

THE BENCH: HOW TO KEEP FROM FALLING FROM GRACE

A CRITIQUE OF JABON V. JUDGE USMAN

JULIE ANN V. CHANG*

I. INTRODUCTION

Section 1 of Article VIII of the 1987 Constitution provides:

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

From the above-mentioned provision, it is clear that one of the three great branches of our Government is the so-called Judiciary composed of the Supreme Court and such other lower courts as may be established by law. Our legal system is based on the principle that an independent, fair, and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary in our concept of justice is essential since the life, liberty, property, and rights of party litigants lie in their hands. This is precisely the reason why our judges and other judicial officers, as public

* '06 LI.B., cand., University of Santo Tomas Faculty of Civil Law. Liaison Officer, UST Law Review.

officers clothed with judicial authority, ought to respect and honor their judicial office as a public trust and strive to maintain confidence in our legal system. Thus, there is a constant need to make them conscious of their responsibility towards the public.

II. THE NEW CODE OF JUDICIAL CONDUCT AND THE OLD CODE OF JUDICIAL CONDUCT

One of the ways to remind judges and other judicial officers of the importance of their responsibility is through the adoption of rules that will govern their conduct. The New Code of Judicial Conduct for the Philippine Judiciary was effectively implemented on June 1, 2004. It was taken from the Bangalore Draft, a document intended to be the Universal Declaration of Judicial Standards applicable in all judiciaries. Chief Justice Hilario G. Davide together with Associate Justice Reynato S. Puno took active part at the Round Table Meeting of Chief Justices held at the Hague on November 25-26, 2002 at which the Bangalore Draft was deliberated upon and approved.¹

The preamble of the New Code provides that:

The Bangalore Draft is founded upon a universal recognition that a competent, independent and impartial judiciary is essential if the courts are to fulfill their role in upholding constitutionalism and the rule of law; that public confidence in the judicial system and in the moral authority and integrity of the judiciary is of utmost importance in a modern democratic society; and that it is essential that judges, individually and collectively, respect and honor judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.²

The New Code expounds on six canons, namely: *independence, integrity, impartiality, propriety, equality and competence & diligence*:

¹ A.M. No. 03-05-01-SC Adopting the New Code of Judicial Conduct for the Philippine Judiciary.

² *Id.*

CANON 1
INDEPENDENCE

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

SECTION 1. Judges shall exercise the judicial function independently on the basis of their assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influence, inducement, pressure, threat or interference, direct or indirect, from any quarter or for any reason.

SECTION 2. In performing judicial duties, Judges shall be independent from judicial colleagues in respect of decisions which the judge is obliged to make independently.

SECTION 3. Judges shall refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

SECTION 4. Judges shall not allow family, social, or other relationship to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

SECTION 5. Judges shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to be free therefrom to a reasonable observer.

SECTION 6. Judges shall be independent in relation to society in general and in relation to the particular parties to a dispute which he or she has to adjudicate.

SECTION 7. Judges shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

SECTION 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public

confidence in the judiciary which is fundamental to the maintenance of judicial independence.

CANON 2 INTEGRITY

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

SECTION 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in view of a reasonable observer.

SECTION 2. The behavior and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

SECTION 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

CANON 3 IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

SECTION 1. Judges shall perform their judicial duties without favor, bias, or prejudice.

SECTION 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

SECTION 3. Judges shall, so far as is reasonable, so conduct themselves as to minimize the occasions on which it will be necessary for them to be disqualified from hearing or deciding cases.

SECTION 4. Judges shall not knowingly, while a proceeding is before, or could come before, them to make any comment that might reasonably be expected to affect the outcome

of such proceeding or impair the manifest fairness of the process. Nor shall judges make any comment in public or otherwise that might affect the fair trial of any person or issue.

