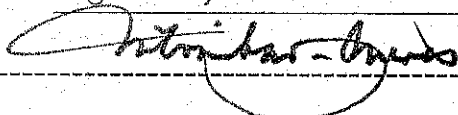


EN BANC

A.M. No. RTJ-23-039 [Formerly JIB FPI No. 21-075-RTJ] – ROLLY C. CASTILLO, Complainant, v. HON. MIGUEL S. ASUNCION, PRESIDING JUDGE, BRANCH 99, REGIONAL TRIAL COURT, ANTIPOLO CITY, RIZAL, Respondent.

Promulgated:

August 20, 2024



X-----X

CONCURRING OPINION

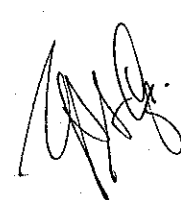
CAGUIOA, J.:

The *ponencia* finds respondent Hon. Miguel S. Asuncion (Judge Asuncion) guilty of Gross Neglect of Duty in the Performance or Non-Performance of Official Functions under Rule 140, Section 14(d) of the Rules of Court, as amended by A.M. No. 21-08-09-SC, and imposes upon him a fine of PHP 201,000.00. On the other hand, the *ponencia* refuses to also find Judge Asuncion guilty of Gross Negligence under Canon VI, Section 33(d) of the Code of Professional Responsibility and Accountability (CPRA) on the ground that the Judicial Integrity Board (JIB) in its Report and Recommendation no longer saw it fit to make a finding thereon.

I fully concur with the disposition in this case. I offer this opinion to only emphasize my view on the propriety of finding a respondent judge guilty as a member of the Bar, as well, in the same administrative case against him or her pertaining to his or her judicial functions.

To recall, the instant case against Judge Asuncion stemmed from a complaint for damages with prayer for the issuance of a writ of preliminary injunction filed by complainant Rolly C. Castillo (Castillo) and the other stall holders at the New Cubao Central Market in Cainta, Rizal against Princeville Construction and Development Corporation and Engineer Alfred Figueras. The said case was raffled to the *sala* of Judge Asuncion.

Due to Judge Asuncion's continued failure to resolve the prayer for the issuance of a writ of preliminary injunction in the civil case for seven (7) years, Castillo filed the present administrative complaint against him for gross inefficiency, as well as for dishonesty in certifying that he has no pending matters to resolve. Judge Asuncion was directed by the JIB to comment on the present complaint and to show cause why he should not also be disciplined under the then Code of Professional Responsibility (CPR).



In his Comment, Judge Asuncion essentially explained that he had to attend to an influx of equally important and pressing matters that demanded his immediate attention. He also manifested that he was adopting said Comment as to why he should not be penalized as a member of the Bar.

Indeed, Section 4, Rule 140 of the Rules of Court, as amended, allows for a disciplinary action against a respondent as a member of the Bar:

SECTION 4. *Administrative Case Considered as Disciplinary Actions Against Members of the Philippine Bar.* — An administrative case against any of those mentioned in Section 1 (1) of this Rule shall also be considered as a disciplinary action against him or her, **provided** that the complaint specifically states that the imputed acts or omissions therein likewise constitute a violation of the Lawyer's Oath, the Code of Professional Responsibility, the Canons of Professional Ethics, or such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers.

If the complaint fails to include such specific statement, or if the disciplinary proceedings are instituted *motu proprio*, the respondent, in the interest of due process, must first be required to show cause in this respect before he or she is likewise disciplined as a member of the Philippine Bar **as may be warranted by the circumstances of the case.** (Emphasis supplied)

I draw attention, however, to the abovementioned *proviso* in the first paragraph and to the phrase in the second paragraph "*as may be warranted by the circumstances of the case.*" To my mind, these cautionary provisions mean that not every offense under Rule 140 *ipso facto* merits a similar disciplinary action against a respondent as a member of the Bar.

