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Obviously, private respondents failed to substantiate their allegation that *The Plan* was invalid. The NLRC was thus incorrect in ruling in their favor by declaring that they were illegally retired. Hence, the affirmation by the Court of Appeals of the Decision of the NLRC must likewise be declared erroneous.

The Court notes that private respondents, in attacking the validity of *The Plan*, might have been motivated by their belief that they were retired by reason of their union activities. But, both the Labor Arbiter and the NLRC dismissed their allegation of unfair labor practice for apparent lack of substantial basis.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals affirming the Resolution of the NLRC is *MODIFIED*. The dismissal of the complaint for unfair labor practice *STANDS* while its declaration that private respondents were illegally retired is *SET ASIDE*. The Decision of the Labor Arbiter declaring the validity of the retirement plan of petitioner company and ordering the dismissal of the consolidated complaints of private respondents is *REVIVED* and *AFFIRMED*.

SO ORDERED.

Mendoza, Quisumbing, Buena, and *De Leon, Jr., JJ.*, concur.

FIRST DIVISION

[A.M. No. RTJ-99-1510. November 6, 2000]

COMMISSIONER RUFUS B. RODRIGUEZ, *complainant, vs.* **JUDGE RODOLFO R. BONIFACIO, RTC, Branch 151, Pasig City,** *respondent.*

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SYNOPSIS

Ma Jing was one of the 20 Chinese nationals with no valid employment documents, apprehended on May 7, 1999. Confined at the Bureau of Immigration (BI) Detention Center, she filed a petition for *habeas corpus* at the Pasig RTC on May 17, 1999. The same was granted by the respondent Judge Rodolfo Bonifacio of Br. 151. On May 21, 1999, the BI submitted a Return of the Writ alleging that a Charge Sheet was filed on May 13, 1999 against Ma Jing for violation of Sec. 37(a)[7] of the Phil. Immigration Act No. 1940, as amended. On May 27, 1999, however, Judge Bonifacio issued an Order for the immediate release of Ma Jing to which the BI filed a motion for reconsideration the very next day. As the BI did not release Ma Jing pursuant to the Order, Ma Jing filed on May 31, 1999 a Motion to Declare BI Commissioner Rufus Rodriguez and his co-respondents guilty of contempt. On June 15, 1999, Judge Bonfacio denied the motion for reconsideration filed by the BI and reiterated its Order to immediately release Ma Jing. On the same day, however, the BI also issued a summary deportation order to Ma Jing. On June 16, 1999, the BI filed a Notice of Appeal to the Court of Appeals of the May 27 and June 15, 1999 Orders of Judge Bonifacio. Meantime, on June 24, 1999, Commissioner Rodriguez and his co-respondents were found guilty of indirect contempt for non-compliance of the Court Order dated May 27, 1999, and on June 25, 1999, they were arrested and detained.

Complainant is not guilty of indirect contempt. First to be stressed is the fact that, the indirect contempt proceedings allowed by the respondent Judge was commenced by Ma Jing not through a verified petition as required by Sec. 4, Rule 71 of the Rules of Court but through a motion. This is in complete disregard of the explicit provision of the law. Second, the Return of the Writ of Habeas Corpus stated that there was already a Charge Sheet filed against Ma Jing. Hence, it was grievous error for respondent judge to give due course to the petition for habeas corpus despite the pending deportation case against Majing.

SYLLABUS

1. ADMINISTRATIVE LAW; JUDGES; CONTEMPT POWERS; PROPER EXERCISE THEREOF, DISCUSSED. — [T]he degree

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of restraint respondent should have observed in the exercise of his contempt powers leaves much to be desired, given the prevailing facts of this case much more so, considering that the same bears with it the taint of personal hostility and passion against the party to whom it is directed. Time and again magistrates have been reminded that — ... the salutary rule is that *the power to punish for contempt must be exercised in the preservative not vindictive principle, and on the corrective not retaliatory idea of punishment.* The courts and other tribunals vested with the power of contempt *must exercise the power for contempt for purposes that are impersonal*, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.

2. ID.; ID.; JUDICIAL TEMPERAMENT REQUIRED. — Besides the basic equipment of possessing the requisite learning in the law, a magistrate must exhibit that hallmark judicial temperament of utmost sobriety and self-restraint which are indispensable qualities of every judge. A judge anywhere should be the last person to be perceived as a petty tyrant holding imperious sway over his domain. Such an image is, however, evoked by the actuations of respondent judge in this case. It has time and again been stressed that the role of a judge in relation to those who appear before his court must be one of temperance, patience and courtesy. A judge who is commanded at all times to be mindful of his high calling and his mission as a dispassionate and impartial arbiter of justice is expected to be "a cerebral man who deliberately holds in check the tug and pull of purely personal preferences which he shares with his fellow mortals." Judges have been admonished to observe judicial decorum which requires that a magistrate must at all times be temperate in his language refraining from inflammatory or excessive rhetoric or from resorting "to the language of vilification." In this regard, Rule 3.04 of the Code of Judicial Conduct states that — Rule 3.04. A judge should be patient, attentive and courteous to all lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants. Respondent judge needs to be reminded that government service is people-oriented. Patience is an essential part of dispensing justice and courtesy is a mark of culture and good breeding.

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Belligerent behavior has no place in government service where personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence.

3. ID.; ID.; MUST BE CONVERSANT WITH BASIC LEGAL PRINCIPLE. — [I]t is imperative that judges be conversant with basic legal principles. The Code of Judicial Conduct, in fact, enjoins judges to "be faithful to the law and maintain professional competence." Respondent judge owes it to the public and to the legal profession to know the law he is supposed to apply in a given controversy. Indeed — A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and aware of well-settled authoritative doctrines. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law... Canon 4 of the Canon of Judicial Ethics requires that a judge should be studious of the principles of law and Canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law. "Observance of the law which he is bound to know and sworn to uphold is required of every judge. When the law is sufficiently basic, a judge owes it to his office to simply apply it; anything less than that would be constitutive of gross ignorance of the law." In short, when the law is so elementary, not to be aware of it constitutes gross ignorance of the law.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DIRECT AND INDIRECT CONTEMPT; DISTINGUISHED. — [A]s defined, indirect contempt is one committed out of or not in the presence of the court that tends to belittle, degrade, obstruct or embarrass the court and justice. On the other hand, direct contempt consists of or is characterized by "misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same" within the meaning of Section 1, Rule 71 of the Rules of Civil Procedure.

5. ID.; ID.; INDIRECT CONTEMPT; HOW COMMENCED; DISREGARDED IN CASE AT BAR. — There is no question that disobedience or resistance to a lawful writ, process, order, judgment or command of a court or injunction granted by a

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court or judge constitutes indirect contempt. Section 4, Rule 71 of the Rules, provides for two (2) modes of commencing proceedings for indirect contempt to wit: 1] It may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt. 2] In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. (all initiatory pleadings should be accompanied with a certificate of non-forum shopping, Sec. 5 Rule 7). As can be gleaned from the records of the case, the contempt proceedings commenced by Ma Jing was made through a motion and not a verified petition as required by the above-cited Section. Respondent Judge relied on Section 3, Rule 71 of the Rules, completely disregarding the provisions of Section 4 which explicitly lays down the manner in which indirect contempt proceedings may be filed.

6. **ADMINISTRATIVE LAW; JUDGES; GIVING DUE COURSE TO PETITION FOR *HABEAS CORPUS* DESPITE THE PENDENCY OF DEPORTATION CASE; NOT PROPER.** — [T]he Return of the Writ [of Habeas Corpus] stated that a Charge Sheet was filed on May 13, 1999 against Ma Jing for violation of Section 37 [a] (7) of the Philippine Immigration Act of 1940. Despite this, respondent judge issued an Order dated May 27, 1999 directing Ma Jing's immediate release. It was grievous error for respondent judge, in the face of these factual circumstances disclosed by the records, to give due course to the petition for *habeas corpus* despite the pendency of a deportation case against Ma Jing. Where the BID had not yet completed its hearing and investigation proceedings with respect to an alien and there is no showing that it is unduly delaying its decision, *habeas corpus* proceedings are premature and should be dismissed. Along the same vein, when an alien is detained by the BID pursuant to an order of deportation, as in this case where a Summary Deportation Order had already been issued by the BID, Courts of First Instance, now Regional Trial Courts, have no power to release the said alien on bail even in *habeas corpus* proceedings, because there is no law authorizing it.