SECTION 5. Judges shall disqualify themselves from participating in any proceeding in which they are unable to decide the matter impartially or in which it may appear to a reasonable observer that they are unable to decide the matter impartially. Such proceedings include, but are not limited to instances where:

- a) The judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;
- b) The judge previously served as a lawyer or was a material witness in the matter in controversy;
- c) The judge or member of his or her family, has economic interest in the outcome of the matter in controversy;
- d) The judge served as executor, administrator, guardian, trustee or lawyer in the case or matter in controversy, or a former associate of the judge served as a counsel during their association, or the judge was a material witness therein;
- e) The judge's ruling in the lower court is the subject of review;
- f) The judge is related by consanguinity or affinity to a party litigant within the 6th civil degree or to counsel within the 4th civil degree; or
- g) The judge knows that his or her spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in the controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings;

SECTION 6. A judge disqualified as stated above may, instead of withdrawing from the proceeding, disclose on the records that basis of disqualification. If, based on such disclosure, the parties and lawyers independently of the judge's participation, all agree in writing that the reason for the inhibition is immaterial or unsubstantial, the judge may then participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceedings.

CANON 4
PROPRIETY

Propriety and appearance of propriety are:

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 judicial office.

SECTION 3. Judges shall, in their personal relations with individual members of the legal profession who practice regularly in their court, avoid situations which might reasonably give rise to suspicion or appearance of favoritism or partiality.

SECTION 4. Judges shall not participate in the determination of a case in which any member of their family represents a litigant or is associated in any manner with the case.

SECTION 5. Judges shall not allow the use of their residence by a member of the legal profession to receive clients of the latter or of other members of the legal profession.

SECTION 6. Judges, like any other citizen, are entitled to freedom of expression, belief, association and assembly, but in exercising such rights, they shall always conduct themselves in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

SECTION 7. Judges shall inform themselves about their personal fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of their family.

SECTION 8. Judges shall not use or lend the prestige of the judicial office to advance their private interests, or those of a member of their family or anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence in the performance of judicial duties.

SECTION 9. Confidential information acquired by judges in their capacity shall not be used or disclosed by any other purpose related to their judicial duties.

SECTION 10. Subject to the proper performance of judicial duties, judges may:

- a) Write, lecture, and participate in activities concerning the law, the legal system, the administration of justice or related matters;
- b) Appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;
- c) Engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

SECTION 11. Judges shall not practice law whilst the holder of judicial office.

SECTION 12. Judges may form or join associations of judges or participate in other organizations representing the interests of judges.

SECTION 13. Judges and members of their families shall neither ask for, nor accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done by him or her in connection with the performance of judicial duties.

SECTION 14. Judges shall not knowingly permit court staff or others subject to their influence, direction or authority, to, ask for, or accept, any gift, bequest, loan or favor in relation to anything done or to be done or omitted to be done in connection with their duties or functions.

SECTION 15. Subject to the law and to any legal requirements of public disclosure, judges may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

CANON 5
EQUALITY

Ensuring equality of treatment to all before the court is essential to the due performance of judicial office.

SECTION 1. Judges shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, color, sex, religion national origin, caste, disability, age, marital status, sexual orientation, social and economic status and like causes.

SECTION 2. Judges shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

SECTION 3. Judges shall carry out judicial duties with appropriate consideration for all person, such as the parties, witnesses, lawyers, court staff, and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

SECTION 4. Judges shall not knowingly permit court staff or other subject to his or her influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

SECTION 5. Judges shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

CANON 6
COMPETENCE AND DILIGENCE

Competence and diligence are prerequisite to the due performance of judicial office.

SECTION 1. The judicial duties of a judge take precedence over all other activities.

SECTION 2. Judges shall devote their professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making

of decisions, but also other tasks relevant to the judicial office or court's operations.

SECTION 3. Judges shall take reasonable steps to maintain and enlarge their knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for this purpose of the training and other facilities which should be made available, under judicial control to judges

SECTION 4. Judges shall keep themselves informed about relevant developments of international law, including international conventions, and other instruments establishing human right norms.

SECTION 5. Judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness.

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 other 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 and control.

SECTION 7. Judges shall not engage in conduct incompatible with the diligent discharge of judicial duties.

