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proof must be solid, clear and convincing to compel the exercise of disciplinary power over the person indicted.

Moreover, the comment of respondent Judge is satisfactory.

WHEREFORE, this administrative complaint against Municipal Judge Solomon Villanueva is dismissed for lack of merit.

SO ORDERED.

Teehankee (Chairman), Fernandez and *De Castro, JJ.*, concur.

Makasiar and *Melencio-Herrera, JJ.*, concurs in the result.

SECOND DIVISION

[A.M. No. 1574-MJ. April 30, 1979]

ARTEMIO ESPAYOS, *complainant, vs.* **ADELARDO G. LEE, as Municipal Judge of Magallanes, Sorsogon,** *respondent.*

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; ADMINISTRATIVE CHARGE; WHEN MUNICIPAL JUDGES SUBJECT TO DISCIPLINARY ACTION.** — A municipal judge may be disciplined if he is not performing his duties properly, or if complaints are made which, if true, would indicate that he is unfit for the office.

2. **ID.; ID.; ID.; COMPLAINANT'S DESISTANCE NOT AN OBSTACLE.** — Complainant's desistance is not an obstacle to the taking of disciplinary action against the respondent if the latter's answer to the charges reveals that he has not performed his duties properly.

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3. ID.; ID.; SHOULD NOT SUGGEST WHAT ACCUSED SHOULD DO AT THE ARRAIGNMENT. — It is improper and unethical for a judge to suggest to the accused what he should do at the arraignment. That impropriety generates the suspicion that *the respondent is in collusion with the accused.* A judge's official conduct should be free from impropriety and the appearance of impropriety.

4. REMEDIAL LAW; CRIMINAL PROCEDURE; SEPARATE CIVIL ACTIONS; CIVIL ACTION FOR RECOVERY OF DAMAGES DEEMED INSTITUTED WITH FILING OF CRIMINAL ACTION. — It is error for a municipal judge not to allow the offended party to prove civil liability of the accused on the theory that *the offended party can always file a separate civil action for* damages. It shows unawareness of the rule that "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately" (Sec. 1, Rule 111, Rules of Court).

5. JUDICIAL ETHICS; JUDGES; SHOULD OBSERVE OFFICE *HOURS IN HIS OFFICE.* — *A judge is legally obligated to* observe office hours so that the parties having official business with him would know where to find him. He cannot certify that he rendered full-time service if during office hours, he remains in his house. Reasons of public policy, the preservation of the good image of the judiciary, and avoidance of all appearances of impropriety, require that a judge should hold office at the regular place of business of the court and not at his residence. A judge holding office in his home makes himself open to suspicion and possible criticism that his official actuations cannot bear public scrutiny, more particularly of his co-officials in the local government.

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RESOLUTION

AQUINO, *J.*:

The facts and circumstances concerning the charges of misbehavior and partiality against respondent municipal judge* in connection with his disposition of Criminal Case No. 2044, *People vs. Prodencio Pareja,* a case of less serious physical injuries, are set forth in detail in the following report of the investigator, Judge Rustico de los Reyes of the Court of First Instance of Sorsogon:

"In a verified letter-complaint dated March 7, 1977, complainant Artemio Espayos charged Honorable Adelardo Lee, then municipal judge of Magallanes, Sorsogon for (1) conduct unbecoming a judge and (2) partiality in the administration of justice, alleging that on January 17, 1977 one Prodencio Pareja threw a piece of stone at the said complainant hitting him at the right side of his nose and as a consequence thereof the station commander of the Magallanes police department filed with the Municipal Court of Magallanes, a criminal complaint for less serious physical injuries, docketed as Criminal Case No. 2044; that the complainant brought the complaint to the respondent judge's house, where he has an office as a municipal judge, for his signature; that he informed the judge that his injury is more serious than it appears and demonstrating to him by smoking and blowing out the smoke through his nose with the result that smoke came only through his right nose indicating that his left nose was closed.

"Complainant further alleged that he hired Atty. Edgar Mella who told him that he will amend the complaint to serious physical injuries; that Prodencio Pareja, the accused offered him ₱200.00 to settle the case amicably but he refused; then on January 27, 1977, without the herein complainant's knowing it, the accused Prodencio Pareja was arraigned, appearing in court by himself, without a lawyer and, as if somebody had instructed him beforehand what to do, he pleaded guilty to the complaint for slight physical injuries; that the station commander who was present in court did not object to Pareja's

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* Respondent judge, who is now sixty-two years old and was admitted to the bar in 1945, took his oath of office on January 20, 1975.

