

Re-issued*

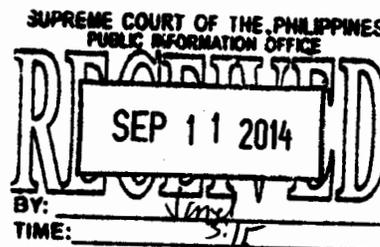


Republic of the Philippines
Supreme Court

Manila

EN BANC

NOTICE



Sirs/Mesdames:

Please take notice that the Court en banc issued a Resolution dated AUGUST 12, 2014, which reads as follows:

“A.M. No. 13-11-09-SC (Re: Interview with Atty. Lorna Kapunan on Corruption in the Judiciary.) – Submitted to the Court for disposition is the Compliance, dated December 12, 2013, of Atty. Lorna Patajo-Kapunan (*Atty. Kapunan*), pursuant to the directive of the Court in its November 26, 2013 Resolution.

In the said Resolution, the Court directed Atty. Kapunan to explain her answers in an interview by Anthony Taberna (*Taberna*) in his show “Umagang Kay Ganda” on November 21, 2013 regarding corruption in the judiciary, within ten (10) days from notice.

The Court required Atty. Kapunan to submit an explanation because, in an interview before a nationwide television audience, she made unwarranted remarks which tended to erode public trust and confidence in the judiciary. She made unfounded insinuations that some members of the judiciary can easily be bribed at the expense of justice.

Attached to her Compliance, as Annex “A,” is the verbatim transcript of the subject interview by Taberna, and, as Annex “B,” the reproduction in CD form of the said interview.

In the said Compliance, Atty. Kapunan avers that, generally, the topic in the one hour face-to-face interview was her life as a lawyer, which started with her family background and flowed into a discussion of her law practice and her experiences with the courts and the justice system. In the course of the discussion, she made certain statements pertaining to corruption in the judiciary.

Atty. Kapunan, however, claims that, mindful of a lawyer’s duty to observe and maintain the respect due to the courts and judicial officers, she refrained from using grossly disrespectful, contemptuous and derogatory language against the courts and individual judges. This can be noted,

* Re-issued with Concurring Opinion of Justice Brion and revised Concurring Opinion of Justice Leonen

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according to her, from the replies she gave during the interview as shown in the transcript, the relevant portions of which she quoted as follows:

A: Paano niyo po sasabihin na ang isang abugado ay mahina?

L: Mahina in the sense na—Kasi ang duty ng abugado tatlo e. First of all your duty is to the courts. Because we are all officers of the court. And of course your duty is also to your client, fidelity to client. And then the third duty is duty to the bar, to your legal profession. Sino ang hindi magaling na abugado, number one, yung has total disrespect to the courts. Meaning, nambabayad ng judge, 'di ba? That is disrespect because it shows you na you can buy justice in this country and that disrespects the integrity of the judicial system. Yung kliyente, your duty to your client. Kung lagi mong sinasabi sa kliyente, mananalo ka bayaran natin si ganoon, what skills did you give your client? Or you do not advise your client well. Or you just don't know the law. Disservice yun sa kliyente. Hindi magaling na abugado yun. xxx (Annex "A" at page 2-3)

A: Meron na po ba kayong nakalaban na nagbayad po sa judge, talo kayo?

L: Ah, yes. Actually, wala namang natatalong kaso e. Nadadaya. (Laughs) Parang candidate. Hindi naman natatalo 'yung kandidato. Nadadaya. No, sadly there are quite a number still. Although the clean up has started from the time of former CJ Puno. At na-identify niya lahat ng mga kailangang tanggalin. There was not enough time. Or 'yung mga notorious ay may kanya-kanyang padrino. (Annex "A" at page 3-4)

A: May kilala po kayong justice ng SC na nababayaran?

L: Oo.

A: Kwan po, sitting justice?

L: Ah, sitting justice? Mas lalong hindi ko sasabihin kung sitting justice, ano. (Laughs) That means may kaso kami doon. No. Yes. Some justice both in the CA and the SC have been known to receive. **Known to receive. Because sometimes, hindi mo naman alam kung totoo 'yun o hindi e.** Kasi that's the problem with bribery, wala namang resibo ang bribe. At wala namang mag-aamin na nagbigay at walang mag-aamin na tumanggap. That's why the SC is having such a difficult time to remove—among tawag doon? Thieves in robes. (T: Hoodlums in robes.) Hoodlums in robes. Because walang gustong mag-testify, whether kliyente or lawyer because babalikan ka e.

