

IN THE
SUPREME COURT
OF THE
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

IN THE MATTER OF
KENNETH L. GOVENDO, ASSOCIATE JUDGE, SUPERIOR COURT FOR THE
NORTHERN MARIANA ISLANDS

SUPREME COURT NO. 2008-SLD-0001-JDA

Cite as: 2010 MP 16

Decided December 1, 2010

Bruce A. Bradley, Rule 5(K) Special Ethics Prosecutor, for the Commonwealth
Kenneth L. Govendo, proceeding Pro Se

BEFORE: ALEXANDRO C. CASTRO, Associate Justice; EDWARD MANIBUSAN,¹ Justice Pro Tem; VERN P. PEREZ,² Justice Pro Tem

PER CURIAM:

¶ 1 On August 25, 2010, we found that Superior Court Associate Judge Kenneth L. Govendo violated certain provisions of the Commonwealth Code of Judicial Conduct (“Canons”), as well as some of the Commonwealth Rules of Judicial Disciplinary Procedure (“Rules”). As a result, the Court conducted a hearing to determine the appropriate sanction to impose. The Special Ethics Prosecutor (“SEP”) Bruce A. Bradley³ and Judge Govendo submitted memoranda in support of their respective positions. The SEP suggested that the Court consider the following sanctions: (1) a period of suspension from the bench; (2) a period of probation; (3) a full audit of all of Judge Govendo’s hearings to determine if other problematic statements occurred; (4) reimbursement for all costs associated with this matter; (5) judicial conduct training; and/or (6) a public reprimand. Judge Govendo objected to the recommendations, and argued that judicial disciplinary matters of this nature are usually handled privately, and that even a public reprimand would be harsher than how the majority of jurisdictions would handle this case. For the reasons set forth below, IT IS HEREBY ORDERED AS FOLLOWS:

- (1) Associate Judge Kenneth L. Govendo is publicly censured;
- (2) Judge Govendo shall write a letter of apology to be published in a newspaper of general circulation in the Commonwealth;
- (3) Judge Govendo shall be reassigned from the Family Court Division for a period of one year; and
- (4) Judge Govendo shall complete a course on judicial ethics within a year from this order at his own expense.

I

A. Factual & Procedural History

¶ 2 On November 14, 2009, Superior Court Associate Judge Ramona V. Manglona wrote a letter to Supreme Court Chief Justice Miguel S. Demapan alleging that Judge Govendo violated ABA Model Code of Judicial Conduct Canon 3B(9). The letter alleged that Judge Govendo made

¹ Justice Pro Tem Manibusan is a retired Presiding Judge of the Commonwealth Superior Court.

² Justice Pro Tem Perez is a sitting Judge of the Guam Superior Court.

³ The SEP, the Guam Bar Association’s Ethics Prosecutor, was appointed to prosecute this matter pursuant to Commonwealth Rule of Judicial Disciplinary Procedure 26. Because he is not a member of the local bar, he was authorized to practice law in the Commonwealth in accordance with Commonwealth Rule of Admission 5(k).

the following statement on the record in open court during a hearing to show cause in a family court matter:

Alright Mr. Castillo, I don't want you to say anymore because you're just going to get yourself in trouble. Um, you can step down. Alright, what I'm going to do is um, I'm going to take this matter under advisement. What I'm really going to do is I'm going to notify the Attorney General's Office that I believe there is a violation of an order of protection and I want criminal charges brought against Mr. Castillo. It is time to say goodbye to Mr. Castillo. It is time that he went back to the Philippines, okay. He's a problem, he doesn't follow court orders, he's a bully and it's time that he went "bye-bye, adios." We don't need people like Mr. Castillo here. And since we're still in charge of the immigration, it's time to say "PROBLEM! ADIOS PROBLEM!" Back to the P.I. where you can be a problem there, okay. We have enough problem children here from the P.I. and it's time we get rid of them. Alright, so I am going to recommend that you be prosecuted. I am going to personally take this on myself, Mr. Castillo. I want to see you leave the Northern Mariana Islands. And when you leave, I will be at the airport to go "ADIOS MUCHACHO! DON'T COME BACK." Alright!

...

