

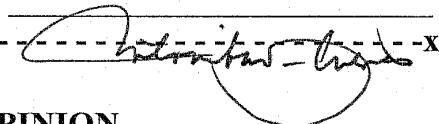
EN BANC

A.M. No. MTJ-25-035 [Formerly JIB FPI No. 21-053-MTJ] – ANONYMOUS, Complainant, v. HON. JULIETO N. BAJAN, Presiding Judge, Branch 2, Municipal Trial Court in Cities, Surigao City, Surigao del Norte, Respondent.

Promulgated:

March 4, 2025

X-----X



CONCURRING OPINION

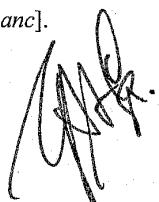
CAGUIOA, J.:

The *ponencia* finds respondent Hon. Julieto N. Bajan (Judge Bajan) administratively liable under Rule 140 of the Rules of Court for the following misconduct: (i) smoking during court hearings and within court premises; (ii) conducting court hearings of cases from other trial courts in the Municipal Trial Court in Cities (MTCC) of Surigao City; (iii) habitual absenteeism and tardiness; (iv) sleeping while conducting trial; and (v) delaying the resolution of cases. The *ponencia* also finds Judge Bajan liable for disregarding the directives issued to him by the Office of the Court Administrator and the Judicial Integrity Board (JIB). There is no dispute that all of these actions were performed in Judge Bajan's capacity as Presiding Judge of Branch 2, MTCC of Surigao City, and as such, I fully agree with the *ponencia* in holding him liable in this capacity.

However, it bears noting that the JIB likewise recommended to hold Judge Bajan liable as a lawyer for simple misconduct. While the *ponencia* did not adopt this recommendation—and rightfully so—I write this Concurring Opinion to expound on the reasons for modifying the JIB's recommendation. I emphasize that Section 4, Rule 140 of the Rules of Court, as amended by A.M. No. 21-08-09-SC,<sup>1</sup> does not apply to any and all misconduct of an erring judge. Again, I reiterate that, as in my position in *Castillo v. Judge Asuncion*<sup>2</sup> (*Castillo*), the administrative liability of judges may only be considered as disciplinary actions against them as lawyers when their misconduct goes into their moral fitness as a member of the Bar. Section 4, Rule 140 of the Rules of Court provides that a disciplinary action against members of the Judiciary shall also be considered as a disciplinary action against him or her as a member of the Philippine Bar under the following circumstances:

<sup>1</sup> Further Amendments to Rule 140 of the Rules of Court, February 22, 2022.

<sup>2</sup> A.M. No. RTJ-23-039 (Formerly JIB FPI No. 21-075-RTJ), August 20, 2024 [Per J. Inting, *En Banc*].



- (i) the complaint explicitly states that the imputed acts or omissions are also grounds for disciplinary action against the respondent as a lawyer; or
- (ii) if the complaint does not include such specific statement, or if the disciplinary proceedings are instituted *motu proprio*, the respondent was required to show cause in this respect.

In this instance, the JIB directed Judge Bajan to show cause why he should not be disciplined as a member of the Bar for violating several provisions of the Code of Professional Responsibility (CPR),<sup>3</sup> which at that time was the governing code of conduct and ethical standards for lawyers. However, the conduct for which Judge Bajan is being sanctioned as a lawyer is the same conduct that he committed in his capacity as a judge. This is evident from the cited provisions of the CPR that he purportedly violated, i.e., the provisions on unlawful and deceitful conduct, defiance of the law, respect to the courts, punctuality, and proper attire.

To be sure, Section 4, Rule 140 does not operate to hold judges liable for acts relating to their adjudicative functions by simply finding the corresponding provision in the CPR, or the Code of Professional Responsibility and Accountability (CPRA), as the case may be. If the Court were to rule in this manner, this would mean that every offending conduct of a judge warrants a similar disciplinary action against him or her as a member of the Bar. However, Section 4, Rule 140 does not contemplate disciplining a judge as a member of the Bar when the alleged acts pertain to his or her judicial functions alone.<sup>4</sup>

In my Concurring Opinion in *Castillo*, I emphasized that Section 4, Rule 140 of the Rules of Court should apply only to instances when the charge or liability of the respondent affects his or her moral fitness or character as a lawyer. In assessing whether the respondent in Rule 140 should also be disciplined as a member of the Bar, the charges against the respondent, assuming them to be true, must also affect the moral fitness to practice the legal profession. This is apparent from the long line of cases applying A.M. No. 02-9-02-SC<sup>5</sup> or the predecessor of Section 4, prior to the amendments to Rule 140 of the Rules of Court.<sup>6</sup>

<sup>3</sup> CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1, rules 1.01 and 1.02, and Canon 11, rules 11.02 and 11.03.

