

A large, dark silhouette of the Statue of Lady Justice, holding a scale in her left hand and a sword in her right. The background is a light purple gradient with diagonal lines.

# **New Code of Judicial Conduct for the Philippine Judiciary (Annotated)**

**February 2007**

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## Foreword

The Supreme Court has consistently stressed the importance of maintaining public confidence in the judicial system and in the moral authority and integrity of the judiciary.

Thus it is that while we already had Canons of Judicial Ethics and a Code of Judicial Conduct, the Supreme Court saw fit to promulgate *The New Code of Judicial Conduct for the Philippine Judiciary* on 27 April 2004 patterned after the Bangalore Draft of the Code of Judicial Conduct.

A Code of Judicial Conduct, no matter how wisely crafted, does not necessarily translate into ethical conduct on the part of magistrates and officers of the law. It is, however, certain that **without** a Code of Conduct a judge will find it difficult to navigate ethically through the mined waters of professional conduct and even in their everyday life as a judge. Prudence is certainly a necessary virtue, but the gray areas are many and questions they raised, difficult.

The Supreme Court has done its job. It has promulgated the New Code of Judicial Conduct for the Philippine Judiciary. What remains to be done is the important thing – to make the Code a living reality in the honorable, decent, respectable and inspiring conduct of our justices, judges and judicial officials. No code can ever achieve the disposition and the decision to conduct oneself ethically, but the direction one must go, the guidepost to use when one chooses to conduct oneself with honor and to hold oneself out to the public as the Republic's credible agent for the administration of justice, is what a Code of Conduct fundamentally is.

The Philippine Judicial Academy, the American Bar Association – Rule of Law Initiative and the U.P. Law Center-Institute of Judicial Administration have jointly written annotations to the New Code of Judicial Conduct for the Philippine Judiciary. Judge Margaret McKeown, United States Court of Appeals for the Ninth Circuit and her staff provided the annotations on U.S. and international case law.

Annotations, in a sense, bring an abstract code closer to life, especially when the annotations are written by men and women who have themselves had to contend with the intricate ethical problems that challenge the judge's moral mettle and have made their way through the treacherous paths of life on the Bench, unsullied and morally whole. It is such men and women whose expertise and experience have gone into writing these annotations.

We, therefore, offer the Annotated Code of Judicial Conduct to the members of the Bench in the Philippines in the hope that the cloud of cynicism that has apparently settled over many of our institutions may be dispelled by lives resplendent with ethical rectitude, moral integrity and professional decency.

Our hope for a judiciary renewed is not in this Code, however. It is in our justices and judges, individually and collectively, guided by their own consciences and motivated by the highest of aspirations to be independent magistrates of competence, integrity and probity.

Ameurfina A. Melencio Herrera  
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Retired Justice  
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## *Acknowledgments*

The ABA-Rule of Law Initiative works to promote the education of judges and lawyers on a variety of topics, with the issue of ethics being one of top priority. In furtherance of this goal, ABA-Rule of Law Initiative collaborated with the Philippines Judicial Academy (PhilJA) and the University of the Philippines Law Center-Institute of Judicial Administration (UP-IJA) to develop this annotation of the New Code of Judicial Conduct for the Philippine Judiciary. ABA-Rule of Law Initiative, UP-IJA and PhilJA hope that this annotation will be widely used by justices and judges throughout the Philippines. We believe it will prove to be an excellent tool for the judiciary as they face ethical dilemmas in their daily work.

ABA-Rule of Law Initiative wishes to acknowledge and thank those who worked to develop this annotation of the Code of Conduct. The writers included Dean Pacifico A. Agabin; Justice Hilarion L. Aquino, Chair, Department of Ethics and Judicial Conduct, PhilJA; Justice Hector L. Hofilena, Vice-Chair, Department of Ethics and Judicial Conduct, PhilJA; Justice Jose L. Sabio, Member, Department of Ethics and Judicial Conduct, PhilJA; Dean Merlin M. Magallona; and Prof. Myrna S. Feliciano. We would also like to extend our gratitude to Judge M. Margaret McKeown, United States Court of Appeals for the Ninth Circuit, her law clerk Allegra McLeod, and extern Katie Payerle who provided significant editing and the addition of U.S. and International case law. We would also like to extend our thanks to the staff of the Philippines Judicial Academy, most especially its Chancellor, Justice Ameurfina A. Melencio-Hererra, as well as the staff of the UP Institute of Judicial Administration. ABA-Rule of Law Initiative also wishes to acknowledge the financial support of the U.S. Agency for International Development (USAID).

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# THE NEW CODE OF JUDICIAL CONDUCT FOR THE PHILIPPINE JUDICIARY

## INTRODUCTION

Judicial accountability has undergone many important changes since Ferdinand Magellan discovered the Philippines in 1521. Soon after Magellan's arrival, Spanish colonists implemented a legal system imported from their homeland. Following a Royal Order issued on June 14, 1569, Miguel Lopez de Legazpi decided civil and criminal cases in his capacity as Governor General of the country.<sup>1</sup> Eventually, other courts were created, along with the *Royal Audiencia*, established on May 5, 1583. At that time, the liability (*responsabilidad*) of Spanish judicial officers for wrongdoing or impropriety was limited to payment of money damages (*resarcimiento*) to private persons when they violated the laws through inexcusable negligence or ignorance in pronouncing a ruling or judgment manifestly contrary to law.<sup>2</sup>

When the Philippines came under American control, the new leadership implemented a system modeled after the judicial system of the United States.<sup>3</sup> Act Number 190 (1901), known as the Code of Civil Procedure, prohibited any judge, magistrate or any presiding officer of any tribunal from sitting in any proceeding in which he had a pecuniary interest or was related to either party within the sixth degree of consanguinity or affinity.<sup>4</sup> A resolution adopted on January 26, 1922 provided that the suspension and removal of judges shall be confidential until the final disposition of the case.<sup>5</sup> The Rules of Court, promulgated in 1940, provided a procedure for bringing charges against judges of the Court of First Instance or Justices of the Court of Appeals.<sup>6</sup>

In 1946, the first Canons of Judicial Ethics for the Philippines, proposed by the Philippine Bar Association, but still based upon the American version came into effect.<sup>7</sup> The 1946 Philippine Canons were approved by the Manila judges of the Court of First Instance and the People's Court. On August 1, 1946, Secretary of Justice Roman Ozaeta issued Administrative Order Number 162, adopting the Canons of Judicial Ethics "for the guidance and observation by all the judges under the administrative supervision of the Department of Justice."<sup>8</sup> These canons created standards for both official and private judicial conduct. There were thirty-one sections addressing topics ranging from relations of the judiciary, the public interest, and avoidance of appearances of impropriety, to independence, essential conduct, industry, and promptness and punctuality. These canons were not particularly

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<sup>1</sup> KATARUNGAN AT BAYAN, THE SUPREME COURT CENTURY YEARBOOK 1 (2002).

<sup>2</sup> *Alcua and Arnalot vs. Johnson*, 21 Phil. 308, 340-342 (1912), citing *Ley de Enjuiciamiento Civil* (Code of Civil Procedure), Book 2, Title VII and the *Ley Organica del Poder Judicial* (Organic Law of the Judiciary), Title V, Chapt. II.

<sup>3</sup> *Id.* at 341.

<sup>4</sup> Sec. 8.

<sup>5</sup> D.G. Nitafan, *Disciplinary Proceedings Against Judicial Officers*, 20-21, J. INTEG. BAR PHIL. 35 (1992-93).

<sup>6</sup> Rules of Court (1940), Rule 129, secs. 1-6. This procedure is still found in the Revised Rules of Court, Rule 140 but excludes the Justices of the Court of Appeals from its coverage by virtue of the Judiciary Act of 1948 [Rep. Act No. 296 (1948)].

<sup>7</sup> In 1922, the American Bar Association (ABA) appointed a Committee headed by former Chief Justice William H. Taft as chairman to draft the Canons of Judicial Ethics. At the ABA's forty-seventh annual meeting in Philadelphia, Pennsylvania, the Canons were adopted on July 9, 1924. They were subsequently amended in 1933, 1937, 1950, and 1990. A substantial revision is currently in draft and expected to be adopted in 2007.

<sup>8</sup> G.A. MALCOLM, LEGAL AND JUDICIAL ETHICS 199 (1949).



effective, however, because they lacked prescribed sanctions for violations, and were adopted only “for the guidance of and observance by judges.”<sup>9</sup>

On December 26, 1988, Chief Justice Marcelo B. Fernan created a committee to draft a proposed Code of Judicial Conduct correcting this deficiency. The proposal was submitted to the Supreme Court on August 25, 1989. The principal sources of the proposed Code were: (1) the Canons of Judicial Ethics (Administrative Order No. 162, issued by the Secretary of Justice on August 1, 1946); (2) the American Bar Association’s Code of Judicial Conduct;<sup>10</sup> (3) the 1987 Constitution, the Rules of Court, as well as the applicable legislation and jurisprudence; and (4) the Supreme Court Administrative orders and circulars.

The Supreme Court unanimously approved the revised Code on September 5, 1989, and it went into effect on October 20, 1989. The Code consisted of a preamble, five Canons and thirty-two Rules. The Canons addressed the general principles of judicial conduct, while the Rules prescribed the specific conduct required of judges. It further required that “all judges shall strictly comply with the Code.” To promote compliance, the Supreme Court imposed penalties in administrative cases against judges and court personnel in accordance with Memorandum Circular Number Thirty, dated July 20, 1980.<sup>11</sup>

On November 25 and 26 of 2002, Chief Justice Hilario G. Davide represented the Philippine Supreme Court at a Roundtable Meeting of Chief Justices held at the Peace Palace in The Hague. At that conference, the Judicial Group on Strengthening Judicial Integrity amended and approved the Bangalore Draft of the Code of Judicial Conduct.<sup>12</sup>

Intended to be the Universal Declaration of Judicial Standards applicable in all judiciaries, the Bangalore Draft is founded upon the following principles:

- (1) 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;
- (2) 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
- (3) 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.<sup>13</sup>

The proposed draft was first submitted to the Philippine Supreme Court for further comments. On April 27, 2004, the draft code was promulgated by Administrative Matter Number 03-05-01-SC, published in the Manila Bulletin and Philippine Star on May 3, 2004, and given effect on June 1, 2004.

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<sup>9</sup> *Id.*

<sup>10</sup> Many of the American cases used to annotate the Philippine Code were also used to annotate and explain the ABA’s Model Code of Judicial Conduct, which is referred to as the American Bar Association Code of Judicial Conduct or the ABA Code. Portions of the ABA’s annotations can be found in the annotations of the Philippines’ Code. There, it is referred to as the American Bar Association Code of Judicial Conduct or the ABA Code.

<sup>11</sup> SUPREME COURT, CIRCULARS, ORDERS, RESOLUTION, 147 (2001).

<sup>12</sup> New Code of Judicial Conduct, Preamble, ¶ 2.

<sup>13</sup> *Id.* at ¶¶ 2-3. *See also* Justice Reynato S. Puno, “The New Philippine Code of Conduct,” paper delivered before the International Conference and Showcase on Judicial Reforms, Nov. 28-30, 2006.

This publication discusses and provides commentary and annotations of law to the new Philippine Code of Judicial Conduct, based upon the Bangalore principles and prior Philippine Codes. The new Code develops nuanced and often overlapping rules that are meant to be respected by judges in both their public and private lives. Its basic and guiding principle is that it is not enough that a judge possess competence in the law, he or she must also have moral integrity,<sup>14</sup> as magistrates are measured not only by their official acts, but also by their private morals, to the extent that these are externalized.<sup>15</sup>

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<sup>14</sup> *Talens-Dabon vs. Arceo* A.M. No. RTJ-96-1336, July 25 1996; *Rodriguez vs. Bonifacio* A.M. No. RTJ-99-1510, November 6 2000

<sup>15</sup> *Junio vs. Rivera* 225 SCRA 688 (1993)



## 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.**

Canon 1 of the previous Code of Judicial Conduct (the “1989 Code”)<sup>1</sup> dealt with upholding both the independence and integrity of the judiciary. The new Canon 1, however, deals solely with the matter of judicial independence as a “pre-requisite to the rule of law” and a “fundamental guarantee of a fair trial.” More precisely, the new Canon 1 differs from the same section of the 1989 Code in three significant ways. First, the new code focuses on the institutional and personal independence of judicial officers, while the 1989 Code was concerned primarily with the institutional independence of the judiciary. Second, Canon 1 of the 1989 Code created a weaker mandate. The 1989 Code contained three guidelines explaining what judges “should” do, while the new code contains eight norms of conduct that judges “shall” follow. The third and primary difference is the treatment of independence as a single Canon. This treatment is similar to that in the Canons of Judicial Ethics.<sup>2</sup>

**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.**

An independent judiciary has been described as “one free of inappropriate outside influences.”<sup>3</sup> Judges frequently experience pressures in the exercise of their judicial functions. Common sources of pressure upon a judge include political patrons, family members, friends and associates, colleagues on the bench, media, civil society, militant groups, criminals and criminal syndicates, and rebel groups. For instance, it is not unusual for political leaders who helped a judge get appointed or promoted to ask for favors regarding a pending case. It is also not uncommon for family members, friends or even close associates to seek assistance in getting provisional remedies, bail grants or even favorable verdicts. Canon 1 requires that judges reject pressure from any source by maintaining independence in the pursuit of their duties.

#### *Influence of Government Officials*

In *Ramirez vs. Corpuz-Macandog*,<sup>4</sup> a judge acted improperly when she rendered rulings based on directives she received from a government official. In her defense, the respondent judge claimed that at that time, the country was then under a revolutionary government, and to promote

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<sup>1</sup> Effective 20 October 1989.

<sup>2</sup> Canon 13 of the Canons of Judicial Ethics reads: “Independence – A judge should not be swayed by public clamor or considerations of personal popularity.”

<sup>3</sup> ABA Annotated Model Code of Judicial Conduct, Canon 1, Commentary; See also Vincent R. Johnson. *The Ethical Foundation of American Independence*, 29 Fordham Urb. L.J. 1007 (2002).

<sup>4</sup> A. M. No. R-351-RTJ, September 26, 1986, 144 SCRA 462. *Note*: The foregoing was consolidated with the following cases, namely: (i) *Liwayway Samson vs. Hon. Antonia Corpuz-Macandog*, A. M. No. 359-RTJ, September 26, 1986; (ii) *Victoria Torres vs. Hon. Antonia Corpuz-Macandog*, A. M. No. R-621-RTJ, September 26, 1986; (iii) *Esperanza Lazaro vs. Hon. Antonia Corpuz-Macandog*, A. M. No. R-684-RTJ, September 26, 1986; (iv) *Jesus Alba vs. Hon. Antonia Corpuz-Macandog*, A. M. No. R-687-RTJ, September 26, 1986; and (v) *Designation of Acting Judge in Branch CXXI, RTC Caloocan City*, A. M. No. 86-4-9987-RTC, September 26, 1986.

peace she made certain rulings acting on the pressure of the government official. The Supreme Court ruled that:

“Even accepting for the nonce that there was this supposed pressure from a source twice removed from the national official mentioned earlier, her confessed act of succumbing to this pressure on the telephone is a patent betrayal of the public trust reposed on respondent as an arbiter of the law and a revelation of her weak moral character. By her appointment to the office, the public has laid on respondent their confidence that she is mentally and morally fit to pass upon the merits of their varied contentions. For this reason, they expect her to be fearless in her pursuit to render justice, to be unafraid to displease any person, interest or power and to be equipped with a moral fiber strong enough to resist the temptations lurking in her office. Regrettably, respondent has dismally failed to exhibit these qualities required of those holding such office.”<sup>5</sup>

#### *Public Opinion*

Canon 1 requires judges to rule fairly regardless of public opinion. In *Libarios vs. Dabalos*,<sup>6</sup> the Supreme Court imposed disciplinary action against a judge who issued a warrant of arrest and fixed the bail of the accused without first conducting a hearing. The judge acted under the pressure of a rally staged by the complainant and sympathizers. The High Court ruled that the pressure of a rally demanding the issuance of a warrant of arrest against the accused is not a sufficient excuse for the unjustified haste in respondent judge's act of fixing a bail without a hearing. In admonishing the respondent judge, the Court stated that,

[i]n every case, a judge should endeavor diligently to ascertain the facts and applicable law unswayed by partisan or personal interests, public opinion or fear of criticism.<sup>7</sup> Respondent judge should not have allowed himself to be swayed into issuing an order fixing bail for the temporary release of the accused charged with murder, without a hearing, which is contrary to established principles of law.<sup>8</sup>

The pressures of public opinion also create difficulties for judges in other countries. For example, in the United States, some state court judges are elected. Elections often tempt judges to tailor their decisions to reflect the opinions of their constituents. Commentators on the American political system note that this set of incentives can be problematic.<sup>9</sup> For example, in 1984, shortly before an election in which the Chief Justice of the Ohio Supreme Court was a candidate, the Ohio court rendered a decision invalidating a gas rate increase. Soon after the decision, the candidates for judicial office (including the incumbent Chief Justice) ran an advertisement explaining the benefit of the decision to taxpayers. Several days before the election, Ohio residents received cash rebates as a result of the decision, accompanied by a letter from the Chief Justice on court stationery.<sup>10</sup> Including a letter signed by an incumbent judicial candidate along with a rebate check that was the result of a judicial decision implicates the judges integrity and impartiality.

In the Philippines, the media is one of the more prevalent forces that exert pressure on the judiciary. By promoting public opinion for or against one party, the media attempts to improperly influence the outcome of judicial decisions. In the performance of their judicial duties, judges must ignore public opinion, specifically disregarding editorials, columns or TV or radio commentaries on cases pending before them.<sup>11</sup>

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<sup>5</sup> *Id.*

<sup>6</sup> A.M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48.

<sup>7</sup> Citing Canon 3, Rule 3.02 of the 1989 Code.

<sup>8</sup> *Libarios vs. Dabalos*, A.M. No. RTJ-89-286, July 11, 1991, 199 SCRA 48.

<sup>9</sup> See e.g. Scott D. Wiener, *Popular Justice: State Judicial Elections and Procedural Due Process*, 31 Harv. C.R.-C.L. L. Rev. 187 (Winter 1996).

<sup>10</sup> *Id.*

<sup>11</sup> *In re Kinsey*, 842 So. 2d 77 (Fla. 2003) (during election campaign, judge violated canon by stating in an

In one sensational murder case,<sup>12</sup> the media depicted the accused as guilty even though proceedings in the case were ongoing. This media influence led to widespread public belief in the suspect's guilt, despite the fact that he had not yet been subjected to a preliminary investigation. The Supreme Court ordered the suspension of the trial and directed the conduct of a preliminary investigation. In separate concurring opinions, two magistrates of the High Court recorded their observations on the manner by which the trial judge dispensed with his judicial functions and the judicial response to pressures wielded by the media. According to the Honorable Justice Isagani L. Cruz,

It appears that the trial court has been moved by a desire to cater to public opinion to the detriment of the impartial administration of justice. The petitioner as portrayed by the media is not exactly a popular person. Nevertheless, the trial court should not have been influenced by this irrelevant consideration, remembering instead that its only guide was the mandate of the law.

Honorable Justice Hugo E. Gutierrez, Jr. concurred:

Mass media has its duty to fearlessly but faithfully inform the public about events and persons. However, when a case has received wide and sensational publicity, the trial court should be doubly careful not only to be fair and impartial but also to give the appearance of complete objectivity in its handling of the case.

The highest degree of independence is required of judges. Once a judge gives in to pressures from whatever source, that judge is deemed to have lost his independence and is considered unworthy of the position. More than just a breach of the rudiments laid down in the Code of Judicial Conduct, judges who succumb to pressure and, as a result, knowingly ignore proven facts or misapply the law in rendering a decision commit corruption. Judges who commit corruption face both administrative and criminal prosecution, and if found guilty, may be punished with imprisonment, suspension or removal from office, and even forfeiture of license.<sup>13</sup> In certain instances, the Supreme Court also orders the forfeiture of benefits of the erring judge.<sup>14</sup>

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**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.**

Just like Section 1 (above), Section 2 is an expanded or more detailed articulation of Rule 1.03 of the 1989 Code,<sup>15</sup> focusing specifically on the influence or pressure wielded by the judges' colleagues or contemporaries. The current version of Section 2 is also more exacting than the weaker suggestion in Rule 1.03.

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

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interview that it was a judge's responsibility to be "absolutely a reflection of what the community wants.")

<sup>12</sup> *Go vs. Court of Appeals*, G.R. No. 101837, February 11, 1992, 206 SCRA 165.

<sup>13</sup> A judge who commits corruption faces administrative and/or criminal liability under Republic Act No. 3019 (1960) [as amended], otherwise known as the "Anti-Graft and Corrupt Practices Act" (RA 3019); and Article 204 of the Revised Penal Code – "Knowingly Rendering an Unjust Judgment."

<sup>14</sup> In *Ramirez vs. Corpuz-Macandog* (*supra*, at note 6), the Supreme Court ordered Judge Antonia Corpuz-Macandog's dismissal from the service with forfeiture of all benefits.

<sup>15</sup> Canon 1, Rule 1.03 of the 1989 Code reads: "A judge should be vigilant against any attempt to subvert the independence of the judiciary and resist any pressure from whatever source."

Section 3 is a verbatim reproduction of Rule 2.04 of Canon 2 of the 1989 Code.<sup>16</sup> Originally, the provision above was part of the rules governing Propriety. The inclusion of the present Section 3 in the Canon on Independence affirms that a judge's restraint from exerting influence over other judicial or quasi-judicial bodies is required for more than just propriety. It is also required for compliance with the duty to respect not just the individual independence of fellow judges but also the independence of the judiciary as a whole.