A: Sa pagkakaalam niyo, magkano na ang bayaran ngayon diyan? Pagdating sa CA saka sa SC.

L: Well, **I am told** ah, na ang restraining order daw sa CA can be as much as 5 million. (T: Hmm?) And sa level naman ng prosecution, **I am told** that 'yung whether to file a case- whether for the fiscal to

file a case or not to file a case, that's half a million. Five hundred thousand. **I am told.**

A: Sa SC po? Hindi niyo binanggit.

L: Ah sa SC **hindi ko po alam.** Kung minsan retirement na e. Retirement fee na 'yan. (T: Nako, ang laki ho noon.)

A: Kung sa bagay meron pong justice ng SC, hinabol pa naka-retire na.

L: 'Di ba nag-midnight decision.

A: Si Justice Reyes ba 'yun?

L: Ay hindi ko alam. (Laughs) (Transcript, Annex "A" at pp. 4-5)^{1/2}

At any rate with reference to the above quoted responses, Atty. Kapunan explains that she made no personal accusation against any court or judge. She adds that when imparting information on corruption and bribe money based on hearsay and/or general knowledge within the legal circles, she, in the interest of candor and transparency, would use the appropriate caveats – "*known to receive*," "*I am told*" and "*hindi ko po alam*."

Nonetheless, Atty. Kapunan cites the pronouncement of the Court in the case of *In re Almacen*³ on the obligations and duties of the members of the Bar as officers of the court, thus:

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Moreover, every citizen has the right to comment upon and criticize the actuations of public officers. This right is not diminished by the fact that the criticism is aimed at a judicial authority, nor that it is articulated by a lawyer." xxx Judicial officers, like other public servants, must answer for their official actions before the chancery of public opinion.

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Courts thus treat with forbearance and restraint a lawyer who vigorously assails their actuations. For courageous and fearless advocates are the strands that weave durability into the tapestry of justice. Hence, as citizen and officers of the court, every lawyer is expected not only to exercise the right, but also to consider it his duty to expose the shortcomings and indiscretions of courts and judges.

¹ Compliance, pp. 2-4.

² The Court checked the interview in full as captured in yonipzone.tv (Tapatan ni Tonying, dated November 22, 2013) and did not notice any splicing.

³ No. L-27654, February 18, 1970, 31 SCRA 562, 576-577.

Atty. Kapunan goes further to quote Justice Fred Ruiz Castro that “criticism of the courts has, indeed, been an important part of the traditional work of the lawyer.”

Hence, as a citizen and officer of the court, a lawyer is expected not only to exercise the right, but also to consider it his duty to avail of such right. No law may abridge this right. Nor is he professionally answerable for a scrutiny into the official conduct of the judges, which would not expose him to legal animadversion as a citizen.

Atty. Kapunan further states that no less than the Honorable Chief Justice Maria Lourdes P. A. Sereno, in a speech delivered on September 25, 2013 in celebration of Law Day by the Philippine Bar Association, had urged lawyers to help the Court in its effort to eliminate the so-called “hoodlums in robes” in the judiciary. The Chief Justice also challenged lawyers to expose cases of bribery or extortion involving judges and vowed to support “whistleblowers.”

Atty. Kapunan, thus, claims that the remarks made in the subject interview were not intended to insult, malign, embarrass, or bring the Court into disrepute. She is not unmindful, she said, of the admonition of this Court that “a lawyer is entitled to voice his criticism within the context of the constitutional guarantee of freedom of speech which must be exercised responsibly. After all, every right carries with it the corresponding obligation. Freedom is not freedom from responsibility, but freedom with responsibility.”⁴

The Court's Disposition

In sum, Atty. Kapunan admits to have made remarks with reference to corruption in the judiciary, but denies to have uttered the same to degrade the court and bring it to disrepute. In invoking her constitutional guarantee to freedom of speech, she explains though that she is not unaware of the corresponding obligation to exercise said right responsibly.

