



revealing tattoos on his upper body that were used as “cover photos” and “profile pictures” in his profile page.<sup>2</sup>

In its Letter<sup>3</sup> dated January 28, 2020, the OCA required Judge Atillo, Jr. to file his comment as regards the subject pictures that were posted on his Facebook account in connection with the possible violations of the New Code of Judicial Conduct as well as OCA Circular No. 173-2017.

In compliance therewith, Judge Atillo, Jr. submitted his Comment<sup>4</sup> dated February 11, 2020, wherein he explained that his Facebook account was hacked on August 11, 2019 and during which, his account privacy setting was switched from private to public.<sup>5</sup> He asserted that the subject pictures showing the tattoos on his body were “exclusively meant for his own viewing pleasure and for his [Facebook] friends only and never posted for public consumption.”<sup>6</sup> Moreover, Judge Atillo, Jr. asserted that the pictures were inadmissible in evidence because they were illegally obtained from his hacked Facebook account, in violation of his right to privacy of communication and correspondence under Section 3, Article III of the Constitution.<sup>7</sup>

#### *The OCA's Report and Recommendations*

In the Memorandum<sup>8</sup> dated July 14, 2020, the OCA found Judge Atillo, Jr. guilty of violating Sections 1 and 2, Canon 4 of the New Code of Judicial Conduct, as well as OCA Circular No. 173-2017, when he posted the subject pictures on his Facebook account. It observed as follows:

x x x In the case of Judge Atillo, Jr., his photos showing him half naked with tattoos may seem harmless at first glance to any person who does not know him. However, the general public may have a different and skeptical perception, particularly litigants whose cases are pending in his sala in Branch 31, RTC, Agoo, La Union. Also, after viewing the Profile Pictures of Judge Atillo, Jr. in a robe

<sup>2</sup> *Id.* at 1.

<sup>3</sup> *Id.* at 8.

<sup>4</sup> *Id.* at 11-18.

<sup>5</sup> *Id.* at 12-13.

<sup>6</sup> *Id.* at 16.

<sup>7</sup> *Id.* at 17.

<sup>8</sup> *Id.* at 1-7.

and with the seal of the Court in the background juxtaposed with pictures of his half-naked, tattooed [*sic*] torso, it creates an altogether different impression on the viewers and, thus, somehow would make a layman question the fitness or appropriateness of the actuations of the judge as a member of the bench. These negative impressions of the public in general are what taint respondent's propriety as a judge.<sup>9</sup>

The OCA likewise held Judge Atillo, Jr. administratively liable for Conduct Unbecoming of a Judge for his improper behavior.<sup>10</sup> It pointed out that had Judge Atillo, Jr. been more careful in his participation in social media, he would not have been placed in this situation wherein pictures of his tattoo-covered body became available to the general public.<sup>11</sup>

Thus, the OCA recommended that:

1. the letter dated 28 January 2020 of the Office of the Court Administrator addressed to Hon. Romeo M. Atillo, Jr., Executive Judge and Presiding Judge of Branch 31, Regional Trial Court, Agoo, La Union, on the matter of the pictures uploaded in the latter's Facebook account, with "public" setting that may be considered inappropriate under the New Code of Judicial Conduct for the Philippine Judiciary and a violation of OCA Circular No. 173-2017 (Proper Use of Social Media), be RE-DOCKETED as a regular administrative matter;
2. the Comment dated 11 February 2020 submitted by Judge Atillo, Jr. be NOTED;
3. Judge Atillo, Jr. be found GUILTY of violating OCA Circular No. 173-2017 as well as Sections 1 and 2 of Canon 4 of the New Code of Judicial Conduct for the Philippine Judiciary and be meted [*sic*] the penalty of fine of P15,000.00; and
4. Judge Atillo, Jr. be also found GUILTY of committing acts constituting Conduct Unbecoming a Judge, and be REPRIMANDED, with a STRONG WARNING that the commission of the same or any similar offenses would be dealt with more severely.<sup>12</sup>

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<sup>9</sup> *Id.* at 3.