<sup>4</sup> See Letter of Associate Justice Maria Filomena D. Singh dated August 5, 2024.

<sup>5</sup> Re: Automatic Conversion of Some Administrative Cases Against Justices of the Court of Appeals and the Sandiganbayan; Judges of Regular and Special Courts; and Court Officials Who are Lawyers as Disciplinary Proceedings Against Them Both as Such Officials and as Members of the Philippine Bar, September 17, 2002.

<sup>6</sup> See Concurring Opinion of Associate Justice Alfredo Benjamin S. Caguioa in *Castillo v. Hon. Asuncion*, which summarized the following cases:

In *Cañada v. Judge Suerte*, respondent judge therein was charged with grave abuse of authority, grave misconduct, grave coercion, dishonesty, harassment, oppression, and violation of Article 215 of the Revised Penal Code and the Canons of Judicial Ethics. The case stemmed from an agent-broker arrangement between respondent judge and therein



For instance, in *Nava II v. Artuz*,<sup>7</sup> the Court found that therein respondent judge, who made false statements in her Personal Data Sheet (PDS) to conceal the fact that she had pending cases at the time of her application with the Judicial and Bar Council (JBC), was found administratively liable for grave misconduct, dishonesty, and falsification of official documents. After directing

complainant that went awry. The Court ultimately found respondent judge guilty of dishonesty. At the same time, the Court applied A.M. No. 02-9-02-SC, disbarring respondent judge after ruling that he also violated Rule 1.01, Canon 1 of the CPR, which enjoins a lawyer from engaging in unlawful, dishonest or deceitful conduct, and Rule 10.01 of Canon 10, which enjoins a lawyer from doing any falsehood or from misleading the court.

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

In *Office of the Court Administrator v. Judge Indar*, respondent judge therein was charged with and found guilty of gross misconduct and dishonesty for issuing decisions on numerous cases for annulment of marriage without conducting any judicial proceedings. At the same time, the Court held that the administrative case shall also be considered as a disciplinary proceeding against respondent judge as a member of the Bar, in accordance with A.M. No. 02-9-02-SC. The Court then disbarred respondent judge after ruling that his gross misconduct and dishonesty likewise constituted a breach of Rule 1.01, Canon 1, and Canon 7 of the CPR and violated the Lawyer's Oath to "do no falsehood, nor consent to the doing of any in court."

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

Finally, in *Cobarrubias-Nabaza v. Lavandero*, respondent therein was a Court Attorney from the Legal Office of the Office of the Court Administrator and was a litigant in a *Batas Pambansa Blg. 22* case pending before the *sala* of therein complainant. A ruling favorable to respondent was made and some of the properties of the defendant in the case were placed in *custodia legis* for levy, execution, and auction sale. One of these properties was a sedan. Complainant discovered that despite the absence of any public auction, respondent had taken the subject vehicle in and out of court premises on three (3) occasions without her prior knowledge and approval, as evidenced by various CCTV footages. This prompted complainant to write a letter to the Office of the Court Administrator, which in turn, referred the same to the Office of Administrative Services-Supreme Court for formal investigation and was docketed as a regular administrative case against respondent. Subsequently, the Court docketed the matter as a separate administrative case against respondent and thereafter, required him to show cause as to why he should not be sanctioned as a member of the Bar. The Court eventually found respondent guilty of Conduct Prejudicial to the Best Interest of the Service. As a lawyer, respondent was also found guilty of failing to fulfill his solemn oath of upholding and obeying the law and its legal processes, and even misused court processes for his own personal gain. In so doing, he committed an act of falsehood and engaged in unlawful, dishonest, and deceitful conduct—for which he was duly sanctioned. (Citations omitted) *J. Caguioa, Concurring Opinion in Castillo v. Hon. Asuncion, supra* note 2, at 3–4. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>7</sup> 871 Phil. 1 (2020) [Per Curiam, En Banc].