True, well-recognized is the right of a lawyer, both as an officer of the court and as a citizen, to criticize the courts or any of its officers. This right, however, is not without limitations. Atty. Kapunan should be reminded that comments made against the courts must not go beyond the bounds of courtesy and fairness in order not to destroy the people's trust in the judicial system. As held in *In re Almacen*:

But it is the cardinal condition of all such criticism that it shall be *bona fide*, and shall not spill over the walls of decency and propriety. A wide chasm exists between fair criticism, on the one hand, and abuse and slander of courts and the judges thereof, on

⁴ Citing *Re: Letter dated September 21, 2005 of Atty. Noel S. Sorreda*, 464 SCRA 32, 4205] sic.

the other. Intemperate and unfair criticism is a gross violation of the duty of respect to courts. It is such a misconduct that subjects a lawyer to disciplinary action.

Likewise, in *Spouses Tiongco v. Aguilar*,⁵ the Court wrote:

The right to criticize, which is guaranteed by the freedom of speech and of expression in the Bill of Rights of the Constitution, must be exercised responsibly, for every right carries with it a corresponding obligation. Freedom is not freedom *from* responsibility, but freedom *with* responsibility. In *Zaldivar vs. Gonzales* (166 SCRA 316, 353-354 [1988]), it was held:

Respondent Gonzales is entitled to the constitutional guarantee of free speech. No one seeks to deny him that right, least of all this Court. What respondent seems unaware of is that freedom of speech and of expression, like all constitutional freedoms, is not absolute and that freedom of expression needs on occasion to be adjusted to and accommodated with the requirements of equally important public interests. One of these fundamental public interests is the maintenance of the integrity and orderly functioning of the administration of justice. There is no antinomy between free expression and the integrity of the system of administering justice. For the protection and maintenance of freedom of expression itself can be secured only within the context of a functioning and orderly system of dispensing justice, within the context, in other words, of viable independent institutions for delivery of justice which are accepted by the general community.

Moreover, it is well to remind Atty. Kapunan that, as a member of the Bar, she is under the obligation to maintain at all times a respectful attitude toward the courts. This responsibility of a lawyer in relation to the court is imposed under the Code of Professional Responsibility. Specifically, Canon 10 and 11 provide:

CANON 10 - A LAWYER OWES CANDOR, FAIRNESS AND GOOD FAITH TO THE COURT.

CANON 11 - A LAWYER SHALL OBSERVE AND MAINTAIN THE RESPECT DUE TO THE COURTS AND TO JUDICIAL OFFICERS AND SHOULD INSIST ON SIMILAR CONDUCT BY OTHERS.

Rule 11.03 - A lawyer shall abstain from scandalous, offensive or menacing language or behavior before the Courts.

This responsibility under the said Code is closely entwined with her vow in the attorney's oath, to conduct herself as a lawyer with all good fidelity to the courts, as well as her duties under Section 20 (b), Rule 138 of the Rules of Court and the first canon of the Canons of Professional Ethics, thus:

⁵ G.R. No. 115932, January 25, 1995, 240 SCRA 589.

For, membership in the Bar imposes upon a person obligations and duties which are not mere flux and ferment. His investiture into the legal profession places upon his shoulders no burden more basic, more exacting and more imperative than that of respectful behavior toward the courts. He vows solemnly to conduct himself "with all good fidelity xxx to the courts; and the Rules of Court constantly remind him "to observe and maintain the respect due to courts of justice and judicial officers." The first canon of legal ethics enjoins him "to maintain towards the courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance."⁶

These rules of courteous demeanor must, according to the Court, be observed not only in open court, but also out of court.

While it appears that, at the moment, there is no solid basis to proceed against her, the Court is not disposed to shelve the matter in the meantime. Justice Brion is of the view that the matter should be dealt with appropriately given the extent and gravity of the substance of her disclosure on the alleged corruption in the judiciary and the public perception her statements represent. In his Reflections, he said, that the Court should "proactively react to the smoke that Atty. Kapunan has raised" as a fire must have existed somewhere behind her statements which, according to him, should not be left unattended to.

As also pointed out by Justice Brion, Atty. Kapunan's disclosures as to the presence and prevalence of corruption in the judiciary were made in one of the most watched program in the country before millions of viewers, an audience that largely does not appreciate what hearsay means. Hence, according to him, the Court's inaction on this case would certainly place in question the integrity of the justice system in the public's eyes. He, thus, suggests as an alternative that the matter be referred for further investigation as done in the "Ma'am Arlene" inquiry.

Justice Leonen concurs with Justice Brion's proposal. He adds that the Court needs to proactively address alleged corruption in the judiciary. To accomplish this purpose, he specifically proposes the creation of its own active investigation unit (Internal Affairs Unit) that answers to a committee of the Supreme Court.