Judges working in the same building or justices of collegiate courts develop what is often referred to as *compañerismo*, a kind of camaraderie bound by respect and personal friendship resulting from sharing a common profession. This camaraderie often leads judges to seek accommodations from fellow judges ranging from the allowance of provisional remedies to the issuance of favorable decisions. The judge requesting the accommodation may be prompted either by personal or familial interests, or by a desire to benefit a friend. Many such accommodations are exchanged for little more consideration than a free dinner or similar token.<sup>17</sup> While seemingly innocuous, this kind of unethical conduct frequently gives rise to a quid-pro-quo situation, whereby the judge who requested the accommodation is later asked to return the favor. This is especially true in the Philippines where "*utang-na-loob*"<sup>18</sup> is a sacrosanct cultural value. Once a judge engages in this kind of favoritism, the circle of mutual accommodation will continue to widen, involving increasingly larger segments of the judiciary.

Unfortunately, some judges believe such conduct is permissible on the basis of *compañerismo*. It must be emphasized, therefore, that this behavior is unethical and anathema to the independent dispensation of judicial functions. Hence, Sections 2 and 3 are intended to address unethical practices among judges, the most commonplace and pervasive of which is the situation described above.

Any attempt, whether successful or not, to influence the decision-making process of another judge, especially one who is of lower rank and over which he exercises supervisory authority, is serious misconduct. In *Sabitsana Jr. vs. Villamor*,<sup>19</sup> the respondent judge of the Regional Trial Court (RTC) wrote a letter to a lower court judge of the Municipal Trial Court (MTC) judge seeking to influence him to hear a case and even intimating that he issue an order of acquittal. The High Court ruled that a judge who tries to influence the outcome of a litigation pending before another court not only subverts the independence of the judiciary but also undermines the people's faith in its integrity and impartiality. The interference in the decision-making process of another judge is a breach of conduct so serious as to justify dismissal from service based only on a preponderance of evidence.<sup>20</sup>

Sections 2 and 3 intend to curb practices or prevent situations whereby a judge influences the decision in a case not pending before him, or whereby a judge hearing a case allows himself to be influenced by another judge. However, if the consultation is purely on an academic or hypothetical basis, and the judge does not surrender his or her independent decision making, there can be no breach of Sections 2 and 3 of the Code.<sup>21</sup>

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<sup>16</sup> Canon 2 is captioned as follows: "A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES."

<sup>17</sup> *In re Kelly*, 757 A.2d 456 (Pa. Ct. Jud. Disc. 2000) (judge reprimanded for holding ex parte communications with a fellow district court judge in an attempt to influence the outcome of a traffic court proceeding for the benefit of a close associate. The court said that a ticket "'fix' may not be cloaked as a 'favor' or a 'break,' for even the least perversion of the process of lawful disposition of traffic offenses befouls the justice system.")

<sup>18</sup> The term is literally translated as "debt of gratitude."

<sup>19</sup> A.M. No. 90-474, October 4, 1991, 202 SCRA 445.

<sup>20</sup> Citing *The Court Administrator vs. Hermoso, et al.*, A.M. No. R-97-RTJ, May 28, 1987, 150 SCRA 269.

<sup>21</sup> Rule 2.9(A)(3), ABA Draft Model Code of Judicial Conduct (2006) ("A judge may consult with court staff and court officials ... or with other judges, provided the judge ...does not abrogate the responsibility personally to decide the matter.").

**SECTION 4. Judges shall not allow family, social or other relationships 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.**

Culturally, Filipinos hold the interests of family to be of paramount importance. Parents are protective and supportive of their children and grandchildren. Children are expected to be respectful and obedient to their parents. Under the New Code of Judicial Conduct, the term “*family*” is extended beyond that of nuclear members to include those related by blood or marriage up to the sixth civil degree, as well as those who belong to the judge’s employ and are living in his household.<sup>22</sup> These familial ties may not influence a judge in his or her discharge of judicial duties.<sup>23</sup>

Friendships are also held in high regard and most often are raised to the level of familial relationships. To a degree lesser only to that of the family, Filipinos develop close relationships with their associates in business, fraternity brothers or sorority sisters, or fellow members of any civil, religious or even political organization. Filipinos highly value smooth interpersonal relations, commonly called *pakikisama*. For example, when one makes a request to a friend or close associate, the latter usually grants it even though he would have refused that same request if made by one who is neither a friend nor associate. Despite all this, the maintenance of friendships and the pursuit of *pakikisama* does not justify using judicial power to grant favors.

However, an individual certainly does not divest himself of these relationships just because he has joined the judiciary. While judges may continue to value these relationships, they must be aware that relatives, friends and associates may try to influence them in the performance of their judicial duties. Judges must always guard against the probability that these people can be potential influence peddlers, trying to sell to others whatever perceived influence or closeness to a judge they may claim to have.

United States courts have explained several ways in which perceived influence can present a problem. For example, an American judge accepted a \$300 gift from a labor union without reporting it. His acceptance of the gift gave the union officials the impression that they were in a special position to influence the judge. Because the court reviewing this conduct focused on the impression held by the union, it was not relevant to the court’s reasoning that the judge gave the money away.<sup>24</sup>

Section 4 of the present Code is an exact replication of Rule 2.03 of the 1989 Code. The provisions therein are closely similar to Canon 12<sup>25</sup> of the Canons of Judicial Ethics,<sup>26</sup> which reads:

A judge should not, unless it is unavoidable, sit in litigation where a near relative is a party or of counsel; and he should not suffer his conduct to create the impression that any person can unduly influence him or enjoy his favor, or that he is affected by the rank, position, or influence of any party.

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<sup>22</sup> The definition of “Judge’s family” in the New Code of Judicial Conduct “includes a judge’s spouse, son, daughter, son-in-law, daughter-in-law, and any other relative by consanguinity or affinity within the sixth civil degree, or person who is a companion or employee of the judge and who lives in the judge’s household.”

<sup>23</sup> For example, judges have crossed the ethical line in permitting undue influence by family members. *In re Inquiry Concerning a Judge*, 832 So. 2d 716 (Fla. 2002) (judge violated canon by requesting scheduling favor for family member from a fellow judge).

<sup>24</sup> *White v. Judicial Inquiry and Review Bd. of Pennsylvania*, 744 F.Supp. 658 (E.D. Pa. 1990). In another case, *In re Cornelius*, 436 S.E.2d 836 (N.C. 1993), a judge intervened in an employment dispute brought by the judge’s friend. Although the judge’s interference brought the judge no personal gain, it violated the Code of Judicial Ethics because it “convey[ed] or permit[ed] others to convey the impression that [the friend] had special influence with him.” *Id.* at 207.

<sup>25</sup> Canon 12 of the Canons of Judicial Ethics is entitled “Kinship or influence of parties and counsel.”

<sup>26</sup> Adm. Order No. 162 dated August 1, 1946 of the Department [Ministry] of Justice.



Similar to Section 3 (above), the Supreme Court deemed it more appropriate to classify the above prescribed conduct under the Canon on Independence instead of Propriety.

It should be noted that when a judge is related to one of the parties within the sixth degree of consanguinity or affinity, his disqualification is mandatory.<sup>27</sup> This provision is intended to ensure that judges are spared from potential influence of family members by disqualifying them even before any opportunity for impropriety presents itself.

This Section gives instruction to judges not to allow their family members, friends and associates to influence them in their judicial conduct or judgment. Also importantly, a judge should ensure that his family members, friends and associates refrain from creating the impression that they are in a position to influence the judge. Judges should, therefore, at all times remind themselves that they are not in the judiciary to give out favors but to dispense justice. They should also make it clear to the members of their family, friends and associates that they will neither be influenced by anyone, nor would they allow anyone to interfere in their judicial work. Otherwise, the judge risks undermining public confidence not just in him or herself, but in the entire judicial institution.

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**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.**

This is a new section adopted in the Code of Judicial Conduct. While this section seems to share similarities with some provisions of the Canon on Propriety, it deals specifically with the avoidance of inappropriate connections – as well as any situation that would give rise to the impression of the existence of such inappropriate connections – with the executive and legislative branches of the government.<sup>28</sup>

Judges are expected to exercise judicial power. Such 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.”<sup>29</sup>

The rule set forth in Section 5 has both legal and practical value. Legally, it affirms the independence of the judiciary from the two other branches of government, as required by the Constitution. Thus, as co-equal bodies, neither the executive nor the legislative branch can dictate or exert influence upon the judiciary. Practically, considering that the appointments, promotions and movements of judges are subject to executive approval, and that the organization, budget and resources of the judiciary are matters that require legislative grace, the provisions of Section 5 require judges to uphold their solemn duty to render justice freely without any obligation to reciprocate whatever beneficence that might have been bestowed on them by the other two branches.

In *Alfonso vs. Alonzo-Legasto*,<sup>30</sup> a judge did not act independently of the Local Government Unit (LGU) when she downsized her staff at the MTC and asked the city to re-employ the laid-off workers without diminution of compensation or disadvantage with regard to location of work assignment. The Supreme Court ruled that the respondent judge had acted improperly in not informing the Court (through the Office of the Court Administrator) of the need to streamline her court and of its personnel needs, instead asking the LGU to employ those who were displaced due to her downsizing.

<sup>27</sup> *Hurtado vs. Judalena*, G.R. No. L-40603, July 13, 1978, 84 SCRA 41; *Rivera vs. Barro*, A.M. No. 2003-CTJ, February 28, 1980, 96 SCRA 338.

<sup>28</sup> For commentary on the importance of judicial independence from other branches of government, see Pilar Domingo, “Judicial Independence: The Politics of the Supreme Court in Mexico,” *Journal of Latin American Studies*, Vol. 32 No. 3 pp. 705-735, (Oct., 2000).

<sup>29</sup> CONSTITUTION, Art. VIII, Sec. 1, 2<sup>nd</sup> ¶.

<sup>30</sup> A.M. MT J-94-995, September 5, 2002, 388 SCRA 351.

The High Court cited *Bagatsing vs. Herrera*<sup>31</sup> explaining that judicial independence is the reason for leaving exclusively to the Court the authority to deal with internal personnel issues, even if the court employees in question are funded by the local government. Because a reasonable person could conclude that the LGU maintained some influence over the MTC judge, under the New Code of Judicial Conduct, respondent judge's actions created an improper connection with an executive/administrative body – the LGU.

The reality in the Philippine political system is that judges can easily get an appointment or promotion with some assistance or support from political leaders, religious groups, military stalwarts, big companies and the affluent. The most pervasive influence comes from leaders in the legislature and those closely allied with the executive department. For instance, most members of the bench have received appointments through the grace of past and present political leaders of this country. It is natural to suppose that considerations of fealty and *utang-na-loob* would compel the judge to consider such factors when rendering his or her decision. However, acting upon such considerations violate this code.

Mere congeniality between a judge and a governor may not necessarily be unethical, but it may still create the appearance of impropriety. The case of *Suspension of Clerk of Court Jacobo*<sup>32</sup> illustrates this point. The judge in that case was on congenial terms with the governor from whom he borrowed vehicles on several occasions to travel to his judicial station. The Supreme Court held that this congeniality was not necessarily detrimental to judicial independence, provided that there was no showing that such relations were for corrupt ends. However, had this case been tried under the New Code of Judicial Conduct, the judge's acts would likely have created an "appearance" of an improper connection. To the common person, the accommodation may seem a reason for the judge to ingratiate himself towards his benefactors, which may ultimately be perceived as affecting the judge's ability to rule independently. Therefore, whether or not the congenial relationship was indeed used for corrupt ends, it would be advisable for judges to avoid becoming dependent on other parties, especially for basic needs like transportation to the judge's workstation.<sup>33</sup>

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**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.**

While Section 6 is a new provision, it is inspired by the provision on "Social relations" in the Canons of Judicial Ethics, which reads:

It is not necessary to the proper performance of judicial duty that judges should live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interests in or appearance at meetings of members of the bar. A judge should, however, in pending or prospective litigation before him be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course.<sup>34</sup>

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<sup>31</sup> L-34952, July 25, 1975, 65 SCRA 434.

<sup>32</sup> A.M. No. 93-10-1296-RTC, August 12, 1998, 294 SCRA 119.

<sup>33</sup> The appearance of impropriety standard, though elastic, is considered an objective standard. *Inquiry Concerning a Judge No. 5-3675*, B22 P.2d 1333 (Alaska 1991) (test is whether a judge fails to use reasonable care to prevent objectively reasonable persons from believing an impropriety was afoot).

<sup>34</sup> Canons of Judicial Ethics, Canon 30.

It is desirable that the judge should, as far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, and prevent an impartial attitude of mind in the administration of judicial duties.<sup>35</sup>

Judges are not required to live a hermit's life. They should socialize and be sensitive to social concerns and developments. Judges may join civil, religious or professional organizations but their membership in these organizations should not interfere with their judicial tasks. There is nothing more regrettable and probably unbearable for a judge than to suffer an ignominious dismissal from the service due to slothfulness and inefficiency and failure to render services that could have been fully rendered were it not for the extra-judicial activities, which distracted the judge's time and efforts from his or her official duties.<sup>36</sup>

More importantly, judges should not fraternize with litigants and their counsel. In fact, they should make a conscious effort to avoid them in order to avoid the perception that their independence has been compromised. Under the 1989 Code, a judge must refrain from financial and business dealings that tend to "increase involvement with lawyers or persons likely to come before the court."<sup>37</sup> In *Tan vs. Rosete*,<sup>38</sup> respondent judge was suspended by the High Court for gross misconduct. The Court ruled that "[r]espondent's act of sending a member of his staff to talk with complainant and show copies of his draft decisions, and his act of meeting with litigants outside the office premises beyond office hours violate the standard of judicial conduct required to be observed by members of the Bench." The Supreme Court ruled that respondent judge's actions constitute gross misconduct, which is punishable under Rule 140 of the Revised Rules of Court.<sup>39</sup>

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**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.**

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**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.**

Sections 7 and 8 instruct judges on what to do to maintain and enhance judicial independence. Section 7 requires judges to encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance judicial independence. While Section 8 is, in many ways, similar to Rule 2.01 of the 1989 Code, the focus of Section 8 is on inspiring public confidence.<sup>40</sup> Public confidence in the judiciary can of course be attained only if judges are perceived by the public to be fair, honest, competent, principled, dignified and honorable. Accordingly, the first duty of judges is to conduct themselves at all times in a manner that is beyond reproach. In whatever atmosphere or environs they may happen to be, judges must remain conscious of their character and reputation as judges and should avoid anything which will indignify their public positions and demean the institution to which they belong.<sup>41</sup>

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<sup>35</sup> Canons of Judicial Ethics, Canon 25 (*Personal investments and relations*), specifically, first paragraph, 2<sup>nd</sup> sentence.

<sup>36</sup> E. Pineda, *Legal and Judicial Ethics*, 1994 ed., p. 392.

<sup>37</sup> Canon 5, Rule 5.02

<sup>38</sup> A.M. No. MTJ-04-1563, September 8, 2004 (formerly A.M. OCA IPI No. 02-1207-MTJ), 437 SCRA 581.

<sup>39</sup> The Rule is captioned "CHARGES AGAINST JUDGES."

<sup>40</sup> Canon 2, Rule 2.01 of the 1989 Code reads: "A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary."

<sup>41</sup> *Id.*

Judges are the visible representation of the law and more importantly of justice.<sup>42</sup> There can be no surer guarantee of judicial independence than the character of those appointed to the Bench.<sup>43</sup> Thus, the above Sections are intended to serve as catch-all provisions for all other acts that would guarantee the independence of the judiciary, but which may not have been covered in the specific instances mentioned in the earlier provisions.

In the case of *Borromeo vs. Mariano*, the High Court described good judges to be those who have:

“mastery of the principles of law, who discharge their duties in accordance with law, who are permitted to perform the duties of the office undeterred by outside influence, and who are independent and self-respecting human units in a judicial system equal and coordinate with the other two departments of the government.”<sup>44</sup>

Judges should embrace their independence and guard it against threats of erosion. As held in *Dimatulac, et al. vs. Villon, et al.*:

[A judge] should always be imbued with a high sense of duty and responsibility in the discharge of his obligation to promptly and properly administer justice. He must view himself as a priest, for the administration of justice is akin to a religious crusade.<sup>45</sup>

Such is the degree of personal and professional character expected of judges. One who is of lesser mettle does not merit a place in the judicial system.

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<sup>42</sup> *Arban vs. Borja*, A.M. No. R-281-RTJ, August 26, 1986, 143 SCRA 634.

<sup>43</sup> *Id.* at note 27, p. 328, *In re Seitz*, 495 N.W.2d 599 (Mich. 1993) (removal of a judge for hostile attitude toward employees, abuse of contempt power and other acts that “demonstrated an attitude, a mind set, that leaves us firmly convinced that he is woefully unfit for judicial office.”)

<sup>44</sup> No. 16808, January 3, 1921, 41 Phil. 322.

<sup>45</sup> G.R. No. 127107, October 12, 1998, 297 SCRA 679.

## CANON 2

### INTEGRITY

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

The Code of Judicial Conduct not only provides that a judge should act with integrity, but also that he or she should so behave at all times so as to promote public confidence in the integrity of the judiciary. As held in *Rural Bank of Barotac Nuevo, Inc. vs. Cartagena*,<sup>46</sup> “[j]udges must be models of uprightness, fairness and honesty.”

While the 1989 Code grouped the values of integrity and independence together,<sup>47</sup> the New Code of Judicial Conduct has separated them, emphasizing the need for judges to maintain a life of personal and professional integrity in order to properly carry out their judicial functions. Thus, the present Canon 2 contains three separate provisions all intended to ensure the maintenance of judicial integrity.

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

Sections 1 and 2 of the New Code of Judicial Conduct for the Philippine Judiciary underscore the importance of public perception in the maintenance of judicial integrity. Section 1 emphasizes that a judge's conduct must not only be above reproach, but must be perceived to be so.<sup>48</sup>

The Supreme Court explains,

[W]e have repeatedly admonished our judges to adhere to the highest tenets of judicial conduct. They must be the embodiment of competence, integrity and independence. The exacting standards of conduct demanded from judges are designed to promote public confidence in the integrity and impartiality of the judiciary because the people's confidence in the judicial system is founded not only on the magnitude of legal knowledge and the diligence of the members of the bench, but also on the highest standard of integrity and moral uprightness they are expected to possess. When a judge becomes the transgressor of any law which he is sworn to apply, he places his office in disrepute, encourages disrespect for the law and impairs public confidence in the integrity and impartiality of the judiciary itself. It is therefore paramount that a judge's personal behavior both in the performance of his duties and daily life, be free from any appearance of impropriety as to be beyond reproach.<sup>49</sup>

United States courts have also emphasized the damage judges inflict on public confidence when they break the law. One court imposed the “strongest disciplinary sanction” of disbarment on a

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<sup>46</sup> G.R. No. A.M. No. 707-MJ, July 21, 1978, 84 SCRA 128.

<sup>47</sup> Canon 1 of the 1989 Code is captioned: “A judge should uphold the integrity and independence of the judiciary.”

<sup>48</sup> *In re Case of Snow*, 674 A.2d 573 (N.H. 1996) (“judges are the most visible symbol of the rule of law in our society; without judges who are perceived and trusted by members of the public as impartial, the authority of the rule of law is compromised.”)

<sup>49</sup> *Tan vs. Rosete*, A.M. No. MTJ-04-1563, September 8, 2004 (formerly A.M. OCA IPI No. 02-1207-MTJ), 437 SCRA 581.

lawyer serving as a city court judge upon finding the judge submitted false reimbursement claims for attending conferences and seminars. The court held that the judge “violated the public’s trust.”<sup>50</sup> It noted, “[w]here those whose job it is to enforce the law break it instead, the public rightfully questions whether the system itself is worthy of respect.”<sup>51</sup>

Thus, “in the judiciary, moral integrity is more than a cardinal virtue; it is a necessity.”<sup>52</sup> Judges have been disciplined for lack or loss of good moral character, both in the performance of their duties and in their private lives. With regard to professional integrity, judges have been penalized for demanding and/or accepting bribes,<sup>53</sup> fraternizing with litigants and/or lawyers,<sup>54</sup> altering orders,<sup>55</sup> delay in rendering decisions,<sup>56</sup> sexual harassment of employees,<sup>57</sup> and ignorance of the law.<sup>58</sup> With respect to personal integrity, judges have been penalized for transgressions in their private lives such as keeping and/or flaunting a mistress,<sup>59</sup> inebriated behavior,<sup>60</sup> and frequenting casinos and cock fights.<sup>61</sup>

More importantly, judges have been disciplined for conduct that reflects negatively on or taints the integrity of the judiciary as a whole. Thus, incompetence, as well as lack of impartiality and independence, are detrimental to the integrity of the judiciary.<sup>62</sup> Judges who failed to observe the Rules of Court in such matters as issuance of warrants of arrest, temporary restraining orders, injunctions, hold departure orders, and citations for contempt, conducting hearings in their residence and using intemperate language, were found to have damaged the integrity of the judiciary. A judge has been admonished even for not wearing the judicial robe in the performance of judicial functions. In reprimanding him, the Supreme Court said: “A judge must take care not only to remain true to the high ideals of competence and integrity his robe represents, but also that he wears one in the first place.”<sup>63</sup>

Ignorance of the law is a mark of incompetence, and where the law involved is elementary, ignorance thereof is considered as an indication of lack of integrity.<sup>64</sup> In one case, the High Court held, “When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds, or he is too vicious that the oversight or omission was deliberately done in

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<sup>50</sup> *In re Hughes*, 640 N.E.2d 1065,1067 (Ind. 1994).