Parenthetically, before the amendment of Rule 140 and the inclusion of Section 4 therein, what was in effect was AM. No. 02-9-02-SC.<sup>1</sup> This resolution was entitled "*Re: Automatic Conversion of **Some** Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar.*" It relevantly provides in part that "[s]ome administrative cases against [J]ustices of the Court of Appeals and the Sandiganbayan Judges of regular and special courts; and the court officials who are lawyers are based on grounds which are likewise grounds for the disciplinary action of members of the Bar for violation of the Lawyer's Oath, the Code of Professional Responsibility[,] and the Canons of Professional Ethics, or for such other forms of breaches of conduct that have been traditionally recognized as grounds for the discipline of lawyers." This only goes to show that, historically—and by the very language of the Court—the recognition has always been that not all administrative cases against a judge call for a concomitant disciplinary action against him or her as a member of the Bar.

<sup>1</sup> Resolution dated September 17, 2002. It took effect on October 1, 2002.



Several cases would show the correct application of AM. No. 02-9-02-SC and Section 4 of Rule 140 of the Rules of Court, as amended.

In *Cañada v. Judge Suerte*,<sup>2</sup> respondent judge therein was charged with grave abuse of authority, grave misconduct, grave coercion, dishonesty, harassment, oppression, and violation of Article 215 of the Revised Penal Code and the Canons of Judicial Ethics. The case stemmed from an agent-broker arrangement between respondent judge and therein complainant that went awry. The Court ultimately found respondent judge guilty of dishonesty. At the same time, the Court applied AM. No. 02-9-02-SC, disbaring respondent judge after ruling that he also violated Rule 1.01, Canon 1 of the CPR, which enjoins a lawyer from engaging in unlawful, dishonest or deceitful conduct, and Rule 10.01 of Canon 10, which enjoins a lawyer from doing any falsehood or from misleading the court.

In *Samson v. Judge Caballero*,<sup>3</sup> an administrative complaint for dishonesty and falsification of a public document was filed against respondent judge therein when, during his interviews before the Judicial and Bar Council (JBC), he allegedly concealed the fact that he had pending administrative charges against him and checked the box indicating “No” to the question “Have you ever been formally charged?” in his March 21, 2006 Personal Data Sheet. In dismissing respondent judge from service, the Court was convinced of his capacity to lie and evade the truth, which misled the JBC and tarnished the image of the Judiciary. Furthermore, the Court also considered the administrative case against respondent judge as a disciplinary proceeding against him as a member of the Bar, pursuant to A.M. No. 02-9-02-SC. In disbaring respondent judge, the Court ruled that his dishonest act was against the Lawyer’s Oath to “do no falsehood, nor consent to the doing of any in court,” and likewise constituted a contravention of Section 27, Rule 138 of the Rules of Court, which strictly enjoins a lawyer from committing acts of deceit.

In *Office of the Court Administrator v. Judge Indar*,<sup>4</sup> respondent judge therein was charged with and found guilty of gross misconduct and dishonesty for issuing decisions on numerous cases for annulment of marriage without conducting any judicial proceedings. At the same time, the Court held that the administrative case shall also be considered as a disciplinary proceeding against respondent judge as a member of the Bar, in accordance with A.M. No. 02-9-02-SC. The Court then disbarred respondent judge after ruling that his gross misconduct and dishonesty likewise constituted a breach of Rule 1.01,<sup>5</sup> Canon 1,<sup>6</sup> and Canon 7<sup>7</sup> of the CPR and

<sup>2</sup> 570 Phil. 25 (2008) (Resolution) [*Per Curiam, En Banc*].

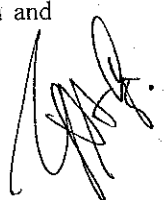
<sup>3</sup> 612 Phil. 737 (2009) (Resolution) [*Per Curiam, En Banc*].

<sup>4</sup> 685 Phil. 272 (2012) [*Per Curiam, En Banc*].

<sup>5</sup> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful act.