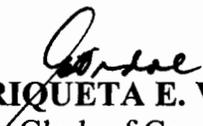
Justice Leonen in his Concurring Opinion also expresses his support on the ponencia's recognition that lawyers do enjoy the constitutional guarantee of freedom of expression. For this reason, he does not fault Atty. Kapunan for her statements on national television. He, however, finds Atty. Kapunan liable for acknowledging that she has heard and probably

⁶ *In re Almacen*, No. L-27654, February 18, 1970, 31 SCRA 562, 580.

experienced acts of corruption and for admitting that she has done nothing to make the perpetrators answerable.

WHEREFORE, the Compliance submitted by Atty. Lorna Patajo-Kapunan, dated December 12, 2013, is **NOTED.**" (adv14)

Very truly yours,


ENRIQUETA E. VIDAL
Clerk of Court

(With Concurring Opinions of Justices Brion and Leonen)

HONORABLE MARIA LOURDES P. A. SERENO (x)
CHIEF JUSTICE
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HON. PRESBITERO J. VELASCO, JR. (x)
HON. TERESITA J. LEONARDO-DE CASTRO (x)
HON. ARTURO D. BRION (x)
HON. DIOSDADO M. PERALTA (x)
HON. LUCAS P. BERSAMIN (x)
HON. MARIANO C. DEL CASTILLO (x)
HON. MARTIN S. VILLARAMA, JR. (x)
HON. JOSE P. PEREZ (x)
HON. JOSE C. MENDOZA (x)
HON. BIENVENIDO L. REYES (x)
HON. ESTELA M. PERLAS-BERNABE (x)
HON. MARVIC MARIO VICTOR F. LEONEN (x)
HON. FRANCIS H. JARDELEZA (X)
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ATTY. MA. CRISTINA B. LAYUSA (x)
Deputy Clerk of Court and Bar Confidant
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A.M. No. 13-11-09-SC
wmd 8/12/14 (adv14) 9/1/14



**A.M. No. 13-11-09-SC – RE: INTERVIEW WITH LORNA KAPUNAN
ON CORRUPTION IN THE JUDICIARY.**

Promulgated:

August 12, 2014

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CONCURRING OPINION

BRION, J.:

I believe and propose to the Court that it desist from declaring the matter in caption closed and terminated simply because the statements of Atty. Lorna Kapunan turned out to be hearsay. Instead, the Court should *proactively* react to the *smoke* that Atty. Kapunan has raised; a *fire* must exist somewhere behind her statements. Even smoking embers, if left unattended to, may turn into a raging conflagration.

The present case arose from the public statements of Atty. Kapunan about alleged corruption in the judiciary among the ranks of the judges, and of the justices of the appellate courts and of this Court. Given the extent and gravity of the substance of what she said, the Court should tread carefully in declaring the case arising from her statements to be open and shut, based solely on Atty. Kapunan's belated claim that what she said was hearsay. Instead of this simplistic treatment, the Court should consider the disclosure as a challenge to the leadership of the Court to face the public perception her statements represent. Brusque and blunt as it may sound, the Court is ultimately to be blamed for what Atty. Kapunan said because all ethical failures in the legal profession and in the judiciary, and the perception that they remain unaddressed, ultimately stop at the doorsteps of this Court. By the mandate of the Constitution, the Supreme Court solely carries the burden of administrative supervision over all courts, its personnel and the legal profession, and it should be alarmed by public allegations, even if claimed to be hearsay, of widespread corruption in the magisterial ranks.

In light of the law, both the bar and the public have no recourse but to look up to the Supreme Court and its leadership *for responsibility; for accountability* for how things are turning out; and for *initiative for solutions*.¹ And they would judge the Court not only through its actions and

¹ This is a constitutional duty on the part of the Supreme Court. Article VIII, Section 5, paragraph 5 of the 1987 Constitution states:

Section 5. The Supreme Court shall have the following powers:

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5. Promulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the integrated bar[.]

proactive reactions, but through the *live and actual examples* the Court would set. To carry this statement of burden a step further, for a credible approach to whatever solutions there may be, it is important that *examples be set and that we in the Court ourselves lead in this task*. To do less is to bury our heads in the sands, at a time when the correct and responsible response is to look around and be seen, to sniff and gauge the wind, and to search for any storm or deluge already happening or that may yet to come.