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7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; NOT PRESENT IN LIEU OF THE TIMELY FILED MOTION FOR RECONSIDERATION AND NOTICE OF APPEAL OF THE RELEASE ORDER ALLEGEDLY VIOLATED IN THE *HABEAS CORPUS* CASE. — [O]n May 28, 1999, complainant-respondent filed a Motion for Reconsideration of the said order (Order of Release dated May 27, 1999) but respondent judge denied the same in an Order dated June 15, 1999, and required complainant and his co-respondents to show cause why they should not be cited in contempt. On the same date, a Summary Deportation Order was issued in the BID Case against Ma Jing. The filing of the motion for reconsideration effectively tolled the period within which to appeal respondent judge's decision dated May 27, 1999. It was not a *pro forma* motion, as respondent judge himself did not say so in the June 15, 1999 order denying the motion. The two-day period to appeal provided in Section 39, B.P. Blg. 129 certainly did not proscribe the filing of the motion for reconsideration of the judgment in the *habeas corpus* case. The motion for reconsideration was filed on May 28, 1999, a day after the decision dated May 27, 1999 was received by complainant. The Notice of Appeal, on the other hand was filed on June 17, 1999. Complainant and co-respondents received the order dated June 15, 1999 of respondent judge on June 16, 1999. Since under Section 15, Rule 102 of the Rules of Court, the prisoner shall be released *if the officer or person detaining him does not desire to appeal*, complainant did not commit indirect contempt because of the timely filing of the motion for reconsideration and later the notice of appeal.

8. ID.; *HABEAS CORPUS*; WHEN WRIT NOT ALLOWED OR DISCHARGE AUTHORIZED; CASE AT BAR. — Be that as it may, there was a valid judicial process justifying Ma Jing's detention even before respondent judge rendered his decision as shown by the Return of the Writ which averred, among others, that a Charge Sheet was filed against Ma Jing. Even granting that the arrest of Ma Jing was initially illegal, the filing of the Charge Sheet cured whatever incipient infirmity there was in her arrest. Respondent judge therefore had no authority to release the party who was thus committed. Section 4, Rule 102 of the Rules of Court provides: SEC. 4. *When writ not allowed or discharge authorized.* — If it appears that the person to be

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restrained of his liberty is in the custody of an officer under process issued by a court or judge; or by virtue of a judgment or order of a court of record, and that court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or, defect in the process, judgment or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment. Once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of *habeas corpus*. His remedy would be to quash the information and/or the warrant of arrest duly issued. The writ of *habeas corpus* should not be allowed after the party sought to be released had been charged before any court. The term "court" includes quasi-judicial bodies like the Deportation Board of the Bureau of Immigration.

9. ADMINISTRATIVE LAW; JUDGES; FALSE REPRESENTATIONS. — [R]espondent judge's malfeasance is not merely confined to the abuse of his judicial prerogatives and ignorance of basic legal precepts but also to the predilection of making false representations to suit his ends. Nowhere is this propensity more evident in this case than in the attendant circumstances upon which he based the Order dated June 28, 1999 denying the complainant's Notice of Appeal. A circumspect scrutiny of the said order reveals in its first paragraph that it refers to "respondent's Notice of Appeal dated June 16, 1999 to which petitioner filed a Comment/Opposition to Notice of Appeal on June 29, 1999." A careful examination of the Comment/Opposition itself discloses that the pleading was filed on June 29, 1999. No satisfactory explanation has been given for this judicial aberration. Needless to state, the allusion contained in an order to a pleading filed *after* its issuance can lead to no other conclusion than that the said order was antedated and, thus, falsified in the absence of any explanation to shed light on the discrepancy. The foregoing act not only seriously undermines and adversely reflects on the honesty and integrity of respondent judge as an officer of the court; it also betrays a character flaw which speaks ill of his person. Suffice it to state in this regard that "[M]aking false representations is a

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vice which no judge should imbibe. As the judge is the visible representation of the law, and more importantly justice, he must therefore, be the first to abide by the law and weave an example for the others to follow."

10. ID.; ID.; PRESENCE OF OTHER ADMINISTRATIVE COMPLAINTS. — A verification with the OCA discloses that aside from the instant complaint, respondent judge has other pending administrative complaints filed against him for the same or similar offenses... [t]hese circumstances only further erode the people's faith and confidence in the judiciary for it is the duty of all members of the bench to avoid any impression of impropriety to protect the image and integrity of the judiciary which in recent times has been the object of criticism and controversy.

PARDO, *J.*, *dissenting opinion*:

1. REMEDIALLAW; HABEAS CORPUS; NOT APPLICABLE TO PEOPLE CHARGED WITH AN OFFENSE. — [C]omplainant Commissioner Rufus B. Rodriguez had reason to hold in continued detention pending deportation Chinese national Ma Jing, pursuant to the charge sheet filed by Bureau of Immigration and Deportation (BID). . . for violation of Section 37 (a) [7], Philippine Immigration Act of 1940, as amended. Despite the validity of the detention, respondent judge issued a writ of *habeas corpus* and ordered the immediate release of Ma Jing. The order of respondent judge was patently erroneous. The rule is that the writ may not be granted, or the person held in detention may not be discharged from detention if he has been charged with an offense. *Habeas corpus* no longer lies. To justify the grant of the writ, the restraint of liberty must be an illegal and involuntary deprivation of freedom of action, which was not the situation in the case at bar.

2. ID.; SPECIAL CIVIL ACTIONS; INDIRECT CONTEMPT; ORDER NOT VALID WHEN COURT DID NOT ACQUIRE JURISDICTION OF THE CASE BECAUSE OF NON-COMPLIANCE OF THE PROCEDURAL REQUISITES.— [T]he order holding BID Commissioner Rodriguez, and company, guilty of indirect contempt of court for their failure to comply with the May 27, 1999 order directing the immediate release of the

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Chinese national is void because the trial court did not acquire jurisdiction over the subject case. Rule 71, Section 3,1997 Rules of Civil Procedure specifically outlines the procedural requisites before one may be punished for indirect contempt, namely: (1) the filing of a written charge and (2) opportunity given to the accused to be heard by himself or counsel. Specifically, Section 4 of the same rule provides how the case for indirect contempt may be commenced. . . The charge for indirect contempt against Commissioner Rodriguez was commenced not by a verified petition, but by motion and without compliance with the requirements for filing initiatory pleadings, which are now required in the rules. The record is bereft of evidence on whether respondent judge conducted a hearing in the contempt charge prior to the issuance of the warrant of arrest against complainant. Pursuant to the clear mandate of Rule 71, Section 3, 1997 Rules of Civil Procedure, respondent judge can not immediately impose a penalty without complying with the due process requirements, namely, the filing of a charge in writing and an opportunity for the accused to be heard by himself or by counsel. It is essential that the contemner be granted an opportunity to meet the charges against him and to be heard in his defense, as contempt of court proceedings are commonly treated as criminal in nature. In finding complainant guilty of indirect contempt and ordering his immediate arrest and confinement without affording him an opportunity to be heard, respondent judge violated the requirements of due process and, therefore, acted without or in excess of jurisdiction or with grave abuse of discretion.

3. **ID.; ID.; CONTEMPT OF COURT; POWER TO PUNISH FOR THE SAME, ELUCIDATED.** — The power to punish for contempt is not limitless. It must be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual. It must be exercised on the preservative and not on the vindictive principle. Contempt of court has been distinctly described as an offense against the State and not against the judge personally. To reiterate, a judge must always remember that the power of the court to punish for contempt should be exercised for purposes that are not personal, because that power is intended as a safeguard, not for judges as persons, but for the functions they exercise.

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4. ID.;ID.; INDIRECT CONTEMPT; NOT PRESENT WHEN ORDER ALLEGEDLY DISOBEYED HAS NOT AT YET ATTAINED FINALITY. — Respondent judge lost sight of the fact that upon receipt of the May 27, 1999 order for the immediate release of the Chinese national, the Commissioner of Immigration and Deportation sought the reconsideration of the order, thus tolling the period to comply. The motion for reconsideration was denied on June 15, 1999, and the Commissioner lost no time in filing an appeal with the Court of Appeals. The order which complainant allegedly disobeyed had not attained finality. Hence, the indirect contempt charge has no basis.

5. ADMINISTRATIVE LAW; JUDGES; BAD FAITH MANIFESTED BY THE IMPOSITION OF EXCESSIVE PENALTY. —Assuming for the sake of argument, but without conceding that complainant was guilty of indirect contempt, the penalty of imprisonment meted out by respondent judge was excessive and ignominious, considering the status and rank of complainant as commissioner of a government bureau. Under the rules on contempt, a person adjudged guilty of indirect contempt against a regional trial court may be punished by fine or imprisonment. Imprisonment of the accused until he complies with the order is not mandatory, but merely directory as implied by the use of the word "may." Respondent need not resort to the application of the extreme penalty of imprisonment if his intention was merely to exact compliance from complainant. The imposition of fine in an amount not exceeding thirty thousand pesos (₱30,000.00) would suffice for this purpose. No other conclusion could be inferred from this set of facts than that respondent judge was moved by spite and a desire to shame the complainant in his constituency because of his purported refusal to comply with respondent judge's order.

