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[A.M. No. RTJ-98-1400. February 1, 1999]

CARLOS DIONISIO, *complainant, vs.* **HON. ZOSIMO V. ESCANO,** *respondent.*

SYNOPSIS

In a letter-complaint dated October 8, 1997, complainant charged respondent judge with allegedly using court facilities in advertising for attractive waitresses and personable waiters and cooks for possible employment in their restaurant business. In addition, respondent judge was also said to have caused the construction of an extension office along the corridor called "Office of Negotiable Cases" after respondent judge acquitted a certain Xiao Jia Hung. The case was referred to the Court of Appeals for investigation, report and recommendation. During the investigation, the Investigating Justice was able to establish, *inter alia*, that respondent judge posted the advertisement for the restaurant in the Court bulletin board for more than a week, even two weeks; that he removed the notices when his attention was called by some lawyers; that he was able to interview about five applicants during the screening regarding the wearing of dresses with short skirts and low necklines; and that the establishment was originally intended as a drinking place, but is now operated as a cafe. Based on the foregoing findings, the Investigating Justice, after considering certain mitigating circumstances in favor of the respondent judge recommended that a fine of P15,000.00 for misconduct be imposed upon respondent judge. With respect to the charge of maintaining an extension office known as the "Office of Negotiable Cases," the Investigating Justice recommended its dismissal for failure to substantiate the same.

The Supreme Court held that respondent judge has behaved in a manner unbecoming of his judicial robe, betrayed the people's high expectations, and diminished the esteem in which he holds the judiciary in general. It is of no import that respondent judge's act of using the court's facilities be motivated by a good cause. The moment such act deviates from purposes not directly related to the functioning and operation for which the courts of justice has been established, it must be immediately rectified. Moreover, respondent judge violated Rules 5.02 and 5.03 of the Code of Judicial Ethics since

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his acts constitute involvement in private business and improper use of office facilities for the promotion of the family business. Thus, the Court held that the penalty recommended by the Investigating Justice was not commensurate to the disgraceful actuation of respondent judge. The gravity of the charge merits a more severe penalty of suspension. The Court therefore meted on respondent Judge the penalty of Suspension from service for six (6) months with a warning that a repetition of the same or similar acts will be dealt with more severely.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; PRIVATE LIVES AS WELL AS OFFICIAL CONDUCT THEREOF MUST AT ALL TIMES BE FREE FROM APPEARANCE OF IMPROPRIETY.** — Time and again we have adhered to the rule that 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 Ceasar's wife, a judge must not only be pure but beyond suspicion. It is with this exacting standard, not only of decency but also of morality, that we have consistently avowed to promote confidence in the Judiciary. And this Court will not hesitate to wield its disciplinary power to those erring personnel under its supervision.

2. **ID.; ID.; MUST CONDUCT THEMSELVES IN SUCH A MANNER THAT THEY GIVE NO GROUND FOR REPROACH.** — Judge Zosimo Escano has behaved in a manner unbecoming of his judicial robe, betrayed the people's high expectations, and diminished the esteem in which they hold the judiciary in general. It is of no import that respondent Judge's act of using the court's facilities be motivated by a good cause, no matter how honorable. The moment such act deviates from purposes not directly related to the functioning and operation for which the courts of justice has been established, it must be immediately rectified. The excuse advanced by respondent Judge that in order for the prospective applicants not to have difficulty of locating their residence it would be more convenient if the screening was made inside his court, is a reason lacking in circumspection and *delicadeza.* It over-extends his authority as judge by failing to avoid situations that make him suspect to committing immorality. For

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judges are enjoined to avoid not just impropriety in their conduct but even the mere appearance of impropriety. This is true not only in the performance of their judicial duties but in all their activities, including their private lives. Judges must conduct themselves in such a manner that they give no ground for reproach. For no position exacts a greater demand or moral righteousness and uprightness of an individual than a seat in the judiciary.

