineteenth century, when judges were given the right to refuse trial by jury. Today, less than one percent of civil trials are jury trials. The Supreme Court Act gives a qualified right to trial by jury in only four types of civil case: libel and slander, fraud, malicious prosecution, and false imprisonment. Even in these cases, the right can be denied where the court is of the opinion that the trial requires “prolonged examination of documents or accounts, or any scientific or local investigation which cannot be conveniently made with a jury.” Sally Lloyd-Bostock and Cheryl Thomas, *Decline of the “Little Parliament”: Juries and Jury Reform in England and Wales*, 62 *Law and Contemporary Problems* 9, 13 (1999).

[18] See for instance, *Gacad v. Judge Clapis* (A.M. No. RTJ-10-2257, July 17, 2012, 676 SCRA 534), *Verginesa-Suarez v. Judge Dilag* (A.M. No. RTJ-06-2014, March 04, 2009, 580 SCRA 491), and *Kaw v. Judge Osorio* (469 Phil. 896 [2004]).

[19] The case of *Razon, et. al. v. Tagitis* (G.R. No. 182498, December 3, 2009, 606 SCRA 598) involves the enforced disappearance of Engineer Morced N. Tagitis, a consultant for the World Bank and the Senior Honorary Counselor for the Islamic Development Bank (IDB) Scholarship Programme. In *Tagitis*, we noted (citing a landmark case by the Inter-American Court of Human Rights) that the deliberate use of the State’s power to destroy pertinent evidence is inherent to the practice of enforced disappearance. Thus, there is a strong need for

flexibility under the unique circumstances that enforced disappearance cases pose to the courts; to have an effective remedy, the standard of evidence must be responsive to the evidentiary difficulties faced.

Accordingly, we allowed the admission of hearsay testimony, over the objections of the public officers concerned, and evaluated it along with its consistency with the totality of all the pieces of evidence adduced.

[20] Id.

[21] Id. at 692.

[22] Article 210, Revised Penal Code.

[23] Article 211, Revised Penal Code.

[24] *People v. Pamplona*, CA, 51 OG 4116, as cited in Luis B. Reyes, *THE REVISED PENAL CODE BOOK TWO*, Seventeenth Ed. 393 – 394 (2008).

[25] Moreover, the ban on hearsay evidence does not cover independently relevant statements. These are statements which are relevant independently of whether they are true or not. They belong to two (2) classes: (1) those statements which are the very facts in issue, and (2) those statements which are circumstantial evidence of the facts in issue. The second class includes the following:

- a. Statement of a person showing his state of mind, that is, his mental condition, knowledge, belief, intention, ill will and other emotions;
- b. Statements of a person which show his physical condition, as illness and the like;
- c. Statements of a person from which an inference may be made as to the state of mind of another, that is, the knowledge, belief, motive, good or bad faith, etc. of the latter;
- d. Statements which may identify the date, place and person in question; and
- e. Statements showing the lack of credibility of a witness. *Estrada v. Desierto*, 408 Phil 194, 227 (2001).

[26] *Miro v. Mendoza*, G.R. Nos. 172532 172544-45, November 20, 2013.

[27] See *US v. Enriquez*, 1 Phil. 241, 243–244 (1902).

[28] In particular, Sections 34 and 35 of Rule 132 of the Rules of Court provide:

Section 34. Offer of evidence. — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified. (35)

Section 35. When to make offer. — As regards the testimony of a witness, the offer must be made at the time the witness is called to testify.

Documentary and object evidence shall be offered after the presentation of a party's testimonial evidence. Such offer shall be done orally unless allowed by the court to be done in writing. (n)

CONCURRING AND DISSENTING OPINION

BERSAMIN, J.:

The Majority holds Justice Gregory S. Ong of the Sandiganbayan guilty of gross misconduct, dishonesty, and impropriety in violation of the New Code of Judicial Conduct for the Judiciary.

I believe, however, that Justice Ong is administratively liable only for simple misconduct, because that was the offense competently and properly established against him, and the offense for which he is to be justly punished. I

join the thorough consideration of the record and recommendation for the suspension of Justice Ong for three months by Justice Jose Portugal Perez and Justice Bienvenido L. Reyes. I humbly opine that it is unjust to punish Justice Ong with the extreme penalty of dismissal from the service if the serious charges of gross misconduct, dishonesty, and impropriety were not clearly and convincingly proven by competent evidence.

In imposing the ultimate penalty of dismissal, the per curiam decision of the Majority contained the following observations:

1. Justice Ong's association with Janet Lim Napoles during the pendency of, and after the promulgation of the decision in the Kevlar case resulting in Napoles's acquittal constituted gross misconduct notwithstanding the absence of direct evidence of corruption or bribery in the rendition of the said judgment.

2. The testimonies of Benhur Luy and Marina Sula, the former employees of Napoles, were considered substantial evidence establishing Napoles's contact with Justice Ong during the pendency of the Kevlar case. The substance of their testimonies given credence by the Majority are the following:

(a)

Napoles revealed to them that she had a "connect" or "contact" in the Sandiganbayan who could help "fix" the Kevlar case;

(b)

Luy testified that Napoles told him that she gave money to Justice Ong but did not disclose the amount;

(c)

Napoles kept a ledger detailing her expense for the Sandiganbayan, which reached P100 Million; and

(d)

Napoles' information about her association with Justice Ong was confirmed when she was eventually acquitted in 2010, and when Luy and Sula saw him visit her office after the promulgation of the decision in the Kevlar case, and given the eleven checks issued by Napoles in 2012;

3. The evidence on record was insufficient to sustain the charge of bribery and corruption against Justice Ong inasmuch as Luy and Sula had not themselves witnessed him actually receiving money from Napoles. Considering that bribery and corruption connote a grave misconduct, the quantum of proof should be more than substantial;

4. By his act of going to Napoles's office on two occasions, Justice Ong exposed himself to the suspicion that he had been partial to Napoles;

5. Investigating Justice Angelina Sandoval-Gutierrez found the testimonies of Luy and Sula credible;

6. Justice Ong's act of voluntarily meeting with Napoles constituted impropriety, because he must at all times be beyond reproach and should avoid even the mere suggestion of partiality and impropriety;

7. According to Justice Sandoval-Gutierrez, the eleven checks supposedly issued as advance interest for Justice Ong's deposit in AFPSLAI were given to him as consideration for the favorable ruling in the Kevlar case; and

8. Justice Ong's denial and failure to disclose his attendance in Napoles's gatherings, and his visits and social calls to Napoles constituted dishonesty.

To the Majority, Justice Ong's guilt for gross misconduct was anchored on the inference from his association

with Napoles having led to her acquittal in the Kevlar case. To support the inference, the Majority accorded credence to the statements of Luy and Sula to the effect that: (a) Napoles had told them on different occasions that she had a “contact” in the Sandiganbayan; (b) Napoles later on disclosed that Justice Ong was her contact in the Sandiganbayan; and (c) Napoles told Luy that she had paid money to Justice Ong (whose amounts she did not bother to disclose).

The evidence required in administrative cases is concededly only substantial;^[1] that is, the requirement of substantial evidence is satisfied although the evidence is not overwhelming, for as long as there is reasonable ground to believe that the person charged is guilty of the act complained of.^[2] However, the substantial evidence rule should not be invoked to sanction the use in administrative proceedings of clearly inadmissible evidence. Although strict adherence to technical rules is not required in administrative proceedings, this lenity should not be considered a license to disregard fundamental evidentiary rules.^[3] The evidence presented must at least have a modicum of admissibility in order for it to have probative value. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.^[4] In my opinion, administrative proceedings should not be treated differently under pain of being perceived as arbitrary in our administrative adjudications.

The statements of Luy and Sula being relied upon were based not on the declarants’ personal knowledge, but on statements made to them by Napoles. I find it very odd that the Majority would accord credence to such statements by Luy and Sula if they themselves did not personally acquire knowledge of such matters. I insist that elementary evidentiary rules must be observed even in administrative proceedings.

A most basic rule is that a witness can only testify on matters that he or she knows of her personal knowledge.^[5] This rule does not change even if the required standard be substantial evidence, preponderance of evidence, proof beyond reasonable doubt, or clear and convincing evidence. The observations that the statements of Luy and Sula were made amidst the “challenging and difficult setting”^[6] of the Senate hearings, and that the witnesses were “candid, straightforward and categorical” during the administrative investigation^[7] did not excise the defect from them. The concern of the hearsay rule is not the credibility of the witness presently testifying, but the veracity and competence of the extrajudicial source of the witness’s information.