I'm going to call the AG's office after I finish and I am going to make it my personal, personal journey to make sure that Mr. Castillo leaves the CNMI. I want you out of here, Roger. . . . It is now time to start cleaning house in the CNMI. We don't need perpetrators of domestic violence here. I wish I could get rid of the locals but I can't. They're American citizens. But the ones who are not, there's no reason why we should have to put up with them.

Emalyn Santiago v. Roger S. Castillo, FCD FP No. 05-0619.

¶ 3

In response to the letter, Chief Justice Demapan appointed an investigating judge, the Honorable Richard H. Benson,⁴ to determine whether the allegations warranted further action by this Court. On October 22, 2009, Judge Benson submitted a report entitled "Recommendation of Formal Proceedings" ("Recommendation") wherein he recommended that formal proceedings be instituted against Judge Govendo. The Recommendation contained a finding that Judge Govendo did in fact make the above statement to Castillo, and that the statement violated Canons 3A(2) and 3A(3), and Rule 6(a)(3). The investigating judge further found that in two other cases Judge Govendo made statements that also violated Rule 6(a)(3). The first statement was reproduced in one of this Court's cases, *In re Adoption of N.I.L.S.*, 2007 MP 31 ¶ 12 n.3, and the relevant part consisted of the following quoted and italicized section below:

Of particular importance to the integrity of justice in the Commonwealth are the trial court's comments during the adoption hearings. A trial court may not make judicial determinations based solely on race, alienage, nationality, ethnicity, or place of origin. *Commonwealth v. Jong Hun Lee*, 2005 MP 19 ¶ 24. While a passing reference to a defendant's nationality is not improper, if there is a

⁴ The Honorable Richard H. Benson is a retired Associate Justice of the Federated States of Micronesia's Supreme Court, Justice Pro Tempore of the Guam Supreme Court, Judge Pro Tempore of the Guam Superior Court, and a temporary justice for the Palau Judiciary.

sufficient risk that a reasonable observer might infer bias from the trial court, then those remarks do not satisfy the “appearance of justice.” *Id.* (citation omitted). Here, the trial court stated that, it was not going to “*approve adoptions with nieces and nephews because there[] [are] millions of them all over in the Philippines who can get a better education here. . . . [T]his has been a giant loophole to bring over as many kids from the Philippines as possible with their parents being here*” Appellants’ ER, Ex. A at 15. The trial court continued, “*picture all the Filipinos here, every single one of them has got [sic] five nieces and nephews, back in the Philippines, who would quote ‘be better off here.’ So all you have to do [is], get married to an Americano, beg him, and he’ll adopt them.*”

¶ 4 In the other statement, Judge Govendo asked the petitioner in an adoption case the following question: “Are there any other kids in the Philippines that you would like to adopt? . . . No more? You sure? . . . Oh, come on. Just about every Filipino here wants to adopt some relative, right?” *In re Petition for Adoption of C.C.R.*, Super. Ct. Case No. FCD-AD04-0327. The investigating judge found that these two statements in conjunction with the *Castillo* statement demonstrated a pattern of improper racial remarks in violation of Rule 6(a)(3). Additionally, if the *Castillo* statement violated any of the above cited canons or rules, then the statement also violated Canon 1, Canon 2A, and Rule 6(a)(4). The Recommendation contained a note that Judge Govendo could not have violated ABA Model Code of Judicial Conduct Canon 3B(9) because the Commonwealth has not adopted that particular Canon, but that our Canon 3A(6) is similar to ABA Canon 3B(9), and that the *Castillo* statement likely violated 3A(6). The investigating judge placed the three statements before the Court as violations of the canons and rules, and the investigating judge recommended that the Supreme Court initiate formal proceedings against Judge Govendo.

¶ 5 After receipt of the Recommendation, the Court appointed Bruce A. Bradley to prosecute the matter, and Judge Govendo elected to represent himself. After numerous pre-hearing motions,⁵ the SEP filed a motion for summary disposition for all of the charges contained in the Recommendation. Judge Govendo attempted to defeat summary disposition by claiming that contextual facts, including, *Castillo*’s abusive nature, his repeated refusals to follow court orders, and the immense and palpable fear he instilled in his common-law wife, justified the remarks. Judge Govendo did not proffer any evidence with respect to the statements made in the two