<sup>6</sup> Canon 1 – A lawyer shall uphold the Constitution, obey the laws of the land and promote respect for law and for legal processes.

<sup>7</sup> Canon 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.



violated the Lawyer's Oath to "do no falsehood, nor consent to the doing of any in court."<sup>8</sup>

In *Office of the Court Administrator v. Judge Alinea*,<sup>9</sup> respondent judge therein was administratively charged for demanding and receiving the amount of PHP 15,000.00 from plaintiffs therein in a land dispute case pending before his court. The Court found that not only did respondent judge gravely violate his duty to dispense justice solely in accordance with the merits of the case, but also put the trust and confidence of the people in the judiciary and the rule of law into serious peril, thereby rendering him utterly unfit to continue dispensing his duties as a public official and a member of the Bar. Hence, the Court did not only impose upon respondent judge the extreme penalty under Rule 140, but also disbarred him, pursuant to A.M. No. 02-9-02-SC.

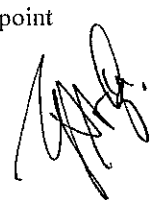
Finally, in *Cobarrubias-Nabaza v. Lavandero*,<sup>10</sup> respondent therein was a Court Attorney from the Legal Office of the Office of the Court Administrator and was a litigant in a *Batas Pambansa Blg. 22* case pending before the *sala* of therein complainant. A ruling favorable to respondent was made and some of the properties of the defendant in the case were placed in *custodia legis* for levy, execution, and auction sale. One of these properties was a sedan. Complainant therein discovered that despite the absence of any public auction, respondent had taken the subject vehicle in and out of court premises on three (3) occasions without her prior knowledge and approval, as evidenced by various CCTV footages. This prompted complainant to write a letter to the Office of the Court Administrator, which in turn, referred the same to the Office of Administrative Services-Supreme Court for formal investigation and was docketed as a regular administrative case against respondent. Subsequently, the Court docketed the matter as a separate administrative case against respondent and thereafter, required him to show cause as to why he should not be sanctioned as a member of the Bar. The Court eventually found respondent guilty of Conduct Prejudicial to the Best Interest of the Service. As a lawyer, respondent was also found guilty of failing to fulfill his solemn oath of upholding and obeying the law and its legal processes, and even misused court processes for his own personal gain. In so doing, he committed an act of falsehood and engaged in unlawful, dishonest, and deceitful conduct—for which he was duly sanctioned.

In the above body of jurisprudence, the fact that the grounds relied upon in the administrative cases are also grounds for violation of the Lawyer's Oath and the CPR or CPRA was, at once, apparent. The charges did not have anything to do with the official functions or duties of the respondents, but more with their moral fitness or character as a judge. In

<sup>8</sup> *Office of the Court Administrator v. Judge Indar*, *supra* note 4 at 292.

<sup>9</sup> 820 Phil. 417 (2017) [*Per Curiam, En Banc*].

<sup>10</sup> A.M. No. 2017-07-SC, March 14, 2022 [Per J. Perlas-Bernabe, Second Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.



other words, the charges were far from being considered judicial in nature or even remotely judicial in nature.

Verily, at this juncture, I submit that in determining whether a respondent charged under Rule 140 should also be disciplined as a lawyer, the Court's treatment of disbarment complaints filed against government lawyers who do not fall under the coverage of Rule 140 may similarly be applied in such instances. The consideration should, therefore, be whether the allegations in the complaint, assuming them to be true, make the respondent unfit to practice the law profession. While this consideration is being made in such cases in order to determine which between the Court or the appropriate government agency shall have jurisdiction over the administrative case, I submit that there is no reason why it should not apply with equal force in cases such as the one at bar. After all, in both cases, the Court is called upon to determine whether the allegations in the complaint would warrant a disbarment case against the respondent which may proceed independently of or alongside an administrative case under either Rule 140 or the Civil Service Rules.