The New Code of Judicial Conduct for the Philippine Judiciary superseded the Canons of Judicial Ethics and the Code of Judicial Conduct but only to the extent that the provisions or concepts therein are embodied in the New Code.³ Most of the provisions in the New Code contain broad statements that serve as a guide to Justices and Judges as to how they should conduct themselves in or out of court. The Old Code, however, contains specific provisions that can still apply in a suppletory character in case of deficiency or absence of specific provisions in the New Code,⁴ some of which are as follows:

³ *Id.*

⁴ *Id.*

Rule 1.02. CJC – A judge should administer justice impartially and without delay.

Rule 3.01. CJC – A judge shall be faithful to the law and maintain professional competence.

Rule 3.04. CJC – A judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts, instead of the courts for the litigants.

Rule 3.05. CJC – A judge shall dispose of the court's business promptly and decide cases within the required periods.

Rule 3.07. CJC – A judge should abstain from making public comments on any pending or impending case and should require similar restraint on the part of court personnel.

Rule 3.08. CJC – A judge should diligently discharge administrative responsibilities, maintain professional competence in court management, and facilitate the performance of the administrative functions of other judges and court personnel.

Rule 3.09. CJC – A judge should organize and supervise the court personnel to ensure the prompt and efficient dispatch of business, and require at all times the observance of high standards of public service and fidelity.

Rule 3.10. CJC – A judge should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

Rule 3.11. CJC – A judge should appoint commissioners, receivers, trustees, guardians, administrators and others strictly on the basis of merit and qualifications, avoiding nepotism and favoritism. Unless otherwise allowed by law, the same criteria should be observed in recommending appointment of court personnel. Where the payment of compensation is allowed, it should be reasonable and commensurate with the fair value of services rendered.

Rule 5.01. CJC – A judge may engage in the following activities provided that they do not interfere with the performance of judicial duties or detract from the dignity of the court:

- (a) write, lecture, teach and speak on non-legal subjects;
- (b) engage in the arts, sports, and other special recreational activities;
- (c) participate in civic and charitable activities;
- (d) serve as an officer, director, trustee, or non-legal advisor of a non-profit or non-political, educational, religious, charitable, fraternal, or civic organization.

Rule 5.02. CJC – A judge shall 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 interest as to minimize the number of cases giving grounds for disqualification.

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

Rule 5.07. CJC – A judge shall not engage in the private practice of law. Unless prohibited by the Constitution or law, a judge may engage in the practice of any other profession provided that such practice will not conflict or tend to conflict with judicial functions.

Rule 5.08. CJC – A judge shall make a full financial disclosure as required by law.

Rule 5.09. CJC – A judge shall not accept appointment or designation to any agency performing quasi-judicial or administrative functions.

Rule 5.10. CJC – A judge is entitled to entertain personal views on political questions. But to avoid suspicion of political partisanship, a judge shall not make political speeches, contribute to party funds, publicly endorse candidates for political office or participate in other partisan political activities.⁵

⁵ Code of Judicial Conduct.

III. “MAINTAINING PUBLIC FAITH AND CONFIDENCE IN THE JUDICIARY” BY SENATOR SALONGA

Former Senator Jovito R. Salonga, as the seventh speaker in the Chief Justice Hilario G. Davide, Jr. Distinguished Lecture Series, spoke on “*Maintaining Public Faith and Confidence in the Judiciary*”, last July 28, 2005, 3:00 P.M., at the Thomas Aquinas Research Complex Auditorium, University of Santo Tomas, España, Manila. The event was co-sponsored by the Faculty of Civil Law, Graduate School and Graduate Law Association of the University of Santo Tomas.

Senator Salonga emphasized in his lecture the “[n]eed for judges to observe the canons of judicial ethics in order to restore public trust in the judiciary, especially in this country where most people are fed up with graft and corruption and are inclined to believe the worst about their public officials.” He stressed that “the kind of judges a free society should have are *free, independent, and impartial* judges.” He also discussed the main duty and function of a judge which is decision-making and called attention to the need to resolve disputes within the period prescribed by law. Another highlight of his lecture was the enumeration of the circumstances in which a justice or judge should refrain from participating in a case, e.g. *the problem of inhibition or refusal*. He made a comparative study of the Rules of Judicial Ethics in the United States and the Philippines and accordingly, made mention of the principles that bind not only judges of lower courts but also Justices of the Supreme Court in the US, as follows:

In performing his official function, a judge should be diligent, attentive to the contentions made by the parties, intellectually honest, and courteous in dealing with litigants, attorneys, and fellow judges.