⁵ Judge Govendo, and later one of the local news stations, requested that video cameras be allowed into the courtroom to record and broadcast the hearings. The Commonwealth Judiciary has no rules governing the use of video cameras in the courtroom. This Court held in an unpublished order that while the media has a right to attend public hearings, whether to allow video cameras into court is purely a discretionary matter. The requests were denied. *See Conway v. United States*, 852 F.2d 187 (6th Cir. 1988); *United States v. Edwards*, 785 F.2d 1293 (5th Cir. 1986); *United States v. Kerley*, 753 F.2d 617 (7th Cir. 1985); *United States v. Hastings*, 695 F.2d 1278 (11th Cir. 1983) cert. denied sub nom.

adoption cases, but claimed that certain contextual facts surrounding the *Castillo* statement created a triable issue of material fact. At a hearing on the motion for summary disposition Judge Govendo admitted to making all three of the statements at issue.

B. Summary Judgment

¶ 6 Relying on our previous judicial disciplinary case, we found that we do have the authority to grant summary disposition when clear and convincing evidence of a violation exists. *In re Lizama*, 2008 MP 20 ¶ 20; NMI R. Jud. Dis. P. 21(a). In *Lizama*, the judge admitted to the facts that formed the basis of the charges against him, but instead argued that his actions did not constitute violations of the canons and rules. *Lizama*, 2008 MP 20 ¶ 17. We found that there was clear and convincing evidence based upon the facts presented, and thus, it was only a question of law as to whether the judge’s actions violated the canons and rules. *Id.* ¶ 20. Here, we rejected Judge Govendo’s argument that the Rules mandated a formal hearing on whether a violation occurred because we found that Rule 21(a) only requires clear and convincing evidence to prove that the charges against the judge are true. *Id.* Since Judge Govendo admitted to the facts underpinning the charges against him at the summary judgment hearing, Rule 21(a)’s hearing requirements were satisfied, and summary disposition was proper.

¶ 7 Turning to the specific violations, Canon 3A(2) states: “[a] judge should maintain order and decorum in the proceedings before him.” Com. Code Jud. Cond. Canon 3A(2). Canon 3A(3) provides that “[a] judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials, and others subject to his direction and control.” Com. Code Jud. Cond. Canon 3A(3). The Recommendation found that Judge Govendo’s use of degrading language and threats of criminal and deportation proceedings in the *Castillo* proceeding violated both canons. We agreed with the findings of the Recommendation, and concluded that the contextual facts were insufficient to create a triable issue of material fact. Thus, it was not “adios muchacho” in a vacuum that caused the violation, but the entire diatribe against Castillo, particularly the inappropriate threats of criminal and deportation proceedings.

¶ 8 Next, Rule 6(a) lists grounds for judicial discipline, and subsection (3) states in pertinent part that “[i]ntemperance, including extreme or immoderate personal conduct, recurring loss of temper or control,” is behavior that may expose a judge to discipline. NMI R. Jud. Dis. P. 6(a)(3). The Recommendation found that the *Castillo*, *In re Adoption of N.I.L.S.*, and *In re Petition for Adoption of C.C.R.* statements were of a recurring intemperate type—meaning that Judge Govendo made racially insensitive remarks. We again agreed with the Recommendation and concluded that it was the combination of multiple statements with racially prejudicial overtones

that resulted in the violation; it was not the lone utterance of “adios muchacho,” but rather a pattern of racial insensitivity—intentional or otherwise.

¶ 9 We also agreed with the Recommendation that Canons 1 and 2A, and Rule 6(a)(4) were violated. Canon 1 states:

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining, and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

Com. Code Jud. Cond. Canon 1. Canon 2A states: “[a] judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.” Com. Code Jud. Cond. Canon 2A. Finally, Rule 6(a)(4) holds that grounds for discipline include “[a]ny conduct that constitutes a violation of the Code of Judicial Conduct” NMI R. Jud. Dis. P. 6(a)(4). We held that the *Castillo* language demonstrated that Judge Govendo failed to follow the high standards of conduct required of a judge necessary to maintain the integrity and independence of the judiciary. Likewise, we held that the threats and intimidation from the *Castillo* statement damaged the public’s faith in the judiciary and failed to promote the public’s confidence in the integrity and impartiality of the judiciary. We also held that a violation of Rule 6(a)(4) occurred because we found that other violations occurred; this rule is breached whenever another rule or canon is breached. Finally, Canon 3A(6) was also violated; the canon states:

A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

Com. Code Jud. Cond. Canon 3A(6). We held that the *Castillo* statement was a public comment within the meaning of the language, and that Judge Govendo’s threats of prosecution and deportation created the appearance that he would seek to influence a future proceeding.

