

ANTONIO M. LORENZANA, COMPLAINANT, VS. JUDGE MA. CECILIA I. AUSTRIA, REGIONAL TRIAL COURT, BRANCH 2, BATANGAS CITY, RESPONDENT.

A.M. No. RTJ-09-2200 (Formerly OCA IPI No. 08-2834-RTJ). April 02, 2014

Ponente: BRION, J.

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BRION, J.:

We resolve in this Decision the administrative complaints[1] filed by Antonio M. Lorenzana (complainant) against Judge Ma. Cecilia I. Austria (respondent), Regional Trial Court (RTC), Branch 2, Batangas City.

The records show that the administrative complaints arose from the case “In the Matter of the Petition to have Steel Corporation of the Philippines Placed under Corporate Rehabilitation with Prayer for the Approval of the Proposed Rehabilitation Plan,” docketed as SP. Proc. No. 06-7993, where the respondent was the presiding judge. The complainant was the Executive Vice President and Chief Operating Officer of Steel Corporation of the Philippines (SCP), a company then under rehabilitation proceedings.

i. Complaint

In his verified complaint dated January 21, 2008, the complainant alleged that in the course of SP. Proc. No. 06-7993, the respondent committed Gross Ignorance of the Law, Grave Abuse of Authority, Gross Misconduct, Grave Incompetence, Irregularity in the Performance of Duty, Grave Bias and Partiality, Lack of Circumspection, Conduct Unbecoming of a Judge, Failure to Observe the Reglementary Period and Violation of the Code of Professional Responsibility, as shown by the following instances:

- The respondent appointed Atty. Santiago T. Gabionza, Jr. as rehabilitation receiver over SCP’s objections and despite serious conflict of interest in being the duly appointed rehabilitation receiver for SCP and, at the same time, the external legal counsel of most of SCP’s creditors; he is also a partner of the law firm that he engaged as legal adviser.
- The respondent conducted informal meetings (which she termed as “consultative meetings” in her Order[2] dated May 11, 2007) in places outside her official jurisdiction (i.e., a first class golf club, a hotel and sports club facilities in Metro Manila) and where she arbitrarily dictated the terms, parameters and features of the rehabilitation plan she wanted to approve for SCP. She also announced in the meetings that she would prepare the rehabilitation plan for SCP.
- The modified rehabilitation plan submitted by Atty. Gabionza is a replica of what the respondent dictated to him. Thus, the respondent exceeded the limits of her authority and effectively usurped and pre-empted the rehabilitation receiver’s exercise of functions.
- The respondent ordered that the proceedings of the informal meetings be off-record so that there would be no record that she had favored Equitable-PCI Bank (EPCIB).

- The respondent had secret meetings and communications with EPCIB to discuss the case without the knowledge and presence of SCP and its creditors.
- The respondent appointed Gerardo Anonas (Anonas) as Atty. Gabionza's financial adviser and, at the same time, as her financial adviser to guide her in the formulation and development of the rehabilitation plan, for a fee of P3.5M at SCP's expense. Anonas is also the cousin-in-law of the managing partner of Atty. Gabionza's law firm.
- The respondent encouraged EPCIB to raise complaints or accusations against SCP, leading to EPCIB's filing of a motion to create a management committee.
- When requested to conduct an evidentiary meeting and to issue a subpoena (so that SCP could confront EPCIB's witnesses to prove the allegation that there was a need for the creation of a management committee), the respondent denied SCP's requests and delayed the issuance of the order until the last minute.
- At the hearing of September 14, 2007, the respondent intimidated SCP's counsel, Atty. Ferdinand Topacio; blocked his every attempt to speak; refused to recognize his appearances in court; and made condescending and snide remarks.
- The respondent failed to observe the reglementary period prescribed by the Interim Rules of Procedure on Corporate Rehabilitation (Rules). She approved the rehabilitation plan beyond the 180 days given to her in the Rules, without asking for permission to extend the period from the Supreme Court (SC).
- The respondent erroneously interpreted and applied Section 23, Rule 4 of the Rules (the court's power to approve the rehabilitation plan) to include the power to amend, modify and alter it.
- The respondent took a personal interest and commitment to decide the matter in EPCIB's favor and made comments and rulings in the proceedings that raised concerns regarding her impartiality.
- The respondent adamantly refused to inhibit herself and showed special interest and personal involvement in the case.

ii. Supplemental Complaint

The complainant likewise filed a supplemental complaint[3] dated April 14, 2008 where he alleged that the respondent committed an act of impropriety when she displayed her photographs in a social networking website called "Friendster" and posted her personal details as an RTC Judge, allegedly for the purpose of finding a compatible partner. She also posed with her upper body barely covered by a shawl, allegedly suggesting that nothing was worn underneath except probably a brassiere.