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pleading guilty, then Judge Lee immediately sentenced him to 15 days imprisonment.

"Allegedly thereafter, complainant Espayos' lawyer filed a petition to allow Espayos to prove damages but the court denied it in an order issued on February 7, 1977; that before the order of denial was issued, Judge Lee called Espayos while he was walking on the street and told him in the Bicol dialect, 'Since you are here also, you cannot get anything from those persons because they are insolvent. So I will give you ₱80.00'; that complainant Espayos refused, and then Judge Lee said to him, also in Bicol: 'Then one hundred,' which complainant likewise refused.

"The letter-complaint also alleged that the respondent judge made his house as the office of the municipal judge and goes to the municipal building only when he tries cases and when he performs a marriage ceremony, so that the public does not know what happens in his house while in the performance of his judicial functions.

"Required by the Acting Assistant Judicial Consultant of the Supreme Court to comment on the complaint of Artemio Espayos, Judge Adelardo Lee filed a letter-answer dated May 5, 1977, alleging and explaining the background of Criminal Case No. 2044 in that minutes before the arraignment on January 27, 1977 of the accused Prodencio Pareja in Criminal Case No. 2044, said accused intimated to the respondent judge that he could not financially afford the expenses of a litigation and that he would be willing to enter a plea of guilty although he was innocent of the crime charged provided that the penalty would not exceed 15 days imprisonment; that respondent judge emphasized to the accused that his plea should be with the conformity of the police station commander who may object or offer no objection and the respondent judge explained to accused Pareja that if he was really intending to plead guilty he should answer that he is willing to plead guilty to a lesser offense when the complaint is read to him.

"Respondent judge further alleged that when the accused was arraigned, he manifested that he was entering a plea of guilty for a lesser offense of slight physical injuries; respondent judge then asked the police station commander if he objects or conforms, to which said station commander manifested that he had no objection, after which the respondent rendered a decision imposing upon the accused an imprisonment of 15 days and to pay the costs; that on the same day when the decision was rendered on January 17, 1977, the accused

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signified his desire to serve immediately his sentence, thus making the decision final.

"Then on January 28, 1977 Artemio Espayos, the herein complainant and the complainant in the criminal case filed with the respondent judge a motion to allow him to prove damages but which the judge denied.

"As to the specific charge that the accused Pareja was arraigned without Espayos' knowledge and that upon arraignment he pleaded guilty as though he had received prior instruction, respondent Judge Lee explained in his letter-answer that the station commander was notified and participated in the arraignment and all that respondent judge did was to enlighten the accused concerning ms desire to enter a plea of guilty to the lesser offense than that charged in the complaint.

"On the charge that the said judge should have suspended the promulgation of the sentence and the complainant notified so as to give him a chance to prove damages, the respondent explained that he did not know that complainant's lawyer had a plan to amend the complaint and in fact no lawyer appeared for the accused; that upon plea of guilty by the accused, respondent had no alternative but to pronounce and promulgate sentence because the accused was under detention and, at any rate, as stated in his order of February 7, 1977, the complainant still had the right to file a separate civil action for damages.

"On the alleged offer to the complainant by the respondent judge to pay the former ₱80.00 and then increased to ₱100.00 to settle the case but which were refused, the respondent judge vehemently denied it.

"As to the complainant's embarrassment and sufferings for which only 15 days was meted to his assailant, the respondent claims that was the proper penalty imposable under the law.

"And finally as to his alleged holding office in his house, respondent admits that 'whenever he has no cases to try or official matters to transact, he stays at his library at his house (only some 140 meters from the court) especially when he studies his pending cases and/or prepares decisions' for the following reasons: (a) the municipal court is devoid of any book while he has his library in his house and which is very near the more complete library of his brother; (b) the clerk of court could stay in the office and could easily call the respondent when needed; and (c) he needed secrecy and

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concentration in making decisions, which conditions are not obtaining in the municipal court because people just get in and out and his clerk busily pounding on the typewriter which disturb him.