To be clear, personal knowledge is a substantive prerequisite for accepting testimonial evidence to establish the truth of a disputed fact. The Court amply explained this in *Patula v. People*:^[8]

To elucidate why x x x hearsay evidence was unreliable and untrustworthy, and thus devoid of probative value, reference is made to Section 36 of Rule 130, Rules of Court, a rule that states that a witness can testify only to those facts that she knows of her personal knowledge; that is, which are derived from her own perception, except as otherwise provided in the Rules of Court. The personal knowledge of a witness is a substantive prerequisite for accepting testimonial evidence that establishes the truth of a disputed fact. A witness bereft of personal knowledge of the disputed fact cannot be called upon for that purpose because her testimony derives its value not from the credit accorded to her as a witness presently testifying but from the veracity and competency of the extrajudicial source of her information.

In case a witness is permitted to testify based on what she has heard another person say about the facts in dispute, the person from whom the witness derived the information on the facts in dispute is not in court and under oath to be examined and cross-examined. The weight of such testimony then depends not upon the veracity of the witness but upon the veracity of the other person giving the information to the witness without oath. The information cannot be tested because the declarant is not standing in court as a witness and cannot, therefore, be cross-examined.

It is apparent, too, that a person who relates a hearsay is not obliged to enter into any particular, to answer any question, to solve any difficulties, to reconcile any contradictions, to explain any obscurities, to remove any ambiguities; and that she entrenches herself in the simple assertion that she was told so, and leaves the burden entirely upon the dead or absent author. Thus, the rule against hearsay testimony rests mainly on the ground that there was no opportunity to cross-examine the declarant. The testimony may have been given under oath and before a court of justice, but if it is offered against a party who is afforded no opportunity to cross-examine the witness, it is hearsay just the same.

Moreover, the theory of the hearsay rule is that when a human utterance is offered as evidence of the truth of the fact asserted, the credit of the assertor becomes the basis of inference, and, therefore, the assertion can be received as evidence only when made on the witness stand, subject to the test of cross-examination. However, if an extrajudicial utterance is offered, not as an assertion to prove the matter asserted but without reference to the truth of the matter asserted, the hearsay rule does not apply. For example, in a slander case, if a prosecution witness testifies that he heard the accused say that the complainant was a thief, this testimony is admissible not to prove that the complainant was really a thief, but merely to show that the accused uttered those words. This kind of utterance is hearsay in character but is not legal hearsay. The distinction is, therefore, between (a) the fact that the statement was made, to which the hearsay rule does not apply, and (b) the truth of the facts asserted in the statement, to which the hearsay rule applies.

Section 36, Rule 130 of the Rules of Court is understandably not the only rule that explains why testimony that is hearsay should be excluded from consideration. Excluding hearsay also aims to preserve the right of the opposing party to cross-examine the original declarant claiming to have a direct knowledge of the transaction or occurrence. If hearsay is allowed, the right stands to be denied because the declarant is not in court. It is then to be stressed that the right to cross-examine the adverse party's witness, being the only means of testing the credibility of witnesses and their testimonies, is essential to the administration of justice.

To address the problem of controlling inadmissible hearsay as evidence to establish the truth in a dispute while also safeguarding a party's right to cross-examine her adversary's witness, the Rules of Court offers two solutions. The first solution is to require that all the witnesses in a judicial trial or hearing be examined only in court under oath or affirmation. Section 1, Rule 132 of the Rules of Court formalizes this solution, viz:

Section 1. Examination to be done in open court. - The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally. (1a)

The second solution is to require that all witnesses be subject to the cross-examination by the adverse party. Section 6, Rule 132 of the Rules of Court ensures this solution thusly:

Section 6. Cross-examination; its purpose and extent. – Upon the termination of the direct examination, the witness may be cross-examined by the adverse party as to any matters stated in the direct examination, or connected therewith, with sufficient fullness and freedom to test his accuracy and truthfulness and freedom from interest or bias, or the reverse, and to elicit all important facts bearing upon the issue. (8a)

Although the second solution traces its existence to a Constitutional precept relevant to criminal cases, i.e., Section 14, (2), Article III, of the 1987 Constitution, which guarantees that: "In all criminal prosecutions, the accused shall xxx enjoy the right xxx to meet the witnesses face to face xxx," the rule requiring the cross-examination by the adverse party equally applies to non-criminal proceedings.

We thus stress that the rule excluding hearsay as evidence is based upon serious concerns about the trustworthiness and reliability of hearsay evidence due to its not being given under oath or solemn affirmation and due to its not being subjected to cross-examination by the opposing counsel to test the perception, memory, veracity and articulateness of the out-of-court declarant or actor upon whose reliability the worth of the

out-of-court statement depends.[9]

In addition, the Majority adverted to the following statements of Luy and Sula, to wit: (a) Luy and Sula saw Justice Ong visit Napoles in her office; (b) there was a ledger listing Napoles's alleged "Sandiganbayan" expenses; and (c) Luy personally prepared the 11 checks allegedly issued by Napoles to Justice Ong as advance interest for the latter's deposit in AFPSLAI as the basis for concluding that Justice Ong's association with Napoles was more than merely casual; and that such association was instrumental in Napoles's acquittal in the Kevlar case supposedly orchestrated by Justice Ong in return for monetary consideration.

I cannot agree with the Majority.

Justice Ong admitted making visits to Napoles, but such visits apparently happened in 2012, or long after the promulgation of the decision in the Kevlar case. He maintained that he had made his visits only to thank her for accommodating his request for access to the robe of the Black Nazarene.

The claim about the ledger and checks remained uncorroborated. No ledger or checks or any other documents indicating the preparation of the ledger or the issuance of the checks were actually presented. Nor was the connection of such ledger or the checks to the fixing of the Kevlar case for monetary consideration ever established. In that light, the adverse statements by Luy and Sula remained to be mere allegations that could not be considered as evidence by any means.[10]

If the Majority concede that there was no sufficient evidence to support the charge of bribery and corruption against Justice Ong, it became unreasonable for the Majority to hold that the totality of the circumstances still showed his corrupt inclination. To let ourselves as judges reach a conclusion of corrupt inclination despite the insufficient basis to find bribery and corruption is to set at naught all our learning of rendering a judgment of guilt only upon evidence that is sufficient, credible and reliable.

Having admitted visiting Napoles after the promulgation of the decision in the Kevlar case, Justice Ong could be considered as fraternizing with a litigant, by which he surely transgressed his duty as a judge to be beyond reproach and suspicion.[11] He thereby violated Section 1 of Canon 4 (Propriety) of the New Code of Judicial Conduct.[12] Yet, such association with Napoles was still censurable. Under Rule 140 of the Rules of Court, fraternizing with lawyers or litigants is classified as a light charge penalized with a fine of not less than P1,000.00 but not exceeding P10,000.00 and/or censure, reprimand, or admonition with warning.

The dishonesty of Justice Ong for having initially denied any acquaintance with Napoles was not of the seriousness or gravity to merit the extreme penalty of dismissal. His denial neither related to his official duties, nor to his qualifications as a Justice of the Sandiganbayan. It was not akin to an act of dishonesty committed through the falsification of one's daily time records,[13] and was not similar to a judge's failure to disclose in his application for appointment to the Judiciary pending criminal cases filed against him.[14]

It is relevant to note that dishonesty is a serious charge punishable by the following: (a) dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits; or (b) suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or (c) a fine of more than P20,000.00 but not exceeding P40,000.00.[15] Even so, the Court refrained in several instances from imposing these stiff administrative penalties because of the presence of mitigating circumstances, like the length of service, acknowledgment of fault, and feeling of remorse and humanitarian considerations.[16]

Nonetheless, the Court should appreciate mitigating circumstances in determining the proper penalty to be

imposed upon Justice Ong. At present, he is the longest-sitting Justice in the Sandiganbayan. Moreover, as mentioned by the Majority, he has admitted that his having associated himself to a former litigant in his court was an error, and has asked forgiveness during the proceedings held by Justice Sandoval-Gutierrez.

ACCORDINGLY, I VOTE to hold respondent JUSTICE GREGORY S. ONG guilty of SIMPLE MISCONDUCT, to be punished with suspension from office for a period of three months.

[1] Section 5, Rule 133 of the Rules of Court states:

Section 5. Substantial evidence. - In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (n)

[2] Office of the Ombudsman v. Dechavez, G.R. No. 176702, November 13, 2013, 709 SCRA 375, 382-383.

[3] Miro v. Mendoza Vda. de Erederos, G.R. Nos. 172532 & 172544-45, November 20, 2013, 710 SCRA 371, 396.