The Office of the Court Administrator (OCA) in its 1st Indorsement[4] dated March 18, 2008, referred the complaints to the respondent for comment.

a. Comment to January 21, 2008 Complaint

The respondent vehemently denied the allegations against her. While she admitted that she crafted a workable, feasible rehabilitation plan best suited for SCP, she maintained that she did so only to render fairness and equity to all the parties to the rehabilitation proceedings. She also submitted that if indeed she erred in modifying the rehabilitation plan, hers was a mere error of judgment that does not call for an administrative disciplinary action. Accordingly, she claimed that the administrative complaints were premature because judicial remedies were still available.[5]

The respondent also argued that the rules do not prohibit informal meetings and conferences. On the contrary, she

argued that informal meetings are even encouraged in view of the summary and non-adversarial nature of rehabilitation proceedings. Since Section 21, Rule 4 of the Rules[6] gives the rehabilitation receiver the power to meet with the creditors, then there is all the more reason for the rehabilitation judge, who has the authority to approve the plan, to call and hold meetings with the parties. She also pointed out that it was SCP which suggested that informal meetings be called and that she only agreed to hold these meetings on the condition that all the parties would attend.

As to her alleged failure to observe the reglementary period, she contended that she approved the rehabilitation plan within the period prescribed by law. She argued that the matter of granting extension of time under Section 11, Rule 4 of the Rules[7] pertains not to the SC, but to the rehabilitation court.

The respondent likewise refuted the allegations of bias and partiality. First, she claimed that her denial of the complainant's motion for inhibition was not due to any bias or prejudice on her part but due to lack of basis. Second, she argued that her decision was not orchestrated to favor EPCIB, as evidenced by the fact that EPCIP itself (as some other creditors did) promptly appealed her decision to the Court of Appeals (CA). Third, she did not remove Atty. Gabionza as SCP's rehabilitation receiver because she disagreed that the grounds the complainant raised warranted his removal. She also found no merit to the allegation of conflict of interest. Lastly, she maintained that the rest of the complainant's allegations were not substantiated and corroborated by evidence.

The respondent further alleged that she did not gravely abuse her authority in not issuing a subpoena as Section 1, Rule 3 of the Interim Rules on Corporate Rehabilitation of the Rules specifically states that the court may decide matters on the basis of affidavits and other documentary evidence.

On the allegation of conflict of interest, she maintained that the allegations were not proven and substantiated by evidence. Finally, the respondent also believed that there was nothing improper in expressing her ideas during the informal meetings.

b. Comment to April 14, 2008 Supplemental Complaint

In her comment[8] on the supplemental complaint, the respondent submitted that the photos she posted in the social networking website "Friendster" could hardly be considered vulgar or lewd. She added that an "off-shouldered" attire is an acceptable social outfit under contemporary standards and is not forbidden. She further stated that there is no prohibition against attractive ladies being judges; she is proud of her photo for having been aesthetically made. Lastly, she submitted that the ruling of the Court in the case of *Impao v. Judge Makilala*[9] should not be applied to her case since the facts are different.

On July 4, 2008, the complainant filed a reply,[10] insisting that the respondent's acts of posting "seductive" pictures and maintaining a "Friendster" account constituted acts of impropriety, in violation of Rules 2.01,[11] 2.02[12] and 2.03,[13] Canon 2 of the Code of Judicial Conduct.

In a Resolution[14] dated September 9, 2009, the Court re-docketed the complaints as regular administrative matters, and referred them to the CA for investigation, report and recommendation.

The CA's Report and Recommendation

On November 13, 2009, Justice Marlene Gonzales-Sison, the Investigating Justice, conducted a hearing, followed by the submission of memoranda by both parties.

In her January 4, 2010 Report and Recommendation,[15] Justice Gonzales-Sison ruled that the complaints were partly meritorious. She found that the issues raised were judicial in nature since these involved the respondent's appreciation of evidence.

She also added that while the CA resolved to set aside the respondent's decision in the rehabilitation proceedings, it was not by reason of her ignorance of the law or abuse of authority, but because the rehabilitation plan could no longer be implemented in view of SCP's financial predicament.