<sup>51</sup> *Id.*, citing *In re Oliver*, 493 N.E.2d 1237 (Ind. 1986).

<sup>52</sup> *Fernandez vs. Hamoy*, A.M. No. RTJ-04-1821, August 12, 2004, 436 SCRA 186; *Dy Teban Hardware & Auto Supply Co. vs. Tapucar*, A.M. No. 1720, January 31, 1981, 102 SCRA 494.

<sup>53</sup> *Tan vs. Rosete*, A.M. No. MTJ-04-1563, September 8, 2004 (formerly A.M. OCA IPI No. 02-1207-MTJ), 437 SCRA 581; *Mamba vs. Garcia*, A.M. No. MTJ-96-10, June 25, 2001, 349 SCRA 426; *Marquez vs. Jardin*, A.M. RTJ-99-1448, April 8, 2000, 339 SCRA 79.

<sup>54</sup> *Dela Cruz vs. Bersamin*, A.M. No. RTJ-00-567, July 25, 2000, 130 SCRA 353.

<sup>55</sup> *Rallos vs. Gako*, A.M. No. RTJ-98-1484, March 18, 2000, 328 SCRA 324.

<sup>56</sup> *Fernandez vs. Hamoy*, A.M. No. RTJ-04-1821, August 12, 2004, 436 SCRA 186; *Salud vs. Alumbres*, A.M. No. RTJ-00-1594, June 20, 2003, 494 SCRA 411.

<sup>57</sup> *Dawa vs. De Asa*, A.M. No. MTJ-98-1144, July 22, 1998, 292 SCRA 703.

<sup>58</sup> *Macalintal v. Teh*, A.M. No. RTJ-93- 1375, October 16, 1997, 280 SCRA 623.

<sup>59</sup> *In Re Judge Marcos*, A.M. No. 97-253-RTC, July 6, 2001, 380 SCRA 539.

<sup>60</sup> *Lachica vs. Flordeliza*, A.M. No. MTJ-9-921, March 4, 1996, 254 SCRA 278.

<sup>61</sup> *City of Tagbilaran vs. Hontanosas*, A.M. No. MTJ- 98-1169, November 29, 2002, 375 SCRA 1.

<sup>62</sup> *Mississippi Comm’n on Judicial Performance v. Boykin*, 763 So. 2d 872 (Miss. 2000) (“Negligence, ignorance, and incompetence are sufficient for a judge to behave in a manner prejudicial to the administration of justice which brings the judicial office into disrepute.”)

<sup>63</sup> *Chan vs. Majaducon*, A.M. No. RTJ-02-1697, October 15, 2003, 413 SCRA 354.

<sup>64</sup> In the United States, one of the most serious violations of the analogous provision is depriving parties of their constitutional rights. For example, judges have been disciplined for holding a hearing in a case without giving notice to the party (*In re McAllister*, 646 So. 2d 173 (Fla. 1994)); denying a party the right to counsel (*In re Esworthy*, 568 N.E.2d 1195 (N.Y. 1991)); and accepting a guilty plea without ensuring the defendant knew the nature of charges and penalties. (*In re Hammermaster*, 985 P.2d 924 (Wash. 1999)).

bad faith and in grave abuse of judicial authority. In both instances, the judge's dismissal is in order."<sup>65</sup>

It appears that integrity is the underlying requirement for all other virtues required of a judge. The Supreme Court has held that "[W]e presume all judges to be honest and men of integrity unless proven otherwise."<sup>66</sup>

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**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.**

To the basic requirement of Section 1, Section 2 adds the sentence, "[j]ustice must not merely be done but must also be seen to be done." This phrase emphasizes the importance of the public perception of the judiciary, not because the judicial department intends to be influenced thereby, but because it is essential that public confidence is always reposed in the judicial systems and processes. It is therefore the duty of the judge to promote public confidence in the judiciary's integrity.<sup>67</sup>

The Supreme Court has often reminded judges of this principle. The High Court has held:

[a] judge's official conduct and his behavior in the performance of judicial duties should be free from the appearance of impropriety and must be beyond reproach. 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 Caesar's wife, a judge must not only be pure but also beyond suspicion. A judge has the duty to not only render a just and impartial decision, but also render it in such a manner as to be free from any suspicion as to its fairness and impartiality, and also as to the judge's integrity. \* \* \* It is obvious, therefore, that while judges should possess proficiency in law in order that they can competently construe and enforce the law, it is more important that they should act and behave in such a manner that the parties before them should have confidence in their impartiality.<sup>68</sup>

Judges must not only render just, correct and impartial decisions, but must do so in a manner free of any suspicion as to their fairness, impartiality and integrity.<sup>69</sup>

The people's confidence in the judicial system is founded not only on the competence and diligence of the members of the bench, but also on their integrity and moral uprightness.<sup>70</sup> A judge must not only be honest but also appear to be so; not only be a good judge, but also a good person.<sup>71</sup>

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<sup>65</sup> *Macalintal vs. Teh*, A.M. No. RTJ-97-1375, October 16, 1997, 280 SCRA 623.

<sup>66</sup> *People of the Philippines vs. Bocar*, G.R. No. L-9050, July 30, 1955, 97 Phil. 398.

<sup>67</sup> Ronald D. Rotunda, *Legal Ethics: The Lawyer's Deskbook of Professional Responsibility*, 924 (2002). See e.g., *In re Bonin*, 378 N.E. 2d 669 (Mass. 1978) (judge's receipt of a leased car as a gift from former client created the appearance of impropriety even though judge reported rental payments as gift and former client had no case pending in judge's court where judge subsequently appointed a key official in client's corporation to position in judge's office at higher than usual salary).

<sup>68</sup> *Sibayan-Joaquin vs. Javellana*, A.M. No. RTJ- 00-1001, November 13, 2001, 368 SCRA 503.

<sup>69</sup> *Rallos vs. Gako*, A.M. No. RTJ-98-1484, March 17, 2000, 328 SCRA 324.

<sup>70</sup> David B. Rottman and Alan J. Tomkins, *Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges*, 36 Court Review 24 (Fall 1999).

<sup>71</sup> *Dawa vs. De Asa*, A.M. No. MTJ-98-1144, July 22, 1998, 292 SCRA 703.

**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.**

Section 3 is an exact reproduction of Rule 3.10 of the 1989 Code. This Section once again addresses the importance of the competence of the judge as an administrator and vanguard of justice. Rule 3.08 of the 1989 Code provided for a related code of conduct, to wit: "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." As in the case of the judge's own conduct, the competence of court personnel must also affirm the integrity of the judiciary.

Judges should not be lenient in the administrative supervision of employees. As an administrator, the judge must ensure that all court personnel perform efficiently and promptly in the administration of justice.<sup>72</sup>

In *Buenaventura vs. Benedicto*,<sup>73</sup> the Supreme Court explained:

Oftentimes...leniency provides the court employees the opportunity to commit minor transgressions of the laws and slight breaches of official duty ultimately leading to vicious delinquencies. The respondent judge should constantly keep a watchful eye on the conduct of his employees. He should realize that big fires start small. His constant scrutiny of the behavior of his employees would deter any abuse on the part of the latter in the exercise of their duties. Then, his subordinates would check that any misdemeanor will not remain unchecked. The slightest semblance of impropriety on the part of the employees of the court in the performance of their official duties stirs ripples of public suspicion and public distrust of the judicial administrators. The slightest breach of duty by and the slightest irregularity in the conduct of court officers and employees detract from the dignity of the courts and erode the faith of the people in the judiciary.

The judiciary would certainly inspire public confidence if all courts headed by the judges and justices were conducted with integrity.<sup>74</sup>

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<sup>72</sup> *Ramirez vs. Corpuz-Macandog*, A. M. No. R-351-RTJ, September 26, 1986, 144 SCRA 462.

<sup>73</sup> Adm. Case No. 137-J, March 27, 1971, 38 SCRA 71.

<sup>74</sup> In the United States, compliance with this duty allows judges some leeway in reprimanding parties and lawyers in the court. For example, a judge did not unfairly prejudice the jury when he admonished a defendant to keep his voice down while conversing with his lawyer. *State v. Lovelace*, 607 P.2d 49 (Kan. 1980).



## 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.**

Canon 3 of the New Code of Judicial Conduct is the updated version of the previous Canon 3, which provides that: “A judge should perform official duties honestly and with impartiality and diligence.” The present version of the Canon maintained some of the provisions of the earlier Canon, specifically Rule 3.07,<sup>75</sup> and the provisions on “Disqualifications”<sup>76</sup> and “Remittal of Disqualification.”<sup>77</sup> However, the provisions pertaining to diligence, competence, and the like have been transferred to other provisions in the New Code of Judicial Conduct.

American courts have also emphasized this principle. One court summarized the reasons for longstanding insistence upon impartiality in the judiciary thus:

The principle[s] of impartiality, disinterestedness, and fairness on the part of the judge [are] as old as the history of courts; in fact, the administration of justice through the mediation of courts is based upon this principle. It is a fundamental idea, running through and pervading the whole system of judicature, and it is the popular acknowledgement of the inviolability of this principle which gives credit, or even toleration, to decrees of judicial tribunals.<sup>78</sup>

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

Time and again, the Supreme Court has reminded judges that they are the visible representations of the law and of justice. A judge must, therefore, apply the law and render justice impartially, without any favor, bias or prejudice. However, mere allegations of bias or prejudice are not sufficient to find a violation of this section. The complainant carries the burden of proof.<sup>79</sup>

Because allegations of bias are quite serious, the person bringing the allegation must prove bias sufficient to require inhibition (also called recusal or disqualification) with clear and convincing evidence. Bare allegations of partiality and prejudgment will not suffice.<sup>80</sup> A judge's conduct must be clearly indicative of arbitrariness and prejudice before it can be stigmatized as biased and partial.<sup>81</sup>

To sustain a claim of bias or prejudice, the resulting opinion must be based upon an extra-judicial source: that is, some influence other than the facts and law presented in the courtroom. In the United States, this is known as the Extra-Judicial Source Rule.<sup>82</sup> As long as decisions made and opinions formed in the course of judicial proceedings are based on the evidence presented, the conduct

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<sup>75</sup> Rule 3.07 reads: “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.”

<sup>76</sup> Rule 3.12 of Canon 3 of the 1989 Code.

<sup>77</sup> Rule 3.13 of Canon 3 of the 1989 Code.

<sup>78</sup> *State ex rel. Barnard vs. Board of Education*, 52 P. 317 (Wash. 1898).

<sup>79</sup> See, e.g. *Turner v. State*, 926 S.E.2d 843 (Ark. 1996); *State v. Mann*, 512 N.W.2d 528 (Iowa 1994).

<sup>80</sup> *Dimo Realty & Dev. Inc. vs. Dimaculangan*, G.R. No. 130991, March 11, 2004, 425 SCRA 376.

<sup>81</sup> *Cruz vs. Iturralde*, A.M. RTJ No. 03-1775, April 30, 2003, 402 SCRA 65.

<sup>82</sup> *Carter v. State*, 271 S.E.2d 475 (Ga. 1980) quoting *U.S. v. Grinnell Corp.*, 384 U.S. 563 (1996).

observed by the magistrate, and the application of the law, such opinions – even if later found to be erroneous – will not sustain a claim of personal bias or prejudice on the part of the judge.<sup>83</sup>

The concern is not only with the judge's actual decision but the manner in which the case is decided. As the Supreme Court has put it, a judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to his fairness and as to his integrity.<sup>84</sup> It is the duty of all judges not only to be impartial but also to "appear impartial."<sup>85</sup>

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**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.**

This provision is designed to maintain and improve public confidence in the entire judiciary as an impartial dispenser of justice. In the leading case of *Pimentel vs. Salanga*,<sup>86</sup> the High Court advised:

A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired.

The Supreme Court later ruled again in the same manner:

The intendment of the above provision of the Rules of Court is not difficult to find. Its rationale is predicated in the long standing precept that no judge should handle a case in which he might be perceived, rightly or wrongly, to be susceptible to bias and impartiality. His judgment must not be tainted by even the slightest suspicion of improbity or preconceived interest. The rule is aimed at preserving at all times the faith and confidence in courts of justice by any party to the litigation.<sup>87</sup>

A judge should behave at all times in a way that promotes public confidence in the integrity and impartiality of the judiciary. The appearance of bias or prejudice can be as damaging to public confidence and the administration of justice as actual bias or prejudice.<sup>88</sup>

There is undue interference where the judge's participation in the conduct of the trial tends to build or to bolster a case of one of the parties. In *Ty vs. Banco Filipino Savings and Mortgage Bank, et al.*,<sup>89</sup> the judge ordered the presentation of specific documentary evidence without a corresponding motion from any party or without the participation of the parties.

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<sup>83</sup> *Gochan vs. Gochan*, G.R. No. 143089, February 27, 2003, 398 SCRA 323.

<sup>84</sup> *Geotina vs. Gonzales*, G.R. No. 26310, September 30, 1971, 41 SCRA 66.

<sup>85</sup> *People of the Philippines vs. Nuguid*, G.R. No. 148991, January 21, 2004, 420 SCRA 533; *Kaw vs. Osorio*, A.M. No. RTJ-03-1801, March 23, 2004, 426 SCRA 63.

<sup>86</sup> G.R. No. L-27934, September 18, 1967, 21 SCRA 160.

<sup>87</sup> *Urbanes, Jr. vs. Court of Appeals*, G.R. No. 117964, March 28, 2001, 236 SCRA 72. *See also: Gutierrez vs. Santos*, No. L-15824, May 30, 1961, 2 SCRA 249; *Geotina vs. Gonzalez*, G.R. No. 26310, September 30, 1971, 41 SCRA 66; *Umale vs. Villaluz*, No. L-33508, May 25, 1973, 51 SCRA 84; *Pimentel vs. Salanga*, No. L-27934, September 18, 1967, 21 SCRA 160.

<sup>88</sup> *Montemayor vs. Bermejo, Jr.*, A.M. No. MTJ-04-1535, March 12, 2004, 425 SCRA 403.

<sup>89</sup> G.R. Nos. 149797-98, February 13, 2004, 422 SCRA 649.

It is within the sound discretion of the trial judge to ask questions from witnesses, if only to clarify what may appear to be vague points in the narration. Questions designed to avoid obscurity in the testimony and to elicit additional relevant evidence are not improper.<sup>90</sup>

In disposing of a criminal case, a judge should avoid appearing like an advocate for either party. It is also improper for the judge to push actively for amicable settlement against the wishes of the complainant. A judge's unwelcome persistence makes the judge vulnerable to suspicions of favoritism.<sup>91</sup>

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**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.**

The need for judges to conduct themselves in so as to minimize their disqualification has been the subject of repeated Supreme Court warnings against judges fraternizing with litigants before their courts.<sup>92</sup>

Judges may, in their exercise of sound discretion, restrict themselves voluntarily from sitting in a case, but such a decision should be based on good, sound or ethical grounds, or for just and valid reasons. It is not enough that a party casts some tenuous allegations of partiality at the judge. No less than imperative is that it is the judge's sacred duty to administer justice without fear or favor.

Another issue is the possibility that no judge would be available to decide a case because judges with jurisdiction over the case would opt to recuse from the case. Hence, it is imperative that judges ensure that they would not be unnecessarily disqualified from a case. This is sometimes referred to as the "duty to sit."<sup>93</sup>

In *Parayno vs. Meneses*,<sup>94</sup> the Supreme Court explained the nature of the voluntary inhibition expected of a judge:

The majority view is that the rule of disqualification of judges must yield to demands of necessity. Simply stated, the rule of necessity means that a judge is not disqualified to sit in a case if there is no other judge available to hear and decide the case. For example, members of the Supreme Court were entitled to adjudicate the validity of a statute placing a limit of 5 percent in the costs of living increase for judges, where it was apparent that all state judges had at least an involuntarily financial interest in the case. \* \* \* Actual disqualification of a member of a court of last resort will not excuse the member from performing his official duty if failure to do so would result in a denial of a litigant's constitutional right to have a question, properly presented the court, adjudicated. In other words, when all judges would be disqualified, disqualification will not be permitted to destroy the only tribunal with power in the premises. The doctrine operates on the principle that a basic judge is

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<sup>90</sup> *Paco, et al vs. Quilala, et al.*, A.M. No. RTJ-02-1699, October 15, 2003 (Formerly OCA IPI No. 02-1444-RTJ), 413 SCRA 364.

<sup>91</sup> *Montemayor vs. Bermejo, Jr.*, A.M. No. MTJ-04-1535, March 12, 2004, 425 SCRA 403.

<sup>92</sup> *Kaw vs. Osorio*, A.M. No. RTJ-03-1801, March 23, 2004, 426 SCRA 63.

<sup>93</sup> The duty to sit is imposed because permitting judges to disqualify themselves for frivolous reasons or for no reason at all would contravene public policy by unduly delaying proceedings, increasing the workload of other judges, and fostering impermissible judge-shopping. ABA Annotated Model Code of Judicial Conduct (2004); Canon 3B1 Commentary. See also Ronald D. Rotunda, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility* 824 (2002).

<sup>94</sup> G.R. No. 112684, April 26, 1994, 231 SCRA 807.

better than no judge at all. Under such circumstances, it is the duty of the disqualified judge to hear and decide the controversy, however disagreeable it may be.<sup>95</sup>

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**SECTION 4. Judges shall not knowingly, while a proceeding is before or could come before them, 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.**

This Section warns judges against making any comment that might reasonably be expected to affect the outcome of the proceedings before them or "*impair the manifest fairness of the process.*" In *Martinez vs. Giorenella*,<sup>96</sup> a judge was disqualified from trying a criminal case because he met with the complainants in chambers and advised them to settle with the accused because their case was weak. In contrast, in *Palang vs. Zosa*,<sup>97</sup> a judge was commended by the Supreme Court when he voluntarily recused himself from presiding over a civil case because he had expressed an opinion in a previous case that might have led one of the parties to doubt his impartiality.

In *Gutierrez vs. Santos*,<sup>98</sup> a judge's act of recusing himself from presiding over a case was upheld by the Supreme Court. While in private practice, the judge had expressed an opinion concerning an issue that would unduly benefit one of the parties. However, the Supreme Court has recently held that judges and justices are not disqualified from participating in a case simply because they have written legal articles on the law involved in the case.<sup>99</sup>

Judges should avoid side remarks, hasty conclusions, loose statements or gratuitous utterances that suggest they are prejudging a case. Judges should be aware that the media might consider them a good and credible source of opinion or ideas, and therefore should refrain from making any comment on a pending case. Not only is there danger of being misquoted, but also of compromising the rights of the litigants in the case.

Not all comments by judges are impermissible.<sup>100</sup> For example, the United States Supreme Court held judicial comments that are critical of the parties or counsel generally do not alone support a motion for disqualification.<sup>101</sup> If a judge expresses open-mindedness regarding the issue at hand<sup>102</sup> and the judges' comments do not clearly favor one side over the other,<sup>103</sup> recusal may not be required. However, some comments are clearly impermissible in American courts. For example, references to a lawyer's age or gender are improper, and constitute reversible error if prejudicial to a party.<sup>104</sup> Comments indicating that the judge formed an opinion as to the outcome of a case before hearing evidence and argument are improper.<sup>105</sup>

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<sup>95</sup> 46 Am. Jur. 2d, 205-206.

<sup>96</sup> No. L-37635, July 22, 1975, 65 SCRA 245.

<sup>97</sup> No. L-38229, August 30, 1974, 58 SCRA 776.

<sup>98</sup> G.R. No. L-15824, May 30, 1961, 2 SCRA 249.

<sup>99</sup> *Chavez vs. Public Estates Authority*, G.R. No. 133250, May 6, 2003, 403 SCRA 1.

<sup>100</sup> The commentary on this issue is based upon the annotations to Canon 3E(1) of the ABA Annotated Model Code of Judicial Conduct (2004).

<sup>101</sup> *Liteky v. United States*, 510 U.S. 540 (1994).

<sup>102</sup> See *Banks v. Department of Human Resources*, 233 S.E.2d 449 (Ga. App. 1977).

<sup>103</sup> See *State v. Gary*, 501 S.E.2d 57 (N.C. 1998).

<sup>104</sup> See *State v. Place*, 447 S.E.2d 186 (S.C. 1994).

<sup>105</sup> See e.g. *Alley v. State*, 882 S.W.2d 810 (Tenn. Crim. App. 1994); *Judicial Inquiry and Review Bd. of Supreme Court of Pennsylvania v. Fink*, 532 A.2d 358 (Pa. 1987); *State el rel McCulloch v. Drumm*, 984 S.W.2d 555 (Tenn. Crim. App. 1999).

**SECTION 5. Judges shall disqualify themselves from participating in any proceedings 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;**

In *Umale vs. Villaluz*,<sup>106</sup> the Supreme Court commended a judge who voluntarily inhibited himself on the ground that he had personal knowledge of the case.