<sup>10</sup> *Id.* at 7.

<sup>11</sup> *Id.* at 5.

<sup>12</sup> *Id.* at 7.

*The Court's Ruling*

After a careful study of the case, the Court adopts the findings of the OCA, but *modifies* the penalties to be imposed against Judge Atillo, Jr.

The Court has often reminded judges to always conduct themselves *irreproachably* and in a manner exemplifying integrity, honesty, and uprightness, not only in the discharge of their official duties, but also in their personal lives.<sup>13</sup> In other words, “[t]heir conduct must be guided by *strict propriety* and decorum at all times in order to merit and maintain the public’s respect for and trust in the Judiciary.”<sup>14</sup>

The exacting standards that a judge must always adhere to are prescribed under Canons 2 and 4 of the New Code of Judicial Conduct, *viz.*:

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.

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.

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.

SECTION 2. As a subject of constant public scrutiny, judges

<sup>13</sup> See *Re: Anonymous Letter-Complaint against Presiding Judge Jose Paolo G. Ariola*, A.M. No. MTJ-20-1944, A.M. No. MTJ-20-1945, OCA IPI No. 14-4254-P (Notice), October 12, 2020.

<sup>14</sup> *Id.*

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.

X X X X

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.

The Court agrees with the OCA that Judge Atillo, Jr. had breached his duty to avoid impropriety, or even just the appearance of impropriety, when he posted the subject pictures showing his half-dressed body and tattooed torso on his Facebook account that eventually became readily accessible to the general public.

In the case of *Lorenzana v. Judge Austria*<sup>15</sup> (*Lorenzana*), the Court found the respondent judge guilty of impropriety when she posted pictures of herself wearing an “off-shouldered” suggestive dress on a social networking site and made it available for public viewing. It explained that:

X X X **While judges are not prohibited from becoming members of and from taking part in social networking activities, we remind them that they do not thereby shed off their status as judges.** They carry with them in cyberspace the same ethical responsibilities and duties that every judge is expected to follow in his/her everyday activities. It is in this light that we judge the respondent in the charge of impropriety when she posted her pictures in a manner viewable by the public.

X X X X

To restate the rule: in communicating and socializing through social networks, judges must bear in mind that what they communicate – regardless of whether it is a personal matter or part of his or her judicial duties – creates and contributes to the people's opinion not just of the judge but of the entire Judiciary of which he or she is a part. This is especially true when the posts the judge makes are viewable not only by his or her family and close friends, but by acquaintances and the general public.<sup>16</sup> (Emphasis in the original.)

<sup>15</sup> 731 Phil. 82 (2014).

<sup>16</sup> *Id.* at 103-105.

The Court clarifies that the impropriety in this case relates *solely* on Judge Atillo, Jr.'s act of posting the subject pictures on social media, and it has absolutely nothing to do with his choice to have tattoos on his body. Simply put, by posting the pictures on Facebook, Judge Atillo, Jr. placed himself in a situation where he, and the status he holds as a sitting judge, became the object of the public's criticism and ridicule. This is easily evinced by the very fact that an anonymous person saw fit to send the pictures to the OCA for appropriate disciplinary action.

To exculpate himself from any administrative liability, Judge Atillo, Jr. primarily argues that he did not intend to share the subject pictures on social media to be viewed by the general public. He also claims that the pictures are inadmissible in evidence under the exclusionary rule.

Judge Atillo, Jr.'s contentions, however, are without merit.

It is elementary that the exclusionary rule<sup>17</sup> under Section 3(2),<sup>18</sup> Article III of the Constitution only applies as a *restraint against the State* and cannot be extended to acts committed by private individuals,<sup>19</sup> save for instances where such individuals are shown to have acted *under the color of a state-related function*.<sup>20</sup> Clearly, the exclusionary rule finds no application in the case because the State was in no way involved in the retrieval of the subject pictures from Judge Atillo, Jr.'s Facebook account.