6. ID.; ID.; GRAVE MISCONDUCT; PRESENT WHEN CONTEMPT ORDER MALICIOUS IN TENOR AND PROCEEDING CONDUCTED IN HASTE. — It was more than evident that respondent judge was moved not by his desire to uphold the law and justice, but by bad faith and malice based on the tenor of the order of contempt... The haste by which the contempt proceeding was conducted and the time the warrant of arrest was carried out belied the good faith of respondent judge... [The] attendant circumstances of the case clearly and

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convincingly establish respondent judge's guilt for grave misconduct. The subject order of respondent judge was not only contrary to existing law and jurisprudence but more importantly, imposed with ignominy and ill will disguised to make complainant suffer humiliation and perfidy.

7. **ID.; ID.; JUDICIAL TEMPERAMENT REQUIRED.** — Respondent judge's acts showed that he was not possessed of that hallmark judicial temperament of utmost sobriety and self-restraint that are indispensable qualities of every judge. [As mandated by] Rule 3.04 of the Code of Judicial Conduct... Patience is an essential part of dispensing justice and courtesy is a mark of culture and good breeding. Bellingerent behavior has no place in government service where personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence.

8. **ID.; ID.; PREDELICTION FOR MAKING FALSE REPRESENTATION TO SUIT HIS ENDS; MANIFESTED IN CASE AT BAR.** — It will be noted that respondent judge has a predilection for making false representation to suit his ends. On June 16, 1999, complainant filed his notice of appeal. Ma Jing filed her comment/opposition to the notice of appeal on June 29, 1999. On June 28, 1999 complainant paid the corresponding docket fees for such notice of appeal although as Commissioner of Immigration in his official capacity, he was exempt from the requirement of paying the docket fees. On the same day, respondent judge issued the order denying the appeal even before the deportee filed her opposition thereto. What was significant about the June 28, 1999 order was that it specifically stated that the trial court, in arriving at the order of denial, took into consideration the complainant's appeal and the opposition filed by the Chinese national. There was something questionable and suspicious about this order of denial as it was issued the day before the other party to the case filed his comment. How could respondent judge consider a pleading that had not been filed with the court at the time the order was issued? Respondent failed to give a satisfactory explanation for this judicial lapse. The only conclusion that could be drawn was that the order of denial was premeditated, for whatever reason or purpose is beyond the Court to divine. It was an unlikely coincidence that the notice of appeal was

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denied by the trial court on the same day that complainant paid the corresponding docket fees for the appeal. Time and again, the Court has said that "the judge is the visible representation of the law and, more importantly, of justice. From him, the people draw their will and awareness to obey the law."

9. **ID.; ID.; GROSS MISCONDUCT, IGNORANCE AND INCOMPETENCE ARE SUFFICIENT GROUND FOR DISMISSAL.** — Judges are required to observe due case in the performance of their official duties. They are likewise charged with knowledge of internal rules and procedures, especially those that relate to the scope of their functions. They are duty bound to observe and abide by these rules and procedures, designed, as they are, primarily to ensure the orderly administration of justice. The facts of the instant case convincingly establish that respondent judge was not conversant with basic legal principles. The Code of Judicial Conduct enjoins judges to "be faithful to the law and maintain professional competence." Respondent judge owes it to the public and to the legal profession to know the law he is supposed to apply in a given controversy. Gross misconduct, gross ignorance of the law and gross incompetence are characteristics and quires impermissible in a judge. They constitute sufficient grounds to dismiss the judge from the judicial service. For these reasons, I vote to impose the penalty of dismissal from the service on the respondent judge.

APPEARANCES OF COUNSEL

Jesus P. Castillo for complainant.

R E S O L U T I O N

YNARES-SANTIAGO, *J.*:

For allegedly granting improvidently a petition for *Habeas Corpus* in Special Proceeding No. 10931[1] entitled "*In the Matter of the Petition for Habeas Corpus of Ma Jing*," respondent

[1] *Rollo*, pp. 40-44.

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was charged in a verified complaint[2] with Violation of the Code of Judicial Conduct, Grave Misconduct, Gross Ignorance of the Law, Gross Incompetence, Gross Inefficiency and Knowingly Rendering An Unjust Judgment relative to the above-mentioned case.

The Office of the Court Administrator (OCA) referred the verified complaint to respondent judge for his comment thereon within ten (10) days from notice.

On July 30, 1999, respondent judge filed his comment[3] denying the charges against him and prayed for the dismissal of the case against him "for utter lack of merit."[4]

The case was subsequently referred to the OCA for evaluation, report and recommendation. In an evaluation report dated September 21, 1999,[5] the OCA recommended the dismissal of the administrative complaint against respondent judge for being *sub judice*, pointing out that the issues therein are the same as those pending resolution by the Court of Appeals in CA-G.R. SP No. 53425 entitled "*Rufus B. Rodriguez v. Hon. Rodolfo R. Bonifacio, et al.*"

The Court of Appeals subsequently promulgated a Decision in CA-G.R. SP No. 53425 dated May 4, 2000[6] setting aside for lack of legal basis the assailed Order of respondent Judge dated June 24, 1999 which found herein complainant guilty of indirect contempt.

In the meantime, in a Resolution dated November 24, 1999,[7] the Court resolved to: 1.] docket the case as a regular administrative proceeding; and 2.] refer the case to Court of

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[2] *Ibid.*, pp. 1-16.

[3] *Id.*, pp. 87-106.

[4] *Id.*, p. 105.

[5] *Id.*, pp. 140-144.

[6] *Id.*, pp. 224-231.

[7] *Id.*, p. 145.

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Appeals Associate Justice Conchita Carpio-Morales for investigation, report and recommendation within ninety (90) days from notice.

In compliance with the foregoing directive, Justice Morales submitted a Report summarizing the factual antecedents of the case thus:

On May 7, 1999 at about 11 p.m., the National Bureau of Investigation (NBI) in coordination with the Department of Labor and Employment (DOLE) and the Bureau of Immigration (BI) conducted simultaneous raids at the Royal Flame Club, Space World and Narcissus Club which are all located in Ermita, Manila as a result of which 20 female Chinese nationals were caught "in the act of entertaining customers and guests."

No Alien Employment Permits or Alien Employment Registration Certificates having been presented by these nationals, they were turned over to the BI for custody and verification of their alien status. They were thereupon confined at the BI Detention Center at Camp Bagong Diwa, Taguig, Metro Manila on May 8, 1999.

On May 17, 1999, Chinese National Ma Jing, one of the 20 apprehended Chinese, filed a petition for *habeas corpus* at the Pasig Regional Trial Court (RTC) which was raffled to Branch 151 thereof.

The caption of the petition did not name any respondent but it alleged as follows:

x x x x x x x x x

2. On or about 07 May 1999 at about 10:00 o'clock in the evening, petitioner, a temporary visitor in the Philippines from the People's Republic of China, was taken from a nightclub (Royal Flame) in Metro Manila by individuals who represented themselves as Agents of the National Bureau of Investigation (NBI), Bureau of Immigration and Deportation (BID) and/or Department of Labor and Employment (DOLE) and since then confined, restrained and deprived her of her liberty and [is] now confined at the BID Detention Center, Camp Bagong Diwa, Taguig, Metro Manila.

3. In spite of the fact that petitioner has been confined from then on, *to date, no formal complaint or accusation for any*

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specific offenses has been filed against her nor any judicial writ or order for her commitment has at any time been issued so far.

4. According to reliable information, the petitioner is *now being unlawfully detained and deprived of her liberty by the Warden and/or Chief of the BID* Detention Center, at Camp Bagong Diwa, Bicutan, Taguig, Metro Manila *at the behest of the Chief of a special operation unit of the NBI combined with BID and DOLE agents and whose office is at NBI, NBI Bldg., Taft Ave., Manila.* (italics supplied)

Acting Presiding Judge Rodolfo Bonifacio of Branch 151 of the Pasig RTC issued a writ.

On May 21, 1999, Atty. Rommel J. de Leon, Technical Assistant, Commissioner's Office, BI, submitted a RETURN OF THE WRIT alleging, *inter alia*:

x x x x x x x x x

4. That an investigation was conducted by Special Prosecutor Ramoncito L. Tolentino by (*sic*) the Bureau of Immigration;

5. That during the said investigation the subject foreign nationals including the petitioner failed to produce any travel documents while the National Bureau of Investigation showed their Affidavit of Arrest, pictures taken at Royal Flame Club and other evidences in support of their claim, copy of said Affidavit of Arrest and pictures are attached hereto as Annexes B and C respectively;

6. That on May 13, 1999, Special Prosecutor Ramon L. Tolentino issued a Charge Sheet charging said alien for violation of Section 37 (a) [7] of the Philippine Immigration Act of 1940, as amended, a copy of the charge sheet is attached hereto as Annex D;

7. That during the hearing at the Bureau of Immigration on May 20, 1999, the Counsel for petitioner and a certain Willy Ang manifested that the petitioner together with her companion are going to submit [an] application for Voluntary Deportation;

8. That based on the foregoing premises it is crystal clear that the petitioner is lawfully detained by the Bureau of Immigration; and

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9. That moreso (*sic*), if ever the petitioner would submit an application for Voluntary Deportation as manifested by his Counsel Atty. San Pedro and their representative Mr. Willy Ang this petition would already be moot and academic.