the respondent to show cause, the Court ruled that her untruthfulness and dishonesty in filling up the PDS constituted a breach of the CPR, particularly, the canons that enjoin lawyers to promote and respect the law, and prohibit the commission of any falsehood. The Court also found that she violated Section 27, Rule 138 of the Rules of Court, which prohibits lawyers from committing any deceit or from violating the Lawyer's Oath. Therein respondent was meted with the penalty of disbarment.<sup>8</sup>

In *Office of the Court Administrator v. Tormis*<sup>9</sup> (*Tormis*), the Court disbarred the respondent judge after she was dismissed from the service for gross inefficiency, neglect of duty, and gross ignorance of the law. It was found that she solemnized marriages despite glaring irregularities in the requirements under the law, including missing or incomplete documents such as marriage licenses.<sup>10</sup> By virtue of her participation in the alleged marriage scam, the Court held that she also violated the canons in the CPR proscribing lawyers from engaging in unlawful or dishonest conduct, or those that adversely affect their fitness to practice law. The Court's pronouncement in *Tormis* is worth echoing:

Respondent used her authority as a judge to make a mockery of marriage. As a judicial officer, she is expected to know the law on solemnization of marriages. "A judge is not only bound by oath to apply the law; he [or she] must also be conscientious and thorough in doing so. Certainly, judges, by the very delicate nature of their office[,] should be more circumspect in the performance of their duties."

Similarly, as a lawyer who is an officer of the court, respondent should have not permitted herself to be an instrument of any violation of law. Her careless attention in dispensing with the necessary requirements of marriage and in conniving with court employees to further monetary interests underscores her utter disregard of the sanctity of marriage.

....

Respondent's conduct has fallen short of the strict standards required by the legal profession. Hence, her repeated failure to live up to the values expected of her as an officer of the court renders her unfit to be a member of the bar.<sup>11</sup> (Emphasis supplied; citations omitted)

As well, the respondent judge in *Avancena v. Liwanag*<sup>12</sup> was disbarred following his dismissal from the service for violating Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act, after he demanded the amount of PHP 1,000,000.00 to acquit an accused charged with violating Batas Pambansa Blg. 22 before his court. The Court held that his malfeasance warranted the

<sup>8</sup> *Id.* at 8–10, 13.

<sup>9</sup> 794 Phil. 1 (2016) [*Per Curiam, En Banc*].

<sup>10</sup> *Id.* at 9–10; see also *Office of the Court Administrator v. Necessario*, 707 Phil. 328, 349–350 (2013) [*Per Curiam, En Banc*].

<sup>11</sup> *Office of the Court Administrator v. Tormis*, *supra* note 9, at 29–31.

<sup>12</sup> 454 Phil. 20 (2003) [*Per Curiam, En Banc*].



supreme penalty of disbarment, as he failed to live up to the exacting standards demanded by the legal profession.

These cases illustrate that the respondent judges' misconduct tarnished not only their integrity as judges, but their personal moral character. As such, this required an assessment of therein respondents' fitness to continue practicing the legal profession. As held in *Magayanes v. Vasquez-Abad*,<sup>13</sup> where the respondent judge made false certifications and even misappropriated the salary of her staff:

Here, it is apparent that the acts of Judge Alamada did not only affect the image of the judiciary but also put her moral character in serious doubt and rendered her unfit to continue in the practice of law. **Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement for the practice of law. If the practice of law is to remain an honorable profession and attain its basic ideals, those counted within its ranks should not only master its tenets and principles but should also accord continuing fidelity to them.** The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.<sup>14</sup> (Emphasis supplied; citation omitted)

That being said, there are cases when the Court ruled that: (i) the respondent judge deemed grossly ignorant of the law should be similarly liable as a lawyer because the CPR enjoins lawyers to uphold the Constitution and the laws;<sup>15</sup> (ii) the respondent judge who used humiliating language against lawyers should also be penalized as a lawyer because the CPR proscribes the use of abusive language;<sup>16</sup> and (iii) the respondent judge who failed to resolve cases within the reglementary period also violated the canons of the CPR prohibiting lawyers from unduly delaying a case.<sup>17</sup> To my mind, however, these cases set too low a bar to also serve as a ground to discipline the respondents as lawyers, and the Court should henceforth refrain from perpetuating the interpretation it employed in these cases. Such interpretation, I submit, is erroneous as it practically allows any and all acts of judges to also serve as a ground to discipline them as lawyers.

