

**J. KING & SONS COMPANY, INC., REPRESENTED BY ITS
PRESIDENT, RICHARD L. KING, COMPLAINANT, VS. JUDGE AGAPITO
L. HONTANOSAS, JR., PRESIDING JUDGE OF RTC, BRANCH 16, CEBU
CITY, RES...**

A.M. No. RTJ-03-1802. September 21, 2004

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PER CURIAM:

Before us is a complaint filed by J. King & Sons Company, Inc., represented by its President, Richard L. King, against Judge Agapito L. Hontanosas, Jr., Regional Trial Court, Branch 16, Cebu City (RTC for brevity).

Complainant alleges: It is the plaintiff in a case for Specific Performance with Damages with Prayer for Writ of Preliminary Attachment, docketed as Civil Case No. CEB-27870,[1] pending before the RTC presided over by respondent. On July 2, 2002, respondent issued an Order granting the application for writ of preliminary attachment upon applicant's filing of a bond in the amount of P35,973,600.00. An urgent motion to discharge and lift writ of preliminary attachment was filed by defendants before the respondent on July 5, 2002 and on the same day, respondent issued an Order lifting the writ of preliminary attachment. Said Order dated July 5, 2002 was issued sans proper notice and hearing as required by section 4, Rule 15 of the 1997 Rules of Civil Procedure. Respondent approved defendants' counter-bond despite knowledge that the bonding company's Supreme Court Clearance was not valid and the maximum net retention of the bonding company had a deficiency of P22,541,463.69. At a meeting in his house, respondent asked Rafael King to match defendants' offer to pay P250,000.00 so that the Order of July 5, 2002 will be reconsidered formally if a motion for reconsideration is filed by complainant. Respondent's favorite hang-out is the karaoke music lounge of Metropolis Hotel owned by herein complainant, and he uses said facilities "gratis et amore."

In compliance with the directive of the Court Administrator, respondent filed his Comment, dated August 22, 2002, wherein he vehemently denies soliciting money from the King brothers. He contends that complainant is merely a dissatisfied litigant which cannot accept an unfavorable court ruling; and that the questioned orders relative to Civil Case No. CEB-27870 were issued by him in the exercise of lawful judicial discretion in accordance with the rules of procedure, the evidence on record, and with the dictates of justice and equity.

Complainant then filed a Reply where it pointed out that respondent failed to squarely meet the issues of the administrative complaint. It emphasized that there was actually no hearing on the motion to lift the writ of attachment allegedly conducted on July 5, 2002.

Respondent filed a Supplemental Comment alleging that complainant has also filed a complaint against him with the Office of the Ombudsman (Visayas), attaching his counter-affidavit thereto. He further claims that it is clear that Richard King and Atty. Renecio Espiritu sought another forum to further expose him to public ridicule thru the print media and air waves thereby eroding public trust and confidence of the people in the judiciary.

The Office of the Ombudsman (Visayas), had forwarded to this Court the complete records of King vs. Hontanosas, pursuant to Section 23(2) of Republic Act No. 6670.

On September 8, 2003, the Court issued a Resolution referring the herein administrative matter to Associate Justice Jose Reyes, Jr., Court of Appeals, for investigation, report and recommendation.

The Investigating Justice conducted hearings where complainant presented the testimonies of witnesses, Richard L. King, Rafael L. King, and the waiters at complainant's karaoke bar, namely: Antonio Cabigon and Axel Reyes.

Richard King testified that he is the president of complainant corporation. He adopted the joint affidavit executed by him together with Rafael King as part of his direct examination. In said joint affidavit, Richard states as follows: He and Rafael are the President and Treasurer, respectively, of J. King and Sons Co., Inc., the plaintiff in Civil Case No. CEB-27870 pending before herein respondent. On July 2, 2002, respondent issued the writ of preliminary attachment against the defendants in the aforementioned case for specific performance. Thereafter, respondent approved the counter-bond despite knowledge of the fact that the clearance was valid only until June 28, 2002, the maximum net retention of the bonding company was only P13,432,136.31, thus, causing a deficiency of P22,541,436.69. On July 5, 2002, respondent lifted the writ of preliminary attachment without notice and hearing in violation of Rule 13 and 15 of the 1997 Rules of Civil Procedure. The calendar of cases of the court showed that the motion to lift attachment filed by defendants in the subject case was not scheduled for hearing on said date of July 5, 2002. The minutes presented by respondent showing that there was a hearing held after 11 o'clock and before 12 o'clock of July 5, 2002, could be easily manufactured. Previous to the aforementioned incidents, respondent had been a frequent visitor of the corporation's music lounge where respondent would entertain himself, his guests and friends for free; Rafael King would entertain respondent when he visited said music lounge; on July 5, 2002, Rafael received a telephone call from respondent, telling him to see him (respondent) at his residence. Richard and Rafael King obliged but they were shocked when respondent asked them to equal the defendants' offer of P250,000.00 so he would reconsider his order lifting the attachment. The King brothers told respondent they could not comply with said demand since they are suffering a financial crisis. Thus, respondent denied the motion for reconsideration filed by J. King & Sons Company, Inc.[2] Richard King further testified that they filed a motion to inhibit respondent from further hearing the subject case and when said motion was granted, the case was re-raffled to a new judge who then reinstated the writ of attachment against the defendants in the subject case.

