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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.M. No. MTJ-02-1418. December 10, 2003]
(Formerly OCA IPI No. 00-871-MTJ)

CARMENCITA D. CACATIAN, *complainant, vs.* **JUDGE RICARDO P. LIWANAG, MUNICIPAL TRIAL COURT, SAN JOSE DEL MONTE, BULACAN,** *respondent.*

SYNOPSIS

Complainant filed an administrative case against respondent judge. The respondent judge allegedly violated the "franking privilege" by sending a demand letter to the complainant using his judicial office to avoid payment of postal stamp. He had also shown malicious and abusive conduct when he shot the complainant with a firearm with expired license, filing a spurious case of estafa against the complainant and issuing warrant of arrest, knowing fully well that the complainant's failure to attend the hearing of a case against her was due to his own manipulation. The complainant also alleged that the respondent judge displayed notoriety and impropriety by the fact that he transacted business with the complainant despite her pending cases before his sala and his filing of a estafa case against the complainant in his own sala. After a careful study of the evidence presented, the investigating judge found that the explanations given by the respondent judge were totally unacceptable. The facts and circumstances of the case vividly demonstrated that the respondent demeaned the office of the judge and gravely dishonored the judiciary.

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The Supreme Court agreed with the investigating judge and ruled that the respondent's behavior fell short of the exacting standards required of him as a magistrate. The instances presented were clear manifestations that the respondent judge is not fit to remain a member of the judiciary. His acts constituted serious misconduct. However, in another case for violation of Anti-Graft and Corrupt Practices Act, the Court *En Banc* already dismissed the respondent from the service, hence, the penalty of dismissal could no longer be feasible in this case. The respondent in this case was found guilty of gross misconduct and was meted a fine of ₱40,000 to be deducted from his leave credits and other benefits he may be entitled to.

SYLLABUS

1. **JUDICIAL ETHICS; CODE OF JUDICIAL ETHICS; JUDGES; REQUIRED TO BEHAVE WITH PROPRIETY AT ALL TIMES.**— The personal behavior of a judge, not only upon the bench but also in everyday life, should be above reproach and free from the appearance of impropriety. The Code of Judicial Ethics dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. 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. He should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life, should be above suspicion. Irresponsible or improper conduct of judges erodes public confidence in the judiciary.

2. **ID.; ID.; ID.; NOT FIT TO REMAIN AS MEMBERS OF THE JUDICIARY WHEN FOUND GUILTY OF SERIOUS MISCONDUCT; RATIONALE.**— [T]he respondent judge is not fit to remain as a member of the judiciary. [His] acts constitute serious misconduct, which, under Section 8, Rule 140 of the Rules of Court is classified as a serious charge. "Misconduct" implies wrongful intention and not mere error of judgment; corrupt, or inspired by an intention to violate the law or a persistent disregard of well-known legal rules. It must be remembered that a judge is the visible representation of the law, and more importantly, of justice. From him, the people draw their will and awareness to obey the law. They see in him an

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intermediary of justice between two conflicting interests. For the judge to return that regard, he must be the first to abide by the law and weave an example for others to follow. Verily, no position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the bench.

D E C I S I O N

CALLEJO, SR., *J.*:

The instant administrative case arose when Carmencita D. Cacatian charged Municipal Trial Court Judge Ricardo P. Liwanag of San Jose del Monte Bulacan, with grave misconduct, grave abuse of authority and conduct unbecoming of a member of the bench in a sworn complaint dated March 12, 2000. According to the complainant, Judge Liwanag, "far from adhering to the qualities of a wise and just magistrate," committed the following:

A. Violated the law, *i.e.*, the "franking privilege" granted under the provisions of PD 26 when he sent to herein complainant a demand letter pertaining to a private transaction but using his judicial office to avoid the payment of a postal stamp as shown by the envelope of said letter (Annex "B-1");

B. Exhibited malicious, abusive and criminal conduct when:

(1) he shot complainant with a firearm covered by an expired license,

(2) he filed a criminal charge against her for *Estafa* based on false and perjurious allegations, and

(3) he issued successive warrants for her arrest knowing, fully well, that her failure to attend the hearing of the case against her was due to his manipulations;