[4] Lepanto Consolidated Mining Company v. Dumapis, G.R. No. 163210, August 13, 2008, 562 SCRA 103, 113-114.

[5] Section 36, Rule 130 of the Rules of Court, to wit:

Section 36. Testimony generally confined to personal knowledge; hearsay excluded. - A witness can testify only to those facts which he knows of his personal knowledge; that is, which are derived from his own perception, except as otherwise provided in these rules. (30a)

[6] Per curiam decision, p. 26.

[7] Id.

[8] G.R. No. 164457, April 11, 2012, 669 SCRA 135.

[9] Id. at 152-155.

[10] See Real v. Sangu Philippines, Inc., G.R. No. 168757, January 19, 2011, 640 SCRA 67, 84-85.

[11] See De Guzman, Jr. v. Judge Sison, A.M. No. RTJ-01-1629, March 26, 2001, 355 SCRA 69, 90.

[12] Section 1. Judges shall avoid impropriety and the appearance of impropriety in all their activities.

[13] Concerned Employees of the Municipal Trial Court of Meycauayan, Bulacan v. Paguio-Bacani, A.M. No. P-06-2217, July 30, 2009, 594 SCRA 242, 258.

[14] Gutierrez v. Belan, A.M. No. MTJ-95-1059. August 7, 1998, 294 SCRA 1, 17.

[15] Section 11, Rule 140 of the Rules of Court.

[16] Office of the Court Administrator v. Judge Aguilar, A.M. No. RTJ-07-2087, 7 June 2011, 651 SCRA 13, 25.

CONCURRING AND DISSENTING OPINION

I dissent in part with the majority decision.

The Charge

Justice Gregory S. Ong (Justice Ong) of the Sandiganbayan stands administratively charged with misconduct in relation to two (2) criminal cases decided by the fourth division of the anti-graft court in 2010—Criminal Cases No. 26768 and 26769.[1]

Criminal Cases No. 26768 and 26769 are referred to as the Kevlar Cases because they dealt with the prosecution of seventeen (17) persons—ten (10) military officials and seven (7) private individuals—thought to be involved in what was alleged to be an anomalous acquisition by the government of five hundred (500) Kevlar helmets in 1998 and 2000. Criminal Case No. 26768 charged all seventeen with malversation of public funds through falsification of public documents, whereas Criminal Case No. 26769 charged them with violation of Section 3(e) of Republic Act No. 3019.

The Kevlar Cases were decided on 28 October 2010. The decision was penned by Justice Jose R. Hernandez and was concurred in by Justice Maria Cristina J. Cornejo and division chair Justice Ong. It handed out no convictions either for malversation or for violation of Section 3(e) of Republic Act No. 3019. The results:

- In Criminal Case No. 26768, seven (7) of the accused were acquitted while ten (10) were convicted albeit only for the lesser offense of falsification of public documents;
- In Criminal Case No. 26769, all seventeen of the accused were acquitted.

It is alleged that Justice Ong accepted bribes in exchange for the relatively tempered decision in the Kevlar Cases. In particular, he is suspected of acting as “contact” and “fixer” for one of the accused who ended up being acquitted in the two cases. That accused is Ms. Janet Lim Napoles (Napoles).

Events Leading to the Instant Administrative Case

The following chain of events precipitated the allegations of bribery against Justice Ong:

A. Pork Barrel Scam

In 2013, Napoles was implicated in a corruption scam that allegedly involved diversion of billions and billions of pesos worth of pork barrel funds[2] into bogus Non-Government Organizations (NGOs) and kickbacks for certain legislators. Details of the scam and Napoles’ involvement therein were revealed in sworn statements executed before the National Bureau of Investigation (NBI) by six (6) “whistleblowers” who were former employees of Napoles in the JLN Corporation.

The Napoles pork barrel scam was highly publicized in the media. News of the scam was met with intense outrage by the public and catapulted numerous protest actions all over the country. Napoles, in her own right, became a well-known public figure in the country albeit one of disrepute.

On 29 August 2013, the Senate Committee on Accountability of Public Officers and Investigations (Blue Ribbon Committee) began a probe, in aid of legislation, into the Napoles pork barrel scam.

B. 30 August 2013 Rappler Report and Photograph

On 30 August 2013, the news website Rappler published a report written by one Aries Rufo (Rufo) entitled “Exclusive: Napoles Parties with Anti-Graft Court Justice” that featured a photograph of Justice Ong, Napoles and Senator Jinggoy Estrada (Senator Estrada) posing and standing beside each other at some gathering.[3] The report contains excerpts of Rufo’s interview with Justice Ong regarding, among others, the circumstances of the

featured photograph and the truth behind anonymous “information” that he (Justice Ong) gave advice to Napoles during the pendency of the Kevlar Cases.

According to the report, Justice Ong acknowledged his presence with Napoles in the featured photograph but clarified that, at that time the same was taken, he did not know who Napoles was, much less know that he was with a former litigant of his.[4] The report also stated that Justice Ong denied being an adviser to Napoles during the pendency of the Kevlar Cases.[5]

After the publication of the Rappler report and photograph, Justice Ong sent to Chief Justice Maria Lourdes P. A. Sereno a Letter dated 26 September 2013. In the letter, Justice Ong explained to the Chief Justice that the photograph featured in the Rappler report could have been taken during the birthday of Senator Estrada either in the year 2012 or 2013, but definitely after the Kevlar Cases have been decided. Justice Ong, in the same letter, also categorically denied having attended any party or social event hosted by Napoles before, during or after the decision in the Kevlar Cases.

C. 26 September 2013 Senate Blue Ribbon Committee Hearing

On the same day Justice Ong wrote his Letter to the Chief Justice, the Senate Blue Ribbon Committee held one of its hearings on the pork barrel scam. Interrogated in this hearing were two (2) of the scam’s whistleblowers—a certain Benhur Luy (Luy) and one Marina Sula (Sula).

Among the questions asked of Luy during the Blue Ribbon Committee hearing was the occurrence, if any, of bribery in the Kevlar Cases. Luy answered that the Kevlar Cases were fixed because Napoles had a “connect” with the Sandiganbayan:

Senator Angara: Baka alam ng ibang whistleblowers kung nagkaka-ayusan sa kaso na iyon [Kevlar Cases].
Sige huwag ka matakot Benhur [Luy].

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

On the other hand, Sula was asked during the same hearing whether Napoles knew any of the justices of the Sandiganbayan. Sula testified that Napoles knew Justice Ong:

Chairman (Senator Guingona III): Sinabi ninyo na may tinawagan si [Napoles] at sinabi niya, malapit nang lumabas yung TRO galing sa korte. May kilala pa ba si [Napoles] na huwes sa korte sa Sandiganbayan?

x x x x

Sula: Si Mr. Ong po. Justice Ong po.

Q: Gregory Ong?

A: Opo.

Q: Sa Sandiganbayan?

A: Opo.

The Administrative Investigation and the Evidence

Amidst the foregoing events, the Chief Justice, on 7 October 2013, requested the Court En Banc to conduct a motu proprio investigation to shed light on the allegations that Justice Ong acted as liaison and fixer for Napoles in the Kevlar Cases.

On 17 October 2013, the Court En Banc required Justice Ong to submit his Comment. Justice Ong submitted his Comment on 21 November 2013.

On 21 January 2014, the Court En Banc then assigned the matter to retired Supreme Court Justice Angelina Sandoval-Gutierrez (Justice Sandoval-Gutierrez) for investigation, report and recommendation.

In compliance with the Court's directive for investigation, Justice Sandoval-Gutierrez conducted hearings on 12 February, 7 March and 21 March 2014.

A. Evidence Against Justice Ong

The evidence against Justice Ong, as culled from the hearings, comprise of the statements of Luy, Sula and Rufo as well as the 30 August 2013 Rappler report and photograph.

Luy Testimony.[6] Luy is a cousin and former employee of Napoles in the JLN Corporation. Luy testified that, on numerous occasions, he was told by Napoles that she has a "connect" in the Sandiganbayan i.e., Justice Ong. Luy recalled that, even during the pendency of the Kevlar Cases, Napoles confided to him that she was already communicating with Justice Ong.

Luy also testified that, just before the decision of the Kevlar Cases went out, Napoles told him that she paid money to Justice Ong; although Napoles did not disclose how much. Luy said that he used to keep a ledger where he records all payments made by Napoles in relation to the Kevlar Cases as disclosed to him by the latter.