3. **ID.; ID.; USING THE COURT IN THE RECRUITMENT OF RESTAURANT PERSONNEL AND USING THE COURT BULLETIN BOARD TO ADVERTISE SAID RECRUITMENT, CONSIDERED A VIOLATION OF RULES 5.02 AND 5.03 OF THE CODE OF JUDICIAL ETHICS.** — As correctly pointed by the Investigating Justice, the acts of posting advertisements for the restaurant personnel on the court bulletin board, using his court address to receive the applications, and of screening applicants in his court constitute involvement in private business and improper use of office facilities for the promotion of the family business in violation of the Code of Judicial Ethics. The restriction enshrined under Rules 5.02 and 5.03 of the Code of Judicial Ethics on judges with regard to their own business interests is based on the possible interference which may be created by these business involvements in the exercise of their judicial duties which may tend to corrode the respect and dignity of the courts as the bastion of justice. Judges must not allow themselves to be distracted from the performance of their judicial tasks by other lawful enterprises. It has been a time honored rule that judges and all court employees should endeavor to maintain at all times the confidence and high respect accorded to those who wield the gavel of justice.

4. **ID.; ID.; CHARGE OF MAINTAINING AN OFFICE OF NEGOTIABLE CASES, NOT PROVEN IN CASE AT BAR.** — As to the other charge that respondent Judge has caused the construction of an extension office known as the "Office of Negotiable Cases" after he acquitted a certain Hung, we have carefully reviewed the records of this case and find no evidence to substantiate that such office exists. In the absence of proof necessary to have a contrary holding, we find no reason to disbelieve the contention of respondent Judge that the extension office was constructed by the Municipal Government of Parañaque as a stockroom and as office for some court personnel. The complainant in this case admittedly being "incognito" for fear of placing his source

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of livelihood at peril, has failed to fully support such claim. The Rules, even in an administrative case, demand that, if the respondent judge should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent and should be derived from direct knowledge. For before any member of the judiciary could be faulted, it should be only after due investigation and after presentation of competent evidence, especially since the charge is penal in character.

5. **ID.; ID.; DIVERGENCE OF OPINION BETWEEN A TRIAL JUDGE AND A PARTY'S COUNSEL AS TO ADMISSIBILITY OF EVIDENCE, NOT PROOF OF BIAS AND PARTIALITY.**— We likewise find no cogent reason to disturb the findings and conclusion of the respondent Judge in Criminal Case No. 96-62 entitled *"People vs. Jia Hung, et al."* The Court understands the frustration that litigants and lawyers alike, would at times encounter in procedural bureaucracy, but imperative justice requires proper observance of indisputable technicalities precisely designed to ensure its proper dispensation. For if a party is prejudiced by the orders of a judge, his remedy lies with the proper court for the proper judicial action and not with the Office of the Court Administrator by means of an administrative complaint. Divergence of opinion between a trial judge and a party's counsel as to admissibility of evidence is not proof of bias and partiality.

6. **ID.; ID.; DISGRACEFUL ACTUATION OF RESPONDENT JUDGE WARRANTS A PENALTY OF SUSPENSION IN CASE AT BAR.** —The Investigating Justice considered certain mitigating circumstances in favor of the respondent Judge in imposing the fine of P15,000.00 for his misconduct, this Court, however, is of the opinion that such penalty is not commensurate to the disgraceful actuation of respondent Judge. The gravity of the charge against the respondent Judge merits a more severe penalty of suspension. For as officers of the court, judges are duty bound to scrupulously adhere and hold sacred the tenets of their profession and they must be reminded, lest they have already conveniently forgotten, that a certificate of service is not merely a means to one's paycheck. A judge should not only possess proficiency in law, but should likewise possess moral integrity for the people look up to him as a virtuous and upright man.

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DECISION

PER CURIAM:

In a letter-complaint[1] dated October 8, 1997, herein complainant Carlos Dionisio charged herein respondent Judge Zosimo Escano with allegedly using court facilities (bulletin board) in advertising for attractive waitresses and personable waiters and cooks for possible employment in their restaurant business. In addition, respondent judge is also said to have caused the construction of an extension office along the corridor called "Office of Negotiable Cases" after respondent Judge acquitted a certain Hung.[2]

Meanwhile, in an October 19, 1997 Manila Bulletin issue, the advertisement[3] of Fontana Café & Restaurant appeared accepting applications for attractive waitresses and female vocalists which reads:

"URGENTLY NEEDED
Attractive Waitresses
Female Vocalists
Bartenders-Male/Female

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Fontana Café & Restaurant
Dampa, Ninoy Aquino Avenue
Parañaque, Metro Manila
or
RTC, Branch 259
Parañaque Municipal Hall
Tel. 825-57-32/826-00-11 loc. 226

Taking note of this advertisement, a staff member of ABS-CBN's public service show "Hoy Gising!" disguised as an applicant was sent to conduct a videotaped investigation on the veracity of the

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[1] *Rollo*, p. 1.