¶ 10 We granted summary disposition for all of the charges contained in the Recommendation based on the totality of what Judge Govendo said during all three hearings. First, Judge Govendo personally threatened criminal prosecution and deportation. He did not administer the threats in a manner consistent with his duties as a judicial officer overseeing an order for protection, but rather as a means to intimidate a repeat offender into compliance. This is a serious violation, and would alone warrant judicial discipline. Second, Judge Govendo made three racially insensitive remarks to and about Filipinos. Judge Govendo has attempted to characterize these proceedings as a referendum on the phrase “adios muchacho;” to the contrary this disciplinary matter is much

larger than “adios muchacho.” While the phrase does have a racially derogatory meaning both to Chamorros and Filipinos, the real problem with “adios muchacho” only comes into focus when the statements from the two adoption cases are reviewed alongside it. The statements made in the two adoption cases were racially insensitive, and racially stereotyped all Filipinos as wanting to adopt all of their relatives in order to give them a better life in the Commonwealth. While the Court was clear in its summary disposition order that it does not believe that Judge Govendo is a racist, and the Recommendation and the SEP similarly stated that there is no evidence of Judge Govendo harboring actual racial prejudice, when the two adoption statements and the “adios muchacho” statement are viewed together, a neutral observer could reasonably infer racial bias or prejudice or the appearance of such bias. This caused us to hold that Judge Govendo violated the applicable canons and rules. Thus, not a single finding from the summary judgment order concerned only “adios muchacho”—all of the violations relied on other statements made by Judge Govendo, or other aspects of the *Castillo* statement. Therefore, we granted summary disposition because Judge Govendo admitted to making the three statements, and when we considered the statements in their totality, we found that violations of the rules and canons occurred.

¶ 11 Following the grant of summary disposition, we conducted another hearing to provide the SEP and Judge Govendo the opportunity to introduce aggravating and mitigating evidence to assist the Court in determining the appropriate sanction to be imposed.

II

A. Fashioning the Appropriate Sanction

¶ 12 In this Commonwealth, the sanction to be imposed on a judge for a violation of the canons or rules is not a *de novo* question. In *In re Lizama*, 2008 MP 20, we sanctioned a judge for violating the Commonwealth Code of Judicial Conduct and Rules of Judicial Disciplinary Procedure. In that case, Judge Lizama wrote two letters that resulted in violations of various judicial canons and rules. The first letter Judge Lizama wrote accused a fellow judge of bias, and the second letter accused the judge of bias, commented on a pending case, and used degrading language to describe the judge. Judge Lizama sent the letters to the judge and other persons involved in the case. The Court found that these letters violated Canons 1, 2A, 3A(4), 3A(6), and Rule 6(a)(1).

¶ 13 In fashioning the appropriate sanction, the *Lizama* Court seriously considered the parameters of Rule 34 which permits this Court to: (1) suspend the judge; (2) impose limitations or conditions on the performance of judicial duties; (3) issue a public reprimand or censure; (4) issue a monetary fine; or (5) assess costs and expenses. *Lizama*, 2008 MP 20 ¶ 21 (citing NMI. R.

Jud. Dis. P. 34). The *Lizama* Panel balanced the following factors to determine what type of sanction to impose:

- (1) the length and character of the judge’s public service; (2) whether there is any prior case law on point; (3) the magnitude of the offense and harm suffered; (4) whether the misconduct is an isolated incident or evidences a pattern of conduct; (5) whether moral turpitude was involved; and (6) the presence or absence of mitigating or aggravating circumstances

Id. ¶ 20 (citing *Miss. Comm’n on Judicial Performance v. Gibson*, 883 So.2d 1155, 1158 (Miss. 2004)). The Court took Judge Lizama’s long and distinguished career as a jurist into account in fashioning the appropriate sanction. Consequently, the Court ordered Judge Lizama to take continuing legal education classes, and it assessed him all of the costs and expenses associated with the proceeding. While the nature of Judge Lizama’s conduct is different from that of Judge Govendo’s, the rules and procedures followed guide us in making our decision today.