Luy likewise recounted two (2) instances in 2012, when Justice Ong visited the offices of Napoles at the Discovery Suites Center in Pasig City:

- On Justice Ong's first visit, Luy recalled—
- He saw Justice Ong and Napoles talking in Unit 2501 of the Discovery Suites. He was then staying at Unit 2502.
- After a while, Napoles went to him at Unit 2502. Napoles told him that Justice Ong was interested in depositing a P25 million Banco De Oro (BDO) check with Armed Forces of the Philippines and Police Savings and Loan Association, Inc. (AFPSLAI) that offers 13% annual interest.
- Napoles, however, told him that instead of depositing the BDO check with the AFPSLAI she would deposit the same in her account and would just advance interest payments to Justice Ong.
- Napoles then told him to prepare eleven (11) checks for Justice Ong. So he prepared the eleven checks.
- After preparing the eleven checks, he handed them to Napoles who then went back to Unit 2501.
- On Justice Ong's second visit, Luy said that Justice Ong and Napoles ate Chinese food at the office.

Sula Testimony.[7] Sula is likewise a former employee of Napoles in the JLN Corporation. Like Luy, Sula testified that she had been told by Napoles in the past that Justice Ong fixed the Kevlar Cases for her.

Sula also testified that she once saw Justice Ong visit Napoles' office in 2012.

Rufo Testimony.[8] Rufo was the author of the 30 August 2013 Rappler report that featured the photograph of Justice Ong, Napoles and Senator Estrada. Rufo testified that he interviewed Justice Ong prior to the publication of the 30 August 2013 Rappler report. Rufo said that Justice Ong looked surprised and shocked when presented with the photograph of him with Napoles and Senator Estrada.

Rufo, however, refused to reveal who gave him the photograph featured in his report based on his privilege as a journalist to protect the identity of his sources.

B. Evidence for Justice Ong

Justice Ong testified in his defense.[9] At the stand, Justice Ong denied acting as liaison and fixer for Napoles in

the Kevlar Cases. He said that he neither met with Napoles nor was familiar with the latter during the pendency of the Kevlar Cases. Justice Ong, however, admitted to associating with Napoles after the Kevlar Cases were decided.

Justice Ong said that his personal encounters with Napoles began only in 2012, during the birthday party of Senator Estrada. It was there, Justice Ong claimed, that he was first introduced to Napoles. Justice Ong said that, during the said party, he was able to converse with Napoles about the Black Nazarene and to exchange cellphone numbers with the latter. Justice Ong also admitted to eventually asking for Napoles' help in gaining access to the robe of the Black Nazarene.

Justice Ong further recounted that, sometime after the birthday of Senator Estrada, he received a call from Napoles asking him to go to the Adoracion Chapel in Makati. Justice Ong said that when he went to the Adoracion Chapel, he was picked up by a car that brought him to a house in a posh subdivision. Inside the house, Justice Ong recalled meeting up with Napoles and one Monsignor Ramirez—the parish priest of Quiapo Church. There, Justice Ong said, arrangements were made for him to wear the robe of the Black Nazarene. Weeks after, Justice Ong said he was able to wear the robe of the Black Nazarene and to receive fragrant cotton balls from the image.

Justice Ong also conceded going to Napoles' office twice. Contrary to Luy's account, however, Justice Ong said he never, in any of his visits, asked Napoles to make a deposit on his behalf with the AFPSLAI. Justice Ong maintained that, in his first visit to Napoles, he merely thanked the latter for giving him access to the robe of the Black Nazarene. Anent visiting Napoles' office for the second time, Justice Ong claimed that he did so only to accede to Napoles' incessant calls inviting him back to her office. At any rate, Justice Ong said, he only had coffee with Napoles during his second visit to the latter's office.

Report and Recommendation

On 15 May 2014, Justice Sandoval-Gutierrez submitted to this Court her Report and Recommendation.

In her Report and Recommendation, Justice Sandoval-Gutierrez found Luy and Sula to be credible witnesses; taking note of the candid, straightforward, categorical and consistent manner by which both Luy and Sula testified during the investigation.[10] Hence, the investigating justice gave full faith and credence to Luy and Sula's testimonies and held as an established fact that Justice Ong acted as liaison and fixer for Napoles in the Kevlar Cases.

Justice Sandoval-Gutierrez moreover noted that despite the fact that Luy and Sula's statements of bribery against Justice Ong are technically hearsay in nature, they still qualify as competent evidence since only substantial evidence is required in administrative proceedings.[11] For the investigating justice, the statements of Luy and Sula satisfies the standard of substantial evidence because they inspire reasonable conclusion that Justice Ong accepted bribes in relation to the Kevlar Cases, and both witnesses were found to be credible.[12]

Verily, Justice Sandoval-Gutierrez recommended that Justice Ong be found guilty of gross misconduct, dishonesty and impropriety and be meted the ultimate penalty of dismissal from service.

Majority Decision

The majority adopted the recommendation of the investigating justice that Justice Ong be dismissed from the service.[13]

Contrary to the findings of Justice Sandoval-Gutierrez, however, the majority held that the evidence yielded by the instant administrative investigation was insufficient to establish that Justice Ong acted as liaison and fixer for Napoles in the Kevlar Cases.[14] For the majority, the evidence on record only establishes that Justice Ong

associated with Napoles two (2) years after the Kevlar Cases were decided.[15]

Be that as it may, the majority characterized such association as Grossly Improper, as is equivalent to Gross Misconduct, on the part of Justice Ong.[16]

Moreover, the majority found Justice Ong to be guilty of Dishonesty before this Court.[17]

Separate Opinions

The majority decision is supported by the separate opinions of Justice Arturo D. Brion, Justice Marvic Mario Victor F. Leonen's and Justice Francis H. Jardeleza's. The three opinions raised different points that tend to justify the dismissal from the service of Justice Ong.

DISCUSSION

I agree with the majority in finding the evidence yielded by the instant administrative investigation as insufficient to establish that Justice Ong of the Sandiganbayan acted as liaison and fixer for Napoles in the Kevlar Cases. I also agree that, at most, the evidence only shows that Justice Ong associated with Napoles two (2) years after the Kevlar Cases were decided.

I, however, disagree with the majority in characterizing such association as Gross Misconduct on the part of Justice Ong. Such association merely constitutes the offense Simple Misconduct which, under Rule 140 of the Rules of Court, is only a less serious charge.[18]

I also disagree with the finding that Justice Ong was guilty of Dishonesty before this Court. The basis of this finding was the result of taking statements of Justice Ong out of context.

Hence, I disagree with the ruling of the majority to dismiss Justice Ong from the service. I opine that, even with due consideration of the fact that he was already previously sanctioned by this Court,[19] Justice Ong only ought to be suspended from office for three (3) months without salary and other benefits.

I

My first objection with the majority decision is that while it found the evidence on record as insufficient to support the conclusion that Justice Ong accepted bribes in relation to the Kevlar Cases, it nevertheless imposed a penalty as if such bribery was, in fact, established. The majority considered the act of Justice Ong in associating with Napoles two (2) years after the promulgation of the Kevlar Cases as gross misconduct, even though the evidence does not establish that Justice Ong did so out of any corrupt or malicious motive. The decision, therefore, sets a very dangerous precedent because it removes the distinction between what could otherwise constitute as bribery or gross misconduct on one hand and mere simple misconduct on the other.

The root cause of this discrepancy, it appears to me, is the majority's half-hearted position as to whether the evidence on record do in fact establish bribery or not.

Thus, in the first part of its discussion, the majority recognized the insufficiency of the evidence on record to establish bribery on the part of Justice Ong:[20]

An accusation of bribery is easy to concoct and difficult to disprove. The complainant must present a panoply of evidence in support of such an accusation. Inasmuch as what is imputed against the respondent judge connotes a grave misconduct, the quantum of proof required should be more than substantial. Concededly, the evidence in this case is insufficient to sustain bribery and corruption charges against the [Justice Ong]. Both Luy and Sula have not witnessed [Justice Ong] actually receiving money from Napoles in exchange for her acquittal in the Kevlar case. Napoles had confided to Luy her alleged bribe to respondent. (Emphasis supplied).

However, in a later part of its discussion, the majority insinuated that such bribery was established by virtue of

Justice Ong's "financial deal" with Napoles regarding "advance interest for APFSLAI deposit" during one of the former's visit to the latter in 2012:[21]

Justice Sandoval-Gutierrez stated that the eleven checks of P282,000 supposed advance interest for respondent's check deposit to AFPSLAI were given to respondent as consideration for the favorable ruling in the [Kevlar Cases]. Such finding is consistent with Luy's testimony that Napoles spent a staggering P100 million just to "fix" the said case. Under the circumstances, it is difficult to believe that [Justice Ong] went to Napoles' office the second time just to have coffee. Respondent's act of again visiting Napoles at her office, after he had supposedly merely thanked her during the first visit, tends to support Luy's claim that respondent had a financial deal with Napoles regarding advance interest for APFSLAI deposit. The question inevitably arises as to why would Napoles extend such an accommodation to [Justice Ong] if not as consideration for her acquittal in the [Kevlar Cases]? [Justice Ong's] controversial photograph alone had raised adverse public opinion, with the media speculating on pay-offs taking place in the courts. (Emphasis supplied).