In *People vs. Gomez*,<sup>107</sup> the Supreme Court held that a judge may validly disqualify himself due to his bias and prejudice. Of course, bias and prejudice cannot be presumed.<sup>108</sup> The mere imputation of bias or partiality is not sufficient for a judge to inhibit, especially when the charge is without basis. It must be proven with clear and convincing evidence.<sup>109</sup> Moreover, it has been held that bias and prejudice must be shown to have stemmed from an extra-judicial source and result in an opinion on the merits on some basis other than the evidence presented.<sup>110</sup>

A judge who exhibits actions which give rise, fairly or unfairly, to perceptions of bias, has no choice but to inhibit.<sup>111</sup> However, the mere filing of an administrative case against a judge is not a ground for disqualification on the ground of bias and prejudice.<sup>112</sup> The fact alone that the judge is a next-door neighbor of the complainant in a case is also not a ground for disqualification.<sup>113</sup> Mere divergence of opinion between a judge and a party's counsel as to applicable law and jurisprudence is likewise not a ground for disqualification.<sup>114</sup> Even reasons of strained personal relationship, animosity and hostility between a judge and party or counsel are not grounds for disqualification.<sup>115</sup> Litigants are entitled to a judge who will decide on the merits of the facts presented. However, "they are not entitled to a judge whose mind is a clean slate."<sup>116</sup> That is, each judge "brings to the bench the experiences of life, both personal and professional. A lifetime of experiences that have generated a number of general attitudes cannot be left in chambers when a judge takes the bench."<sup>117</sup>

The Supreme Court has warned judges against succumbing to first impressions,<sup>118</sup> which can be perceived as the source of bias. As the Court explained:

[T]he 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

<sup>106</sup> No. L-33508, May 25, 1973, 51 SCRA 84.

<sup>107</sup> No. L-22345, May 29, 1967, 20 SCRA 293.

<sup>108</sup> *Soriano vs. Angeles*, G.R. No. 109920, August 31, 2000, 339 SCRA 366.

<sup>109</sup> *Gochan vs. Gochan*, G.R. No. 143089, February 27, 2003, 398 SCRA 323.

<sup>110</sup> *Aleria, Jr. vs. Velez*, G.R. No. 127400 November 16, 1998, 298 SCRA 611.

<sup>111</sup> *Garcia vs. Burgos*, G.R. No. 124130, June 29, 1998, 291 SCRA 546.

<sup>112</sup> *Aparicio vs. Andal*, G.R. Nos. 86587-93, July 25, 1989, 175 SCRA 569; *Medina vs. De Guia*, A.M. No. RTJ-88-216, March 1, 1993, 219 SCRA 153; *Mantaring vs. Roman, Jr.*, G.R. No. A.M. No. RTJ-93-964, March 28, 1996, 254 SCRA 158.

<sup>113</sup> *Choa vs. Chiongson*, A.M. No. MTJ-95-063, February 9, 1996, 253 SCRA 371.

<sup>114</sup> *Paredes vs. Sandiganbayan*, G.R. No. 108251, January 31, 1996, 252 SCRA 641.

<sup>115</sup> *Villapando vs. Quitain*, Nos. L-41333, 41378-41, January 20, 1977, 75 SCRA 24.

<sup>116</sup> Annotations to American Bar Association Model Code of Judicial Conduct, Canon 3E(1)(a), p. 225.

<sup>117</sup> *Id.* quoting *Madsen v. Prudential Federal Sav. and Loan Ass'n*, 767 P.2d 538 (Utah 1988).

<sup>118</sup> American courts have also found it to be improper judicial conduct when a judge indicates that he or she has formed an opinion before the parties can be heard. *See e.g. Alley v. State*, 882 S.W.2d 810 (Tenn. Crim. App. 1994); *Judicial inquiry and Review Bd. of Supreme Court of Pennsylvania v. Fink*, 532 A.2d 358 (Pa. 1987); *State el rel McCulloch v. Drumm*, 984 S.W.2d 555 (Tenn. Crim. App. 1999).

rather than to facts, of being 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 hears 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.<sup>119</sup>

The rules also require disqualification if a judge has outside knowledge of disputed facts. To be grounds for disqualification, the knowledge must be obtained extra-judicially.<sup>120</sup> For example, when a judge personally observed a claimant in a worker's compensation claim, it is reversible error for the judge to rule based upon the out-of-court observations.<sup>121</sup> This prohibition also disallows extra-judicial research on the internet.<sup>122</sup>

**(b) The judge previously served as a lawyer or was a material witness in the matter in controversy;**

A judge may be disqualified if he was formerly associated with one of the parties or their counsel.<sup>123</sup>

In one case, a judge was disqualified for notarizing the affidavit of a person to be presented as a witness in a case before him.<sup>124</sup> Under the ABA Model Code of Judicial Conduct, if a judge previously represented a party, disqualification is required.<sup>125</sup>

Finally, if a judge is a material witness in a case, the judge may not hear the case.<sup>126</sup>

**(c) The judge or a member of his or her family, has an economic interest in the outcome of the matter in controversy;**

In the case of *Oktubre vs. Velasco*,<sup>127</sup> a municipal judge who filed complaints in his own court for robbery and malicious mischief against a party for the purpose of protecting the property interests of the judge's co-heirs, and then issued warrants of arrest against the party, was found guilty of serious misconduct and ordered dismissed from the bench before he was able to recuse himself. The Supreme Court held that "his subsequent inhibition from the cases which he filed in his own court does not detract from his culpability for he should have not taken cognizance of the cases in the first place – the evil that the rule on disqualification seeks to prevent is the denial of a party of his right to due process."

In the United States, this principle has occasionally been employed to disqualify judges when the law firm of a family member is counsel of record. Counsel generally have an economic interest in the outcome of the matter if they are partners in the firm representing the litigant. However, salaried

<sup>119</sup> *Castillo vs. Juan*, Nos. L-39516-17, January 28, 1975, 62 SCRA 124.

<sup>120</sup> ABA Annotated Model Code of Judicial Conduct (2004) Commentary, Canon 3E(1)(a).

<sup>121</sup> *Vaughn v. Shelby Williams of Tennessee, Inc.*, 813 S.W.2d 132 (Tenn. 1991).

<sup>122</sup> Rule 2.9, Ex Parte Communications, ABA Draft Annotated Model Code of Judicial Conduct (2006); Comment 6 provides that "The prohibition against a judge investigating the facts in a matter extends to information available in all mediums, including electronic."

<sup>123</sup> *Austria vs. Masaquel*, No. L-22536, August 31, 1967, 20 SCRA 1247; *Bautista vs. Rebueno*, No. L-46117, February 22, 1978, 81 SCRA 535; *Masadao vs. Elizaga*, A.M. No. 87-9-3918-RTC, October 26, 1987, 155 SCRA 72.

<sup>124</sup> *Mateo vs. Villaluz*, Nos. L-34756-59, March 31, 1973, 50 SCRA 18.

<sup>125</sup> *Judicial Qualifications Comm'n v. Shirado*, 364 N.W. 2d 50 (N.D. 1985); *Matter of Estate of Risovi*, 429 N.W.2d 404 (N.D. 1988).

<sup>126</sup> See *Lewis v. State*, 565 S.E.2d 431 (Ga. 2002); *In re Dostert*, 324 S.E.2d 402 (W.Va. 1984).

<sup>127</sup> A.M. No. MTJ 02-1444, July 20, 2004 (Formerly A.M. OCA IPI no. 01-1000-MTJ), 434 SCRA 636.

associates or counsel are less likely to trigger disqualification because they are not deemed to have an economic interest in the matter.<sup>128</sup>

- (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 counsel during their association, or the judge or lawyer was a material witness therein;**

A judge is automatically disqualified from sitting in a case in which the judge previously served as a lawyer. This restriction extends to judges who served as lawyers in closely related cases.<sup>129</sup> Recusal is also mandated when the judge's former law partner or associate served as a lawyer in the matter while the judge was practicing with the lawyer.<sup>130</sup> Finally, a judge may not sit in a case in which the judge has been a material witness.<sup>131</sup>

- (e) The judge's ruling in a lower court is the subject of review;**

In *Sandoval vs. Court of Appeals*,<sup>132</sup> an Associate Justice of the Court of Appeals refused to inhibit himself from reviewing the decision in a case which he had partially heard as a trial judge prior to his promotion, on the ground that the decision was not written by him. The Supreme Court upheld his refusal, but nevertheless commented that he "should have been more prudent and circumspect and declined to take on the case owing to his earlier involvement in the case. The Court has held that a judge should not handle a case in which he might be perceived, rightly or wrongly, to be susceptible to bias and prejudice."

- (f) The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth civil degree; or**

The Supreme Court has, in several cases, admonished judges for participating in proceedings in which one of the parties or counsel is a relative within the sixth or fourth civil degrees, respectively. In *Villaluz vs. Mijares*,<sup>133</sup> a judge was fined for presiding over a petition for correction of a birth record where the petitioner was the judge's daughter. In *Hurtado vs. Judalena*,<sup>134</sup> a preliminary injunction issued by a judge in favor of his sister before inhibiting himself was found reprehensible. Similarly, in *Perez vs. Suller*,<sup>135</sup> a judge improperly presided over the preliminary investigation of a criminal complaint wherein the complaining witness was his nephew. The High Court held that the judge should have inhibited himself, because while conducting preliminary investigation may not be construed strictly as "sitting in a case," the underlying reason behind disqualification under Rule 3.12 of the Code of Judicial Conduct and Section 1 of Rule 137<sup>136</sup> are the same.

In *Garcia vs. De La Pena*,<sup>137</sup> a Municipal Trial Court judge was dismissed for taking cognizance of a criminal complaint lodged by his brother, and issuing a warrant of arrest. The Supreme Court stated:

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<sup>128</sup> American Bar Association Code of Judicial Conduct, Annotation to 3E(1) (2004). *See also Keene Corp v. Rogers*, 863 S.W.2d 168 (Tex. App. 1993).

<sup>129</sup> *See e.g., Judicial Qualifications Comm'n v. Shirado*, 364 N.W.2d 50 (N.D. 1985) (judge censured for failing to disqualify himself from hearing case in which he previously represented one litigant and failing to inform parties in another case that he had represented litigant's son on traffic charges arising out of accident at issue.)

<sup>130</sup> ABA Annotated Model Code of Judicial Conduct, Commentary, Canon 3E(1)(b).

<sup>131</sup> *See e.g., Lewis v. State*, 565 S.E.2d 431 (Ga. 2002) (after testifying as a material witness with regard to an issue in a case, judge could not consider and rule on defendant's motion for a new trial.).

<sup>132</sup> G.R. No. 106657, August 1, 1996, 260 SCRA 283.

<sup>133</sup> A.M. No. RTJ-98-1402, April 3, 1998, 288 SCRA 594.

<sup>134</sup> G.R. No. L-40603, July 13, 1978, 84 SCRA 41.

<sup>135</sup> A.M. No. MTJ-94-436, November 6, 1995, 249 SCRA 665.

<sup>136</sup> These references are found in the rules on "Disqualification of judicial officers"

<sup>137</sup> A.M. No. MTJ-92-637, February 9, 1994, 229 SCRA 766.

[T]he rule on compulsory disqualification of a judge to hear a case where, as in the instant case, the respondent judge is related to either party within the sixth degree of consanguinity or affinity rests on the salutary principle that no judge should preside in a case in which he is not wholly free, disinterested, impartial and independent. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to its fairness and as to his integrity. The law conclusively presumes that a judge cannot objectively or impartially sit in such a case and, for that reason, prohibits him and strikes at his authority to hear and decide it, in the absence of written consent of all parties concerned. The purpose is to preserve the people's faith and confidence in the courts' justice.

- (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 controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings.**

While United States jurisprudence has distinguished between direct and indirect interest,<sup>138</sup> there is no equivalent Philippine jurisprudence on the matter. This rule is intended to ensure judges' impartiality by preventing situations in which a judge must consider familial interests in the conflicts before him or her. If the public is aware of a family member's financial interest, the public may question the judge's impartiality. This would be the case especially if the decision tended to work to the judge's family member's benefit despite the fact that the ruling is in accordance with the established facts and law. For the judge's and the judicial department's benefit, it would be advisable to simply disqualify the judge from hearing the case.

The reasons for disqualification cited in Canon 3, Section 5 are "not limited to" these circumstances. Strict compliance with the rules on disqualification is required.<sup>139</sup> The petition to disqualify a judge must be filed before rendition of the judgment,<sup>140</sup> and cannot be raised on appeal. Otherwise, the parties are deemed to have waived any objection regarding the impartiality of the judge.

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**SECTION 6. A judge disqualified as stated above may, instead of withdrawing from the proceeding, disclose on the records the 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 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 3, Section 6 of the New Code of Judicial Conduct is an almost verbatim reproduction of the former Canon 3, Rule 3.13. Notably, the decision to continue hearing the case, despite the existence of reasons for disqualification should be: (1) coupled with a *bona fide* disclosure to the parties-in-litigation; and (2) subject to express acceptance by all the parties of the cited reason as not material or substantial. Absent such agreement, the judge may not continue to hear the case.

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<sup>138</sup> One way to illustrate the distinction between direct and indirect interest in the U.S. system is with regard to a family member that works for the law firm representing a litigant before the judge. If a judge's relative is a partner at the law firm representing one of the litigants in the case before the judge, that relative might receive direct pecuniary benefit resulting from a favorable outcome of the litigation. Thus, the relative's interest is sufficiently direct to require recusal. *SCA Services, Inc. v. Morgan*, 557 F.2d 110 (7th Cir. 1977). Conversely, if the relative's only gain is through non-pecuniary benefits to the firm (such as enhanced reputation or increased good will), the benefit to the relative is indirect, and recusal is likely not required. *See Regional Sales Agency, Inc. v. Reichert*, 830 P.2d 252 (Utah 1992).

<sup>139</sup> *Marfil vs. Cuachon*, A.M. No. 2360-MJ, August 31, 1981, 107 SCRA 41.

<sup>140</sup> *Government vs. Heirs of Abella*, No. 25009, September 8, 1926, 49 Phil. 374.



The judge should disclose on the record the basis for his disqualification. Perhaps prompted by a cultural sense of *delicadeza*, some magistrates state only "personal reasons" as the ground for inhibiting themselves. The parties affected often would often not question such disqualification, usually for fear of incurring the judge's ire. However, such vague reasoning is not acceptable, as it would effectively place voluntary disqualification at the whim of the judge. This kind of latitude is not the intended effect of the rule.

The ABA Model Code of Judicial Conduct created a specific and strictly-followed procedure for remittal of disqualification.<sup>141</sup> To effectively remit disqualification, a judge must disclose on the record the basis of the disqualification and ask parties and lawyers to consider, out of the presence of the judge, whether to waive disqualification. As long as the disqualification is not based upon personal bias or prejudice, the parties and lawyers may all agree that the judge should not be disqualified. If all parties and the judge agree that the judge should participate, the judge may participate, and must incorporate the agreement into the record of the proceeding.<sup>142</sup>

Each step must be strictly followed. Any deviation renders the waiver invalid.<sup>143</sup> For example, the judge must affirmatively disclose facts that might be grounds for disqualification.<sup>144</sup> Moreover, in some jurisdictions, the judge must obtain a waiver from both lawyers and parties. Waivers by lawyers alone will not suffice.<sup>145</sup>

The judge is invested with the great responsibility of ensuring that the judiciary's impartiality will forever be maintained and upheld. The decision of whether the judge will proceed or recuse in a case depends on which course of action would allow the parties to be properly heard and given their "day in court" so that ultimately the ends of justice are fully served.

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<sup>141</sup> ABA Model Code of Judicial Conduct, Canon 3F.

<sup>142</sup> *Id.*

<sup>143</sup> ABA Annotated Model Code of Judicial Conduct (2004), Commentary, Canon 3F.

<sup>144</sup> *Reilly by Reilly v. Southeastern Pennsylvania Transp. Authority*, 479 A.2d 973 (Pa. Super. 1984) (the parties are not obligated to search out and discover whether there may exist some fact, known to the judge but not known to the parties, that requires recusal.)

<sup>145</sup> *Thomas G. Abbell, M.D. v. Oliver*, 117 S.W.3d 661 (Ky. App. 2003) (the defendant did not waive the conflict simply because the defendant's lawyer knew about the conflict).; *But see, Southwood v. Carlson*, 704 N.E.2d 163 (Ind. App. 1999) (plaintiff waived claim that trial judge erroneously failed to recuse himself, where plaintiff's lawyer had reason to know of judge's relationship with physician).

## CANON 4

### PROPRIETY

**Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.**

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

The requirement that judges be free from impropriety or any appearance thereof is closely related to the maintenance of integrity and promotion of confidence in the judiciary. Judicial ethics cases decided before the adoption of this new Code were often decided on the grounds that improper acts tended to dilute public confidence in the integrity and impartiality of the courts.<sup>146</sup> The new Code of Judicial Conduct significantly expands the provisions respecting the avoidance of impropriety. The new provisions on propriety complement and at times reiterate, principles also stated in the other canons, especially those on independence and integrity.

By prohibiting not only impropriety but even the appearance of impropriety,<sup>147</sup> the Code recognizes that even acts that are not *per se* improper can nevertheless be perceived by the larger community as such.<sup>148</sup> This is so because the community holds judges to higher standards of integrity and ethical conduct than attorneys and other persons not invested with public trust.<sup>149</sup> For example, the United States Model Code of Judicial Conduct's Commentary suggests that there is an appearance of impropriety when "the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired."<sup>150</sup>

The High Court held in a number of instances that acts done by a judge which are not illegal may still violate the Code of Judicial Ethics.<sup>151</sup> Some examples include censure of a judge who heard cases on a day when he was supposed to be on official leave,<sup>152</sup> and of another judge who heard a motion while on vacation, in his room dressed in a polo jacket.<sup>153</sup> In another case, the Court stated that even if there was no clear evidence of sexual congress between a judge and one of his subordinates, photos showing the two of them coming out of a hotel together was enough to give rise to the appearance of impropriety that the Code strongly warns against.<sup>154</sup>

Under Philippine law, even a joking remark made by a judge to a litigant suggesting that the litigant prove he harbored no ill feelings towards the judge was improper,<sup>155</sup> as was the admonition by

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<sup>146</sup> *Dy Teban Hardware and Auto Supply Co. vs. Tapucar* 102 SCRA 493 (1981); *Castillo vs. Calanog* 199 SCRA 75. (1991); *Alday vs. Cruz, Jr.* A.M. No. RTJ-00-1530, March 14 2001.

<sup>147</sup> M. Margaret McKeown, *Don't Shoot the Canons: Maintaining the Appearance of Propriety Standard*, 7 J. App. Prac. & Process 45 (2005).

<sup>148</sup> See, e.g., *Huffman v. Arkansas Judicial Discipline and Disability Comm'n*, 42 S.W.3d 386 (Ark. 2001) (judge who owned 12,000 shares of Wal-Mart stock worth about \$700,000, created appearance of impropriety when he presided over a Wal-Mart labor dispute; appearance of impropriety existed even though the judge's action was unlikely to affect the value of his stock, which was "but a miniscule percent of the total stock" of Wal-Mart.").

<sup>149</sup> *OCA v. Estacion Jr.*, 247 SCRA 503.

<sup>150</sup> ABA Annotated Model Code of Judicial Conduct, Commentary to Canon 2A (2004).

<sup>151</sup> *Macariola v. Asuncion*, *supra*.

<sup>152</sup> *Re: Anonymous Complaint Against Judge Edmundo T. Acuña* A.M. No RTJ-04-1891, July 28 2005.

<sup>153</sup> *Ignacio v. Valenzuela*, 111 SCRA 12.

<sup>154</sup> *Liwanag v. Lustre* A.M. No. MTJ-98-1168, April 21 1999.

<sup>155</sup> *Co v Plata* A.M. No. MTJ-03-1501, March 14 2005.

a judge, after conducting a marriage ceremony, that the bride and groom should sexually satisfy each other so that they will not go astray.<sup>156</sup>

In the United States, the judge's own perception of motives is not relevant when considering the appearance of impropriety.<sup>157</sup> For example, in one case, a Chief Judge's racially insensitive remarks in a newspaper created an appearance of impropriety even though the judge alleged those remarks had been misinterpreted and did not reflect the judge's personal beliefs. Because the comments "significantly eroded his ability to work effectively with all segments of the community in administering the courts," the court removed the Chief Judge from his position.<sup>158</sup>

The Philippine courts have also acknowledged the irrelevance of the judge's perception of impropriety. In *Vidal v. Dojillo*, the Court gave a reprimand with warning to Judge Dojillo for sitting beside the counsel for Dojillo's brother in the hearing of an election protest filed by the latter. The Court was not convinced by Dojillo's defense that he intended only to give moral support. As a judge, Dojillo should have known family concerns are only secondary to preserving the integrity of the judiciary as a whole.<sup>159</sup>

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**SECTION 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.**

While judges are only human, their acceptance of the judicial position means that more is expected from them than from ordinary citizens, as their acts, both public and private, color the public's perception of the judiciary as a whole.<sup>160</sup> The New Code of Judicial Conduct requires judges to ensure not only that their conduct is above reproach, but also that it is perceived to be so by a reasonable observer.<sup>161</sup> A judicial officer is subject to scrutiny for both public and private conduct. Such scrutiny is an unavoidable consequence of occupying a judicial position.<sup>162</sup> Judges are thus held liable for acts that, if committed by any other person would not necessarily be deemed improper, including the use of intemperate language<sup>163</sup> and succumbing to states of inebriation during parties.<sup>164</sup>

Dignified conduct is best described as conduct befitting men and women possessed of temperance and respect for the law and for others. Thus, the Supreme Court rebuked judges who made sexually suggestive advances to women, including inviting ladies to go with the judge and his companions to the beach,<sup>165</sup> writing letters asking a married woman to come to the judge's *sala* after five o'clock in the evening,<sup>166</sup> and assigning a female stenographer to the judge's chambers.<sup>167</sup> A judge was similarly disciplined for confronting a former boyfriend and his female companion in a restaurant, and giving false and misleading information to the police.<sup>168</sup>

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<sup>156</sup> *Hadap v. Lee*, 114 SCRA 559.