Moreover, the OCA is correct that Judge Atillo, Jr. cannot simply evade administrative liability by relying on the "friends" only privacy setting<sup>21</sup> of his Facebook account as a defense.

As the Court observed in the case of *Vivares v. St. Theresa's*

<sup>17</sup> The Court pronounced in *People v. Sison*, G.R. No. 238453, July 31, 2019, "[the] exclusionary rule is a protection against erring officers who deliberately or negligently disregard the proper procedure in effecting searches, and would so recklessly trample on one's right to privacy."

<sup>18</sup> Section 3(2), Article III of the Constitution provides:

SECTION 3. x x x x

(2) Any evidence obtained in violation of [the right against unreasonable searches and seizures] shall be inadmissible for any purpose in any proceeding.

<sup>19</sup> See *People v. Marti*, 271 Phil. 51, 62 (1991).

<sup>20</sup> See *Miguel v. People*, 814 Phil. 1073, 1082 (2017).

<sup>21</sup> *Rollo*, pp. 5-6.

*College*<sup>22</sup> (*Vivares*), setting a post's or profile detail's privacy to "friends" does *not* guarantee that the content will not be accessible to another user who is not Facebook friends with the source thereof, *viz.*:

It is well to emphasize at this point that setting a post's or profile detail's privacy to "Friends" is no assurance that it can no longer be viewed by another user who is not Facebook friends with the source of the content. The user's own Facebook friend can share said content or tag his or her own Facebook friend thereto, regardless of whether the user tagged by the latter is Facebook friends or not with the former. Also, when the post is shared or when a person is tagged, the respective Facebook friends of the person who shared the post or who was tagged can view the post, the privacy setting of which was set at "Friends."

To illustrate, suppose A has 100 Facebook friends and B has 200. A and B are not Facebook friends. If C, A's Facebook friend, tags B in A's post, which is set at "Friends," the initial audience of 100 (A's own Facebook friends) is dramatically increased to 300 (A's 100 friends plus B's 200 friends or the public, depending upon B's privacy setting). As a result, the audience who can view the post is effectively expanded—and to a very large extent.<sup>23</sup>

Thus, the Court in *Vivares* warned social media users of the *risks* involved when sharing content in cyberspace as follows:

[Online social network] users should be aware of the risks that they expose themselves to whenever they engage in cyberspace activities. Accordingly, they should be cautious enough to control their privacy and to exercise sound discretion regarding how much information about themselves they are willing to give up. Internet consumers ought to be aware that, by entering or uploading any kind of data or information online, they are automatically and inevitably making it permanently available online, the perpetuation of which is outside the ambit of their control. *Furthermore, and more importantly, information, otherwise private, voluntarily surrendered by them can be opened, read, or copied by their parties who may or may not be allowed access to such.*<sup>24</sup> (Italics supplied.)

Here, Judge Atillo, Jr. already admitted that he had a "sizeable" number of Facebook friends who can access his daily posts, including

<sup>22</sup> 744 Phil. 451 (2014).

<sup>23</sup> *Id.* at 476.

<sup>24</sup> *Id.* at 479.

the subject pictures,<sup>25</sup> and even share content on his account profile page.<sup>26</sup> As a matter of fact, it appears that Judge Atillo, Jr. had allowed a certain Anthony Yabes (Yabes) to share his pictures on his Facebook account, which content could be viewed not only by Judge Atillo, Jr.'s Facebook friends, but also, by the Facebook friends of Yabes or by the public, depending on the latter's privacy setting.<sup>27</sup>

Guided by the ruling in *Vivares*, Judge Atillo, Jr.'s Facebook account, therefore, cannot be deemed to be truly private, even assuming *arguendo* that his account privacy setting was actually changed without his consent from "friends" only to public when his account was purportedly hacked in 2019.