On the allegation of grave bias and partiality in handling the rehabilitation proceedings, Justice Gonzales-Sison ruled that the complainant failed to present any clear and convincing proof that the respondent intentionally and deliberately acted against SCP's interests; the complaint merely relied on his opinions and surmises.

On the matter of the respondent's inhibition, she noted that in cases not covered by the rule on mandatory inhibition, the decision to inhibit lies within the discretion of the sitting judge and is primarily a matter of conscience.

With respect to the respondent's informal meetings, Justice Gonzales-Sison found nothing irregular despite the out-of-court meetings as these were agreed upon by all the parties, including SCP's creditors. She also found satisfactory the respondent's explanation in approving the rehabilitation plan beyond the 180-day period prescribed by the Rules.

The foregoing notwithstanding, Justice Gonzales-Sison noted the respondent's unnecessary bickering with SCP's legal counsel and ruled that her exchanges and utterances were reflective of arrogance and superiority. In the words of the Justice Gonzales-Sison:

Rather than rule on the manifestations of counsels, she instead brushed off the matter with what would appear to be a conceited show of a prerogative of her office, a conduct that falls below the standard of decorum expected of a judge. Her statements appear to be done recklessly and were uncalled for. xxx. Section 6[,] Canon 6 of the New Code of Judicial Conduct for the Philippine Judiciary states that: judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others whom the judge deals in an official capacity. Judicial decorum requires judges to be temperate in their language at all times. Failure on this regard amounts to a conduct unbecoming of a judge, for which Judge Austria should be held liable.[16]

On the respondent's Friendster account, she believes that her act of maintaining a personal social networking account (displaying photos of herself and disclosing personal details as a magistrate in the account) – even during these changing times when social networking websites seem to be the trend – constitutes an act of impropriety which cannot be legally justified by the public's acceptance of this type of conduct. She explained that propriety and the appearance of propriety are essential to the performance of all the activities of a judge and that judges shall conduct themselves in a manner consistent with the dignity of the judicial office.

Finally, Justice Gonzales-Sison noted the CA's May 16, 2006 decision[17] in CA-G.R. SP No. 100941 finding that the respondent committed grave abuse of discretion in ordering the creation of a management committee without first conducting an evidentiary hearing in accordance with the procedures prescribed under the Rules. She ruled that such professional incompetence was tantamount to gross ignorance of the law and procedure, and recommended a fine of P20,000.00. She also recommended that the respondent be admonished for failing to observe strict propriety and judicial decorum required by her office.

The Action and Recommendation of the OCA

In its Memorandum[18] dated September 4, 2013, the OCA recommended the following:

RECOMMENDATION: It is respectfully recommended for the consideration of the Honorable Court that:

1)

the Report dated January 4, 2010 of Investigating Justice Marlene Gonzales-Sison be NOTED;

2)

respondent Judge Ma. Cecilia I. Austria, Branch 2, Regional Trial Court, Batangas City, Batangas, be found GUILTY of conduct unbecoming a judge and for violation of Section 6, Canon 4 of the New Code of Judicial Conduct;

3)

respondent Judge Austria be FINED in the amount of Twenty Thousand Pesos (Php20,000.00); and

4)

respondent Judge Austria be ADMONISHED to refrain from further acts of impropriety with a stern warning that a repetition of the same or any similar act will be dealt with more severely.[19]

In arriving at its recommendation the OCA found that the respondent was not guilty of gross ignorance of the law as the complainant failed to prove that her orders were motivated by bad faith, fraud, dishonesty or corruption.

The OCA also found that the charges of bias and partiality in handling the rehabilitation proceedings were not supported by evidence. It accepted the respondent's explanation in the charge of failure to observe the reglementary period.

Lastly, the OCA maintained that the allegations of grave abuse of authority and gross incompetence are judicial in nature, hence, they should not be the subject of disciplinary action. On the other hand, on allegations of conduct unbecoming of a judge, violation of the Code of Professional Responsibility (Code), lack of circumspection and impropriety, the OCA shared Justice Gonzales-Sison's observations that the respondent's act of posting seductive photos in her Friendster account contravened the standard of propriety set forth by the Code.