1. The Gibson Sanctioning Factors

¶ 14 We will balance the factors from *Gibson* in formulating Judge Govendo’s sanction. Considering the first *Gibson* factor, the length and character of a judge’s public service, Judge Govendo has been a member of the Superior Court since 2002, and has been the family court judge for that entire time. As evidenced in his opposition to the motion for summary disposition, Judge Govendo has been nationally recognized for his excellent efforts to protect victims of domestic violence.⁶ As discussed in depth below, all of Judge Govendo’s witnesses testified that he is a good family court judge, and that he is a well-liked and well-respected member of the judiciary. If it were not for the statements brought to the Court’s attention, there would be nothing negative about his time on the bench. Thus, Judge Govendo has had a long and generally positive tenure at the Superior Court.

¶ 15 The second *Gibson* factor directs us to consider case law that is on point. As *Lizama* is not factually analogous, we look to other jurisdictions for guidance. We note at the outset that most published opinions dealing with judicial discipline involve facts more severe than those before us. In *In re King*, 568 N.E.2d 588, 599 (Mass. 1991), a judge was publicly censured and enjoined from sitting on a certain court for making statements to a local newspaper about how he handled certain cases, inappropriately used bail money, and abused alcohol. In *In re Cresap*, 940 So.2d 624, 640 (La. 2006), a judge was suspended for thirty days without pay and ordered to reimburse the judicial commission for some of the costs associated with the proceeding. These sanctions were imposed for holding an attorney in contempt four separate times for seeking the

⁶ Alliance of Local Service Organizations: Technical Assistance Provider for the Office on Violence Against Women: Domestic Violence Success Story.

judge's recusal, ejecting the attorney from court, and for demanding that the attorney general return early from a business trip to testify as to his knowledge of the recusal motion. In *In re Jones*, 581 N.W.2d 876, 891 (Neb. 1998), a judge was removed from office for his outbursts of temper; frequent use of vulgar, abusive, and profane language; threats against another judge; making hostile comments about another judge; and signing court papers with false names. In ordering the removal, the court focused on the continuing pattern of misconduct.⁷ *Id.*

¶ 16

In *In re Stevens*, 645 P.2d 99, 99 (Cal. 1982), the judge was publicly censured for repeatedly and persistently making racial epithets and for making racially stereotypical remarks to counsel and court personnel; most of the remarks were not made in open court. The court found that the judge's remarks were prejudicial to the administration of justice. *Id.* In *In re Chargin*, 471 P.2d 29, 29 (Cal. 1970), a judge was publicly censured for conduct prejudicial to the administration of justice and for bringing his judicial office into disrepute by making inflammatory remarks during a juvenile court hearing concerning the juvenile's family and members of their ethnic group. In *In re Fasmussen*, 734 P.2d 988, 989 (Cal. 1987), a judge publicly branded a person who was previously convicted of child molestation a "pervert," initiated probation revocation proceedings for personal reasons, engaged in open court criticism of another judge, communicated to a criminal defendant his likely sentence while his counsel was absent, improperly suggested that the state bar should investigate an attorney, displayed a lack of partiality, and engaged in conduct that amounted to petty harassment against attorneys who filed affidavits of prejudice against him. The court issued a public censure, but stated that it would have imposed a harsher sentence if it were not for numerous other judges testifying that he was engaged in continuing, commendable efforts to temper his courtroom behavior. *Id.* We recognize that while these cases are factually different, enough facts bear resemblance to those now at bar, and we find them useful in gauging how other courts have sanctioned judges for a wide range of inappropriate conduct. While courts use suspension only for the most egregious behavior, courts frequently issue public reprimands. Additionally, other jurisdictions in addition to our own have ordered the judge to pay for the cost of the disciplinary proceeding.