If the real intent of the majority was to say that Justice Ong's "financial deal" with Napoles was enough to support reasonable conclusion that there was bribery in the Kevlar Cases, then I must register my dissent to this point as well.

"Financial Deal" Involving
APFSLAI Deposits Was
Not Proven.

To begin with, the existence of such financial deal was never really established in this case. Justice Ong's purported financial deal with Napoles rests merely on the hearsay account of Luy, viz:[22]

Justice Gutierrez

Q:

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

Witness Luy:

A:

Noong 2012 po kasi, si Justice Gregory Ong po nasa unit...office din po ng JNL Corporation, Unit 2501, yung office; so kami ni Ms. Janet Lim Napoles nandito sa 2502 kasi yun po ang office talaga namin. Si Ms. Napoles po sinabi niya sa akin, Ben, kasi si Ms. Napoles, may pera siyang madami na pine-place niya po sa AFSLAI [sic] at yung AFSLAI [sic] po ay nagbibigay po sa kanya o nago-offer ng 13% interest annually po. So, ang nangyari po doon, sabi po ni Janet Napoles, si Justice Ong ho raw, gustong magkaroon din ng interest parang ganoon. So tutulungan niya. So, ang ginawa po namin...

Justice Gutierrez

Q:

Meaning to say, Justice Ong would like to deposit money...

A:

Opo.

Q:

So he could get 13% interest?

A:

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

Q:

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

A:

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

Q:

That belongs to Justice Ong?

A:

Opo. Tapos madam, so ang ginawa po naming ni Ms. Napoles, after po noon madam, dahil 13% interest ang ino-offer ng AFSLAI, [sic] sabi ni madam, ganito na lang Ben, ipasok na lang muna natin yung checke niya sa personal account ko. Ako na lang muna for the meantime, mag-issue ng checke sa kanya para ma-avail ni Justice Ong yung interest. So, ang ginawa naming madam, P25.5 million times 13% interest, tapos divided by 12, lumalabas na P282 or 283,000.00 or 281 po madam kasi nag-round off kami sa P282,000.00. So ginawa ni madam, бага monthly. So, eleven (11) checks ang prinepare namin. x x x.

The flaws in Luy's account was revealed during his cross-examination:[23]

Atty. Geronilla

Q:

Where were you at the office at that time?

Witness Luy

A:

Yung alin po?

Q:

When you saw Justice Ong?

A:

Andun lang po ako sa office niya sa cubicle.

Q:

Did Ms. Napoles talk to Justice Ong?

A:

Yes po.

Q:

But you did not know what they talked about.

A:

Hindi ko po alam kung ano pinag-uusapan.

Q:

Now, when... I am interested in this check which as you said P25 million 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 it was from Gregory Ong?

A:

Sinabi po ni Ms. Napoles sa akin.

Q:

Ah, it was she who told you?

A:

Yes po.

x x x x

Justice Gutierrez

Q:

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

Witness Luy:

Q:

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 naming ni madam na cash. Tapos, pinirmahan niya yung checke na prinepare ko. So, bitbit na niya yung check. Dinala niya.

Q:

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

x x x x

A:

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

Q:

You did not see?

A:

Hindi po. Hindi ko po nakita.

x x x x

Atty. Geronilla

Q:

You also said that there were eleven (11) checks issued to somebody whom you do not know which you gave to Janet Napoles.

Witness Luy

A:

Checke po yun ni Ms. Janet Lim Napoles.

Q:

Yes. Now, do you have a copy or record of those checks?

A:

Wala na po.

Q:

You know that if you deposit a check, it will return to you, right?

A:

Babalik po iyon sa office.

Q:

Do you have the return checks? Any return checks?

A:

Wala na po.

Q:

So you have no personal knowledge as to whom these checks were paid or who deposited these checks if they deposited it at all?

Justice Gutierrez

Q:

Of your own knowledge, where are those checks now?

Witness Luy

A:

Hindi ko po alam kung nasaan. Basta ang sabi ni Ms. Napoles sa akin madam, after na pagkakuha ng checke, noon inihahatid po yung checke, inihatid lang po yung checke kay Justice Gregory Ong sa kabilang office sa 2501. Pero hindi ko na po inalam kasi personal checke na po niya yon e.

Q:

I am asking about the return checks?

A:

Wala na po, ma'am.

Q:

You have no knowledge where they are?

A:

Wala po.

What is clear from the statements of Luy regarding the financial deal was that it is only based on what Napoles actually relayed to him. Luy had no personal knowledge about the conversation between Napoles and Justice Ong during the latter's visit; about whether Justice Ong assented to an arrangement with Napoles; and about whether Justice Ong did issue a BDO check. The only thing Luy was competent to testify about is his preparation of eleven (11) checks, purportedly for Justice Ong, at the direction of Napoles. But, just the same, Luy does not have any personal knowledge whether the eleven (11) checks were indeed given to Justice Ong or whether Justice Ong received and accepted such checks.

Justice Leonen, in his Reflections, however, opined that we ought to consider as established Justice Ong's receipt of the eleven (11) checks because "even if Luy was not in Unit 2501 when Napoles handed the checks to Justice Ong, there could be no other conclusion to be derived from the facts."^[24] I respectfully disagree with Justice Leonen's analysis.

In my opinion, it is precisely the fact that no one was able to see and observe Justice Ong receiving the eleven (11) checks that a contrary conclusion i.e., that Justice Ong never received any checks from Napoles, finds reason. And this conclusion becomes all the more reasonable if we consider that no one, neither Luy nor Sula, was able to testify regarding the existence of any returned checks and that no such checks were ever submitted in evidence.

Hence, I opine that the existence of a so-called “financial deal” between Justice Ong and Napoles was not established in this case.

Even Assuming The Existence of
The Financial Deal, Evidence Still
Does Not Support Finding of Bribery
in the Kevlar Cases

Moreover, even assuming arguendo that the statements of Luy suffice to establish the existence of a financial deal between Justice Ong and Napoles, the same cannot still establish that there had been bribery in the Kevlar Cases. To conclude that the consideration for the financial deal was Napoles’ acquittal in the Kevlar Cases is equivalent to mere speculation:

First. There is no direct evidence establishing that the financial deal was a bribe. Even Luy himself does not say so. Hence, any conclusion of bribery can only be inferred from circumstantial evidence.

Second. There is, however, no circumstantial evidence on record from which the conclusion of bribery may be inferred. At the very least, there should have been evidence to show that Justice Ong and Napoles had been communicating during the pendency of the Kevlar Cases. There is no evidence of such communication in this case—except, the hearsay testimonies of Luy and Sula.

Third. The conclusion of bribery cannot be inferred from the financial deal itself. The deal, it must be emphasized, was entered into two (2) years after the decision in the Kevlar Cases was promulgated. While not impossible, the likelihood that the financial deal was a bribe becomes remote given the considerable amount of time that passed between Napoles’ acquittal and the purported pay-off.

Fourth. The conclusion of bribery cannot be inferred from the accommodating nature of the financial deal. Indeed, if Luy’s statements as to the existence of the financial deal were to be believed as the truth, then the deal itself cannot really be considered as an “accommodation.” Justice Ong, as Luy recounted, had to issue a check of his own in exchange of the eleven (11) checks of Napoles. The implication is that Justice Ong was not issued the eleven (11) checks out of thin air or as a pay-off; rather, Justice Ong allowed the use of his own money as consideration for the checks he allegedly received. Hence, the financial deal can stand as a transaction away from bribery.

Since there is neither direct nor circumstantial evidence to support a finding of bribery, concluding still that there was such bribery would be mere speculation. It would not be a “reasonable” conclusion warranted by substantial evidence. From Luy’s own story, bribery is plainly and simply speculative.

II

My second objection with the majority decision is the characterization of Justice Ong’s association with Napoles as gross misconduct. I opine that the same is merely a simple misconduct.