On cross-examination, Richard testified: Respondent and his brother, Rafael, are friends. At the behest of respondent, he and his brother went to the house of respondent at around 7 or 8 o'clock in the evening. Due to the fact that Rafael and respondent were friends, respondent frankly told Rafael that he (respondent) needed money and if Rafael could match the offer of the opposing party and come up with P250,000.00, respondent would reverse his order lifting the attachment upon complainant's filing of a motion for reconsideration. Their conversation lasted no more than twenty minutes and because Richard and Rafael were shocked by respondent's actuation, they immediately left respondent's house. Richard King further pointed out that he is a very busy businessman and by the filing of the present administrative case against respondent, he has nothing to gain. [3]

Witness Rafael King likewise adopted the joint affidavit he executed with his brother, Richard King, as part of his direct testimony. Rafael further stated that respondent had been his friend for 3 to 4 years and in that span of time, he had never asked for any favors from respondent regarding cases of complainant corporation pending before the sala of respondent. Respondent did not ask for money from him for the granting of the writ of attachment. However, after the order lifting the attachment had been issued on July 5, 2002, at around 2 or 3 o'clock in the afternoon, respondent called him up on the phone and asked him to go to his (respondent's) house. Since this was the first time that Rafael would go to respondent's house, it was even respondent who gave him (Rafael) directions on how to reach said house. Rafael denied respondent's claim that he was the one who called

respondent's son, Butch, to ask for a meeting with him. Rafael admitted that he knows the wife of respondent since she often uses the music lounge owned by complainant corporation. Before July 5, 2002, respondent had often called Rafael on the phone to tell the latter that he and his family will use said music lounge. Upon the Investigating Justice's questioning, Rafael stated that they filed the present administrative case against respondent because it was an injustice for respondent to demand money from them.[4]

Antonio Cabigon and Axel Reyes, corroborated each other's testimonies. They testified that: they work as waiters at the karaoke bar owned by complainant and they often saw respondent and his wife, sometimes also with some of their friends, at said bar; respondent and his wife did not have to pay for the use of the facilities of said bar, per instruction of the bar's management; however, for record purposes, they would still give the bill or order slips to respondent for his signature, but it was respondent's wife who signed the same in their presence.

Respondent, on the other hand, testified as follows: A hearing on the defendants' motion to lift the preliminary attachment was actually held on July 5, 2002 between eleven o'clock in the morning and twelve o'clock noon as shown by the transcript of stenographic notes taken during said hearing. He held the hearing because the motion was urgent in nature, and he did it in the spirit of equity and justice. Furthermore, he asked from counsel for defendants whether counsel for complainant had been notified of the hearing and the former assured respondent that counsel for complainant had been notified of the hearing. With regard to the claim that he demanded P250,000.00 from the Kings, he denied ever calling Rafael King or demand any money from the Kings; instead, it was Rafael King who called up his (respondent's) son Butch and asked that they be allowed to meet with him at his residence. While the Kings were at his house, the Kings tried to bully him into reconsidering his Order dated July 5, 2002, but he told them to just file a motion for reconsideration. Complainant filed the motion for reconsideration but after hearing the same, he denied the motion in his Order dated July 17, 2002. He pointed out that at the hearing on the Motion for Reconsideration, the defendants were able to present a Certification from the Supreme Court that the authority of the bonding company was up to August 3, and so he denied the Motion for Reconsideration. With regard to the claim that he frequently used complainant's karaoke bar without paying for said facilities, respondent insisted that his wife offered to pay but the bar's management would not allow her to pay.[5]

On June 14, 2004, the Investigating Justice submitted his Investigation Report together with his recommendation which reads as follows:

RECOMMENDATION:

The complaint may be divided into four (4) issues. First, would be the alleged demand for P250,000.0 in exchange for a favorable action regarding complainant's motion for reconsideration. The second, the use of complainant's karaoke bar at the Metropolis Hotel by respondent and his family for free. The third, the alleged impropriety regarding the issuance of the Order of July 5, 2002, and lastly, the sufficiency of the counterbond.

- AS TO THE ALLEGED DEMAND FOR P250,000.00

The investigating justice finds that the same had not been sufficiently substantiated. Other than the bare assertion of Rafael and Richard King there was no other evidence presented. Although the visit of the King brothers to the house of respondent in the evening of July 5, 2002 is admitted, this by itself would not prove that a demand for money was made.

However, the investigating justice finds that it was inappropriate for respondent to have entertained a litigant in his home particularly when the case is still pending before his sala. As held in *De Guzman, Jr. v. Sison* (355 SCRA 69 [2001]) patronizing with litigants tarnishes the appearance of propriety, to wit:

It is an ironclad principle that a judge must not only be impartial; he must also appear to be impartial. Hence, the judge must, at all times, maintain the appearance of fairness and impartiality. His language, both written and spoken, must be guarded and measured lest the best of intentions be misconstrued. A judge's conduct must be above reproach. Like Caesar's wife, a judge must not only be pure but above suspicion. A judge's private as well as official conduct must at all times be free from all appearances of impropriety and be beyond reproach.