¶ 17

The third *Gibson* factor requires us to consider the magnitude of the offense and the harm suffered. Judge Govendo has not exhibited any actual bias while sitting as a judge, and at the formal hearing he apologized for the remarks he made at the *Castillo* hearing. On the other hand, he has exhibited the appearance of bias and has failed to maintain the proper judicial decorum in the courtroom. He violated many of our canons and rules with these statements, and as a result, he

⁷ In the Commonwealth, only the Legislature can remove a judge or justice from office via the impeachment process.

has lowered the bar with respect to the judiciary's reputation in the eyes of the people of the Commonwealth. No doubt the parties before him during these proceedings, two of which were petitioners for adoption, likely felt prejudiced, and likely left the courthouse with a feeling that the court did not dispense impartial justice. These statements essentially amount to angry tirades. The adoption comments are even more shocking as he attacked innocent and valued members of our community, and accused them of wishing to adopt all Filipinos and ruin the Commonwealth in the process. While Castillo was a serially abusive husband, the adoption petitioners were law-abiding members of our community. Judge Govendo certainly had the right to question the petitioners to determine that the adoptions were legal, but it is beyond the pale of acceptable judicial conduct to *accuse* would-be parents of inappropriate motives just because they wanted to adopt Filipino children. No party or lawyer can tell a judge on the bench to be quiet, so when Judge Govendo decided to berate the people before him, there was nothing they could do other than be publicly humiliated. Therefore, the comments caused substantial harm to the judiciary as they cast disrepute on all of the judges and justices of the Commonwealth Courts.

¶ 18 The fourth *Gibson* factor asks us to determine whether the conduct complained of is isolated or part of a pattern. In this case, the conduct is clearly part of a pattern of Judge Govendo making racially insensitive remarks, and berating parties who appear before him that he feels need a lecture. Judge Govendo made two similar statements in the adoption cases that created an appearance of racial bias with respect to adoptions by Filipinos. Then, in the *Castillo* case, Judge Govendo berated the party before him with inappropriate threats, and he made the “adios muchacho” remark which is offensive to both Chamorros and Filipinos. Therefore, Judge Govendo exhibited a pattern of losing his temper on the bench, and he also exhibited a pattern of making remarks that create an appearance of racial bias.

¶ 19 The fifth *Gibson* factor focuses our attention on whether the charge is one of moral turpitude; it is not. The sixth consideration asks us to consider aggravating and mitigating circumstances. At the formal hearing both the SEP and Judge Govendo submitted aggravating and mitigating evidence respectively. The SEP submitted an official recording of *Commonwealth v. Kurk Palacios*, Case Number 07-0131-B (October 2, 2008), a case that Judge Govendo presided over; he did not call any witnesses. Judge Govendo submitted official recordings of two adoption proceedings, numbered 05-0586 and 06-0147. Judge Govendo also called as witnesses the Honorable Robert C. Naraja, Presiding Judge of the Commonwealth Superior Court, Judge Ramona V. Manglona, and Myrna Santos, his former courtroom clerk.

a. SEP's Aggravating Evidence

¶ 20 Following the hearing on October 15, 2010, the Court listened to the *Palacios* tapes. The case concerned a nineteen-year-old male having sexual relations with a thirteen-year-old female; Judge Govendo presided over *Palacios*'s sentencing, in which the defendant pled to a prison term of twelve months. While *Palacios* received his sentence for statutory rape, he did not disrespect the court in any manner, and sat silent during most of the sentencing hearing. Judge Govendo's voice, however, was raised and he sounded agitated; at times he shouted at the defendant, the defendant's family, and seemingly at everyone in the courtroom. When he turned his attention to the defendant's family, he accused them of failing to raise their son properly. Throughout the entire remarks, Judge Govendo sounded un-composed, exasperated, and angry. Simply put, Judge Govendo had lost his composure, and spoke as an outraged citizen and not as a neutral arbiter.

¶ 21 The Exhibit List filed by the SEP prior to the formal hearing contained some written excerpts of the *Palacios* recording. Those are as follows:

1. "If you have a son, start educating him tonight: He can't screw 13 year olds!"
2. If you have a 13 year old daughter, it's time to tell her: Stop screwing! Period!"
3. Our young people "need to become members of society, not teenage baby makers."
4. "this [adult males have sex with minor girls] has been accepted by this whole community."
5. "I have said it over and over again: This is the loose-as-a-geese Commonwealth of the Northern Mariana Islands. Our moral values are Low! Low!"
6. "I just do not see, in this society, parents spending time with their teenagers. There's always rosaries to go to, there's always excuses."