Extent of Justice Ong’s Association
with Napoles

As established by the evidence, Justice Ong began associating with Napoles two (2) years after Kevlar Cases were decided. Justice Ong himself admitted the entire breadth of this “association:”[25]

First. At the birthday party of Senator Estrada in 2012, where Justice Ong was first formally introduced to Napoles. The two talked about the Black Nazarene. They exchanged cellphone numbers. It was also here that Justice Ong requested the help of Napoles in gaining access to the robe of the Black Nazarene.

Second. Sometime after the birthday of Senator Estrada, Justice Ong received a call from Napoles asking him to go the Adoracion Chapel in Makati. Justice Ong went to the Adoracion Chapel and was picked up by a car that brought him to a house in a posh subdivision. Inside the house, Justice Ong was able to meet up with Napoles and one Monsignor Ramirez—the parish priest of Quiapo Church. Here, arrangements were made for Justice Ong to wear the robe of the Black Nazarene. Weeks after, Justice Ong was able to wear the robe of the Black Nazarene and he received fragrant cotton balls from the image.

Third. Sometime after that, Justice Ong went to Napoles' office twice.

The above are the only instances of Justice Ong's association with Napoles that have been duly supported and established by competent evidence.

Justice Ong's Association with Napoles is Mere Simple Misconduct

It is my considered opinion that Justice Ong's association with Napoles only constitutes simple misconduct.

Unlike the case of fraternization between judges and litigants with still pending cases, there is no rule of ethics that categorically prohibits and sanctions fraternization between judges and their former litigants.[26] Be that as it may, cases of fraternization between judges and their former litigants may still be held unethical if found to be done for a corrupt purpose or in such manner that violates any of the norms of propriety and integrity that every member of the bench ought to possess. The ethical implications of fraternizations between judges and their former litigants, therefore, must be evaluated on a case-to-case basis.

The case of Justice Ong and his association with Napoles, though done years after the Kevlar Cases have been decided and not for any proven corrupt purpose, remain unethical because theirs was not a case of simple fraternization. Aside from socializing with Napoles, Justice Ong—by his own admission no less—received favors (i.e., the arrangements made by Napoles providing access to the robe of the Black Nazarene) from the former that, though innocent, could nonetheless be mistaken by the public as related to his judgeship. Justice Ong's receipt of such favors from Napoles, therefore, had the effect of compromising his image of impartiality and integrity as it has indeed given the story of bribery the appearance of reality. As it has affected the judgeship of Justice Ong, so has it affected the court to which he belongs.

For such indiscretion, Justice Ong undoubtedly committed violations of Section 1 of Canon 2 and Section 1 of Canon 4 of the New Code of Judicial Conduct:

CANON 2: INTEGRITY

SECTION 1. 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.

CANON 4: PROPRIETY

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

These violations of Justice Ong, however, cannot be considered as gross misconduct but mere simple misconduct. Gross misconduct means a transgression of some established and definite rule of action that is willful, flagrant or animated by corrupt motives.[27] Gross misconduct implies the existence of malice or gross negligence, which reflects the corrupt character of the actor. Malice or corruption, however, has not been established on the part of Justice Ong.

Justice Ong, therefore, is only accountable for simple misconduct, i.e., a plain transgression of established norms

but without the elements of willfulness, malice or corruption.

No Flagrant Disregard of Rules

In his Reflections, however, Justice Leonen opined that Justice Ong's association with Napoles is still a gross misconduct despite absence of any evidence that taints such association with corruption.[28] He claims that even sans the element of corruption, Justice Ong's violations of ethical standards may still be considered gross misconduct because they constitute "flagrant disregard of rules." [29]

I agree that "flagrant disregard of rules" may qualify an otherwise simple misconduct into a gross one but I discount its existence in this case. In my view, Justice Ong's receipt of arrangements regarding the robe of the Black Nazarene and his visits to Napoles thereafter does not show a "propensity to disregard the rules" [30] on his part.

Flagrant disregard of rules may indeed exist outside the concept of corruption but it does require more than the mere act of violating an ethical norm. I submit that in order to consider a violation of an ethical norm as a "flagrant disregard" we must consider the circumstances under which such violation was committed. The circumstances must show precisely a "propensity to disregard the rules" on the part of the actor—something that is deliberate or malicious and which relates to the very moral fibre of the actor; not the result of a mere simple indiscretion.

Justice Ong's receipt of arrangements regarding the robe of the Black Nazarene and his visits to Napoles thereafter undoubtedly resulted in a violation of our ethical norms but it is not a flagrant violation. We may consider perhaps the following circumstances: the acts were committed two (2) years after the Kevlar cases were decided; the receipt by Justice Ong of the arrangements regarding the Black Nazarene were motivated not by anything illicit but by an all too human religious devotion; such arrangements were of no significant pecuniary value; the subsequent visits to Napoles' office were not shown to have been made for any purpose other than to extend thanks to Napoles for the religious favor. These circumstances, though certainly not justifying, nonetheless speak that the actuations by Justice Ong was motivated not by any malicious intent to violate the established rules judicial ethics but more reasonably was the result of a mere momentary lapse of discretion.

Hence, I discount the existence of a "flagrant disregard of rules" on the part of Justice Ong.

III

I also object to the majority's finding that Justice Ong had been dishonest with this Court.

Findings of Dishonesty Has No Basis

In finding the existence of dishonesty on the part of Justice Ong, the majority pointed to the former's somewhat deliberate attempt to conceal his visits to Napoles' office as inferred from the following circumstances: [31]

- In his Letter dated 26 September 2013 to the Chief Justice, Justice Ong never mentioned that he visited Napoles' office twice in 2012.
- In his Comment, Justice Ong mentioned of only one instance he visited Napoles' office, i.e., the single occasion referred to by witness Sula in her supplemental affidavit.

I respectfully disagree. The instances, from which the inference of concealment was drawn, were taken out of context.

First. Justice Ong's Letter dated 26 September 2013 came at the heels of the 30 August 2013 Rappler report that depicted him as having "partied" with the Napoleses and which featured a controversial photograph of him,

Napoles and Senator Estrada in some gathering. Verily, as confirmed by Justice Ong, his main purpose in writing the said letter was for it to serve as a direct response to the impression created by the said report and photograph that he had attended a party or social event that was hosted by Napoles.[32]

Given the purpose of the Letter, it becomes understandable why Justice Ong's statements therein were only limited to rebutting the Rappler report and explaining the context and circumstance of the photograph. Justice Ong could not be expected to mention therein anything about his subsequent private visits to Napoles' office because those matters were not, in the first place, brought up by the Rappler report and photograph. Hence, Justice Ong's silence in the Letter with respect to his visits to Napoles' office cannot be taken against him.

Second. In his Comment, Justice Ong never stated that he only visited Napoles' office once. Justice Ong mentioned and described only one occasion of his visit to Napoles' office because he was, by then, responding to the sole instance in which he was seen by Sula in Napoles' office. Hence, the use by Justice Ong of the phrase: "This is the single occasion that Sula was talking about in her supplemental affidavit..."[33] Justice Ong never made any representations that he only visited the office of Napoles once.

At any rate, when asked during the investigation as to how many times he had visited Napoles' office, Justice Ong candidly admitted doing so twice:[34]

Justice Gutierrez

Q: Did you go there?

Justice Ong

A: Yes, your honor.

Q: The second time as claimed by the whistleblowers?

A: Yes, I went there twice, your honor. (Emphasis supplied).

Hence, I find no cause in holding Justice Ong accountable for dishonesty.

Findings of Dishonesty By Justice Leonen

In addition to those pointed out by the majority, Justice Leonen further cites the following instances purportedly indicative of Justice Ong's dishonesty:[35]

- In the Rappler article, Justice Ong was documented as saying that he did not know who Napoles was or that the latter was a former litigant of his at the time the photograph featured in the article was taken. However, Justice Ong contradicted this fact during the investigation when he revealed that on the occasion when such photograph was taken, Napoles thanked him for her acquittal in the Kevlar Cases.
- Justice Ong, in his Comment, stated that he never attended a social event hosted by Napoles. However, during the investigation, Justice Ong admitted to having attended a Eucharistic mass arranged by Napoles.
- Justice Ong had the propensity to conceal his association with Napoles as much as possible and he only accommodated more details into his story as he was confronted with more facts about such association. Thus, when confronted only with a picture of him and Napoles in some gathering, Justice Ong limited his association with Napoles to their attendance in Senator Estrada's party. But later, when confronted with the testimony of Marina Sula who recounted having seen him visit the office of Napoles once, Justice Ong explained in his Comment only the circumstances of that one visit. And still later on, when confronted by Luy's statement during the investigation to the effect that he visited Napoles' office twice, Justice Ong's story evolved so as to

accommodate that second visit as well.