C. Displayed notoriety and impropriety as shown by the fact that:

(1) the respondent judge transacted business with herein complainant despite the fact that herein complainant has a pending case before his sala;

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(2) refused to recuse himself from hearing said case despite having filed an *estafa* case against herein complainant who likewise filed a complainant (*sic*) for frustrated homicide against him;

(3) filing the *estafa* case in his own sala; . . .[1]

The accusations against the respondent as summarized by the Office of the Court Administrator (OCA) in its Report dated March 1, 2002 are as follows:

Complainant, who is the accused in Criminal Cases Nos. 8367 to 8398 pending before respondent, alleges that during the pendency of the aforesaid cases, respondent started frequenting the club that she manages, the "Daeyun Videoke Club" at Lagro, Quezon City. When he learned that she had connections with the Firearms and Explosives Division (FED) of the PNP, he requested her assistance in fixing his 9mm pistol as well as in acquiring a new 380-caliber Beretta automatic pistol. Respondent handed to her ₱10,000 to be used as down payment for the new gun.

On 31 July 1999 at around 8:30 p.m., complainant was informed that respondent wanted to see her inside the VIP room of "Daeyun Bar and Videoke Club" which is located beside her residence. Upon entering the aforementioned room, the visibly drunken respondent started berating her, allegedly because of her failure to facilitate the immediate approval of the license covering his new firearm as well as the poor job done on his old gun. She then saw him point the gun at her after which a shot rang out hitting her on the left hand. She was brought to the hospital by respondent Judge's driver.

While she was still at the hospital, respondent Judge promised to shoulder her hospital expenses and pleaded with her not to report the matter to the police or file criminal charges against him. Because of the said incident, she lost the use of her left hand.

Sometime in August 1999, complainant sought reimbursement of the cost of her hospitalization from respondent. However, the latter became furious and refused to reimburse her for the said expenses and even threatened to make things very difficult for her.

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[1] *Rollo*, pp. 12-13.

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Thereafter on 20 September 1999, she received a demand letter dated 7 September 1999 from respondent enclosed in a brown letter envelope which bore the sender's address as "Judge Ricardo P. Liwanag, Municipal Trial Court, San Jose del Monte, Bulacan" and in lieu of the mandatory postal stamp are the words "Free Under PD 26."

Meanwhile on 10 September 1999, respondent filed a criminal complaint against complainant for Estafa before the MTC of San Jose Del Monte. On the same day, a warrant for her arrest was issued. In his complaint, respondent alleged that herein complainant misappropriated the sum of ₱45,000.00 which was intended for the purchase of a new gun. Complainant admits that she received ₱10,000 from respondent Judge that the latter handed to her at the Videoke Club as down payment for the purchase of a new firearm but denies having received from him an FEG 9mm pistol which is allegedly valued at ₱35,000.

Verification with the Firearms and Explosives Division of the PNP revealed that only a 9mm Daewoo pistol with Serial No. BA005065 was licensed in the name of respondent. Complainant also points out that if respondent's allegation that the money and pistol were handed to her in his chambers is true, then he committed a breach of judicial conduct for performing personal transactions therein with a person who had pending cases before his sala.

She insists that the criminal complaint for estafa is baseless because as early as 16 August 1999 she had already submitted respondent's application for license before the FEB of the PNP. Moreover, the date of its filing (10 September) precedes the date of mailing of the demand letter (13 September 1999) indicating that the case was filed even before the mailing of the letter to herein complainant. She denies that she was previously furnished with a copy thereof on 9 September 1999.

On 12 October 1999 herein complainant filed a criminal complaint for frustrated homicide against respondent Judge before the Office of the City Prosecutor of Quezon City. The case was scheduled for preliminary investigation on 11 November 1999. On said date, she was arrested by the elements of CIDG, PNP, Bulacan on the strength of a warrant of arrest issued by respondent. She was then brought to the Malolos Police Station.