After conducting a hearing on the petition for *habeas corpus*, Judge Bonifacio, by Order of May 27, 1999, held:

x x x x x x x x x

Upon due inquiry, the Court finds that the petitioner is not really an undocumented alien as she has a valid PROC passport No. 1437777 and Visa No. 1201 issued by the Philippine Embassy on March 18, 1999. Her stay in the Philippines has been duly extended up to June 30, 1999 under O.R. No. M 7922945. The Charge Sheet, however, remains as a mere accusation, i.e. that petitioner is a mere suspect, working as a Guest Relation Officer at the Royal Flame Club without securing the necessary working permit/visa from the Bureau of Immigration. She was not notified though of the charges against her nor was she afforded due process. No commitment order was issued by the Commissioner of Immigration or any competent authority to justify her continued detention.

x x x x x x x x x

In *Dramayo*, the Supreme Court has ruled categorically that accusation is not synonymous with guilt. The strongest suspicion must not be permitted to sway judgment (*People vs. Austria*, 195 SCRA 700). The illegal arrest of petitioner without warrant of arrest or seizure on 07 May 1999 and arbitrary detention, to date, is not remedied by the supposed filing in a Charge Sheet dated 13 May 1999 but assumably filed only on 14 May 1999. Petitioner had been detained without any valid charge from 07 May 1999 to 14 May 1999. The filing of the Charge Sheet did not (*sic*) the illegal detention of the petitioner. x x x

Accordingly the said Order of May 27, 1999 disposed:

IN THE LIGHT OF THE FOREGOING, the Court finds no cogent reason to hold petitioner under continued detention so that *Ma Jing's immediate release is hereby ordered*, unless otherwise held on a different case and/or valid judicial process.

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The following day, *May 28, 1999 "respondent Bureau of Immigration . . . by counsel Atty. Rommel J. de Leon, Technical Assistant, Commissioner's Office" filed a Motion for Reconsideration of the May 27, 1999 [Order].*

On May 31, 1999, Ma Jing not having been released from detention, filed a "Motion to Declare Parties Guilty of Contempt" naming BI Commissioner Rufus B. Rodriguez, Atty. de Leon, BI Detention Center Warden Enrico R. Paner and BI employees Mar Novales and Richie Galvadores as contemnors.

By Order of June 15, 1999, Judge Bonifacio denied the BI's Motion for Reconsideration of the Order of May 27, 1999 and *directed BI Commissioner Rodriguez and co-respondents in the Motion to hold them in contempt of court* for failure to obey the Order of May 27, 1999.

In the same Order of June 15, 1999, Judge Bonifacio ordered Commissioner Rodriguez and co-respondents to immediately release Ma Jing in accordance with his May 27, 1999 Order.

Also on June 15, 1999, the BI issued a summary deportation order to Ma Jing who refused to receive it.

The following day or on June 16, 1999, the BI filed at Branch 151 of the RTC Pasig a *Notice of Appeal (to the Court of Appeals) of the May 27, 1999 Order and the June 15, 1999 Order.*

On June 18, 1999, Commissioner Rodriguez and his co-respondents, in compliance with the show cause order, filed an Explanation dated June 17, 1999 stating, *inter alia*, that they were never ordered in the May 17, 1999 Order to release Ma Jing; that except for Commissioner Rodriguez, the other respondents had no authority to release Ma Jing from the Detention Center; "that the contempt proceedings in the case at bar was not initiated by the Court *motu propio*, hence, the indirect contempt should be commenced by a verified petition and not by merely filing a Motion as was done in the instant case," following Sec. 4 of Rule 71 of the 1997 Rules of Civil Procedure which they therein quoted; and that the Motion for Reconsideration of the May 17, 1999 Order stayed the execution thereof as did the Notice of Appeal (filed on June 17, 1999) of the same order.

In the meantime, the other Chinese nationals' petitions for voluntary deportation were, by separate orders, granted by the BI.

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By June 24, 1999, Judge Bonifacio found Commissioner Rodriguez and co-respondents guilty of indirect contempt and ordered their arrest and detention at the Pasig City jail *until they have complied with the Order dated May 27, 1999* in the light of the following disquisition:

> x x x proceedings in *habeas corpus* are separate and distinct from any deportation proceedings taking place at the Bureau of Immigration and Deportation. They (*habeas corpus* proceedings) rarely, if ever, touch the merits of the deportation case and require no pronouncement with respect thereto.
>
> In its May 27, 1999 Order, this Court ordered the immediate release of petitioner Ma Jing, principally upon the following reasons: (i) the petitioner was unlawfully arrested without any warrant of arrest and, thereafter, arbitrarily detained, in disregard of her rights, even as an alien, to due process of law; and (ii) a warrant of arrest issued by the Commissioner of the Bureau of Immigration, to be valid, must be for the sole purpose of executing a final order of deportation.
>
> x x x x x x x x x
>
> 1. It is not correct to say that the May 27, 1999 Order should not be obeyed because it did not specifically direct Hon. Rufus D (*sic*) Rodriguez, P/Supt. Angelito O. Tan, Mar Navales and Richie Galvadores as the persons who should obey the said Order.
>
> The Writ of *Habeas Corpus* dated May 17, 1999 as directed, among others, to "The Chief of the Special Operation Unit-NBI and/or the Warden or Chief of the BID Detention Center, Camp Bagong Diwa, Taguig, Metro, Manila." As such, all the respondents fall under the classification "BID Agents" and are thus included in the persons to whom the writ of *habeas corpus* is directed.
>
> x x x x x x x x x
>
> 2. Neither is the Court impressed with the argument that P/Supt. Angelito O. Tan, Atty. Rommel J. de Leon, Enrico R. Paner, Mar Navales and Richie Galvadores do not have the authority to release the petitioner from the BID Detention Center, such authority pertaining only to the Commissioner, BID.

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The authority for the release of petitioner Ma Jing is precisely the May 27, 1999 Order of this Court which directs her immediate release. There can be no doubt on the jurisdiction of this Court on *habeas corpus* cases, as the case at bar, and the validity of its lawful orders issued pursuant to the exercise of such jurisdiction.

It is significant that Hon. Rufus Rodriguez has not disauthorized or revoked or in any way disowned the refusal of his subordinates to obey the subject court order, as he would certainly have done if his authority had been improperly invoked.

x x x x x x x x x

3. Neither is this Court persuaded by the argument that the May 27, 1999 Order was not yet executory because BID's Motion for Reconsideration stayed its execution.

By its very nature, *habeas corpus* proceedings are always characterized by promptness or speed. It is always timely to recall this categorical affirmation in the *ponencia* of Justice Malcolm in the landmark case of *Villavicencio v. Lukban*, *supra*:

> The writ of *habeas corpus* was devised as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom.

Therefore, only an injunction from a Higher Court could restrain enforceability of the May 27, 1999 Order which, by its unmistakable language, directed the "immediate release" of petitioner Ma Jing.

4. There is also a puerile claim that the contempt proceeding was improper because it was commenced by mere motion and not by a verified petition.

The Revised Rules of Court (should be 1997 Rules of Civil Procedure) cannot be any clearer. The appropriate section is quite explicit.: "After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following

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acts may be punished for indirect contempt . . . (b) Disobedience of or resistance to a lawful writ, process, order or judgment of a court . . ."

It is very clear that, as to form, the only requirement is that the charge be in writing x x x

x x x x x x x x x

5. On the claim that the Notice of Appeal filed by BID on June 17 stayed execution of the May 27, 1999 Order, suffice it to say that, as already discussed above, being a writ of liberty, *habeas corpus* proceedings are always characterized by promptness or speed. Therefore, the May 27, 1999 Order of release was inherently immediately executory, and only an injunction from a Higher Court could restrain its immediate enforceability.

6. Finally, the respondents submit the argument that it is no longer legally possible for the BID to order the release of the petitioner because of the issuance of a Summary Deportation Order against her.

The first time the respondents first disobeyed the May 27, 1999 Order was on May 28, 1999. There was no deportation order yet at that time. The Court cannot accede to the proposition that the subsequent issuance of the deportation order should have the effect of erasing or pardoning the contempt already committed by the respondents as early as May 28, 1999.

Moreover, the release of petitioner Ma Jing is not really a primordial consideration insofar as the pending incident is concerned. The ultimate purpose of this inquiry is to determine whether the respondents are guilty of indirect contempt, i.e., 'disobedience of or resistance to a lawful writ, process, order, or judgment of a court.'