Another basic principle requires that a justice should not participate in a case in which he has been personally involved, or has a financial interest, or with respect to which his impartiality may be questioned.⁶

⁶ See Memorandum of *J. Scalia* in *Richard B. Cheney v. United States District Court for the District of Columbia*, No. 03-475, Decided March 18, 2004.

While in the Philippines, he said “[i]t has been held that a judge should not participate in a case in which he has a direct interest. Direct interest includes – financial interest as a partner, director or stockholder, prior involvement as a lawyer, and close family relationship to the litigants.”

Senator Salonga’s lecture basically centered on the canons found under the Code of Judicial Conduct as well as the New Code of Judicial Conduct. The observance of these rules is of utmost importance since the conduct of judges greatly affects the public’s perception of our justice system.

IV. CRITIQUE OF JABON v. JUDGE USMAN

All these rules found under the Code of Judicial Conduct, New Code of Judicial Conduct for the Philippine Judiciary and the Rules of Court promulgated and adopted by the Supreme Court are not intended or designed as a basis for civil liability or criminal prosecution. Otherwise, party litigants may use these rules as a means to harass judges, delay the proceedings or gain tactical advantage. These rules were formulated and adopted primarily to guide judges and other judicial officers in the proper performance of their duties. A violation of these rules merely gives rise to administrative liability which may result in the judge’s dismissal from the service, forfeiture of benefits, disqualification from reinstatement or appointment to any public office, suspension or payment of a fine.⁷

In this light, it is appropriate to bring everyone’s attention to a recent administrative case decided by the Supreme Court entitled, *Romulo D. Jabon v. Judge Sibannah E. Usman*.⁸ This case involves an administrative complaint filed by complainants Romulo D. Jabon and Plaridel D. Bohol against Judge Sibannah E. Usman, Presiding Judge of the Regional Trial Court, Branch 28, of Catbalogan, Samar, for graft and corruption, incompetence, ignorance of the law, dishonesty, partiality and scandalous

⁷ Rules of Court, Rule 140, § 11.

⁸ A.M. No. RTJ-02-1713, October 25, 2005.

bias in the conduct of his judicial proceeding, fraternization with law practitioners affecting the disposition of cases in his sala, and for absenteeism. After the parties have presented their respective affidavits and counter-affidavits, as well as their respective evidence to support their allegations and defense, the Investigating Judge dismissed most of the claims of the complainants on the ground that the complainants *failed to establish the grounds for removal beyond reasonable doubt*. The findings of the Investigating Judge were adopted by the Supreme Court.

The basis of that pronouncement was the earlier case of *Antonio K. Litonjua v. Court of Appeals Justices Juan Q. Enriquez, Jr. and Bernardo P. Abesamis*⁹, where the Supreme Court dismissed the administrative complaints for serious misconduct filed against respondent Justices. The High Court held in that case that “[d]espite the serious nature of the accusations and the attendant publicity, complainant Litonjua failed to substantiate his allegations as the evidence he presented was based mainly on testimonies.” The Decision more particularly states:

The ground for the removal of a judicial officer **should be established beyond reasonable doubt**. Such is the rule where the charges on which the removal is sought is misconduct in office, willful neglect, corruption or incompetence. The general rules with regard to admissibility of evidence in criminal trials apply.

When weighed against such standards, complainant’s evidence falls short. Despite the serious nature of the accusations and the attendant publicity, he failed to convince that credence should be given to his complaint.

This Court is in full accord with the findings and evaluation of the Investigating Justice. As in the case of factual findings of the trial court, this Court accords great weight and respect to the evaluation of Justice Griño-Aquino, a well-respected retired member of this Court, and her assessment and appreciation of the evidence are quite competent and convincing.