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The following day, her sister had to appear on her behalf before respondent's sala for the hearing of her cases. Despite his personal knowledge of her detention and complainant's sister's explanations, respondent ordered complainant's arrest for failure to appear during the said hearing. In said order, respondent cited an alleged report that complainant was released from detention at around 10:00 a.m. Even if the same were true, complainant asserts that she was neither physically nor emotionally prepared to appear at the hearing. Thereafter, the respondent inhibited himself from hearing all cases against the complainant which are pending before him.[2]

The respondent judge denied all the charges against him in his Answer dated June 23, 2000. He never frequented the Daeyun Videoke Club, but admitted that he went there once to get his gun, thinking that it was the complainant's residence. He averred that he had no time to engage in nocturnal activities even after office hours because of the volume of his work. Furthermore, as a resident of Plaridel, Bulacan, it would take him no less than an hour to reach Lagro, Novaliches, Quezon City. According to the respondent:

That what actually happened that night of July 31, 1999 which resulted to the hand injury unfortunately suffered by Mrs. Cacatian was the result of her own gross negligence because when she requested to see the Daewoo pistol respondent told his driver to get the gun from his car as it was his driver who placed it earlier inside the vehicle. When the driver returned to the place where respondent Judge and Mrs. Cacatian were talking in the presence of her common-law husband (Rowan Dominais) the driver removed the gun's magazine then handed over the same direct to Mrs. Cacatian who, because she might have been thinking then or of the erroneous impression that there was no bullet in the pistol's chamber, in turn recklessly pulled the trigger in the course of her cursory examination of the rebluing job done earlier to the firearm and when the gun suddenly went off she unexpectedly hit her left palm which shocked every one then present. If there really was a berating act from the respondent's end and if the undersigned was fuming mad such behavior could not have escaped Rowan Dominais' attention and also could have immediately forewarned said common-law husband to be alert at her defense and when the shooting happened he could

[2] *Id.* at 52-54.

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have also waged immediately an attack directed against the respondent Judge or shouted somehow for help from the herd of their employees then physically present but the stunning silence or complete absence of any retaliatory or defensive reaction from anyone inside the establishment would already render Mrs. Cacatian's account without legs to stand on and, at the same time, unerringly point that the version of Mrs. Cacatian as borne now by her complaint is certainly unfounded as it is untrue and against the normal reaction of one confronted with a startling event or occurrence as a shooting done right under the nose of one's live-in partner.[3]

The respondent admitted that he had indeed sent a demand letter[4] to the complainant, but averred that the mailing clerk must have "inadvertently commingled" the same with the other official letters coming from the court, resulting in the innocent usage of the official envelope. He also averred that his filing a complaint for estafa against the complainant before the MTC of San Jose del Monte, Bulacan is appropriate and legal, because the incident happened within the said town. The respondent also clarified that while he issued a warrant of arrest against the complainant in the criminal cases pending before his *sala*, it was through the instance or manifestation of the private prosecutor, Atty. Antonio Senador and private complainant Teresita Gutierrez who filed numerous criminal cases against the complainant. The respondent judge also averred that he had no knowledge of the complainant's arrest on November 11, 1999, until the complainant's sister went to his office and relayed the matter to the clerk of court who, in turn, informed the respondent. The respondent insisted that he had no liability to the complainant, whatsoever, since the shooting incident was accidental, thus:

That Mrs. Cacatian being a long time employee of the Firearms and Explosives Division of the PNP and experienced in handling of guns plus the fact that she was once married to a police officer who has had also experience in handling guns even right at their residence as he could have been bringing home likewise his service firearms,

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[3] *Id.* at 28-29.

[4] Annex "B-1".

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she was expected to exercise extra precautionary measures whenever handling a gun, however, she did not display such behavior nor prudence because of mental lapse which resulted to the accident of her own making.[5]

Finally, after a careful analysis of the situation, the respondent judge issued an Order[6] dated November 18, 1999, inhibiting himself in all cases filed against the complainant pending before his *sala*.[7]

Pursuant to the OCA's recommendation, the case was redocketed as an administrative matter, and was assigned to Executive Judge Oscar C. Herrera, Jr. for investigation, report and recommendation.[8] The Investigating Judge made the following findings in his Report dated December 6, 2002:

> After a careful study of the evidence presented, the undersigned submits that the reasons and explanation given by the respondent are totally unacceptable and merely insult one's intelligence.
>
> As a judge, respondent knew or ought to have known that transacting business with a litigant having several cases in his sala violates the Code of Judicial Conduct. His position imposes upon him the sacred duty to avoid impropriety and the appearance of impropriety in all activities in order to promote public confidence and respect in the integrity of the judiciary.
>
> In the demand letter that he sent to the complainant which violated his franking privilege, the sender in enveloped (*sic*) was named "Judge Ricardo P. Liwanag, Municipal Trial Court of San Jose del Monte, Bulacan" (Exh. "G-1"), although it referred to a private transaction, and in the letter itself (Exh. "G"), he indicated over his typewritten name which he signed the title "Judge." These are things which he

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[5] *Rollo*, p. 29.