The Court finds that such disobedience has been indubitably established by the various Sheriff's Reports extant in the records of this case, and that the 'reasons' advanced by the respondents in their 'Explanation' dated June 17, 1999 are not the real reasons which impelled said disobedience, as the same conclusively stems from the perception of the Hon. Rufus Rodriguez and his subalterns that the Court has no authority to order the release of petitioner Ma Jing. Even assuming that

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the respondents were of the opinion that the subject Order was grossly erroneous, they could have availed of the remedy of *certiorari* immediately after its promulgation. But they, certainly, cannot adamantly and belligerently defy the Order of the Courts simply because they have a contrary opinion.

Confronted with the mandatory directive of May 27, 1999 to release petitioner Ma Jing, the obstinate refusal of the respondents to obey the same constitutes indirect contempt." (Italics supplied).

On June 25, 1999, a Friday, at about 2 o'clock in the afternoon, *Commissioner Rodriguez, et al. were, pursuant to the June 24, 1999 Order, arrested by the NBI whose Director was specifically ordered by Judge Bonifacio to serve the warrant.*

Commissioner Rodriguez, *et al.* lost no time in filing at the Court of Appeals on June 25, 1999 an Urgent Petition for *Certiorari* against Judge Bonifacio, docketed as CA-G.R. No. 53425, followed by an Amended Petition, *assailing the Judge's Order of June 24, 1999.*

By Order of June 25, 1999, the Court of Appeals issued a writ of preliminary mandatory injunction commanding the immediate release of Commissioner Rodriguez, *et al.* after posting a bond and directing Judge Bonifacio to file his comment on the petition.

At 10:00 p.m. of June 25, 1999, Commissioner Rodriguez, *et al.* were released after posting a bond.

On the basis of the foregoing facts, the Investigating Justice recommends respondent judge be fined Fifty Thousand (₱50,000.00) Pesos for gross ignorance of the law and warned that a repetition or the commission of a similar infraction will be dealt with more severely, reasoning thus:

Under Rule 71 of the 1997 Rules of Civil Procedure, contempt proceedings may be commenced as follows:

SECTION 4. *How proceedings commenced.* — Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

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> In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of the documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision.

The *petition for habeas corpus* alleged that Ma Jing was "[a]ccording to reliable" information being unlawfully deprived of her liberty "by the Warden and/or Chief of the BID Detention Center at the behest of the Chief of a special operations unit of the NBI combined with BID and DLE agents whose office is at NBI." *It did not name herein complainant as respondent.*

Neither did the May 27, 1999 Order direct herein complainant to release Ma Jing. It was when Ma Jing filed on May 31, 1999 a Motion to Cite in Contempt that herein complainant's name was for the first time drawn in the case.

Under the circumstances, compliance with the second mode of initiating a petition for contempt *under Sec. 4* of Rule 71 of the 1997 Code of Civil Procedure, — filing a "*verified petition* with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for initiating pleadings for civil action in the court concerned" — was in order. It is in this light that the undersigned investigator finds that respondent ERRED in giving due course to the mere motion to cite in contempt and finding herein complainant guilty thereof by Order of June 24, 1999, *especially given the fact that in the Explanation-Answer to the show cause Order of respondent herein, complainant et al. quoted Sec. 4 of Rule 71 and alleged that as "[t]he contempt proceedings . . . w[ere] not initiated by the Court motu proprio . . . the indirect contempt should be commenced by a verified petition and not by mere filing [of a] motion as was done in the instant case.*"

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For administrative liability to attach for errors of judgment, the error must be *gross, patent or deliberate* (*Re: Judge Silverio S. Tayao*, A.M. No. 93-8-1204, 229 SCRA 723 [1994]).

For administrative liability to attach for gross ignorance of the law and/or knowingly rendering an unjust order or judgment, it must be established that the order or judgment is *not only erroneous* but [that] he was *actuated by bad faith, dishonesty, hatred, revenge, corrupt purpose* or some other like motive (*Guerrero v. Villamor*, A.M. No. RTJ-90-617, 296 SCRA 88 [1998]).

For a judge may not be held administratively accountable for every erroneous order or decision he renders (*Rodrigo v. Quijano*, 79 10 [1997]) [*sic*] otherwise it would "render judicial office untenable for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible (*vide Lopez v. Corpus*, 78 SCRA 374 [1997] (*sic*); *Pilipinas Bank v. Tirona-Liwag*, 190 SCRA 834 [1994]).

The undersigned finds that respondent's error in giving due course to the "Motion to Declare Parties Guilty of Contempt" was patent, given that circumstances mentioned above. Respondent's invoking of Sec. 3 of the same Rule 71 (of the 1997 Rules of Civil Procedure, not revised Rules of Court as he stated) which to him clearly shows that "the only requirement is that the charge be in writing, *citing Tomas C. Aguador v. Malcolm S. Enerio, et al., G.R. No. L-20383, January 30, 1971*, betrays his ignorance that this *Aguador* case was decided in 1971, long before Sec. 4, Rule 71, which is a *new provision*, was *incorporated in the 1997* Rules of Civil Procedure.

And, as from the following portion of respondent's Order of June 24, 1999, to wit:

> Incidentally, the Bureau of Immigration and Deportation is not a sovereign entity where the commissioner reigns supreme. It is a mere Bureau and a becoming modesty of inferior offices demands a conscious realization of the position that they occupy in the interrelation and operation of the huge governmental bureaucracy. Most decidedly, this Court does not believe that the Honorable Commissioner of Immigration and Deportation — however exalted he may personally feel his position to be — is beyond the processes of Courts of the land."

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it is gathered that he was actuated by anger or hatred in so acting on the motion for contempt, administrative liability attaches for his gross ignorance of the law.

As for the rest of the assailed Orders — bases of the other charges at bar, complainant's charge that they violate the law and the jurisprudence he cited not being indubitable in the light of respondent's own citations of the law and jurisprudence, the undersigned does not find respondent to have acted arrantly. The issue thus becomes judicial in character and would not warrant faulting him administratively (*Godinez v. Alano*, 303 SCRA 259 [1999]).

The Court agrees with the investigating Justice that respondent judge should indeed be sanctioned, but finds the recommended penalty not commensurate to the gravity of respondent's malfeasance for the following reasons:

First, the degree of restraint respondent should have observed in the exercise of his contempt powers leaves much to be desired, given the prevailing facts of this case much more so, considering that the same bears with it the taint of personal hostility and passion against the party to whom it is directed. Time and again magistrates have been reminded that —

. . . the salutary rule is that *the power to punish for contempt must be exercised in the preservative not vindictive principle,*[8] *and on the corrective not retaliatory idea of punishment.*[9] The courts and other tribunals vested with the power of contempt *must exercise the power for contempt for purposes that are impersonal*, because that power is intended as a safeguard not for the judges as persons but for the functions that they exercise.[10]

Besides the basic equipment of possessing the requisite learning in the law, a magistrate must exhibit that hallmark judicial

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[8] *Commissioner on Immigration v. Cloribel*, 127 Phil. 716 [1967].

[9] *Nazareno v. Barnes*, 136 SCRA 57 [1985]; *Pacuribot v. Lim, Jr.*, 275 SCRA 543 [1997].

[10] *Yasay, Jr. v. Recto*, G.R. No. 129521, 7 September 1999, 313 SCRA 739, citing *Austria v. Masaquiel*, 20 SCRA 1247 [1967]; *Angeles v. Gernale*, 274 SCRA 10 [1997] *and Nazareno v. Barnes, supra.; Panado v. CA*, 298 SCRA 110 [1998].

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temperament of utmost sobriety[11] and self-restraint which are indispensable qualities of every judge.[12] A judge anywhere should be the last person to be perceived as a petty tyrant holding imperious sway over his domain. Such an image is, however, evoked by the actuations of respondent judge in this case.

It has time and again been stressed that the role of a judge in relation to those who appear before his court must be one of temperance, patience and courtesy.[13] A judge who is commanded at all times to be mindful of his high calling and his mission as a dispassionate and impartial arbiter of justice[14] is expected to be "a cerebral man who deliberately holds in check the tug and pull of purely personal preferences which he shares with his fellow mortals."[15]

Judges have been admonished to observe judicial decorum which requires that a magistrate must at all times be temperate in his language[16] refraining from inflammatory or excessive rhetoric[17] or from resorting "to the language of vilification."[18] In this regard, Rule 3.04 of the Code of Judicial Conduct states that —

> Rule 3.04. A judge should be patient, attentive and courteous to all lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants.

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[11] *Martinez v. Pahimulin*, 116 SCRA 136 [1982].

[12] *Ferrer v. Maramba*, 290 SCRA 44 [1998].

[13] See *Delgra, Jr. v. Gonzales*, 31 SCRA 237 [1970]; *Laguio v. Diaz*, 104 SCRA 689 [1981]; *Retuya v. Equipilag*, 91 SCRA 416 [1979].

[14] *Royeca v. Animas*, 71 SCRA 1 [1976].