[2] Respondent in Criminal Case No. 96-662 entitled *"People vs. Xiao Jia Hung alias Jose Lim,"* for violation of Sec. 15, Art. III, R.A. 6425 as amended; *Rollo*, pp. 119-139.

[3] *Rollo*, p. 23.

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advertisement. The incidents of the investigation were aired live on television in their regular program. This tape was also made part of the complaint submitted to the Office of the Court Administrator. The aforesaid staff member was able to ferret out the following admissions from respondent Judge Escano inside his chamber at RTC, Branch 259, Parañaque Municipal Hall where he conducted the interview:

As to the ownership of the said establishment, respondent admitted: *'Ako ang may-ari. Ako mismo ang owner.'*

As to the nature of the business establishment, respondent Judge has this to say: *'Ngayon, ang concept nitong pubhouse, lalo itong lugar ko, itong pangalan ay Fontana Café, ang ano ay we will be catering to classes A and B.'* He further added: *'Yung mga lalake target natin, may come on tayo diyan.'*

Respondent Judge even continued to say: *'I will be requiring yung mga waitress, yung medyo naka-mini or depende sa mga uniporme. Tapos yung medyo paseksi din dito* (respondent was making gestures on the upper part of his body, obviously referring to just above the breast). *Yung konti lang naman, yung medyo paduda, alam mo na, I hope you are getting me, yung medyo nakaano nang konti yon.'*

He further elucidates: *'May mga customers tayo na mga DOM. Medyo hahawak-hawak sa kamay.'* For singers, he explained, *'Pagkanta mo ron, hindi yung nakaganyan ka, kwan ka. Magsuot ka ng medyo makatawag pansin sa mga lalaki. Siempre lalake, mga crowd natin lalaki. Kung umikot makikita pati panty, pati ano. Paseksihan na' yon, eh.* That's the Entertainment World Today.'

When respondent Judge was asked to give his comment on the news report against him, he admitted the contents of the interview but clarified that the business establishment is merely a restaurant, a sort of watering hole for some friends.

In answer to the complaint filed by Carlos Dionisio, respondent Judge explained that after his wife was issued a Certificate of Registration of Business from the Department of Trade and Industry[4] and before the construction of the restaurant was about

[4] Annex "A", Comment/Answer of Respondent Judge Escano; *Rollo*, p. 10.

[5] *Rollo*, pp. 34-80.

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to be finished, his wife requested his assistance for the hiring of its personnel. He thought that, considering the difficulty of locating their residence which is about three (3) kilometers from the main gate of Better Living Subdivision, it would be convenient for him to conduct the screening of the applicants in his office. With this arrangement, respondent Judge posted the notice at the Court bulletin board without realizing that it may later on create in the minds of some people the perception that he was misusing the court facilities. However, when the said matter was brought to his attention, respondent Judge immediately ordered the removal of said posters.

On the allegation of an Office of "Negotiable Cases," respondent Judge clarified that the structure was constructed by the Municipal Government of Parañaque to utilize the open space in front of Branch 259. The said office now serves as stockroom and as office for the Clerk of Court, Legal Researcher, Interpreter, the Sheriff and all other male personnel of the court who used to work inside the courtroom.

As regards the complainant's allusion to the case of *People vs. Xiao Jia Hung, et al.,* respondent Judge pointed out that the acquittal of the accused was anchored mainly on the absolute absence of hard evidence and proof worthy to overturn the presumption of innocence.

On March 3, 1998, respondent Judge supplemented the aforesaid Answer contending therein that he has been fair and just in rendering his decisions as a special criminal court Judge. To manifest such impartiality, he attached his performance record for the year 1997 with comparative data[5] from other branches of the RTC, Parañaque, photocopies of his decisions in *People vs. Richard Ong, et al.*[6] and *People vs. Xiao Jia Hung, et al.*[7]

Subsequently, this administrative matter was referred to the Court of Appeals for investigation, report and recommendation on January

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[6] Crim. Case No. 96-460, Kidnapping for Ransom with Homicide; *Rollo*, pp. 81-118.

[7] Crim. Case No. 96-662 for Violation of Sec. 15, Art. III, R.A. 6425 as amended; *Rollo*, pp. 119-139.

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19, 1998[8] which was later on assigned to Justice Minerva P. Gonzaga-Reyes.