Fraternalizing with litigants tarnishes this appearance. It was, thus, held that it is improper for a judge to meet privately with the accused without the presence of the complainant. (at 89-90)

- AS TO THE USE OF COMPLAINANT'S KARAOKE BAR AT THE METROPOLIS HOTEL

The investigating justice notes that this was not denied by respondent but interposes the defense that during the time he used the bar, his friends would pay the bill (See: TSN, April 27, 2004, p. 29). He also claimed that at one time the owners of the karaoke bar would not allow his wife to pay. He testified, thus:

Atty. Cortez:

Mr. Respondent, the complainant thru its witnesses Richard King and Rafael King have accused you of taking advantage of the amenities in their karaoke joint and according to them you were not charged, what can you say to this? Did you abuse?

Witness:

I did not. Because that is an open place. I went there together with my wife to entertain some judge friends and then my wife was suppose to pay and the management did not allow my wife to pay. (TSN, April 27, 2004, p. 20)

Although there is a question of whether or not respondent had used the facilities free of charge, the investigating justice nevertheless finds that respondent judge should have not frequented the place to prevent any appearance of impropriety considering that, as admitted by respondent, there are at least three (3) cases filed by complainant which are pending before his court. This is a violation of Canon 2 of the Code of Judicial Conduct.

Thus, it has been held time and again that the judges must avoid all appearances of impropriety. In *Calilung v. Suriaga* (339 SCRA 340 [2000]), it was held:

The Code of Judicial Conduct provides:

CANON 2 A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES.

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

It is evident from the aforesaid provisions that both the reality and the appearance must concur. Case law repeatedly teaches that judicial office circumscribes the personal conduct of a judge and imposes a number of restrictions thereon, which he has to pay for accepting and occupying an exalted position in the administration of justice. The irresponsible or improper conduct of a judge erodes public confidence in the judiciary. It is thus the duty of the members of the bench to avoid any impression of impropriety to protect the image and integrity of the judiciary.

This reminder applies all the more sternly to municipal, metropolitan and regional trial court judges like herein respondent, because they are judicial front-liners who have direct contact with the litigating parties. They are the intermediaries between conflicting interests and the embodiments of the people's sense of justice. Thus, their official conduct should remain free from any appearance of impropriety and should be beyond reproach.

Given the factual circumstances prevailing in this case, the Court does not hesitate to conclude that respondent Judge tainted the image of the judiciary to which he owes fealty and the obligation to keep it all times unsullied and worthy of the people's trust. A judge should conduct himself at all times in a manner which would reasonably merit the respect and confidence of the people for he is the visible representation of the law. (at 361-362)

- AS TO THE ALLEGED IMPROPRIETY REGARDING THE ISSUANCE OF THE ORDER OF JULY 5, 2002

For clarity, the undisputed facts leading to the lifting of the writ of preliminary injunction are reiterated, thus: On July 2, 2002, a writ of preliminary injunction was issued. On July 5, 2002 defendants filed an urgent motion to lift writ of preliminary injunction and on the same day an order lifting the writ of preliminary injunction was issued.

...

Respondent on the other hand, countered in his testimony that he granted the motion to lift the writ of preliminary attachment because he thought that it was the most equitable thing to do . . .

The investigating justice is not persuaded by respondent's explanation. As held in the case of Peroxide Philippines Corp. v. Court of Appeals (199 SCRA 882 [1991]) before a writ of attachment may be lifted, a hearing and an opportunity to oppose the motion should be given to the attaching creditor, to wit: Now, it is undeniable that when the attachment is challenged for having been illegally or improperly issued, there must be a hearing with the burden of proof to sustain the writ of being on the attaching creditor. That hearing embraces not only the right to present evidence but also a reasonable opportunity to know the claims of the opposing parties and meet them. The right to submit arguments implies that opportunity, otherwise the right would be a barren one. It means a fair and open hearing. And, as provided by the aforecited Section 13 of Rule 57, the attaching creditor should be allowed to oppose the application for the discharge of the attachment by counter-affidavit or other evidence, in addition to that on which the attachment was made. (at 890)

In the present administrative case, no opportunity was given to complainant to even oppose the motion to lift attachment. Respondent failed to persuade the investigating justice of the alleged urgency to grant the motion to lift the writ of preliminary attachment as a justification for granting the motion without a full-blown hearing. It may also be said that the July 5, 2002 Order may have been too hastily issued considering the fact that a copy of the said motion was mailed only on July 3, 2002 (Exhibit "5"). Hence, as argued by complainant, the motion could not have been set for hearing earlier than July 6, 2002 without doing violence to the 3-day notice rule.

The respondent judge, having ignored settled jurisprudence, is GUILTY of gross ignorance of law.

As held in *Gozum v. Liangco* (339 SCRA 253 [2001]):

When the law violated is elementary, the failure to know or observe it constitutes gross ignorance of the law. (at 259)

There could be nothing more basic under Philippine Law than the aforementioned 3-day notice rule:

- AS TO THE SUFFICIENCY OF THE COUNTER-BOND

In this regard, complainant alleged that:

That there is no better evidence of the insufficiency of the counter-bond submitted and lack of clearance from the Supreme Court on the date the counter-bond was approved on July 4, 2002 than the Certification of the Clerk of Court VII, Joefrey S. Joaquin, Office of the Clerk of Court, Cebu City, that the said counter-bond its (sic) Supreme Court Clearance was valid up to June 28, 2002. That its maximum net retention is only P13,432,136.31, but was issuing a counter-bond worth P35,973,600.00 to answer for damages to petitioner.