"Ordered on January 30, 1978 by the Supreme Court to file a reply to the foregoing comment of Judge Adelardo Lee, complainant filed his reply dated March 19, 1978. He alleged that the sudden and unexpected setting of the arraignment from the date of filing of the complaint was not the usual practice of Judge Lee, as illustrated in eight specific cases. Complainant Espayos admitted that he had asked accused Pareja ₱500 for the dismissal of the case but Pareja was willing to give only ₱200 after which he went to the direction of the house of Judge Lee; he admitted also that he could file a separate civil suit to recover damages but he would incur additional expenses. He alleged further that when Judge Lee offered him ₱80.00 and then ₱100, the complainant had already filed his petition to prove damages; that Judge Lee used to have a handicraft factory in his house which he manages and after the business became defunct, he plays mahjong in the afternoons during working days and he thus stays in his house not to prepare decisions."

Complainant Espayos did not appear at the investigation of the case in spite of repeated notices. He filed a motion withdrawing his complaint. He stated therein that he had lost interest in the case due to the circuitization of the municipal courts (respondent was transferred to Bacon, Sorsogon). The investigator recommended the dismissal of the case for failure to prosecute (*nolle prosequi*).

A municipal judge may be disciplined if he is not performing his duties properly, or if complaints are made which, if true, would indicate that he is unfit for the office (Sec. 97. Judiciary Law).

Complainant's desistance is not an obstacle to the taking of disciplinary action against the respondent because the latter's answer to the charges reveals that he had not performed his duties properly, Respondent admitted that before the arraignment, he explained to Prodencio Pareja, the accused in Criminal Case No. 2044, that after the complaint was read to him, he should answer that he was willing to plead guilty to a lesser offense. Pareja followed respondent's advice. The respondent convicted

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him of the lesser offense and imposed upon him the penalty of fifteen days of *arresto menor*. The information was not amended.

It was improper and unethical to suggest to Pareja what he should do at the arraignment. That impropriety generated the suspicion that the respondent was in collusion with the accused. It is the sort of misbehavior which would be resented by the offended party and would make him surmise that the sentence meted to the accused was fixed or is what is known in the vernacular as *lutong macao*. "A judge's official conduct should be free from impropriety and the appearance of impropriety." (Par. 4, Canons of Judicial Ethics, adopted in Administrative Order No. 162 of the Secretary of Justice, dated August 1, 1946, 42 O. G. 1803).

The respondent erred in not allowing the offended party, now complainant Artemio Espayos, to prove the civil liability of the accused (*Veloso vs. Carmona,* Administrative Matter No. 502-MJ, June 30, 1977, 77 SCRA 450). Respondent's theory is that the offended party "can always file a separate civil action for damages" even though he did not reserve his right to institute a separate civil action. That theory is wrong. It shows unawareness of the rule that "when a criminal action is instituted, the civil action for recovery of civil liability arising from the offense charged is impliedly instituted with the criminal action, unless the offended party expressly waives the civil action or reserves his right to institute it separately" (Sec. 1, Rule 111, Rules of Court).

As to respondent's admission that he allegedly stayed in the library of his residence, whenever he had no official business to transact in his office, we find that practice to be another instance of his improper discharge of his duties as a municipal judge. He is legally obligated to observe office hours so that the parties having official business with him would know where to find him (*Jakosalem vs. Cordovez,* Administrative Matter No. 13-MJ, July 18, 1974, 58 SCRA 11). That means that he should stay in his office and not in his residence. He cannot certify that he rendered full-time service if during office hours,

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he remains in his house (*Suan vs. Resuello*, Administrative Matter No. 610-MJ, July 25, 1975, 65 SCRA 301).

As well-stated by Justice Muñoz Palma, "reasons of public policy, the preservation of the good image of the judiciary, and avoidance of all appearances of impropriety, require that a judge should hold office at the regular place of business of the court and not at his residence. A judge holding office in his house makes himself open to suspicion and possible criticism that his official actuations cannot bear public scrutiny, more particularly of his co-officials in the local government" (*Siasico vs. Sales*, Administrative Matter No. 687-MJ, May 31, 1976, 71 SCRA 139, 146).

For having committed the above-mentioned irregularities, showing that he had not performed his duties properly, respondent judge is severely censured. He is warned that a more drastic penalty will be imposed on him in case he commits similar irregularities. A copy of this decision should be attached to his personal record.

SO ORDERED.

Fernando (Acting C.J.), Barredo, Concepcion Jr., and *Santos, JJ.*, concur.

Antonio, J., in the result.

Abad Santos, J., took no part.