During the investigation, Justice Minerva P. Gonzaga-Reyes was able to establish, *inter alia,* that the respondent Judge posted the advertisement for "attractive waitresses and personable waiters" for the restaurant in the court bulletin board for more than a week, even two weeks; that he removed the notices when his attention was called by some lawyers; that he was able to interview about five applicants; that the suggestions he made to the applicants during the screening regarding the wearing of dresses with short skirts and low necklines which were recorded on videotape by the personnel of the "Hoy Gising!" program were true; and that the establishment was originally intended as a "pub" or drinking place, but is now operated as a café.

Based on the foregoing findings, the Investigating Justice submitted her report and recommendation, the pertinent portion of which reads:

"x x x, the plea of Judge Escano that he merely wanted to help his wife to establish a legitimate business to help augment his judge's income, the apologies tendered to the Supreme Court and his peers in the judiciary for any embarrassment (he) might have caused the institution, and the fact that the infraction was committed for a short time, as he promptly desisted when his attention was called, may mitigate the penalty which is hereby recommended to be a fine of P15,000.00.

"With respect to the charge that Judge Escano is maintaining an Office of Negotiable Cases, which he denied, the same is not substantiated and is recommended for dismissal.

"Respectfully submitted."[9]

Time and again we have adhered to the rule that 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

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[8] Resolution of the Supreme Court, Second Division; *Rollo*, p. 29.

[9] *Rollo*, pp. 142-145.

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his official conduct must at all times be free from the appearance of impropriety.[10] Because appearance is as important as reality in the performance of judicial functions, like Ceasar's wife, a judge must not only be pure but beyond suspicion.[11] It is with this exacting standard, not only of decency but also of morality, that we have consistently avowed to promote confidence in the Judiciary. And this Court will not hesitate to wield its disciplinary power to those erring personnel under its supervision.

The Code of Judicial Ethics provides in so far as pertinent:

Canon II

Rule 2.00 – A Judge should avoid impropriety and the appearance of impropriety in all activities.

Canon V

Rule 5.02. – A Judge should refrain from financial and business dealings that tend to reflect adversely on the court's impartiality, interfere with the proper performance of judicial activities, or increase involvement with lawyers or persons likely to come before the court. A judge should so manage investments and other financial interests to minimize the number of cases giving grounds for disqualification, and if necessary, divest such investments and interests. Divestment shall be made within one year fom the effectivity of this Code or from appointment, as the case may be."

"Rule 5.03. – Subject to the provisions of the preceding rule, a judge may hold and manage investments but should not serve as a officer, director, advisor, or employee of any business except as director, or non-legal consultant of a family business."

Judge Zosimo Escano has behaved in a manner unbecoming of his judicial robe, betrayed the people's high expectations, and diminished the esteem in which they hold the judiciary in general. It is of no import that respondent Judge's act of using the court's facilities be motivated by a good cause, no matter how honorable. The moment such act deviates from purposes not directly related

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[10] *Luque vs. Kayanan*, 29 SCRA 165; *Conde vs. Superable*, 29 SCRA 727; *Otero vs. Esguerra*, 57 SCRA 57; *Jakosalem vs. Judge Cordovez*, 58 SCRA 11; *Jugueta vs. Boncaros*, 60 SCRA 27.

[11] *Palang vs. Zosa*, 58 SCRA 776.

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to the functioning and operation for which the courts of justice has been established, it must be immediately rectified. In *Bautista vs. Costelo, Jr.*,[12] we have held that "the prohibition against the use of halls of justice for purposes other than that for which they have been built extends to their immediate vicinity including their grounds. Otherwise, if the prohibition is not thus construed, acts tending to degrade courts would go unpunished on the pretext that they are not committed 'within the Halls of Justice.'"

The excuse advanced by respondent Judge that in order for the prospective applicants not to have difficulty of locating their residence it would be more convenient if the screening was made inside his court, is a reason lacking in circumspection and *delicadeza*. It over-extends his authority as judge by failing to avoid situations that make him suspect to committing immorality. For judges are enjoined to avoid not just impropriety in their conduct but even the mere appearance of impropriety. This is true not only in the performance of their judicial duties but in all their activities, including their private lives. Judges must conduct themselves in such a manner that they give no ground for reproach.[13] For no position exacts a greater demand or moral righteousness and uprightness of an individual than a seat in the judiciary.[14]

And as correctly pointed by the Investigating Justice, the acts of posting advertisements for the restaurant personnel on the court bulletin board, using his court address to receive the applications, and of screening applicants in his court constitute involvement in private business and improper use of office facilities for the promotion of the family business in violation of the Code of Judicial Ethics. The restriction enshrined under Rules 5.02 and 5.03 of the Code of Judicial Ethics on judges with regard to their own business interests is based on the possible interference which may be created by these business involvements in the exercise of their judicial duties which may tend to corrode the respect and dignity of the

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[12] 254 SCRA 148.