<sup>157</sup> *In re Removal of a Chief Judge*, 592 So. 2d 671 (Fla. 1992). Also, for a more complete explanation of the propriety canons in the ABA Model Code of Judicial Conduct, see Leslie W. Abramson, *Cannon 2 of the Code of Judicial Conduct*, 79 MARQ. L. REV. 949 (Summer 1996).

<sup>158</sup> *Id.* at 672.

<sup>159</sup> A.M. No. MTJ-05-1591, July 14 2005.

<sup>160</sup> *Re: Anonymous Complaint Against Judge Edmundo T. Acuña*, *supra*.

<sup>161</sup> *Dulay v. Lelina Jr.*, 463 SCRA 269.

<sup>162</sup> *Cañeda vs. Alaán* A.M. No. MTJ-01-1376, January 23 2002.

<sup>163</sup> *Fidel vs. Caraos* A.M. No. MTJ-99-1224, December 12 2002.

<sup>164</sup> *Lachica vs. Flordeliza* 254 SCRA 278 (1996).

<sup>165</sup> *Mariano v. Gonzales*, 114 SCRA 112.

<sup>166</sup> *Hadap v. Lee*, *supra*.

<sup>167</sup> *Ritual v. Valencia*, 85 SCRA 313

<sup>168</sup> *In re Williams*, 777 A.2d 323 (N.J. 2001).

In the United States, judges are also discouraged from engaging in behavior that shows disregard for the law or the judiciary.<sup>169</sup> For example, judges have been disciplined for a pattern of hostile conduct toward attorneys, court personnel and judges,<sup>170</sup> and for a “pattern of making derogatory and obscene references to members of the bar” in a social setting.<sup>171</sup>

This principle also applies where the judge may not have actually acted immorally, but has nevertheless raised the suspicion of impropriety. In *Ribaya vs. Binamira-Parcia*,<sup>172</sup> the Court noted that there were just “too many intriguing uncertainties” that surrounded the filing of a case that had become the root of an administrative complaint. The Court ruled that although a judge had done nothing to violate the constitutional rights of the accused as alleged by the complainant, she had nevertheless failed to erase doubts as to her manner of administering justice within her jurisdiction.

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**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 the suspicion or appearance of favoritism or partiality.**

Essential to the avoidance of impropriety and its appearance is the maintenance of cold neutrality and impartiality. This section is squarely directed at bolstering this principle as it requires judges to scrupulously guard against any act that may be construed as an expression of bias in favor of a litigant. In *Office of the Court Administrator vs. Paderanga*,<sup>173</sup> the Court explained that a judge is commanded at all times to be mindful of the high calling of a dispassionate and impartial arbiter expected at all times to be a “cerebral man who deliberately holds in check the tug and pull of purely personal preferences which he shares with his fellow mortals.” Judges should refrain from inviting counsel for one side into their chambers after or prior to sessions in court without disclosing to the other counsel the reason for such meetings,<sup>174</sup> being aggressive in demeanor towards a lawyer appearing before them,<sup>175</sup> and making public comments, or allowing court staff to make comments, on pending cases.<sup>176</sup>

The high tribunal observed that “constant company with a lawyer tends to breed intimacy and camaraderie to the point that favors in the future may be asked from the judge which he may find it hard to resist.” If a judge is seen eating and drinking in public places with a lawyer who has cases pending in his or her *sala*, public suspicion may be aroused, thus tending to erode the trust of litigants in the impartiality of the judge.<sup>177</sup> Such action constitutes “fraternizing with lawyers and litigants” which is conduct unbecoming a judge and in violation of this canon.

Judges must be especially careful about violating this canon when distributing jobs at the court. A judge created the appearance that “the court’s business was based upon the exchange of favors” where the judge hired a corporation run by a close friend of the court administrator to provide services for a court program, the corporation then hired a relative of the court administrator to run the program, and the judge then became engaged to a corporation accountant.<sup>178</sup>

In *Omana v. Yulde*, a judge was found guilty of impropriety and failure to behave in a manner that would promote public confidence in the integrity and impartiality of judiciary. Respect for the

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<sup>169</sup> ABA Annotated Model Code of Judicial Conduct, Annotations to Canon 4A(2) (2004).

<sup>170</sup> *In re Shea*, 759 So.2d 631 (Fla. 2000).

<sup>171</sup> *In re King*, 568 N.E.2d 588 (Mass. 1991).

<sup>172</sup> A.M. No. MTJ-04-1547, April 15 2005.

<sup>173</sup> A.M. No. RTJ-01-1660, August 25 2005.

<sup>174</sup> *Martinez vs. Gironella* G.R. No. L-37635, July 22 1975.

<sup>175</sup> *Royeca v. Animas* G.R. No. L-39584, May 3 1976.

<sup>176</sup> *Geotina v. Gonzalez* G. R. No. 26310, September 30 1971.

<sup>177</sup> *Padilla v. Zantua Jr.*, 237 SCRA 670.

<sup>178</sup> *Matter of Goodman*, 649 N.E.2d 115 (Ind. 1995).

office required him to avoid fraternizing and drinking excessively with lawyers who have pending cases in his court.<sup>179</sup>

On the other hand, a judge should not be too thin-skinned in his relationship with lawyers. A judge should not hold a lawyer in contempt for an expression of concern about the impartiality of the judge, even if the judge may have been insulted.<sup>180</sup>

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**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.**

This rule rests on the principle that no judge should preside in a case in which the judge is not wholly free, disinterested, impartial and independent. A judge has both the duty of rendering a just decision and the duty of doing it in a manner completely free from suspicion as to fairness and integrity. The purpose is to preserve the people's faith and confidence in the courts of justice.

In *Garcia v. de la Pena*,<sup>181</sup> a judge violated the rule on compulsory disqualification when he handled a case in which a relative within the second degree of consanguinity was a party.<sup>182</sup> In another case, a judge violated the same rule when she did not recuse herself in a criminal case where the accused was her brother in law, regardless of the fact that it was only after the case had been submitted for decision that the accused became her brother-in-law.<sup>183</sup> A judge's failure to recuse himself when his son-in-law appeared as additional counsel in a case he was trying<sup>184</sup> or his failure to recuse in the preliminary investigation of a criminal case where his wife was the complaining witness<sup>185</sup> is a patent violation of the Code of Judicial Conduct and the Rules of Court. The Code of Judicial Ethics is violated where the judge in a preliminary investigation did not recuse himself despite the fact that the counsel for the accused was the counsel for the judge's family in a pending civil case.<sup>186</sup> Even when judges do not intend to use their position to influence the outcome of cases involving family members, it cannot be denied that a judge's mere presence in the courtroom,<sup>187</sup> or even writing letters to an administrative body conducting an investigation pursuant to the exercise of quasi-judicial functions<sup>188</sup> tend to give rise to the suspicion that influence is being used.

In one United States state court, a judge was publicly reprimanded for ordering his own son's release from custody after the son was arrested for possession of drugs. Although the court could not "think of a situation more fraught with the threat of partiality as where a judge's child faces criminal charges," the fact that the judge "harbored no malicious intention or purely selfish motive by his actions mitigates in his favor."<sup>189</sup> The court settled on public reprimand as punishment.<sup>190</sup> Another judge was removed from office when she presided over an arraignment hearing pertaining to a dishonored check given to the judge's husband, particularly when the judge "clearly displayed favoritism to her husband."<sup>191</sup>

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<sup>179</sup> *Omaña v. Yulde*, A.M. MTJ-01-1345, 26 August 2002).

<sup>180</sup> *Felongco v. Dictado*, 223 SCRA 696

<sup>181</sup> *Garcia v. de la Pena*, 229 SCRA 766

<sup>182</sup> *Garcia v. de la Pena*, 229 SCRA 766

<sup>183</sup> *Ubarra v. Mapalad*, 220 SCRA 226

<sup>184</sup> *Ortiz v. Jaculbe Jr.*, 461 SCRA 361

<sup>185</sup> *Sales v. Calvin*, 428 SCRA 1

<sup>186</sup> *Yulo-Tuvilla v. Balgos*, 288 SCRA 358

<sup>187</sup> *Vidal vs. Dojillo* A.M. No. MTJ-05-1591, July 14 2005

<sup>188</sup> *Perez vs. Costales* A.M. No. RTJ-04-1876 February 23 2005

<sup>189</sup> *In the matter of Gary Van Rider*, 715 N.E.2d 402, 404 (Ind. 1999)

<sup>190</sup> *Id.*

<sup>191</sup> *Matter of Tyler*, 553 N.E.2d 1316 (N.Y. 1990).

**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.**

The rationale for this section is the same as that of Section 3. The high tribunal held that it was inappropriate for a judge to have entertained a litigant in his house particularly when the case is still pending before his *sala*.<sup>192</sup>

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**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.**

While judges are not expected to live a hermit-like existence or cease functioning as citizens of the Republic, they should remember that they do not disrobe themselves of their judicial office upon leaving their *salas*. In the exercise of their civil liberties, they should be circumspect and ever mindful that their continuing commitment to upholding the judiciary and its values places upon them certain implied restraints to their freedom.<sup>193</sup> A judge was admonished for the appearance of engaging in partisan politics when he participated in a political rally sponsored by one party, even though he only explained the mechanics of block voting to the audience.<sup>194</sup>

The use of expletives is frowned upon by the Supreme Court. The court reprimanded a judge who used expletives like “*putris*” and “*putang ina*,” even though they were not directed to any particular individual.<sup>195</sup> In another case, the court found that the judge displayed unbecoming behavior by sarcastically commenting upon a complainant’s ability to read English and using phrases such as “moronic attitude,” “stupid,” and “*putang inamo*” to describe the complainant.<sup>196</sup>

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

This section of the New Code of Judicial Conduct should be read in conjunction with Section 7 of the Republic Act 6713, which prohibits certain personal fiduciary and financial conflicts.

“[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.”<sup>197</sup> When a judge, along with two other people, acted as real estate agents for the sale of a parcel of land for which he agreed to give a commission of P100,000 to each of his companions, and after the transaction was completed only gave the complainants P25,000 each, the high Court held that the judge violated the section of the prior Code of Judicial Conduct.

One way to avoid financial conflicts spawned by equity stock investments is to invest in mutual funds because a holder of such funds is not considered to have a financial interest in the underlying stocks in the fund.<sup>198</sup>

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<sup>192</sup> *J. King and Sons v. Hontanosas*, 438 SCRA 264.

<sup>193</sup> *Sison vs. Caoibes, Jr.* A.M. No. RTJ-03-1771, May 27 2004.

<sup>194</sup> *Macias v. Arula*, 115 SCRA 135.

<sup>195</sup> *Re Judge Edmundo Acuna*, 464 SCRA 250.

<sup>196</sup> *Seludo v. Fineza*, 447 SCRA 73.

<sup>197</sup> *Catbagan v. Barte*, 455 SCRA 1.

<sup>198</sup> ABA Model Judicial Code of Conduct (2004) excludes “ownership of an interest in mutual or common

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**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 of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.**

This rule has two parts. The first is that a judge may not use judicial office to advance private interests. The second is that a judge may not give the impression that he or she can be influenced to use the judicial office to advance the private interests of others.

*Javier vs. de Guzman*<sup>199</sup> explains the rationale behind the first part. In that case, the respondent judge took advantage of his position as a Makati Regional Trial Court judge by filing in the Makati court a collection case in which he and his wife were the complainants. The Court ruled that although a stipulation in the contract gave the judge, as creditor, choice of venue, the judge had nonetheless fallen short of what is expected of him as a judicial officer. As this case was decided before the effective date of the new Code, the Court explained that the reason for the ruling of impropriety was that peculiar Philippine psyche, personality and culture would lead the public, and in particular the judge's adversary in the collection case, to suspect that the judge would use the choice of venue as a means to exert influence in favor of himself. This is precisely the reason behind this particular section of the new Code.

Similarly, a judge who filed a case for *estafa* in his own *sala* and who assisted in the issuance of the warrant of arrest against the accused was held guilty of serious misconduct.<sup>200</sup> In another case, a judge was found liable for gross misconduct when he made phone calls to the station commander on behalf of a family friend who had been detained, and asked her bailiff to look into the status of the car that had been left in the parking lot when the friend had been arrested.<sup>201</sup> Posting advertisements for restaurant personnel on the court bulletin board, using his court address to receive applications for such position, and of screening applicants in his court, constitute involvement in private business and improper use of office facilities for the promotion of family business.<sup>202</sup> As is further shown by the Court's decision in *Umale vs. Villaluz, et al.*,<sup>203</sup> the trend since the 1960s has been to progressively provide clearer guidelines for a judge's recusal.

In the United States, a recurring issue is "ticket-fixing," in which judges impermissibly take advantage of their position to avoid punishment for traffic violations. The Chief Justice of the Illinois Supreme Court was sanctioned because he was stopped for a traffic violation, produced his judicial identification credential instead of his driver's license and asked, "don't you know who I am?"<sup>204</sup>

Another common violation of this rule is using judicial power to exact personal vengeance. For example, it was improper when, after a confrontation between a judge's son and the son's teacher, the judge had the teacher arrested and arraigned before him.<sup>205</sup> A judge was disciplined when, upon being served with process, he issued a bench warrant directing that the process server be arrested for contempt of court.<sup>206</sup>

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investment fund that holds securities" from the definition of "economic interest."

<sup>199</sup> A.M. No. RTJ-89-380, December 19 1990.

<sup>200</sup> *Vistan v. Nicolas*, 201 SCRA 524.

<sup>201</sup> *Manansala III vs. Asdala*, A.M. No. RTJ-05-1916, May 10 2005.

<sup>202</sup> *Dionisio v. Escano*, 302 SCRA 411.

<sup>203</sup> G.R. No. L-33508, May 25 1973.

<sup>204</sup> *In re Heiple*, No. 97-CC-1 (Cts. Comm'n of Ill. Apr. 30, 1997).

<sup>205</sup> *In re Samay*, 764 A.2d 394 (N.J. 2001).

<sup>206</sup> *Matter of Edwards*, 459 S.E.2d 837 (S.C. 1995).

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

When a judge released a draft of her decision to a party, that conduct was found to be not just a simple breach of confidentiality but a scheme to make the party “negotiate” for increases in the monetary awards to be given by the judge.<sup>207</sup> Similarly, a judge's act of personally furnishing a party copies of orders issued, without passing them through the court docket, was considered to be highly irregular, giving rise to the suspicion that the judge was partial to one of the parties in the case.<sup>208</sup> Overlapping somewhat with Section 8, it is improper for a judge to allow his wife to have access to court records which are necessarily confidential, as this practice may convey the impression that she is the one who can influence the judge's official functions.<sup>209</sup> Where respondent appellate justice announced on television that he lost a confidential draft of an order and publicly asked the National Bureau of Investigation to investigate, he was held by the Supreme Court to have been guilty of conduct unbecoming a judge.<sup>210</sup>

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

- (a) Write, lecture, teach 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.**

This section allows the judge to participate in legal academia and public discourse on legal matters with the proviso that there shall be no interference in the performance of the judge's primary functions with respect to his or her jurisdiction. However, in dealing with the media, the Philippine Judicial Academy suggests that a judge or court should avoid acrimonious debate with reporters and the public, for a knee jerk reaction from the court or judge may only provoke negative follow-up reports and articles.<sup>211</sup>

This section's tolerance of judicially-related activities is limited by Section 12, Article VIII of the Constitution, which prohibits judges from being “designated to any agency performing quasi-judicial or administrative functions.” In the landmark case of *In Re: Designation of Judge Rodolfo U. Manzano*,<sup>212</sup> a judge sought the Court's permission to accept membership in the Ilocos Norte Provincial Committee on Justice, an administrative body. The Court denied his request, ruling that allowing the judge's membership would be a violation of the constitutional provision on the discharge by members of the judiciary of administrative functions in quasi-judicial or administrative agencies.<sup>213</sup> The *Manzano* decision did include the qualification that the constitutional prohibition should not be construed as a directive to avoid all involvement with organizations concerned with judicial interests. As the Court stated therein:

This declaration does not mean that RTC judges should adopt an attitude of monastic insensibility or unbecoming indifference to the Province/City Committee on Justice.

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<sup>207</sup> *Centrum Agri-Business Realty Corp. v. Katalbas-Moscardon*, 247 SCRA 145.

<sup>208</sup> *Co v. Calimag*, 334 SCRA 20.

<sup>209</sup> *Gordon v. Lilagan*, 361 SCRA 690.

<sup>210</sup> *In Re Justice Anacleto Badoy*, 395 SCRA 231.

<sup>211</sup> *Philippine Judicial Academy, Manual Guide for the Judiciary in Dealing With Media*, approved by the Supreme Court on February , 2006.

<sup>212</sup> A.M. No. 88-7-1861-RTC, October 5 1988.

<sup>213</sup> Section 12, Art. VIII.



As incumbent RTC judges, they form part of the structure of government...Even as non-members...RTC judges should render assistance to said Committees to help promote the laudable purposes for which they exist, but only when such assistance may be reasonably incidental to the fulfillment of their judicial duties.

Under Subsection (c), a judge may not engage in private business without the written permission of the Supreme Court.<sup>214</sup> In *NBI v. Villanueva*, a judge was found to have taken his business consultancy with a woman too far where it was shown that they were sleeping in the same bedroom and having breakfast together.<sup>215</sup>

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

This prohibition is based on the inherent incompatibility of the rights, duties and functions of the office of an attorney with the powers, duties and functions of a judge.<sup>216</sup>

The “practice of law” in the United States has not been confined “to services by an attorney in a court of justice; it also includes any service of a legal nature rendered outside of courts and unrelated to matters pending in the courts. It is uniformly held that writing and interpreting wills, contracts, trust agreements, and the giving of legal advice in general constitute ‘practicing law.’”<sup>217</sup>

Philippine courts not only prohibit judges from overtly representing clients as counsel of record,<sup>218</sup> but also from acting more subtly in a way more befitting an advocate than a judge. For example, a judge may not meet with a complainant to give him advice.<sup>219</sup> The due process requirement of “the cold neutrality of an impartial judge” is denied the accused when the court assumes the dual role of magistrate and advocate by asking many questions of an accused.<sup>220</sup>

While municipal judges can administer oaths or execute certificates on matters related to their official functions, they cannot notarize private documents.<sup>221</sup> However, it should be noted that judges assigned to municipalities and circuits may act as notaries public provided that: (1) all notarial fees charged be to the government’s account, and (2) certification be made in the notarial documents attesting to the lack of lawyers or notary in the municipality or circuit.<sup>222</sup> Otherwise, the act of a judge in notarizing a pleading in a case which is not pending in that judge’s *sala*,<sup>223</sup> or in notarizing private documents,<sup>224</sup> constitutes unlawful practice of law in violation of the Code of Judicial Conduct, as implemented by SC Circular 1-90.

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

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<sup>214</sup> *Borre v. Moya*, 100 SCRA 314.

<sup>215</sup> *NBI v. Villanueva*, 370 SCRA 1.

<sup>216</sup> *Carual v. Brusola*, 317 SCRA 54.

<sup>217</sup> *Judicial Discipline & Disab. Comm’n. v. Thompson*, 16 S.W3d 212 (Ark. 2001).

<sup>218</sup> *Candia v. Tagabucha*, 79 SCRA 52 (holding that a judge who acted as counsel for both parties, with opposing interests in a parcel of land within his jurisdiction, acted in pursuit of his own interests and must be dismissed).

<sup>219</sup> *Contreras v. Solis*, 260 SCRA 570.

<sup>220</sup> *Tabuena v. Sandigan*, 268 SCRA 332.

<sup>221</sup> *Tabao v. Asis*, 252 SCRA 581.

<sup>222</sup> *Doughlas v. Lopez Jr.*, 325 SCRA 129.

<sup>223</sup> *Ellert v. Galapon, Jr.*, 336 SCRA 566.

<sup>224</sup> *Villareal v. Dionson*, 345 SCRA 341.

This rule also recognizes the difference between membership in associations of judges and membership in associations of other legal professionals. While attendance at lavish events hosted by lawyers might create an appearance of impropriety,<sup>225</sup> participation in a judges-only organizations does not.

In the United States, judges are encouraged to take part in activities of bar associations and other organizations dedicated to the improvement of the legal system.<sup>226</sup> However, a judge may generally not use the resources of the federal government to do so.<sup>227</sup>

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**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.**

This section should be read in conjunction with Section 7(d) of R.A. 6713 which prohibits public officials from soliciting or accepting gifts. According to this provision:

Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of money value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

Thus, aside from constituting serious misconduct,<sup>228</sup> the act of demanding and receiving money or property from a litigant violates this provision of the Act.<sup>229</sup> For example, a judge who accepts the free use of a car for a year or utilizes free battery charging services from the shop of the litigant<sup>230</sup> or who allows a litigant to pay for the freight of for personal acquisitions<sup>231</sup> also violates the Anti-Graft Law.<sup>232</sup>

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**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, to be done or omitted to be done in connection with their duties or functions.**

This section complements the previous section and assures that what the judge cannot do directly, may not be done indirectly through the use of employees or staff members. The high Court held that a judge allowing his bailiff's son to store attached property at his house constitutes misconduct.<sup>233</sup>

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<sup>225</sup> South Carolina Advisory Comm.on Standard of Jud Conduct, Op. 36-2001 (2001). (Judge may not speak at retreat hosted and financed by law firm, which is likely to appear before his or her court where firm is paying judge's expenses).