The Court's Ruling

We agree with the recommendation of both Justice Gonzales-Sison and the OCA for the imposition of a fine on the respondent but modify the amount as indicated below. We sustain Justice Gonzales-Sison's finding of gross ignorance of the law in so far as the respondent ordered the creation of a management committee without conducting an evidentiary hearing. The absence of a hearing was a matter of basic due process that no magistrate should be forgetful or careless about.

On the Charges of Grave Abuse of Authority;
Irregularity in the Performance of Duty; Grave
Bias and Partiality; and Lack of Circumspection

It is well settled that in administrative cases, the complainant bears the onus of proving the averments of his complaint by substantial evidence.[20] In the present case, the allegations of grave abuse of authority, irregularity in the performance of duty, grave bias and partiality, and lack of circumspection are devoid of merit because the complainant failed to establish the respondent's bad faith, malice or ill will. The complainant merely pointed to circumstances based on mere conjectures and suppositions. These, by themselves, however, are not sufficient to prove the accusations. "[M]ere allegation is not evidence and is not equivalent to proof." [21]

"[U]nless the acts were committed with fraud, dishonesty, corruption, malice or ill-will, bad faith, or deliberate intent to do an injustice, [the] respondent judge may not be held administratively liable for gross misconduct, ignorance of the law or incompetence of official acts in the exercise of judicial functions and duties, particularly

in the adjudication of cases.”[22]

Even granting that the respondent indeed erred in the exercise of her judicial functions, these are, at best, legal errors correctible not by a disciplinary action, but by judicial remedies that are readily available to the complainant. “An administrative complaint is not the appropriate remedy for every irregular or erroneous order or decision issued by a judge where a judicial remedy is available, such as a motion for reconsideration or an appeal.”[23] Errors committed by him/her in the exercise of adjudicative functions cannot be corrected through administrative proceedings but should be assailed instead through judicial remedies.[24]

On the Charges of Grave Bias and Partiality

We likewise find the allegations of bias and partiality on the part of the respondent baseless. The truth about the respondent’s alleged partiality cannot be determined by simply relying on the complainant’s verified complaint. Bias and prejudice cannot be presumed, in light especially of a judge’s sacred obligation under his oath of office to administer justice without respect to the person, and to give equal right to the poor and rich.[25] There should be clear and convincing evidence to prove the charge; mere suspicion of partiality is not enough.[26]

In the present case, aside from being speculative and judicial in character, the circumstances cited by the complainant were grounded on mere opinion and surmises. The complainant, too, failed to adduce proof indicating the respondent’s predisposition to decide the case in favor of one party. This kind of evidence would have helped its cause. The bare allegations of the complainant cannot overturn the presumption that the respondent acted regularly and impartially. We thus conclude that due to the complainant’s failure to establish with clear, solid, and convincing proof, the allegations of bias and partiality must fail.

On the Charges of Grave Incompetence and Gross Ignorance of the Law

We agree with the findings of the OCA that not every error or mistake of a judge in the performance of his official duties renders him liable.[27] “[A]s a matter of policy, in the absence of fraud, dishonesty or corruption, the acts of a judge in his judicial capacity are not subject to disciplinary action even though such acts are erroneous.”[28]

In the present case, what was involved was the respondent’s application of Section 23, Rule 4 of the Rules, which provides:

Sec. 23. Approval of the Rehabilitation Plan. - The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.[29]

The respondent approved the rehabilitation plan submitted by Atty. Gabionza, subject to the modifications she found necessary to make the plan viable. The complainant alleged that in modifying the plan, she exceeded her authority and effectively usurped the functions of a rehabilitation receiver. We find, however, that in failing to show that the respondent was motivated by bad faith or ill motives in rendering the assailed decision, the charge of gross ignorance of the law against her should be dismissed. “To [rule] otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.”[30]

To constitute gross ignorance of the law, it is not enough that the decision, order or actuation of the judge in the performance of his official duties is contrary to existing law and jurisprudence. It must also be proven that he was moved by bad faith, fraud, dishonesty or corruption[31] or had committed an error so egregious that it amounted to bad faith.

In the present case, nothing in the records suggests that the respondent was motivated by bad faith, fraud, corruption, dishonesty or egregious error in rendering her decision approving the modified rehabilitation plan. Besides his bare accusations, the complainant failed to substantiate his allegations with competent proof. Bad faith cannot be presumed^[32] and this Court cannot conclude that bad faith intervened when none was actually proven.