What is material was the date the counter-bond was approved not any other date thereafter. (Rollo, pp. 15-16)

Respondent, upon the other hand, testified that he did not notice that the clearance had already expired and that the bond was over the legal retention . . .

On this matter, the investigating justice finds that respondent judge was negligent. The Indorsement issued by the Clerk of Court of the RTC of Cebu dated July 5, 2002 contained the following Information (Exhibit "F").

a)

The signature of the bonding officer is genuine as compared to his specimen signature on file.

b)

The company's Supreme Court Clearance is valid until June 28, 2002.

c)

The company's Maximum Net Retention Per Subject of Insurance is only THIRTEEN MILLION FOUR HUNDRED THIRTY TWO THOUSAND ONE HUNDRED THIRTY SIX & 31/100 PESOS (P13,432,136.13), per its OIC Form No. 1 on file with this Office.

Had respondent carefully examined the aforesaid Indorsement it would have been immediately apparent to him that the insurance company's clearance had already expired and that the bond issued exceeded its net retention. Because of this negligence, damage resulted to the litigant in the case. The position of a judge is a sensitive one, he should have been more circumspect and careful in his actions, granting that his actions may have been motivated with the desire to act equitably.

To recapitulate, the investigating justice finds that respondent judge is GUILTY of:

a).

IMPROPER CONDUCT when he entertained the litigant in his residence as well as when he used complainant's karaoke bar;

b).

GROSS IGNORANCE OF LAW when he failed to hold a hearing regarding the lifting of the writ of preliminary attachment as mandated in the case of Peroxide Philippines Corporation v. Court of Appeals (supra) as well as when he heard the motion to lift the writ of preliminary attachment in violation of the 3-day notice rule; and

c).

NEGLIGENCE IN THE PERFORMANCE OF HIS DUTY when he approved the patently defective counter-bond.

WHEREFORE, in view of the foregoing, it is respectfully recommended that respondent judge be SUSPENDED for three (3) months without pay and be issued a warning that a more severe penalty shall be imposed in case of another infraction.[6]

We do not fully agree with the evaluation and recommendation of the Investigating Justice.

On the alleged demand for
P250,000.00.

The Investigating Justice finds that the charges of extortion had not been sufficiently substantiated because “other than the bare assertions of Rafael and Richard King there was no other evidence presented.” The following questions come to mind. May we, considering that we are not a trier of facts, review the assessment of the credibility of witnesses? Should the testimonies of both Rafael and Richard King be automatically disregarded simply because there is no other evidence presented by complainant? May the testimonies of such witnesses suffice to establish the guilt of respondent?

It is a well-entrenched rule that the trial judge’s, in this case, the investigating justice’s findings of facts and assessment of the credibility of witnesses are accorded finality. However, such rule is not without exceptions. Such findings may be reviewed if there appears in the record some fact or circumstance of weight which the lower court may have overlooked, misunderstood or misappreciated, and which, if properly considered, would alter the result of the case.[7] Among the circumstances which had been held to be justifiable reasons for the Court to reexamine the trial court or appellate court’s findings of facts are, when the inference made is manifestly mistaken; when the judgment is based on misapprehension of facts; and when the finding of fact of the trial court or appellate court is premised on the supposed absence of evidence and is contradicted by evidence on record.[8]

In the present case, we find that such circumstances exist to make this case come under those aforementioned exceptions. A re-assessment of the Investigating Justice’s ruling on the sufficiency of evidence against respondent is warranted. We find that the Investigating Justice’s inference that the evidence on record is insufficient to hold respondent liable is erroneous, a patent mistake. The Investigating Justice seriously overlooked the fact that to require the King brothers to present evidence other than their corroborating testimonies that respondent made such a demand would be unrealistic. Human experience tells us that extortion would be done in utmost secrecy, minimizing possible witnesses. Hence, respondent required the King brothers to meet him at his house, where everything would be under his control. In this case, complainant is quite fortunate to even have two witnesses to corroborate each other. Verily, to require that there be any documentary evidence or a paper trail of the commission of extortion would be quite absurd for, naturally, respondent would not allow such incriminating evidence to exist. In *Velez vs. Flores*,[9] we observed that being a trial judge, respondent is not expected to be careless enough to document his extortion activities on paper. Therefore, the King brothers’ testimonies cannot be automatically disregarded simply because there is no additional evidence presented by complainant.

It should be noted that the Investigating Justice did not categorically state that the King brothers are not credible witnesses or that their testimonies are not worthy of belief. Thus, we closely examined the testimonies of Richard and Rafael King and found the same to be very candid, forthright, unwavering, and bereft of any material or significant inconsistencies. Furthermore, as aptly pointed out by Richard King, they actually have nothing to gain from the filing of the present administrative case. If anything, their having to appear at the hearings of this case was even a burden, as they had to squeeze in such hearings into their already busy schedules. They even had to travel from Cebu City, where they reside, to Manila just to give their testimonies before the Investigating Justice. Moreover, respondent failed to present evidence that Richard and Rafael King had any ill motives in leveling such grave accusations of extortion against him. Furthermore, respondent’s admission that he did entertain the King brothers at his home bolsters the credibility of their averment that he demanded P250,000.00 from them for a favorable ruling on the motion for reconsideration that they would file. Thus, we find the King brothers’ testimonies to be entitled to full faith and credit and sufficient proof that respondent demanded P250,000.00 in exchange for a ruling in their favor.