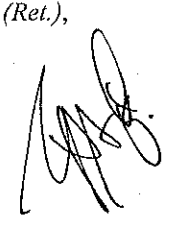
Notably, the Court in *Guevarra-Castil v. Trinidad*<sup>11</sup> (*Guevarra-Castil*) stated that while it takes an apprehensive stance towards certain disbarment complaints against government lawyers, it has nevertheless refused to shirk from its constitutional mandate to discipline, suspend, or even disbar misbehaving members of the legal profession, whenever proper and called for. Indeed, the Court explained, **"if the government official's misconduct is of such character as to affect his [or her] qualification as a lawyer[,] or to show moral delinquency, he [or she] may be disciplined as a member of the [B]ar on such ground."**<sup>12</sup> To my mind, this statement bolsters the conclusion that not every administrative offense, regardless of its nature, consequentially justifies a similar disciplinary action against a respondent as a lawyer.

Thus, in fact, the Court in *Guevarra-Castil* observed further that in disbarment cases against government lawyers which were eventually dismissed by the Court for lack of jurisdiction, the common element was the fact that said government lawyers committed acts and omissions primarily involving their official duties.<sup>13</sup> The Court elaborated that **while they were lawyers, their offenses had more to do with their government position, and less with them being lawyers. In other words, they were charged in their capacity as public servants, and not as members of the Bar.** In applying this assessment, the Court in *Guevarra-Castil*, which involved a respondent lawyer/police officer who had an illicit affair with another married police officer, held that therein respondent's conduct did not relate

<sup>11</sup> A.C. No. 10294, July 12, 2022 [*Per Curiam, En Banc*]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>12</sup> *Id.* citing *Sismaet v. Cruzabra*, A.C. No. 5001, September 7, 2020, citing *Olazo v. Justice Tinga (Ret.)*, 651 Phil. 290 (2010).

<sup>13</sup> *See id.*



to, or was not remotely accomplished by virtue of, her position as a police officer. Simply put, before proceeding with a ruling on the merits, the Court determined that the allegations in the complaint therein had explicitly established that the respondent should be disciplined in her capacity as a lawyer, not as a public employee or official.<sup>14</sup> This should also hold true in some cases where a respondent is being charged under Rule 140 as a court official or personnel and, at the same time, under applicable rules as a member of the Bar; for in the same vein, **when a respondent is charged under Rule 140, their offense may certainly have more to do with their position and responsibilities as an official or employee of the Judiciary, and less with them being lawyers.**

It is in the foregoing light, therefore, that Section 4 of Rule 140 of the Rules of Court, as amended, must be interpreted. I submit that this provision should not automatically hold a respondent liable for violating the CPRA or the Lawyer's Oath. Rather, it is important to look into the **context** of each administrative case in determining whether a respondent charged under Rule 140 should also be charged as a member of the Bar under applicable rules. Otherwise, a mechanical application of Section 4 of Rule 140 may not only unwittingly allow the effective forum shopping the Court wants to curb, but may unfairly force a respondent to defend himself or herself twice in the discharge of his or her official functions, both in the administrative proceedings under Rule 140 and in disbarment proceedings.<sup>15</sup>

As this very case illustrates, Castillo charged Judge Asuncion with gross inefficiency for the issuance of a writ of preliminary injunction in the civil case for seven (7) years, and for dishonesty in certifying that he has no pending matters to resolve. There was no other allegation by Castillo that Judge Asuncion should also be found guilty as a member of the Bar, but the JIB Office of the Executive Director (JIB-OED) also included a directive for him to show cause why he should not be disciplined under the then CPR.