[6] Annex "9", *id.* at 49.

[7] The complainant was charged with 18 counts of estafa, docketed as Criminal Cases Nos. 8367-98 to 8378-98; and Criminal Cases Nos. 9563-99 to 9568-99, entitled *People of the Philippines v. Carmencita Cacatian Dominais*.

[8] *Rollo*, p. 7.

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could not have possibly missed. These were obviously meant to use his official position in delivering a message that will intimidate the addressee.

Respondent's filing of an estafa case against complainant right in his sala, when he could have done so in the Prosecutor's Office in Malolos, Bulacan, was also clearly meant to use the power and authority of his office in harassing the complainant. This became evident when he caused the issuance by his assisting judge of a warrant of arrest against the complainant (Exh. "H"), and by himself subsequently issuing a warrant of arrest (Exh. "I") in the B.P. No. 22 cases against complainant long pending in his sala.

The facts and circumstances in this case vividly demonstrate that respondent, in his transactions and actuation relative to his dealings with complainant, demeaned the office of a judge and gravely dishonored the judiciary.[9]

We agree with the Investigating Judge.

The personal behavior of a judge, not only upon the bench but also in everyday life, should be above reproach and free from the appearance of impropriety.[10] The Code of Judicial Ethics dictates that a judge, in order to promote public confidence in the integrity and impartiality of the judiciary, must behave with propriety at all times. 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. He should personify judicial integrity and exemplify honest public service. The personal behavior of a judge, both in the performance of official duties and in private life, should be above suspicion.[11] Irresponsible or improper conduct of judges erodes public confidence in the judiciary.

The respondent's behavior in this case fell short of the exacting standards required of him as a magistrate. He transacted business with a party litigant who had a pending case in his sala.

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[9] Report, p. 13.

[10] Canon 17, Canons of Judicial Ethics.

[11] *Castillo v. Calanog*, 199 SCRA 75 (1991).

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Notwithstanding the fact that this was done after office hours as he claimed, the respondent should not have put himself in such a position as to arouse suspicion of improper conduct. He should have known that his dealings with a party litigant outside of the courtroom would give rise to doubts as to the propriety of the same.

The respondent also used his official position and authority as a judge to deliver a demand letter[12] to the complainant. He cannot hide behind his court personnel and claim that the letter was mistakenly "commingled" with official correspondence. Prudence dictates that a judge should be aware of the goings-on in his courtroom, particularly in this case where what is involved is the use of his franking privilege. Furthermore, the tenor of the respondent's letter seeking the return of his 9mm gun and the amount of ₱10,000 was clearly meant to intimidate the complainant into compliance, as he signed the same as "Ricardo P. Liwanag, Judge." The respondent even had the letter delivered to the complainant by Clerk of Court Rogelio Montero III and Court Interpreter Corazon Española, both employees under him.[13]

The respondent also filed a case for estafa[14] against the complainant *in his own* sala, the MTC of San Jose, and assisted in the issuance of a warrant of arrest[15] against the same.[16] Although the said warrant was issued by another magistrate, Judge Aznar D. Lindayag, the filing of the case before the respondent's sala may be construed as the judge's attempt to influence the outcome of a case where he himself is an interested party. This placed the court in a bad light. The respondent should have known that under the circumstances, the more

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[12] Annex "A-2", *Rollo*, p. 44.

[13] Annex "5", *id.* at 43.

[14] Docketed as Criminal Case No. 9549-99, entitled *People of the Philippines v. Menchie D. Cacatian.*

[15] Annex "4", *Rollo*, p. 42.

[16] TSN, 26 September 2002, p. 18.