⁹ A.M. No. CAJ-04-41, September 22, 2004

It is good to reiterate that while this Court will never tolerate or condone any act, conduct or omission that would violate the norms of public accountability or diminish the people's faith in the judiciary, neither will it hesitate to reject unfounded suits that only serve to disrupt rather than promote the orderly administration of justice.¹⁰

The above-cited pronouncement is contrary to the long-standing principle that administrative cases against judges of regular and special courts and Justices of the Court of Appeals and the Sandiganbayan are governed by the Substantial Evidence Rule.¹¹ In a number of cases and in the recent case of *Galman-cruz v. Justice Hormachuelos*, dated March 31, 2004, the Supreme Court held that “[i]n administrative proceedings, the complainant has the burden of proving by substantial evidence the allegations in his complaint. In the absence of contrary evidence, what will prevail is the presumption that the respondents have regularly performed their official duties.” Thus, a finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed the acts stated in the complaint or formal charge. As defined, **substantial evidence** is such relevant evidence as a reasonable mind may accept as adequate to support a conclusion.¹² This is different from the quantum of proof required in criminal proceedings which necessitates a finding of guilt of the accused beyond reasonable doubt.

Unfortunately, the complainants in both cases failed to move for a reconsideration of their cases. The Supreme Court should re-examine and clarify this pronouncement so as not to create confusion and to avoid any impression of partiality.

¹⁰ *Id.*, Emphasis Supplied.

¹¹ See The Rules of Court, Rule 140, § 1.

¹² Section 5, Rule 134 of the Rules on Evidence.

V. CONCLUSION

The lesson we learn from all these is that there is a reason behind these rules that are promulgated and adopted by the Supreme Court to govern the conduct, not only of the members of the Bench but also of the members of the Bar. The New Code of Judicial Conduct for the Philippine Judiciary, for instance, was adopted in furtherance of our nation's need to ground our legal system in universal precepts and ethical standards that are shared by other judiciaries. However, to be effective, the Supreme Court should apply these rules and canons consistent with established jurisprudence, other court rules, statutes, and the Constitution.

The Supreme Court, vested with the power to discipline judges of lower courts or to order their dismissal,¹³ must continue to see to it that members of the Bench who cannot live up to the ethical standards required of them are removed from service without fear or favor. In the recent years, among the most serious grounds for administrative cases decided by the Supreme Court against RTC Judges are Gross Misconduct and Gross Ignorance of the Law. Other judges were guilty of Immorality, Knowingly rendering an unjust judgment, Violation of the Anti-Graft and Corrupt Practices Act, Willful failure to pay just debt and Bribery.¹⁴ Former Associate Justice Artemio Panganiban, now the newly appointed Chief Justice of the Supreme Court, was quoted in a newspaper article as saying, "Legally knowledgeable judges who have no regard for ethics are dangerous to society; they may turn out to be worse than the criminals they sentence to jail. They are the scum and the scourge of the judiciary".¹⁵

¹³ CONST. art. VIII, § 11

¹⁴ Atty. Maria Florencia B. Formes-Baculo, *An Analysis of the Most Serious Grounds of Administrative Charges Decided by The Supreme Court against RTC Judges as found in the SCRA from 1994-2003-A Thesis submitted to the Faculty of Graduate School of the University of Santo Tomas*, (March 2005)

¹⁵ Tubeza, *SC Purges 56 Erring Judges from the Judiciary*, Philippine Daily Inquirer, February 07, 2005, p. A4.

But even if we dispense with these rules that guide judges and other officers involved in the administration of justice, the real challenge lies in each and everyone's desire to do what is right and what is just. These rules will remain meaningless if they are not put to heart. The improvement of the judiciary has to start from the institution itself and a corresponding belief from the public that there is a possibility for a better and more efficient judiciary that is aimed at nothing less than public service. Every day should be a quest for our judges and other judicial officers to strive for a reputation that is far better than what they have today. For it is only when the idealistic purpose behind the rules governing the conduct of the judiciary is turned into a reality can the members of the Bench say that indeed justice for all is served.