[15] *Azucena v. Muñoz*, 33 SCRA 722 [1970].

[16] *Turqueza v. Hernando*, 97 SCRA 483 [1980].

[17] *Royeca v. Animas, supra.*, p. 6.

[18] *Ibid.*, p. 9.

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Respondent judge needs to be reminded that government service is people-oriented.[19] Patience is an essential part of dispensing justice and courtesy is a mark of culture and good breeding.[20] Belligerent behavior has no place in government service where personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence.[21]

Second, it is imperative that judges be conversant with basic legal principles. The Code of Judicial Conduct, in fact, enjoins judges to "be faithful to the law and maintain professional competence."[22] Respondent judge owes it to the public and to the legal profession to know the law he is supposed to apply in a given controversy.[23] Indeed —

> A judge is called upon to exhibit more than just a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles and aware of well-settled authoritative doctrines. He should strive for excellence exceeded only by his passion for truth, to the end that he be the personification of justice and the Rule of Law.[24]

In this case, respondent judge displayed a deplorable deficiency in his grasp of the basic principles governing contempt. As defined, indirect contempt is one committed out of or not in the presence of the court that tends to belittle, degrade, obstruct

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[19] *De Luna v. Ricon*, 250 SCRA 1 [1995].

[20] Pineda, E.L., *Legal and Judicial Ethics*, pp. 354-355 [1995].

[21] *Quiroz v. Orfila*, 272 SCRA 324 [1997].

[22] Canon 3, Rule 3.01.

[23] *Bacar v. De Guzman, Jr.*, 271 SCRA 328 [1997].

[24] *Juana Marzan-Gelacio v. Judge Alipio V. Flores, Branch 20, RTC, Vigan, Ilocos Sur*, A.M. No. RTJ-99-1488, 20 June 2000, p. 8., citing *Conducto v. Monzon*, 291 SCRA 619 [1998], citing *Estoya v. Abraham-Singson*, 237 SCRA 1 [1994], citing *Aducaen v. Flores*, 51 SCRA 78 [1973]; *Ajeno v. Insierto*, 71 SCRA 166 [1976]: *Ubongen v. Mayo*, 99 SCRA 30 [1980]; *Libarios v. Dabalos*, 199 SCRA 48 [1991]; *Lim v. Domagas*, 227 SCRA 258 [1993]; Cuaresma v. Aguilar, 226 SCRA 73 [1993].

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or embarrass the court and justice.[25] On the other hand, direct contempt consists of or is characterized, by "misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same" within the meaning of Section 1, Rule 71 of the Rules of Civil Procedure.[26]

There is no question that disobedience or resistance to a lawful writ, process, order, judgment or command of a court or injunction granted by a court or judge constitutes indirect contempt.[27] Section 4, Rule 71 of the Rules, provides for two (2) modes of commencing proceedings for indirect contempt, to wit:

1.] It may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

2.] In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned. (all initiatory pleadings should be accompanied with a certificate of non-forum shopping, Sec. 5 Rule 7).[28]

As can be gleaned from the records of the case, the contempt proceedings commenced by Ma Jing was made through a motion and not a verified petition as required by the above-cited Section. Respondent Judge relied on Section 3, Rule 71 of the Rules, completely disregarding the provisions of Section 4 which explicitly lays down the manner in which indirect contempt proceedings may be filed.

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[25] *Guerrero v. Villamor*, 179 SCRA 355 [1989].

[26] *Wicker v. Arcangel*, 252 SCRA 444 [1996].

[27] *Industrial and Transport Equipment, Inc. v. NLRC*, 284 SCRA 144 [1998], citing *Abad v. Somera*, 187 SCRA 75 [1990].

[28] Herrera O.M. *Remedial Law*, Vol. VII, 1997 Ed., p. 811.

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Contempt of court has been distinctly described as an offense against the State and not against the judge personally. To reiterate, a judge must always remember that the power of the court to punish for contempt should be exercised for purposes that are not personal, because that power is intended as a safeguard, not for judges as persons, but for the functions they exercise.[29]

Viewed *vis-a-vis* the foregoing circumscription of a court's power to punish for contempt, it bears stressing that the court must exercise the power of contempt judiciously and sparingly with utmost self-restraint[30] with the end in view of utilizing the same for correction and preservation of the dignity of the court, not for retaliation or vindication.[31] In this case, respondent judge failed to observe the procedure expressly spelled out in Section 4, Rule 71 of the Rules.

As stated earlier, a judge is called upon to exhibit more than a cursory acquaintance with statutes and procedural rules; it is imperative that he be conversant with basic legal principles.[32] Canon 4 of the Canon of Judicial Ethics requires that a judge should be studious of the principles of law and Canon 18 mandates that he should administer his office with due regard to the integrity of the system of the law itself, remembering that he is not a depositary of arbitrary power, but a judge under the sanction of law.[33]

"Observance of the law which he is bound to know and sworn to uphold is required of every judge.[34] When the law is

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[29] *Angeles v. Gernale*, 274 SCRA 10 [1997], citing *Buyco v. Zosa*, 145 Phil. 663 [1970] and *Austria v. Masaquiel, supra.*

[30] *Terry v. People*, G.R. No. 136203 16 September 1999, 314 SCRA 669, citing *De Guia v. Guerrero*, 234 SCRA 625 [1994]; *Fontelera v. Amores*, 70 SCRA 37 [1976] and *Pacuribot v. Lim, supra.*

[31] *Esmeralda-Baroy v. Peralta*, 287 SCRA 1 [1998].

[32] *Teresa Jason v. Judge Briccio C. Ygaña, et al.*, A.M. No. RTJ-00-1543, 4 August 2000, p. 9.

[33] *Ibid*, citing *Estoya v. Abraham-Singson, supra.*

[34] *Hermo v. De la Rosa*, 299 SCRA 68 [1998].

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sufficiently basic, a judge owes it to his office to simply apply it;[35] anything less than that would be constitutive of gross ignorance of the law."[36] In short, when the law is so elementary; not to be aware of it constitutes gross ignorance of the law.[37]

Third, assuming *ex gratia argumenti* that there was indeed a valid contempt charge filed against herein complainant, the validity of the charge will not extricate respondent judge from his predicament. The records disclose that the Return of the Writ[38] stated that a Charge Sheet[39] was filed on May 13, 1999 against Ma Jing for violation of Section 37 [a] (7) of the Philippine Immigration Act of 1940. Despite this, respondent judge issued an Order dated May 27, 1999[40] directing Ma Jing's immediate release. It was grievous error for respondent judge, in the face of these factual circumstances disclosed by the records, to give due course to the petition for *habeas corpus* despite the pendency of a deportation case against Ma Jing. Where the BID had not yet completed its hearing and investigation proceedings with respect to an alien and there is no showing that it is unduly delaying its decision, *habeas corpus* proceedings are premature and should be dismissed.[41] Along the same vein, when an alien is detained by the BID pursuant to an order of deportation, as in this case where a Summary Deportation Order[42] had already been issued by the BID, Courts of First Instance,

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[35] *Bacor v. De Guzman*, 271 SCRA 328 [1997].

[36] *Carlos B. Creer v. Concordio L. Fabillar, Acting Judge. MCTC, Giporlos-Quinapundan, Eastern Samar,* A.M. No. MTJ-99-1218, 14 August 2000, p. 8, citing *Cortes v. Agcaoili*, 294 SCRA 423 [1998].

[37] *People v. Serrano*, G.R. No. 135451, 30 September 1999, 315 SCRA 686, citing *Cortes v. Agcaoili, supra.*, citing *Agcaoili v. Ramos*, 229 SCRA 705 [1994].

[38] *Rollo*, pp. 30-32.

[39] *Ibid*, p. 26.

[40] *Id.*, pp. 40-44.

[41] *Johnson v. Commission on Immigration*, 101 Phil. 654 [1957].

[42] *Rollo*, p. 53.

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now Regional Trial Courts, have no power to release the said alien on bail even in *habeas corpus* proceedings, because there is no law authorizing it.[43]

It, furthermore, must be pointed out that on May 28, 1999, complainant-respondent filed a Motion for Reconsideration[44] of the said order but respondent judge denied the same in an Order dated June 15, 1999,[45] and required complainant and his co-respondents to show cause why they should not be cited in contempt. On the same date, a Summary Deportation Order was issued in the BID Case against Ma Jing. The filing of the motion for reconsideration effectively tolled the period within which to appeal respondent judge's decision dated May 27, 1999. It was not a *pro forma* motion, as respondent judge himself did not say so in the June 15, 1999 order denying the motion. The two-day period to appeal provided in Section 39, B.P. Blg. 129 certainly did not proscribe the filing of the motion for reconsideration of the judgment in the *habeas corpus* case. The motion for reconsideration was filed on May 28, 1999, a day after the decision dated May 27, 1999 was received by complainant. The Notice of Appeal,[46] on the other hand was filed on June 17, 1999. Complainant and co-respondents received the order dated June 15, 1999 of respondent judge on June 16, 1999. Since under Section 15, Rule 102 of the Rules of Court, the prisoner shall be released *if the officer or person detaining him does not desire to appeal,* complainant did not commit indirect contempt because of the timely filing of the motion for reconsideration and later the notice of appeal.