With respect to the action of the respondent in ordering the creation of a management committee without first conducting an evidentiary hearing for the purpose, however, we find the error to be so egregious as to amount to bad faith, leading to the conclusion of gross ignorance of the law, as charged.

Due process and fair play are basic requirements that no less than the Constitution demands. In rehabilitation proceedings, the parties must first be given an opportunity to prove (or disprove) the existence of an imminent danger of dissipation, loss, wastage or destruction of the debtor-company's assets and properties that are or may be prejudicial to the interest of minority stockholders, parties-litigants or the general public.^[33] The rehabilitation court should hear both sides, allow them to present proof and conscientiously deliberate, based on their submissions, on whether the appointment of a management receiver is justified. This is a very basic requirement in every adversarial proceeding that no judge or magistrate can disregard.

In SCP's rehabilitation proceedings, SCP was not given at all the opportunity to present its evidence, nor to confront the EPCIB witnesses. Significantly, the CA, in its May 16, 2006 decision, found that the respondent's act of denying SCP the opportunity to disprove the grounds for the appointment of a management committee was tantamount to grave abuse of discretion. As aptly observed by Justice Gonzales-Sison:

[T]he acts of the respondent judge (Judge Austria) in creating a MANCOM without observing the procedures prescribed under the IRPGICC clearly constitute grave abuse of discretion amounting to excess of jurisdiction.^[34]

Indeed, while a judge may not be held liable for gross ignorance of the law for every erroneous order that he renders, this does not mean that a judge need not observe due care in the performance of his/her official functions.^[35] When a basic principle of law is involved and when an error is so gross and patent, error can produce an inference of bad faith, making the judge liable for gross ignorance of the law.^[36] On this basis, we conclude that the respondent's act of promptly ordering the creation of a management committee, without the benefit of a hearing and despite the demand for one, was tantamount to punishable professional incompetence and gross ignorance of the law.

On the Ground of Failure to Observe
the Reglementary Period

On the respondent's failure to observe the reglementary period prescribed by the Rules, we find the respondent's explanation to be satisfactory.

Section 11, Rule 4 of the previous Rules provides:

Sec. 11. Period of the Stay Order. – xxx

The petition shall be dismissed if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition.^[37]

Under this provision, the matter of who would grant the extension beyond the 180-day period carried a good

measure of ambiguity as it did not indicate with particularity whether the rehabilitation court could act by itself or whether Supreme Court approval was still required. Only recently was this uncertainty clarified when A.M. No. 00-8-10-SC, the 2008 Rules of Procedure on Corporate Rehabilitation, took effect.

Section 12, Rule 4 of the Rules provides:

Section 12. Period to Decide Petition. - The court shall decide the petition within one (1) year from the date of filing of the petition, unless the court, for good cause shown, is able to secure an extension of the period from the Supreme Court.[38]

Since the new Rules only took effect on January 16, 2009 (long after the respondent's approval of the rehabilitation plan on December 3, 2007), we find no basis to hold the respondent liable for the extension she granted and for the consequent delay.

On the Ground of Conduct

Unbecoming of a Judge

On the allegation of conduct unbecoming of a judge, Section 6, Canon 6 of the New Code of Judicial Conduct states that:

SECTION 6. Judges shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, witnesses, lawyers and others with whom the judge deals in an official capacity. Judges shall require similar conduct of legal representatives, court staff and others subject to their influence, direction or control.[39]

A judge should always conduct himself in a manner that would preserve the dignity, independence and respect for himself/herself, the Court and the Judiciary as a whole. He must exhibit the hallmark judicial temperament of utmost sobriety and self-restraint.[40] He should choose his words and exercise more caution and control in expressing himself. In other words, a judge should possess the virtue of gravitas.[41]

As held in *De la Cruz (Concerned Citizen of Legazpi City) v. Judge Carretas*,[42] a judge should be considerate, courteous and civil to all persons who come to his court; he should always keep his passion guarded. He can never allow it to run loose and overcome his reason. Furthermore, a magistrate should not descend to the level of a sharp-tongued, ill-mannered petty tyrant by uttering harsh words, snide remarks and sarcastic comments.

Similarly in *Attys. Guanzon and Montesino v. Judge Rufon*,[43] the Court declared that "although respondent judge may attribute his intemperate language to human frailty, his noble position in the bench nevertheless demands from him courteous speech in and out of court. Judges are required to always be temperate, patient and courteous, both in conduct and in language."