At this juncture, it must be clarified that there is no disagreement on the propriety of holding Judge Bajan liable as member of the Bench. As the most visible representation of the law, trial court judges are expected to avoid impropriety and any appearance thereof. They are expected to conduct themselves in a manner that befits their stature as high officers of the court.

<sup>13</sup> A.M. Nos. MTJ-23-014 (Formerly JIB FPI No. 21-024-MTJ), MTJ-23-015 (Formerly JIB FPI No. 21-032-MTJ), MTJ-24-026 (Formerly JIB FPI No. 21-033-MTJ) and MTJ-24-027 (Formerly JIB FPI No. 21-042-MTJ), April 11, 2024 [Per Curiam, En Banc].

<sup>14</sup> *Id.* at 35. This pinpoint citation refers to the copy of the Decision uploaded to the Supreme Court website.

<sup>15</sup> *Mariano v. Nacional*, 598 Phil. 6 (2009) [Per J. Corona, En Banc].

<sup>16</sup> *Dela Cruz (Concerned Citizen of Legazpi City) v. Carretas*, 559 Phil. 5 (2007) [Per J. Corona, First Division].

<sup>17</sup> *Office of the Court Administrator v. Ismael*, 624 Phil. 275 (2010) [Per J. Corona, Third Division]; *Re: Report on the Judicial Audit Conducted in the MCTC, Jimenez-Sinacaban, Misamis Occ. Judge Hernandez*, 610 Phil. 237 (2009) [Per Curiam, En Banc]; *Dee C. Chuan & Sons, Inc. v. Peralta*, 603 Phil. 94 (2009) [Per J. Corona, First Division].

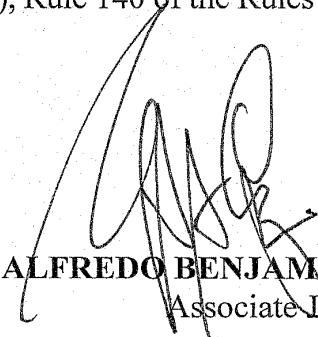


By sleeping and smoking during trial, failing to report during office hours, reporting late for work, and irregularly conducting hearings outside the designated courts, Judge Bajan is rightfully administratively liable for his misconduct. However, there should be no similar finding of liability as a member of the Bar, as the actions for which he is being held liable were exercised, not in his capacity as a lawyer, but in the performance of his duties as a judge. More importantly, absent any finding that his misconduct is of such character that establishes his moral delinquency, there is no basis to similarly hold him liable under the CPRA.

Given the foregoing, the application of Section 4, Rule 140 of the Rules of Court should be reserved to the commission of patently unlawful acts and to clear cases of dishonesty, immorality, or deceitful conduct. I emphasize anew, as I did in *Castillo*, that the loose application of Section 4, Rule 140 of the Rules of Court is tantamount to unfairly charging and punishing the respondent judge twice for the discharge of his official functions. The Court must therefore make a distinction between misconduct that is of such character that the judge's qualification as a lawyer is affected, as the misfeasance illustrates a moral delinquency on his or her part, and a judge who may have some shortcomings in the discharge of his or her official duty.

To be sure, a judge, who is inevitably also a member of the Bar, has a distinct role from a lawyer. While lawyers are also enjoined to uphold the Constitution and the law, their professional duties involve fidelity to the cause of their client. Judges, on the other hand, are expected to be impartial and beyond reproach, and to dispense justice in accordance with the rule of law. Thus, the canons under the New Code of Judicial Conduct do not have a one-to-one correspondence with the CPRA. The *ponencia* correctly ruled that the threshold that should govern is the moral character of the respondent, both as a member of the Judiciary and as a member of the Bar.

**ACCORDINGLY**, I concur that respondent Hon. Julieto N. Bajan should only be held liable in his capacity as a judge for the following offenses: (i) two counts of violation of Supreme Court rules, directives, and circulars that establish an internal policy, rule or procedure, or protocol; (ii) one count of habitual tardiness; (iii) one count of simple misconduct under Section 15(a), Rule 140 of the Rules of Court; and (iv) one count of gross insubordination, punishable under Section 14(n), Rule 140 of the Rules of Court.



ALFREDO BENJAMIN S. CAGUIOA  
Associate Justice