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prudent thing to do was to file the case with the provincial prosecutor's office. The respondent should have remembered the ironclad principle that a judge must not only be impartial, but must also *appear to be impartial.*[17]

These instances are clear manifestations that the respondent judge is not fit to remain as a member of the Judiciary. Such acts constitute serious misconduct, which, under Section 8, Rule 140 of the Rules of Court is classified as a serious charge. "Misconduct" implies wrongful intention and not mere error of judgment;[18] corrupt, or inspired by an intention to violate the law or a persistent disregard of well-known legal rules.[19]

It must be remembered that a judge is the visible representation of the law, and more importantly, of justice. From him, the people draw their will and awareness to obey the law. They see in him an intermediary of justice between two conflicting interests. For the judge to return that regard, he must be the first to abide by the law and weave an example for others to follow.[20] Verily, no position is more demanding as regards moral righteousness and uprightness of any individual than a seat on the bench.[21]

As this Court held in *State Prosecutors v. Muro*:[22]

In every litigation, the manner and attitude of a trial judge are crucial to everyone concerned, the offended party, no less than the accused. It is not for him to indulge or even to give the appearance of catering to the at-times human failing of yielding to first impressions. He is to refrain from reaching hasty conclusions or prejudging matters. It would be deplorable if he lays himself open to the suspicion of reacting to feelings rather than the facts, of being

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[17] *De Guzman, Jr. v. Sison*, 355 SCRA 69 (2001).

[18] *Raquiza v. Castañeda*, 82 SCRA 235 (1978).

[19] *Galangi v. Macli-ing*, 81 SCRA 91 (1978).

[20] *Impao v. Makilala*, 178 SCRA 541 (1989).

[21] *Santos v. Buenaventura*, 367 SCRA 83 (2001).

[22] 251 SCRA 111 (1995).

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imprisoned in the net of his own sympathies and predilections. It must be obvious to the parties as well as the public that he follows the traditional mode of adjudication requiring that he hear both sides with patience and understanding to keep the risk of reaching an unjust decision at a minimum. It is not necessary that he should possess marked proficiency in law, but it is essential that he is *to hold the balance true. What is equally important is that he should avoid any conduct that casts doubt on his impartiality.* What has been said is not merely a matter of judicial ethics. It is impressed with constitutional significance.[23]

The Court *En Banc* recently found the respondent guilty of violating Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, and was dismissed from the service with prejudice to re-employment in any government agency and government-owned or controlled corporation and with forfeiture of all retirement benefits except accrued leave credits.[24] In that case, we stated —

> Respondent tainted the image of the Judiciary to which he owes fealty and the obligation to keep it at all times unsullied and worthy of the people's trust. Violation of R.A. 3019 affects the moral fiber and personal integrity of the respondent. He becomes an ineffective tool in the administration of justice and the court over which he is called to preside will be a mockery, one devoid of respect. There is no place in the Judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. Respondent does not deserve to remain in the Judiciary, where integrity is an indispensable credential, and should accordingly be removed from the service.[25]

The Court thereafter issued a Resolution dated July 17, 2003 denying the respondent's motion for reconsideration with finality and disbarring the latter from the practice of law for conduct unbecoming a member of the bar.[26]

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[23] *Id.* at 117-118 (Italics supplied).

[24] *Perlita Avanceña v. Judge Ricardo P. Liwanag*, A.M. No. MTJ-01-1383, March 5, 2003.

[25] *Id.* at 11.

[26] *Perlita Avanceña v. Judge Ricardo P. Liwanag*, A.M. No. MTJ-01-1383, July 17, 2003, p. 7.

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Considering the foregoing, the penalty of dismissal from the service is no longer feasible in the instant case. Pursuant to Section 11-A (3) of Rule 141[27] of the Revised Rules of Court, the Court finds that a fine of ₱40,000 is justified under the circumstances.

WHEREFORE, Judge Ricardo P. Liwanag is found *GUILTY* of gross misconduct and is hereby meted a *FINE* of ₱40,000 to be deducted from his leave credits and whatever other benefits he may be entitled to.

This decision shall take effect immediately.

SO ORDERED.

Davide, Jr., C.J., Puno, Vitug, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio Morales, Azcuna, and *Tinga, JJ.,* concur.

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[27] 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 ₱20,000, but not exceeding ₱40,000.