Again, I respectfully disagree. The cited instances of dishonesty may be explained otherwise:

First. The first cited instance of dishonesty is premised on the fact that the photograph featuring Napoles with Justice Ong was taken after the two were formally introduced to each other. But such fact had never been established. It could have been otherwise.

Second. The second instance of dishonesty may be explained by the fact that when Justice Ong mentioned the word “social event” in his Comment he was basically referring to events such as parties or any social gatherings similar to that of a birthday party. This is likely so because Justice Ong used the word “social event” primarily as a response to the impression created by the photograph featured in the Rappler article—which depicts a party or a similar event. Under those terms, it is understandable that Justice Ong may not have considered a Eucharistic mass as a “social event.”

Third. The third instance of dishonesty just stretches reasonable appreciation of Justice Ong’s statements. Justice Ong, of course, can only be expected to reveal so much as is required by the subject of inquiry at any given time. When the subject of inquiry, however, shifted to the entire gamut of his association with Napoles, like what happened during the investigation stage, Justice Ong was candid enough to reveal them in its entirety. To assume that the reason why Justice Ong revealed his association with Napoles piece by piece was because he was trying to avoid disclosure of his entire association with Napoles is to presume bad faith without any corroboration whatsoever.

Hence, I maintain that there remains no categorical indication that Justice Ong attempted to be dishonest with this Court.

IV

Justice Ong then was shown liable only for simple misconduct which, under Section 9 of Rule 140 of the Rules of Court, is merely a less serious charge. Under Section 11 of the same rule, the sanction for committing a less serious charge could either be suspension from office without salary and other benefits for not less than one (1) nor more than three (3) months or a fine not exceeding P10,000.00 but not exceeding P20,000.00.

It must also be considered, however, that Justice Ong was already previously fined P15,000.00 by this Court in the administrative case *Jamsani-Rodriguez v. Ong*.^[36]

This being his second offense, I deem it proper to sanction Justice Ong with the maximum period of suspension from office allowable for less serious charges.

IN VIEW WHEREOF, I cast my vote in favor of finding Associate Justice Gregory S. Ong of the Sandiganbayan guilty of SIMPLE MISCONDUCT, for which he must suffer SUSPENSION FROM OFFICE, without salary or other benefits, for a period of THREE (3) MONTHS. Associate Justice Gregory S. Ong is also STERNLY WARNED that a repetition of the same or similar offenses shall be dealt with more severely.

SO ORDERED.

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(SGD)

JOSE PORTUGAL PEREZ

Associate Justice

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- [1] Entitled People of the Philippines vs. Espinosa et al.
- [2] Formally known as the Priority Development Assistance Fund.
- [3] Accessed at <http://www.rappler.com/newsbreak/37673-napoles-anti-graft-court-justice> on 30 July 2014.
- [4] Id.
- [5] Id.
- [6] TSN, 12 February 2014, pp. 1-60.
- [7] TSN, 12 February 2014, pp. 60-144.
- [8] TSN dated 7 March 2014.
- [9] TSN dated 21 March 2014.
- [10] Report and Recommendation, p. 22.
- [11] Id. at 23-25.
- [12] Id. at 25.
- [13] Per Curiam Decision.
- [14] Id. at 25.
- [15] Id.
- [16] Id. at 28.
- [17] Id. at 34.
- [18] Rules of Court, Rule 140, Section 9.
- [19] Jasmani v. Ong, A.M. No. 08-19-SB-J, 24 August 2010.
- [20] Per Curiam Decision, p. 25.

- [21] Id. at 33-34.
- [22] TSN, 12 February 2014, pp. 23-24.
- [23] Id. at 49-52 and 56-57.
- [24] Justice Leonen's Reflections, p. 17.
- [25] TSN, 21 March 2014, p. 29.
- [26] See Rules of Court, Rule 140, Section 10.
- [27] *Camus v. Civil Service Board of Appeals*, 112 Phil. 301, 306 (1961).
- [28] Justice Leonen's Reflections, p. 31-32.
- [29] Id.
- [30] *Imperial vs. Government Service Insurance System*, G.R. No. 91224, 4 October 2011.
- [31] Per Curiam Decision, p. 34.
- [32] TSN, 21 March 2014, pp. 27-28.
- [33] Id. at 41.
- [34] Id. at 29.
- [35] Justice Leonen's Reflections, pp. 26-31.
- [36] A.M. No. 08-19-SB-J, 24 August 2010, 628 SCRA 626.

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 Imng 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 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.

Q

To you?

A

Yes, madam.

xxxx

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 nasa 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 P282,000.00, to Justice Ong, supposedly interest payments for the P25.5 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.

xxxx

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, nasa 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.

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]

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]

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.

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 P1,000 as recommended by the Investigating Justice, but P20,000 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 P20,000.00, but not exceeding P40,000.00.[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 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.

xxxx

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.

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.

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

[2] See *Castanos v. Judge Escano, 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*, 501 Phil. 227 (2005).

[4] TSN, February 12, 2014, p. 15.

[5] *Id.* at 26-29.

[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.
- [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 I.
- [15] Dela Cruz v. Judge Bersamira, 391 Phil. 232, 242 (2000).
- [16] Derogatory News Items Charging J. Demetrio Demetria, 407 Phil. 671 (200 I).
- [17] See Gacad v. Clapis, Jr., A.M. No. RTJ-1 0-2257, July 17, 2012, 676 SCRA 534; Judge Francisco v. Justice Cosico, 469 Phil. 549 (2004).
- [18] 462 Phil. 620 (2003).
- [19] Id. at 630-631.
- [20] RULES OF COURT, Rule I 40, Section 11.
- [21] See Jamsani-Rodriguez v. Justice Ong, A.M. No. 08-19-SB-J. August 24, 2010, 628 SCRA 626.
- [22] Canada v. Judge Suerte, 570 Phil. 25, 35 (2008).
- [23] TSN, March 21,2014, pp. 12-13; 27.

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 P3,864,044.99 (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 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 P100 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]

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.

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]

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 P25.5 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 P282,000.00, for a total of P3,102,000.00.[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 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]

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 prison correccional in its maximum period to prison 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 prison 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.

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”;
- 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]

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.

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.

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.

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.

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 P3 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 P25.5 million with the AFPSLAI. He argued that the AFPSLAI rules only allow for a maximum deposit of P30,000.00 per quarter and a maximum deposit per member of P3 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] 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 P25.5 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 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.

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 Sandiganbayan[61] 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 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 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 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 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;
- 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.

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. 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?

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]

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.”

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:

- 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;
- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
- A fine of more than P20,000.00 but not exceeding P40,000.00.

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] (Underscoring 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.

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 include dismissal, three- to six-month suspension, or a fine ranging from P20,000.00 to P40,000.00.

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.

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 clemency^[97] 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.

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.

[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.

[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.

[6] Id. at 26–27.

[7] Id. at 27, 30, and 41.

[8] Id. at 32.

[9] Id. at 29.

[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.

[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 (visited September 22, 2014).

[26] A. Rufo, Exclusive: Napoles parties with anti-graft justice, *Rappler*, August 30, 2013 (visited September 22, 2014).

[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.

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

[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].

[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.

[38] TSN, March 21, 2014, p. 21.

[39] *Id.* at 24.

[40] *Id.* at 24–25.

[41] *Id.* at 25.

[42] Comment, p. 19.

[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.

[47] TSN, March 21, 2014, p. 30.

[48] *Id.*

[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].

[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 (visited September 22, 2014).

[54] See the official AFPSLAI website (visited September 22, 2014).

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

[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.

[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].

[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.

[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].

[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.

[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].

[76] TSN, March 21, 2014, p. 31.

[77] TSN, February 12, 2014, p. 30.

[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.

[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. Olandesca*, G.R. No. 171434, April 23, 2010, 619 SCRA 264, 273–274 [Per J. Peralta, En Banc].

[83] TSN, March 7, 2014, pp. 9–10.

[84] A. Rufo, Exclusive: Napoles parties with anti-graft court justice, *Rappler*, August 30, 2013 (visited September 22, 2014) Emphasis in this quote supplied.

[85] Comment, p. 18.

[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].

[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].

[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.

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

[94] Id. at 507–508.

[95] A.M. No. RTJ-14-2388, June 10, 2014 [Per Curiam, En Banc].

[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.