Subsequently, the JIB-OED found Judge Asuncion liable for Gross Neglect of Duty under the New Code of Judicial Conduct in his undue delay in resolving a prayer for the issuance of a writ of preliminary injunction and motions filed in a civil case involving Castillo. Under these same facts, however, the JIB-OED also found Judge Asuncion administratively liable as a member of the Bar under Section 2, Canon III and Section 3 and 4, Canon IV of the CPRA, which partly read:

### CANON III

#### FIDELITY

<sup>14</sup> See *Mendoza v. Nobleza*, A.C. No. 11433 (Formerly CBD Case No. 17-5301), June 5, 2024 [J. Caguioa, Third Division]. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>15</sup> *Id.*



SECTION 2. *The responsible and accountable lawyer.* —

As an officer of the court, a lawyer shall uphold the rule of law and conscientiously assist in the speedy and efficient administration of justice.

CANON IV

COMPETENCE AND DILIGENCE

SECTION 3. *Diligence and punctuality.* —

A lawyer shall be punctual in all appearances, submissions of pleadings and documents before any court, tribunal or other government agency, and all matters professionally referred by the client, including meetings and other commitments.

SECTION 4. *Diligence in all undertakings.* — A lawyer shall observe diligence in all professional undertakings, and shall not cause or occasion delay in any legal matter before any court, tribunal, or other agency.

A lawyer shall appear for trial adequately familiar with the law, the facts of the case, and the evidence to be presented. A lawyer shall also be ready with the object and documentary evidence, as well as the judicial affidavits of the witnesses, when required by the rules or the court.

Evidently, however, the case brought by Castillo against Judge Asuncion arose from the latter's exercise of his functions as a magistrate of the court, and not as a lawyer. Simply put, when Judge Asuncion is being held liable under the CPRA for failing to conscientiously assist in the speedy and efficient administration of justice and to be punctual and diligent, he is, essentially, being held liable for the acts he committed as a judge. The acts he committed as a judge, by all means, similarly accounted for his failure to conscientiously assist in the speedy and efficient administration of justice and to be diligent in his work. It would surely be unfair to punish Judge Asuncion under both Rule 140 as a member of the Judiciary and under the CPRA as a member of the Bar for the lone reason that a violation of the basic tenets of judicial conduct embodied in the New Code of Judicial Conduct for the Philippine Judiciary and the Code of Judicial Conduct also constitutes a breach of the CPRA.<sup>16</sup> As emphasized earlier, whether an administrative case also calls for a disbarment case has to be assessed for context. It doesn't happen as a matter of course. **The context and threshold**

<sup>16</sup> See *Dela Cruz v. Judge Carretas*, 559 Phil. 5 (2007) (Resolution) [Per J. Corona, First Division].



**that must be obtained is that the government official's misconduct is of such character as to affect his or her qualification as a lawyer, or to show moral delinquency.**

Here, the charges against Judge Asuncion clearly do not require a probe into his character or moral fitness as a member of the Judiciary, which may be said to also, inexorably, go into his character or moral fitness as a member of the Bar. To hold him liable under the same facts, therefore, is to essentially punish him twice in connection with his undue delay in resolving a prayer for the issuance of a writ of preliminary injunction in a civil case.

To be sure, the Court is extraordinarily strict with judges because, being the visible representation of the law, they should set a good example to the bench, bar, and students of the law. The standard of integrity imposed on them is—and should be—higher than that of the average person for it is their integrity that gives them the right to judge.<sup>17</sup> The right and duty to be extraordinarily strict, however, should be balanced with fairness as well. This balance is required if the Court is called upon to put a blemish on both records of a respondent in government service and in his or her personal record as a member of the Bar.

**ACCORDINGLY**, I concur that respondent Hon. Miguel S. Asuncion should only be held **GUILTY** of Gross Neglect of Duty in the Performance or Non-Performance of Official Functions under Rule 140, Section 14(d) of the Rules of Court, as further amended by A.M. No. 21-08-09-SC, for which he should pay a fine of PHP 201,000.00.



**ALFREDO BENJAMIN S. CAGUIOA**  
Associate Justice

---

<sup>17</sup> *Samson v. Judge. Caballero*, 612 Phil. 737, 752 (2009) (Resolution) [*Per Curiam, En Banc*].