Accordingly, the respondent's unnecessary bickering with SCP's legal counsel, her expressions of exasperation over trivial procedural and negligible lapses, her snide remarks, as well as her condescending attitude, are conduct that the Court cannot allow. They are displays of arrogance and air of superiority that the Code abhors.

Records and transcripts of the proceedings bear out that the respondent failed to observe judicial temperament and to conduct herself irreproachably. She also failed to maintain the decorum required by the Code and to use temperate language befitting a magistrate. "As a judge, [she] should ensure that [her] conduct is always above reproach and perceived to be so by a reasonable observer. [She] must never show conceit or even an appearance thereof, or any kind of impropriety."[44]

Section 1, Canon 2 of the New Code of Judicial Conduct states that:

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.

In these lights, the respondent exhibited conduct unbecoming of a judge and thus violated Section 6, Canon 6 and Section 1, Canon 2 of the New Code of Judicial Conduct.

On the Ground of Impropriety

We are not unaware of the increasing prevalence of social networking sites in the Internet – a new medium through which more and more Filipinos communicate with each other.[45] While judges are not prohibited from becoming members of and from taking part in social networking activities, we remind them that they do not thereby shed off their status as judges. They carry with them in cyberspace the same ethical responsibilities and duties that every judge is expected to follow in his/her everyday activities. It is in this light that we judge the respondent in the charge of impropriety when she posted her pictures in a manner viewable by the public.

Lest this rule be misunderstood, the New Code of Judicial Conduct does not prohibit a judge from joining or maintaining an account in a social networking site such as Friendster. Section 6, Canon 4 of the New Code of Judicial Conduct recognizes that judges, like any other citizen, are entitled to freedom of expression. This right "includes the freedom to hold opinions without interference and impart information and ideas through any media regardless of frontiers." [46] Joining a social networking site is an exercise of one's freedom of expression. The respondent judge's act of joining Friendster is, therefore, per se not violative of the New Code of Judicial Conduct.

Section 6, Canon 4 of the New Code of Judicial Conduct, however, also imposes a correlative restriction on judges: in the exercise of their freedom of expression, they should always conduct themselves in a manner that preserves the dignity of the judicial office and the impartiality and independence of the Judiciary.

This rule reflects the general principle of propriety expected of judges in all of their activities, whether it be in the course of their judicial office or in their personal lives. In particular, Sections 1 and 2 of Canon 4 of the New Code of Judicial Conduct prohibit impropriety and even the appearance of impropriety in all of their activities:

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

SECTION 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.

Based on this provision, we hold that the respondent disregarded the propriety and appearance of propriety required of her when she posted Friendster photos of herself wearing an "off-shouldered" suggestive dress and made this available for public viewing.

To restate the rule: in communicating and socializing through social networks, judges must bear in mind that what they communicate – regardless of whether it is a personal matter or part of his or her judicial duties – creates and contributes to the people's opinion not just of the judge but of the entire Judiciary of which he or she is a part. This is especially true when the posts the judge makes are viewable not only by his or her family and close friends, but by acquaintances and the general public.

Thus, it may be acceptable for the respondent to show a picture of herself in the attire she wore to her family and close friends, but when she made this picture available for public consumption, she placed herself in a situation where she, and the status she holds as a judge, may be the object of the public's criticism and ridicule. The nature of cyber communications, particularly its speedy and wide-scale character, renders this rule necessary.

We are not also unaware that the respondent's act of posting her photos would seem harmless and inoffensive had

this act been done by an ordinary member of the public. As the visible personification of law and justice, however, judges are held to higher standards of conduct and thus must accordingly comport themselves.[47]

This exacting standard applies both to acts involving the judicial office and personal matters. The very nature of their functions requires behavior under exacting standards of morality, decency and propriety; both in the performance of their duties and their daily personal lives, they should be beyond reproach.[48] Judges necessarily accept this standard of conduct when they take their oath of office as magistrates.

Imposable Penalty

Under Section 8, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC, gross ignorance of the law or procedure is classified as a serious charge. Under Section 11(A) of the same Rule, a serious charge merits any of the following sanctions:

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.

On the other hand, conduct unbecoming of a judge is classified as a light offense under Section 10, Rule 140 of the Rules of Court. It is penalized under Section 11(C) thereof by any of the following: (1) A fine of not less than P1,000.00 but not exceeding P10,000.00; (2) Censure; (3) Reprimand; and (4) Admonition with warning.