SEPARATE CONCURRING OPINION

JARDELEZA, J.:

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

(1)

Respondent acted as contact of Napoles in connection with the Kevlar case while it was pending in the Sandiganbayan Fourth Division wherein he is the Chairman;

(2)

Respondent, being Napoles' contact in the Sandiganbayan, fixed the Kevlar case resulting in her acquittal;

(3)

Respondent received an undetermined amount of money from Napoles prior to the promulgation of the decision in the Kevlar case thus, she was sure (kampante) of her acquittal;

(4)

Respondent visited Napoles in her office where she handed to him eleven (11) checks, each amounting to P282,000.00, or a total of P3,102,000.00, as advanced interest for his P25.5 million BDO check she deposited in her personal account; and

(5)

Respondent attended Napoles' parties and was photographed with Senator Estrada and Napoles.[1]

After much consideration, the majority found Respondent guilty of gross misconduct, dishonesty and impropriety, for which he is meted the penalty of "dismissal from the service, with forfeiture of all retirement benefits, except accrued leave credits, if any, and with prejudice to reemployment in any branch, agency or instrumentality of the government including government-owned or controlled corporations."

I concur with the majority. I submit this Separate Opinion, however, to emphasize that the commission of acts of Indirect Bribery under Article 211 of the Revised Penal Code (RPC) and Acceptance of Gift under Presidential Decree No. 46 (PD 46)[2] are also punishable administratively. If proven on the facts by substantial evidence, they give rise to the sanctions of dismissal from the service and forfeiture of benefits as provided under Rule 140 of the Revised Rules of Court.[3]

Laws governing practice of gift-giving

A public officer should not accept any gift offered to him because such gift is offered in anticipation of future favor from him. Such gift received will in the future corrupt him or make him omit the performance of his official

duty.[4] As part of the government's efforts to wipe out all conceivable forms of graft and corruption in the public service, there are several laws in place that regulate the practice of gift-giving to public officials. For purposes of this case, PD 46 and Article 211 of the Revised Penal Code find relevance.

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

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

While PD 46 is not part of the enumeration in Section 8, Rule 140 of the Revised Rules of Court the commission of which gives rise to the sanction of dismissal from the service and forfeiture of benefits, PD 46 should be deemed included among these "serious charges." An examination of said Section would show that the enumeration is qualified by the word "include"--- which implies that the enumeration is not exclusive but would also cover acts analogous to those enumerated.[5] The acts of gift-giving and gift-receiving prohibited in PD 46 are analogous[6] to those same practices similarly prohibited under Article 211 of the RPC (Indirect Bribery) and Republic Act No. 3019, otherwise known as the Anti-Graft and CmTUpt Practices Act. The common element under PD 46 and Article 211 of the RPC is that both laws consider a public official's act of receiving a gift, given by reason of his official position, as corrupt.

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

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

Significantly, under both PD 46 and Article 211 of the RPC, a public officer becomes liable upon mere acceptance of a gift. It is not necessary that the official should do any particular act or promise to do an act, as it is enough that he accepts gifts offered to him by reason of his office.[8] Neither is it required that the giver hopes or expects to receive a favor or better treatment in the future.[9] That PD 46 and Article 211 is a variant of the other appears to be confirmed by Luis B. Reyes who, in his commentary on the Revised Penal Code, included PD 46 in his discussion of Article 211.[10]

Republic Act No. 6713 (RA 6713), or the Code of Conduct and Ethical Standards for Public Officials and Employees, defines a gift as "a thing or a right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it. .."[11] RA 6713 further defines the act of "receiving any gift" to include "the act of accepting directly or indirectly, a gift from a person other than a member of his family or relative... even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is neither nominal nor insignificant, or the gift is given in anticipation of, or in exchange for, a favor.,[12]

Notably, the proscription against the solicitation and/or acceptance of gifts has been adopted by a number of government agencies as part of their official policy. The Governance Commission for Government-Owned and Controlled Corporations (GCG), under Section 29 of the Code of Corporate Governance for the GOCC Sector, required all covered Governing Boards to formally adopt a "No Gift Policy" and ensure its full advertisement to the community and its strict implementation by particular set of rules.[13] Thus, government-owned and controlled corporations (GOCCs) such as the Land Bank of the Philippines,[14] the Philippine Postal Corporation,[15] the Development Bank of the Philippines[16] and the Philippine Deposit Insurance Corporation[17] have issued written policies to this effect. Line agencies in the Executive Department, including the Department of Agrarian Reform,[18] Department of Budget and Management (DMB)[19] and the Department of Finance,[20] have likewise issued written policies governing the receipt of gifts. In the case of the DBM, it makes specific reference to PD 46 as a statutory basis for its "No Gift Policy."

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

Evidence on record

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

xxx

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

Atty. Geronilla

Q: What was your reaction when Mrs.

Napoles told you about this? Justice Ong

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

xxx

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

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

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

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

Q: And what happened next?

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

Q: How did she know your cell number

Justice Ong?

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

Atty. Geronilla

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

Justice Ong

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

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

A: Yes, sir.

Q: In your cellphone?

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

Q: What was your answer?

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

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

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

Q: After that, did you actually go to the

Adoracion Chapel?

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

Q: What happened next?

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

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

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

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

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

Q: What is the name of the husband?

A: Jaime Napoles, sir.

Q: Do you know where that house is?

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

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

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

Q: And who were with you in the lunch?

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

Q: Do you remember where you were seated?

A: Yes, sir. Monsignor Ramirez is a very big guy, almost 400 lbs, I suppose. He is a very big guy so he was seated in the kabisera and I was seated to his right, and Mrs. Napoles was facing me. I supposed Monsignor Ramirez already knew at that time that I wanted access to the robe. When I kissed his hand, he told me "Hijo, bakit gusto mong masuot ang robe ng Mahal na Poon?" Since he is a priest, I confided "kasi ho may prostate cancer po ako e." and he said you just talk to Mrs. Napoles and arrange it and I will have you wear it. You just make arrangement with Ms. Napoles and you will know when and how you can wear that robe.

Q: So did this actually happen, Justice Ong?

A: Yes, sir.

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

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

Justice Gutierrez

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

Justice Ong

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

Atty. Geronilla

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

Justice Ong

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

Q: What was that?

A: He gave me fragrant cotton balls and he told me that "kung saan may karamdaman ka or kung saan may sakit, pwede mong ipahid." Tutulungan ka ni Mahal na Poon." As a matter of fact, I have it here, your Honor. I

want to show it to you, your Honor, but I cannot leave this. This is the one taken from the body of the Mahal na Poon.

Justice Gutierrez

Witness showing to the Investigating Justice fragrant cotton balls. Justice Ong

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

Justice Gutierrez

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

Atty. Geronilla

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

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

Xxx

Q: Now when did you see Ms. Napoles?

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

Justice Gutierrez

Q: What was the year?

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

Q: Now, you were explaining earlier that your letter to the Chief Justice concentrated only on the photograph and article of Mr. Rufo and that at that time, there was no allegation regarding the fact that you visited or was seen in the office of Janet Napoles. Now, will you please tell us where this allegation was first made regarding your visit to Ms. Napoles?

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

Justice Gutierrez

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

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

Justice Gutierrez

Q: Discovery Suites at 2502?

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

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

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

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

A: Yes, your honor.

Q: So, afterwards, you left?

A: Yes, your honor.

Justice Gutierrez

Continue, counsel.

Atty. Geronilla

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

Justice Gutierrez

Next question before that.

Q: Did you go there?

Justice Ong

Yes, your honor.

Q: The second time as claimed by the whistleblowers?

A: Yes, I went there twice your honor.

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

A: Yes, your honor.

Q: When was that? Do you remember?

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

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

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

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

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

xxx

(Emphasis and underscoring supplied.)

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

First. A gift need not be restricted to a physical thing or object. In fact, as provided under RA 6713, it can come in the form of a favor, an act or liberality extended in favor of another. Thus, in *Capuno vs. Jaramillo*,[24] a judge was found guilty of gross misconduct and dismissed from the service for having accepted the free use, for one

year, of a car and availment of free battery recharging services from a litigant who has a pending case before him. In *Agpalasin vs. Agcaoili*,^[25] a judge was dismissed for allowing a litigant in his sala to pay for the freight of his personal acquisitions.

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

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

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

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

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

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

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

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

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

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

[6] PD 46 provides:

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

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

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

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

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

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

[10] Supra at note 8.

[11] Section 3(c).

[12] Section 3(d).

[13] GCG Memorandum Circular No. 2012-07.

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

[15] Board Resolution No. 2014-69 (2014)

[16] Circular No. 25 (2013)

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

[18] Memorandum Circular No. 07, s. 2010.

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

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

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

[22] Id. at 22.

[23] Id. at 26.

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

[25] A.M. No. RTJ-95-130&, April 12,2000,330 SCRA 250.

[26] TSN, March 21,2014, p. 22.

[27] Id. at 26.

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

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