In *Avancena vs. Liwanag*,^[10] we considered the mere testimony of complainant that respondent judge therein was demanding P1,000,000.00 for a favorable judgment in her favor and the testimony of an NBI agent that they tried to entrap respondent therein but their operation was unsuccessful, as sufficient evidence to find respondent therein guilty of extortion. Imposing the penalty of dismissal on respondent therein, we held that:

. . . in the instant proceeding, respondent is being held to account for serious misconduct or malfeasance in office in violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. The quantum of proof required to establish respondent's misconduct in the administrative complaint is not proof beyond reasonable doubt but substantial evidence, which is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

Again, in *Office of the Court Administrator vs. Morante*,^[11] we emphasized that:

. . . in administrative proceedings only substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to support a conviction, is required. Evidence to support a conviction in a criminal case is not necessary, as the standard of integrity demanded of members of the Bench is not satisfied which merely allows one to escape the penalties of criminal law.

In *Villaros vs. Orpiano*,^[12] we found the testimony of complainant therein and his mother that respondent Stenographer and Officer-in-Charge of the Regional Trial Court of Guimba, Nueva Ecija, Branch 32, had solicited P1,500.00 from them, as sufficient evidence to hold him guilty of improper solicitation, and held thus:

The Court finds the respondent administratively liable for improper solicitation and thus imposes the penalty prescribed by prevailing rules and jurisprudence, which is dismissal from service on the first offense.

Time and time again, we have stressed that the behavior of all employees and officials involved in the administration of justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility. Their 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. Needless to say, all court personnel must conduct themselves in a manner exemplifying integrity, honesty and uprightness.

The respondent's act of demanding money from the complainant hardly meets the foregoing standard. Improper solicitation from litigants is a grave offense that carries an equally grave penalty.

In the present case, we likewise hold that the credible testimonies of the King brothers meet the required quantum of evidence which justifies our conclusion that respondent indeed demanded P250,000.00 from them. Such conduct is a violation of Rule 1.01, Canon 1, and Rule 2.01, Canon 2 of the Code of Judicial conduct, which provide that:

Canon 1 – A judge should uphold the integrity and independence of the judiciary

Rule 1.01. – A judge should be the embodiment of competence, integrity, and independence.

Canon 2 – A judge should avoid impropriety and the appearance of impropriety in all activities

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

On the Investigating Justice's
finding of gross ignorance of
the law for not holding a full-
blown hearing on the motion to
lift attachment and for

violating the three-day notice rule.

We agree with the Investigating Justice's finding that respondent is guilty of gross ignorance of the law for not holding a full-blown hearing on the motion to lift attachment and for violating the three-day notice rule.

Section 4, Rule 15 of the 1997 Rules of Civil Procedure provides:

Sec. 4. Hearing of motion. - . . .

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

A perusal of the motion to lift attachment shows that a copy of the same was mailed to plaintiff's counsel only on July 3, 2002. The court's receiving stamp showed that said motion was filed in court only at 11:02 in the morning of July 5, 2002, despite the fact that the notice of hearing for said motion stated that said motion would be set for hearing at 8:30 in the morning of July 5, 2002. The proximity of the date of mailing of the copy of the motion to the other party and the hearing date indicated in the notice of hearing clearly shows that it is impossible for the other party to receive said motion at least three days before the date of hearing. Evidently, the party filing the motion to lift attachment had already violated the three-day notice rule. Such circumstances should have already warned respondent that plaintiff in the subject case had not yet been apprised of the filing of such a motion, much less the holding of a hearing for said motion. Yet, despite said patent defects in the motion, respondent consented to hold a hearing on the motion at 11:20 of the very same morning of July 5, 2002. Although Section 4, Rule 15 of the 1997 Rules of Civil Procedure provides that the court, for good cause, may set the hearing on shorter notice, the rule is explicit that notice of the hearing cannot be altogether dispensed with. In this case, common knowledge dictates that it would be impossible for a copy of the motion, mailed only on July 3, 2002, to be delivered by registered mail to counsel for the plaintiff on or before July 5, 2002. Obviously, therefore, the plaintiff had no notice whatsoever of the filing of the motion and the hearing date for the same.

Section 12, Rule 57[13] of the 1997 Rules of Civil Procedure, also provides that the court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment. Although it is true that respondent was able to present a transcript of stenographic notes[14] to prove that a hearing on the motion to lift attachment was conducted on July 5, 2002, the same only highlighted the fact that respondent failed to give herein complainant, the plaintiff and attaching party in subject case, due notice and the opportunity to be heard, as mandated by the aforementioned rule. The transcripts of stenographic notes of July 5, 2002, in fact shows that respondent already had strong suspicions that the plaintiff had not yet been notified of the filing of the motion when he propounded the following questions to the counsel of defendants in the subject case, to wit:

COURT:

Where is the proof that the counsel for the plaintiff received this?

ATTY. SENO:

It was mailed, Your Honor. Our basis that he received this is the registry receipt which is the proof of mailing, and there is an explanation why no personal service could be made because of time constrained (sic), Your Honor. As we can recall, we filed our Answer last July 3, Your Honor, and it was about that time that we received the summons and it was also about that time that we filed this motion, Your Honor. At any rate, this is

only a counterbond which is a mere ministerial procedure. It is just a matter of paying the surety of the counterbond and to submit it to the Honorable Court to prove that there is already a bond which may answer for any loss that the plaintiffs may suffer.