<sup>226</sup> Annotations to the ABA Model Judicial Code of Conduct, Canon 4D(5)(b) (2004).

<sup>227</sup> *In re Wiley*, 671 A.2d 308 (R.I. 1996) (judge may attend meetings of professional associations as a guest of organization or at his or her own expense.).

<sup>228</sup> *Liban v. Villacete*, 237 SCRA 397; *OCA v. Gaticales*, 208 SCRA 508.

<sup>229</sup> *Legaspi v. Garrete*, 242 SCRA 679.

<sup>230</sup> *Capuno v. Jaramillo*, 234 SCRA 212.

<sup>231</sup> *Agpalasin v. Agcaoili*, 330 SCRA 250.

<sup>232</sup> For discussions about the economic drawbacks of graft and corruption, see Eduardo Buscaglia, *Judicial Corruption in Developing Countries: Its Causes and Economic Consequences*, Global Programme Against Corruption Conferences, Vienna, March 2001.

<sup>233</sup> *Agpalasin v. Agcaoili*, *supra*.

While sections 13 and 14 cover instances where the judge is clearly the recipient of money or property from litigants before his court,<sup>234</sup> the sections are likewise relevant to cases where the transaction between the judge and interested parties is less obvious. In a case involving the financial and judicial audit of the municipal trial court in Koronadal,<sup>235</sup> a judge was found guilty of gross misconduct for having violated these provisions. In that case, the judge had periodically “borrowed” from court funds to pay for a variety of personal expenses including his children’s tuition and medical expenses incurred for his parents’ illness. He had also used evidence submitted to the Court – such as guns and ammunition –for his own protection. In *Dulay vs. Lelina*,<sup>236</sup> the Court suspended the respondent judge for six months for allowing his daughters to accept a business partnership offered by persons with pending cases before his court.

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**SECTION 15. Subject to 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 be reasonably perceived as intended to influence the judge in the performance of official duties or otherwise give rise to an appearance of partiality.**

This section qualifies the last two sections by allowing judges to accept token gifts, awards, or benefits when given as a consequence of a special occasion. As to gifts and grants from foreign countries, Section 7(d) of R.A. 6713 allows the following:

1. The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;
2. The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or
3. The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippines (such as allowances, transportation, food and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interest of the Philippines, and permitted by the head office, branch or agency to which the judge belongs.

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<sup>234</sup> *Ompoc vs. Torres* A.M. No. MTJ-86-11, September 27 1989

<sup>235</sup> *In Re: Report on the Judicial and Financial Audit Conducted in the Municipal Trial Court in Cities, Koronadal City* A.M. No. 02-9-233-MTCC, April 27 2005.

<sup>236</sup> A.M. No. RTJ-99-1516, July 14 2005.

## CANON 5

### EQUALITY

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

This is a new Canon not found in the previous two Philippine Codes of Judicial Conduct. It expands the measures to promote equality required by international human rights agreements. Those agreements advocate a universal application of law and non-discrimination between the sexes. The United Nations Charter and the International Bill of Rights, both of which the Philippines has ratified, affirm the equality of all human beings and establish a norm of “full respect of human rights and for fundamental freedom for all without distinction as to race, sex, language or religion.”<sup>237</sup> Moreover, the Philippines ratified the U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) on August 5, 1981,<sup>238</sup> which requires party states to recognize the important economic and social contributions of women to the family and to society. It stresses the need for a change in attitude, through education of both men and women, to accept equality of rights and responsibilities and to overcome prejudices and practices based on stereotyped roles. In line with this Convention, Section 14, Article II of the Constitution provides that “the State recognizes the role of women in nation-building and shall ensure the fundamental equality before the law of women and men.”

The drafters of the New Code of Judicial Conduct were well aware of the basic principles found in many U.N. documents and thus included principles of equality and non-discrimination as a reaffirmation of equality in the enjoyment of human rights and fundamental freedoms.

Acknowledgment of the unequal and unfair treatment of women and minorities within the judicial system is a crucial first step towards achieving full equality. In order to remove biases, judges need better to understand the impact of variables such as gender, poverty, race, illiteracy, disability, discrimination, alcohol and drug abuse, and sexual and physical abuse on social behavior, and on their own decisions.

As the guardians of justice, courts must adhere to the principle of equality. People expect the courts to be unaffected by differences in social status, degree of education, and even physical abilities. Thus, Canon 5 begins with the preamble “ensuring equality of treatment to all before the courts is essential to the due performance of the 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 other like causes.**

To render substantial justice and maintain public confidence in the judicial system, judges are expected to be aware of the diversity in society that results from an increased worldwide exchange of people and ideas. Judges must be able to avoid the infiltration of preconceptions into their decisions. They should be mindful of the various international instruments and treaties ratified by the

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<sup>237</sup> U.N. Charter, Chapter 1, Art. 1(3); Universal Declaration of Human Rights, arts. 1 & 2; the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights.

<sup>238</sup> 1249 U.N.T.S. 13.

Philippines, which affirm the equality of all human beings and establish a norm of non-discrimination without distinction as to race, sex, language or religion.<sup>239</sup>

The first two articles of the Universal Declaration of Human Rights of 1948 provide for equality of rights and the prevention of discrimination. Since 1948, The U.N. General Assembly passed various international conventions and declarations. These conventions are aimed at the elimination of discrimination against specific groups. For example, the U.N. General Assembly passed the Convention on the Elimination of All Forms of Discrimination against Women and its optional protocol,<sup>240</sup> the Convention on the Rights of the Child and its two optional protocols, and the Declaration on the Elimination of Violence against Women.<sup>241</sup>

The Philippines implemented these conventions in Article II, Section 11 of the 1987 Constitution, which states, “the State values the dignity of every human person and guarantees full respect for human rights.” Likewise, “the State recognizes the role of women in nation-building, and shall ensure the fundamental equality before the law of women and men.”<sup>242</sup> Accordingly, it is the duty of the State to ensure that there is equality before the law in all aspects of national life by rectifying or ending all practices and systems that discriminate against women on the basis of sex.

Cognizant that a judicial system must be sensitive and responsive to gender equality, the Supreme Court created a Committee on Gender Responsiveness in the Judiciary on March 27, 2003 and approved the Gender and Development (GAD) Mainstreaming Plan for the Philippine Judicial System on December 9, 2003.

Conducting judicial proceedings in a manner and with an attitude that affirms the dignity of such proceedings is crucial to maintaining public confidence in the judiciary.<sup>243</sup> Judges should not yield to first impression, reach hasty conclusions or prejudge matters.<sup>244</sup> They have a duty to ensure that the minority status of the accused plays no part in their decisions.<sup>245</sup> Neither should judges insult witnesses in the hallway or in pleadings filed before the Supreme Court.<sup>246</sup> Likewise, judges may not use derogatory or condescending language in their judgment when dealing with a rape complaint.<sup>247</sup> Due process cannot be satisfied in the absence of objectivity on the part of a judge sufficient to reassure litigants that the judicial system is fair and just.<sup>248</sup>

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**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.**

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<sup>239</sup> U.N. Charter, art. 1(3); International Covenant on Economic, Social and Cultural Rights, art. 2(2), 993 U.N.T.S. 3 which the Philippines ratified on June 7, 1974; International Covenant on Civil and Political Rights, art. 2(1), 999 U.N.T.S. 171, which the Philippines ratified on October 23, 1986.

<sup>240</sup> 1249 U.N.T.S. 13; Philippines ratified it on August 5, 1981; U.N.G.A./Res 5414, 6 October 1999, Philippines ratified it on October 6, 2003.

<sup>241</sup> 1577 U.N.T.S. 3; The Philippines ratified it on August 21, 1990; Optional Protocol on the Involvement of Children in Armed Conflict (U.N.G.A./RES/54/263, May 25, 2000 and Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (U.N.G.A./RES/54/263, May 25, 2000)

<sup>242</sup> CONST., art. II, sec. 14.

<sup>243</sup> David B. Rottman & Alan J. Tomkins, *Public Trust and Confidence in the Courts: What Public Opinion Surveys Mean to Judges*, 36 Court Review 24 (Fall 1999 reports survey results indicating that African-Americans perceive that they receive unequal treatment from the American courts. The authors noted the importance of both actual equality and perceived equality in the administration of justice.

<sup>244</sup> *Castillo v. Judge Juan*, G.R. Nos. 39516-17, January 28, 1975, 62 SCRA 124.

<sup>245</sup> *People v. Orvillas*, G.R. No. 137666, May 20, 2004, 428 SCRA 659.

<sup>246</sup> *Sy v. Judge Fineza*, A.M. No. RTJ-03-1808, October 15, 2003.

<sup>247</sup> *Iglesia ni Kristo v. Gironella*, A.M. No. 2440-CFI, July 25, 1981, 106 SCRA 1.

<sup>248</sup> *Castillo v. Judge Juan, supra, Mateo v. Villaluz*, G.R. No. 34756, March 31, 1973, 50 SCRA 18.

Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. Being the subject of constant public scrutiny, judges should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.<sup>249</sup> When a judge accepts and occupies a high office in the administration of justice, he is responsible for ensuring that his conduct, even in private arenas, reflects the dignity of the judicial office.<sup>250</sup>

Judges should avoid private remarks, hasty conclusions, or distasteful jokes that may give even erroneous impressions of prejudice and lead the public to believe that cases before them are being prejudged.<sup>251</sup> When a judge advised an accused of the best course of action at arraignment, it appeared that the judge was taking sides with the accused. This behavior may create the impression that the sentence meted out to the accused is – in colorful vernacular – “*lutong macao*.”<sup>252</sup> Judges should also avoid using racially derogatory language to refer to someone that is not in the courtroom.<sup>253</sup>

A judge should avoid being seen in public with litigants because it may give adverse parties the impression that the judge is partial.<sup>254</sup> The Supreme Court reprimanded a judge who rode in the defendant’s car to make an inspection. The judge aggravated the impropriety and demonstrated bias by taking an active part in the inspection, making unwarranted observations, and directly contradicting the witness to the point of maliciously distorting facts.<sup>255</sup>

Likewise, a judge who advises a claimant to settle her claim and overtly pressures her to accept the proposal of the employer creates the suspicion that the judge is biased in favor of the employer.<sup>256</sup> Consequently, in pending or prospective litigation, a judge should scrupulously avoid actions that may lead to suspicion that social or business relations or friendships are influencing judicial decisions. Magistrates of law must comport themselves at all times in such a manner that their conduct, official or otherwise, can withstand the highest level of public scrutiny.<sup>257</sup>

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**SECTION 3. Judges shall carry out judicial duties with appropriate consideration for all persons, 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.**

This provision is taken from Canons 1, 9 and 10 of the Canons of Judicial Ethics and Rule 3.04, Canon 3 of the 1989 Code of Judicial Conduct. Canon 1 states, “the assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to, among others, the practitioners of law in his court. Canons 9 and 10 more specifically provide that the judge “should be considerate of witnesses and others in attendance upon his court” and that “judges should be courteous to counsel, especially to those who are young and inexperienced and also to all others concerned in the administration of justice in their courts.” This is reiterated in Rule 3.04 of Canon 3 of the 1989 Code of Judicial Conduct when it states, “a judge should be patient, attentive, and courteous to lawyers, especially the inexperienced, to litigants, witnesses, and others before the court.”

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<sup>249</sup> Commentary on Rule 2.01 of the 1989 Code of Judicial Conduct.

<sup>250</sup> *Candia v. Tagabucha*, A.M. No. 528-MJ, September 12, 1977; *Berja v. Bercasio*, A.M. No. 561-MJ, December 29, 1976.

<sup>251</sup> *Castillo v. Juan*, G.R. No. 39516, January 28, 1975, 62 SCRA 124; *Abinag v. Estonina*, Adm. Case No. 91-MJ, July 23, 1974, 58 SCRA 49; *Otero v. Esguerra*, Adm. Case No. 655-MJ, May 23, 1974, 57 SCRA 47.

<sup>252</sup> *Espayos v. Lee*, A.M. No. 1574-MJ, April 30, 1979.

<sup>253</sup> ABA Annotated Model Code of Judicial Conduct, Commentary, Cannon 3B(4), citing *In re Gorenstein*, 434 N.W.2d 603 (Wis. 1989), *In re Golden*, 645 So. 2d 970 (Fla. 1994).

<sup>254</sup> *Fonacier-Abaño v. Ancheta*, A.M. No. 1938-CFI, September 11, 1981, 107 SCRA 538.

<sup>255</sup> *Cabreana v. Avelino*, A.M. No. 1733-CFI, September 30, 1981.

<sup>256</sup> *Retuya v. Judge Equipilag*, A.M. No. 1431-MJ, July 16, 1979.

<sup>257</sup> *Dio-Añonuevo v. Bercasio*, A.M. No. 177-MJ, November 27, 1975, 68 SCRA 81.

In addition, “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.”<sup>258</sup>

As arbiters of the law, judges should be conscientious, studious, courteous, patient and punctual in the discharge of their judicial duties, recognizing that time of litigants, witnesses and counsel is of value. In addressing litigants, witnesses and counsel, judges should avoid a controversial tone. Judges should be aware that undue interference, impatience or participation in the examination of witnesses, especially those who are excited or nervous about the unusual circumstances of a trial, may tend to prevent the presentation of a case or the determination of the truth.<sup>259</sup> Judges should act with decorum toward jurors,<sup>260</sup> parties,<sup>261</sup> court staff,<sup>262</sup> and spectators<sup>263</sup> alike. They should not be quick to interrupt a presentation by counsel, and instead show restraint.<sup>264</sup> While judges may properly intervene in a trial to promote expeditious proceedings, prevent unnecessary waste of time and dilly-dallying of counsel or to clear up obscurities,<sup>265</sup> the propriety of these queries is determined by whether the defendant was prejudiced by such questioning.<sup>266</sup> A judge should not examine or cross-examine a witness if the questioning reveals information that destroys the theory of one party.<sup>267</sup> Also, there is undue interference where the judge’s participation in the conduct of the trial tends to build or bolster a case for one of the parties.<sup>268</sup> Judges also should not interrupt proceedings before another judge.<sup>269</sup>

Unequal and disparate treatment in the courthouse, whether intentional or perceived, is unacceptable and can negatively impact the professional lives of attorneys and employees, the assessment of claims of litigants, and the respect and credibility of the justice system.

A judge can influence the outcome of a case in many ways. The judge is responsible for the interpretation of laws, the weighing of the testimonies and demeanor of witnesses, and the application of the facts to the law pertaining to the case. Judges are the dominant figure in the judicial process and the authority that determines which conduct or evidence may or may not be allowed. When sitting as arbiters in court, they take their personal value systems into the courtroom. They set the tone and environment within which members of all groups, in their roles as litigants and lawyers, will be heard. When judges censure the use of harsh or sexist language and the inappropriate behavior of attorneys, they protect the dignity of litigants and the judicial system. When they create a friendly and respectful environment in court, they make vulnerable witnesses more at ease and less intimidated by the judicial process.<sup>270</sup>

Judges must also be concerned with the public’s impression of the judiciary. When judges of the same court fight with each other, slap their personnel in public, or commit acts of sexual

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<sup>258</sup> *Id.*, Rule 3.04, 2<sup>nd</sup> para.

<sup>259</sup> Canons of Judicial Ethics, 7 & 14.

<sup>260</sup> See *In re Trettis*, 577 So. 2d 1312 (Fla. 1991).

<sup>261</sup> See *In re Inquiry Concerning a Judge (Hammill)* 566 S.E.2d 310 (Ga 2002).

<sup>262</sup> See *In re Jefferson*, 753 So.2d 181 (La. 2002).

<sup>263</sup> See *In re Griffin*, 357 S.E.2d 682 (N.C.1987).

<sup>264</sup> *Ysasi v. Fernandez*, G.R. No. 28593, December 16, 1968, 26 SCRA 409; *Lugue v. Kayanan*, G.R. No. 26826, August 29, 1969, 29 SCRA 165, *Delgra, Jr. v. Gonzales*, G.R. No. 24981, January 30, 1970, 31 SCRA 237. *Dodds v. Comm’n on Judicial Performance*, 906 P.2d 1260 (Cal. 1995) (“[W]hen a judge, clothed with the prestige and authority of his judicial office, repeatedly interrupts a litigant and yells angrily without adequate provocation, the judge exceeds his proper role and casts disrepute on the judicial office.”).

<sup>265</sup> *People v. Larrañaga*, G.R. Nos. 138874-75, February 3, 2004, 421 SCRA 530.

<sup>266</sup> *People v. Guambor*, G.R. No. 152183, January 22, 2004, 420 SCRA 677.

<sup>267</sup> *Id.*

<sup>268</sup> *Ty v. Banco Filipino Savings & Mortgage Bank*, G.R. Nos. 149797-98, February 13, 2004, 422 SCRA 649.

<sup>269</sup> See *In re Graziano*, 696 So. 2d 744 (Fla. 1997).

<sup>270</sup> Rowena Guanzon, et al., *Engendering the Judiciary* 11 (2005).

harassment, the image of the judiciary is impaired.<sup>271</sup> Repeated comments about a woman's physical appearance, bodily functions, or manner of dress are inappropriate.<sup>272</sup> Judges should not make insensitive and sarcastic comments in rape cases or use vulgar language in solemnizing marriages—even off the record. Such comments demean respect for the entire judiciary and people begin to doubt the moral standards of judges and their capacity and fitness to dispense justice.<sup>273</sup> This is also true of judges who resort to vilification of parties through the use of arrogant, intemperate and undignified language.<sup>274</sup>

It is disconcerting when courts that are expected to be paradigms of equality display any gender or racial insensitivity or bias. The effect is the same when the insensitive act or comment is made by a lawyer appearing in the court and the judge does not admonish the lawyer for the insensitivity.<sup>275</sup> A humane court is essential for due process. If the court environment is intimidating or biased, the court itself may deter and limit access to justice.<sup>276</sup>

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

Judges should organize their courts to ensure the prompt and convenient dispatch of business and should not tolerate misconduct by clerks, sheriffs and other assistants who are sometimes prone to expect favors or special treatment due to their professional relationship with the judge.<sup>277</sup> Judges 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.<sup>278</sup> They should ensure that clerks and other personnel faithfully perform the functions assigned to them as well as observe at all times high standards of public service and fidelity.<sup>279</sup> Judges should ensure that court personnel under their supervision do not discriminate by dispensing special favors or disclosing confidential information to any unauthorized person, regardless of whether such information came from authorized or unauthorized sources.<sup>280</sup>

All personnel involved in the dispensation of justice should conduct themselves with a high degree of responsibility.<sup>281</sup> Belligerent behavior has no place in government service, where personnel should act with self-restraint and civility at all times, even when confronted with rudeness and

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<sup>271</sup> *Navarro v. Tormis*, A.M. No. MTJ-00-1937, April 27, 2004, 428 SCRA 37; *Lim v. Sequiban*, A.M. nos. R-612-MTJ & P-87-61, March 10, 1988, 158 SCRA 532; *Ferrer v. Maramba*, A.M. No. MTJ-93-795, May 14, 1998, 290 SCRA 44; *Alumbres v. Caoibes, Jr.*, A.C. No. RTJ-99-1431, January 23, 2002, 374 SCRA 255; *Vedaña v. Valencia*, A.M. No. RTJ-96-1351, September 3, 1998, 295 SCRA 1; *Briones v. Ante, Jr.*, A.M. No. MTJ-02-1411, April 11, 2002, 380 SCRA 409.

<sup>272</sup> For examples of specific inappropriate comments, see *Office of Disciplinary Counsel v. Campbell*, 623 N.E.2d 24 (Ohio 1993); *In re Buchanan*, 669 P.2d 1248 (Wash. 1983); *In re Empson*, 562 N.W.2d 817 (Neb. 1997).

<sup>273</sup> *Hadap v. Lee*, A.M. No. 1665-MJ, June 19, 1982, 114 SCRA 559.

<sup>274</sup> *Royeca v. Animas*, A.M. No. 801, CFI, February 2, 1979, 88 SCRA 180;

*Sy v. Fineza*, A.M. No. RTJ-03-1808, October 15, 2003, 413 SCRA 374; *Seludo v. Fineza*, A.M. No. RTJ-03-1813, November 21, 2003, 416 SCRA 332.

<sup>275</sup> *People v. Bores*, G.R. No. 127495, December 22, 2000, 348 SCRA 638.

<sup>276</sup> H.G. Davide, Jr., *Foreword*, in M.S. FELICIANO, ET AL., *GENDER SENSITIVITY IN THE FAMILY COURTS* (2005).

<sup>277</sup> *Canons of Judicial Ethics*, 8; 1989 Code of Judicial Conduct, Canon 3, Rule 3.09.

<sup>278</sup> 1989 Code of Judicial Conduct, Rule 3.08.

<sup>279</sup> *Id.*, Rule 3.09; *Menzon v. Perello*, A.M. No. RT-02-1686, May 7, 2004, 428 SCRA 355.

<sup>280</sup> Code of Conduct for Court Personnel, A.M. No. 03-06-13-SC effective June 1, 2004, Canon I, sec. 3; Canon II, sec. 1.