We find these remarks troubling. While a judge can certainly state his or her displeasure with a particular defendant, he or she must always maintain judicial composure. Many violent and heinous offenders come into our courts, and while we can certainly air the community's sense of moral righteousness in condemning these individuals, it must never become personal. In this instance Judge Govendo's remarks moved away from moral reproach directed towards *Palacios* and instead attacked the Commonwealth as a whole. This is unacceptable, and it implies that we as a community failed, whereas in reality, one particular individual failed to live up to our community standards. We see absolutely no problem with a Judge scolding a nineteen-year-old man for engaging in a sexual relationship with a thirteen-year-old girl in violation of Commonwealth law, but those comments must be direct and focused. The judge's tone and demeanor must also remain composed and judicial in character. While some of the substantive remarks made by Judge Govendo were inappropriate, what concerned us the most was how he

made his comments. Judge Govendo sounded more like an outraged relative of the victim than a judge handing down a sentence. We note that if Judge Govendo previously wrote his comments in advance and read them at the sentencing hearing as the National Judicial College recommends in some of its courses, the entire situation might never have arisen.

¶ 22 There is another troubling aspect of the *Palacios* proceeding, which relates to its timing. *In re Adoption of N.I.L.S.*, 2007 MP 31 ¶ 12 n.3, contains remarks made by Judge Govendo that are at issue in this proceeding, and that the Court took issue with at the time by stating “[t]he trial court’s language does not meet the reasonable observer’s appearance of justice. We are confident that the trial court will satisfy the appearance of justice on remand.” The *Adoption of N.I.L.S.* case was issued in December 2007, and with it the Court essentially put Judge Govendo on notice that his remarks during the adoption proceeding were inappropriate. The *Castillo* comments occurred roughly five months prior to our issuance of *Adoption of N.I.L.S.* so Judge Govendo was not on notice that we were displeased with some of his comments. The *Palacios* hearing, however, occurred roughly ten months after the issuance of *Adoption of N.I.L.S.* Thus, Judge Govendo had at least constructive, if not actual, notice that the Court felt that some of his remarks were inappropriate. This served as a warning that he needed to tone down his rhetoric. Instead, Judge Govendo disregarded this warning and engaged in another diatribe. This deeply worries us because our initial message did not seem to get across. Judge Govendo still operates under the mindset that he is totally unrestrained in his right to speak his mind in court, and that gentle warnings issued by this Court can be disregarded with impunity. The Court would think that a footnote in one of our opinions publicly acknowledging inappropriate language would be sufficient to effectuate a change in behavior—apparently it is not. We will seriously consider Judge Govendo’s past inability to conform his conduct to appropriate standards. Therefore, in evaluating the SEP’s aggravating evidence not only does the content of the *Palacios* statements concern us, as well as Judge Govendo’s tone, but the judge made these comments after we put him on notice that he needed to ensure that his remarks “satisfy the appearance of justice.” *Id.*

b. Judge Govendo’s Mitigating Evidence

¶ 23 Turning to Judge Govendo’s mitigating evidence, Presiding Judge Robert C. Naraja testified to Judge Govendo’s competency, ingenuity, decency, and his passion and enthusiasm for being the family court judge. He also noted that Judge Govendo has been nationally recognized for his efforts in protecting victims of domestic violence and seeing that parents pay child support. He has not heard any comments from members of the bench, bar, or community that Judge Govendo is a racist, and he does not believe that Judge Govendo harbors racial prejudice towards any group. He also testified that family court is a difficult and complex assignment

because of the emotionally charged nature of the proceedings. He noted that domestic violence cases are some of the hardest cases, and that sometimes “tough talk” is necessary to coerce parties into appropriate behavior. The Presiding Judge assigned Judge Govendo to family court because he believed it would be a challenging assignment, and because he believed Judge Govendo would do a good job. Presiding Judge Narja asked the Court to show leniency towards Judge Govendo.