Judge Austria's record shows that she had never been administratively charged or found liable for any wrongdoing in the past. Since this is her first offense, the Court finds it fair and proper to temper the penalty for her offenses.

WHEREFORE, the Court finds Judge Ma. Cecilia I. Austria guilty of GROSS IGNORANCE OF THE LAW for which she is FINED Twenty-One Thousand Pesos (P21,000.00). Judge Austria is likewise hereby ADMONISHED to refrain from further acts of IMPROPRIETY and to refrain from CONDUCT UNBECOMING OF A JUDGE, with the STERN WARNING that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Carpio, (Chairperson), Del Castillo, Villarama, Jr.,[*] and Reyes,[**] JJ., concur.

[*] Designated as Additional Member in lieu of Justice Estela M. Perlas-Bernabe, per Raffle dated March 24, 2014.

[**] Designated as Additional Member in lieu of Justice Jose P. Perez, per Raffle dated March 31, 2014.

[1] Rollo, pp. 1-20.

[2] Id. at 21.

[3] Id. at 102-104.

[4] Id. at 71.

[5] Id. at 115-172.

[6] Sec. 21. Creditors' Meetings. – At any time before he submits his evaluation on the rehabilitation plan to the court as prescribed in section 9, Rule 4 of this Rule, the Rehabilitation Receiver may, either alone or with the debtor, meet with the creditors or any interested party to discuss the plan with a view to clarifying or resolving any matter connected therewith. [emphasis ours]

[7] Sec. 11. xxx.

The petition shall be [dismissed] if no rehabilitation plan is approved by the court upon the lapse of one hundred eighty (180) days from the date of the initial hearing. The court may grant an extension beyond this period only if it appears by convincing and compelling evidence that the debtor may successfully be rehabilitated. In no instance, however, shall the period for approving or disapproving a rehabilitation plan exceed eighteen (18) months from the date of filing of the petition.

[8] Rollo, pp. 209-230.

[9] 258-A Phil. 234 (1989).

[10] Rollo, pp. 331-353.

[11] RULE 2.01 - A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

[12] RULE 2.02 - A judge should not seek publicity for personal vainglory.

[13] RULE 2.03 - A judge shall not allow family, social, or other relationships to influence judicial conduct or judgment.

[14] Rollo, pp. 370-374.

[15] Id. at 599-625.

[16] Id. at 620; emphases ours.

[17] Id. at 646.

[18] Id. at 630-646.

[19] Id. at 491-506.

[20] Spouses Oliveros v. Judge Sison, 552 Phil. 839, 844 (2007).

[21] Sasing v. Gelbolingo, A.M. No. P-12-3032, February 20, 2013, 691 SCRA 241, 248.

[22] Andrada v. Hon. Judge Banzon, 592 Phil. 229, 233-234 (2008).

[23] Cordero v. Justice Enriquez, 467 Phil. 611, 618 (2004).

[24] Bello, III v. Judge Diaz, 459 Phil. 214, 221 (2003).

[25] Negros Grace Pharmacy, Inc. v. Judge Hilario, 461 Phil. 843, 849 (2003).

[26] Carriaga v. Anasario, 444 Phil. 685, 690 (2003).

[27] Dipatuan v. Mangotara, A.M. No. RTJ-09-2190, April 23, 2010, 619 SCRA 48, 56.