The Court is *not* unaware that Judge Atillo, Jr.'s act of posting the subject pictures on his Facebook account would no doubt seem harmless and inoffensive *if* it was done by an ordinary member of the public. "As the visible personification of law and justice, however, **judges are held to higher standards of conduct and thus must accordingly comport themselves.**"<sup>28</sup>

By doing so, Judge Atillo, Jr. likewise failed to adhere to the standard of propriety required of judges and court personnel under OCA Circular No. 173-2017, which mandates all members of the Judiciary who participate in social media to be *cautious* and *circumspect* in posting photographs, liking posts, and making comments in public on social networking sites like Facebook. Indeed, Judge Atillo, Jr. should have known better than to post *highly personal content* on his Facebook account that was viewable not only by his family and close friends, but also, by his "regular followers"<sup>29</sup> or, in other words, members of the general public.

### *The Proper Penalty*

The Court finds that Judge Atillo, Jr.'s complained act constitutes Conduct Unbecoming of a Judge, which, under Section 24, in relation to

<sup>25</sup> *Rollo*, p. 13.

<sup>26</sup> *Id.* at 14-15.

<sup>27</sup> *Id.*

<sup>28</sup> *Lorenzana v. Judge Austria*, *supra* note 15 at 105. Emphasis in the original and citation omitted.

<sup>29</sup> *Rollo*, p. 13.



Section 25(C), of Rule 140, as amended by A.M. No. 18-01-05-SC<sup>30</sup> and A.M. No. 21-03-17-SC,<sup>31</sup> is a *light offense* that is punishable by any of the following: (a) a fine of not less than ₱1,000.00 but not exceeding ₱35,000.00, and/or; (b) censure; (c) reprimand; or (d) admonition with warning. After a careful consideration of the peculiar circumstances of this case, the Court deems it proper to impose against Judge Atillo, Jr. the penalty of an admonition as this is his *first offense*.

With the emergence of various social media platforms through the years since the *Lorenzana* ruling came out in 2014, the Court once again reminds judges to be mindful of what they communicate in social networking sites—regardless of whether it is a personal matter or a part of his or her judicial functions—as such content indubitably creates and contributes to the public’s perception not only of the concerned judges, but, more importantly, of the Judiciary as a whole.<sup>32</sup>

**WHEREFORE**, the Court resolves as follows:


- 1) The Letter dated January 28, 2020 of the Office of the Court Administrator is **RE-DOCKETED** as a regular administrative matter;
- 2) Respondent Judge Romeo M. Atillo, Jr. is found **GUILTY** of Conduct Unbecoming of a Judge and is hereby **ADMONISHED** to be more circumspect in his professional and personal dealings in social media and **STERNLY WARNED** that a repetition of the same or similar acts shall be dealt with more severely; and
- 3) The Comment dated February 11, 2020 submitted by Respondent Judge Romeo M. Atillo, Jr. is **NOTED**.

<sup>30</sup> Internal Rules of the Judicial Integrity Board, approved on December 15, 2020.


<sup>31</sup> Amendments to the Fines Provided in Rule 140 of the Revised Rules of Court, approved on March 16, 2021

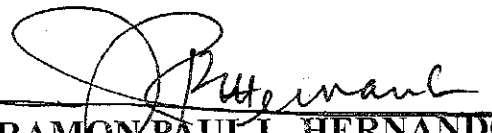
<sup>32</sup> *Lorenzana v. Judge Austria*, *supra* note 15 at 104-105.

**SO ORDERED.**

  
**HENRI JEAN PAUL B. INTING**  
*Associate Justice*

WE CONCUR:

  
**ESTELA M. PERLAS-BERNABE**  
*Senior Associate Justice*  
*Chairperson*

  
**RAMON PAUL L. HERNANDO**  
*Associate Justice*

  
**JHOSEP Y. LOPEZ**  
*Associate Justice*

  
**JAPAR B. DIMAAMPAO**  
*Associate Justice*