COURT:

But are you sure that Atty. Navarro was aware of that?

ATTY. SENO:

Yes, because we met him, Your Honor. He had a case here and we met at the hallway. Before he left, I told him that I filed a motion and he was furnished a copy through mail, Your Honor.

COURT:

You should have let him signed (sic) this pleading here as a copy furnished, since you were already talking to him at that time.

ATTY. SENO:

Yes, Your Honor, precisely there is an explanation why no personal service could be had. Under the rules, if no personal service could be had, then it should be mailed by registered mail. But there is already an explanation why no personal service could be made and we believe that is already sufficient, Your Honor.

COURT:

Because this is a very urgent motion and considering that the counsel for the plaintiffs was around, you should have furnished him a copy and let him sign to prove that he received a copy. At that time, was he willing to receive the copy? Perhaps, he was not willing to receive a copy.

ATTY. SENO:

No, no, we had a talk, Your Honor. He may not be willing to receive the copy at that time, but we have mailed to him already a copy and we believe that it is already suffice (sic), Your Honor.

COURT:

But it was easy for you to serve him a copy personally. Why do you have to mail it, when you could have serve (sic) it to him personally?

ATTY. SENO:

No, because my office, Your Honor, is in Mandaue City. The office of Atty. Navarro is in Capitol and it's so hard to travel from Mandaue to Capitol in just a matter of 30 minutes especially during school days, Your Honor. As a matter of fact, we can even file an ex-parte motion, Your Honor.

COURT:

Anyway, the incident is now considered submitted for resolution.

Despite such misgivings on the lack of due notice on counsel for plaintiff in subject case, respondent still conducted an ex-parte hearing on the motion and hastily considered the same submitted for resolution and on the very same day of July 5, 2002, respondent approved the counter-bond. Complainant is not quite accurate in stating that respondent approved said counter-bond on July 4, 2002. The stamp of approval of the bond was affixed onto the bond without any date thereof. The date of execution by the President of the bonding company was July 4, 2002; but this does not mean that respondent also approved said counter-bond on the same date of July 4, 2002. The Indorsement of the Clerk of Court of the Regional Trial Court of Cebu City was dated July 5, 2002, thus,

respondent could not have received subject counter-bond any earlier than the date of said indorsement.

Just the same, respondent acted with indecent haste in immediately holding a hearing on the motion to lift attachment filed only a few minutes before said hearing, in considering the same submitted for resolution, and in issuing the order lifting the writ of preliminary attachment and approving the counter-bond, all on the same day of July 5, 2002, without giving complainant the opportunity to be heard on the matter. We agree with the Investigating Justice that respondent's defense that he immediately heard the motion even in the absence of counsel for the other party because of the urgency of the lifting of the attachment, is not persuasive. The transcripts of stenographic notes for the hearing on July 5, 2002 shows that counsel for defendants in subject case presented no argument whatsoever showing the urgency of the motion.

It has been oft repeated that judges cannot be held to account or answer criminally, civilly or administratively for an erroneous judgment of decision rendered by him in good faith, or in the absence of fraud, dishonesty or corruption.[15] However, it has also been held that when the law violated is elementary, a judge is subject to disciplinary action.[16] The principles of due notice and hearing are so basic that respondent's inability to accord a litigant their right thereto cannot be excused. In this case, we believe that respondent's actions reek of malice and bad faith. Thus, we find respondent guilty of gross ignorance of the law for violating the three-day notice rule and failing to give herein complainant due notice and the opportunity to be heard on the matter as mandated by Section 12, Rule 57 of the 1997 Rules of Civil Procedure.

On respondent's negligence
in the performance of his duty

As to the matter of the approval of the counter-bond, respondent utterly failed to exercise due care in examining the supporting papers therefor. The respondent should know the basic requirements before approving a surety bond or a judicial bond such as counter-bond. In *Mangalindan vs. Court of Appeals*, [17] the Court enumerated the requirements for accepting a surety bond as bail. Since surety bail bonds are closely analogous to judicial bonds and counter-bonds required for the issuance of writs of attachment or the lifting thereof, the respondent should know that the requirements for acceptance of said surety bail bonds are the same for all other bonds such as acceptance bonds or counter-bonds except the requirement for photographs of the accused. Said requirements are: (1) affidavit of justification, including a statement that the company has no pending obligation demandable and outstanding in any amount to the Government or any of its agencies as of the last day of the month preceding the date the bond is issued or posted; (2) Clearance from the Supreme Court, valid only for thirty days from the date of issuance; (3) Certificate of compliance with the Circular from the Office of the Insurance Commissioner; (4) Authority of the agent in case the bond is issued through a branch office or through an agent; and (5) current certificate of authority issued by the Insurance Commission with the financial statement showing the maximum underwriting capacity of the company.[18] The Court imposed these requirements for very good reason, and that is, to ensure that the bonding company has the capacity to pay whatever liability it may have under the bond it issued. The bonding company's ability to pay is all too important in this case where the counter-bond it issued is supposed to answer for whatever amount may ultimately be adjudged in favor of the party who applied for the writ of attachment. It is, therefore, indispensable for a judge to review these documents before he approves the bond.