[13] *San Juan vs. Bagalacsa*, 283 SCRA 416; *Dysico vs. Dacumos*, 262 SCRA 275.

[14] *Naval vs. Panday*, 275 SCRA 654.

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courts as the bastion of justice. Judges must not allow themselves to be distracted from the performance of their judicial tasks by other lawful enterprises.[15] It has been a time honored rule that judges and all court employees should endeavor to maintain at all times the confidence and high respect accorded to those who wield the gavel of justice.[16]

As to the other charge that respondent Judge has caused the construction of an extension office known as the "Office of Negotiable Cases" after he acquitted a certain Hung, we have carefully reviewed the records of this case and find no evidence to substantiate that such office exists. In the absence of proof necessary to have a contrary holding, we find no reason to disbelieve the contention of respondent Judge that the extension office was constructed by the Municipal Government of Parañaque as a stockroom and as office for some court personnel. The complainant in this case admittedly being "*incognito*" for fear of placing his source of livelihood at peril, has failed to fully support such claim. The Rules, even in an administrative case, demand that, if the respondent judge should be disciplined for grave misconduct or any graver offense, the evidence against him should be competent and should be derived from direct knowledge.[17] For before any member of the judiciary could be faulted, it should be only after due investigation and after presentation of competent evidence, especially since the charge is penal in character.[18]

Furthermore, we likewise find no cogent reason to disturb the findings and conclusion of the respondent Judge in Criminal Case No. 96-62 entitled "*People vs. Jia Hung, et al.*" The Court understands the frustration that litigants and lawyers alike, would at times encounter in procedural bureaucracy, but imperative justice requires proper observance of indisputable technicalities precisely designed to ensure its proper dispensation.[19] For if a party is

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[15] *Albos vs. Alaba*, 231 SCRA 68.

[16] *Re: Issuance of Subpoena to Prisoner Nicanor De Guzman, Jr.*, 278 SCRA 18.

[17] *Office of the Court Administrator vs. Pascual*, 259 SCRA 604.

[18] *Office of the Court Administrator vs. Pascual, supra.*

[19] *Office of the Court Administrator vs. Myrna Alvarez*, A.M. No. CA-98-8-P, March 11, 1998 citing *Young vs. Office of the Ombudsman*, 228 SCRA 718.

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prejudiced by the orders of a judge, his remedy lies with the proper court for the proper judicial action and not with the Office of the Court Administrator by means of an administrative complaint. Divergence of opinion between a trial judge and a party's counsel as to admissibility of evidence is not proof of bias and partiality.[20]

While concededly, the Investigating Justice considered certain mitigating circumstances in favor of the respondent Judge in imposing the fine of P15,000.00 for his misconduct, this Court, however, is of the opinion that such penalty is not commensurate to the disgraceful actuation of respondent Judge. The gravity of the charge against the respondent Judge merits a more severe penalty of suspension. For as officers of the court, judges are duty bound to scrupulously adhere and hold sacred the tenets of their profession and they must be reminded, lest they have already conveniently forgotten, that a certificate of service is not merely a means to ones's paycheck.[21] A judge should not only possess proficiency in law, but should likewise possess moral integrity for the people look up to him as a virtuous and upright man.[22]

WHEREFORE, premises considered, respondent Judge Zosimo Escano is hereby meted the penalty of *SUSPENSION* from service for six (6) months which shall start upon receipt of notice hereof *WITH WARNING* that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Martinez, Quisumbing, Purisima, Pardo, and *Buena, JJ.*, concur.

Gonzaga-Reyes, J., no part.

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[20] *Go vs. CA*, 221 SCRA 397; *Paredes, Jr. vs. Sandiganbayan*, 252 SCRA 541.

[21] *Re: Judge Fernando P. Agdamag*, 254 SCRA 644.

[22] *Talens-Dabon vs. Arceo*, 259 SCRA 354.