<sup>281</sup> *Mataga v. Rosete*, A.M. No. MTJ-03-1488, October 13, 2004, 440 SCRA 217.



insolence.<sup>282</sup> Judges and clerks of court must therefore take proper action against the misdeeds of employees. While the traditional value of *pakikisama* often fosters harmony and good relationships in the workplace, it cannot be allowed to frustrate or prejudice the administration of justice.<sup>283</sup>

The conduct and behavior of court personnel must always be beyond reproach and therefore they should refrain from the use of language that is abusive, offensive, scandalous, menacing or otherwise improper.<sup>284</sup> Any misbehavior, whether true or only perceived is likely to reflect adversely on the administration of justice.<sup>285</sup> The men and women who work in the judiciary must always act with propriety as the image of the court is reflected in the conduct of its personnel.<sup>286</sup>

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**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.**

Judges should conduct proceedings in court with dignity and in a manner that reflects the importance and seriousness of proceedings. They should maintain order and proper decorum in the court.<sup>287</sup>

Since judges set the tone and environment of the court proceedings, they should censure lawyers who use sexist language or inappropriate behavior in court.<sup>288</sup> They should hold lawyers to the requirements of Rule 12.07 of the Code of Professional Responsibility which provides that a “lawyer shall not abuse, browbeat or harass a witness nor needlessly inconvenience him.” Judges have the duty to prevent lawyers from abusing witnesses with unfair treatment. Witnesses have the following rights and obligations as provided for in Rule 132, section 3 of the Revised Rules of Court:

- (1) To be protected from irrelevant, improper or insulting questions and from a harsh or insulting demeanor;
- (2) Not to be detained longer than the interests of justice require
- (3) Not to be examined except as to matters pertinent to the issues before the court;
- (4) Not to give an answer which will tend to subject him to a penalty for an offense unless otherwise provided by law; or
- (5) Not to give an answer which will tend to degrade the witness’ reputation, but a witness must answer the fact of any previous final conviction for a criminal offense.

Women appearing as witnesses or litigants have found themselves subjected to inappropriate, overly familiar and demeaning forms of address, comments on their personal appearance, sexist remarks, “jokes” and unwelcome advances.<sup>289</sup> As courts are expected to ensure equality, any lawyer who makes an insensitive or demeaning comment in court should be admonished. In *People v. Bores*,<sup>290</sup> the Supreme Court opined that the frightful experience of being questioned about rape committed against children requires the highest degree of tact, patience and diplomacy. Thus,

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<sup>282</sup> *Misajon v. Feranil*, A.M. Nos. P-02-156, 04-1900 & MTJ-02-1408, October 18, 2004, 440 SCRA 315.

<sup>283</sup> *Lacurom v. Magbanua*, A.M. No. P-02-1646, January 22, 2003, 395 SCRA 589.

<sup>284</sup> *Marbas-Vizcarra v. Soriano*, A.M. No. P-01-1491, March 25, 2003, 400 SCRA 16.

<sup>285</sup> *Rugor v. Ligot*, A.M. No. 2003-5-SC, November 20, 2003, 416 SCRA 255.

<sup>286</sup> *Aquino, Jr. v. Miranda*, A.M. No. P-01-1453, May 27, 2004, 429 SCRA 230.

<sup>287</sup> 1989 Code of Judicial Conduct, Canon 3, Rule 3.03.

<sup>288</sup> *In re Romano*, 690 N.Y.S. 2d 849 (N.Y. 1999).

<sup>289</sup> For examples of specific inappropriate comments, see *Office of Disciplinary Counsel v. Campbell*, 623 N.E.2d 24 (Ohio 1993) (judge told female lawyer he wanted to “connect the dots” on her patterned stockings to “see where it lead to” [sic]); *In re Buchanan*, 669 P.2d 1248 (Wash. 1983) (a judge’s speculation about his female employee’s lingerie is undignified); *Mississippi Comm’n on Judicial Performance v. Spencer*, 725 So.2d 171 (Miss. 1998) (judge commented he wanted to buy a clerk a pair of red underwear and offered to wash a clerk’s jeans if she took them off “right now”).

<sup>290</sup> G.R. No. 127495, December 22, 2000, 348 SCRA 638, 646-647.

excessive queries to a 6-year old child as to whether she remembered step-by-step the sexual intercourse at the hands of the accused were unnecessary and inappropriate.

## CANON 6

### COMPETENCE AND DILIGENCE

#### **Competence and diligence are pre-requisites to the due performance of judicial office.**

Judicial office demands competence and diligence. “The administration of justice,” the Supreme Court affirms, “is a sacred task ... and [u]pon assumption to office, a judge ceases to be an ordinary mortal. He becomes the visible representation of the law and more importantly, of justice.”<sup>291</sup> Hence, the Constitution prescribes that he “must be a person of proven competence,” as a requisite of his membership in the Judiciary.<sup>292</sup>

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

“Though a judge has a duty to not sit where disqualified, a judge has an equally strong duty not to recuse himself when the circumstances do not require recusal.”<sup>293</sup> Amended in 1974, an American statute mandates that a judge sit in a case unless there is a reasonable question as to the judge’s impartiality.<sup>294</sup> Thus, a judge should not recuse himself simply to avoid sitting on difficult or controversial cases.<sup>295</sup>

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#### **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 the court’s operations.**

Violations of this section often involve a failure to keep records or handle funds in compliance with court rules.<sup>296</sup> An excessive caseload might provide a defense if, for example, the caseload is due to the unusual absence of another magistrate.<sup>297</sup> However, if the excuse for the failure to comply with the rules is the general insufficiency of staff, the judge may still be subject to discipline.<sup>298</sup>

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

Judges are regarded as persons learned in the law and it is in part their masterful grasp of the law that sustains public trust in their work and in the confidence of the people and the legal profession

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<sup>291</sup> *Office of the Court Administrator v. Gines*, 224 SCRA 261 (1993).

<sup>292</sup> The present Constitution provides: “A Member of the Judiciary must be a person of proven competence, integrity, probity and independence” (Art. VIII, sec. 7(3)).

<sup>293</sup> ABA Annotated Model Code of Judicial Conduct (2004), Commentary, Canon 3B(1), citing *Laird v. Tatum*, 409 U.S. 824 (1972).

<sup>294</sup> 28 U.S.C.A. § 445.

<sup>295</sup> Annotations to American Bar Association Code of Judicial Conduct, Canon 3B(1), citing *United States v. Glick*, 942 F.2d 335 (4th Cir. 1991).

<sup>296</sup> See *In re Braun*, 883 P.2d 996 (Ariz. 1994); *In re Carstensen*, 316 N.W.2d 889 (Iowa 1982).

<sup>297</sup> See *In re Twyman*, 437 S.E.2d 764 (W.Va. 1993)

<sup>298</sup> *In re Long*, 772 P.2d 814 (Kan.1989)

in the administration of justice. The Supreme Court has said, “[s]ervice in the judiciary means a continuous study and research on the law from beginning to end.”<sup>299</sup> Judges are perceived as the visible representation of the law, an intermediary of justice between two conflicting interests.<sup>300</sup>

Canon 4 of the 1946 Canons of Judicial Ethics provides that “since [the judge] is to administer the law and apply it to the facts, he should be studious of the principles of the law, diligent in endeavoring to ascertain the facts.” Rule 3.01, Canon 3 of the 1989 Code of Judicial Conduct requires judges to “maintain professional competence.”

Under the Rules of Court, gross ignorance of the law or procedure constitutes a serious charge for which disciplinary proceedings may be instituted by the Supreme Court against judges of regular and special courts as well as against justices of the Court of Appeals and the *Sandiganbayan*.<sup>301</sup> If guilty, the respondent judge may be subject to “[d]ismissal from the service, forfeiture of all or part of the benefits [other than accrued leave credits] as the [Supreme] Court may determine, and disqualification from reinstatement or appointment to any public office, including government owned or controlled corporations.”<sup>302</sup>

The maxim “ignorance of the law excuses no one” has special application to judges.<sup>303</sup> As advocates of justice and visible representation of the law, the public expects judges to be conversant with the developments of law and jurisprudence and proficient in their application or interpretation of it.<sup>304</sup> It is imperative that judges be well-informed of basic legal principles.

Judges are not, however, expected to be infallible; not every error or irregularity committed by judges in the performance of official duties is subject to administrative sanction. In the absence of bad faith, fraud, dishonesty, or deliberate intent to do injustice, incorrect rulings do not constitute misconduct and may not give rise to a charge of gross ignorance of the law.<sup>305</sup> Thus, judges are not liable for every erroneous order or decision; otherwise the judicial office becomes unbearable and they will be the objects of endless harassment.<sup>306</sup> Good faith and absence of malice or corruption are sufficient defenses to charges of ignorance of the law.<sup>307</sup> However, the Supreme Court admonished that

“good faith of fallible discretion inheres only within the perimeter of tolerable judgment and does not apply where the issues are so simple and the applicable legal principles evident and basic as to be beyond possible margin of error.”<sup>308</sup> To constitute gross ignorance of the law, an error or irregularity on the part of the judge in the application or interpretation of the law “must not only be contrary to existing law and jurisprudence but ... motivated by bad faith, fraud, dishonesty and corruption.”<sup>309</sup>

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<sup>299</sup> *Ajeno v. Inserto*, 7 SCRA 166; *Lopez v. Fernandez*, 99 SCRA 612; *Aurillo v. Francisco*, 235 SCRA 283, *State Prosecutor v. Muro*, 236 SCRA 57[1994]; *Rao v. Imbing*, 231 SCRA 57[1994].

<sup>300</sup> *Impao v. Makilala*, 178 SCRA 541 (1989).

<sup>301</sup> Sections 1 and 8(9), Rule 140, Revised Rules of Court.

<sup>302</sup> Section 11(1), Rule 140, Revised Rules of Court.

<sup>303</sup> *Espiritu v. Javellanos*, 280 SCRA 579 (1997).

<sup>304</sup> *Almonte v. Bien*, 461 SCRA 218 (2005).

<sup>305</sup> *Cruz v. Iturralde*, 402 SCRA 65, 73-74 (2003).

<sup>306</sup> *Dantes v. Caguia*, 461 SCRA 236 (2005); *Tan v. Estoconong*, 462 SCRA 10 (2005); *Daracan v. Natividad*, 341 SCRA 161 (2000); *DBP v. Llanes, Jr.*, 266 SCRA 212 (1997). See also Ben F. Overton, *Grounds for Judicial Discipline in the Context of Judicial Disciplinary Commissions*, 54 Chi. Kent L. Rev. 59 (1977). The author of this article notes that if every legal error carried the threat of sanctions against an individual judge, such harsh discipline would “have a tendency to chill his independence.”

<sup>307</sup> *Chan v. Lantion*, 468 SCRA 37 (2005); *Dantes v. Caguia*, 461 SCRA 236 (2005); *Balsamo V. Suan*, 411 SCRA 189 (2003); *Rallos v. Gako, Jr.*, 328 SCRA 324 (2000); *Guillermo v. Reyes, Jr.*, 240 SCRA 154 (1995); *Castañon v. Escaño*, 251 SCRA 174 (1995).

<sup>308</sup> *Poso v. Mijares*, 387 SCRA 485, 507 (2002); *Corpus v. Ochotorea*, 435 SCRA 446 (2004).

<sup>309</sup> *Duduaco v. Laquindanum*, 466 SCRA 428 (2005). A similar standard was highlighted by Professor

Resort to administrative sanction is an exceptional remedy. The normal course of action is to correct the errors or irregularities in the application of law by the judge by way of motion for reconsideration, or where appropriate under the rules of procedure, motion for new trial or special civil action of certiorari, prohibition or mandamus. The Supreme Court provided the following guideline in *Maquiran v. Grageda*:<sup>310</sup>

Now, the established doctrine and policy is that disciplinary proceedings and criminal actions against Judges are not complementary or suppletory of, nor a substitute for, these judicial remedies, whether ordinary or extraordinary. Resort to and exhaustion of these judicial remedies ... are prerequisites for the taking of other measures against the persons of the judges concerned, whether of civil, administrative, or criminal nature. It is only after the available judicial remedies have been exhausted and the appellate tribunals have spoken with finality that the door to an inquiry into his criminal, civil, or administrative liability may be said to have opened, or closed.

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

In the Philippines, this provision of the code is implicit within Section 4 as well. The Constitution incorporates the two principal sources of international law – general or customary norms and conventional norms. Subject to conditions set forth in the fundamental law, both customary and conventional norms of international law are part of Philippine law. Customary norms are binding on all States. They are the norms of international law referred to in Section 2, Article II of the Constitution when it provides that “[t]he Philippines ... adopts the generally accepted principles of international law as part of the law of the land.” As to conventional or treaty law, the Constitution in Section 21, Article VII prescribes that when at least two-thirds of all the Members of the Senate concur in a treaty or international agreement, it may become part of Philippine domestic law. This means that the treaty becomes binding as domestic law even though it is also a source of international obligations.<sup>311</sup>

The main legal instruments of international human rights enjoy the same status in Philippine law. In particular, the United Nations Charter, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights are international conventions of which the Philippines is a party. Moreover, a great number of these rights are considered general norms of international law and thus form part of Philippine law by constitutional mandate. The International Court of Justice considers “the principles and rules concerning the basic rights of the human person” as *erga omnes* obligations, that is, obligations of every State towards the international community as a whole. They are the concern of all States; “all States can be held to have a legal interest in their protection.”<sup>312</sup> Within its own territory, the Philippines has the obligation to respect the civil and political rights recognized by the International Covenant on Civil and Political Rights without discrimination as to national origin, among other factors — an obligation that binds both its citizens and foreign nationals within its jurisdiction.<sup>313</sup>

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Jeffrey Shaman. See Jeffrey M. Shaman, *Judicial Ethics*, 2 Geo. J. Legal Ethics 1, 8 (1988).

<sup>310</sup> 451 SCRA 15 (2005).

<sup>311</sup> See *Guerrero's Transportation Services, Inc. v. Blaylock Transportation Services Employees Association – Kilusan*, G.R. L-41518, June 30, 1976.

<sup>312</sup> *Barcelona Traction Case, ICJ Reports*, 1970, pp. 3, 32.

<sup>313</sup> The ABA Model Code of Judicial Conduct does not have an analogous provision on international law, although the United States Supreme Court stated that “international law is part of our law, and must be ascertained and administered by the courts of justice of appropriate jurisdiction as often as questions of right depending upon it are duly presented for their determination” *The Paquete Habana*, 175 U.S. 677,

Norms of international law become the concern of judges because they form part of legal standards by which their competence and diligence required by the New Code of Judicial Conduct are to be measured.

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

The essence of the judicial function is expressed in Section 1, Rule 124 of the Revised Rules of Court which provides that “[j]ustice shall be impartially administered without unnecessary delay.” This principle permeates the whole system of judicature, and supports the legitimacy of the decrees of judicial tribunals.

Canon 18 of the 1946 Canons of Judicial Ethics defines the scope of judicial duties. In the trial and resolution of particular controversies -- the core of judicial function -- a judge’s “duty is the application of general law to particular instance[s], deciding cases impartially and without undue delay.” A judge’s duty includes the management of the judicial office. Canon 18 directs a judge to “administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law.” Judges are required under Canon 8 to “organize [their] court[s] with the view to prompt and convenient dispatch of its business.”

The core of the judicial function is to “administer justice impartially and without delay.”<sup>314</sup> More specifically, “[i]n every case, a [judicial officer] shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.”<sup>315</sup> A judge must also deal efficiently with administrative responsibilities. According to Rule 3.09 of Canon 3, he or she “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.”

Outside of their core judicial duties, Rule 4.01 Canon 4 of the Code of Judicial Conduct allows judges to:

- (1) speak, write, lecture, teach or participate in activities concerning the law, the legal system and the administration of justice;
- (2) appear at public hearing before a legislative or executive body on matters concerning the law, the legal system or the administration of justice and otherwise consult with them on matters concerning the administration of justice;
- (3) serve on any organization devoted to the improvement of the law, the legal system or the administration of justice.

Explicit in this Rule is the limitation that the judge may only engage in these activities “to the extent that ... [they] do not impair the performance of judicial duties or cast doubt on the judge’s impartiality.”

Rule 5.01 of Canon 5 of the 1989 Code of Judicial Conduct also permits the judge to:

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700 (1900).

<sup>314</sup> 1989 Code of Judicial Conduct, Canon 1, Rule 1.02. *Sierra Nevada Stagelines, Inc. v. Rossi*, 892 P.2d 592 (Nev. 1995) points out the importance of disposing of judicial matters promptly and efficiently, but acknowledges that promptness should not be achieved at the expense of fairness. Usually, American courts will sanction judges for a lack of timeliness only if the conduct involves a pattern of delay. See e.g. *In re Gerard*, 631 N.W.2d 271 (Iowa 2001); *In the Matter of Alvino*, 494 A.2d 1014 (N.J. 1985) (holding that inadvertent delay does not warrant judicial discipline but rather administrative correction.).

<sup>315</sup> 1989 Code of Judicial Conduct, Canon 3, Rule 3.02.

- (1) write, lecture, teach and speak on non-legal subjects;
- (2) participate in sports and other special recreational activities;
- (3) participate in civil and charitable activities;
- (4) serve as an officer, director, trustee, or non-legal advisor of a non-profit or non-political educational, religious, charitable, fraternal, or civil organization.

The judge, however, is subject to the restriction that such activities “do not interfere with the performance of judicial duties or detract from the dignity of the court.”<sup>316</sup>

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

Canon 2 of the 1946 Canons of Judicial Ethics affirms the principle that the courts are made for the litigants, not the litigants for the courts. Punctuality was required under Canon 7, “recognizing that the time of the litigants, witnesses, and attorneys is of value.” Canon 8 did not allow judges to tolerate abuses and neglect by clerks, sheriffs, and other assistants. Canon 9 required consideration of witnesses and others in attendance in court. Canon 14 prohibited the “undue interference, impatience, or participation in the examination of witnesses,” as well as “interruptions of counsel in their arguments except to clarify [the judge’s] mind as to their positions.”

The 1989 Code of Judicial Conduct required the judge to (1) maintain order and proper decorum in the court (Rule 3.03, Canon 3); (2) facilitate performance of administrative functions of other judges and court personnel (Rule 3.08, Canon 3); and require court personnel to observe high standards of public service and fidelity at all times (Rule 3.09, Canon 3).

In *Briones v. Ante, Jr.* the respondent judge was guilty of committing acts unbecoming of a judge and abuse of authority when he shouted invectives and threw a chair at the complainant, resulting in wrist and other injuries to the complainant.<sup>317</sup>

In *Yu-Asensi v. Villanueva*, the respondent judge was found guilty of serious misconduct and inefficiency by reason of habitual tardiness. He was fined and suspended for judicial indolence.<sup>318</sup>

A judge may be subject to an administrative fine for inefficiency, neglect, and unreasonable delay in elevating the records of a civil case to the Court of Appeals. As the Supreme Court has stressed, “as an administrative officer of the court, 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 standard of public service and fidelity. A delay of three years in the transmission of court records to the appellate court, where a period of 30 days is required, is inexcusable.”<sup>319</sup>

Besides possessing the requisite learning in the law, the Supreme Court has emphasized that “a magistrate must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge.”<sup>320</sup> A judge anywhere should be the last person to be perceived as a petty tyrant holding imperious sway over his domain. Such an image is evoked by the

<sup>316</sup> Rule 5.01 of Canon 5, Code of Judicial Conduct.

<sup>317</sup> *Briones v. Ante, Jr.*, 380 SCRA 40 [2002]. For examples in American courts of judicial misconduct, see *In re Trettis*, 577 So. 2d 1312(Fla. 1991); *In re Inquiry Concerning a Judge (Hammill)*, 566 S.E.2d 310 (Ga. 2002); *In re Jefferson*, 753 So.2d 181 (La. 2000); *In re Albano*, 384 A.2d 144 (N.J. 1978).

<sup>318</sup> *Yu-Asensi v. Villanueva*, 322 SCRA 255 [2000].)

<sup>319</sup> *Pantaleon v. Gudez*, 323 SCRA 147 [2000].

<sup>320</sup> *Rodriguez v. Bonifacio*, 344 SCRA 519[2000].

actuations of respondent judge in this case.”<sup>321</sup> The Court goes on to stress that “government service is people-oriented.”<sup>322</sup> Patience is an essential part of dispensing justice and courtesy is a mark of culture and good breeding. Belligerent behavior has no place in government service where personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence.<sup>323</sup>

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

Canon 3 of the 1946 Code of Judicial Ethics stated that the official conduct of the judge should be “free from the appearance of impropriety.” His or her personal behavior should be beyond reproach in the performance of judicial duties as well as in everyday life. Canon 23 did not allow a judge to accept duties that would “interfere with his devotion to the expeditious and proper administration of his official functions.” Canon 28 required judges to abstain from participating in any judicial acts “in which...personal interests are involved.” Canon 29 disallowed judges from accepting “any presents or favors from litigants or from lawyers practicing before [them].”

Under the 1989 Code of Judicial Ethics, judges were required to avoid “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.” While Rule 5.03 of Canon 5 permitted Judges to hold and manage investments, they were prohibited from serving “as an officer, director, manager, adviser, or employee of any business except as director of a family business of the judge.” Rule 5.04 of this Canon prevented judges or any member of their families to accept “a gift, bequest, favor or loan from anyone” except as may be allowed by law.” Rule 5.07 of Canon 5 prohibited private practice of law by a judge, or any other profession in conflict with judicial functions.

In *Beso v. Daguman*, a judge neglected his duty when he failed to exercise extra care in ensuring that records of the cases and official documents in his custody were intact. The Supreme Court reiterated that “judges must adopt a system of record management and organize their dockets in order to bolster the prompt and efficient dispatch of business.”<sup>324</sup>

By issuing orders indefinitely postponing the hearing of election protest, the judge in *De la Cruz v. Pascua* manifested inefficiency in the disposition of an election protest case and thus overtly transgressed basic mandatory rules for expeditious resolution of cases.<sup>325</sup>

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<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> *Id.*

<sup>324</sup> *Beso v. Daguman*, 323 SCRA 566 (2000).