Notably, among the requisites for the bond to be acceptable are a clearance from the Supreme Court and the current certificate of authority showing the maximum underwriting capacity of the company.

The Clerk of Court's Indorsement dated July 5, 2002, clearly showed that the bonding company's Supreme Court Clearance was valid only until June 28, 2002, and its Maximum Net Retention is only P13,432,136.31. A simple

perusal thereof would have alerted respondent that at the time the counter-bond was submitted to him for approval on July 5, 2002, the bonding company did not have enough properties to answer for the counter-bond it issued in the amount of P35,973,600.00. Thus, we agree with the Investigating Justice that respondent acted negligently in approving the counter-bond.

On respondent's improper
conduct in entertaining
litigants at his home and
using litigant's karaoke bar
for free.

It is indeed grossly improper for respondent to meet with a litigant at his home and to frequent the karaoke bar owned by such litigant, enjoying the use thereof for free. Respondent thereby received benefits from a litigant appearing in his court. Respondent's defense that his wife offered to pay but the management of the karaoke bar did not allow her to do so, is feeble. The testimonies of the waiters at said bar are quite clear that respondent's wife would sign the order slips, but no payment was ever given by respondent or his wife. Respondent should have insisted on paying, especially considering that complainant has a total of three cases pending before his court. Nothing on record shows that respondent even exerted any effort to so insist. He appeared only too ready and willing to enjoy the facilities of complainant's karaoke for free. In *Cañeda vs. Alaan*,^[19] we held that:

Judges are required not only to be impartial but also to appear to be so, for appearance is an essential manifestation of reality. Canon 2 of the Code of Judicial Conduct enjoins judges to avoid not just impropriety in their conduct but even the mere appearance of impropriety.

They must conduct themselves in such a manner that they give no ground for reproach.

[Respondent's] acts have been less than circumspect. He should have kept himself free from any appearance of impropriety and endeavored to distance himself from any act liable to create an impression of indecorum.

.....

Indeed, respondent must always bear in mind that:

"A judicial officer traces a line around his official as well as personal conduct, a price one has to pay for occupying an exalted position in the judiciary, beyond which he may not freely venture. Canon 2 of the Code of Judicial Conduct enjoins a judge to avoid not just impropriety in the performance of judicial duties but in all his activities whether in his public or private life. He must conduct himself in a manner that gives no ground for reproach." (Emphasis supplied),

By entertaining a litigant in his home and receiving benefits given by said litigant, respondent miserably failed to live up to the standards of judicial conduct.

A judge must assiduously protect the image of his exalted office as we have previously emphasized in *Spouses Makadaya Sadik and Usodan Sadik vs. Judge Abdallah Casar*,^[20] to wit:

It must be borne in mind that courts exist to dispense and to promote justice. However, the reality of justice depends, above all, on the intellectual, moral and personal quality of the men and women who are called to serve as our judges. In a piece written by Rosenberg, this point was emphasized, thus:

Justice is an alloy of men and mechanisms in which, as Roscoe Pound remarked, "men count more than machinery." Assume the clearest rules, the most enlightened procedures, the most sophisticated court techniques; the key factor is still the judge. In the long run, "There is no guarantee of justice except the personality of the judge." The reason the judge makes or breaks the system of justice is that rules are not

self-declaring or self-applying. Even in a government of laws, men make the decisions.

In the recent case of *Jocelyn Talens-Dabon v. Judge Hermin E. Arceo*, the Court emphasized the importance of the role played by judges in the judicial system, thus:

The integrity of the Judiciary rests not only upon the fact that it is able to administer justice but also upon the perception and confidence of the community that the people who run the system have done justice. At times, the strict manner by which we apply the law may, in fact, do justice but may not necessarily create confidence among the people that justice, indeed, is served. Hence, in order to create such confidence, the people who run the judiciary, particularly judges and justices, must not only be proficient in both the substantive and procedural aspects of the law, but more importantly, they must possess the highest integrity, probity, and unquestionable moral uprightness, both in their public and private lives. Only then can the people be reassured that the wheels of justice in this country run with fairness and equity, thus creating confidence in the judicial system.

Insistence on personal integrity and honesty as indispensable qualifications for judicial office reflect an awareness in the legal profession of the immensity of the damage that can be done to the legal order by judicial corruption. The rationale for this was succinctly put by Jones, thus:

If a physician or a professor or a businessman is discovered to be a thief or an influence peddler, the disclosure will not put medicine, higher education, or business into general disrepute. But judges are different and more representative; revelations of judicial corruption create suspicion and loss of confidence in legal processes generally and endanger public respect for law.

Indeed, to be effective in his role, a judge must be a man of exceptional integrity and honesty. The special urgency for requiring these qualities in a judge is not hard to understand for the judge acts directly upon the property, liberty, even life, of his countrymen. Hence, being in a position of such grave responsibility in the administration of justice, a judge must conduct himself in a manner befitting the dignity of such exalted office.[21]

Finally, it cannot be said that complainant is guilty of forum-shopping in filing a criminal complaint against respondent before the Office of the Ombudsman (Visayas). We held in *Bejarasco, Jr. vs. Judge Buenconsejo*[22] that:

. . . it is a settled rule that administrative cases may proceed independently of criminal proceedings, and may continue despite the dismissal of the latter charges. As the disciplining arm of the judiciary, it is the Court's duty to investigate and determine the truth behind every matter in complaints against judges and to mete the necessary penalties therefor.