¶ 24 Judge Govendo next called Judge Ramona V. Manglona. Judge Manglona stated that she considers Judge Govendo a colleague, respects him, and recognizes him as an important member of the judiciary. She also acknowledged the difficult nature of family court, and felt that this proceeding could have a chilling effect on the judiciary because it could potentially make judges afraid that any offhand remark would expose them to discipline. Judge Manglona, however, also stood by her decision to report Judge Govendo for the *Castillo* comments. She felt strongly that what Judge Govendo said violated the canons of judicial conduct, and correctly noted that pursuant to Canon 3B(3) it was her duty as a judge to bring the remarks to the attention of the Chief Justice.⁸

¶ 25 The last witness was Myrna Santos, Judge Govendo’s former courtroom clerk, and the clerk present at the *Castillo* hearing. She was a clerk for the Superior Court for twenty-one years, and believes that Judge Govendo is a good family court judge. She is also a Filipina, and does not believe that Judge Govendo said “adios muchacho” with a derogatory intent. She does not believe that Judge Govendo harbors any racial prejudice towards Filipinos. After the *Castillo* hearing, Santos approached Judge Govendo and told him that the term “muchacho” was a “put down” term in Tagalog, and that a Filipino would likely take offense to be called a muchacho. She testified that Judge Govendo responded that he did not know it was a derogatory term, that he thought it meant boy, and that it was not his intent to racially demean anyone. Santos believed Judge Govendo’s statements about his intent and lack of awareness of the word’s meaning. She hoped that Judge Govendo would continue in his duties as he is a good family court judge.

¶ 26 In addition to the testimony, Judge Govendo requested that the Court listen to recordings from the adoption cases numbered 05-0586 and 06-0147. As with the tapes submitted by the SEP, the Court listened to all of the submitted proceedings in their entirety. We found that Judge Govendo’s tone in these proceedings was mean, condescending, and angry. We listened to Judge Govendo berate would-be adoptive parents on the basis that they were motivated to adopt the children not because they loved them, but instead because they wished to bring more Filipinos

⁸ Commonwealth Code of Judicial Conduct Canon 3B(3) states that: “A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct which the judge may become aware.

into the Commonwealth. Judge Govendo attacked the petitioners and their motivations. He stated that it was petitioners' intent in these adoptions to circumvent Commonwealth law, and that he would not stand for such tactics. Like the *Palacios* hearing, it was not only what Judge Govendo said, but how he said it that concerned us. These tapes cast serious doubt as to Judge Govendo's ability to maintain the proper judicial decorum. Therefore, Judge Govendo's witnesses were supportive, but the tapes were not favorable. The above discussion constitutes all of the evidence, precedent, and considerations that we examine in fashioning an appropriate sanction.

III

¶ 27

In conclusion, the statements made in the *Castillo* hearing, the *In re Adoption of N.I.L.S.* hearing, and the *In re Petition for Adoption of C.C.R.* hearing unequivocally crossed the line of what constitutes permissible judicial commentary within the courtroom and must be sanctioned. In considering these statements in light of the aggravating and mitigating evidence, relevant precedent, and the other *Gibson* factors, IT IS HEREBY ORDERED:

- (1) Associate Judge Kenneth L. Govendo is publicly censured for the statements he made in the three proceedings at issue.
- (2) Judge Govendo shall write a letter of apology to the people of the Commonwealth for making these statements. The letter of apology shall be submitted to the Court for its review and approval within fifteen days.⁹
- (3) Judge Govendo shall be reassigned from the Family Court Division for a period of one year. To ensure a smooth transition, the reassignment shall be done at the direction of Presiding Judge Robert C. Naraja within sixty days.
- (4) Judge Govendo shall complete an educational program on judicial ethics at his own expense.¹⁰ The National Judicial College's *Ethics, Fairness, and Security in Your Courtroom and Community*,¹¹ currently scheduled for October 24-27, 2011 is highly

⁹ In connection with the publication of this letter, Judge Govendo shall bear the expense of taking out advertisements in two newspapers of local circulation in order to ensure that the letters are published in their entirety.

¹⁰ Judge Govendo shall not apply for any outside funding for the purpose of attending the program.

¹¹ A brief description of the class states:
Participants will examine real cases and use hypothetical scenarios to distinguish between proper and improper personal conduct in the courtroom and community activities; discuss the importance of different cultures in the community and their impact on courtrooms; reduce bias and prejudice to maintain the integrity of the court process and apply appropriate personal security measures when engaging with the public.

Any other class that Judge Govendo would rather take should be similar to the class described above.

recommended. Judge Govendo may petition the Court to take a different course that may be offered earlier by a different institution, but an online class will not be accepted.

ENTERED this 1st day of December, 2010.

/s/

ALEXANDRO C. CASTRO
Associate Justice

/s/

EDWARD MANIBUSAN
Justice Pro Tem

/s/

VERN P. PEREZ
Justice Pro Tem