Be that as it may, there was a valid judicial process justifying Ma Jing's detention even before respondent judge rendered

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[43] *Republic v. Cloribel*, 9 SCRA 453 [1963]; *Ong See Hana v. Commissioner of Immigration*, 4 SCRA 442 [1962]; *Bengzon v. Ocampo*, 84 Phil. 611 [1949].

[44] *Rollo*, pp. 45-48.

[45] *Ibid*, pp. 49-51.

[46] *Id.*, p. 52.

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his decision as shown by the Return of the Writ which averred, among others, that a Charge Sheet was filed against Ma Jing. Even granting that the arrest of Ma Jing was initially illegal, the filing of the Charge Sheet cured whatever incipient infirmity there was in her arrest. Respondent judge therefore had no authority to release the party who was thus committed.[47] Section 4, Rule 102 of the Rules of Court provides:

> SECTION 4. *When writ not allowed or discharge authorized.* — If it appears that the person to be restrained of his liberty is in the custody of an officer under process issued by a court or judge; or by virtue of a judgment or order of a court of record, and that court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

Once a person detained is duly charged in court, he may no longer question his detention through a petition for issuance of a writ of *habeas corpus*. His remedy would be to quash the information and/or the warrant of arrest duly issued.[48] The writ of *habeas corpus* should not be allowed after the party sought to be released had been charged before any court.[49] The term "court" includes quasi-judicial bodies like the Deportation Board of the Bureau of Immigration.[50]

It is significant to note *vis-a-vis* the foregoing disquisitions that in it Decision dated May 4, 2000[51] in CA-G.R. SP No. 53425, the Court of Appeals faulted respondent judge with grave

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[47] *Republic v. Cloribel, supra.*

[48] *Bernarte v. CA,* 263 SCRA 323 [1996].

[49] *Republic v. Cloribel, supra.*

[50] *Velasco v. CA,* 245 SCRA 677 [1995].

[51] *Rollo,* pp. 224-231.

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abuse of discretion and gross ignorance of the law in issuing the June 24, 1999 Order on similar grounds. In castigating respondent judge, the appellate court minced no words:

> When the inefficiency springs from a failure to consider so basic and elemental a rule, a law or a principle in the discharge of his duties, a judge is either too incompetent and undeserving of the position and title he holds or is too vicious that the oversight or omission was deliberately done in bad faith and in grave abuse of judicial authority[52] x x x Thus, when the law transgressed is elementary — the failure to know to observe it, constitute gross ignorance of the law.[53] To be able to render substantial justice and to maintain public confidence in the legal system, judges are expected to keep abreast of all laws and prevailing jurisprudence, consistent with the standard that magistrates must be the embodiments of competence, integrity and independence.[54]

Lastly, it appears from the record that respondent judge's malfeasance is not merely confined to the abuse of his judicial prerogatives and ignorance of basic legal precepts but also to the predilection of making false representations to suit his ends. Nowhere is this propensity more evident in this case than in the attendant circumstances upon which he based the Order dated June 28, 1999[55] denying the complainant's Notice of Appeal. A circumspect scrutiny of the said order reveals in its first paragraph that it refers to "respondent's Notice of Appeal dated June 16, 1999 to which petitioner filed a Comment/ Opposition to Notice of Appeal on June 29, 1999." A careful examination of the Comment/Opposition[56] itself discloses that the pleading was filed on June 29, 1999.[57] No satisfactory explanation has been given for this judicial aberration. Needless

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[52] *Carreon v. Municipal Judge Flores*, 64 SCRA 238 [1975].

[53] *Supena v. Dela Rosa*, 266 SCRA 1 [1997].

[54] *Cortes v. Agcaoili*, 294 SCRA 423 [1998].

[55] *Rollo*, p. 210.

[56] *Ibid.*, pp. 211-212.

[57] *Id.*, p. 211.

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to state, the allusion contained in an order to a pleading filed *after* its issuance can lead to no other conclusion than that the said order was antedated and, thus, falsified in the absence of any explanation to shed light on the discrepancy.

The foregoing act not only seriously undermines and adversely reflects on the honesty and integrity of respondent judge as an officer of the court; it also betrays a character flaw which speaks ill of his person. Suffice it to state in this regard that "[M]aking false representations is a vice which no judge should imbibe. As the judge is the visible representation of the law, and more importantly justice, he must therefore, be the first to abide by the law and weave an example for the others to follow."[58]

A verification with the OCA discloses that aside from the instant complaint, respondent judge has other pending administrative complaints filed against him for the same or similar offenses. In A.M. No. RTJ-99-845, respondent judge stands charged with Serious Misconduct Re: JDRC Case No. 2913, while in A.M. No. RTJ-00-972 he stands indicted for Gross Ignorance of the Law, Bias, Abuse of Authority and Malicious Intent to Hinder and Frustrate the Administration of Justice by Interfering with Orders and Processes of a Co-equal Court. Needless to state, these circumstances only further erode the people's faith and confidence in the judiciary for it is the duty of all members of the bench to avoid any impression of impropriety to protect the image and integrity of the judiciary which in recent times has been the object of criticism and controversy.[59]

Taking into account the prevailing circumstances of this case, the Court believes that in lieu of the fine recommended by the investigating Justice, a three (3) month suspension without pay would be a more appropriate penalty.

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[58] *BPI v. Generoso*, 249 SCRA 477 [1995], citing *Castillo v. Cortes*, 234 SCRA 398 [1994].

[59] *Fernando Dela Cruz v. Judge Jesus G. Bersamira*, A.M. No. RTJ-00-1567 p. 15, citing *Antonio Yu Asensi v. Judge Francisco D. Villanueva*, A.M. No. MTJ-00-1245 19 January 2000.

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WHEREFORE, respondent Judge Rodolfo R. Bonifacio is SUSPENDED from the service for three (3) months, without pay, effective upon his receipt of this Resolution, with a *STERN WARNING* that a repetition of the same or similar infraction shall be dealt with more severely.

SO ORDERED.

Davide, Jr., C .J . and *Puno, J .,* concur.

Kapunan, J ., is on leave.

Pardo, J., dissents.

PARDO, *J.,* *dissenting*:

I am constrained to dissent. I disagree with the penalty imposed upon respondent Judge Rodolfo R. Bonifacio. The imposition of three (3) months suspension without pay is too light a penalty considering the gravity of the charge and finding of gross misconduct, incompetence and gross ignorance of the law.

In the instant case, complainant Commissioner Rufus B. Rodriguez had reason to hold in continued detention pending deportation Chinese national Ma Jing, pursuant to the charge sheet filed by Bureau of Immigration and Deportation (BID) Special Prosecutor Ramon L. Tolentino on May 13, 1999, for violation of Section 37 (a) [7], Philippine Immigration Act of 1940, as amended. Despite the validity of the detention, respondent judge issued a writ of *habeas corpus* and ordered the immediate release of Ma Jing.

The order of respondent judge was patently erroneous.[1] The rule is that the writ may not be granted, or the person held in detention may not be discharged from detention if he has been charged with an offense.[2] *Habeas corpus* no longer lies.[3] To justify the grant of the writ, the restraint of liberty must be an

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[1] *Zarate v. Judge Balderian*, A.M. No. MTJ-00-1261, March 31, 2000.

[2] Rule 102, Section 4, Rules of Court.

[3] *Ilagan v. Enrile*, 139 SCRA 349 [1985].

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illegal and involuntary deprivation of freedom of action, which was not the situation in the case at bar.[4]

Moreover, the order holding BID Commissioner Rodriguez, and company, guilty of indirect contempt of court for their failure to comply with the May 27, 1999 order directing the immediate release of the Chinese national is void because the trial court did not acquire jurisdiction over the subject case. Rule 71, Section 3, 1997 Rules of Civil Procedure specifically outlines the procedural requisites before one may be punished for indirect contempt, namely: (1) the filing of a written charge and (2) opportunity given to the accused to be heard by himself or counsel.[5] Specifically, Section 4 of the same rule provides how the case for indirect contempt may be commenced:

"SECTION 4.— Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon *full compliance* with the *requirements for filing initiatory pleadings for civil actions* in the court concerned. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision."[italics supplied]

The charge for indirect contempt against Commissioner Rodriguez was commenced not by a verified petition, but by motion and without compliance with the requirements for filing initiatory pleadings, which are now required in the rules.[6]

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[4] *Ilusorio v. Bildner*, G.R. Nos. 139789 & 139808, May 12, 2000.