<sup>325</sup> *De la Cruz v. Pascua*, 359 SCRA 568 (2001).





**A.M. No. 03-05-01-SC**

**ADOPTING  
THE NEW CODE OF JUDICIAL CONDUCT  
FOR THE PHILIPPINE JUDICIARY**

**WHEREAS**, at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, on 25-26 November 2002, at which the Philippine Supreme Court was represented by the Chief Justice and Associate Justice Reynato S. Puno, the Bangalore Draft of the Code of Judicial Conduct adopted by the Judicial Group on Strengthening Judicial Integrity was deliberated upon and approved after incorporating therein several amendments;

**WHEREAS**, the Bangalore Draft, as amended, is intended to be the Universal Declaration of Judicial Standards applicable in all judiciaries;

**WHEREAS**, 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;

**WHEREAS**, the adoption of the universal declaration of standards for ethical conduct of judges embodied in the Bangalore Draft as revised at the Round Table Conference of Chief Justices at The Hague is imperative not only to update and correlate the Code of Judicial Conduct and the Canons of Judicial Ethics adopted for the Philippines, but also to stress the Philippines’ solidarity with the universal clamor for a universal code of judicial ethics.

**NOW, THEREFORE**, the Court hereby adopts this *New Code of Judicial Conduct for the Philippine Judiciary*:

*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.

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

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

SEC. 4. Judges shall not allow family, social, or other relationships 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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 the view of a reasonable observer.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 4. Judges shall not knowingly, while a proceeding is before, or could come before, them 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.

SEC. 5. Judges shall disqualify themselves from participating in any proceedings 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 a member of his or her family, has an 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 counsel during their association, or the judge or lawyer was a material witness therein;
- (e) The judge's ruling in a lower court is the subject of review;
- (f) The judge is related by consanguinity or affinity to a party litigant within the sixth civil degree or to counsel within the fourth 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 controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceedings;

SEC. 6. A judge disqualified as stated above may, instead of withdrawing from the proceeding, disclose on the records the 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 the appearance of propriety are essential to the performance of all the activities of a judge.

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

SEC. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

SEC. 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 the suspicion or appearance of favoritism or partiality.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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.

SEC. 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 of anyone else, nor shall they convey or permit others to convey the impression that anyone is in a special position improperly to influence them in the performance of judicial duties.

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

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

- (a) Write, lecture, teach 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.

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

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

SEC. 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.

SEC. 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.

SEC. 15. Subject to 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 courts is essential to the due performance of the 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 other like causes.

SEC. 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.

SEC. 3. Judges shall carry out judicial duties with appropriate consideration for all persons, 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.

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

SEC. 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 prerequisites to the due performance of judicial office.

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

SEC. 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 the court's operations.

SEC. 3. Judges shall take reasonable steps to maintain and enhance 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.

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

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

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

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

### DEFINITIONS

In this Code, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

“*Court staff*” includes the personal staff of the judge including law clerks.

“*Judge*” means any person exercising judicial power, however designated.

“*Judge's family*” includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other relative by consanguinity or affinity within the sixth civil degree, or person who is a companion or employee of the judge and who lives in the judge's household.

This Code, which shall hereafter be referred to as the *New Code of Judicial Conduct for the*

*Philippine Judiciary*, supersedes the Canons of Judicial Ethics and the Code of Judicial Conduct heretofore applied in the Philippines to the extent that the provisions or concepts therein are embodied in this Code: *Provided, however*, that in case of deficiency or absence of specific provisions in this New Code, the Canons of Judicial Ethics and the Code of Judicial Conduct shall be applicable in a suppletory character.

This *New Code of Judicial Conduct for the Philippine Judiciary* shall take effect on the first day of June 2004, following its publication not later than 15 May 2004 in two newspapers of large circulation in the Philippines to ensure its widest publicity.

Promulgated this 27<sup>th</sup> day of April 2004.

HILARIO G. DAVIDE, JR.  
Chief Justice

REYNATO S. PUNO  
Associate Justice

JOSE C. VITUG  
Associate Justice

ARTEMIO V. PANGANIBAN  
Associate Justice

LEONARDO A. QUISUMBING  
Associate Justice

CONSUELO YNARES-SANTIAGO  
Associate Justice

ANGELINA SANDOVAL -GUTIERREZ  
Associate Justice

ANTONIO T. CARPIO  
Associate Justice

MA. ALICIA AUSTRIA - MARTINEZ  
Associate Justice

(on leave)  
RENATO C. CORONA  
Associate Justice

CONCHITA CARPIO MORALES  
Associate Justice

ROMEO J. CALLEJO, SR.  
Associate Justice

ADOLFO S. AZCUNA  
Associate Justice

DANTE O. TINGA  
Associate Justice

**CODE OF JUDICIAL CONDUCT**

**PREAMBLE**

An honorable competent and independent judiciary exists to administer justice and thus promote the unity of the country, the stability of government, and the well-being of the people.

**CANON 1**

**A JUDGE SHOULD UPHOLD THE INTEGRITY  
AND INDEPENDENCE OF THE JUDICIARY**

**RULE 1.01** - A judge should be the embodiment of competence, integrity and independence.

**RULE 1.02** - A judge should administer justice impartially and without delay.

**RULE 1.03** - A judge should be vigilant against any attempt to subvert the independence of the judiciary and should forthwith resist any pressure from whatever source intended to influence the performance of official functions.

**CANON 2**

**A JUDGE SHOULD AVOID IMPROPRIETY  
AND THE APPEARANCE OF IMPROPRIETY  
IN ALL ACTIVITIES**

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

**RULE 2.02** - A judge should not seek publicity for personal vainglory.

**RULE 2.03** - A judge shall not allow family, social, or other relationships 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.

**RULE 2.04** - A judge should refrain from influencing in any manner the outcome of litigation or dispute pending before another court or administrative agency.

**CANON 3**



A JUDGE SHOULD PERFORM OFFICIAL DUTIES  
HONESTLY, AND WITH IMPARTIALITY AND DILIGENCE

**ADJUDICATIVE RESPONSIBILITIES**

**RULE 3.01** - A judge shall be faithful to the law and maintain professional competence.

**RULE 3.02** - In every case, a judge shall endeavor diligently to ascertain the facts and the applicable law unswayed by partisan interests, public opinion or fear of criticism.

**RULE 3.03** - A judge shall maintain order and proper decorum in the court.

**RULE 3.04** - 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** - A judge shall dispose of the court's business promptly and decide cases within the required periods.

**RULE 3.06** - While a judge may, to promote justice, prevent waste of time or clear up some obscurity, properly intervene in the presentation of evidence during the trial, it should always be borne in mind that undue interference may prevent the proper presentation of the cause or the ascertainment of truth.

**RULE 3.07** - 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.

**ADMINISTRATIVE RESPONSIBILITIES**

**RULE 3.08** - 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** - 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** - 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** - 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.

**DISQUALIFICATION**

**RULE 3.12** - A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. These cases include among others, proceedings where:

- (a) the judge has personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) 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 counsel during their association, or the judge or lawyer was a material witness therein;

(c) the judge's ruling in a lower court is the subject of review;

(d) the judge is related by consanguinity or affinity to a party litigant within the sixth degree or to counsel within the fourth degree;

(e) the judge knows the judge's spouse or child has a financial interest, as heir, legatee, creditor, fiduciary, or otherwise, in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding.

In every instance, the judge shall indicate the legal reason for inhibition.

## **REMITTAL OF DISQUALIFICATION**

**RULE 3.13** - A judge disqualified by the terms of rule 3.12 may, instead of withdrawing from the proceeding, disclose on the record the basis of disqualification. If, based on such disclosure, the parties and lawyers independently of judge's participation, all agree in writing that the reason for the inhibition is immaterial or insubstantial, the judge may then participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

## **CANON 4**

### **A JUDGE MAY, WITH DUE REGARD TO OFFICIAL DUTIES, ENGAGE IN ACTIVITIES TO IMPROVE THE LAW, THE LEGAL SYSTEM AND THE ADMINISTRATION OF JUSTICE**

**Rule 4.01** – A judge may, to the extent that the following activities do not impair the performance of judicial duties or cast doubt on the judge's impartiality:

(a) speak, write, lecture, teach or participate in activities concerning the law, the legal system and the administration of justice;

(b) appear at a public hearing before a legislative or executive body on matters concerning the law, the legal system or the administration of justice and otherwise consult with them on matters concerning the administration of justice;

(c) serve on any organization devoted to the improvement of the law, the legal system or the administration of justice

## **CANON 5**

### **A JUDGE SHOULD REGULATE EXTRA-JUDICIAL ACTIVITIES TO MINIMIZE THE RISK OF CONFLICT WITH JUDICIAL DUTIES**

#### **A VOCATIONAL, CIVIC AND CHARITABLE ACTIVITIES**

**RULE 5.01** - 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, 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.

#### **FINANCIAL ACTIVITIES**

**RULE 5.02** - A judge shall refrain from financial and business dealing 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 as to minimize the number of cases giving grounds for disqualifications.

**RULE 5.03** - Subject to the provisions of the proceeding rule, a judge may hold and manage investments but should not serve as officer, director, manager or advisor, or employee of any business except as director of a family business of the judge.

**RULE 5.04** - A judge or any immediate member of the family shall not accept a gift, bequest, factor or loan from any one except as may be allowed by law.

**RULE 5.05** - No information acquired in a judicial capacity shall be used or disclosed by a judge in any financial dealing or for any other purpose not related to judicial activities.

#### **FIDUCIARY ACTIVITIES**

**RULE 5.06** - A judge should not serve as the executor, administrator, trustee, guardian, or other fiduciary, except for the estate, trusts, or person of a member of the immediate family, and then only if such service will not interfere with the proper performance of judicial duties. "Member of immediate family" shall be limited to the spouse and relatives within the second degree of consanguinity. As a family, a judge shall not:

- (1) serve in proceedings that might come before the court of said judge; or
- (2) act as such contrary to rules 5.02 to 5.05.

#### **PRACTICE OF LAW AND OTHER PROFESSION**

**RULE 5.07** - 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.

#### **FINANCIAL DISCLOSURE**

**RULE 5.08** - A judge shall make full financial disclosure as required by law.

#### **EXTRA-JUDICIAL APPOINTMENTS**

**RULE 5.09** - A judge shall not accept appointment or designation to any agency performing quasi-judicial or administrative functions.

**POLITICAL ACTIVITIES**

**RULE 5.10** - 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.

**COMPLIANCE WITH THE CODE OF JUDICIAL CONDUCT**

All judges shall strictly comply with this Code.

**DATE OF EFFECTIVITY**

*This Code, promulgated on 5 September 1989, shall take effect on 20 October 1989.*



**“Annex C”**

**CANONS OF JUDICIAL ETHICS**  
(Administrative Order No. 162 dated August 1, 1946  
of the Department of Justice)

In the interest of the administration of justice, the following Canons of Judicial Ethics, proposed by the Philippine Bar Association and approved by the judges of First Instance of Manila re hereby adopted for the guidance of and observance by the judges under the administrative supervision of the Department of Justice (now of the Supreme Court), including municipal judges and city judges:

1. Relations of the judiciary

The assumption of the office of judge casts upon the incumbent duties in respect to his personal conduct which concern his relation to the State and its inhabitants, the litigants before him, the principles of law, the practitioners of law in his court, and the witnesses and attendants who aid him in the administration of its functions

2. The public interest

The courts exist to promote justice; and thus to aid in securing the contentment and happiness of the people. Their administration should be speedy and careful. Every judge should at all times be alert in his rulings and in the conduct of the business of his court, so far as he can, to make it useful to litigants and to the community. He should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

3. Avoidance of appearance of impropriety

A judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also in his every day life, should be beyond reproach.

4. Essential conduct

He should be temperate, patient, attentive, impartial, and, since he is to administer the law and apply it to the facts, he should be studious of the principles of the law, diligent in endeavoring to ascertain the facts.

5. Industry

He should exhibit an industry and application commensurate with the duties imposed upon him.

6. Promptness

He should be prompt in disposing of all matters submitted to him, remembering that justice delayed is often justice denied.

7. Punctuality

He should be punctual in the performance of his judicial duties, recognizing that the time of litigants, witnesses, and attorneys is of value and that if the judge is unpunctual in his habits he sets a bad example to the bar and tends to create dissatisfaction with the administration of justice.

#### 8. Court organization

He should organize his court with a view to prompt and convenient dispatch of its business and he should not tolerate abuses and neglect by clerks, sheriffs, and other assistants who are sometimes prone to presume too much upon his good-natured acquiescence by reason of friendly association with him.

#### 9. Consideration for witnesses and others

He should be considerate of witnesses and others in attendance upon his court.

#### 10. Courtesy and civility

Judges should be courteous to counsel, especially to those who are young and inexperienced, and also to all others concerned in the administration of justice in their courts.

They should also require, and, as far as their power extends, enforce on the part of clerks, court officers and counsel civility and courtesy to witnesses, litigants and others having business with the court.

#### 11. Appointments of the judiciary and their compensation

Trustees, receivers, masters, referees, guardians, and administrators appointed by a judge to aid in the administration of justice under his supervision should have the strictest probity and impartiality and should be selected with a view solely to their character and competency. Patronage of a judge is conferred by him for no personal or partisan advantage. A judge should not permit his appointments to be controlled by others than himself, and he should avoid the allowance of excessive compensation to the appointees. He should also avoid nepotism in his appointments.

#### 12. Kinship or influence of parties and counsel

A judge should not, unless it is unavoidable, sit in litigation where a near relative is a party or of counsel; and he should not suffer his conduct to create the impression that any person can unduly influence him or enjoy his favor, or that he is affected by the rank, position, or influence of any party.

#### 13. Independence

A judge should not be swayed by public claim or considerations of personal popularity.

#### 14. Interference to conduct of trial

While a judge may properly intervene in a trial of a case to promote expedition and prevent unnecessary waste of time, or to clear up some obscurity, nevertheless, he should bear in mind that his undue interference, impatience, or participation in the examination of witnesses, or a severe attitude on his part toward witnesses, especially those who are excited or terrified by the unusual circumstances of trial, may tend to prevent the proper presentation of the cause, or the ascertainment of the truth in respect thereto.

Conversation between the judge and counsel in court is often necessary, but the judge should be studious to avoid controversies which are apt to obscure the merits of the dispute between litigants and lead to its unjust disposition. In addressing counsel, litigants, or witnesses, he should avoid a controversial tone.

He should avoid interruptions of counsel in their arguments except to clarify his mind as to their positions, and he should not be tempted to an unnecessary display of learning or a premature judgment.

#### 15. Ex parte applications

Judges should discourage ex parte hearing of applications for injunctions and receivership where the order may work detriment to absent parties; they should act upon ex parte applications only where the necessity for quick action is clearly shown; if this be demonstrated, then the judge should endeavor to counteract the effect of the absence of opposing counsel by a scrupulous cross-examination and investigation as to the facts and the principles of law upon which the application is based, granting relief only when fully satisfied that the law permits it and the emergency demands it. The judge should remember that an injunction is a limitation upon the freedom of action of defendants and should not be granted lightly or inadvisedly. One applying for such relief must sustain the burden of showing clearly its necessity and this burden is increased in the absence of the party whose freedom of action is to be restrained even though only temporarily.

#### 16. Continuances

Delay in the administration of justice is a common cause of complaint; counsel are frequently responsible for this delay. Judges, without being arbitrary or forcing cases unreasonably or unjustly to trial when unprepared, to the detriment of parties, may well endeavor to hold counsel to a proper appreciation of their duties to the public to their own clients, and to the adverse party and his counsel, so as to enforce due diligence in the dispatch of business before the court.

#### 17. Judicial opinions

In disposing of controverted cases, judges should indicate the reasons for their action in opinions showing that they have not disregarded or overlooked serious arguments of counsel. They should show their full understanding of the case, avoid the suspicion of arbitrary conclusion, promote confidence in their intellectual integrity and contribute useful precedents to the growth of the law.

But the volume of reported decisions is such and is ever so increasing that in writing opinions which are to be published, judges may well take this fact into consideration, and curtail them accordingly, without substantially departing from the principles stated above. It is of high importance that judges constituting a court of last resort should use effort and self-restraint to promote solidarity of conclusion and the consequent influence of judicial decision. A judge should not yield to pride of opinion or value more highly his individual reputation than that of the court to which he should be loyal. Therefore, except in case of conscientious difference of opinion on fundamental principle, dissents should be discouraged.

#### 18. Influence of decisions upon the development of the law

A Judge should be mindful that his duty is the application of general law to particular instance, that ours is a government of laws and not of men, and that he violates his duty as a minister of justice under such a system if he seeks to do what he may personally consider substantial justice in a particular case and disregards the general law as he knows it to be binding on him. Such action may have detrimental consequences beyond the immediate controversy. He should administer his office with a due regard to the integrity of the system of the law itself, remembering that he is not a depository of arbitrary power, but a judge under the sanction of law.

#### 19. Idiosyncrasies and inconsistency

Justice should not be bounded by the individual idiosyncrasies of those who administer it. A judge should adopt the usual and expected method of doing justice, and not seek to be extreme or peculiar in his judgment, or spectacular or sensational in the conduct of his court. Though vested with discretion in the imposition of mild or severe sentence, he should not compel persons convicted or accused to submit to some humiliating act or discipline of his own devising, without authority of law, because he thinks it will have a beneficial corrective influence.



Judges imposing sentence should endeavor to conform to a reasonable standard of punishment and should not seek popularity either by exceptional severity or undue leniency.

#### 20. Review

In order that a litigant may secure the full benefit of the right of review accorded to him by law, a trial judge should scrupulously grant to the defeated party opportunity to present the situation arising upon the trial exactly as it arose, was presented, and decided by full and fair bill of exceptions or otherwise; and failure in this regard on the part of the judge is peculiarly worthy of condemnation because the wrong done is remediable.

#### 21. Legislation

Judges have exceptional opportunity to observe the operation of statutes, especially those relating to practice, and to ascertain whether they tend to impede the just disposition of controversies; and they may well contribute to the public interest by advising those having authority to remedy defects of procedure of the result of their observation and experience.

#### 22. Infractions of law

The judge should be studiously careful himself to avoid even the slightest infraction of the law, lest it be a demoralizing example to others.

#### 23. Inconsistent obligations

A judge should not accept inconsistent duties; nor incur obligations, pecuniary or otherwise, which will in any way interfere with his devotion to the expeditious and proper administration of his official functions.

#### 24. Business promotions and solicitations for charity.

He should avoid giving ground for any reasonable suspicion that in utilizing the power or prestige of his office to persuade or coerce others to patronize or contribute, either to the success of private business ventures, or to charitable enterprises. He should, therefore, not enter into such private business, or pursue such a course of conduct, as would justify such suspicion, nor use the power of his office or the influence of his name to promote the business interest of others; he should not solicit for charities, nor should he enter into any business relation which, in the normal course of events reasonably to be expected, might bring his personal interests into conflict with the impartial performance of his official duties.

#### 25. Personal investments and relations

A Judge should abstain from making personal investments in enterprises which are apt to be involved in litigation in his court; and, after accession to the bench, he should not retain such investments previously made, longer than a period sufficient to enable him to dispose of them without serious loss.

It is desirable that he should, so far as reasonably possible, refrain from all relations which would normally tend to arouse the suspicion that such relations warp or bias his judgment, or prevent his impartial attitude of mind in the administration of his judicial duties.

It is highly improper for a judge to utilize information coming to him in a juridical capacity for purposes of speculation and it detracts from the public confidence in his integrity and the soundness of judicial judgment for him at any time to become a speculative investor upon the hazard of a margin.

#### 26. Executorships and trusteeships

While judges are not disqualified from holding executorships or trusteeships, they should not accept or continue to hold any fiduciary or other position if the holding of it would interfere or seem to interfere with the proper performance of their judicial duties, or if the business interests of those represented

require investments in enterprises that are apt to come before the court, or to be involved in questions of law to be determined by it.

#### 27. Partisan politics

While entitled to entertain his personal view on political questions, and while not required to surrender his rights or opinions as a citizen, it is inevitable that suspicion of being warped by political bias will attach to a judge who becomes the active promoter of the interests of one political party against another.

A Judge should avoid making political speeches, contributions to party funds, the public endorsement of candidates for political office, or participating in party conventions.

#### 28. Self-interest

He should abstain from participating in any judicial act in which his personal interests are involved. If he has personal litigation in the court of which he is judge, he need not resign his judgeship on that account, but he should, of course, refrain from any judicial act in such a controversy.

#### 29. Gifts and favors

He should not accept any presents or favors from litigants or from lawyers practicing before him.

#### 30. Social relations

It is not necessary to the proper performance of judicial duty that judges should live in retirement or seclusion; it is desirable that, so far as the reasonable attention to the completion of their work will permit, they continue to mingle in social intercourse, and that they should not discontinue their interests in or appearance at meetings of members of the bar. A judge should, however, in pending or prospective litigation before him be scrupulously careful to avoid such action as may reasonably tend to waken the suspicion that his social or business relations or friendships constitute an element in determining his judicial course.

#### 31. A summary of judicial obligations

A judge's conduct should be above reproach and in the discharge of his judicial duties he should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, and regardless of private influence should administer justice according to law and should deal with the patronage of the position as a public trust; and he should not allow outside matters or his private interests to interfere with the prompt and proper performance of his office.