Presently, we can positively claim prompt and immediate reaction to allegations of corruption through our response in the “Ma’am Arlene” matter when we promptly created an *ad hoc* committee to investigate “Ma’am Arlene” who allegedly peddled influence in the lower courts and in the Court of Appeals.² Beyond this, however, we have not done much. The *Legal Ethics Committee* that our Internal Rules provide (to investigate ethical lapses within the Court itself) exists only in these Rules and has not been fully activated. The *Whistle Blowing Rule* that has been pending for some years has not been approved and actualized; its future remains not only uncertain but closer to oblivion than to live operation.

I would be presumptuous and self-righteous if I say more than these, as the best ideas, remedies and solutions lay in the collective wisdom of the Members of the Court. But we must do more; otherwise, the reforms our own Chief Justice speaks about in her speeches and public pronouncements will be nothing but empty air.

Specifically in the case of Atty. Kapunan, let us not forget that Atty. Kapunan’s disclosures were made on nationwide television in one of the most watched programs in the country. They practically involve all levels of the judiciary. She made the statements before millions of viewers (an audience that largely does not appreciate what hearsay means) that corruption is present and prevalent in the judiciary. Atty. Kapunan even quoted the actual extent of the bribe money involved.

Inaction on this type of report cannot but place in question the integrity of the Court and its leadership, and attribute to it, at the very least, deplorable complacency. This is particularly true since, in her submitted *Compliance* (which Atty. Kapunan also publicized³), she heavily referred to the keynote speech Chief Justice Sereno delivered during the celebration of law day by the Philippine Bar Association. Atty. Kapunan quoted the Chief Justice’s encouragement to lawyers to help the Supreme Court in purging the judiciary of so called “hoodlums in robes”; her challenge to lawyers to

Article VIII, Section 6, paragraph 5 of the 1987 Constitution states:

Section 6. The Supreme Court shall have administrative supervision over all courts and the personnel thereof.

² Louis Bacani, *SC probing photo of ‘Ma’am Arlene’ with justices*, Phil-Star, Dec. 13, 2013, available at www.philstar.com/headlines/2013/12/13/sc-proving-photo-ma-am-arlene-justices.

³ See attached online articles “*Kapunan Backtracks on alleged Corrupt Justice*” dated from Balita.com (<http://www.balita.com/kapunan-backtracks-on-alleged-corrupt-sc-justice/>); and Sunstar’s “*Ex-Napoles lawyer: Corrupt SC justice tag is ‘hearsay’*” dated January 27, 2014.

expose cases of bribery and extortion involving judges; and her vow of support to “whistleblowers.”

I would suggest as an alternative that the Kapunan matter be referred for further investigation in the way we did in our Ma’am Arlene inquiry, with the recommendation that the inquiry this time be a wider and general one, with a call for witnesses who can testify on ethical lapses in this Court and in the appellate courts. Obviously, this call must come with the *caveat* and the reservation to proceed, under pain of sanctions, against unfounded and grandstanding claims intended only to bring the name of the Court to disrepute. In other words, those who should speak loudly of corruption must now put up or shut up.

Hopefully, a general inquiry on allegations of ethical lapses in our ranks will clear the air not only of unfounded accusations, but of the inaccurate public perceptions, as well of how the judiciary operates, including the limits of what we can actually do. I believe that if done with clear rules of engagement, *i.e.*, with sufficient assurance of privacy (*e.g.* outside the media glare that attends Senate investigations) and with due assurance to the participating parties who act in good faith that they will be protected from reprisals, the interests of all concerned, including the Court’s and its Members’, can amply be protected. We can then impress upon the public that we are not an old-boys club overly concerned with the protection of our own interests, and thereby stop whatever erosion there may be of the integrity of our justice system in the public’s eyes.



ARTURO D. BRION

Associate Justice

Revised

EN BANC

**A.M. No. 13-11-09-SC – RE: INTERVIEW WITH LORNA KAPUNAN
ON CORRUPTION IN THE JUDICIARY**

Promulgated:

August 12, 2014

CONCURRING OPINION

LEONEN, J.:

I concur with Justice Brion's opinion. I also emphatically support the recognition of the ponencia, Justice Mendoza, that lawyers also enjoy the constitutional guarantee of freedom of expression. I wish, however, to add two points.*

First, the maintenance of ethical standards is not the responsibility of the judiciary alone. It is likewise a burden that all lawyers must share.