- [28] *Salvador v. Limsiaco, Jr.*, 519 Phil. 683, 687 (2006).
- [29] Emphasis ours, italics supplied.
- [30] *Magdadar v. Saniel, Jr.*, A.M. No. RTJ-12-2331, December 10, 2012, 687 SCRA 401, 408.
- [31] *Lago v. Abul, Jr.*, A.M. No. RTJ-10-2255, February 8, 2012, 665 SCRA 247, 251.
- [32] *Gatmaitan v. Dr. Gonzales*, 525 Phil. 658, 671 (2006).
- [33] Section 6, par. (d) of Presidential Decree No. 902-A.
- [34] *Rollo*, p. 622.
- [35] *Dipatuan v. Mangotara*, supra note 27, at 56-57.
- [36] *Gacad v. Clapis, Jr.*, A.M. No. RTJ-10-2257, July 17, 2012, 676 SCRA 534, 548.
- [37] Italics and emphasis ours.
- [38] Emphasis ours.
- [39] Emphasis ours.
- [40] *Soria v. Judge Villegas*, 485 Phil. 406, 415 (2004).
- [41] *Dela Cruz (Concerned Citizen of Legazpi City) v. Judge Carretas*, 559 Phil. 5, 15 (2007).
- [42] *Id.* at 15-16.
- [43] 562 Phil. 633, 638 (2007); citation omitted.
- [44] *Dela Cruz (Concerned Citizen of Legazpi City) v. Judge Carretas*, supra note 41, at 17.
- [45] The Philippines has been dubbed as “the social networking capital of the world” in 2011 by the blog 24/7 Wall Street, which compiled a list of countries where Facebook penetration (usage per population) is highest. Jon Russell, Philippines named social networking capital of the world, *Asiancorrespondent.com*, May 15, 2011 at <http://asiancorrespondent.com/54475/philippines-named-the-social-networking-capital-of-the-world-indonesia-malaysia-amongst-top-10/>.
- [46] Universal Declaration of Human Rights, Article 19.
- [47] In foreign jurisdiction, the respective committees on judicial ethics in some states of the United States of America have issued opinions on the application of their respective rules on judicial conduct to the judges’ acts of joining and maintaining accounts in online social networking sites.
- The California Judges Association, Judicial Ethics Committee, Opinion 66 On Online Social Networking states that [s]ocial networking sites typically allow users to post photos and videos onto the user’s pages. The user may also add links to other Internet sites and indicate favorable or unfavorable reviews of products, websites and public figures. When utilizing such features of social networking sites, judges must always be mindful that they have a duty to act at all times in a manner that promotes public confidence in the integrity of the judiciary (Canon 2A) and must refrain from any extrajudicial activities that demean the judiciary (Canon 4A). Online activities that would be permissible and appropriate for a member of the general public may be improper for a judge. While it may be acceptable for a college student to post photographs of himself or herself engaged in a drunken revelry, it is not appropriate for a judge to do so.

Canon 5A prohibits judges from publicly endorsing or opposing any candidate for non-judicial office. Canon 5B prohibits a judge from engaging in “any political activity other than in relation to measures concerning the improvement of the law, the legal system, or the administration of justice.” By their very nature, statements posted on social networking sites are public. Therefore, it would be inappropriate to endorse or oppose candidates for non-judicial office on a social networking site. In addition, using features of a site could constitute political activity. For example, creating links to political organizations or posting a comment on a proposed legislative measure would be improper. (Source: <http://www.caljudges.org/files/pdf/Opinion%2066FinalShort.pdf>)

The Ethics Committee of the Kentucky Judiciary, in its Formal Judicial Ethics Opinion JE-119 dated January 20, 2010, opined that “the Committee is compelled to note that, as with any public media, social networking sites are fraught with peril for judges, and that this opinion should not be construed as an explicit or implicit statement that judges may participate in such sites in the same manner as members of the general public. Personal information, commentary and pictures are frequently part of such (social networking) sites. Judges are required to establish, maintain and enforce high standards of conduct, and to personally observe those standards (Canon). In addition, judges shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary (Canon).

Thus, pictures and commentary posted on sites which might be of questionable taste, but otherwise acceptable for members of the general public, may be inappropriate for judges. See *In re: Complaint of Judicial Misconduct*, 575 F. 3d 279 (3rd Cir. 2009) (interpreting federal Judicial Conduct and Disability Act) (publicly reprimanding a judge who had maintained a website containing sexually explicit and offensive materials). In its decision, the Third Circuit Court of Appeals noted [a] judge's conduct may be judicially imprudent, even if it is legally defensible (575 F.3d at 291) (Source: http://courts.ky.gov/commissionscommittees/JEC/JEC_Opinions/JE_119.pdf)

The New York Judicial Ethics Committee Opinion 08-176 states that “[t]he Rules require that a judge must avoid impropriety and the appearance of impropriety in all of the judge’s activities (and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. Similarly, a judge shall conduct all of the judge’s extra-judicial activities so that they do not detract from the dignity of judicial office (see 22 NYCRR 100.4[A][2]).

What a judge posts on his/her profile page or on other users’ pages could potentially violate the Rules in several ways. Xxx A judge should thus recognize the public nature of anything he/she places on a social network page and tailor any postings accordingly. (Source: <http://www.courts.state.ny.us/ip/judicialethics/opinions/08-176.htm>)

[48] *Gacad v. Clapis, Jr.*, supra note 38, at 550.

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