In sum, we find respondent guilty of the serious charges of two counts of Gross Misconduct in violation of Rule 1.01, Canon 1, and Rule 2.01, Canon 2 of the Code of Judicial Conduct under Section 8(3) of Rule 140 of the Revised Rules of Court, as amended by A.M. No. 01-8-10-SC, for demanding P250,000.00 from complainant and using complainant's karaoke bar and entertaining litigants at his home. Respondent is likewise guilty of Gross Ignorance of the Law or Procedure under Section 8(9) Rule 140 of the same Rules for failing to accord complainant the due notice and hearing it was entitled to under the rules. Lastly, respondent is guilty of the less serious charge of Simple Misconduct under Section 9(7), also under Rule 140 of the Revised Rules of Court, as amended, for his negligence in approving the subject counter-bond.

Under Section 11(A), Rule 140, a respondent found guilty of a serious charge may be penalized as follows:

Sec. 11. Sanctions. – A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

- Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits.
- Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months; or
- A fine of more than P20,000.00 but not exceeding P40,000.00.

while Section 11(B) of said Rule, dealing with sanctions that may be imposed on the respondent found guilty of less serious charges, provide thus:

B. If the respondent is guilty of a less serious charge, any of the following sanctions shall be imposed:

- Suspension from office without salary and other benefits for not less than one (1) or more than three (3) months; or
- A fine of more than P10,000.00 but not exceeding P20,000.00.

Consequently, we find the recommendation of the Investigating Justice that respondent be suspended for only three (3) months without pay to be inappropriate.

We note further that respondent had been previously administratively sanctioned in City Government of Tagbilaran vs. Judge Hontanosas, Jr.[23] for violating Circular No. 4 issued on August 27, 1980, enjoining judges of inferior courts from playing in or being present in gambling casinos. Thus, the fact that respondent is guilty of three counts of serious offenses, i.e., two counts of Gross Misconduct and one count Gross Ignorance of the Law or Procedure, and also of one count of Simple Misconduct, further aggravated by the finding of guilt in a previous administrative case against him, justifies the imposition of the penalty of dismissal from the service.

WHEREFORE, respondent Judge Agapito L. Hontanosas, Jr. is hereby found GUILTY of two counts of Gross Misconduct, one count of Gross Ignorance of the Law or Procedure, and, Simple Misconduct. He is DISMISSED from the service with forfeiture of all benefits except as to accrued leave credits and disqualified from reinstatement or appointment to any public office, including government-owned or controlled corporations.

This Decision is immediately executory. Respondent Judge is further ordered to cease and desist from discharging the functions of his Office upon receipt of this Decision. Let a copy hereof be entered in the personnel records of respondent.

Further, pursuant to A.M. No. 02-9-02-SC, which took effect on October 1, 2002, respondent is required to show cause within ten (10) days from notice why he should not be disbarred from the practice of law for conduct unbecoming of a member of the bar.

SO ORDERED.

Davide, Jr., C.J., Puno, Panganiban, Quisumbing, Ynares-Santiago, Sandoval-Gutierrez, Carpio, Austria-Martinez, Corona, Carpio-Morales, Callejo, Sr., Azcuna, and Tinga, JJ., concur.
Chico-Nazario, J., on leave.

[1] Entitled, "J. King & Sons, Co., Inc. and James L. King vs. Roderick Lim Go alias Edu Ting, Lucy Go, Nelson Go, John Doe and Peter Doe."

[2] Joint Affidavit of Richard King and Rafael King dated July 19, 2002, Rollo, p. 21-23.

[3] TSN of March 29, 2004, pp. 41-47, 50-54.

[4] TSN of March 29, 2004, pp. 77-78, 85-93, 100.

[5] TSN, April 27, 2004, pp. 5-11, 16, and 20-29.

[6] Report and Recommendation, pp. 14-24.

[7] People vs. Parreno, G.R. No. 144343, July 7, 2004.

[8] Vera Cruz vs. Calderon, G.R. No. 160748, July 14, 2004.

[9] 397 SCRA 92, 97 (2003)

[10] 406 SCRA 300, 303 (2003)

[11] A.M. No. P-02-1555. April 16, 2004

[12] A.M. No. P-02-1548. October 1, 2003

[13] Sec. 12. Discharge of attachment upon giving counter-bond. – After a writ of attachment has been enforced, the party whose property has been attached, or the person appearing on his behalf, may move for the discharge of the attachment wholly or in part on the security given. The court shall, after due notice and hearing, order the discharge of the attachment if the movant makes a cash deposit, or files a counter-bond executed to the attaching party with the clerk of the court where the application is made, in an amount equal to that fixed by the court in the order of attachment, exclusive of costs. . . .

[14] Rollo, pp. 336-342.

[15] Dumo vs. Perez, 322 SCRA 545, 558 (2000)

[16] Tabao vs. Barataman 380 SCRA 396, 401 (2002)

[17] 246 SCRA 105 (1995).

[18] Id. at 118; See also The 2002 Revised Manual for Clerks of Court, Vol. 1, pp. 287-289.

[19] 374 SCRA 225, 230-231 (2002).

[20] 266 SCRA 1 (1997).

[21] Id., pp. 14-15.

[22] A.M. No. MTJ-02-1417, May 27, 2004.

[23] 375 SCRA 1 (2002)

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