[5] *Remman Enterprises, Inc. v. Court of Appeals*, 268 SCRA 688, 698 [1997].

[6] Rule 71, Section 4, 1997 Rules of Civil Procedure.

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The record is bereft of evidence on whether respondent judge conducted a hearing in the contempt charge prior to the issuance of the warrant of arrest against complainant. Pursuant to the clear mandate of Rule 71, Section 3, 1997 Rules of Civil Procedure, respondent judge can not immediately impose a penalty without complying with the due process requirements, namely, the filing of a charge in writing and an opportunity for the accused to be heard by himself or by counsel.[7] It is essential that the contemner be granted an opportunity to meet the charges against him and to be heard in his defense,[8] as contempt of court proceedings are commonly treated as criminal in nature.[9]

In finding complainant guilty of indirect contempt and ordering his immediate arrest and confinement without affording him an opportunity to be heard, respondent judge violated the requirements of due process and, therefore, acted without or in excess of jurisdiction or with grave abuse of discretion.[10]

The power to punish for contempt is not limitless. It must be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual. It must be exercised on the preservative and not on the vindictive principle.[11] Contempt of court has been distinctly described as an offense against the State and not against the judge personally. To reiterate, a judge must always remember that the power of the court to punish for contempt should be exercised for purposes that are not personal, because that power is intended as a safeguard, not for judges as persons, but for the functions they exercise.[12]

Respondent judge lost sight of the fact that upon receipt of the May 27, 1999 order for the immediate release of the Chinese

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[7] *Paredes-Garcia v. Court of Appeals*, 261 SCRA 693 [1996].

[8] *Remman Enterprises, Inc. v. Court of Appeals, supra*, Note 5.

[9] *Paredes-Garcia v. Court of Appeals, supra*, Note 7.

[10] *Ibid.*, at p. 708.

[11] *Ibid.*, at p. 705.

[12] *Angeles v. Gernale*, 274 SCRA 10 [1997].

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national, the Commissioner of Immigration and Deportation sought the reconsideration of the order, thus tolling the period to comply. The motion for reconsideration was denied on June 15, 1999, and the Commissioner lost no time in filing an appeal with the Court of Appeals. The order which complainant allegedly disobeyed had not attained finality. Hence, the indirect contempt charge has no basis.

Assuming for the sake of argument, but without conceding that complainant was guilty of indirect contempt, the penalty of imprisonment meted out by respondent judge was excessive and ignominious, considering the status and rank of complainant as commissioner of a government bureau. Under the rules on contempt, a person adjudged guilty of indirect contempt against a regional trial court may be punished by fine or imprisonment.[13] Imprisonment of the accused until he complies with the order is not mandatory, but merely directory as implied by the use of the word "may."[14] Respondent need not resort to the application of the extreme penalty of imprisonment if his intention was merely to exact compliance from complainant. The imposition of fine in an amount not exceeding thirty thousand pesos (₱30,000.00)[15] would suffice for this purpose. No other conclusion could be inferred from this set of facts than that respondent judge was moved by spite and a desire to shame the complainant in his constituency because of his purported refusal to comply with respondent judge's order.

It was more than evident that respondent judge was moved not by his desire to uphold the law and justice, but by bad faith and malice based on the tenor of the order of contempt, to wit:

"Incidentally, the Bureau of Immigration and Deportation is not a sovereign entity where the commissioner reigns supreme. It is a mere

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[13] Rule 71, Section 7, 1997 Rules of Civil Procedure.

[14] "Section 8. *Imprisonment until order obeyed.* — When the contempt consists in the refusal or omission to do an act which is yet in the power of the respondent to perform, he may be imprisoned by order of the court concerned until he performs it." [Rule 71, 1997 Rules of Civil Procedure].

[15] Rule 71, Section 7, 1997 Rules of Civil Procedure.

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Bureau and a becoming modesty of inferior offices demands a conscious realization of the position that they occupy in the interrelation and operation of the huge governmental bureaucracy. Most decidedly, *this Court does not believe* that the Honorable Commissioner of Immigration and Deportation — *however exalted he may personally feel his position to be* — is beyond the processes of Courts of the land."[16]

The haste by which the contempt proceeding was conducted and the time the warrant of arrest was carried out belied the good faith of respondent judge. On June 24, 1999, complainant was immediately ordered arrested and detained in the Pasig City Jail until he shall have complied with the May 27, 1999 order of respondent judge. It was only on the following day, which was a Friday, that complainant was arrested at around 2:00 in the afternoon and detained at the Pasig City Jail. What was suspicious about the arrest of complainant was the time and manner it was implemented, as it was done on a Friday afternoon, when the next day was a non-working day and complainant would find it difficult to secure his release on bail or otherwise. Hence, ensuring that complainant would be incarcerated during the weekend.

These attendant circumstances clearly and convincingly establish respondent judge's guilt for grave misconduct. The subject order of respondent judge was not only contrary to existing law and jurisprudence but more importantly, imposed with ignominy and ill will disguised to make complainant suffer humiliation and perfidy.[17]

Respondent judge's acts showed that he was not possessed of that hallmark judicial temperament of utmost sobriety[18] and self-restraint that are indispensable qualities of every judge.[19] Rule 3.04 of the Code of Judicial Conduct clearly mandates that:

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[16] Report of the Investigating Justice, *Rollo*, pp. 232-260, at p. 259.

[17] *Heirs of the Late Nasser D. Yasin v. Felix*, 250 SCRA 545, 554 [1995].

[18] *Martinez v. Pahimulin*, 116 SCRA 136 [1982].

[19] *Ferrer v. Maramba*, 290 SCRA 44 [1998].

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"Rule 3.04 — a judge should be patient, attentive and courteous to all lawyers, especially the inexperienced, to litigants, witnesses, and others appearing before the court. A judge should avoid unconsciously falling into the attitude of mind that the litigants are made for the courts instead of the courts for the litigants."

Patience is an essential part of dispensing justice and courtesy is a mark of culture and good breeding.[20] Belligerent behavior has no place in government service where personnel are enjoined to act with self-restraint and civility at all times even when confronted with rudeness and insolence.[21]

It will be noted that respondent judge has a predilection for making false representation to suit his ends. On June 16, 1999, complainant filed his notice of appeal. Ma Jing filed her comment/opposition to the notice of appeal on June 29, 1999. On June 28, 1999 complainant paid the corresponding docket fees for such notice of appeal although as Commissioner of Immigration in his official capacity, he was exempt from the requirement of paying the docket fees.[22] On the same day, respondent judge issued the order denying the appeal even before the deportee filed her opposition thereto.

What was significant about the June 28, 1999 order was that it specifically stated that the trial court, in arriving at the order of denial, took into consideration the complainant's appeal and the opposition filed by the Chinese national. There was something questionable and suspicious about this order of denial as it was issued the day before the other party to the case filed his comment. How could respondent judge consider a pleading that had not been filed with the court at the time the order was issued? Respondent failed to give a satisfactory explanation for this judicial lapse. The only conclusion that could be drawn was that the order of denial was premeditated, for whatever reason or purpose is beyond the Court to divine. It was an

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[20] Pineda, E. L., *Legal and Judicial Ethics*, pp. 354-355 [1995].

[21] *Quiroz v. Orfila*, 272 SCRA 324 [1997].

[22] Rule 141, Section 16, 1964 Revised Rules of Court.

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unlikely coincidence that the notice of appeal was denied by the trial court on the same day that complainant paid the corresponding docket fees for the appeal.

Time and again, the Court has said that "the judge is the visible representation of the law and, more importantly, of justice. From him, the people draw their will and awareness to obey the law."[23]

Judges are required to observe due care in the performance of their official duties. They are likewise charged with knowledge of internal rules and procedures, especially those that relate to the scope of their functions. They are duty bound to observe and abide by these rules and procedures, designed, as they are, primarily to ensure the orderly administration of justice.[24]

The facts of the instant case convincingly establish that respondent judge was not conversant with basic legal principles. The Code of Judicial Conduct enjoins judges to "be faithful to the law and maintain professional competence."[25] Respondent judge owes it to the public and to the legal profession to know the law he is supposed to apply in a given controversy.[26] Gross misconduct, gross ignorance of the law and gross incompetence are characteristics and quires impermissible in a judge.[27] They constitute sufficient grounds to dismiss the judge from the judicial service.[28]

For these reasons, I vote to impose the penalty of dismissal from the service on the respondent judge.

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[23] *Impao v. Makilala*, 178 SCRA 541, 550 [1989].

[24] *Ramirez v. Corpuz-Macandog*, 144 SCRA 462, 478-479 [1986].

[25] Canon 3, Rule 3.01, Code of Judicial Ethics.

[26] *Bacar v. De Guzman, Jr.*, 271 SCRA 328 [1997].

[27] *Garganera v. Jocson*, 213 SCRA 149 [1992].

[28] *Ramirez v. Corpuz-Macandog, supra*, Note 24.