Criticisms of courts will understandably be made mostly by lawyers. After all, it is they who usually avail of the remedies that the legal order provides for their clients. Apart from the judges, they will also have more first-hand knowledge of the judiciary's faults and inefficiencies.

However, owing to the very fact that they continually use the system, they tend to tolerate the corruption that they witness. Many of them are unsure how deep-seated or how systemic these practices may be. An ordinary lawyer from whom a judge or court personnel extorts in exchange for favorable outcomes will usually have little basis to infer whether such nefarious practice is widespread among other courts or simply unique in the sala that he or she participates in. He or she normally takes the easy way out as a cautionary measure. He or she remains silent.

The doubt that a single act of corruption is unique understandably becomes more salient when young lawyers hear insinuations and exaggerated claims from seasoned practitioners about unspecified corruption in our court system. In a way, the insinuations and exaggerations become self-fulfilling prophecies. Speech made by lawyers that does** not identify judges or specific acts of corruption operate to provide an unintended blanket of protection for those who are indeed corrupt.

* The phrase "for the consideration of the court" was removed.

** The word "do" was changed to "does."

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The only way that this cycle may be broken is for this court to clearly acknowledge that the responsibility for maintaining ethical standards is shared by the judiciary and the legal profession. Doing so requires that we are able to identify incentives for those who report wrongdoings and efficiently rule on the proper penalties for those who are guilty. I agree, therefore, that reviewing our rules to check whether, in fact, the proper incentives and disincentives are in place should be in our highest priorities.

However, the legal profession should also do its share.

I do not fault Atty. Lorna Kapunan for the statements she made on national television. I do find her liable because she acknowledges that she has heard (and probably experienced) acts of corruption and admits that she has done nothing to bring the perpetrators to the proper forum. Our younger lawyers seek leadership among the more prominent members of the bar. By making statements without backing it up with the corresponding action, she undermined the nobility of this profession. Exciting the audience with tales of corruption heard or experienced is a selfish act if it is not backed up with leadership and action. Making insinuations is easy. Doing the right thing often requires more courage.

Second, we need to restructure our bureaucracy to be able to proactively address alleged corruption in the judiciary. Specifically, I propose that we should have our own active investigation unit (Internal Affairs Unit) that answers to a committee of this court.

Oftentimes, the burden of identifying, gathering, maintaining, and presenting collaborating evidence falls only on the courageous complainant that comes forward to present his or her grievances. Our present offices, even under the Office of the Court Administrator, lack the skill and resources to do intensive surveillance and investigation that can lead to the identification of possible sources of evidence. Most of the time, our system is passive: It waits for evidence to be presented. Furthermore, the Office of the Court Administrator is tasked to assist judges with their administrative and logistical needs. I find these roles as contradictory to the Office of the Court Administrator's additional task to investigate and ensure discipline among judges.

Complainants who come forward often suffer from lack of resources. They usually feel that they are going up against an entire system. Often, the judges they go up against have personal relationships which they can mobilize to support their case and weaken the resolve of complainants. Without our own independent investigating unit, we rely on these weaknesses to resolve serious allegations against the judiciary.

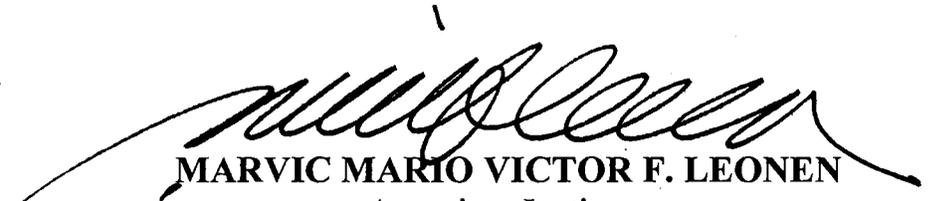
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We all suffer by exaggerated association. We should revise the incentives in our rules and institutional set-up so that those who have genuine grievances can be more efficiently heard and protected. In this way, we isolate the few who have lost their way. The better we are at identifying, prosecuting, and penalizing breaches of our ethical rules, the more deterrence we provide.

We owe it to our people that we stay within this straight and narrow path. *Al sirat al mustaqim.*

Accordingly, I add that:

1. We liaise with all the organizations of lawyers to gather suggestions on how to eradicate corruption in our courts, if any; and
2. Lorna Kapunan be sternly warned as her failure to take action on any act of corruption is a grave breach of the Code of Professional Responsibility.



MARVIC MARIO VICTOR F. LEONEN
Associate Justice